**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF FLORIDA**
**FORT LAUDERDALE DIVISION**
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| In re: | Chapter 11 |
| 1 GLOBAL CAPITAL LLC, *et al.*,[1] | Case No. 18-19121-RBR |
| Debtors. | (Jointly Administered) |

**PLAN PROPONENTS' MOTION TO STRIKE AND PRELIMINARY RESPONSE TO OBJECTIONS OF TRAVIS PORTFOLIO, LLC, OLIPHANT FINANCIAL, LLC, AND COLLINS ASSET GROUP, LLC TO THE DEBTORS' DISCLOSURE STATEMENT FOR PLAN OF LIQUIDATION**

The above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), together with the Official Committee of Unsecured Creditors (the "**Committee**," and together with the Debtors, the "**Plan Proponents**"), hereby move (this "**Motion**") the Court to strike the *Objections of Travis Portfolio, LLC, Oliphant Financial, LLC and Collins Asset Group, LLC to the Debtors' Disclosure Statement for Plan of Liquidation* [ECF No. 803] (the "**Objection**") filed by Travis Portfolio, LLC, Oliphant Financial, LLC, and Collins Asset Group, LLC (collectively, the "**Travis Defendants**") and respond preliminarily as follows:

[1] The Debtors in these 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 Global Capital LLC, d/b/a 1 GC Collections, 1250 E. Hallandale Beach Blvd., Suite 605, Hallandale Beach, FL 33009 (9517); and 1 West Capital LLC, d/b/a 1 West Collections, 1250 E. Hallandale Beach Blvd., Suite 605, Hallandale Beach, FL 33009 (1711). On February 19, 2019, the Debtors registered the fictitious names "1 GC Collections" and "1 West Collections" with the Florida Department of State.

## Introduction

1. In less than one year, the independent court-approved or appointed fiduciaries of the Debtors, working closely with the Creditors' Committee, and under the watchful eye of the Securities and Exchange Commission (the "**SEC**"), the Office of the United States Trustee (the "**UST**") and this Court, have turned the emergency, "free fall" filing of these Chapter 11 Cases into an orderly, value-maximizing wind down for the benefit of the Debtors' investors—the victims of an alleged unregistered securities fraud. In this brief period, the Debtors have collected more than $80 million through continued business operations under the protections of the Chapter 11, have investigated the prepetition use or misuse of investor funds, have commenced actions in this Court and others to recover more than $120 million of those funds, and continue to pursue other sources of recoveries for their investors.

2. The Debtors and the Committee, as Plan Proponents, are now poised to confirm the *Joint First Amended Plan of Liquidation* [ECF No. 805] (the "**Plan**") and make an initial distribution in an aggregate amount of not less than $75 million before the end of the calendar year. Prompt approval of the *First Amended Disclosure Statement* [ECF No. 806] (the "**Disclosure Statement**") is a critical step towards confirmation of the Plan in mid-September so that the Plan Proponents can make this initial $75 million distribution before the end of the year—perhaps as soon as November.

3. The Plan and Disclosure Statement are the result of negotiations between the Debtors and the Creditors' Committee—the members of which have lost significant sums of their retirement savings and other monies and who have actively participated in these Chapter 11 Cases without compensation. Before filing the Plan and Disclosure Statement, the Plan Proponents shared drafts with the SEC who reviewed it and offered significant comments that

were discussed and incorporated. The UST and representatives of two uncertified class actions of the Debtors' investors have also reviewed these documents and offered comments that have been incorporated into both the Plan and Disclosure Statement. Every party in interest in these Chapter 11 Cases with a fiduciary duty or statutory obligation to protect the interests of the Debtors' investor and other creditors supports the Plan and Disclosure Statement.

4. In fact, of the 4,000 investors holding approximately $285 million in claims, plus other creditors, no party in interest has a pending objection to the Disclosure Statement other than the Travis Defendants—who are the principal litigation targets of the Debtors' estates. Before the Petition Date, the Debtors purchased approximately $78 million of future receivables from the Travis Defendants for a purchase price of approximately $65 million, and are now actively litigating against the Travis Defendants to recover not less than $64.5 million that is still owed to the victims of the alleged securities fraud.[2] Although ostensibly filed in their capacity as disputed creditors of the Debtors, their Objection is an attempt by a significant litigation target to delay confirmation in the hopes that the delay—and pain of the Debtors' investors in delayed receipt of an initial distribution—will force the Debtors and their investors to accept an unfavorable settlement.

5. Consistent with this tactic, the Objection contains material inaccuracies regarding settlement offers and truth-twisting concerning the Debtors' pre-suit investigation. First, the Debtors have not repeatedly rebuffed multiple settlement offers. Rather, two written offers made in August 2018 and December 2018 for a very small fraction of the investor funds obtained by the Travis Defendants were rejected by the Debtors—after careful consideration by the Debtors' management team and, as to the offer in December 2018, after consultation with the Creditors'

[2] *See 1 Global Capital LLC v. Travis Portfolio LLC et al.*, Adv. Proc. No. 19-01072-(RBR), ECF No. 31 (the "**Adversary Proceeding**").

Committee. The Travis Defendants defended these lowball offers on the basis of the Proofs of Claims they have filed against the Debtors' estates, but these claims are without merit as the Debtors will show in the Adversary Proceeding.[3] Since that time, the Plan Proponents have welcomed written or verbal settlement offers, but have received none since the lowball offer made in December 2018 and have received no settlement communications whatsoever in the last two months.

6. Second, the Objection twists the truth concerning the onsite visits by the representatives of the Debtors and the Creditors' Committee. The Debtors' financial consultants arranged and coordinated with the Travis Defendants a meeting in mid-November as part of the Debtors' good-faith efforts to resolve matters with the Travis Defendants pre-litigation. This meeting was intended to be multi-day given that the Travis Defendants had received $65 million of investor money. The meeting was, however, shortened after the Travis Defendants promised to produce further documents in December—not because the Debtors' professionals left to attend NCBJ (which had already occurred a few weeks earlier). Although it is true that before this meeting, the Debtors' independent manager made an unplanned visit to the same office for an hour while he was nearby to attend the NCBJ, there was nothing untoward about this introductory visit. Its purpose was to verify the existence of this entity, not an unfounded concern given the background of the Debtors. As is evident from the tenor of the Objection, the Travis Defendants, at peril for liability in the tens of millions of dollars, would prefer to attack the Debtors' professionals, rather than deal with the merits.

7. As set forth more fully below, the Objection should be stricken under Local Rule 3017-1(A) as untimely. In the alternative, the Objection should be overruled. To the extent it

[3] *See Motion to Dismiss Travis Portfolio, LLC's, Oliphant LLC's, and Collins Asset Group, LLC's Proofs of Claim* [*1 Global Capital LLC v. Travis Portfolio LLC et al.*, Adv. Proc. No. 19-01072-(RBR), ECF No. 31].

addresses the adequacy of the Disclosure Statement, those matters have been addressed by amendment. The focus, however, of the Objection is not the adequacy of the Disclosure Statement, but the Debtors' adversary proceeding against the Travis Objection, confirmation of the Plan, and an as-yet unfiled request for payment of a (wholly unmeritorious) administrative claim. These matters should be left for the appropriate proceeding at a later day. At the July 24th hearing on the Disclosure Statement (the "**Disclosure Statement Hearing**"), the Disclosure Statement should be approved, following which the Plan will promptly be sent out for solicitation so that the Debtors' investors can be best positioned to receive an initial distribution of at least $75 million before the end of this calendar year.

**Motion to Strike**

8. The Objection is untimely and should be stricken. Local Rule 3017-1(A) requires objections to a disclosure statement be filed at least seven days before the hearing on approval of the disclosure statement. It also requires the objecting party to confer with the plan proponent at least three business days before the hearing in an effort to resolve the objections. The Travis Defendants did neither.

9. The Travis Defendants were on actual notice of the date of the Disclosure Statement Hearing and of the deadline for objections (the "**Disclosure Statement Objection Deadline**"). The *Notice of Hearing to Consider Approval of Disclosure Statement* [ECF No. 727] ("**Hearing Notice**") provides in boldface and underlined type that the date of Disclosure Statement Objection Deadline is July 17, 2019 and the date of the Disclosure Statement Hearing is July 24, 2019. The Hearing Notice was served by ECF and US mail on counsel who filed the Objection, by ECF on counsel who have previously appeared and has been active in these

Chapter 11 Cases, and by US mail on each of the Travis Defendants.[4] The Hearing Notice was served on June 17, 2019, providing thirty days' notice of the Disclosure Statement Objection Deadline.[5] Electronic copies of the initial *Disclosure Statement* [ECF No. 725] and the *Disclosure Statement Motion* [ECF No. 726] were also provided to the Travis Defendants' counsel by ECF on June 17, 2019.[6] Moreover, the Travis Defendants have been active in the Chapter 11 Cases, one of them having filed an objection in August 2018[7] and all of them having appeared as defendants in the Debtors' adversary proceeding against them.[8]

10. Despite this actual notice of the Disclosure Statement Objection Deadline, the Travis Defendants filed a 19-page objection, five days after the deadline expired and within nearly 48 hours of the Disclosure Statement Hearing. The Travis Defendants also failed to meet-and-confer within three business days before the Disclosure Statement Hearing or at any time whatsoever.

11. In light of the ample actual notice provided by the Plan Proponents, it strains credulity that a reasonable excuse exists for these failures. In light of the fact that they are significant litigation targets, the Travis Defendants and their principals are no doubt hoping to delay approval of the Disclosure Statement and confirmation by a last-minute objection—and ultimately to delay an initial distribution to investors in the hope that they can force an unfavorable settlement and keep the $64.5 million that is owed to the victims of this alleged securities fraud.

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4 *See Affidavit of Service* [ECF No. 729] (showing service of the Hearing Notice on Mr. Fender, Mr. Hochheiser, Mr. Lora, Travis Portfolio, LLC, Oliphant Financial, LLC, and Collins Asset Group, LLC).

5 *See id.* Thirty-days' notice of the Disclosure Statement Objection Deadline complies with the requirements of Fed.R.Bankr.P. 2002(b).

6 *See id.* (showing ECF service on Mr. Fender, Mr. Hochheiser, and Mr. Lora).

7 *See, e.g.*, *Emergency Motion to Prohibit Use of Cash Collateral Filed by Creditor Collins Asset Group, LLC* [ECF No. 98, Aug. 24, 2018]; *Emergency Motion for Relief from Stay* [ECF No. 99, Aug. 24, 2018].

8 *See 1 Global Capital LLC v. Travis Portfolio LLC et al.*, Adv. Proc. No. 19-01072-(RBR).

12. The rules exist to prevent such tactics and unfair surprise. For objection deadlines to carry any weight, courts must enforce them, and case law demonstrates that a failure to file a timely objection should result in repercussions.[9] The appropriate and necessary repercussion is for the Objection to be stricken.

**Preliminary Response**[10]

13. The Objection is an effort to litigate the merits of the Adversary Proceeding under the guise of an objection to the Disclosure Statement. The Travis Defendants also improperly use the Objection as a forum to pressure the Debtors into an unfavorable settlement to the detriment of the Debtors' investors. Objections to a disclosure statement are not the place to air settlement offers nor to negotiate. A disclosure statement is intended to serve as the means to educate voting constituents, thereby enabling them to make informed judgments about whether to accept or to reject a plan of reorganization or liquidation. The Disclosure Statement Hearing is not meant to address confirmation objections, for parties to prosecute an alleged claim, or to require a debtor to discuss its future plans vis-à-vis a particular constituency or litigation target.

**A. The Travis Defendants.**

14. The Travis Defendants are the single largest recipient of investor funds, which the SEC has alleged are the proceeds of a four-year long unregistered securities fraud totaling more than $287 million. The Travis Defendants understand they are therefore a principal litigation

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[9] *See, e.g., Webster Capital Fin., Inc. v. Ottawa Bus Serv., Inc. (In re Ottawa Bus Serv., Inc.)*, 498 B.R. 281, 284 (D. Kan. 2013) (declining to consider an untimely objection, the court noted "that not timely filing an objection . . . and/or not appearing at a hearing that is set for confirmation or approval of the disclosure statement, a creditor does so at its own peril."); *In re Smith*, 179 B.R. 437, 444 (Bankr. E.D. Pa. 1995) (finding that the failure of creditors, a trustee, and all other parties notified of an objection deadline to file an objection within the appropriate period barred the objections); *see also Taylor v. Freeland & Kronz*, 503 U.S. 638, 644 (1992) ("Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality.).

[10] The nature of this response is necessarily preliminary in light of the untimeliness of the Objection and the number of issues—many of which are not relevant to the Disclosure Statement Hearing and are appropriately considered at confirmation or in the Debtors' adversary proceeding against the Travis Defendants.

target and one of the largest sources of recovery for the Debtors and their creditors.

15. Since the commencement of the Chapter 11 Cases, the Travis Defendants have resisted the Debtors' efforts to recover their investors' money. The Debtors have, on multiple occasions, sought an accounting, the production of documents, and payment of all amounts due. In response, the Travis Defendants have engaged in a series of half measures to maintain an appearance of cooperating without actually producing an accounting, all of the meaningful documents requested by the Debtors, or paying the Debtors all the funds they are owed. The most recent example of these tactics is that yesterday—the same day the Objection was filed—the Travis Defendants produced documents that the Debtors have been requesting for months. The timing is not coincidental. Although these documents are still being reviewed, they appear to show the Travis Defendants are transferring to related parties monies that may well rightfully belong to the Debtors and their investors.

16. The Travis Defendants have also asserted in the Objection that they have an administrative expense claim against the Debtors. Although they state this claim is asserted in their Proofs of Claim and Sixth Affirmative Defense—neither being the appropriate procedural vehicle to make such a request—the Debtors have in the brief time available since the filing of the Objection reviewed these documents and cannot find anywhere in them a reference to an administrative claim.

17. More to the point, the asserted claim is alleged to arise under an executory contract—a conditional "commitment" letter sent by one of the Travis Defendants to the Debtors prepetition that was never signed by the Debtors. Even if this unsigned letter were somehow enforceable against one of the Debtors, the Plan provides for all executory contracts not expressly assumed to be rejected on the Plan's effective date. Under sections 365(g) and 502(g)

of the Code, any claims arising under those contracts are treated as prepetition general unsecured claims. For this and other reasons that will be more fully explained should the Travis Defendants file a request for payment under section 503(a) of the Code, the Travis Defendants are not entitled to an administrative expense. The unmeritorious and procedurally improper assertion is however yet another example of the shaky half-measures the principals of the Travis Defendants have employed.

**B. The Objection Contains Numerous Inaccuracies.**

18. The Objection contains numerous inaccuracies. These inaccuracies relate primarily to the Debtors' adversary proceeding against the Travis Defendants. Although a full response to these matters is necessarily and appropriately left to another proceeding at a later date, a preliminary response is required in light of the attacks directed at the Plan Proponents' professionals rather than on the merits. Contrary to the Travis Defendants' assertions, the Debtors have not received any written (or even verbal) settlement offers from the Travis Defendants since December 2018, and the settlement offers that received before that time were for a very small fraction of the $64.5 million owed to the victims of the alleged fraud. These lowball offers were rightly rejected after consideration by the Debtors' management team and, as to the October offer, after consultation with the Creditors' Committee.

19. The Debtors, meanwhile, have stated that they are receptive to receiving settlement offers from the Travis Defendants and that every offer would be discussed with the Creditor's Committee. Instead of communicating any settlement offer, counsel to the Travis Defendants has merely asked if the Debtors and the Creditor's Committee would consider a hypothetical settlement along certain lines. The Debtors and the Creditors' Committee responded that they would consider any formal offer, but would not respond to mere concepts or

unspecified possible ideas.

20. The Travis Defendants also inaccurately assert that that they have fully cooperated with the Debtors and their professionals. At the outset of these Chapter 11 Cases, following an informal request by the Debtors the Travis Defendants provided data on a cumulative basis such that the Debtors' financial advisor, Development Specialists, Inc. ("**DSI**"), was unable to verify whether each underlying asset was performing as expected. No data was provided showing if monthly payments were being made by each account in a given month, whether Collins and/or Oliphant had entered into a settlement, or even if the asset ceased payments.

21. Accordingly, the Debtors followed up with a further informal request for this information. When it was not provided, a Rule 2004 request was issued. This information was not provided even after the Rule 2004 request was issued. On June 4, 2019, another request for that information was made, and the Travis Defendants eventually produced limited information demonstrating the acquisition date, collections by month and the date gross collections run through dates. The Travis Defendants' assertion that the delay was caused by its legal inability to provide private financial information is baseless, as the Debtors advised that they were not seeking to obtain any names or personal identifying information.

22. From the limited data provided, DSI could not determine how the Travis Defendants calculated gross collections to net collections as the reports lacked activity date(s), and explanations. It was also impossible to determine whether legal fees were deducted from gross collections or from the net collections remitted by the Travis Defendants to the Debtors.

23. The data provided could not be reconciled after extensive review. There appeared to be significant payments to insiders and owners of the Travis Defendants, who are all related

through interlocking ownerships, and the Debtors' requests for detailed information as to why these payments were made and how they were calculated were ignored for months. The Travis Defendants merely provided a copy of an Operating Agreement and W-9s, which explained nothing.

24. It was not until July 22, 2019—the day the Objection was filed, that the Debtors received some information with respect to the insider payments. Oliphant and Collins admitted in an email that they received "owner's commissions" which were "contingency fees earned by Oliphant and Collins for the service to provided [sic] to collect, process and report on the payments collected from the delinquent consumers. This fee is also inclusive of external costs such as lettering, consumer monitoring, and paying third- party agency and law firm fees." In other words, the Travis Defendants have unilaterally allocated their costs of collection to the Debtors, which is not provided for in the merchant cash advance agreements with the Debtors. The Travis Defendants have yet to explain why Collins and Oliphant, which already own the debt portfolio funded with money from the Debtors' investors, have a legal right to commissions for collecting debts owed to themselves. The exact amount of these insider commissions is still unknown.

**C. The Disclosure Statement Should be Approved.**

25. The Disclosure Statement complies with all relevant sections of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules. Pursuant to section 1125 of the Bankruptcy Code, the proponent of a chapter 11 plan must provide holders of impaired claims and interests entitled to vote on a plan with "adequate information" regarding the plan. The Disclosure Statement provides stakeholders with sufficient information to make informed judgments when voting to accept or reject the Plan, and, as such, fully satisfies the requirements

of section 1125 of the Bankruptcy Code.

26. The Debtors submit that insofar as the Travis Defendants seek additional disclosures, the Debtors have provided additional disclosures in the Disclosure Statement, even going beyond the scope of what is required under section 1125 of the Bankruptcy Code in some instances. The Disclosure Statement makes disclosures concerning, among other things, (i) the assertion by the Travis Defendants of an administrative expense, (ii) clarification of the right to return and purchase amounts in the merchant-cash-advance transactions with the Travis Defendants, (iii) the Causes of Action, including Avoidance Actions, being retained by the Liquidating Trust, (iv) the anticipated retention of professionals by the Liquidating Trust and the terms of those representations if sought and approved, and (v) the Plan Proponents' Liquidation Analysis.

27. To the extent that any of the points raised in the Objection are not addressed by specific changes to the Disclosure Statement, the Debtors submit that the Objection should be overruled for at least two reasons. First, certain of the matters the Travis Defendants seek disclosed are sought in their capacity as litigation targets. Undoubtedly, the Travis Defendants would like to know the valuation of the litigation against them. But the notion that the Plan Proponents are required to give a significant litigation target information that the target could use to harm investors in settlement negotiations is risible. Second, other matters the Travis Defendants seek disclosed in the Disclosure Statement are their self-serving view of the litigation. Nothing in section 1125 of the Code requires the Plan Proponents to parrot the Travis Defendants' views of the litigation against them.

28. The Objection not only raises untimely issues concerning disclosure, but it also contains plan confirmation objections and arguments related to the adversary proceeding that the

Debtors commenced against the Travis Defendants. To the extent the Travis Defendants raise objections to plan confirmability, the Debtors submit that the Disclosure Statement Hearing is not the proper forum to address objections to confirmation of a plan. Doing so subverts section 1125 of the Bankruptcy Code and the orderly process for confirmation set forth in the Bankruptcy Code—a process that contemplates disclosure first, solicitation and voting second, and only then, confirmation. For these reasons, it is well-settled that objections to confirmation are addressed only at a disclosure statement hearing if the plan is unconfirmable on its face.[11] Likewise, a disclosure statement hearing is not the proper forum to address issues relating to pending adversary proceeding actions. The Travis Defendants unabashed attempts to utilize the Objection to advance their own personal agenda in these Chapter 11 Cases should not be authorized by this Court.

29. For the reasons set forth herein and in the Disclosure Statement Motion, the Court can (and should) find that the Disclosure Statement provides the information that voting creditors need to make an informed judgment to accept or reject the Plan in satisfaction of the statutory requirements of section 1125 of the Bankruptcy Code. Accordingly, the Plan Proponents respectfully request that the Court approve the Disclosure Statement and authorize the Plan Proponents to commence solicitation.

**RESERVATION OF RIGHTS**

30. The Plan Proponents reserve all rights with respect to the arguments made herein, including the right to fully respond to the Objection, if required, and to respond to any and all objections asserted in connection with confirmation of the Plan.

[11] None of the issues purportedly identified by the Travis Defendants rise to this high standard. Rather, they are of the sort properly (and typically) deferred until the hearing to consider confirmation of a plan. However, even if the Court were to address the merits of the arguments, none of them render the Plan unconfirmable.

## CONCLUSION

**WHEREFORE**, the Plan Proponents respectfully request that the Court enter an order, (i) striking the Objection in its entirety, and (ii) granting such other and further relief as may be just and proper under the circumstances.

Dated: July 23, 2019

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