

**Debtors' Motion for Entry of an Order (A) Setting Bar Dates for Filing Proofs of Claim, (B) Approving the Form and Manner for Filing Proofs of Claim, and (C) Approving Notice Thereof (the "Bar Date Motion").**

By the Bar Date Motion, the Debtors request that the Court enter an order (i) establishing May 19, 2008 at 5:00 p.m. (PT) as the last date by which all creditors and holders of claims against the Debtors and their respective estates must file a proof of claim in these cases (the "Bar Date")<sup>1</sup> and (ii) approving the manner for filing proofs of claims and for providing parties with notice of the Bar Date. The Debtors propose to mail notices and proof of claim forms (the "Proof of Claim Form") by March 14, 2008. Under the Local Bankruptcy Rules, unless otherwise ordered by the Bankruptcy Court, the deadline for non-governmental entities to file proofs of claim or interest is required to be set for 90 days after the date first scheduled for the section 341 meeting of creditors. In these chapter 11 cases, the Debtors have petitioned the Court and the U.S. Trustee to shorten that typical 90-day period to approximately 65 days.

The Debtors assert that it is in the best interests of all parties that the Court establish the Bar Date because such date will enable the Debtors to receive, process, and begin their analysis of creditors' claims against the Debtors in a timely and efficient manner. By the Bar Date Motion, the Debtors also propose specific procedures for filing proofs of claim (the "Claims Filing Procedures") and for providing parties with notice of the Bar Date (the "Notice Procedures"). The Debtors believe that, based upon the Claim Filing Procedures and Notice Procedures, all creditors will have ample opportunity to prepare and timely file proofs of claim timely.<sup>2</sup> As noted in footnote 2 of this memorandum, under the Claim Filing Procedures, it is unnecessary for

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<sup>1</sup> The deadline for *governmental entities* to file claims will be July 28, 2008.

<sup>2</sup> The Bar Date Motion specifically provides that the following entities are **not** required to file a proof of claim on or before the Bar Date: (i) any person or entity that has already filed a proof of claim against the Debtors with the Clerk of the Bankruptcy Court for the Southern District of Florida in a form substantially similar to Official Bankruptcy Form No. 10; (ii) any person or entity whose claim is listed on the Schedules filed by the Debtors; *provided, however*, that: (a) the claim is not scheduled as disputed, contingent, or unliquidated; (b) the claimant does not disagree with the amount or classification or the Debtors identified as owing the claim; (iii) any person or entity whose claim has been paid in full by any of the Debtors; (iv) any Debtor having a claim against another Debtor or any of the nondebtor direct or indirect, wholly-owned subsidiaries of TOUSA, Inc. having a claim against any of the Debtors; (v) claims of one Debtor against any of the other Debtors; (vi) claims of any current employee of any of the Debtors to the extent that the Debtors were authorized by the court to honor those claims in the ordinary course of business; (vii) any person or entity whose claim is limited exclusively to the repayment of principal, interest, and/or other applicable fees and charges (a "Debt Claim") on or under any bond or note issued by the Debtors pursuant to an indenture (the "Debt Instruments"); *provided, however*, that: (a) this exclusion shall not apply to the indenture trustee under the applicable Debt Instrument (the "Indenture Trustee"); (b) the Indenture Trustee shall be required to file one proof of claim, on or before the Bar Date, with respect to all of the Debt Claims on or under each of the Debt Instruments; (c) any holder of a Debt Claim wishing to assert a claim, other than a Debt Claim, arising out of or relating to a Debt Instrument shall be required to file a proof of claim on or before the Bar Date; and (d) any indenture trustee must only file a proof of claim against the primary obligor on the underlying debt; and (viii) claims of any customer who has signed a contract or has closed on a home with the Debtors or a homeowners association of the Debtors within the past six years to the extent the Debtors were authorized to honor those claims in the ordinary course of business; *provided, however*, that customers must submit a Proof of Claim by the Bar Date if the claim relates to a contested warranty claim or damages arising from a breach of contract; (ix) equity interests, which interests are based exclusively upon an interest in the equity ownership of any of the Debtors; and (x) any holder of a claim allowable under section 503(b) and 507(a) of the Bankruptcy Code as an expense of administration.

individual noteholders to file individual proofs of claim, but rather, the respective indenture trustees are required to file a proof of claim on behalf of all noteholders under a particular indenture.

#### **A. The Claims Filing Procedures**

By the Bar Date Motion, the Debtors request that the Court approve its proposed Proof of Claim Form. The Debtors also propose that all Proofs of Claim be delivered to the Debtors' claims and balloting agent, Kurtzman Carson Consultants LLC ("KCC") at the following address: TOUSA Claim Processing Center, c/o Kurtzman Carson Consultants, LLC, 2335 Alaska Avenue, El Segundo, California 90245. The Debtors also ask that only original Proofs of Claim be deemed valid.

In order to be properly filed, each proof of claim must: (i) be written in English; (ii) include a claim amount denominated in United States dollars; (iii) indicate the Debtor against which the creditor is asserting a claim; (iv) include supporting documentation (if voluminous, attach a summary) or an explanation as to why such documentation is not available; and (v) be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant.

Pursuant to the relevant Federal Rules of Bankruptcy Procedure, the Debtors propose that (i) any holder of a claim against one or more of the Debtors, who is required, but fails, to file a proof of claim in accordance with the Claims Filing Procedures on or before the Bar Date, shall be forever barred from asserting such claim against a given Debtor or filing a claim with respect to such Debtor; (ii) such Debtor's estate and its property shall be forever discharged from any and all indebtedness or liability with respect to such claim; and (iii) such holder shall not be permitted to vote to accept or reject any chapter 11 plan or participate in any distribution in such Debtor's case on account of such claim or to receive further notices regarding such claim.

#### **B. The Notice Procedures**

By the Bar Date Motion, the Debtors propose to mail (i) a bar date notice (the "Bar Date Notice") and (ii) the Proof of Claim Form to, among others, the following parties: (a) counsel to the Committee; (b) the indenture trustees pursuant to the Debtors' Debt Instruments; (c) all persons or entities that have requested notice of the proceedings in these chapter 11 cases; (d) all persons or entities that have filed claims; (e) all creditors and other known holders of claims as of the date of the Bar Date order, including all persons or entities listed in the Schedules as holding claims; (f) all parties to executory contracts and unexpired leases of the Debtors listed on the Schedules; (g) entities listed on the Consolidated List of Creditors Holding the 50 Largest Unsecured Claims Against the Debtors; (h) parties to litigation with the Debtors; (i) the Internal Revenue Service; and (j) all customers who have purchased homes or have signed an agreement to purchase a home from the Debtors within the past six years to the extent that contact information is available. The Debtors will rely on publication to provide notice to their unknown creditors.

The Debtors assert that the Notice Procedures will: (i) notify the parties of the Bar Date; (ii) contain information regarding who must file a proof of claim; (iii) contain the procedures for filing a proof of claim and the consequences of failure to file a proof of claim timely; and (iv)

with respect to those creditors listed on the Schedules, notify such creditors how the Debtors have scheduled such creditor's claim.

The Debtors also request that the order granting the Bar Date Motion provide that any person or entity that holds a claim that arises from the rejection of an executory contract or unexpired lease must file a proof of claim form based on such rejection on or before the Bar Date, or as the Court may otherwise fix in the applicable order authorizing the rejection of such contract or lease. For claims discovered after the Bar Date, the Debtors request that the Court permit them to set limited subsequent Bar Dates without seeking further Court order, subject to the prior written consent of the Committee. Lastly, the Debtors request the authority to extend the Bar Date for limited entities without further Court order, subject to the prior written consent of the Committee.

*An order approving the Bar Date Motion was entered in March 17, 2008.*