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11-6188872

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: Chapter 11

JENNIFER CONVERTIBLES, INC., *et al.*, Case No.: 10-13779-ALG
(Jointly Administered)

Debtors. Hon. Allan L. Gropper

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**MOTION OF JACOB PEARLSTEIN, LLC FOR
ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM**

JACOB PEARLSTEIN, LLC ("JPLLC"), by its attorneys, Certilman Balin Adler & Hyman, LLP, states as follows in support of its Motion for Allowance of and Payment of an Administrative Expense Claim:

Jurisdiction

1. The Court has jurisdiction over this application pursuant to 28 U.S.C. §§ 157 and 1334. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 503(b)(1) and 507(a)(2).

2. Jennifer Convertibles, Inc., along with several affiliated entities (collectively, the "Debtor"), filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, in the United States Bankruptcy Court for the Southern District of New York on July 18, 2010 (the "Petition Date"). Since the Petition Date,

the Debtor has operated its businesses as debtors-in-possession pursuant to 11 U.S.C. §§ 1107, 1108.

Background

3. Prior to the Petition Date, JPLLC entered into a lease for nonresidential real property with the Debtor (the "Lease") for demised premises located at 96 Dogwood Road, Roslyn, New York 11576 (the "Demised Premises"). The Lease commenced on January 1, 2010 and expires on December 31, 2011. The monthly rent is \$13,000.00, together with applicable late charges and interest on any unpaid rent and charges.

4. The Debtor has not yet assumed or rejected the Lease.

5. PLLC has a priority administrative claim pursuant to 11 U.S.C. §§ 507(a)(2), 503(b) and 365(b)(4) in the *pro rata* amount of \$5,870.90 (the "Priority Administrative Claim") for post-petition rent for the period beginning on July 18, 2010 through and including July 31, 2010 (\$419.35 x 14 days). JPLLC has filed a proof of claim in the total amount of \$40,519.40, consisting of a general unsecured claim in the amount of \$34,648.50 for pre-petition rent and for administrative rent in the amount of \$5,870.90, a copy of which is annexed hereto as **Exhibit A**.

Relief Requested

6. By and through this Motion, JPLLC requests that the Court enter an Order (a) allowing the Priority Administrative Claim in full and (b) requiring the Debtor to pay the Priority Administrative Claim expense promptly. A proposed Order is annexed hereto as **Exhibit B**.

Basis for Relief

7. Section 507(a)(2) of the Bankruptcy Code provides, in pertinent part, that

“administrative expenses allowed under section 503(b) of this title” have priority in bankruptcy cases. 11 U.S.C. § 507(a)(2). Section 503(b) of the Bankruptcy Code provides in pertinent part that “[a]fter notice and a hearing, there shall be allowed administrative expenses . . . , including—(1)(A) the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b). Section 365(b)(4) of the Bankruptcy Code provides in pertinent part that “if there has been a default in an unexpired lease of the debtor, other than a default specified in paragraph (2) of this subsection [which is not applicable here], the trustee may not require a lessor to provide services or supplies incidental to such lease unless the lessor is compensated under the terms of such lease for any services and supplies provided under such lease before assumption of such lease.” 11 U.S.C. § 365(b)(4).

8. Here, the Debtor has not paid post-petition rent to JPLLC for the period July 18-31, 2010, in the sum of \$5,879.90, which constitutes a default under the Lease, but nevertheless continues to enjoy use and occupation of the Demised Premises since the commencement of these Chapter 11 cases, which has conferred a benefit on the Chapter 11 estates and their creditors. As provided in Section 365(b)(4), JPLLC cannot be required to provide services or supplies incidental to the Lease unless JPLLC is compensated under the terms of the Lease for any services and supplies provided thereunder prior to assumption of the unexpired Lease. As such, it is respectfully requested that the Court enter an order allowing JPLLC’s Priority Administrative Claim in the amount of \$5,879.90 and directing the Debtor to make prompt payment of such sum to JPLLC.

WHEREFORE, for the foregoing reasons, JPLLC respectfully requests that this Court:

(1) enter an order providing JPLLC with a Priority Administrative Claim in the amount of \$5,870.90;

(2) require the Debtor to pay \$5,879.90 to JPLLC in satisfaction of its Priority Administrative Claim; and

(3) grant such other and further relief as this Court deems necessary and proper.

Dated: East Meadow, New York
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