

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

**UNITED SITE SERVICES, INC.,**

Debtors.

Chapter 11

**Case No.: 25-23630 (MBK)**

**(Jointly Administered)**

**OBJECTION TO THE AMENDED JOINT PREPACKAGED PLAN OF  
REORGANIZATION OF UNITED SITE SERVICES INC. AND ITS DEBTOR  
AFFILIATES.**

By way of objection and reservation of rights to the Amended Joint Prepackaged Plan of Reorganization of United Site Services Inc, and its debtor affiliates (ECF 234) (the Plan) creditor OMJ LLC states:

**PRELIMINARY STATEMENT:**

1. Creditor OMJ LLC (OMJ) is a former landlord of several premises in Gresham, Oregon leased to the debtor United Site Services of Nevada Inc. (Debtor). The Debtor materially breached several covenants in its leases with OMJ prior to abandoning the premises and leaving the premises in abysmal condition despite covenants in the leases obligating the Debtor to be solely responsible for maintenance and care of the premises. In addition, the Debtor failed and refused to pay rent and hold-over to OMJ for a significant amount of time prior to its departure. The leases contain covenants obligating the Debtor to be responsible for damages to the premises



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together with OMJ's attorney fees, interest and contains indemnification obligations which survive the termination of the leases.

2. In furtherance of the pursuit of its claims against the Debtor OMJ has filed proofs of claim in the case of United Site Services Inc as well as in the affiliate case of United Site Services of Nevada Inc. The claims as filed are approximately \$1,182,000. The claims are # 58 in the United Site Services Inc case, and # 63 in the United Site Services of Nevada Inc case. Copies of the leases as well as a summary of the categories of the claims held by OMJ against the Debtor are attached to the proofs of claim.

3. The Plan states that Plan constitutes a separate plan for each Debtor: The introduction to the Plan states as follows:

“Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor.”

The same statement is repeated at page 124 of the Plan as to the classification of claims.

4. Under the Plan the claims of General Unsecured Creditors are classified as Class 8 and are “unimpaired”; and are not permitted to vote. Presumably the claims of OMJ against the Debtor are general unsecured claims.

5. The treatment of allowed unsecured claims in Clas 8 is described at page 129 to (1) “be paid in full in Cash or (ii) otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.” Section 1129(a)(9) provides for deferred cash payments with respect to certain claims as identified therein. The Debtor reserves to itself the discretion as to whether to pay allowed claimants in Class 8 in Cash or in deferred cash payments. No explanation is provided for the rational to be used to determine whether payments

to Class 8 allowed claims will be in Cash or deferred payments, nor is there any explanation how paying Class 8 in deferred payments leaves them unimpaired.

6. Subparagraph C. on page 131 contains Special Provisions Governing Unimpaired Claims reserving Debtors' rights and defenses with respect to unimpaired claims. While the Debtors on one hand are saying that Class 8 is unimpaired it is reserving its rights to challenge the claims leaving the holders of Class 8 claims in an ambiguous position.

7. The Plan states that there is no need for claimants to file proofs of claim. As a result, there is no way for the Debtor or the affiliate debtors or the other stakeholders in the case to understand the extent of the claims which may be filed against the Debtor.

8. Subparagraph C(1) of the Plan on page 133 states that "The Debtors and the Reorganized Debtors as applicable shall fund distributions under the Plan required to be paid in Cash from Cash on hand, including Cash from operations, the proceeds of the DIP Facility, the Equity Rights Offering, the Exit ABL Facility, Exit RCF Facility and the Exit Term Loan Facility.

9. Nowhere in the Plan is there a chart that discloses how much money from the various sources will be allocated to the various Debtor Affiliates. Notwithstanding the statement that allowed general unsecured creditors are "unimpaired", how can the Debtor or the claimants understand the extent of the outstanding unsecured debt? Since the Plan is a separate plan for each of the debtor affiliates, there should be a clear statement as to how much of the funding will be allocated to each Debtor.

10. The effect of the classification of allowed unsecured creditors as unimpaired is misleading and is an effort to lull unsecured creditors into a state of acceptance without providing them with (a) the size of the outstanding unsecured debt and (b) the amount of cash allocated to pay the unsecured debt. Unsecured creditors are placed in a class based upon what

may be a fiction and are precluded from voting. Neither the Disclosure Statement nor the Plan does provide sufficient information to allow unsecured creditors to understand the likelihood of receiving a distribution or the amount of any such distribution.

11. Absent a clear estimate of the size of the unsecured claims, and without an allocation among the various debtor affiliates of the cash to be generated from the various sources identified in the Plan, feasibility is an open question.

#### **SPECIFIC OBJECTIONS:**

**12. The reference to 1129(a)(9) in the treatment of allowed unsecured creditors is itself an impairment.**

The Plan provides that Class 8 General Unsecured Claims may receive treatment consistent with Section 1129(a)(9) at the Debtors' discretion. To remain unimpaired under Bankruptcy Code 1124 the treatment of the claim must "leave unaltered the legal, equitable and contractual rights to which such claim or interest entitles the holder of such claim or interest. An unimpaired claim must receive immediate payment in cash upon the claim's allowance. The reference to section 1129(a)(9) as an alternative treatment at the discretion of the Debtor renders the claim impaired.

**13. The Plan Does Not Include a Disputed Claim Reserve**

Article VII of the Plan deals with the procedures to resolve contingent, unliquidated and disputed claims. It provides that proofs of claim are unnecessary and that "the Reorganized Debtors and the Holders of Claims shall determine, adjudicate and resolve any disputes over the validity and amounts of Claims in the ordinary course of business as if the Chapter 11 Cases had not been commenced....." In other words, there is no claims reconciliation process. The Plan goes on to say however that notwithstanding the fact that proofs of claim are unnecessary..."all proofs of claim filed after the Effective Date shall be Disallowed.....". So if you do or do not

file a proof of claim you can try to negotiate with the Reorganized Debtor to reach an agreement; but absent a resolution through negotiation there is no process in place to resolve the amount of a claim and the claimant cannot proceed to file litigation against the Reorganized Debtor because of the Plan Injunction; and if a creditor files a proof of claim after the Effective Date the claim is barred. In my view a somewhat draconian provision. Filing a claim is unnecessary; there is no claim reconciliation process and late filed claims will be forever barred. No one will know the size of the unsecured creditor body.

14. The Plan should contain a claims process. Further subparagraph E states that the Reorganized debtor has 180 days to file objections to claims unless otherwise set by the Court. So not only are the Class 8 claimants subject to be paid deferred payments, but the resolution of their claims will not start for at least 6 months following the Effective Date. The provision is objectionable and goes to feasibility. Class 8 claims are clearly impaired under Bankruptcy Code section 1124. The classification is misleading and an attempt to induce acceptance without procedural protection.

#### **15. Preservation of Contractual Attorney Fees (Oregon Law)**

The leases which were breached by the Debtor contain clauses providing for a reimbursement to the Landlord for attorney fees in the event of a breach by the tenants of the leases. The leases which were breached are governed by Oregon law. Under ORS 20.096 the fee-shifting provision is reciprocal. The Plan must preserve OMJ's right to seek reasonable post-petition attorney fees incurred in defending its claim; otherwise, the OMJ claim is impaired.

#### **16. Preservation of All Prepetition Legal and Contractual Rights**

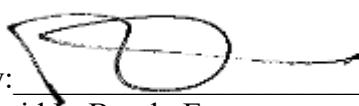
In order to be unimpaired as provided in section 1124 of the Bankruptcy Code all of OMJ's prepetition contractual rights—including indemnity, setoff, and recoupment provisions in the

leases must survive the Plan's **Effective Date** unaltered. OMJ has opted out of the Release provisions of the Plan. The Plan must state that all contractual rights of Class 8 claimants survive confirmation of the Plan; otherwise, Class 8 claims are impaired.

#### 17. Conclusion

OMJ requests that the Court condition confirmation of the Plan upon modifications that ensure OMJ's rights are protected as described. OMJ reserves all rights with respect to further amendments and proposed modifications of the Plan.

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By: 

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