

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

In re:

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

Chapter 11

Case No. 10-13779 (ALG)

Jointly Administered

**STIPULATION AND AGREED ORDER BETWEEN
THE DEBTORS AND DFS SERVICES, LLC**

Jennifer Convertibles, Inc., and its affiliate debtors, the above-captioned Debtors and Debtors-In-Possession (collectively, the “**Debtor**”), and DFS Services, LLC f/k/a Discover Financial Services LLC (“**DFS**”), (the Debtor and DFS, collectively, the “**Parties**”), by and through their undersigned counsel, hereby stipulate and agree, and the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) hereby finds and orders, as follows:

RECITALS:

WHEREAS, on or about July 18, 2010 (the “**Petition Date**”), the Debtor filed voluntary petitions under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”);

WHEREAS, the Debtor continues to operate its businesses and manage its properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, prior to the Petition Date, the Debtor was, and currently is, the owner of (i) the largest group of sofabled specialty retail stores and leather specialty retail stores in the United States, with stores located throughout the Eastern seaboard, Midwest, West Coast and Southwest

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); (ix) Nicole Convertibles, Inc. (5985); (xii) Washington Heights Convertibles, Inc. (0783).

(the “**Jennifer Stores**”), 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.;

WHEREAS, through the operation of the Jennifer Stores and the Ashley Stores, the Debtors sell diverse home furnishings and accessories (collectively, the “**Merchandise**”);

WHEREAS, prior to the Petition Date, the Debtor and DFS were parties to a Merchant Services Agreement, effective as of September 18, 1990, and certain Operating Regulations referenced therein, as amended thereafter from time to time, in connection with the Jennifer Stores (the “**Jennifer Agreement**”);

WHEREAS, prior to the Petition Date, the Debtor and DFS were parties to a Merchant Services Agreement, effective as of May 27, 2007, and certain Operating Regulations (the “Operating Regulations”) referenced therein, as amended thereafter from time to time, in connection with the Ashley Stores (the “**Ashley Agreement**” and, together with the Jennifer Agreement, the “**MSA Agreements**”);

WHEREAS, pursuant to the MSA Agreements, the Debtor agreed to accept valid Cards (as defined in the MSA Agreements) and DFS agreed to process such Card transactions between the Debtor and its customers (“**Card Transactions**”);

WHEREAS, pursuant to the MSA Agreements, after a purchase (“**Card Sale**”) by a customer with a Card (“**Cardholder**”), the Debtor is required to forward to DFS the transaction data documenting the Card Sale and DFS is required to pay the Debtor the amount of the purchase less certain amounts that the Debtor owes to DFS under, in connection with and as set forth in the MSA Agreements (such amounts, the “**Debtor Obligations**”), which Debtor Obligations include, without limitation, amounts owed by the Debtor to DFS for discounts, fees

(including transaction fees, processing fees, collection costs, submission error fees and costs incurred exercising rights under the MSA Agreements), Chargebacks (as defined in the MSA Agreements) and other adjustments. DFS then bills the Cardholder directly for the Card Sale;

WHEREAS, when the Cardholder pays the bill on his/her Card account, DFS retains the payment, as the amounts owed to the Debtor for such Card Sales have already been paid to the Debtor by DFS;

WHEREAS, in the event that a Cardholder disputes the quality or non-delivery of items charged in connection with a Card Sale resulting in a Chargeback, refund and/or return, the Debtor has received an overpayment from DFS with respect to such Card Sale to the extent the Cardholder dispute is determined to be valid in accordance with the dispute resolution procedures set forth in the Operating Regulations;

WHEREAS, in order to secure the payment by the Debtor to DFS of the Debtor Obligations, DFS is entitled to establish a reserve account under the express terms of the MSA Agreements;

WHEREAS, in the event of Chargebacks, refunds and/or returns of a Card Sale, and in order to recover the amounts already paid to the Debtor for the Card Sale in question, DFS may hold back money owed to the Debtor from other Card Sales in reserve, pursuant to the terms of the MSA Agreements;

WHEREAS, payment of amounts owed by DFS to the Debtor is subject to the rights of DFS to recoup or otherwise set off against amounts which are or thereafter become due and owing by the Debtor to DFS, including, without limitation, Merchant Fees (as defined in the MSA Agreements) and both contingent and fixed claims for Chargebacks, returns, processing

fees, submission error fees and adjustments and other credits arising out of or in connection with Card Sales;

WHEREAS, DFS is currently holding funds as security for amounts which are due or may become due from the Debtor to DFS (the “**Settlement Holdback**”);

WHEREAS, as of the date hereof, the amount of the Settlement Holdback is \$131,065.06;

WHEREAS, the Debtor has not assumed the MSA Agreements, but the Parties have continued to perform under the MSA Agreements subsequent to the Petition Date; and

WHEREAS, the Parties hereby desire to set forth the terms and conditions of their post-Petition Date business relationship.

NOW, THEREFORE, in consideration of the mutual promises and representations set forth in this Stipulation and Order Between the Debtor and DFS Services LLC (the “**Stipulation and Order**”), and for other good and valuable consideration, the Parties hereby agree, and the Court hereby orders, as of the date this Stipulation and Order is “so-ordered” by the Court (the “**Effective Date**”), as follows:

1. The Parties shall continue to operate under and be bound by the terms and conditions of MSA Agreements, except as otherwise expressly set forth herein.
2. Upon and at all times after the Effective Date, the terms and conditions of the Ashley Agreement shall apply to all transactions between the Debtor and DFS, except to the extent otherwise expressly set forth herein, regardless of whether Card Sales are made in connection with the Jennifer Stores or the Ashley Stores.
3. Within five (5) business days after the Effective Date, DFS shall pay to the Debtor the amount of the Settlement Holdback, if any, which is in excess of \$89,218 (subject to

adjustment as described in Section “6” and “7” below based upon a Monthly Deposit Report received on or prior to the Effective Date for a month ending within 45 days prior to the Effective Date) and shall continue to hold, as security for amounts which are due or may become due from the Debtor to DFS, the remainder of the Settlement Holdback, subject to adjustment as set forth herein.

4. On or prior to the tenth (10th) business day of each month after the date of execution of this Stipulation by DFS, the Debtor shall provide DFS with a report, in form and substance acceptable to DFS, which sets forth in detail the total amount of customer deposits in connection with Card Sales which are then outstanding with respect to Jennifer Stores and Ashley Stores (each such report, a “**Monthly Deposit Report**”).

5. Each Monthly Deposit Report shall contain a certification by the Chief Financial Officer of the Debtor, or such other officer of the Debtor as DFS may accept, that the information and data contained therein is true and accurate in all respects as of the date of such Monthly Deposit Report.

6. Upon receipt of a Monthly Deposit Report, DFS shall adjust the then current balance of the Settlement Holdback as follows: (i) to the extent that the then current Settlement Holdback exceeds 87.5% of the amount of the customer deposits held by the Debtor to secure future delivery of goods and services to or for the benefit of customers in connection with Card Sales with respect to the Jennifer Stores as reflected in such Monthly Deposit Report DFS shall pay the Debtor the amount of such excess, net of any Debtor Obligations, rounded to the nearest dollar, within 5 business days after DFS’ receipt of such Monthly Deposit Report, or (ii) to the extent that the then current Settlement Holdback is less than 87.5% of the amount of the customer deposits in connection with Card Sales with respect to the Jennifer Stores reflected in

such Monthly Deposit Report, DFS shall have the right to increase the amount of the Settlement Holdback to an amount equal to 87.5% of the amount of the customer deposits held by the Debtor to secure future delivery of goods and services to or for the benefit of customers in connection with Card Sales with respect to the Jennifer Stores as reflected in such Monthly Deposit Report net of any Debtor Obligations, rounded to the nearest dollar.

7. In the event that the Debtor fails to timely provide DFS with a Monthly Deposit Report, DFS shall have the right commencing on the eleventh (11th) business day of the month in which such Monthly Deposit Report was required to be delivered (the “**Required Month of Delivery**”) and continuing until such Monthly Deposit Report is received by DFS, to increase the amount of the then current balance of the Settlement Holdback to an amount equal to one hundred percent (100%) of Card Sales.

8. Notwithstanding anything to the contrary contained herein, DFS has the right to recoup and/or set off any amounts the Debtor owes to DFS (whether due or not due) against the settlement holdback or any amounts DFS owes to the Debtor (whether due or not due) in the ordinary course of DFS’ business as existed immediately prior to the Petition Date, regardless of whether such amounts arose prior to or subsequent to the Petition Date and, to the extent the automatic stay of section 362(a) of the Bankruptcy Code would otherwise preclude such setoff, relief from such automatic stay is hereby granted to allow DFS to recoup and/or set off such amounts.

9. The Debtor represents and warrants that it has the authority to bind itself, its heirs, executors, successors, administrators and assigns, including, without limitation, its bankruptcy estate and any subsequently appointed trustee, plan administrator, plan trustee, liquidation trust, examiner or other representative, to this Stipulation and Order.

10. The Parties recognize and acknowledge that this Stipulation and Order shall not be construed as an admission of liability by either of the Parties.

11. The provisions of this Stipulation and Order will become effective only upon the Effective Date.

12. Upon entry of this “so-ordered” Stipulation and Order by the Court and it becoming final and non-appealable, this Stipulation and Order shall be valid and binding on the Parties and their respective heirs, executors, successors, administrators and assigns, including, without limitation, the bankruptcy estate and any subsequently appointed trustee, plan administrator, plan trustee, liquidation trust, examiner or other representative, and the provisions of this Stipulation and Order shall survive any conversion or dismissal of, or confirmation of a plan in, the above-captioned case.

13. The Parties acknowledge that, in entering into this Stipulation and Order, they relied entirely upon their own independent judgment, beliefs and interest and, where applicable, the advice of their own counsel (for whose expense each shall be solely responsible).

14. The Parties have reviewed this Stipulation and Order, and each party fully understands and voluntarily accepts all the provisions contained in this Stipulation and Order. This Stipulation and Order was the product of negotiations between the Parties and any rule of construction requiring that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Stipulation and Order.

15. This Stipulation and Order may be executed by facsimile and in counterparts, each of which shall be deemed an original, and all of which together shall constitute a single executable document.

16. The Court shall retain jurisdiction to resolve any dispute concerning this Stipulation and Order.

This Stipulation and Order represents the entire agreement between the Parties and shall not be modified, except in writing to be countersigned by the Parties or their respective counsel and “so-ordered” by this Court.

Dated: December 16, 2010

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“SO ORDERED” on this 23rd day of December, 2010:

/s/ Allan L. Gropper
United States Bankruptcy Judge