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

In re:

FLORIDA GAMING CENTERS, INC., *et al.*,[1]

Case No. 13-29597-RAM

Chapter 11
(Jointly Administered)

Debtor.
_____/

EMERGENCY MOTION OF PREFERRED SHAREHOLDER, PRIDES CAPITAL FUND I, L.P., TO VACATE PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9024 AND FEDERAL RULE OF CIVIL PROCUEDRE 60(B): (I) ORDER UNDER 11 U.S.C. §§ 105, 363 AND FED. R. BANKR. P. 2002, 6004, 6006, 9019 AND 9014 APPROVING (A) SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (B) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS TO SUCCESSFUL BIDDER AND (C) RELATED RELIEF [ECF NO. 420] AND (II) ORDER PURSUANT TO FED. R. BANKR. P. 9019(A) APPROVING SETTLEMENT AND COMPROMISE BY AND AMONG THE DEBTORS AND THEIR RESPECTIVE ESTATES, WILLIAM B. COLLETT, WILLIAM B. COLLETT, JR., ABC FUNDING, LLC AND THE OFFICIAL JOINT COMMITTEE OF UNSECURED CREDITORS [ECF NO. 387]

(Emergency Hearing Requested As Soon As the Court's Schedule Allows)

Basis for Emergency Relief

Movant has been informed that the Debtors intend to consummate the sale of substantially all of their assets as soon as the prospective purchaser obtains the requisite gaming licenses, which it is expected to do as early as April 30, 2014. By this motion, Movant is requesting that the Bankruptcy Court vacate its order authorizing the sale of the Debtors' assets, as well as a second order approving a global settlement in these cases, on the basis that neither Movant nor any other equity security holder of Florida

[1] The debtors in these chapter 11 cases, and the last four digits of their federal tax identification numbers, are: Florida Gaming Corporation (0533), Florida Gaming Centers, Inc. (5893), Tara Club Estates, Inc. (9545) and Freedom Holding, Inc. (4929).

Gaming Corporation (collectively, the "Equity Holders") was served with notice of either the sale motion or the settlement motion, both of which indelibly affect the Equity Holders' rights. If the Debtors are allowed to consummate the sale of their assets and distribute the proceeds they receive therefrom pursuant to the settlement agreement, the issues raised in this motion may be mooted and the Equity Holders will be irreparably harmed. In order to protect their interests and their due process rights, Movant respectfully requests that a hearing on this motion be held as soon as possible. Movant represents that it has attempted to resolve the matters herein without an emergency hearing by contacting the Debtors through their counsel, but to date has not received a response therefrom.

Prides Capital Fund I, L.P. ("Prides Capital" or "Movant"), the holder of 5,000 shares of Series AA 7% Cumulative Convertible Preferred Stock ("Series AA Preferred Stock") of Florida Gaming Corporation ("Holdings"), by and through undersigned counsel, hereby files this *Emergency Motion to Vacate Pursuant to Federal Rule of Bankruptcy Procedure 9024 and Federal Rule of Civil Procedure 60(b): (I) Order under 11 U.S.C. §§ 105, 363 and Fed. R. Bankr. P. 2002, 6004, 6006, 9019 and 9014 Approving (A) Sale of Assets Free and Clear of Liens, Claims, Encumbrances and Other Interests; (B) Assumption and Assignment of Executory Contracts to Successful Bidder and (C) Related Relief [ECF No. 420] and (II) Order Pursuant to Fed. R. Bankr. P. 9019(A) Approving Settlement and Compromise by and among the Debtors and Their Respective Estates, William B. Collett, William B. Collett, Jr., ABC Fondling, LLC and the Official Joint Committee of Unsecured Creditors [ECF No. 387]* (the "Motion"). In support of this Motion, Prides Capital respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are (i) Federal Rule of Civil Procedure 60(b), as made applicable to these cases pursuant to Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule") 9024, (ii) Bankruptcy Rule 2002(d) and (iii) Bankruptcy Local Rules 2002-1(H)(1)(j) and 9075-1.

BACKGROUND

A. General Background

4. On August 19, 2013 (the "Petition Date"), Holdings, Florida Gaming Centers, Inc. ("Centers"), Tara Club Estates, Inc. ("Tara") and Freedom Holding, Inc. (collectively with Holdings, Centers and Tara, the "Debtors"), commenced these cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

5. Since the Petition Date, the Debtors have been operating their business as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. On September 9, 2013, the Office of the United States Trustee appointed the Official Joint Committee of Unsecured Creditors (the "Committee") as to Holdings and Centers. *See* ECF No. 90.

B. The Ownership Structure of Centers and Holdings

7. Holdings is a publicly-traded corporation with five separate classes of equity holders. As set forth in the *List of Equity Security Holders* filed by Holdings on September 17, 2013, Prides Capital is the holder of 5,000 shares of the Series AA Preferred Stock of Holdings. *See* ECF No. 112.

8. Centers is a wholly-owned subsidiary of Holdings. *See List of Equity Security Holders* filed by Centers. [ECF No. 111].

C. The Sale Motion

9. The linchpin of these cases has always been a sale of tangible and certain intangible assets of the Debtors to a qualified purchaser. In fact, as the Bankruptcy Court is aware, the Debtors entered bankruptcy only after their proposed sale to Silvermark LLC was derailed for a number of reasons not germane to this Motion.

10. Not surprisingly, a few months after these cases were commenced, the Debtors filed a motion (the "Sale Motion") (ECF No. 228) seeking authority to sell substantially all of their assets through a competitive bidding process conducted under the purview of the Bankruptcy Court.

11. The certificates of service appended to or filed in conjunction with the Sale Motion reflect that Debtors' counsel served only those parties listed on the Master Service List and the creditor matrix, and not any of the Equity Holders, with any notice of the Sale Motion. *See* ECF Nos. 228 and 236.

12. In December 2013, after several modifications were made to the Debtors' proposed bidding procedures, the Bankruptcy Court entered an order authorizing the Debtors to implement the bidding procedures and conduct an auction for the sale of their assets (ECF No. 261). The auction was conducted in March 2014 and Fronton Holdings, LLC ("Fronton"), an affiliate of the Debtors' prepetition secured lender, ABC Funding, LLC ("ABC"), was declared the winning bidder.

13. On April 7, 2014, the Bankruptcy Court entered an order approving the sale of the Debtors' assets to Fronton (the "Sale Order") (ECF No. 420). The Sale Order is one of two orders that Prides Capital is now hereby asking the Bankruptcy Court to vacate based on certain due process violations detailed below.

14. Appended to the Sale Order is an executed copy of that certain Asset Purchase Agreement, dated March 28, 2014, by and among Holdings, Centers and Fronton (the "Purchase Agreement"), which provides the terms and conditions under which Fronton is purchasing the Debtors' assets. *See* ECF No. 420, p. 34-247. The Purchase Agreement makes clear that Fronton is not only purchasing substantially all of Centers' assets, but Holdings' assets as well. Specifically, Fronton is purchasing certain real property in Fort Pierce, Florida owned by Holdings, as well as certain contracts related to the Debtors' operations to which Holdings is a party and certain intellectual property owned by Holdings. *Id.* at p. 40, 41, 100 (Schedule of Real Property appended to Purchase Agreement), 142, and 241.

15. The Purchase Agreement does not provide for any type of purchase price allocation between Holdings' assets and Centers' assets. Prides Capital submits that a purchase price allocation is a customary provision found in a majority of purchase agreements that is a critical accounting component for business enterprises. Without this purchase price allocation, it is impossible to determine what portion of the sale proceeds should be allocated to one seller verses another. In other words, by omitting a purchase price allocation in the Purchase Agreement, the Debtors have effectively aggregated and consolidated their assets, treating the two entities as one for purposes of liquidating their assets.

D. The Settlement Motion

16. Concurrently with running the sale process, the Debtors became embroiled in contentious litigation with ABC, and ultimately the Committee, over ABC's right to credit bid at the auction and the allowance of its claim against Holdings' and Centers' estates (the "ABC Litigation"). Likely recognizing that a sale could not successfully close without resolution of the ABC Litigation, the Debtors, the Committee and ABC reached agreement on the terms of a

global settlement (the "Settlement") in February 2014.

17. On March 3, 2014, the Committee filed a motion (the "Settlement Motion") to approve the Settlement and authorize the Debtors' entry into an agreement memorializing the terms of same (the "Settlement Agreement"). ECF No. 326.

18. The certificate of service appended to the Settlement Motion reflects that the Committee's counsel served the parties on the Master Service List and the creditor matrix, but did not serve Holdings' Equity Holders, with notice of the Settlement Motion. *Id.*

19. The Bankruptcy Court entered an order approving the Settlement and the related Settlement Agreement (the "Settlement Order") on March 20, 2014 (ECF No. 387). The Settlement Order is the second of the two orders Prides Capital is now asking the Bankruptcy Court to vacate for the reasons set forth below.

E. Service Defects in the Sale Motion and Settlement Motion

20. Notwithstanding the fact that Prides Capital's rights were directly affected by the relief requested in the Sale Motion and the Settlement Motion, neither the Sale Motion nor the Settlement Motion, nor any of the ancillary pleadings filed in connection therewith (including notices of hearing), were ever served on Prides Capital or the other Equity Holders.

21. As noted above, a thorough review of the certificates of service either appended to or filed in conjunction with the Sale Motion and the Settlement Motion makes clear that Debtors' counsel and the Committee's counsel simply failed to serve the Equity Holders with notice of the motions. *See* ECF Nos. 228, 236 and 326.

22. For instance, the Certificate of Service appended to the Settlement Motion states that the Settlement Motion was served "via U.S. mail upon all parties on the attached service list and creditor matrix." *See* Settlement Motion at p. 48. Conspicuously missing from both the

creditor matrix and the service list attached to the Settlement Motion is a list of Holding's Equity Holders, including Prides Capital.

23. Notwithstanding these omissions, the Sale Order contains specific findings regarding the sufficiency of notice afforded to parties in interest:

> "As evidenced by the certificates of service and notice previously filed with the Court and based on the representations of counsel at the hearing...proper, timely, adequate and sufficient notice...have been provided."

See ECF No. 420 at ¶ C, p. 4-5. Likewise, the Settlement Order contains similar findings. *See* ECF No. 387 at ¶ D, p. 3.

24. Prides Capital only became aware of the terms of the sale and the Settlement after one of its principals, Kevin Richardson, reviewed an 8-K filed with the Securities and Exchange Commission by Holdings on April 10, 2014 -- three days after the Sale Order was entered.

F. <u>Conclusive Effect of the Settlement Agreement on Equity Holders Without Notice and an Opportunity to be Heard</u>

25. The Settlement Agreement does more than merely resolve the amount of ABC's claim and its right to credit bid at the auction. It contains releases of claims against ABC and its affiliates, dictates the terms of a plan liquidation and perhaps most notably, provides the order in which proceeds from the sale of the Debtors' assets are to be distributed to the Debtors' creditors and equity holders. Importantly, this waterfall, just like the Purchase Agreement, fails to allocate sale proceeds between the Debtors' various estates. Rather, the Settlement Agreement simply assumes that there is a single bucket of cash available to fund distributions to creditors of different Debtors.

26. Assuming a purchase price of approximately $140 million (which is the amount Fronton is paying for the assets), the Settlement Agreement appears to provide for a distribution

in full to all of the Debtors' creditors, including ABC and all general unsecured creditors, while leaving nothing for Equity Holders. This result is particularly troubling given that $37 million of ABC's claim relates to repurchase obligations arising under a warrant agreement between ABC, Holdings and Centers (the "Repurchase Claim").

27. The Bankruptcy Court previously entered an order holding that the Repurchase Claim should be subordinated and treated as common stock of Centers pursuant to Bankruptcy Code section 510(b), *pari passu* with the existing common stock of Centers owned by Holdings (the "Summary Judgment Order"). *See* ECF No. 35, filed in Adversary Proceeding No. 13-01816. Moreover, the Court noted that the percentage ownership attributable to the Repurchase Claim against Holdings would depend upon how the Court ultimately ruled on the scope of the subordination, and whether Holdings' guaranty of the Repurchase Claim was likewise subject to section 510(b) subordination.

28. In direct contravention of the Summary Judgment Order, the Settlement Agreement provides for payment in full of the Repurchase Claim notwithstanding the Bankruptcy Court's directive that it be treated as common stock that is *pari passu* with Holding's common stock in Centers.

29. Moreover, at the time the Summary Judgment Order was entered and the Settlement Agreement signed, the auction contemplated by the Sale Motion had not yet occurred. At the auction sale, Fronton, an affiliate of ABC, agreed to pay $140 million for the assets of the Debtors.

30. Based upon Pride Capital's review of the docket, it does not appear that the Repurchase Claim was ever recalculated based upon the final purchase price determined through the auction. To Pride Capital's knowledge, the amount of the Repurchase Claim that was

originally stated in ABC's proof of claim was based upon a valuation by Jefferies, LLC of the Debtors' assets in the summer of 2013 in an amount in excess of $180 million. If the ultimate sale price for the Debtors' assets is at least $40 million less than the value determined by Jefferies, LLC, then it stands to reason that the Repurchase Claim should also be reduced.

31. The failure to provide Equity Holders with notice of the Sale Motion and Settlement Motion precluded a representative of the Equity Holders from participating in the negotiations that resulted in the Settlement Agreement. The presence of an Equity Holders representative at the negotiations would likely have resulted in a fairer resolution of the subordination issue identified by the Bankruptcy Court in the Summary Judgment Order and an agreed-upon reduction of the amount of the Repurchase Claim. That outcome would have resulted in at least some portion of the funds earmarked for the Repurchase Claim to be distributed to Equity Holders.

RELIEF REQUESTED

32. By this Motion, Prides Capital hereby requests that the Bankruptcy Court vacate the Sale Order and the Settlement Order pursuant to Federal Rule of Civil Procedure 60(b), as made applicable to these cases pursuant to Bankruptcy Rule 9024, as well as Bankruptcy Rule 2002 and Bankruptcy Local Rule 2002-1.

BASIS FOR RELIEF

A. Prides Capital Was Entitled to Notice of the Sale Motion and Settlement Motion pursuant to Bankruptcy Rule 2002 and Bankruptcy Local Rule 2002-1.

33. Bankruptcy Rule 2002(d) provides that a debtor's equity holders are entitled to notice in certain proscribed circumstances, including "[a] hearing on the proposed sale of all or substantially all of the debtor's assets." Fed. R. Bankr. P. 2002(d). Given that the Debtors listed Prides Capital in the *List of Equity Security Holders* for Holdings, it is readily apparent that they

knew of the existence of Prides Capital and its position as one of the Equity Holders. It is undisputed that Prides Capital is a known Equity Holder entitled to notice of the Sale Motion.[2]

34. Bankruptcy Local Rule 2002-1(H)(1)(j), which authorizes the use of a "Master Service List", requires that the party responsible for service serve "any parties and entities previously known to the debtor to have a particularized interest in the subject of the notice(s) required to be served."[3] This requirement is further refined by the following statement in Bankruptcy Local Rule 2002-1(H)(2): "Notice in the case will at all times be deemed proper and adequate if papers, and the notices related to such papers, are timely served upon any party whose interests are directly affected by a specific paper, and upon those parties on the 'Master Service List.'"

35. The foundation for these statutorily- and judicially-created rules is the due process clause of the Fifth Amendment of the United States Constitution. As the Supreme Court recognized in *Mullane v. Central Hanover Bank & Trust Co.*, "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." 339 U.S. 306, 314 (1950).

36. The due process requirements enumerated in *Mullane* apply equally to bankruptcy proceedings. *Bank of Marin v. England*, 385 U.S. 99, 102 (1966); *Alderwoods Group v. Garcia*, 420 B.R. 609, 617 (Bankr. S.D. Fla. 2009). In fact, at least one bankruptcy court has held that

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[2] "In the absence of a proof of interest filed by an equity security holder that provides a specific address for service, notice to equity security holders should be sent to the address shown on the list of equity security holders." *In re Sudano*, 391 B.R. 678, 689 (Bankr. E.D. N.Y. 2008)(citing Bankruptcy Rule 2002(g)(3)).

[3] Bankruptcy Local Rule 2002-1(h)(3) expressly provides that a Master Service List may not be used in lieu of providing notice to equity security holders as required by Bankruptcy Rule 2002.

"notice provisions are the cornerstone of bankruptcy procedures; notice to 'parties in interest' is indispensable."[4] *In re Rounds*, 229 B.R. 758, 763 (Bankr. W.D. Ark. 1999).

37. In situations similar to the one presented here, courts have routinely held that a failure to provide notice to parties in interest is fatal to the efficacy of a final order. *See, e.g., In re Rounds*, 229 B.R. at 764 (setting aside a sale order where "notice as to the sale of property is governed by additional statutory and rules requirements specifically as to notice required in that circumstance" and such notice was not given); *In re Savage Indus., Inc.*, 43 F.3d 714 (1st Cir. 1994) (state-law products liability action survives chapter 11 due to debtor's failure to notice); *MRR Traders Inc. v. Cave Atlantique Inc.*, 788 F.2d 816 (1st Cir. 1986) (notice of proposed sale of liquor license sent to debtor's landlord rather than landlord's attorney failed to satisfy notice requirement and justified setting aside sale order); *In re Fernwood Mkts.*, 73 B.R. 616 (Bankr. E.D. Pa. 1987) (notice sent to lienholder's attorney, rather than lienholder, is insufficient and grounds to set aside sale); *accord* 2 Lawrence P. King, *Collier on Bankruptcy*, ¶ 363.13, at 363–43 (16th ed.) (noting that the Code concern for finality in bankruptcy sales "will not, however, protect a party buying from the trustee in a sale free and clear of liens where no notice is given to the lienholder [and] [s]uch a purchaser will be held to have purchased subject to the lien").

38. The same reasoning applies equally to parties in interest that are not served with notice of a global settlement that effectively eliminates their interests in a debtor. As the Court of Appeals for the Fourth Circuit explained in *In re Banks*, "where the Bankruptcy Code and Rules require a heightened degree of notice, due process entitles a party to receive such notice before an order binding the party will be afforded preclusive effect." 299 F.3d 296, 303 n.4 (4th

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[4] It is important to keep in mind that the term "parties in interest" is construed broadly in the bankruptcy context to cover "not only entities holding 'claims' against the debtor, but also any entity whose pecuniary interests might be directly and adversely affected by the proposed action." *Id.*

Cir. 2002).

39. Undoubtedly, the Debtors and the Committee will offer various explanations for why Prides Capital and other Equity Holders were not served with notice of the Sale Motion or the Settlement Motion. They may even argue that Prides Capital had constructive notice of the sale and settlement by virtue of certain publicly-filed documents or casual conversations between certain principals of Prides Capital and the Debtors.

40. However, as numerous courts have held time and again, such constructive notice is not sufficient. "[T]he creditor who is not given notice, even if he has actual knowledge of reorganization proceedings, does not have a duty to investigate and inject himself into the proceedings. If a known creditor of a Chapter 11 corporate debtor is not provided with notice of the bar date for filings proofs of claim or the hearing on plan confirmation, that creditor will not be bound by confirmation of the plan and its claims will not be discharged." *In re Arch Wireless*, 332 B.R. 241, 252-53 (Bankr. D. Mass. 2005); *see also In re Intaco Puerto Rico, Inc.*, 494 F.2d 94, 99 (1st Cir. 1974) ("the fact that the creditor may, as here, be generally aware of the pending reorganization, does not of itself impose upon him an affirmative burden to intervene in that matter and present his claim."). "The ultimate burden of ensuring proper notice must rest on the Trustee." *In re Rounds*, 229 B.R. at 764; *see also In re Loloee*, 241 B.R. 655, 662 (B.A.P. 9th Cir. 1999) ("Parties are entitled to presume that the court will comply with applicable rules of procedure and that they will receive the notice that is usually required.").

B. Failure to Provide Proper Notice to Prides Capital Makes the Sale Order and Settlement Order Void under Federal Rule of Civil Procedure 60(b)(4).

41. Federal Rule of Civil Procedure 60(b), made applicable to bankruptcy cases pursuant to Bankruptcy Rule 9024, provides that a court may provide relief from a final judgment where "the judgment is void." Fed. R. Civ. P. 60(b)(4). A judgment will be found

void under Rule 60(b)(4) "for a violation of the due process clause of the Fifth Amendment." *Winhoven v. U.S.*, 201 F.2d 174, 175 (9th Cir. 1952); *see also Eberhardt v. Integrated Design & Constr., Inc.*, 167 F.3d 861, 871 (4th Cir. 1999). In other words, "if the notice requirement of the due process clause is not satisfied, the order is void." *In re Ex-Cel Concrete Co.*, 178 B.R. 198, 203 (1995); *see also In re Worldwide Web Systems, Inc.*, 328 F.3d 1291, 1298 (11th Cir. 2003) ("Generally, where service of process is insufficient, the court has no power to render judgment and the judgment is void.").

42. As discussed above, the Supreme Court set forth the due process requirements required by the Fifth Amendment in the seminal case of *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). The Court later explained that "[t]he purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending 'hearing.'" *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 14 (1978).

43. Applying the due process requirements of *Mullane* to bankruptcy proceedings requires a court to examine the adequacy of notice "in light of the Bankruptcy Code's statutory requirements, safeguard and remedies." *In re Center Wholesale*, 759 F.2d 1440, 1448 (9th Cir. 1985). As the Bankruptcy Appellate Panel for the Ninth Circuit noted, "One, then, must compare the notice that was actually given with the notice that would have been given if the rules of procedure had been followed. Whether the difference is enough to flunk basic due process requirements is, in the end, a matter of degree." *In re Loloee*, 241 B.R. at 662.

44. Where, as here, the party required to provide notice completely failed to do so, the inquiry is short-lived. The Debtors were required to give Prides Capital and the other Equity Holders notice of the Sale Motion pursuant to Bankruptcy Rule 2002(d), which they failed to do. In addition, the Committee was required to give Prides Capital and the other Equity Holders

notice of the Settlement Motion pursuant to Bankruptcy Local Rule 2002-1(H)(1)(j), which it failed to do. Both parties failed to meet even the basic threshold requirements of the Bankruptcy Code and the Bankruptcy Rules, let alone the due process clause of the Fifth Amendment. *See In re Ex-Cel Concrete Co.*, 178 B.R. at 203 ("The trustee failed to pass even the threshold of the foregoing requirements of the Bankruptcy Code and Rules, since it is undisputed that Citicorp did not receive notice of the sale nor consent to it.").

45. Prides Capital, as an undisputed and known Equity Holder of Holdings, should have had the opportunity to review the Sale Motion and the Settlement Motion. For whatever reason, service on and notice to Prides Capital was overlooked by both the Debtors and the Committee. The net result is that Prides Capital, as well as the other non-insider Equity Holders of the Debtors, were denied the opportunity to object to the relief requested in the Sale Motion and Settlement Motion and be present at hearings thereon.

46. What makes this result particularly egregious is that the Sale Order and Settlement Order effectively resolve these cases. Once the sale is consummated and the Settlement becomes effective, there will be nothing left to do in these cases but propose and confirm a plan of liquidation (as expressly contemplated by the Settlement Agreement).

47. When read in conjunction, the Sale Order and the Settlement Order authorize the sale of substantially all of the Debtors' assets (which impacts Prides Capital and every other Equity Holder), and then provide for the distribution of the sale proceeds to those parties that were afforded notice of the Sale Motion and an opportunity to participate in the Settlement. Those that were not given notice, including Prides Capital and the rest of the Equity Holders, receive nothing, while those who received notice likely will be repaid in full.

48. Having now reviewed the Sale Motion and the Settlement Motion, Prides Capital

has serious concerns about the relief requested therein, including, without limitation, (i) the deemed substantive consolidation of the Debtors' estates (as evidenced by the lack of a purchase price allocation in the Purchase Agreement), (ii) indications that the Sale Order and Settlement Order essentially effect a *sub rosa* plan in these cases (particularly the waterfall and release provisions in the Settlement Agreement), and (iii) ABC's entitlement to the amount of the Repurchase Claims in light of the reduction in the ultimate sale price from the amount determined by Jefferies, LLC.

49. Prides Capital recognizes that the Debtors, the Committee, ABC and a host of other parties, including the Bankruptcy Court, worked diligently to bring these cases to successful resolution and that the relief requested herein will be unpalatable to many of these parties. However, overwhelming fatigue and disfavor cannot supersede the due process rights afforded Prides Capital under the United States Constitution, the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules and well-settled caselaw.

50. Prides Capital should be given the opportunity to present the issues addressed in the Motion with the Bankruptcy Court, in light of the circumstances of these cases. In fact, the Bankruptcy Rules require that this be done. The Debtors' and the Committee's failure to provide adequate notice of the Sale Motion and the Settlement Motion is a *prima facie* violation of Prides Capital's due process rights, and it is undisputed that such a violation renders the Sale Order and the Settlement Order void. Accordingly, both orders must be vacated pursuant to Federal Rule of Civil Procedure 60(b)(4).

WHEREFORE, Prides Capital respectfully requests that the Bankruptcy Court enter an order: (i) vacating the Sale Order; (ii) vacating the Settlement Order; and (iii) granting Prides Capital such other relief as the Bankruptcy Court deems just and proper.

Dated: May 1, 2014

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(A).

Respectfully submitted,

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