

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**101 PARK AVENUE  
NEW YORK, NEW YORK 10178**

(212) 808-7800

FACSIMILE

(212) 808-7897

www.kelleydrye.com

WASHINGTON, DC

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

DIRECT LINE: (212) 808-5102

EMAIL: ksmith@kelleydrye.com

December 2, 2010

**VIA E-MAIL AND FEDERAL EXPRESS**

Jennifer Convertibles, Inc.  
417 Crossways Park Drive  
Woodbury, New York 11797  
Attn: Rami Abada

-and-

Olshan Grundman Frome Rosenzweig  
& Wolosky LLP  
Park Avenue Tower  
65 East 55<sup>th</sup> Street  
New York, New York 10022  
Attn: Michael S. Fox, Esq.

*Re: In re Jennifer Convertibles, Inc., et al., Case No. 10-13779 (ALG)  
Demand for Lawsuit*

Dear Messrs. Abada and Fox:

As you are aware, Kelley Drye & Warren LLP is counsel to the Official Committee of Unsecured Creditors (“the Committee”) of Jennifer Convertibles, Inc., *et al.* (the “Debtors”). In furtherance of the Committee’s statutory obligations, Kelley Drye has commenced an investigation of the Debtors’ pre-bankruptcy interactions and relationship with Jara Enterprises, Inc. (“Jara”). As a result of our investigation to date, the Committee believes that sufficient facts exist on which to commence a litigation against the Debtors’ officers and directors, including, but not limited to, the Debtors’ Chief Executive Officer and Chairman of the Board, Harley Greenfield, for damages, in an amount not less than \$5,000,000, resulting from their breaches of duties of loyalty, care and good faith and neglect in connection with their relationship with Jara. Accordingly, the Committee demands that you immediately bring suit against the Debtors’ officers and directors.

December 2, 2010

Page 2

Summary of Background Facts<sup>1</sup>

The Committee understands that Jara is owned and operated by Harley Greenfield's sister, Jane Love. Prior to 2010, Jara owned and operated approximately 20 "Jennifer" stores that were licensed by the Debtors to Jara. Until 2009, certain of the Debtors and Jara were parties to several agreements, including a Purchasing Agreement under which the Debtors purchased merchandise for Jara and Jara was required to reimburse the Debtors. The Debtors also provided warehousing services to Jara pursuant to a Warehousing Agreement (as amended in 2009) in exchange for a fee of 7.5% of the net sales price of goods sold by Jara. In addition, pursuant to a Management Agreement and License (as amended in 2009), Jara was required to contribute at least \$150,000 per month to the Debtors for advertising fees.

Throughout 2009, Jara accumulated, and failed to pay, significant amounts due to the Debtors. As of August 29, 2009, the Committee believes that Jara owed the Debtors not less than \$947,000 in net current charges under these agreements. Rather than require repayment, the Debtors provided an allowance for loss of \$947,000 as of August 29, 2009. Notwithstanding Jara's failure to pay this amount, the Debtors continued to do business with Jara and had to record an additional allowance for loss of \$3,167,000 for the 13-week period ending November 28, 2009.

On December 11, 2009, the Debtors and Jara entered into an interim agreement (effective as of November 27, 2009) that provided, among other things, that future sales at stores owned by Jara would be made on the Debtors' behalf, but that Jara, rather than repaying previous amounts owed to the Debtors, would be entitled to compensation equal to 35% of the sales price of the merchandise for writing such sales. Jara subsequently defaulted on this interim agreement and, on December 31, 2009, Harley Greenfield and Jane Love entered into another agreement, dated December 31, 2009 (the "2009 Agreement").

Notwithstanding the substantial amount still owed by Jara to the Debtors, under the 2009 Agreement, the Debtors paid Jara \$635,000 for Jara's inventory and absolved Jara of \$301,000 due under the interim agreement. Jara ceased operations on January 1, 2010. Thereafter, the Board of Directors of the Debtors relieved Jara of over \$4,000,000 in obligations owed to the Debtors and took on substantial liabilities for, among other things, certain lifetime fabric and leather protection plans for which Jara had been the sole obligor.

---

<sup>1</sup> Substantially all of the background facts contained in this Demand Letter were taken from the Debtors' publicly filed documents. The Committee reserves the right to supplement this Demand Letter with additional facts and allegations as its investigation continues.

December 2, 2010

Page 3

Breaches of Duties By The Debtors' Officers And Board of Directors

The Company's officers and Board of Directors owe fiduciary duties, including duties of loyalty, care, and good faith. "The duty of loyalty mandates that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director, officer or controlling shareholder and not shared by the stockholders generally." *Cede & Co. v. Technicolor Inc.*, 634 A.2d 345, 361 (Del. 1994). It requires directors to eschew conflict between duty and self-interest. *Ivanhoe Partners v. Newmont Mining Corp.*, 535 A.2d 1334, 1345 (Del. 1987). In addition, the Board's duty of care mandates that directors use that amount of care that ordinarily careful and prudent individuals would use in similar circumstances. *In re The Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 749 (Del. Ch. 2005). It requires that directors inform themselves, prior to making a business decision, of all material information reasonably available to them, *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984), and to consider reasonable alternatives. *UIS, Inc. v. Walbro Corp.*, 1987 WL 18108, \*2 (Del. Ch. Oct. 6, 1987). Failure to fulfill this duty amounts to gross negligence. *In re The Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 64 (Del. 2006). Further, directors are obligated to discharge their obligations "honestly and in good faith in the corporation's best interests." *In re The Walt Disney Co. Derivative Litig.*, 825 A.2d 275, 289 (Del. Ch. 2003). Consequently, directors may be held liable for acting in bad faith where their conduct is "more culpable than simple inattention or failure to be informed of all facts material to the decision." *Walt Disney Co. Derivative Litig.*, 906 A.2d at 66.

In approving and/or acquiescing to the numerous transactions with Jara, including but not limited to the 2009 Agreement, forgiving over \$4,000,000 in debt owed to the Debtors and taking on substantial liabilities that were previously the sole obligation of Jara, the Debtors' officers and directors, including their CEO, Chairman and Board of Directors, failed to fulfill their fiduciary duties. Indeed, Harley Greenfield, with the approval of the Board, executed a series of strikingly one-sided deals in November and December 2009 with Jara after it had already defaulted on various other agreements and obligations to the Debtors. Harley Greenfield, again with Board approval, executed the 2009 Agreement, and paid \$635,000 for Jara's inventory and absolved Jara of \$301,000 due under the interim agreement for shares of the Debtor. Compounding their breaches of duties, in January 2010, Harley Greenfield and the Board forgave over \$4,000,000 in debt owed by Jara. The Committee believes that the Debtors' officers and directors were fully aware of the relationship between Harley Greenfield and Jara, yet consented to these numerous transactions at the expense of the Debtors' creditors. These facts lead to the inescapable conclusion that the officers and directors committed breaches of their duties of loyalty, care and good faith, gross negligence and/or negligence in approving the Debtors' dealings with Jara. Harley Greenfield's conduct, in his dealings with Jara, owned by his sister, was also a breach of the Debtors' Code of Conduct, which prohibits, among other things, the appearance of conflicts of interest. Moreover, the Debtors' officers and directors should have, but failed, to demand alternative solutions amounting to willful disregard of their fiduciary duties.

December 2, 2010

Page 4

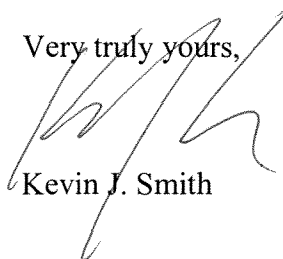
Conclusion

For all these reasons, the Committee believes that substantial and valid grounds exist to commence suit against the Debtors' officers and directors for violating their fiduciary duties, gross negligence and/or negligence.<sup>2</sup> The Debtors should be awarded a sum to be determined at trial, but no less than \$5,000,000 in compensatory damages.

If the Debtors do not file a lawsuit, or provide authority to the Committee to file a lawsuit, against their officers and directors within 10 days of receipt of this demand, we will deem you to have refused to comply with the demand made in this letter. At that time, the Committee will seek authority from the Bankruptcy Court to institute a lawsuit to recover damages on behalf of the Debtors' bankruptcy estates.<sup>3</sup>

The Committee reserves and does not waive any and all rights to commence proceedings against the Debtors, Harley Greenfield, the Board of Directors, and any other entity concerning the facts and claims (and potentially additional claims) set forth in this letter.

Very truly yours,



Kevin J. Smith

cc: James S. Carr  
Jason R. Adams

---

<sup>2</sup> The Committee believes that discovery related to the Debtors' dealings with Jara may reveal facts that demonstrate additional potential claims.

<sup>3</sup> "By definition, the fact of insolvency places the creditors in the shoes normally occupied by the shareholders ...." *Production Resources Group, L.L.C. v. NCT Group, Inc.*, 863 A.2d 772, 791 (De. Ch. 2004). As a result, "the creditors of an *insolvent* corporation have standing to maintain derivative claims against directors on behalf of the corporation for breaches of fiduciary duties." *North Am. Catholic Ed. Programming Foundation, Inc. v. Gheewalla*, 930 A.2d 92, 101 (Del. 2007).