

(collectively, the “Class Action Plaintiffs”), pursuant to sections 105(a) and 362 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 7001 and 7065 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), alleges as follows:

INTRODUCTION

1. This adversary proceeding seeks declaratory and injunctive relief to stay and enjoin the continued prosecution of five Class Actions (defined below) that have been commenced against Comerica by the Class Action Plaintiffs. Comerica seeks entry of a judgment declaring that the Class Actions assert derivative claims which are property of the Debtors’ estates, violate the automatic stay and are void *ab initio*, and to enjoin further prosecution of the Class Actions by the Class Action Plaintiffs. The Class Actions should be stayed to: (i) prevent needless and expensive duplicative litigation, which will be to the detriment of the Debtors, their estates and their creditors; and (ii) prevent substantial indemnification claims from accruing against the Debtors.

2. Now that the Debtors (through a Term Sheet) have indicated that any plan of reorganization will admit that the Debtors operated a Ponzi scheme, it is apparent that the Class Action Plaintiffs are the victims of a fraudulent Ponzi scheme perpetrated by Robert Shapiro (“Shapiro”) and the companies he controlled, which include Woodbridge Group of Companies, LLC (“Woodbridge”) and its affiliated debtors (together with Woodbridge, collectively, the “Debtors”). The Class Action Plaintiffs, all of whom are holders of promissory notes and equity units issued by the Debtors, assert substantially similar (and in some instances virtually identical) claims against Comerica, which claims Comerica strenuously denies. By asserting claims that the Class Action Plaintiffs allege are common to all of the Debtors’ creditors in the Class Actions by virtue of Comerica’s banking relationship with the Debtors, the Class Action Plaintiffs are violating the automatic stay’s prohibition against creditors from pursuing “any act to obtain

possession of property of the estate” under Bankruptcy Code section 362(a)(3).

3. All of the Class Action Plaintiffs’ interests are already represented by the Ad Hoc Noteholder Group (the “Noteholder Committee”), and the Official Ad Hoc Committee of Unitholders (the “Unitholder Committee”). The continued prosecution of the Class Actions will reduce any potential recoveries to the Class Action Plaintiffs by the amount needed to compensate class action attorneys, and, more importantly, allow the Class Action Plaintiffs to pursue double recoveries, first as Class Action Plaintiffs and again as creditors of the Debtors and their estates.

4. Many of the Class Action Plaintiffs have personally appeared in this Court, and some of the Class Action Plaintiffs are even serving as members of the Noteholder Committee. The members of the Noteholder Committee should not be pursuing estate claims for themselves as plaintiffs in separate litigation while serving in a fiduciary capacity in this Court.

5. Moreover, the claims asserted against Comerica in the Class Actions all give rise to claims by Comerica for indemnification against the Debtors’ estates. Each Debtor that had an account at Comerica entered into an account agreement that indemnifies Comerica from claims of third parties such as the Class Action Plaintiffs. The continued prosecution of the Class Actions will result in the accrual of substantial indemnification claims against the Debtors caused by duplicative litigation in multiple forums.

6. Enjoining the Class Actions will promote the orderly liquidation of the Debtors and maximize the recovery of all creditors, including Comerica. Thus, enjoining the Class Actions will prevent the Debtors, their estates and their creditors, including Comerica, from suffering immediate, irreparable, and substantial harm. By contrast, continuation of the Class Actions creates an even bigger mess in what has already been a very contentious case, resulting in a waste of judicial and legal resources, potentially inconsistent judicial rulings, substantial indemnification

claims against the Debtors, and potentially preferential recoveries for the Class Action Plaintiffs.

7. Now that the Debtors (through a Term Sheet) have indicated that any plan of reorganization will admit that the Debtors operated a Ponzi scheme, it is apparent that Comerica was a victim of the same fraudulent acts perpetrated by Shapiro as the Class Action Plaintiffs. Although Comerica has no desire to commence an action against other victims of Shapiro's fraud, Comerica is required to do so under the Bankruptcy Code and Bankruptcy Rules, which require the filing of an adversary proceeding in order to obtain declaratory and injunctive relief to prevent the continued prosecution of the Class Actions that only serve to reduce recoveries of the Debtors' creditors.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the claims raised in this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157 and the Amended Standing Order of Reference dated as of February 29, 2012 from the United States District Court for the District of Delaware.

9. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

10. This is an adversary proceeding brought pursuant to Rules 7001 and 7065 of the Bankruptcy Rules.

11. There exists a substantial controversy between Comerica and the Class Action Plaintiffs of sufficient immediacy and reality to warrant the relief requested.²

² Pursuant to Local Bankruptcy Rule 7008-1, Comerica consents to the entry of final orders or judgments by this Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

THE PARTIES

12. Comerica Bank is a Texas banking association with its principal place of business in Dallas, Texas.

13. The Class Action Plaintiffs are the named plaintiffs in the five Class Action complaints (the “Class Action Complaints”) that have to date been filed against Comerica.³

14. The Class Action Plaintiffs in the action captioned *Jay Beynon Family Trust DTD 10/23/1998 et al., v. Comerica Bank*, Case No. 2:18-cv-00103 (C.D. Cal. Jan. 4, 2018), (hereinafter, the “Beynon Class Action”) (*see* Neier Dec. Ex. C) are as follows:

- a. The Jay Beynon Family Trust DTD 10/23/1998, an entity located in El Segundo, California;
- b. Richard J. Carli, a resident of Clayton, North Carolina;
- c. Lois M. Carli, a resident of Clayton, North Carolina;
- d. Albert M. Lynch, a resident of Spartanburg, South Carolina; and
- e. Freda B. Lynch, a resident of Spartanburg, South Carolina.

15. The Class Action Plaintiffs in the action captioned *Prince, et al., v. Comerica Bank*, Case No. 2:18-c-00430 (C.D. Cal. Jan. 17, 2018) (hereinafter, the “Prince Class Action”) (*see* Neier Dec. Ex. D), are as follows:

- a. Robert J. Prince, a resident of West Chester, Pennsylvania;

³ A sixth Class Action Complaint in the action captioned *Katz et al., v. Comerica Bank*, Case No. 0:17-cv-62551-WPD (S.D. Fla.) (filed Dec. 22, 2017) (hereinafter, the “Katz Class Action”) was also filed against Comerica. But Comerica was not served in that case. Additionally, the plaintiffs in *Katz* have subsequently filed a notice of voluntary dismissal, which resulted in the court granting a dismissal that was entered on the docket on March 19, 2018. *See* Order of Dismissal, *Katz v. Comerica Bank*, No. 17-62551 (S.D. Fla. March 19, 2018) (ECF No. 5) (the “Katz Class Action”). A copy of the *Katz* Class Action complaint is attached to the declaration of David Neier (“Neier Dec.”) as Exhibit A. A copy of the dismissal order entered in the *Katz* Class Action is attached to the Neier Dec. as Exhibit B),

- b. Lilly Shirley, a resident of Harriman, Tennessee; and
- c. Joseph C. Hull, a resident of Media, Pennsylvania.

16. The Class Action Plaintiffs in the action captioned *Landman, et al., v. Comerica Bank*, Case No. 2:18-cv-00471 (C.D. Cal. Jan. 18, 2018) (hereinafter, the “Landman Class Action”) (*see* Neier Dec. Ex. E), are as follows:

- a. Lloyd Landman, a resident of Clark County, Nevada; and
- b. Nancy Landman, a resident of Clark County, Nevada.

17. The Class Action Plaintiffs in the action captioned *Gordon, et al., v. Comerica Bank*, Case No. 2:18-cv-001298 (C. D. Cal. February 16, 2018) (hereinafter, the “Gordon Class Action”) (*see* Neier. Dec. Ex. F), are as follows:

- a. Alan Gordon, a resident of Sunrise, Florida; and
- b. Marlene Gordon, a resident of Sunrise Florida.

18. The Class Action Plaintiffs in the action captioned *Baker, et al., v. Comerica Bank*, Case No. 0:18-cv-60524 (S.D. Fla. March 12, 2018) (hereinafter, the “Baker Class Action, (*see* Neier Dec. Ex. G) and together with the Katz Class Action, the Beynon Class Action, the Prince Class Action, the Landman Class Action and the Gordon Class Action, the “Class Actions”), are as follows:

- a. Mark Baker, a resident of Weston, Florida; and
- b. Cornerstone Growth LP, a limited partnership with its principal place of business in Las Vegas, Nevada.

FACTUAL ALLEGATIONS

19. Prior to the Petition Date certain of the Debtors opened accounts at Comerica. In opening those accounts, each of the prepetition Debtors entered into a Business and Personal

Deposit Account Contract (the “Contract”) with Comerica. (*see* Neier Dec. Ex. H).

20. The Debtors that had accounts with Comerica are as follows: (i) Woodbridge Group Of Companies, LLC; (ii) Woodbridge Capital Investments, LLC; (iii) Woodbridge Commercial Bridge Loan Fund 1, LLC; (iv) Woodbridge Commercial Bridge Loan Fund 2, LLC; (v) Woodbridge Mortgage Investment Fund 1, LLC; (vi) Woodbridge Mortgage Investment Fund 2, LLC; (vii) Woodbridge Mortgage Investment Fund 3, LLC; (viii) Woodbridge Mortgage Investment Fund 3A, LLC; (ix) Woodbridge Mortgage Investment Fund 4, LLC; and (x) Woodbridge Structured Funding, LLC.

21. Among other things, the Contract provides that all account holders “agree to indemnify and hold [Comerica] harmless (including the payment of reasonable attorney’s and paralegal fees and other costs) against all liability to third parties arising out of or in connection with the terms, conditions or services provided under the Contract or otherwise pursuant to your instructions.” (Neier Dec. Ex. H at §3.06).

22. Pursuant to the Contract, the Class Action Claims asserted in the Class Actions give rise to indemnification claims against the Debtors. Accordingly, if the Class Actions are allowed to proceed, the Debtors will be subject to substantial indemnification claims by Comerica, thereby reducing recoveries to all creditors in the Chapter 11 Cases.

23. Commencing on December 4, 2017 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

24. Beginning on December 22, 2017 with the filing of the Katz Class Action Complaint, the six Class Action Complaints were filed against Comerica. As noted above, five of the six Class Actions remain pending. (Neier Dec. Exs. C-G).

25. The Class Actions Complaints are substantially similar (and in places virtually

identical) and contain substantially similar (and in places virtually identical) allegations against Comerica, namely, that:

- a. Shapiro was engaged in a Ponzi scheme;
- b. Shapiro opened accounts at Comerica in the names of certain of the prepetition Debtors; and
- c. Comerica should be deemed to have known and/or must have known that Shapiro was engaged in a Ponzi scheme.

(*see* Neier Dec., Beynon Class Action Complaint, Ex. C at ¶¶78-95; Prince Class Action Complaint, Ex. D at ¶¶91-116; Landman Class Complaint, Ex. E at ¶¶94-120; Gordon Class Action Complaint, Ex. F at ¶¶77-94; and Baker Class Complaint, Ex. G at ¶¶37-40).

26. Comerica denies the allegations and claims asserted in the Class Actions. Indeed, if anything Comerica is a victim of the same fraud perpetrated by Shapiro that went undetected by regulatory and law enforcement agencies for years.

27. The causes of action asserted against Comerica in the Class Actions include claims for, *inter alia*:

- a. aiding and abetting fraud (*see* Neier Dec., Beynon Class Action Complaint, Ex. C at ¶¶113-119; Prince Class Action Complaint, Ex. D at ¶¶137-142; Landman Class Complaint, Ex. E at ¶¶130-136; Gordon Class Action Complaint, Ex. F at ¶¶112-118; Baker Class Complaint, Ex. G at ¶¶85-93); and
- b. aiding and abetting breach of fiduciary duty (*see* Neier Dec., Beynon Class Action Complaint, Ex. C at ¶¶120-140; Prince Class Action Complaint, Ex. D at ¶¶143-148; Landman Class Complaint, Ex. E at ¶¶137-142; Gordon Class Action Complaint, Ex. F at ¶¶119-124; Baker Class Complaint, Ex. G at ¶¶94-99).

28. All of the claims asserted in the Class Action Complaints are derivative and such claims are therefore clearly assets of the Debtors' estates. All of the claims relate to the banking relationship between Comerica and the prepetition Debtors. The Class Action Plaintiffs thus seek to litigate the very same issues and causes of action that will likely be litigated in this Court by the Liquidating Trust (defined below) as assignee of the claims of creditors. *See* Neier Dec. Ex. L.

29. The Class Action Plaintiffs do not allege a direct relationship with Comerica; rather, the Class Action Plaintiffs allege that Comerica is liable to each of them based on Comerica's banking relationship with Debtors. Comerica denies that class certification would be appropriate in any of the Class Actions, and because there is no alleged relationship between Comerica and any of the Class Action Plaintiffs, any alleged liability must be derivative of obligations owed by Comerica to the Debtors (if any). Moreover, none of the Class Action Complaints contain any particularized or individualized allegations by any of the Class Action Plaintiffs against Comerica, nor could they, since they are asserted as class actions. Instead, as pled, all of the claims asserted against Comerica are asserted as being common to all members of the class for whom the Class Action Plaintiffs are seeking to serve as representatives. (Neier Dec. Exs. C-G).

30. In addition to pursuing the Class Actions, the Class Action Plaintiffs are represented in these cases by the Noteholder Committee and the Unitholder Committee. Some of the Class Action Plaintiffs are members of the Noteholder Committee. (Neier Dec. Ex. I). Other Class Action Plaintiffs have had attorneys appear on their behalf in this Court (Neier Dec. Ex. J), and have written letters to the Court objecting to relief sought by the Debtors. (Neier Dec. Ex. K). As a result, the Class Action Plaintiffs are seeking recoveries from the estates as creditors of the Debtors while concurrently seeking recovery on these claims from Comerica in the Class Actions.

31. On March 27, 2018, the Debtors filed a summary term sheet (the "Term Sheet")

agreed to by the Official Committee of Unsecured Creditors, the Noteholder Committee and the Unitholder Committee. The Term Sheet provides that a liquidating plan of reorganization will be filed that will establish a liquidation trust. The Term Sheet states that the plan of reorganization will “admit and acknowledge that the Debtors were operating a Ponzi scheme...” (Neier Dec. Ex. L at §2(c)).

32. In addition, pursuant to the Term Sheet, the plan will provide that the liquidation trust will pursue, among other things, all causes of action “held by the Debtors, the Debtors’ estates, *and any individual creditor claims that are assigned to the Liquidation Trust...*” (Neier Dec. Ex. L at 7) (emphasis added). Accordingly, if the Class Actions are allowed to proceed, there will inevitably be litigation commenced by the Liquidation Trust on behalf of all the Debtors’ creditors that is duplicative of the claims asserted in the Class Actions by the Class Action Plaintiffs. Moreover, if the Class Actions proceed to judgment, the potential recoveries contemplated by the Term Sheet will have to be adjusted to account for any recoveries by the Class Action Plaintiffs in the Class Actions, the expenses of counsel for the Class Action Plaintiffs, and the substantial indemnification claims of Comerica.

COUNT I

(Declaratory Relief against the Class Actions and the Class Action Plaintiffs)

33. Comerica repeats and re-alleges the allegations contained in Paragraphs 1 through 32 above as though fully set forth herein.

34. Bankruptcy Code section 362(k) provides in relevant part that “an individual injured by any willful violation of a stay provided by this section [362] shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.” A corporate creditor such as Comerica is an “individual” within the meaning

of Bankruptcy Code section 362(k) and therefore has standing to commence actions with respect to stay violations, including for punitive damages and attorney's fees.

35. In addition, section 362(a)(3) of the Bankruptcy Code prohibits the commencement or continuation of "any act to obtain possession of property of the estate." The Class Actions all assert causes of action that are property of the Debtors' estates and creditors as a whole. In addition, the Class Action Plaintiffs are pursuing for themselves the same recoveries they are seeking as creditors of the Debtors. Continued prosecution of the Class Actions also results in the accrual of indemnification claims against the Debtors under the Contract to the detriment of the Debtors' estates and creditors.

36. Accordingly, the Class Actions should be stayed, declared void *ab initio*, and the Class Action Plaintiffs should be enjoined from continuing to prosecute the Class Actions.

37. There exists a substantial controversy between Comerica and the Class Action Plaintiffs of sufficient immediacy and reality to warrant the issuance of a declaratory judgment pursuant to 28 U.S.C. § 2201. A prompt judicial determination of the respective rights and duties of the parties in these respects is necessary and appropriate.

COUNT II

(Injunctive Relief against the Class Actions and Class Action Plaintiffs)

38. Comerica repeats and re-alleges Paragraphs 1 through 37 above.

39. Section 105(a) of the Bankruptcy Code provides, in relevant part, that the Court may "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Comerica seeks an injunction enjoining the continued prosecution of the Class Actions by the Class Action Plaintiffs against Comerica under section 105(a) of the Bankruptcy Code.

40. The authority granted by section 105(a) of the Bankruptcy Code includes the power to issue injunctions staying litigation in other courts and to stay creditors from pursuing such litigation when it is detrimental to the Debtors, their estates and their creditors.

41. The likelihood of irreparable harm to the Debtors and their estates in the absence of injunctive relief far outweighs any harm to the Class Action Plaintiffs. As set forth in the Term Sheet, the Class Action Plaintiffs will be able to assign their claims to the Liquidating Trust for the benefit of all creditors of the Debtors.

42. If the Class Actions are not enjoined, the Debtors' estates and their creditors, including Comerica, will likely suffer harm, including: (i) the risk that claims which are property of the estate are adjudicated in other courts for the benefit of particular creditors rather than all creditors of the Debtors as a whole; and (ii) the accrual of substantial indemnification claims against the Debtors as a result of the continued prosecution of duplicative litigation in the Class Actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request entry of a judgment against the Class Action Plaintiffs as follows:

- a. a declaration that the Class Actions should be and is stayed pursuant to section 362 of the Bankruptcy Code;
- b. an injunction pursuant to sections 105(a) and 362 of the Bankruptcy Code barring the continued prosecution of the Class Actions by the Class Action Plaintiffs; and
- c. such other and further legal and equitable relief as this Court deems just and

proper.⁴

Dated: April 4, 2018
Wilmington, Delaware

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⁴ Comerica reserves the right to amend this Complaint, including, without limitation, to add claims under 11 U.S.C. §362(k) for actual damages, including costs and attorneys' fees, and punitive damages.

CERTIFICATE OF SERVICE

I, F. Troupe Mickler IV, hereby certify that on April 4, 2018, I caused one copy of the foregoing document to be served upon the parties on the attached service list via email and first class mail.

/s/ F. Troupe Mickler IV

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