

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:

TOUSA, INC., *et al.*,

Debtors.

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF TOUSA, INC., *et al.*,

Plaintiffs,

-against-

CITICORP NORTH AMERICA, INC., *et al.*,

Defendants.

Chapter 11 Cases

Case No. 08-10928-JKO
Jointly Administered

Adv. Pro. No. 08-01435-JKO

**STIPULATION OF JOINDER OF
PARTY DEFENDANT SOF INVESTMENTS, L.P.**

The Official Committee of Unsecured Creditors of TOUSA, Inc., et al. (the "Committee") and SOF Investments, L.P., through their undersigned counsel, stipulate to the joinder of SOF Investments, L.P. as a party defendant in this adversary proceeding, pursuant to Fed R. Civ. P. 20 and 21 and Fed. R. Bankr. P. 7020 and 7021. In support of this stipulation, the Committee and SOF Investments, L.P. state as follows:

Procedural History

1. SOF Investments, L.P. was a lender under the First Lien Term Loan.

2. The Committee instituted the present adversary proceeding by Adversary Complaint filed on July 14, 2008 (D.E. #1).¹

3. The Committee named SOF Investments, L.P. as a defendant in its capacity as a lender under the First Lien Term Loan in the First Amended Adversary Complaint filed on October 17, 2008 (D.E. #120). On October 29, 2008, the Committee filed a Certificate of Service (D.E. #143) indicating it served a copy of the First Amended Adversary Complaint on SOF Investments, L.P. by mailing it via first-class U.S. mail to:

SOF Investments, L.P.
c/o MSD Capital, L.P.
645 Fifth Avenue, 21st Floor
New York, NY 10022
Attn: Jeff Kravetz

SOF Investments, L.P. asserts that it was not properly served and did not appear as a party or otherwise participate in the adversary proceeding.

4. Following the trial of the adversary proceeding, the Court entered Findings of Fact and Conclusions of Law (D.E. #658) and Final Judgment (D.E. #659) on October 13, 2009 (collectively, the "Original Findings and Judgment"), and entered Amended Findings of Fact and Conclusions of Law (D.E. #722) and Amended Final Judgment (D.E. #721) on October 30, 2009 (collectively, the "Amended Findings and Judgment").

5. Citicorp North America, Inc., as administrative agent for the First Lien Term Loan, and the First Lien Term Loan lender defendants appearing in the adversary proceeding at the

¹ Unless otherwise noted, all Docket Entries refer to the docket for the adversary proceeding, Case No. 08-10928-JKO, Adv. Pro. No. 08-01435-JKO.

time of the Original Findings and Judgment (collectively, the "Appearing First Lien Defendants") filed a timely Notice of Appeal of the Original Findings and Judgment on October 20, 2009 (D.E. #668) and of the Amended Findings and Judgment on November 9, 2009 (D.E. #748) (collectively, the "Appearing First Lien Defendants' Appeals").

6. Following the Appearing First Lien Defendants' Notices of Appeal, the Appearing First Lien Defendants obtained an Order on Motions for Stay Pending Appeal from the Court on October 30, 2008 (D.E. #723). The Order was modified by the Order Granting in Part Motions for Stay & Closing Cases entered by the United States District Court for the Southern District of Florida on November 24, 2009, Case No. 09-23425 D.E. #20, and the Order Granting Motion to Modify Order for Stay Pending Appeal entered by the Bankruptcy Court on December 30, 2009 (D.E. #837) (collectively, the "Stay Orders"). The Stay Orders provided the Appearing First Lien Lenders with a stay of enforcement of the monetary portion of the judgment conditioned upon the posting of bonds or cash in the amount of 110% of the interest, principal and/or adequate protection payments made to the Appearing First Lien Defendants under the First Lien Term Loan, as set forth in the Original Findings and Judgment and Amended Findings and Judgment.

Joinder of SOF Investments, L.P.

7. SOF Investments, L.P. hereby appears in the adversary proceeding and agrees to be bound by the Original Findings and Judgment, the Amended Findings and Judgment, and any subsequent findings of fact and conclusions of law or final judgment issued by the Court (the "Further Findings and Judgment" and collectively with the Original Findings and Judgment and the Amended Findings and Judgment, the "Judgment"), effective as of the date the Court so-orders this stipulation or otherwise authorizes the joinder of SOF Investments, L.P. as a defendant in its

capacity as a First Lien Term Loan Lender (the "Effective Date"). This agreement to be bound by the Judgment is not and shall not be construed to be a waiver of SOF Investments, L.P.'s right to appeal the judgment.

8. As a consequence of SOF Investments, L.P. appearing and agreeing to join the adversary proceeding and be bound by the Judgment, the Committee waives default judgment as a remedy against SOF Investments, L.P. and agrees that it shall not seek a default judgment.

9. SOF Investments, L.P. shall be bound by the Judgment as of the Effective Date as if it had appeared and defended the adversary proceeding in its capacity as a First Lien Term Loan lender defendant and shall be treated for all purposes as if it had appeared and defended the adversary proceeding in its capacity as a First Lien Term Loan lender defendant, including for any calculation of pre-judgment interest.

10. SOF Investments, L.P. agrees to file a Notice of Appeal within fourteen days of the Effective Date, and the Committee agrees that the filing of a Notice of Appeal within such period shall be timely pursuant to 28 U.S.C. § 158, Federal Rule of Bankruptcy Procedure 8002, and Local Rule 8002-1.

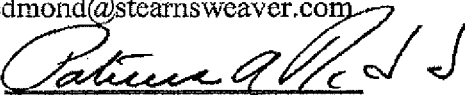
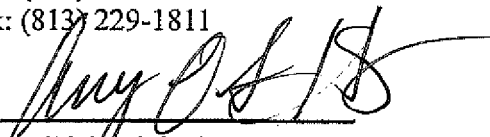
11. Upon filing of a Notice of Appeal, SOF Investments, L.P. shall be deemed a party to the Stay Orders, as if originally party thereto, except that SOF Investments, L.P. shall have thirty days from the Effective Date to post a supersedeas bond or cash with the Clerk of the Court in satisfaction of the terms of the Stay Orders in order to receive a stay of execution and enforcement pending appeal. The bond amount to be posted by SOF Investments, L.P. shall be 110% of the \$461,785.07 in principal and interest payments received by SOF Investments, L.P. under the First

Lien Term Loan, or \$507,963.57. The Committee shall have fifteen (15) days from the posting of the supersedeas bond or cash to file an objection to its terms or adequacy.

12. At such time as SOF Investments, L.P. has filed its Notice of Appeal and such appeal is separately docketed by the United States Bankruptcy Court or the United States District Court, SOF Investments, L.P. and the Committee agree to jointly seek consolidation of such appeal with the Appearing First Lien Defendants' Appeals.

13. This Stipulation may be executed in counterparts and a facsimile or PDF copy of a signature on this stipulation shall be acceptable as an original.

Stipulated and Agreed To:

<p>OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF TOUSA, INC., ET AL.</p> <p>STEARNS WEAVER MILLER WEISSLER, ALHADEFF & SITTERSON, P.A.</p> <p>150 West Flagler Street Suite 2200 Miami, Florida 33130 Tel: (305) 789-3200 Fax: (305) 789-3395 predmond@stearnsweaver.com</p> <p>By  Patricia A. Redmond Florida Bar No.: 303739</p> <p>ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP</p> <p>1801 K Street N.W. Suite 411-L Washington, DC 20006 Tel: (202) 775-4500 Fax: (202) 775-4510</p>	<p>SOF INVESTMENTS, L.P.</p> <p>STICHTER, RIEDEL, BLAIN & PROSSER, P.A.</p> <p>110 East Madison Street, Suite 200 Tampa, Florida 33602-4718 Tel.: (813) 229-0144 Fax: (813) 229-1811</p> <p>By  Richard Craig Prosser Florida Bar No.: 354831</p> <p>Amy Denton Harris Florida Bar No.: 0634506</p> <p>CHADBOURNE & PARKE LLP</p> <p>30 Rockefeller Plaza New York, New York 10112 Tel.: (212) 408-5100 Fax: (212) 541-5369</p>
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