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

In re: JENNIFER CONVERTIBLES, INC., <i>et al.</i> ¹ Debtors.	Chapter 11 Case No. 10-13779 (ALG) (Jointly Administered) Hearing Date: September 22, 2010 at 11:00 a.m. (EDT) Objection Deadline: September 15, 2010 at 5:00 p.m. (EDT)
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**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF JENNIFER CONVERTIBLES, INC., *ET AL.* FOR AN ORDER
DETERMINING THAT THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS IS NOT REQUIRED TO PROVIDE ACCESS TO
CONFIDENTIAL OR PRIVILEGED INFORMATION OF THE DEBTORS**

The Official Committee of Unsecured Creditors (the “Committee”) of Jennifer Convertibles, Inc., *et al.*, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through its proposed counsel, Kelley Drye & Warren LLP,² hereby submits this motion (the “Motion”) for entry of an order pursuant to sections 105(a), 107(b), and 1102(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9018, determining that the

¹ The Debtors in these chapter 11 cases are: (i) Jennifer Convertibles, Inc.; (ii) Jennifer Convertibles Boylston MA, Inc.; (iii) Jennifer Chicago Ltd.; (iv) Elegant Living Management, Ltd.; (v) Hartsdale Convertibles, Inc.; (vi) Jennifer Management III Corp.; (vii) Jennifer Purchasing Corp.; (viii) Jennifer Management II Corp.; (ix) Jennifer Management V Ltd.; (x) Jennifer Convertibles Natick, Inc.; (xi) Nicole Convertibles, Inc.; and (xii) Washington Heights Convertibles, Inc.

² An application to retain Kelley Drye & Warren LLP as counsel to the Committee was filed on August 18, 2010. Docket Entry No. 174.

Committee is not required to provide any non-Committee creditors with access to the Debtors' Confidential Information (as defined below) or Privileged Information (as defined below). In support of the Motion, the Committee respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a), 107(b), and 1102(b)(3)(A) of the Bankruptcy Code, as supplemented by Bankruptcy Rule 9018.

BACKGROUND

3. On July 18, 2010 (the "Petition Date"), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. Since the Petition Date, the Debtors have continued in possession of their properties and have continued to operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On July 23, 2010, the United States Trustee appointed Klaussner Furniture Industries Inc., Creative Television Marketing, Brent Associates Inc., Caye Home Furnishings LLC, Fata Equities LLC, PIC Management Group d/b/a PIC Media Group, PS Promotions Inc., 301 East 66 LLC, and Ayisha Combs to the Committee.³ On the same date, the Committee selected Kelley Drye & Warren LLP to serve as counsel to the Committee.

³ Docket Entry No. 77.

6. The Committee members have entered into a confidentiality agreement (the “Confidentiality Agreement”) with the Debtors. The Confidentiality Agreement requires that, except as provided therein, the Committee members keep confidential and do not disclose any confidential information that has been, or will be, supplied to them throughout these cases.

RELIEF REQUESTED

7. By this Motion, the Committee seeks entry of an order of the Court: (a) confirming that section 1102(b)(3)(A) of the Bankruptcy Code does not require the Committee to provide anyone other than its members, counsel, and advisors with access to the Debtors’ Confidential Information;⁴ and (b) clarifying that the Committee is not required to provide anyone other than its members, its counsel, and advisors access to Privileged Information (as defined below).

8. The relief requested herein will help ensure that confidential, privileged, proprietary, and/or material non-public information will not be disseminated to the detriment of the Debtors’ estates, and will aid the Committee in performing its statutory functions under the Bankruptcy Code. In addition, the relief requested is consistent with the Committee members’ obligations under the Confidentiality Agreement.

⁴ For purposes of this Motion, the term “Confidential Information” shall mean any non-public information of the Debtors, including, without limitation, information concerning the Debtors’ assets, liabilities, business operations, projections, analyses, compilations, studies, and other documents prepared by the Debtors or their representatives, advisors, or other agents, all to the extent not privileged, which is furnished, disclosed, or made known to the Committee, whether intentionally or unintentionally and in any manner, including written form, orally, or through any electronic, facsimile, or computer-related communication. Confidential Information shall include (a) any notes, summaries, compilations, memoranda, or similar written materials disclosing or discussing Confidential Information; (b) any written Confidential Information that is discussed or presented orally; and (c) any other Confidential Information conveyed to the Committee orally.

Notwithstanding the foregoing, Confidential Information shall not include any information or portion of information that: (i) is or becomes generally available to the public or is or becomes available to the Committee on a non-confidential basis, in each case to the extent that such information became so available other than by a violation of a contractual, legal, or fiduciary obligation to the Debtors; or (ii) was in the possession of the Committee prior to its disclosure by the Debtors and is not subject to any other duty or obligation to maintain confidentiality.

ARGUMENT

9. Section 1102(b)(3)(A), provides, in pertinent part, that a committee appointed under section 1102(a) of the Bankruptcy Code shall “provide access to information for creditors who– (i) hold claims of the kind represented by that committee; and (ii) are not appointed to the committee[.]” 11 U.S.C. § 1102(b)(3)(A). The statute, however, does not indicate the nature, scope, or extent of the “information” that must be provided to such creditors or how a committee should provide “access to information.”

10. This lack of specificity in section 1102(b)(3)(A) creates significant issues for debtors and creditors’ committees. Typically, debtors will share confidential and other non-public proprietary information with a committee. A committee uses this information to, among other things, assess debtors’ prospects for reorganization and analyze the propriety of relief being sought by the debtors. In addition, as here, committee members often execute confidentiality agreements or enter into other similar arrangements with debtors. Through these agreements and other arrangements, debtors can ensure that a committee’s members will keep its proprietary information confidential and will not use Confidential Information except in connection with the chapter 11 case and on terms acceptable to the debtors. In these cases, pursuant to the Confidentiality Agreement, the Committee members are required to keep confidential and not disclose Confidential Information except as may be otherwise provided therein.

11. Because of its silence on the issue, section 1102(b)(3)(A) raises a question as to whether a committee could be required to share debtors’ Confidential Information with any creditor that the committee represents. Nothing in the plain language of section 1102(b)(3)(A) nor its legislative history requires such a result. Nevertheless, as a precautionary measure, the Committee hereby seeks an order of the Court confirming that section 1102(b)(3)(A) does not

require it to provide access to Confidential Information to the Debtors' creditors that are not members of the Committee.

12. Public dissemination of the Confidential Information likely would cause serious harm to their estates by, among other things, providing access to otherwise protected information to the Debtors' competitors and litigation adversaries who could use it to the detriment of the Debtors' estates. Moreover, the Committee will likely receive other Confidential Information of the Debtors, such as compensation levels or other employee information, that should be kept private. Public disclosure of such information is unnecessary and could jeopardize morale and harm the Debtors.

13. If there was a risk that Confidential Information given by the Debtors to the Committee must be shared with any creditor, the Debtors would be discouraged from giving Confidential Information to the Committee, which in turn, could limit the Committee's ability to fulfill its statutory obligations under the Bankruptcy Code.

14. Section 1102(b)(3)(A) also raises a question as to whether a committee could be required to share debtors' information that is subject to the attorney-client or some other state, federal, or other jurisdictional law privilege, whether such privilege is solely controlled by the committee or is a joint privilege with the debtors or a third party (collectively, "Privileged Information"), with any creditor who is not a constituent of the committee. Compelling the Debtors and the Committee to provide non-Committee creditors with access to Privileged Information creates obvious concerns. If Privileged Information must be turned over to such creditors, the relevant privilege would likely be lost. The Debtors and the Committee, therefore, would be limited in their ability to obtain the independent advice and consultation that such privileges are designed to support. As with Confidential Information, the plain language of

section 1102(b)(3)(A) and its legislative history do not require this result. Nevertheless, as a precautionary measure, the Committee seeks an order confirming that section 1102(b)(3)(A) does not require it to provide access to Privileged Information to unsecured creditors generally.

15. Importantly, courts have clarified that committees are not required to provide access to confidential or privileged information. *See, e.g., In re Refco*, 336 B.R. 187 (Bankr. S.D.N.Y. 2006) (holding that a committee is not required to disclose information that is confidential, or if the disclosure would result in the waiver of the attorney-client privilege or the violation of an agreement, order, or law, unless the court orders otherwise on request of a creditor seeking such information); *see also, In re Global Home Products LLC, et al.*, Case No. 06-10340 (KG) (Bankr. D. Del. May 5, 2006) (stating that a committee is not authorized or required to provide access to confidential or privileged information).

16. Section 107(b)(1) of the Bankruptcy Code requires that “[o]n request of a party in interest, the bankruptcy court shall ... protect an entity with respect to a trade secret or confidential research, development, or commercial information[.]” 11 U.S.C. § 107(b)(1). Section 107(b)(1) of the Bankruptcy Code is mandatory. *See Video Software Dealers Ass’n v. Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994) (providing that the protections of section 107(b)(1) are mandatory upon request; a court has no discretion to deny the application as to information that fits any of the specified categories). Accordingly, section 107(b)(1), as supplemented by Bankruptcy Rule 9018,⁵ provides this Court with an independent basis to

⁵ Bankruptcy Rule 9018 provides, in pertinent part:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information....

protect Confidential Information and Privileged Information from disclosure to non-Committee creditors.

17. The disclosure of non-public or privileged information to such creditors would likely cause serious harm to the Debtors' estates, as discussed above. In the interest of avoiding any such harm, and to maximize the value of these estates, the Committee respectfully requests entry of an order of this Court pursuant to sections 105(a), 107(b)(1), and 1102(b)(3)(A) of the Bankruptcy Code confirming that the Committee is not required to provide access to Confidential Information or Privileged Information.⁶

18. Under the Committee's proposed procedures, the Committee would be permitted, but not required, to provide access to information, including Privileged Information, to any party so long as (a) such information does not otherwise constitute Confidential Information, and (b) any privilege is held and controlled solely by the Committee. The Committee proposes that the Committee and its individual members and their respective representatives, advisors, and counsel shall be deemed to be in compliance with sections 1102(b)(3) and 1103(c) of the Bankruptcy Code by implementing either of the following procedures (the "Procedures"):

⁶ In addition, the existing rights or obligation of the Committee as to the Debtors' information will not be impacted by this Motion, as the proposed order provides, "Nothing in this Order shall expand, restrict, affirm, or deny the right or obligation, if any, of a Committee to provide access, or not to provide access, to any information of the Debtors to any party except as explicitly provided herein." As a result, the relief requested herein is limited solely to the potential impact of section 1102(b)(3)(A) and does not attempt to adjudicate the rights or obligations of the Committee.

- (a) authorizing, but not requiring, establishment of a website (the “Website”) to make general information about these cases available to creditors;⁷ or
- (b) establishing an email address (the “E-mail Address”) to allow unsecured creditors to send questions and comments to the Committee’s counsel in connection with these cases and authorizing the Committee and its counsel, in their reasonable discretion, to review and/or respond to correspondence sent to the E-mail Address.

Notice

19. Notice of this Motion has been provided to: (i) counsel to the Debtors; (ii) the Office of the United States Trustee for this District; and (iii) all parties requesting notice pursuant to Bankruptcy Rule 2002. Because of the nature of the relief requested, the Committee respectfully submits that no further notice of the Motion is necessary or required under the circumstances.

⁷

On the Website, the Committee may make available information regarding the Debtors’ cases, including: (i) the Petition Date; (ii) the case number; (iii) the contact information for the Debtors (and any information hotlines or informational email addresses (as discussed below) that they establish), the Debtors’ counsel, and the Committee’s counsel; (iv) the voting deadline with respect to any plan filed in these cases; (v) information regarding any claims bar date; (vi) access to the claims docket established by the claims and noticing agent retained in these cases; (vii) a general overview of the chapter 11 process; (viii) press releases (if any) issued by the Committee or by the Debtors; (ix) links to other relevant websites (e.g., the Debtors’ corporate website, the Bankruptcy Court website, and the website of the Office of the United States Trustee); and (x) any other information that the Committee or its counsel, in their sole discretion, deems appropriate subject to the restrictions and limitations herein.

WHEREFORE, the Committee respectfully requests that this Court enter an order, substantially in the form attached hereto as Exhibit A, (i) granting the Motion; and (ii) granting such other and further relief as this Court deems just and proper.

Dated: New York, New York
September 1, 2010

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Proposed Counsel to the Official Committee of
Unsecured Creditors of Jennifer Convertibles, Inc., *et al.*

EXHIBIT A

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

In re:

JENNIFER CONVERTIBLES, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 10-13779 (ALG)
(Jointly Administered)

**ORDER DETERMINING THAT THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF JENNIFER CONVERTIBLES, INC., *ET AL.*
IS NOT REQUIRED TO PROVIDE ACCESS TO CONFIDENTIAL
OR PRIVILEGED INFORMATION OF THE DEBTORS**

Upon the motion (the “Motion”)² of the Official Committee of Unsecured Creditors (the “Committee”) of Jennifer Convertibles, Inc., *et al.*, the above-captioned debtors and debtors-in-possession (the “Debtors”), for entry of an order pursuant to sections 105(a), 107(b), and 1102(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9018 determining that the Committee is not required to provide access to the Confidential Information or Privileged Information to any creditor of the Debtors who is not a member of the Committee; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and notice of the Motion and the opportunity for a hearing on the Motion being appropriate under the circumstances such that no other or further notice need be given; upon the record herein, after due deliberation thereon, good and

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² Capitalized terms not defined in this order shall have the respective meanings ascribed to them in the Motion.

sufficient cause exists for the granting of the relief as set forth herein, IT IS HEREBY ORDERED THAT:

1. The Committee and its individual members and their respective representatives, agents, advisors, and counsel (each a “Committee Party” and collectively, the “Committee Parties”) are not required to provide access to any Confidential Information concerning the Debtors, including (without limitation) with respect to the acts, conduct, assets, liabilities, and financial condition of the Debtors, the operation of the Debtors’ businesses and the desirability of the continuance of such businesses, or any other matter relevant to these cases or to the formulation of a chapter 11 plan, whether provided by or on behalf of the Debtors or by any third party, to any creditor who is not a member of the Committee.

2. Committee Parties shall not be required, without an order of this Court or consent of the Debtors, to provide access to any Privileged Information concerning the Debtors to any creditor who is not a member of the Committee. The Committee is authorized, but not required, to provide access to Privileged Information to creditors who are not members of the Committee so long as (a) such Privileged Information is not Confidential Information; and (b) the relevant privilege is held and controlled solely by the Committee.

3. None of the Committee Parties shall have or incur any liability to any entity (including the Debtors) for acts taken or omitted to be taken as long as the Committee Parties have acted in compliance with the Procedures, the Confidentiality Agreement, or any other provisions of this Order; provided, however, that the foregoing shall not preclude or abridge the right of any creditor to move the Court for an order requiring the production of other or further information.

4. Nothing in this Order shall diminish the qualified immunity under applicable law of any Committee Party, or shall require the Committee to provide access to information or solicit comments from any entity that has not demonstrated to the satisfaction of the Committee that it holds claims of the kind described in section 1102(b)(3)(A) of the Bankruptcy Code.

5. Nothing in this Order expands, restricts, affirms, or denies the right or obligation, if any, of the Committee to provide access, or not to provide access, to any information of the Debtors or the Committee to any party except as explicitly provided herein.

6. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
September ____, 2010

THE HONORABLE ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE