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Hearing Date: March 1, 2011 at 10:00 a.m. (EST)
Objection Deadline: February 22, 2011 at 4:00 p.m. (EST)

Counsel to The Official Committee of
Unsecured Creditors of Jennifer Convertibles, Inc., *et al.*

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

In re:)	
)	Chapter 11
JENNIFER CONVERTIBLES, INC., <i>et al.</i> ¹)	
)	Case No. 10-13779 (ALG)
Debtors.)	(Jointly Administered)
)	
)	

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR
AN ORDER DIRECTING ORAL EXAMINATIONS AND PRODUCTION
OF DOCUMENTS PURSUANT TO BANKRUPTCY RULE 2004**

The Official Committee of Unsecured Creditors (the “Committee”) of Jennifer Convertibles, Inc., *et al.*, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through its undersigned counsel, Kelley Drye & Warren LLP (“Kelley Drye”), respectfully submits this motion (the “Motion”) for an order pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) compelling the persons identified in the attached Exhibit A to appear for oral examinations and, if applicable, to produce documents. The document requests, as well as a form subpoena which will be conformed and

¹ The Debtors in these chapter 11 cases are: (i) Jennifer Convertibles, Inc.; (ii) Jennifer Convertibles Boylston MA, Inc.; (iii) Jennifer Chicago Ltd.; (iv) Elegant Living Management, Ltd.; (v) Hartsdale Convertibles, Inc.; (vi) Jennifer Management III Corp.; (vii) Jennifer Purchasing Corp.; (viii) Jennifer Management II Corp.; (ix) Jennifer Management V Ltd.; (x) Jennifer Convertibles Natick, Inc.; (xi) Nicole Convertibles, Inc.; and (xii) Washington Heights Convertibles, Inc.

served on each party listed on Exhibit A, are attached hereto as Exhibit B. In support of this Motion, the Committee respectfully represents as follows:

PRELIMINARY STATEMENT

1. In furtherance of the Committee's statutory obligations, it commenced a preliminary investigation of the Debtors' pre-bankruptcy interactions and relationship with Jara Enterprises, Inc. ("Jara"). Jara is a corporation that was owned and operated by Jane Love, the sister of Harley Greenfield, the Debtors' Chief Executive Officer and Chairman of the board of directors (the "Board"). To date, the Committee's investigation has been limited to a review of the Debtors' publicly available filings. This limited investigation revealed that in 2009, Harley Greenfield, with the approval of the Board, entered into a series of strikingly one-sided transactions (collectively, the "2009 Transactions") with Jara. These transactions were detrimental to the Debtors' creditors, resulting in at least \$5,000,000 in losses, and potentially giving rise to causes of action for breach of fiduciary duty, gross negligence and negligence against the Debtors' officers and directors. Any potential claims against Harley Greenfield and the Debtors' officers and directors could be a meaningful source of recovery for unsecured creditors.

2. The Committee identified these potential claims in the first few months of the Debtors' cases. Rather than commence discovery immediately, the Committee agreed to focus its attention on the Debtors' swift emergence from bankruptcy in order to preserve the business. To that end, the Committee worked with the Debtors and its primary supplier, Haining Mengnu Group Co. Ltd. ("Mengnu") to reach agreement in early November 2010 on the terms of a global settlement that would allow for the Debtors' emergence from bankruptcy. One part of this settlement was that the Debtors would assign to the Committee until the effective date of a

plan of reorganization, and thereafter to the litigation trust established under the plan, insider causes of action including actions related to the Debtors' transactions with Jara. Mengnu also agreed that it would not oppose the Committee obtaining discovery from the Debtors and conducting 2004 examinations of two of the Debtors' officers, Rami Abada and Harley Greenfield. After this global settlement was reached, the Committee worked tirelessly with the Debtors and Mengnu to draft and file the Debtors' plan and disclosure statement less than two weeks later, on November 19, 2010.

3. On December 2, 2010, the Committee sent the Debtors and their counsel a demand letter requesting that suit be brought with respect to the 2009 Transactions within 10 days. On December 13, 2010, after expiration of this 10-day period, counsel to the Committee reached out to Debtors' counsel to inform the Debtors that the Committee was prepared to file a motion pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure to conduct initial discovery related to the 2009 Transactions. However, in order to avoid unnecessary costs to the Debtors' estates associated with seeking formal relief, counsel to the Committee asked Debtors' counsel whether the Debtors would be amenable to proceeding on an informal basis with respect to document requests and conducting the examinations of Mr. Abada and Mr. Greenfield. Debtors' counsel agreed to such informal discovery and, on December 13, 2010, the Committee sent its informal discovery requests to the Debtors' counsel.

4. Nearly two months have gone by and the Committee has not received any documents responsive to its discovery requests and the Debtors have refused to schedule the examinations of Mr. Abada and Mr. Greenfield. Over the course of the last two months, the Committee has repeatedly followed up with the Debtors on this discovery. The Debtors have always responded that the Debtors need to focus on plan and emergence issues but that the

Committee would get the discovery when these matters subsided. The Committee remained patient in order to ensure that the Debtors could emerge from bankruptcy on the timeline dictated by the Debtors and Mengnu.

5. However, the Debtors have now refused to provide the Committee with the discovery that was promised 2 months ago. The Committee has only been able to obtain information through analysis of publicly filed documents. To effectively analyze any potential causes of action against the Debtors' officers and/or directors, the Committee requires depositions, documents and other information concerning, among other things, the 2009 Transactions. Bankruptcy Rule 2004 was enacted to permit this type of investigation.

6. The Debtors' plan of reorganization, confirmed on February 8, 2011, provides for only \$100,000 of funding the litigation trust. This amount was agreed to by the Committee, in part, based upon the agreement that the Committee would be able to advance potential director and officer litigation during the course of the Debtors' cases through some initial discovery. Given the limited funding of the litigation trust, the discovery sought at this time is crucial to give the litigation trust sufficient information regarding the 2009 Transactions to assess the potential causes of action and to retain counsel to pursue such causes of actions.

7. In light of the Debtors' refusal to respond to the Committee's discovery requests and to schedule the examinations of Mr. Abada and Mr. Greenfield, despite its prior agreement to do so, the Debtors have left the Committee with no choice but to file this Motion. This discovery is essential to allow the litigation trustee to pursue a claim that could result in a meaningful increase in distributions to unsecured creditors, including Mengnu. Accordingly, the Committee requests that the Court grant the Motion and allow the Committee, after the effective date of the Plan, to conduct the requested discovery. The Committee further requests that the

Court require the Debtors to pay for the reasonable fees and expenses incurred by the Committee in connection with this discovery, subject to the Court's August 10, 2010, Interim Compensation Order.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and the general reference of bankruptcy matters to this Court made by the District Court for the Southern District of New York on July 10, 1984.

9. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

10. Venue for the Debtors' chapter 11 cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 2004.

BACKGROUND

11. On July 18, 2010 (the "Petition Date"), the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued in possession of their property and have continued to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

12. On July 23, 2010, the United States Trustee appointed Klaussner Furniture Industries, Inc., Creative Television Marketing, Brent Associates, Inc., Caye Home Furnishings, LLC, Fata Equities, LLC, PIC Management Group d/b/a PIC Media Group, PS Promotions, Inc.,

301 East 66 LLC and Ayisha Combs to the Committee.² On the same date, the Committee selected Kelley Drye to serve as counsel to the Committee.

13. On the Petition Date, the Debtors submitted the Declaration of Rami Abada Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of First-Day Motions (the “Abada Declaration”).³ Mr. Abada is the Chief Financial Officer, Chief Operating Officer and President of the Debtors.

14. Paragraphs 50-52 of the Abada Declaration discuss, in general terms, certain transactions with a “Related Company” whereby the Related Company defaulted on its payment obligations to the Debtors and the Debtors entered into an agreement with the Related Company. Pursuant to this agreement, the Related Company ceased operating 19 stores licensed by the Debtors and the Debtors (i) began operating the stores; and (ii) purchased the inventory at the stores’ showrooms. In addition to curing certain rent arrearages, the Debtors assumed certain liabilities including delivery expenses and fabric protection of approximately \$3 million and also wrote-off merchandise.⁴

15. In the exercise of its fiduciary duties to unsecured creditors, the Committee began investigating the Debtors’ relationship with this Related Company through a review of the Debtors’ public filings. The Committee discovered that this Related Company was Jara.

16. Prior to 2010, Jara owned and operated approximately 20 “Jennifer” furniture stores under licenses granted by the Debtors. The Debtors and Jara were parties to several agreements that governed the relationship between the parties, including: (i) a purchasing

² Docket Entry No. 77.

³ Docket Entry No. 3.

⁴ Abada Declaration at ¶¶ 50-52.

agreement pursuant to which the Debtors bought merchandise for Jara and Jara was obligated to reimburse the Debtors; (ii) a warehousing agreement pursuant to which the Debtors provided warehousing services to Jara in exchange for a fee of 7.5% of the net sales prices of goods sold by Jara; and (iii) a management agreement under which Jara was required to contribute at least \$150,000 per month to the Debtors for certain advertising fees. Jara was also the sole obligor under certain lifetime fabric and leather protections plans.

17. Throughout 2009, Jara defaulted on significant payments to the Debtors. For example, as of August 29, 2009, Jara owed the Debtors not less than \$947,000 in net current charges under its agreements with the Debtors. Rather than require payment from Jara, Harley Greenfield and the Board provided an allowance for loss of \$947,000 as of August 29, 2009.

18. Notwithstanding Jara's failure to pay this amount, the Board permitted the Debtors to continue business with Jara and Jara continued to accumulate significant debt for which it did not pay the Debtors. Subsequently, the Board decided to record an additional allowance for loss of \$3,167,000 for the 13-week period ending November 28, 2009.

19. On or about December 11, 2009, Harley Greenfield and the Board decided to terminate the purchasing agreement with Jara and directed that the Debtors to enter into an interim agreement with Jara (the "Interim Agreement"). Rather than mandating that Jara pay its overdue balance, the Interim Agreement provided for Jara to continue making sales on the Debtors' behalf and provided that Jara would receive compensation equal to 35% of the sales price of the merchandise.

20. Jara defaulted on the Interim Agreement, and on December 31, 2009, Harley Greenfield, presumably at the direction of the Board, and Jane Love entered into another agreement whereby the Debtors acquired Jara's business assets (the "2009 Agreement"). Under

the 2009 Agreement, the Debtors acquired Jara's business and paid Jara \$635,000 for its inventory, notwithstanding the substantial amount still owed by Jara to the Debtors. Further, under the 2009 Agreement, the Board approved that the Debtors would (i) absolve Jara of \$301,000 due under the Interim Agreement, (ii) relieve Jara of over \$4,000,000 of prior obligations; and (iii) take on substantial liabilities for, among other things, Jara's lifetime fabric and leather protection plans.

21. Mr. Greenfield's and the Board's approval of and/or acquiescence in these transactions evidences an egregious failure to act in the Debtors' best interests. Accordingly, causes of action may exist against Mr. Greenfield, the Board and the Debtors' officers for, among other things, breaches of fiduciary duty, gross negligence and/or negligence.

22. Based on these limited facts identified to date, the Committee believes that it has a duty to investigate these potential causes of action related to the Debtors' interactions with Jara. To continue that investigation, the Committee requires discovery – including examinations and documents – from the Debtors' former CEO, Harley Greenfield and its current Chief Operating Officer and President, Rami Abada.

23. On February 8, 2011, this Court entered an order confirming the Debtors' Second Amended Joint Chapter 11 Plan of Reorganization (the "Plan"). Under the Plan, causes of action against the Debtors' directors and officers will be transferred to the Jennifer Convertibles Litigation Trust (the "Trust"). The trustee of the Trust (the "Litigation Trustee") has the right to pursue such cause of action. The Trust will only be funded with \$100,000.

24. The Plan was the result of extensive negotiations, and ultimately a global settlement, among the Debtors, the Committee and Mengnu. As part of this global settlement, the parties agreed that all insider causes of action, which would include an action relating to Jara,

would be assigned to the Committee until the effective date of the Plan and that the Debtors would provide the Committee with immediate access to documents and information relating to potential insider actions. Mengnu also agreed that it would not oppose the Committee obtaining discovery from the Debtors and conducting 2004 examinations of Mr. Abada and Mr. Greenfield.

25. Based upon this global settlement, on December 2, 2010, the Committee sent a letter to the Debtors and counsel to the Debtors detailing the potential causes of action relating to Jara and demanded that the Debtors commence a lawsuit or provide authority to the Committee to file a lawsuit. In connection therewith and in accordance with the global settlement, on December 13, 2010, Kelley Drye and Debtors' counsel had a telephone conference to discuss commencing initial discovery. Kelley Drye informed Debtors' counsel that they were prepared to seek formal discovery as set forth in this Motion but before doing so, and in order to minimize costs to the estate, wanted to see if the Debtors would proceed with informal discovery. Debtors' counsel informed Kelley Drye that they were amenable to proceeding on an informal basis rather than involving this Court. Accordingly, on December 13, 2010, Kelley Drye sent an email to Debtors' counsel attaching informal document requests and requesting the scheduling of mutually agreeable times for the examinations of Mr. Abada and Mr. Greenfield. A copy of this email and the document requests are attached hereto as Exhibit C.

26. Since December 13, 2010, Kelley Drye has made numerous inquiries as to the status of the Debtors' responses to the informal document requests and to schedule the examinations of Mr. Abada and Mr. Greenfield. To date, the Debtors have failed to provide any documents responsive to the Committee's requests and have refused to schedule the requested

examinations. The Debtors have now informed Kelley Drye that they cannot provide the Committee with the documents requested and that they are unwilling to schedule the requested depositions. The Debtors' refusal to do so notwithstanding their prior agreement to cooperate has cost the Committee nearly 2 months of time in its investigation of Jara and the 2009 Transactions and will substantially impede the efforts of the Trust to pursue potentially valuable causes of action that could substantially increase distributions to the Debtors' unsecured creditors, as well as Mengnu.

LEGAL AUTHORITY

27. Rule 2004 of the Federal Rules of Bankruptcy Procedure provides, in pertinent part, as follows:

(a) *Examination on Motion.* On motion of any party in interest, the court may order the examination of any entity.

(b) *Scope of Examination.* The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate

(c) *Compelling attendance and production of documentary evidence.* The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

28. It is well-established that the scope of an examination under Bankruptcy Rule 2004 is unfettered and broad. In re Bakalis, 199 B.R. 443, 447 (Bankr. E.D.N.Y. 1996); In re Vantage Petroleum Corp., 34 B.R. 650, 651 (Bankr. E.D.N.Y. 1983). Indeed, the examination can "legitimately be in the nature of a 'fishing expedition.'" In re M4 Enters., Inc., 190 B.R.

471, 474 (Bankr. N.D. Ga. 1995); In re Frigitemp Corp., 15 B.R. 263, 264 n.3 (Bankr. S.D.N.Y. 1981) (noting that predecessor to Rule 2004 examinations have been likened to “fishing expeditions”). Examinations under Bankruptcy Rule 2004(a) and (c) in a chapter 11 case may properly include within their scope, among other things, any matter which may relate to the property and assets of the estate, the financial condition of the debtor, any matter which may affect the administration of a debtor’s estate, and any matter relevant to the case or to the formulation of a plan.

29. Here, the information sought by the Committee in connection with this Motion is consistent with Bankruptcy Rule 2004 and the interpretive caselaw. “The purpose of a Rule 2004 examination is ‘to show the condition of the estate and to enable the Court to discover its extent and whereabouts, and to come into possession of it, that the rights of the creditor may be preserved.’” In re Coffee Cupboard, Inc., 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991) (citing Cameron v. United States, 231 U.S. 710, 717 (1914)). “Because the purpose of the Rule 2004 investigation is to aid in the discovery of assets, any third party who can be shown to have a relationship with the debtor can be made subject to a Rule 2004 investigation.” In re Ionosphere Clubs, Inc., 156 B.R. 414, 432 (S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d Cir. 1994); see also In re Ecam Publications, Inc., 131 B.R. 556, 559 (Bankr. S.D.N.Y. 1991) (third parties may be subject to examination if they have knowledge of the debtors’ affairs).

30. The Committee properly seeks to investigate and determine whether causes of action may exist against Mr. Greenfield, or other of the Debtors’ officers, and directors in connection with the 2009 Transactions. Accordingly, the Committee and the Litigation Trustee must understand and evaluate Mr. Greenfield’s and the Boards’ relationships and financial dealings with Jara, including the inception, approval, and results of the numerous

transactions between the parties. It is only with this information that the Litigation Trustee may, among other things, (a) properly evaluate any potential causes of action that may exist, and (b) identify the steps that it should take to preserve and realize the value of these assets for the benefit of creditors. This clearly presents a “matter which may affect the administration of the debtor’s estate” under Bankruptcy Rule 2004(b).

WAIVER OF MEMORANDUM OF LAW

31. Because this Motion does not present any novel issues of law and the appropriate citations relied on by the Committee are cited herein, the Committee respectfully requests that the Court waive the requirement for the filing of a separate memorandum of law in support of this Motion under Local Bankruptcy Rule 9013-1(b).

PRIOR REQUEST FOR RELIEF

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

NOTICE

33. The Committee has provided notice of this Motion to (a) the Debtors; (b) counsel to the Debtors; (c) counsel to Mengnu; (d) the Office of the United States Trustee for the Southern District of New York; and (e) Illinois National Insurance Company. The Committee respectfully submits that no other or further notice need be given.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Committee respectfully requests that the Court enter an order (a) authorizing the requested Bankruptcy Rule 2004 discovery; (b) requiring the Debtors to pay for the reasonable fees and expenses incurred by the Committee in connection with the requested Bankruptcy Rule 2004 discovery, subject to the Court's August 10, 2010, Interim Compensation Order; and (c) granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
February 14, 2011

KELLEY DRYE & WARREN LLP

By: */s/ James S. Carr* _____

James S. Carr
Kevin J. Smith
Jason R. Adams

101 Park Avenue
New York, New York 10178
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Counsel to the Official Committee of Unsecured
Creditors of Jennifer Convertibles, Inc., et al.

EXHIBIT A

Persons Requested to Submit to Oral Examinations

1. Harley Greenfield, former CEO and Chairman of Debtors' Board of Directors
2. Rami Abada, current Chief Operating Officer and President

EXHIBIT B
Form Subpoena
Document Requests

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

IN RE:

JENNIFER CONVERTIBLES, INC., et al, **SUBPOENA FOR RULE 2004 EXAMINATION**
Debtors. **Case No. 10-13779 (ALG)**

To: JENNIFER CONVERTIBLES, INC.
c/o Olshan Grundman Frome Rosenzweig & Wolosky, LLP
65 East 55th Street
New York, NY 10022

YOU ARE COMMANDED to appear pursuant to a court order issued under Rule 2004, Fed. R. Bankr. P., at the place, date, and time specified below to testify at the taking of a deposition in the above case, which deposition will be recorded both stenographically and by videotape. The topics of the examination pursuant to Fed. R. Bankr. P. 7030 are annexed as Schedule A.

PLACE: Kelley Drye & Warren LLP 101 Park Avenue New York, NY 10178	DATE AND TIME March __, 2011 at 10:00 a.m.
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

SEE ATTACHED

PLACE Kelley Drye & Warren LLP 101 Park Avenue New York, NY 10178	DATE AND TIME March __, 2011 at 10:00 a.m.
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

Issuing officer signature and title (indicate if attorney for plaintiff or defendant) <p style="text-align:center">Counsel to the Official Committee of Unsecured Creditors</p>	DATE March __, 2011 at 10:00 a.m.
---	--

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Kevin J. Smith Kelley Drye & Warren LLP 101 Park Avenue New York, NY 10178 (212) 808-7800	
---	--

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises – or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the

testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

DEFINITIONS

1. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
2. “Document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term.
3. “Relating to” means concerning, referring to, pertaining to, containing, describing, reflecting, regarding, illustrating, mentioning, evidencing, embodying, constituting, supporting, discussing or having any logical or factual connection whatsoever with the subject matter in question.
4. “Board” means Debtors’ board of directors.
5. “Debtors” means (i) Jennifer Convertibles, Inc.; (ii) Jennifer Convertibles Boylston MA, Inc.; (iii) Jennifer Chicago Ltd.; (iv) Elegant Living Management, Ltd.; (v) Hartsdale Convertibles, Inc.; (vi) Jennifer Management III Corp.; (vii) Jennifer Purchasing Corp.; (viii) Jennifer Management II Corp.; (ix) Jennifer Management V Ltd.; (x) Jennifer Convertibles Natick, Inc.; (xi) Nicole Convertibles, Inc.; and (xii) Washington Heights Convertibles, Inc.
6. “Jennifer” means Jennifer Convertibles, Inc. and all of its affiliates, partnerships, partners, control groups, control group members, predecessors, successors, and all entities and funds directly or indirectly owned or controlled, in whole or in part, by Jennifer including, without limitation, Jennifer, Harley Greenfield, and all other Officers, directors, shareholders, employees, representatives, agents, attorneys, and advisers of the foregoing.

7. “Jara” means Jara Enterprises, Inc. and all of its affiliates, partnerships, partners, control groups, control group members, predecessors, successors, and all entities and funds directly or indirectly owned or controlled, in whole or in part, by Jara including, without limitation, Jara, Jane Love, and all of the Officers, employees, representatives, agents, attorneys, and advisers of the foregoing.

8. “Monitoring Committee” means that committee established pursuant to a derivative action settlement agreement, filed on November 4, 2005, in the United States District Court, Eastern District of New York.

9. “Petition Date” means July 18, 2010, the date Jennifer filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code.

10. “Interim Agreement” means the agreement entered into by Debtors and Jara on December 11, 2009 following the termination of the Purchasing Agreement.

11. “2009 Agreement” means the agreement entered into by Debtors and Jara on December 31, 2009 whereby Debtors acquired Jara’s business assets.

RULES OF CONSTRUCTION

1. “All/Each”. The terms “all” and “each” shall be construed as all and each.

2. “And/Or”. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

3. “Number”. The use of the singular form of any word includes the plural and vice versa.

4. Unless otherwise defined herein, each word or term shall have the meaning ascribed to it in Webster’s Ninth New Collegiate Dictionary.

GENERAL INSTRUCTIONS

A. You are requested to produce all documents designated below which are in your possession, custody or control, or in the possession, custody or control of any of your associates, employees, agents, consultants or other representatives.

B. These requests are continuing in nature. In the event you obtain or discover any additional, further or different information or documents after the production of the documents or things requested herein you are requested to promptly make a supplemental production of documents.

C. You are requested to produce the original and all non-identical copies, including all drafts, of each document requested. If you are not able to produce the original of any document, please produce the best available copy.

D. A complete original or copy of each document or thing must be produced, even though only a portion of such document or thing is responsive to one of the numbered requests contained herein. Documents shall not be edited, cut, redacted (except where a claim of privilege is asserted with respect to a portion of a document) or expunged and shall include all attachments, appendices, tables and exhibits and all covering memoranda, letters or documents. Things (*e.g.*, computer data tapes, disks or CD-ROMS) shall not be altered or modified, unless otherwise directed.

E. Each request for documents and subparagraph or subdivision thereof shall be construed independently, and no other request or subparagraph or subdivision thereof shall be referred to or relied on for the purpose of limiting its scope except insofar as the request or subparagraph or subdivision construed expressly refers to another request or subparagraph or subdivision thereof.

F. If any document requested herein was at one time in existence, but has been lost, discarded, deleted, destroyed, or is otherwise unavailable, identify each such document including its date, author, and subject matter.

G. If any document requested herein is maintained in electronic form (*e.g.*, computer files), you are requested to produce each such document in paper form as well as provide a copy of each document in electronic form (*i.e.*, on computer disk or CD-ROM).

H. All documents shall be segregated and identified by the request to which they are primarily responsive. Each page or sheet produced is to be marked with identification and consecutive document control numbers, with the exception of bound pamphlets or books, which may be marked with a single control number. Within the response to a given request, documents shall be organized and identified according to the file(s) in which they are kept, maintained or found.

I. If objections are made to producing any documents, or any portion thereof, or disclosing any information contained therein, in response to any document request, on the basis of a claim of privilege, then, simultaneously with the production of documents, you should submit a privilege log that identifies with respect to each and every document, or portion thereof, withheld on such a basis:

1. the title of the document;
2. the nature of the document (*e.g.*, letter, memorandum, etc.);
3. the author or sender;
4. the addressee;
5. the date the document was produced and sent;
6. the name of each person to whom the original or a copy was shown

or circulated;

7. the names appearing on any circulation list, “cc” designation, or “bcc” designation, relating to or appearing on the document;
8. the name or subject matter of the file in which the document is maintained or found;
9. the nature and type of privilege or privileges claimed; and
10. a summary statement of the subject matter of the document in sufficient detail to permit the Court to rule on the propriety of the claim of privilege.

DOCUMENT REQUESTS

Request No. 1:

All documents prepared for or relating to the Monitoring Committee including, but not limited to, minutes of Monitoring Committee meetings.

Request No. 2:

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Request No. 3:

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- (a) invoices, account statements, and other financial records reflecting payments made between Debtors and Jara;
- (b) the transfer of assets between Debtors and Jara;
- (c) income statements;
- (d) cash flow statements;
- (e) balance sheets;
- (f) monthly bank statements.

Request No. 11:

All documents relating to any valuation(s) conducted by or on behalf of Debtors of Jara and/or Jara's assets.

EXHIBIT C

From: Carr, James
Sent: Monday, December 13, 2010 5:36 PM
To: 'mfox@olshanlaw.com'; 'Nadritch, Jordanna L.'
Cc: Adams, Jason
Subject: FW: Jennifer Convertibles - Informal Discovery Requests For D&O Actions (Draft Email)
Attachments: Informal Discovery Requests.pdf

Michael and Jordanna,

In connection with the Committee's investigation of the potential D&O actions identified in our December 2, 2010 letter, and, in accordance with the term sheet between the Committee and Mengnu, the Committee would like to commence initial discovery relating to such D&O actions. To that end, as I discussed with Michael today, I am attaching the Committee's initial informal document requests. In addition, the Committee would like to schedule mutually agreeable times to conduct the depositions of Rami Abada and Harley Greenfield. Please provide us with some dates that they are available. We don't need to schedule them on the same day. We would like to schedule them in early January 2011.

Please let us know if the Debtors, Rami and Harley are amenable to proceeding on an informal basis. In the alternative, if preferable, the Committee is prepared to seek formal discovery under Bankruptcy Rule 2004. However, to minimize costs, we believe that proceeding on an informal basis would be best.

I look forward to hearing you.

Regards,

Jim

DEFINITIONS

1. “**Communication**” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
2. “**Document**” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term.
3. “**Relating to**” means concerning, referring to, pertaining to, containing, describing, reflecting, regarding, illustrating, mentioning, evidencing, embodying, constituting, supporting, discussing or having any logical or factual connection whatsoever with the subject matter in question.
4. “**Board**” means Debtors’ board of directors.
5. “**Debtors**” means (i) Jennifer Convertibles, Inc.; (ii) Jennifer Convertibles Boylston MA, Inc.; (iii) Jennifer Chicago Ltd.; (iv) Elegant Living Management, Ltd.; (v) Hartsdale Convertibles, Inc.; (vi) Jennifer Management III Corp.; (vii) Jennifer Purchasing Corp.; (viii) Jennifer Management II Corp.; (ix) Jennifer Management V Ltd.; (x) Jennifer Convertibles Natick, Inc.; (xi) Nicole Convertibles, Inc.; and (xii) Washington Heights Convertibles, Inc.
6. “**Jennifer**” means Jennifer Convertibles, Inc. and all of its affiliates, partnerships, partners, control groups, control group members, predecessors, successors, and all entities and funds directly or indirectly owned or controlled, in whole or in part, by Jennifer including, without limitation, Jennifer, Harley Greenfield, and all other Officers, directors, shareholders, employees, representatives, agents, attorneys, and advisers of the foregoing.

7. “Jara” means Jara Enterprises, Inc. and all of its affiliates, partnerships, partners, control groups, control group members, predecessors, successors, and all entities and funds directly or indirectly owned or controlled, in whole or in part, by Jara including, without limitation, Jara, Jane Love, and all of the Officers, employees, representatives, agents, attorneys, and advisers of the foregoing.

8. “Monitoring Committee” means that committee established pursuant to a derivative action settlement agreement, filed on November 4, 2005, in the United States District Court, Eastern District of New York.

9. “Petition Date” means July 18, 2010, the date Jennifer filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code.

10. “Interim Agreement” means the agreement entered into by Debtors and Jara on December 11, 2009 following the termination of the Purchasing Agreement.

11. “2009 Agreement” means the agreement entered into by Debtors and Jara on December 31, 2009 whereby Debtors acquired Jara’s business assets.

RULES OF CONSTRUCTION

1. “All/Each”. The terms “all” and “each” shall be construed as all and each.

2. “And/Or”. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

3. “Number”. The use of the singular form of any word includes the plural and vice versa.

4. Unless otherwise defined herein, each word or term shall have the meaning ascribed to it in Webster’s Ninth New Collegiate Dictionary.

GENERAL INSTRUCTIONS

A. You are requested to produce all documents designated below which are in your possession, custody or control, or in the possession, custody or control of any of your associates, employees, agents, consultants or other representatives.

B. These requests are continuing in nature. In the event you obtain or discover any additional, further or different information or documents after the production of the documents or things requested herein you are requested to promptly make a supplemental production of documents.

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