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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)

(Jointly Administered)

**DEBTORS' APPLICATION PURSUANT TO RULE 9019 OF THE FEDERAL RULES
OF BANKRUPTCY PROCEDURE AND BANKRUPTCY CODE SECTIONS 105(a) AND
363 FOR ENTRY OF AN ORDER AUTHORIZING AND APPROVING THE
DEBTORS' SETTLEMENT AND STIPULATION WITH HANNINGTON LP**

Jennifer Convertibles, Inc. (“Jennifer Convertibles”) and its affiliated debtors, as debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned counsel, hereby submit this Application (the “Application”) for entry of an order, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), authorizing and approving the settlement with Hannington LP (“Hannington”), in accordance with the terms of

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).

the stipulation attached hereto as Exhibit A (the “Stipulation”). In support of this Application, the Debtors respectfully state as follows:

Status of the Case

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. An Official Committee of Unsecured Creditors was appointed in these chapter 11 cases on July 23, 2010 (the “Creditors’ Committee”).

2. On September 3, 2010, the Debtors filed their Schedules of Assets and Liabilities and Statements of Financial Affairs. On September 15, 2010, the meeting of creditors pursuant to section 341 of the Bankruptcy Code was held.

3. 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.

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

5. As of the Petition Date, the Debtors employed 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. 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 filed on July 19, 2010 and incorporated herein by reference.

Jurisdiction

7. 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.

8. The statutory predicates for the relief requested herein are Bankruptcy Rule 9019 and sections 105(a) and 363 of the Bankruptcy Code.

Relief Requested

9. By this Application, the Debtors seek entry of an order authorizing and approving the settlement with Hannington in accordance with the terms of the Stipulation, whereby Hannington consents to the release of attachment upon accounts, goods, effects and credits held by JP Morgan Chase Bank on behalf of the Debtors in the amount of \$81,560.76 (the "Funds"). Upon release of the Funds the Debtors agree to pay Hannington an amount of \$36,529.91 on account of an allowed administrative claim for postpetition rental obligations with regard to the premises located at 1524 VFW Parkway, Route 1, West Roxbury, Massachusetts (the "Premises"). The remaining \$45,030.85 of the Funds will be remitted to the Debtors' estates.

Relevant Background

10. Prior to the Petition Date, Hannington commenced an action in the Superior Court for the Commonwealth of Massachusetts (the "Massachusetts Court"), seeking an ex parte attachment upon the Funds in order to secure judgment with respect to arrears for rental obligations for the Premises.

11. The attachment was granted by the Massachusetts Court on June 16, 2010. Subsequently, on June 22, 2010, JP Morgan Chase Bank placed a hold on the Funds held in the Debtors' account.

12. On September 8, 2010, the Debtors filed a notice of rejection for the Premises with a surrender date of September 28, 2010 (docket no. 222), in accordance with the *Order Approving Expedited Procedure for Rejection of Certain Unexpired Leases of Nonresidential Real Property*, dated August 31, 2010 (docket no. 199). Hannington accepted the surrender of the Premises.

13. In settlement of this action, the Debtors and Hannington engaged in arms' length negotiations which resulted in the terms set forth in the attached Stipulation. Pursuant to the terms of the Stipulation, Hannington agrees to release the attachment and hold on the Debtors' Funds, and the Debtors will agree to use a portion of the Funds to pay their rental obligation for the Premises for (i) August 2010; (ii) September 2010; and (iii) the stub period of July 18, 2010 through July 31, 2010 which totals \$36,529.91 and will be allowed in these chapter 11 cases as an administrative claim. The remaining Funds of \$45,030.85 will be remitted to the Debtors' estates.

Basis for Relief Requested

14. Bankruptcy Code section 105(a) empowers a court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Code]. The purpose of section 105(a) is to ensure a bankruptcy court's power to take whatever action "is appropriate or necessary in aid of the exercise of [its] jurisdiction." In re Casse, 198 F.3d 327, 336 (2d Cir. 1999).

15. In addition, Bankruptcy Rule 9019(a), which governs approval of compromises and settlements, provides, in pertinent part:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States Trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

16. Approval of a proposed compromise or settlement is within the sound discretion of the Court. Protective Comm. for Indep. Stockholders v. Anderson, 390 U.S. 414, reh'g denied, 391 U.S. 909 (1968); Fischer v. Pereira (In re 47-49 Charles St. Inc.), 209 B.R. 618, 620 (S.D.N.Y. 1997). “In making such a determination, the bankruptcy court should appraise itself ‘of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated’; ‘should form an educated estimate of the complexity, expense, and likely duration of such litigation’; should determine ‘the possible difficulties of collecting on any judgment which might be obtained’; and should review ‘all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.’” In re Enron Corp., No. 02 Civ. 8489 (AKH), 2003 WL 230838, at * 2 (S.D.N.Y. Jan. 31, 2003) (citing Anderson, 390 U.S. at 424-25).

17. A bankruptcy court may approve a settlement where the proposed settlement is “both fair and equitable and in the best interests of the estate.” In re Ashford Hotels, Ltd., 235 B.R. 734, 740 (S.D.N.Y. 1999) (citing In re Liu, No. 98-5027, 1998 WL 890176, at *1 (2d Cir. Dec. 18, 1998)). Although a judge must consider the fairness of the settlement to the estate and its creditors, the judge is not required to consider the “minutia of every claim.” Six West Retail Acquisition, Inc. v. Loews Cineplex Entm’t, 286 B.R. 239, 249 (S.D.N.Y. 2002) (citing Nellis v. Shugrue, 165 B.R. 115, 123 (S.D.N.Y. 1994)). Indeed, the judge need not conduct a ‘mini trial’ to determine the merits of the underlying litigation. Instead, it is charged with “canvassing the issues to determine whether the settlement falls below the lowest point in the range of

reasonableness.” In re Enron Corp., 2003 WL 230838 at *2 (quoting In re Interstate Cigar Co., 240 B.R. 816, 822 (E.D.N.Y. 1999)).

18. In determining whether to approve a proposed compromise or settlement, a court must consider all factors relevant to a “full and fair assessment of the wisdom of the proposed compromise.” In re Purofied Down Products Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993). These factors include:

- (a) The balance between the likelihood of the plaintiff’s or the defendant’s success should the case go to trial as compared with the benefits of the settlement without the expense and delay of a trial;
- (b) The prospect of a complex and protracted litigation if the settlement is not approved;
- (c) The proportion of creditors who do not object to, or who affirmatively support, the proposed settlement;
- (d) The proposed benefits to be received;
- (e) The nature and breadth of releases to be issued as a result of the settlement; and
- (f) The extent to which the settlement is truly the product of arms’ length bargaining and not the product of fraud or collusion.

In re Best Prods. Co., 168 B.R. 35, 50 (Bankr. S.D.N.Y. 1994).

19. Here, all of the above factors weigh towards approval of the Stipulation. The Massachusetts Court granted Hannington an attachment on the Funds because of the strong likelihood of success of Hannington’s action. Thus, the Debtors benefit by settling this matter, as Funds currently attached by Hannington will be returned to the Debtors’ estates. Moreover, the Debtors are using their limited resources to ensure a successful chapter 11 reorganization, and do not need to tie up additional resources and cash flow when the alternative is a return of the Funds to the Debtors’ estates. The Debtors will receive the Funds as soon as the Stipulation is approved, thus providing the Debtors with immediate access to necessary operating cash. Indeed, all of the Debtors’ creditors will benefit by having the Funds returned to the estates, thus, most, if not all, of the Debtors’ creditors should support the terms of the Stipulation. In addition,

there are no releases in the Stipulation and the Debtors are merely paying Hannington administrative rent using a portion of the Funds. And finally, the Stipulation is the result of extensive arms' length negotiation, as the parties engaged in numerous discussions before settling on the terms of the Stipulation.

20. Thus, for the foregoing reasons, the Debtors respectfully submit that it is in the best interests of the Debtors, the Debtors' creditors and the Debtors' estates to allow the Debtors to enter into the Stipulation with Hannington.

No Previous Request

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

Notice

22. No trustee or examiner 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) counsel to the Official Committee of Unsecured Creditors; (iii) the SEC; and (iv) any other party who has filed a notice of appearance in these cases. The Debtors submit that such notice is sufficient under the circumstances.

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
October 19, 2010

OLSHAN GRUNDMAN FROME
ROSENZWEIG & WOLOSKY LLP

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EXHIBIT A

Stipulation

**OLSHAN GRUNDMAN FROME
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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)

(Jointly Administered)

STIPULATION AND ORDER

WHEREAS on June 11, 2010 Plaintiff Hannington, LP (the "Plaintiff") requested and obtained an ex parte attachment upon accounts, goods, effects and credits held by JP Morgan Chase Bank on behalf of Jennifer Convertibles, Inc., debtors and debtors in possession (the "Debtors") in the amount of \$81,560.76; and

WHEREAS such attachment was granted by the Trial Court of the Commonwealth of Massachusetts on June 16, 2010; and

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).

WHEREAS on June 22, 2010 JP Morgan Chase Bank subsequently placed a hold on the Debtors' account (account ending 8842) (the "Account"); and

WHEREAS on July 18, 2010, the Debtors commenced with the United States Bankruptcy Court of the Southern District of New York a voluntary case pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Proceeding"); and

WHEREAS any further action with respect to the attachment has been stayed by the Debtors' bankruptcy filing.

NOW THEREFORE, through their undersigned counsel, the parties stipulate and agree as follows:

1. Upon approval of this Stipulation, the Plaintiff has agreed to release the attachment and hold on the Debtor's Account.
2. With regard to the premises located at 1524 VFW Parkway, Route 1, West Roxbury, Massachusetts (the "Premises"), the Debtors shall use the money in the Account to pay its rental obligation for (i) August 2010; (ii) September 2010; and (iii) the stub period of July 18, 2010 through July 31, 2010 which totals \$36,529.91, which is Allowed as an Administrative Claim in the Bankruptcy Proceeding.
3. JP Morgan Chase Bank is directed to release the attachment and hold on the Account.
4. Upon approval of this Stipulation and concurrent with the release in paragraph 3, the Debtors shall disburse payments to Hannington LP, via wire transfer the sum of \$36,529.91 to Hannington's account, Routing No. 063102152 and Account No. 0321008836825.
5. Plaintiff acknowledges that the Debtors have vacated the Premises on October 4, 2010.

6. The parties' agreement to the terms of this Stipulation and Order does not constitute an admission by either party that the other party would, in the absence of this Stipulation and Order, have any right to the provisions herein.

Dated: October 14, 2010

OLSHAN GRUNDMAN FROME
ROSENZWEIG & WOLOSKY LLP

By: _____

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Jayme M. Bethel
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Dated October 14, 2010

BROWN RUDNICK LLP

By: _____

Danielle M. Bennett
Danielle M. Bennett
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Seven Times Square
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*signed by
permission
C. L. Bennett*

SO ORDERED:

Date: _____, 2010

EXHIBIT B

Proposed Order

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

In re:

Chapter 11

JENNIFER CONVERTIBLES, INC.,¹

Case No. 10-13779 (ALG)

Debtors.

(Jointly Administered)

**ORDER AUTHORIZING AND APPROVING THE DEBTORS'
SETTLEMENT AND STIPULATION WITH HANNINGTON LP**

Upon the Application, dated October 19, 2010 (the "Application")² of Jennifer Convertibles, Inc. and its affiliated debtors, as debtors in possession (collectively, the "Debtors"), for entry of an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code"), authorizing and approving the settlement with Hannington LP ("Hannington"), in accordance with the terms of the stipulation (the "Stipulation") attached as Exhibit A to the Application; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Application (the "Hearing"); and the

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

appearances of all interested parties having been noted in the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and it appearing that the relief requested in the Application is in the best interests of the Debtors, their estates, creditors, and parties in interest; 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 relief requested in the Application is GRANTED.
2. The Stipulation is hereby approved.
3. This Court shall retain jurisdiction to interpret and enforce this Order.

Dated: _____, 2010
New York, New York

UNITED STATES BANKRUPTCY JUDGE