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**UNITED STATES BANKRUPTCY COURT
THE SOUTHERN DISTRICT OF NEW YORK**

In re:

JENNIFER CONVERTIBLES, INC.,¹

Debtors.

Chapter 11

Case No. 10-13779 (ALG)

(Motion for Joint Administration Pending)

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING THE DEBTORS
TO SATISFY PREPETITION CLAIMS RELATING TO COMMON CARRIERS,
WAREHOUSE PROVIDERS AND THE CUSTOMS BROKER PURSUANT TO
SECTION 105(a) OF THE BANKRUPTCY CODE**

Jennifer Convertibles, Inc. (“Jennifer Convertibles”) and its affiliated debtors, as debtors in possession (together, the “Debtors”), hereby move this Court for entry of an order authorizing, but not directing, the payment of prepetition claims of certain common carriers and the customs broker, pursuant to section 105(a) of the Bankruptcy Code (the "Motion"). In support of this Motion, the Debtors respectfully state as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: (i) Jennifer Convertibles, Inc. (4646); (ii) Jennifer Convertibles Boylston MA, Inc. (7904); (iii) Jennifer Chicago Ltd. (0505); (iv) Elegant Living Management, Ltd. (5049); (v) Hartsdale Convertibles, Inc. (1681); (vi) Jennifer Management III Corp. (3552); (vii) Jennifer Purchasing Corp. (7319); (viii) Jennifer Management II Corp. (9177); (ix) Jennifer Management V Ltd. (9876); (x) Jennifer Convertibles Natick, Inc. (2227); (xi) Nicole Convertibles, Inc. (5985); (xii) Washington Heights Convertibles, Inc. (0783).

Background

1. On July 18, 2010 (the “Petition Date”), each of the Debtors commenced with the Bankruptcy Court a voluntary case pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory creditors’ committee has been appointed in these chapter 11 cases.

2. Jennifer Convertibles, Inc. was organized as a Delaware corporation in 1986, and is currently the owner of (i) the largest group of sofabed specialty retail stores and leather specialty retail stores in the United States, with stores located throughout the Eastern seaboard, Midwest, West Coast and Southwest, and (ii) seven big box, full-line furniture stores operated under the Ashley Furniture HomeStore brand (the “Ashley Stores”) under a license from Ashley Furniture Industries, Inc.

3. In order to generate sales, the Debtors rely on aggressive pricing, the attractive image of its stores, extensive advertising and prompt delivery. Operations are classified into two operating segments organized by retail concept: Jennifer and Ashley. The Jennifer segment operates the sofabed specialty retail store concept. The Ashley segment is the big box, full line home furniture retail store concept. There are no inter-company sales between segments. The Ashley segment is highly profitable due to its unique sourcing model, whereby once most sales are executed, Ashley’s supplier manages the supply chain process. Under the Ashley sourcing model, the Debtors need for warehouse inventory is reduced, thereby limiting working capital needs and infrastructure requirements. The Debtors’ two operating segments enable the Debtors to more effectively offer diverse home furnishings and accessories and expand to a broader consumer base.

4. As of the Petition Date, the Debtors' stores include 130 stores operated by the Jennifer segment. During fiscal 2007, the Debtors opened their first Ashley Store. As of the Petition Date, the Debtors operate seven Ashley Stores.

5. As of the Petition Date, the Debtors employ 497 people. There are 336 employees in the Jennifer segment, 114 employees in the Ashley segment and 47 corporate employees. None of the employees are represented by a collective bargaining unit.

6. For the fiscal year ended August 29, 2009, the Debtors' consolidated financial statements showed revenues from continuing operations of approximately \$94,177,000, compared with \$120,131,000 for the fiscal year ended August 30, 2008, and \$132,683,000 for the fiscal year ended August 25, 2007. For the thirty-nine weeks ended May 29, 2010, revenues from continuing operations were approximately \$70,036,000, with \$56,144,000 coming from the Jennifer segment stores, and \$13,892,000 from the Ashley segment stores.

7. Net sales from continuing operations were \$88,845,000 and \$113,073,000 for the fiscal years ended August 29, 2009 and August 30, 2008, respectively. Net sales from continuing operations decreased by 21.4%, or \$24,228,000 for the fiscal year ended August 29, 2009 compared to the fiscal year ended August 30, 2008. The decrease in net sales is attributable to a decline in overall demand within the furniture industry sector due to a poor housing market and an overall weak U.S. economy. Consolidated same store sales from continuing operations (sales at those stores open for the entire current and prior comparable periods) decreased 19.6% for the thirteen weeks ended May 29, 2010, compared to the same period ended May 30, 2009.

8. Specifically, in the Ashley segment, net sales from continuing operations were \$5,106,000 and \$3,363,000 for the thirteen-week periods ended May 29, 2010 and May 30,

2009, respectively. Net sales from continuing operations increased by 51.8%, or \$1,743,000 for the thirteen-week period ended May 29, 2010 compared to the thirteen-week period ended May 30, 2009. The increase is largely attributable to four new Ashley locations open during the thirteen-week period ended May 29, 2010, that were not open during the same thirteen week period last year.

9. In the Jennifer segment, net sales from continuing operations were \$16,375,000 and \$16,987,000 for the thirteen-week periods ended May 29, 2010 and May 30, 2009, respectively. Net sales from continuing operations decreased by 3.6%, or \$612,000 for the thirteen-week period ended May 29, 2010 compared to the thirteen-week period ended May 30, 2009. The decrease is attributable to the decline in overall demand within the furniture industry sector due to the prevailing conditions of the U.S. economy, the current housing market, store closings, and delays in receipt of merchandise from the Debtors' Chinese supplier, all as discussed in greater detail in the other first day motions, filed concurrently herewith.

10. The factual background relating to the Debtors' commencement of these chapter 11 cases is set forth in additional detail in the Declaration of Rami Abada in Support of First Day Motions (the "Abada Declaration") filed contemporaneously with this Motion and incorporated herein by reference.

Jurisdiction

11. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. 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.

12. The statutory predicates for the relief requested herein is section 105(a) of the United States Code (the "Bankruptcy Code").

Common Carriers and Customs Broker

13. Common Carriers. In the ordinary course of business, the Debtors use and rely on numerous freight, rail, and vessel companies operated by certain third parties (collectively, the "Common Carriers") to transport goods and merchandise from manufacturers to the Debtors' warehouses and distribution centers and from the Debtors' warehouses and distribution centers to their wholesale customers and retail and outlet stores.

14. The Common Carriers provide carrier services themselves or outsource such services to other parties. The Common Carriers are compensated based upon contractual rates agreed to between the Debtors and each of the Common Carriers for the services provided to the Debtors (the "Common Carrier Charges").

15. Among the Common Carriers, the Debtors use the services of various domestic trucking companies (the "Truckers") to ship their merchandise. The Debtors remit payment to the Truckers once per month, on or around the 10th of each month. As of the Petition Date, the Debtors estimate that the aggregate amount of unpaid prepetition amounts owed to the Common Carriers is approximately \$83,000.

16. If the Common Carrier Charges are not paid by the Debtors, many of the Common Carriers may stop providing their essential services to the Debtors, causing delay or interruption in the delivery and sale of merchandise. It is critical to the Debtors' reorganization efforts that they maintain a reliable and efficient flow of inventory to their retail stores and distribution centers. Unless the Debtors continue to receive and distribute goods and merchandise on a timely basis without interruption, these operations will be severely disrupted, and the Debtors' ability to generate revenues and realize value on their assets would be impaired. Even if suitable alternative service providers were available, the time necessary to

identify these replacements and integrate them into the Debtors' operations likely would essentially shut down the Debtors' operations, and cause sales to be lost.

17. In addition, the failure to pay the Common Carrier Charges may result in the assertion of possessory liens by certain service providers under applicable state law. Typically, state laws grant an entity that furnishes services with respect to goods a possessory lien on such goods to secure payment for services, if such entity retains possession of the goods at issue. Pursuant to Bankruptcy Code section 362(b)(3), the act of perfecting such liens is expressly excluded from the automatic stay imposed by Section 362(a). Therefore, many of the Common Carriers may be entitled to assert and perfect liens against the Debtors' property, to the detriment of the Debtors' estates and creditors.

18. Customs Broker. Traditionally, in the ordinary course of business, the Debtors purchase and import from China into the United States approximately 55% of the merchandise to be sold by the Debtors' retail stores. Goods enter the United States through customs at various ports on the west and east coasts. All such imported goods are subject to certain customs import duties (the "Customs Duties") imposed by the laws of the United States. The Debtors must pay not only Customs Duties on such imported merchandise (the "Imported Goods"), but also freight, storage and port charges to effectuate the release of the Imported Goods to the Debtors (the "Customs Charges").

19. Once the Imported Goods are released by customs, they are transported by numerous freight and rail companies operated by certain third parties (collectively, the "Inbound Carriers") to the Debtors' warehouses / distribution centers.

20. The Debtors use the services of a customs broker, ASF Logistics, (the "Customs Broker"), to facilitate the import and release of the Imported Goods and to pay the Customs

Duties, Customs Charges, and the charges of the Inbound Carriers on the Debtors' behalf. The Customs Broker is an integral part of the Debtors' import system because it facilitates the importing, transportation, and receipt of merchandise from foreign manufacturers, completes paperwork necessary for customs clearance, coordinates delivery to the Debtors' distribution centers and warehouses, pays the Debtors' Inbound Carriers and Customs Charges and Duties, and performs numerous related services for the Debtors. In exchange for its services, the Debtors pay the Customs Broker service-based fees (the "Broker's Fees") and reimburse the Customs Broker for any funds advanced on behalf of the Debtors, including Custom Duties, Customs Charges, payments to the Inbound Carriers, and miscellaneous storage and handling expenses (collectively, the "Customs Claims"). The Customs Broker is paid on receipt of invoice, as they will hold the goods at port if the Debtors do not remit the amount owed. As such, it is vital to the Debtors' operations that payment to the Customs Broker being paid on a timely basis.

21. The Debtors estimate that, as of the Petition Date, the aggregate amount of unpaid prepetition amounts owed to the Customs Broker is approximately \$22,000.

Relief Requested

22. By this motion, the Debtors seek entry of an order authorizing, but not directing, them to pay, in their sole discretion, (i) the valid prepetition claims of the Common Carriers relating to the shipment, transport and delivery of goods to the Debtors in the ordinary course of business, and (ii) the valid prepetition Customs Duties, Broker's Fees and Custom Claims in respect of the Imported Goods pursuant to section 105 of the Bankruptcy Code that are accrued and unpaid as of the Petition Date. The Debtors propose to pay such claims, when, in the Debtors' sole discretion, the Common Carriers' exercise of contractual or statutory self-help remedies would unduly disrupt the Debtors' businesses.

Basis For Relief

23. Any disruption to the delivery, import, and flow of inventory would have an immediate and devastating impact on the Debtors' operations and the maximization of the value of the Debtors' assets. Without the inventory, the Debtors would be unable to adequately stock and supply their retail stores with the inventory required by their customers. Because uninterrupted delivery of the merchandise is essential for the Debtors to maximize the Debtors' returns from their liquidation efforts, the interests of the Debtors and all parties in interest will be best served by entry of an order allowing the payment of prepetition claims to the Customs Broker and Common Carriers.

24. Section 105 of the Bankruptcy Code grants courts broad authority to enforce the Bankruptcy Code's provisions either under the specific statutory language of the Bankruptcy Code or under equitable common law doctrines. "The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). This equitable common law principle "was first articulated by the United States Supreme Court in *Miltenberger v. Logansport, C. & S.W. R. Co.*, 106 U.S. 286 (1882) and is commonly referred to as either the 'doctrine of necessity' or the 'necessity of payment' rule." *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175-76. "The Supreme Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of prepetition claims when such payment is necessary for the debtor's survival during chapter 11." *In re Just For Feet Inc.*, 242 B.R. 821, 825 (D. Del. 1999). "The necessity of payment doctrine recognizes that paying certain pre-petition claims may be necessary to realize the goal of chapter 11 - a successful reorganization." *Id.* at 825-26.

25. Under the doctrine of necessity, a bankruptcy court may exercise its equitable power to authorize a debtor to pay certain critical prepetition claims, even though such payment is not explicitly authorized under the Bankruptcy Code. *See In re Columbia Gas System*, 136 B.R. 930, 939 (Bankr. D. Del. 1992) (citing *In re Lehigh & N.E. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (recognizing that "if payment of a prepetition claim `is essential to the continued operation of [debtor], payment may be authorized"')).

26. Courts have authorized the payment of prepetition common carrier charges, customs duties, brokers' fees and related charges in other large retail chapter 11 cases in this district. *See, e.g.*,

27. If required, the payment of the prepetition Customs Duties, as well as the Common Carriers, Broker's Fees, Custom Claims and other prepetition amounts due and owing in respect of the Imported Goods will support the Debtors' liquidation process by permitting the continued and uninterrupted flow of merchandise and goods that can be sold by the Debtors.

28. Authorization to pay the prepetition claims described herein will not be deemed to constitute postpetition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code. The Debtors reserve all of their rights under the Bankruptcy Code with respect to any such agreements. Moreover, authorization to pay any prepetition claims herein does not affect the Debtors' right to contest the amount or validity of any such charges, in whole or in part.

The Debtors Satisfy Bankruptcy Rules 6003 and 6004

29. Pursuant to Rule 6003 (b) of the Federal Rules of Bankruptcy Procedure, "a motion to pay all or part of a claim that arose before the filing of the petition" shall not be granted by the Court within 20 days of the Petition Date "(e)xcept to the extent that relief is

necessary to avoid immediate and irreparable harm. . . ." Fed. R. Bankr. P. 6003(b). Because the Common Carriers and Customs Broker may attempt to terminate the Debtors' postpetition services, the Debtors submit that the requirements of Rule 6003 have been met and that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates. To implement the foregoing successfully and insure the Debtors' services are not interrupted, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the ten day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h), to the extent these rules are applicable.

Notice

30. No trustee, examiner or statutory creditors' committee has been appointed in these chapter 11 cases. Notice of this Motion has been provided to: (i) Office of the United States Trustee for the Southern District of New York; (ii) those creditors holding the thirty (30) largest unsecured claims against the Debtors' estate (on a consolidated basis); (iii) counsel to Haining Mengnu Group Co. Ltd.; (iv) the SEC; (v) the IRS; (vi) all taxing authorities in relevant jurisdictions; (vii) all attorneys general in relevant jurisdictions; and (viii) any other party directly affected by this Motion. The Debtors submit that such notice is sufficient under the circumstances.

No Previous Request

31. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: New York, New York
July 19, 2010

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*Proposed Attorneys for the Debtors and
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EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

JENNIFER CONVERTIBLES, INC.,¹

Debtors.

Chapter 11

Case No. 10-13779 (ALG)

(Motion for Joint Administration Pending)

**ORDER AUTHORIZING THE DEBTORS TO SATISFY
PREPETITION CLAIMS RELATING TO COMMON CARRIERS, WAREHOUSE
PROVIDERS AND THE CUSTOMS BROKER, PURSUANT TO
SECTION 105(a) OF THE BANKRUPTCY CODE**

Upon the motion, dated July 19, 2010 (the “Motion”)² of Jennifer Convertibles, Inc. and its affiliated debtors, as debtors in possession (collectively, the “Debtors”), for an order authorizing the Debtors to satisfy prepetition claims relating to Common Carriers and the Customs Broker, pursuant to Section 105(a) of the Bankruptcy Code and upon consideration of the Declaration of Rami Abada in Support of the Debtors’ Chapter 11 Petitions and Request for First Day Relief; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having determined that the legal and factual bases

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² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to section 105(a) of the Bankruptcy Code, the Debtors are authorized, but not directed, to pay, in their sole discretion, any or all of the valid prepetition Common Carrier, Customs Duties, Broker's Fees, Custom Claims and related charges in the ordinary course of the Debtors' business.
3. Nothing in this Order or the Motion shall be construed as prejudicing the Debtors' right to dispute or contest the amount of, or basis for, any claims against the Debtors relating to the Common Carrier, Customs Duties, Broker's Fees, Custom Claims and related charges.
4. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall constitute, nor is it intended to constitute, an assumption of any contract under section 365 of the Bankruptcy Code or the waiver by the Debtors or their nondebtor affiliates of any of their rights pursuant to any agreement by operation of law or otherwise.
5. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.
6. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.
7. Bankruptcy Rule 6003(b) has been satisfied.
8. The requirements of Bankruptcy Rule 6004(a) are waived,

9. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.

10. If no Objections are filed to the Motion, the Court may enter a Final Order without further notice or hearing.

Dated: July __, 2010
New York, New York

UNITED STATES BANKRUPTCY JUDGE