

FLASTER/GREENBERG P.C.
1600 John F. Kennedy Boulevard, Suite 200
Philadelphia, PA 19103
Telephone: 215-279-9904
Facsimile: 215-279-9394
Kristan Howard, Esquire (PA No. 201345)

Hearing Date: December 16, 2010
Time: 10:00 a.m.

Objections Due: December 9, 2010
Time: 4:00 p.m.

Counsel for American Express Travel Related Services Company, Inc.

**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)

**MOTION TO APPROVE STIPULATION AND ORDER
CONCERNING SETOFF AND COLLATERAL**

American Express Travel Related Services Company, Inc. (“American Express”), by and through its counsel, Flaster/Greenberg P.C., hereby moves this Court (the “Motion”) for entry of an order, pursuant to section 553 and section 362(d) of Title 11 of the United States Code (the “Bankruptcy Code”), approving the Stipulation and Order Concerning Setoff and Collateral (the “Stipulation and Order”) by and between American Express and a certain above-captioned Debtor, Jennifer Convertibles, Inc. (referred to herein as “Debtor”), a copy of which is attached hereto as Exhibit A. In support of this Motion, American Express states as follows:

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 157 and 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper

¹ A list of the Debtors, along with the last four digits of each Debtor’s federal tax identification number, is filed with the Court at Docket No. 6 and available at www.bmcgroup.com.

before this Court pursuant to 28 U.S.C. § 1408 and 1409. The statutory relief sought in this matter is predicated upon 11 U.S.C. § 362(d), 11 U.S.C. § 553 and New York law.

2. On July 18, 2010 (the “Petition Date”), the Debtors filed a petition in bankruptcy under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). Pursuant to an Order of this Court, the Chapter 11 Cases are being jointly administered.

3. Prior to the Petition Date, American Express and Debtor entered into certain agreements (the “Agreements”), pursuant to which American Express has issued American Express Corporate Cards and/or other American Express Commercial billing and payment products (including, without limitation, American Express Corporate Purchasing Card accounts and Business Travel Accounts) to Debtor and/or certain of the Debtor’s employees who are authorized to incur expenses on Debtor’s behalf (collectively, the “Programs”).

4. Pursuant to the Agreements, Debtor is liable for all indebtedness, obligations and liabilities (including without limitation, all purchases, cash advances, fees, American Express Travelers Cheque encashments, interest, and delinquency assessments charged to the Programs) in connection with the Agreements (collectively, the “Obligations”).

5. On or about December 9, 2008, Debtor executed a Pledge Agreement (the “Pledge Agreement”), whereby Debtor granted American Express a security interest in a certificate of deposit in the principal amount of \$25,000.00 (the “Certificate of Deposit”) held by American Express Bank, FSB, maintained in the name of American Express and subject to American Express’ sole and exclusive dominion and control.

6. The Pledge Agreement granted American Express a security interest in the Certificate of Deposit to secure the Obligations.

7. On the Petition Date, Debtor's outstanding pre-petition liability under the Programs totaled \$15,374.99 (the "Pre-Petition Obligations"). Debtor has acknowledged the validity of the Pre-Petition Obligations.

8. Since the Petition Date, American Express continues to extend credit to Debtor through the Programs, Debtor continues to have use of its American Express Corporate Cards and/or other American Express Commercial billing and payment products, and pursuant to the Agreements, Debtor is obligated to pay American Express for the Pre-Petition Obligations. Debtor is current on all post-petition obligations.

9. Debtor's payment of the Pre-Petition Obligations is secured by the security interest in the Certificate of Deposit. Pursuant to the Pledge Agreement, American Express may withdraw any principal, interest and/or bonuses credited to the Certificate of Deposit upon the occurrence of a Trigger Event, as such term is defined in the Pledge Agreement. American Express and Debtor desire to setoff the amounts held under the Certificate of Deposit against the Pre-Petition Obligations.

10. The parties desire to allow American Express to exercise its non-bankruptcy setoff rights as to the Pre-Petition Obligations pursuant to Bankruptcy Code § 553.

11. In this case, both the Certificate of Deposit and the Pre-Petition Obligations arose prior to the Petition Date. Moreover, no dispute exists with respect to the amounts held under the Certificate of Deposit against the Pre-Petition Obligations. Finally, the parties' debts are "mutual." In each case, American Express has (i) an obligation to Debtor with respect to the funds held in the Certificate of Deposit pursuant to the Pledge Agreement since such funds are the property of the Debtor (subject to American Express' rights) and (ii) a claim against Debtor

for the Pre-Petition Obligations pursuant to the Agreements and the Pledge Agreement. Accordingly, the parties' debts are appropriate to be setoff.

12. Moreover, since the Certificate of Deposit arose prior to the Petition Date and American Express continues to extend credit to Debtor under the Programs post-petition, American Express has requested and Debtor has agreed to permit American Express to continue to hold the Certificate of Deposit in the balance of \$9,625.01 (in accordance with the terms of the Pledge Agreement and any amendments thereto) as security for the payment of the Obligations, including those Obligations arising after the Petition Date.

13. By this Motion, American Express requests that this Court approve the Stipulation and Order attached hereto concerning (a) the setoff between amounts held under the Certificate of Deposit against the Pre-Petition Obligations, and (b) the roll-over of pre-petition collateral to secure post-petition obligations.

14. American Express further requests that this Court grant relief from the automatic stay to allow American Express to carry out the terms of the Stipulation and Order. Under the circumstances of this case, relief from the automatic stay for "cause" is appropriate pursuant to 11 U.S.C. § 362(d)(2).

15. American Express reserves all rights (1) to defend against challenges from other parties and (2) to seek recovery on other alternative grounds. Nothing herein contained shall be construed to constitute an admission, assumption or acknowledgment of liability for the debts of any other entity.

16. Notice of this Motion will be provided by facsimile, electronic transmission or mail delivery (except as otherwise noted) to (a) the Debtors, (b) counsel for the Debtors, (c) the

United States Trustee for the Southern District of New York, (d) counsel for the Official Committee of Unsecured Creditors, and (e) all parties requesting notice pursuant to Federal Bankruptcy Procedure 2002.

17. No prior request for the relief sought in this Motion has been made to this or any other court in connection with Debtors' Chapter 11 Cases.

WHEREFORE, American Express respectfully requests that the Court enter approve the Stipulation and Order.

FLASTER/GREENBERG P.C.

Dated: November 16, 2010

/s/ Kristan L. Howard

Kristan L. Howard, Esquire
1600 John F. Kennedy Boulevard, Suite 200
Philadelphia, PA 19103
Telephone: 215-279-9904
Facsimile: 215-279-9394

and

Eugene J. Chikowski, Esquire
1600 John F. Kennedy Boulevard, Suite 200
Philadelphia, PA 19103
Telephone: 215-279-9393
Facsimile: 215-279-9394

*Counsel for American Express Travel Related
Services Company, Inc.*