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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' REPLY IN SUPPORT OF APPROVAL
OF DISCLOSURE STATEMENT WITH RESPECT TO AMENDED
JOINT CHAPTER 11 PLAN OF REORGANIZATION FOR JENNIFER
CONVERTIBLES, INC. AND ITS AFFILIATED DEBTORS**

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”) submit this reply (the “Reply”) in opposition to objections (collectively, the “Objections”)² to the Debtors’ Disclosure Statement with Respect to the Joint Chapter 11 Plan of Reorganization for Jennifer Convertibles, Inc., filed on November 19, 2010 (as the same may be amended, modified and/or supplemented, the “Disclosure Statement”) and in support of their

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).

² The Objections received are (i) Objection of TMCC, Inc. to Motion to Approve Debtors' Disclosure Statement [Dkt. no. 368] (the “TMCC Objection”), and (ii) Objection of the United States Trustee to the Debtors' Disclosure Statement [Dkt. no. 371] (the “UST Objection”).

request for an order approving the Disclosure Statement relating to the Debtors' Joint Chapter 11 Plan of Reorganization for Jennifer Convertibles, Inc. and Its Affiliated Debtors, filed on November 19, 2010 (as the same may be amended, modified and/or supplemented, the "Plan").

PRELIMINARY STATEMENT³

1. As set forth more fully below, the Disclosure Statement contains "adequate information" within the meaning of section 1125 of the Bankruptcy Code and should be approved. To assist the Court and parties in interest with the task of ensuring that each of the Objections is addressed, the Debtors have created a comprehensive response summary chart which is annexed hereto as Exhibit A (the "Appendix"). The Appendix identifies each objecting party (each an "Objector"), summarizes the substance of the Objection, and provides the Debtors' response thereto, including proposed supplemental disclosures that are being incorporated in the definitive documents. The Debtors believe their responses contained in the Reply and in the Appendix adequately respond to the issues raised by each Objection.

2. The Objections fall into two general categories: (a) objections to the adequacy of disclosure; and (b) objections to issues regarding plan confirmation. The Plan and Disclosure Statement have since been modified to accommodate a majority of the Objections; thus, the Debtors believe that the Plan and Disclosure Statement in their current form render most aspects of the Objections moot.⁴ As evidenced by the Appendix, the Debtors have been willing to modify the Disclosure Statement to address reasonable requests for additional disclosure. As a result, the Debtors have set forth in the Appendix changes the Debtors have made, where appropriate, to the Plan and Disclosure Statement to resolve certain aspects of the Objections.

³ Capitalized terms used but not defined herein shall have the meanings set forth in the Plan and Disclosure Statement.

⁴ The Debtors will be filing an amended Disclosure Statement that resolves all of the United States Trustee's Objections

3. With respect to the issues raised in the Objections regarding Plan confirmation, the Debtors believe that the provisions of the Plan are appropriate, permissible and supported by applicable law. Indeed, notwithstanding arguments to the contrary, none of the confirmation issues raised in the Objections, either individually or collectively, render the Plan unconfirmable as a matter of law. Thus, while the Disclosure Statement Hearing (as defined below) provides an opportunity for the Court to review the adequacy of the information contained in the Disclosure Statement, it should not be transformed into a “mini” confirmation hearing. Rather, it is the Debtors’ view that objections to confirmation of the Plan contained in the Objections (which also are noted in the Appendix) should be reserved for the Confirmation Hearing.

4. To minimize the burden on the Court at the Disclosure Statement Hearing, this Reply only addresses threshold issues regarding the standards for approving a disclosure statement and the proper scope of a disclosure statement hearing. The Appendix summarizes specific Objections and responses.

BACKGROUND

5. On November 19, 2010, the Debtors filed the Plan and related Disclosure Statement. Prior to filing the Plan and Disclosure Statement, the Debtors heavily negotiated the terms of the Plan with and obtained the support, of both the Creditors’ Committee and Mengnu. The Court scheduled a hearing (the “Disclosure Statement Hearing”) for December 21, 2010 to consider the Debtors’ motion seeking, among other things, approval of the Disclosure Statement as containing adequate information (the “Disclosure Statement Motion”), in accordance with section 1125 of the chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 3017 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and related voting procedures.

6. The Debtors served notice of the Disclosure Statement Hearing and the deadline by which any party objecting to the Motion and/or adequacy of the information contained in the Disclosure Statement was required to file and serve such objection (the “Objection Deadline”).

RESPONSE

A. The Disclosure Statement Contains Adequate Information to Permit Voting Creditors to Make an Informed Judgment About the Plan.

7. The Court may approve a disclosure statement that contains “adequate information.” Section 1125(a)(1) of the Bankruptcy Code defines “adequate information” as:

[I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records . . . that would enable . . . a hypothetical investor of the relevant class to make an informed judgment about the plan, but *adequate information need not include such information about any other possible or proposed plan*

11 U.S.C. § 1125(a)(1) (emphasis added). Thus, the Bankruptcy Code requires that a disclosure statement as a whole give information “reasonably practicable” to permit an “informed judgment” by those entitled to vote on a plan of reorganization. *See In re Dakota Rail, Inc.*, 104 B.R. 138, 142 (Bankr. D. Minn. 1989).

8. A court has broad discretion in applying the “adequate information” standard. *Id.* at 142-3 (court has “wide discretion to determine on a case-by-case basis whether a disclosure statement contains adequate information, without burdensome, unnecessary, and cumbersome detail”); *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973 (Bankr. N.D.N.Y. 1988) (adequacy of information in disclosure statement determined on case-specific basis under flexible standard that promotes policy of chapter 11 of fair settlement through negotiations among informed, interested parties); *In re Brandon Mills Farms, Ltd.*, 37 B.R. 190, 192 (Bankr. N.D. Ga. 1984) (adequacy of disclosure statement is left to court’s discretion on case-by-case basis).

9. In enacting section 1125 of the Bankruptcy Code, Congress envisioned that courts would take a practical and flexible approach, basing the determination of adequate disclosure on the unique facts and circumstances of each case. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 408-09 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6364-66. “In reorganization cases, there is frequently great uncertainty. Therefore, the need for flexibility is greatest.” *Id.* at 409. As delineated by Congress, speed is an important factor in determining adequacy of information in certain instances:

Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case, such as . . . the need for relative speed in solicitation and confirmation

Id.

10. In determining the adequacy of the information to be included, the following non-exhaustive list of categories of information is to be considered:⁵

- a. The circumstances that gave rise to the filing of the chapter 11 petition;
- b. A complete description of the available assets and their value;
- c. The anticipated future of the debtor, with accompanying financial projections;
- d. The source of the information provided in the disclosure statement;
- e. The condition and performance of the debtor while in chapter 11;
- f. Information regarding allowed, disputed, and estimated claims against the estate;
- g. A liquidation analysis setting forth the estimated return that creditors would receive under chapter 7;
- h. The accounting and valuation methods used to produce the financial information in the disclosure statement;

⁵Collier on Bankruptcy suggests that these standards appear in medium to large cases, “often where securities are to be issued.” Collier on Bankruptcy, ¶ 1125.02[2] at 1125-12 (15th Ed. Revised 2006).

- i. Information regarding the future management of the debtor, including the amount of compensation to be paid to any insiders of the debtor;
- j. A summary of the plan of reorganization;
- k. An estimate of all administrative expenses, including attorneys' fees and accountants' fees;
- l. The collectibility of any accounts receivable;
- m. Any financial information, valuations or *pro forma* projections that would be relevant to a creditor's determination of whether to accept or reject the plan;
- n. Information relevant to the risks being taken by the creditors and interest holders;
- o. The actual or projected value that can be obtained from avoidable transfers;
- p. The existence, likelihood and possible success of non-bankruptcy litigation;
- q. The tax consequences of the plan; and
- r. The relationship of the debtor with its affiliates.

See In re Oxford Homes, Inc., 204 B.R. 264, 269 n. 17 (Bankr. D. Me. 1997); *In re Ferretti*, 128 B.R. 16, 18-19 (Bankr. D.N.H. 1991); *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988).

11. Notwithstanding the arguments to the contrary, the Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code and should be approved. The Disclosure Statement, as modified, contains approximately 115 pages of disclosure, plus exhibits, for parties in interest to consider when voting on the Plan. It includes, among other things:

- a. The events leading up to and giving rise to the filing of the chapter 11 petitions, including general information regarding the chapter 11 cases, a description and history of the Debtors' business, and a summary of the Debtors' prepetition capital structure (*See* Disclosure Statement Arts. II & III);

- b. The anticipated future of the Debtors' businesses, with accompanying financial projections (See Disclosure Statement Exhibit B);
- c. A liquidation analysis setting forth the estimated return that creditors would receive under chapter 7 (See Disclosure Statement Exhibit D);
- d. A summary of the Plan (See Disclosure Statement Art. V);
- e. Historical financial information and valuations that may be relevant to a creditor's determination of whether to accept or reject the plan (See Disclosure Statement Art. II);
- f. The risks associated with the Plan, the Debtors' business, and securities laws (See Disclosure Statement Art. XIX); and
- g. The tax consequences of the Plan (See Disclosure Statement Art. XVI).

B. Confirmation Objections Should Not Be Considered At The Disclosure Statement Hearing.

12. It is widely acknowledged that the disclosure statement hearing should not be converted into a premature hearing on plan confirmation. *See, e.g., In re United States Brass Corp.*, 194 B.R. 420, 422 (Bankr. E.D. Tex. 1996) (court must be careful so as not to convert disclosure statement hearing into confirmation hearing); *In re Cardinal-Congregate I*, 121 B.R. 760, 763-64 (Bankr. S.D. Ohio 1990) (objections to, *inter alia*, classification, treatment of claims, and protection of creditor interests properly addressed at confirmation hearing); *In re Dakota Rail, Inc.*, 104 B.R. at 144 (whether plan could be confirmed without violating absolute priority rule was not ripe for determination at disclosure statement hearing); *See also In re Adelphia Communications Corp.*, Case No. 02-41729, Chambers Conference Transcript at 131 (July 12, 2005).

13. Approval of a disclosure statement is an interlocutory action in the progress of a chapter 11 reorganization leading to a confirmation hearing at which all parties have ample opportunity to object to confirmation of the plan. *In re Ionosphere Clubs, Inc.*, 179 B.R. 24, 26-27 (S.D.N.Y. 1995) (almost without exception, courts have found that orders approving

disclosure statements are interlocutory); *In re Waterville Timeshare Group*, 67 B.R. 412, 413 (Bankr. D.N.H. 1986) (“[A]pproval of a disclosure statement is an interlocutory action in the progress of a Chapter 11 reorganization effort leading to a confirmation hearing at which all parties have ample opportunity to object to confirmation of the plan.”). Such interlocutory action is not intended to be the primary focus of litigation in a contested chapter 11 case. *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 980 (Bankr. N.D.N.Y. 1988) (“[C]are must be taken to ensure that the hearing on the disclosure statement does not turn into a confirmation hearing.”); *In re Waterville Timeshare Group*, 67 B.R. at 413. The court’s focus should be on the adequacy of, and the probability that a hypothetical investor can make an informed judgment based on, the information provided in the disclosure statement:

If the creditors oppose their treatment in the plan, but the Disclosure Statement contains adequate information, issues respecting the plan’s confirmability will await the hearing on confirmation. Therefore, the Debtor need not obtain creditors’ approval of the plan; it need only provide them with adequate information as that term is defined in 11 U.S.C. § 1125(a)(1).

In re Scioto Valley Mortgage Co., 88 B.R. 168, 172 (Bankr. S.D. Ohio 1988).

14. In short, Objections relating to the substantive provisions of the Plan are best left for the Confirmation Hearing itself. At this stage, only the adequacy of the information contained in the Disclosure Statement needs to be addressed. To address confirmation issues at the Disclosure Statement Hearing would delay the course of these cases unnecessarily by converting the disclosure hearing into a premature confirmation hearing.

15. Nevertheless, some courts have looked beyond disclosure issues and addressed plan confirmation issues at the disclosure hearing. The plans before the courts in those cases, however, were inherently flawed and clearly facially unconfirmable; that is, a “clearly fruitless venture.” *In re Valrico Square Ltd. Partnership*, 113 B.R. 794, 796 (Bankr. S.D. Fla. 1990). *See*

also *In re 266 Washington Assoc.*, 141 B.R. 275, 288 (Bankr. E.D.N.Y. 1992) (disclosure statement not approved where plan has patent legal defects and is not confirmable); *In re Eastern Maine Elec. Coop., Inc.*, 125 B.R. 329, 333 (Bankr. D. Me. 1991) (disclosure statement describes plan with fatal deficiencies and stark absence of good faith); *In re Copy Crafters Quickprint, Inc.*, 92 B.R. at 980 (plan too speculative); *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D. Va 1986) (facially invalid plan precludes approval of disclosure statement). The *Copy Crafters* court nevertheless warned that “care must be taken to ensure that the hearing on the disclosure statement does not turn into a confirmation hearing.” *In re Copy Crafters Quickprint, Inc.*, 92 B.R. at 980. The Debtors respectfully submit that the Plan hardly can be called a “fruitless venture” or “impossible to confirm,” particularly as it enjoys the support of the Creditors’ Committee and Mengnu.

16. Among the confirmation issues that were prematurely raised in the Objections, the primary issue is that of substantive consolidation of the Debtors’ estates. This issue plainly is an objection to confirmation of the Plan. Furthermore, although confirmation objections are not ripe at this time, in the interest of resolving certain objections, the Debtors have modified certain provisions of the Plan. While the Debtors believe that there is legal support for all aspects of the Plan, even if such objections are meritorious, any perceived deficiencies in the Plan in no way rise to the level of being so “fatal” that solicitation of the Plan would be a wasted effort.

17. The Debtors respectfully refer the Court to the Appendix for a complete list of all Objections that the Debtors believe to be Plan confirmation objections. As stated above, the Debtors reserve their rights to respond to such Objections more fully at the appropriate time. Besides addressing the filed Objection herein, through supplementing the Disclosure Statement,

the Debtors have obviated the need for objections to be filed by certain parties by incorporating modifications proposed by such parties in interest.⁶

CONCLUSION

The Debtors respectfully submit that the Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code. Accordingly, the Debtors request that the Court approve the Disclosure Statement.

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⁶ As stated above, the Debtors reserve their rights to further respond to any and all objections (whether asserted formally or informally).

Exhibit A

Appendix

Responses to Objections to Debtors’ Disclosure Statement with Respect to the Joint Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. and its Affiliated Debtors¹²

Party	Objection	Response
TMCC Objection Docket No. 368	A. The Disclosure Statement does not contain adequate information and describes an unconfirmable plan, with respect to substantive consolidation.	This is a confirmation objection. Nonetheless, the Debtors believe that they have offered substantial justification for substantive consolidation of their estates.
	B. The Plan improperly classifies the claim of Mengnu.	Mengnu, as the Debtors’ key supplier and DIP financing provider, is entitled to separate classification. <u>See, e.g., In re Lafayette Hotel Partnership</u> , No. 98-5085, 1999 WL 822490, at *1 (2d Cir. 1999) (affirming bankruptcy court finding that unsecured creditor “was ‘an integral part of the reorganization process’ and that ‘its non-creditor interests and its contribution to the funding of the Plan’ make the lessee ‘distinct from other creditors.’ ... this legitimate reason justified the separate classification of the lessee’s unsecured claim.”).
	C. The Plan has disenfranchisement and timing issues with respect to the voting record date.	The Voting Record Date determines ownership of a particular claim as of a particular date. TMCC, and other similarly situated landlords, will be the record owner of any potential rejection claim, regardless of when such claim comes into existence.
UST Objection Docket No. 371	A. The Disclosure Statement’s “No Admissions” provision is unduly broad.	This objection is rendered moot by the amended Disclosure Statement and Plan.
	B. The Disclosure Statement’s and Plan’s exculpation provisions violate the New York Rules of Professional Conduct.	This objection is rendered moot by the amended Disclosure Statement and Plan.

¹ Capitalized terms used but not defined herein have the meanings given to them in the Disclosure Statement

² The Debtors’ responses are not intended to convey that the corresponding objection is properly brought pursuant to section 1125 of the Bankruptcy Code, or that such objection should be considered in advance of the Confirmation Hearing. Confirmation objections responded to herein are noted as such.

	C. The Plan and Disclosure Statement contain inadequate information regarding the post-confirmation operation of the Debtors and the Litigation Trust	This objection is rendered moot by the amended Disclosure Statement and Plan.
	D. Neither the Plan nor the Disclosure Statement contain adequate information regarding selection of a Trustee or any Successor Trustee for the Litigation Trust, or the Litigation Trustee's Bonding	This objection is rendered moot by the amended Disclosure Statement and Plan.
	E. The Plan and the Disclosure Statement lack deadlines for the filing of post-confirmation operating reports	This objection is rendered moot by the amended Disclosure Statement and Plan.
	F. The Disclosure Statement needs to contain a plain-language or graphic description of the tranches of notes	This objection is rendered moot by the amended Disclosure Statement and Plan.
	G. The Plan and the Disclosure Statement need to provide for the payment of statutory interest with respect to the United States Trustee quarterly fees.	This objection is rendered moot by the amended Disclosure Statement and Plan.