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**Hearing Date: April 27, 2011 at 10:00 am  
Objection Date: April 20, 2011 at 4:00 pm**

*Counsel to the Debtors*

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

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

**SUMMARY OF THE FIRST AND FINAL ALLOWANCE OF  
COMPENSATION OF OLSHAN GRUNDMAN FROME ROSENZWEIG  
& WOLOSKY LLP AS COUNSEL FOR DEBTORS FOR  
SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES  
INCURRED FROM JULY 18, 2010 THROUGH FEBRUARY 22, 2011**

Name of Applicant:	Olshan Grundman Frome Rosenzweig & Wolosky LLP
Authorized to Provide Professional Services to:	Debtors and Debtors In Possession
Date of Retention:	Retention Order Entered on August 10, 2010 (Effective as of July 18, 2010)
Period for Which Compensation and Reimbursement is Sought:	July 18, 2010 through February 22, 2011

<sup>1</sup> 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).

Fees Sought for Compensation Period: <b>February 1, 2011 through February 22, 2011</b>	\$115,167.50
Expenses Sought for Compensation Period: <b>February 1, 2011 through February 22, 2011</b>	\$3,443.92
Total Compensation and Expense Reimbursement Sought: <b>February 1, 2011 through February 22, 2011</b>	\$118,611.42
Fees Sought for Final Period: <b>July 18, 2010 through February 22, 2011</b>	\$1,436,806.50
Expenses Sought for Final Period: <b>July 18, 2010 through February 22, 2011</b>	\$37,633.57
Total Compensation and Expense Reimbursement Sought: <b>July 18, 2010 through February 22, 2011</b>	\$1,474,440.07
Blended Rate of Professionals (Including Paraprofessionals):	\$393.60

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

In re:

JENNIFER CONVERTIBLES, INC.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 10-13779 (ALG)

(Jointly Administered)

**APPLICATION OF OLSHAN GRUNDMAN FROME ROSENZWEIG  
& WOLOSKY LLP AS COUNSEL FOR DEBTORS FOR  
FIRST AND FINAL ALLOWANCE OF COMPENSATION FOR  
SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES  
INCURRED FROM JULY 18, 2010 THROUGH FEBRUARY 22, 2011**

TO: THE HONORABLE ALLAN L. GROPPER  
UNITED STATES BANKRUPTCY JUDGE:

Olshan Grundman Frome Rosenzweig & Wolosky LLP ("**Olshan**"), counsel for the debtors in the above-captioned cases (the "**Debtors**," and, on and after the effective date of the Debtors' plan of reorganization, the "**Reorganized Debtors**"), submits this application (the "**Final Fee Application**") pursuant to (i) sections 330 and 331 of title 11 of the United States

<sup>1</sup> 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).

Code (the “**Bankruptcy Code**”); (ii) Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); (iii) Administrative Order M-389, Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases (the “**Amended Guidelines**”); (iv) the Court’s order pursuant to Bankruptcy Code sections 105(a) and 331 and Bankruptcy Rule 2016(a), establishing procedures for interim monthly compensation and reimbursement of expenses of professionals, dated August 10, 2010, (Docket No. 155) (the “**Interim Compensation Order**”); (v) the guidelines promulgated by the Office of the United States Trustee applicable to the Application for compensation and reimbursement of expenses (the “**U.S. Trustee Guidelines**”); (vi) the Court’s order dated August 10, 2010 Granting the Application of the Debtors for Authorization to Employ and Retain Olshan Grundman Frome Rosenzweig & Wolosky LLP as Attorneys for the Debtors *Nunc Pro Tunc* to the Petition Date (Docket No. 156) (the “**Retention Order**”); and (vii) Findings of Fact and Conclusions of Law and Order Signed on 2/8/2011 Confirming the Amended Joint Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. and its Affiliated Debtors, dated February 9, 2011 (Docket No. 491) (the “**Confirmation Order**”), seeking entry of an Order granting allowance of compensation for professional services rendered and reimbursement of expenses incurred from July 18, 2010 through February 22, 2011 (the “**Final Application Period**”). In support of this Final Fee Application, Olshan respectfully states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Final Fee Application pursuant to 28 U.S.C. §§ 157 and 1334 and the “Standing Order of Referral of Cases to Bankruptcy Judges,” dated July 10, 1984, of District Court Judge Robert J. Ward. Venue of these cases and this Final Fee Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory

predicates for the relief sought herein are Bankruptcy Code sections 330 and 331, Bankruptcy Rule 2016, and Local Rule 2016-1 of the Local Bankruptcy Rules of the Southern District of New York (the “**Local Rules**”).

### **PRELIMINARY STATEMENT**

2. In just under seven months, the Debtors have successfully used the chapter 11 process to reach a consensus with its stakeholders – including its plan sponsor Haining Mengnu Group Co. Ltd. (“**Mengnu**”), the official committee of unsecured creditors (the “**Creditors’ Committee**”), landlords and other key creditors – regarding the terms of a chapter 11 plan of reorganization that effectuates a comprehensive restructuring of the Debtors’ core businesses, provides a recovery to unsecured creditors, preserves the brand names of both Jennifer Convertibles and Ashley Homestores, modifies key leases, and secures the appropriate forms of financing to support the go forward needs of the business. This extraordinary result, which supports the Debtors as a going concern enterprise, protects more than 400 jobs and maximizes value for stakeholders, enables the Debtors to grow and further develop the business.

3. The success of these chapter 11 cases is directly attributable to the extensive efforts of the Debtors’ management and advisor team, including Olshan. Olshan therefore respectfully submits that the compensation and expense reimbursement sought herein for the necessary and beneficial professional services Olshan provided to the Debtors during the Final Application Period is reasonable and appropriate, commensurate with the market scale, nature and complexity of these chapter 11 cases, and should be allowed on a final basis.

### **BACKGROUND**

4. On July 18, 2010 (the “**Petition Date**”), each of the debtors commenced with the Bankruptcy Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code. The

Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Creditors' Committee was appointed in these chapter 11 cases on July 23, 2010.

5. Jennifer Convertibles, Inc. was organized as a Delaware corporation in 1986, and is currently the owner of (i) the largest group of sofabed specialty retail stores and leather specialty retail stores in the United States, and (ii) six big box, full-line furniture stores operated under the Ashley Furniture HomeStore brand under a license from Ashley Furniture Industries, Inc.

6. On July 19, 2010, the Debtors filed the Application to Employ Olshan Grundman Frome Rosenzweig & Wolosky, LLP as Counsel to Debtors (Docket No. 5) (the "**Retention Application**"). On August 10, 2010, the Court entered the Retention Order granting the Retention Application.

7. On September 3, 2010, the Debtors filed their Schedules of Assets and Liabilities and Statements of Financial Affairs. On September 15, 2010, the meeting of creditors pursuant to section 341 of the Bankruptcy Code was held.

8. On November 19, 2010, the Debtors filed the Debtors Emergency Motion For Entry Of An Order Authorizing The Debtors To Enter Into A DIP Credit Agreement (Docket No. 335) (the "**DIP Motion**"), seeking authorization of the Bankruptcy Court to enter into a DIP financing arrangement with Mengnu. The Court approved the requested relief on an interim basis on December 1, 2010, and entered the Final Order Authorizing Debtors to Enter into a DIP Credit Agreement on December 21, 2010 (Docket No. 394).

9. Also on November 19, 2010, the Debtors filed their Joint Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. and Its Affiliated Debtors, and Disclosure

Statement with Respect to the Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. and Its Affiliated Debtors. On December 22, 2010, the Debtors filed their Amended Disclosure Statement with Respect to the Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. and Its Affiliated Debtors (the “**Amended Disclosure Statement**”) and their Amended Joint Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. and Its Affiliated Debtors (the “**Amended Plan**”).

10. On December 22, 2010, the Bankruptcy Court entered an order approving the Amended Disclosure Statement (Docket No. 397) (the “**Disclosure Statement Order**”).

11. The confirmation hearing was held on January 25, 2011, and on February 9, 2011, the Bankruptcy Court entered the Confirmation Order (Docket No. 491) (the “**Confirmation Order**”).

12. On February 22, 2011, the Amended Plan became effective (the “**Effective Date**”) and the Reorganized Debtors filed with the Court the Notice of Effective Date (Docket No. 503).

### **THE DEBTORS’ CHAPTER 11 CASES**

13. Olshan worked diligently to ensure that the Debtors transitioned smoothly into chapter 11, obtaining necessary first day relief for the Debtors with respect to cash management, employee wages and benefits, common carriers, customer programs, taxes, and utilities. During the early days of the Debtors’ chapter 11 cases, Olshan worked closely with the Debtors and their suppliers, customers and other stakeholders to explain the complexities of the chapter 11 process and to reassure creditors and suppliers that the Debtors were willing and able to continue to work with them while in chapter 11. These efforts provided the Debtors with the stability and flexibility required for their business operations during a difficult economic climate.

Notably, and as various testimony confirms, the Debtors' business operations did not experience any significant disruptions as a result of filing these chapter 11 cases.

14. In the early months of the chapter 11 cases, Olshan assisted the Debtors in undertaking a comprehensive analysis of the Debtors' operations in order to streamline business operations and improve financial performance. Part of the Debtors' strategy in this regard was to perform store closing sales in several "exiting territories". Olshan assisted the Debtors in running a comprehensive marketing and negotiation process designed to maximize the value of the Debtors' assets in these closing locations.

15. During the course of the bankruptcy Olshan assisted the Debtors as they continued negotiations with the Debtors' stakeholders – including Mengnu, the Creditors' Committee, landlords and other key creditors – regarding the terms of a chapter 11 plan of reorganization that would provide a recovery to unsecured creditors, preserve the Ashley Homestores, modify key leases. In that respect, the Debtors entered into over 65 lease modification agreements with various landlords, memorializing terms that would provide substantial savings to the Debtors' go forward business. The Debtors, with the assistance of Olshan, were also able to negotiate go forward terms with their key suppliers, in addition to securing the appropriate forms of DIP financing to support the go forward need of the business.

16. On December 17, 2010, the Debtors filed the Amended Plan and Amended Disclosure Statement. Thereafter, the Debtors and their advisors continued to work with stakeholders to refine the Amended Plan, resolve issues and the objection filed by Ashley prior to the hearing on the Amended Disclosure Statement, prepare for the solicitation and voting process, and draft the documents required for the plan supplement. Olshan then represented the Debtors at a contested confirmation hearing, at which they litigated the objection of Ashley with



respect to the assumption by the Reorganized Debtors of Ashley's Trademark Usage Agreements, resulting in the Court entering a decision allowing the assumption of the Ashley Trademark Usage Agreements followed by entry of the Confirmation Order. Subsequently, Olshan and the Debtors shifted their focus toward finalizing the Effective Date documents. It is the Debtors' belief that the success of these chapter 11 cases is directly attributable to the extensive efforts of the Debtors' management and advisor team, including Olshan.

### **OLSHAN 'S FEES AND EXPENSES**

17. Olshan's services in these cases have been substantial, necessary, and beneficial to the Debtors, their estates, creditors and other parties in interest. Throughout the Final Application Period, the variety and complexity of the issues involved in these cases and the need to address those issues on an expedited basis has required Olshan, in the discharge of its professional responsibilities, to devote substantial time by professionals from several legal disciplines on a daily basis.

18. Specifically, in the Final Application Period, Olshan expended the requisite time, skill and effort towards, inter alia: (a) assisting the Debtors in stabilizing their businesses; (b) moving the Debtors through the chapter 11 process without undue delay; (c) advising and assisting the Debtors in connection with their statutory obligations as debtors in possession; (d) negotiation the terms of the Debtors' DIP financing; (e) negotiating with landlords and working with the Debtors' real estate advisors to enter into approximately 65 lease modification agreements; (f) seeking approval of the initial Plan and Disclosure Statement; (g) negotiating and memorializing modifications to the Plan and Disclosure Statement, which allowed the Debtors to obtain the Creditors' Committee's support of the Plan; (h) reconciling, objecting to, and negotiating resolutions in regards to various claims asserted against the

Debtors' estates; and (i) assisting the Debtors in obtaining exit financing and preparing to make post-Effective Date distributions.

### **MONTHLY FEE STATEMENTS**

19. Olshan was retained as counsel to the Debtors, *nunc pro tunc* to the Petition Date, pursuant to the Retention Order entered on August 10, 2010. Also on August 10, 2010, this Court entered the Interim Compensation Order. The Interim Compensation Order provides, among other things, that the Debtors' retained professionals are required to serve monthly itemized billing statements (each, a "**Monthly Fee Statement**") to the U.S. Trustee, the Debtors, Debtors' counsel, and counsel to the Creditors' Committee (collectively, the "**Notice Parties**") with respect to pre-Effective Date services. Upon passage of a thirty-five day objection period, if no objections have been received, the Debtors are authorized to pay to the professionals 80% of the fees and 100% of the expenses requested.

20. In compliance with the Interim Compensation Order, Olshan has served seven Monthly Fee Statements relating to the Final Application Period. Payment on account of these Monthly Fee Statements has been requested as follows:

- (a) Pursuant to the Monthly Fee Statement for the period July 18, 2010 through July 31, 2010 (the "**July Fee Statement**"), Olshan requested payment of \$120,722.80, representing 80% of the total fees requested for services rendered, and \$6,845.00, representing 100% of the expenses incurred during the period. The total fees for this period were \$150,903.50.
- (b) Pursuant to the Monthly Fee Statement for the period August 1, 2010 through August 31, 2010 (the "**August Fee Statement**"), Olshan requested payment of \$192,769.60, representing 80% of the total fees requested for services rendered, and \$2,084.51, representing 100% of the expenses incurred during the period. The total fees for this period were \$240,962.00.
- (c) Pursuant to the Monthly Fee Statement for the period September 1, 2010 through September 30, 2010 (the "**September Fee Statement**"), Olshan requested payment of \$112,243.60, representing 80% of the

total fees requested for services rendered, and \$3,387.87, representing 100% of the expenses incurred during the period. The total fees for this period were \$140,304.50.

- (d) Pursuant to the Monthly Fee Statement for the period October 1, 2010 through October 31, 2010 (the "**October Fee Statement**"), Olshan requested payment of \$152,687.60, representing 80% of the total fees requested for services rendered, and \$5,496.68, representing 100% of the expenses incurred during the period. The total fees for this period were \$190,859.50.
- (e) Pursuant to the Monthly Fee Statement for the period November 1, 2010 through November 30, 2010 (the "**November Fee Statement**"), Olshan requested payment of \$177,715.20, representing 80% of the total fees requested for services rendered, and \$5,131.57, representing 100% of the expenses incurred during the period. The total fees for this period were \$222,144.00.
- (f) Pursuant to the Monthly Fee Statement for the period December 1, 2010 through December 31, 2010 (the "**December Fee Statement**"), Olshan requested payment of \$119,494.40, representing 80% of the total fees requested for services rendered, and \$4,098.43, representing 100% of the expenses incurred during the period. The total fees for this period were \$149,368.00.
- (g) Pursuant to the Monthly Fee Statement for the period January 1, 2010 through January 31, 2010 (the "**January Fee Statement**"), Olshan requested payment of \$181,678.00, representing 80% of the total fees requested for services rendered, and \$7,145.59, representing 100% of the expenses incurred during the period. The total fees for this period were \$227,097.50.

In addition, a Monthly Fee Statement was not filed for the period February 1, 2011 through February 22, 2011, and Olshan incurred fees of \$115,167.50 for services rendered, and \$3,443.92 for the expenses incurred during the period (the "**February Fees**").

21. No objections to the July through December Fee Statements were submitted. In accordance with the Interim Compensation Order, Olshan could have received payments of \$902,677.26 relating to the July through December Fee Statements. However, in an effort to conserve the Debtors' limited cash flow, Olshan agreed to defer its payments on account

of the Fee Statements, and thus has only received \$696,229.66 in total payments for services rendered during the course of the chapter 11 cases.

22. As of the submission of this Application, the objection deadline for the January Fee Statement has not yet passed. Olshan therefore has not received payment for the January Fee Statement as of the date hereof. In addition, as this Final Fee Application includes a request for the February Fees and therefore the objection deadline for payment of the February Fees has not yet passed, Olshan has not received payment of the February Fees as of the date hereof.

### **FINAL FEE APPLICATION**

23. In the ninety (90) days prior to the Petition Date, Olshan received payments of \$356,411.22 in the aggregate for services rendered and reimbursement for expenses incurred prior to the Petition Date. In addition, as of the Petition Date, Olshan held a retainer in the amount of \$250,000.00 (the “**Retainer**”). However, in accordance with the Supplemental Declaration and Disclosure Statement of Michael S. Fox on Behalf of Olshan Grundman Frome Rosenzweig & Wolosky LLP, dated August 9, 2010 (Docket No. 139) and the Retention Order, Olshan applied \$71,498.75 of the Retainer to prepetition fees and expenses, and the remaining balance of \$178,501.25 had been applied to the Debtors’ post-petition fees and expenses. No agreement or understanding exists between Olshan and any other entity for the sharing of compensation to be received for services rendered in or in connection with these cases. *See* Affidavit of Michael S. Fox, Esq. (the “**Fox Affidavit**”, annexed hereto as Exhibit A).

24. By this Final Fee Application, Olshan hereby submits its application for first interim and final allowance and payment of 100% of the fees for professional services rendered by Olshan to the Debtors during the Final Application Period and 100% of actual and

necessary expenses incurred by Olshan in connection with, the rendering of such professional services, which equal \$1,436,806.50 and \$37,633.57, respectively. During the Final Application Period, Olshan expended a total of 3,650.40 hours on matters relating to the Debtors' cases, which resulted in a blended hourly rate of \$393.60.

25. Olshan maintains written records of the time expended by attorneys and paraprofessionals in the rendition of professional services to the Debtors. Such time records are made contemporaneously with the rendition of services by the person rendering such services. A summary of the time records for the Final Application Period, broken down by matter, is annexed hereto as Exhibit B. Full copies of the time records for the Final Application Period will be made available to parties in interest upon reasonable request. Additionally, copies of the daily time records for each of the Monthly Fee Statements, broken down by matter and listing the name of the attorney or paraprofessional, the date on which the services were performed, and the amount of time spent in performing the services have previously been provided to the Notice Parties.

26. For the convenience of the Court and parties in interest, annexed hereto as Exhibit C is a list of the attorneys and paraprofessionals who have worked on these cases during the Final Application Period, his or her hourly billing rate, and the amount of Olshan's fees attributable to each individual.

27. Olshan also maintains records of all actual and necessary out-of-pocket expenses incurred in connection with the rendition of professional services. Schedules setting forth the categories of expenses and amounts for which reimbursement is requested for the Final Application Period are annexed hereto as Exhibits D.

28. Pursuant to the Interim Compensation Order, Olshan recorded its services rendered and disbursements incurred on different matters reasonably expected by the Debtors to continue over a period of at least three months and to constitute a substantial portion of the fees sought during an application period.

### **SUMMARY OF SERVICES RENDERED**

29. Recitation of each and every item of professional services that Olshan performed during the Final Application Period would unduly burden the Court; hence, the following summary highlights the major areas to which Olshan devoted substantial time and attention during the Final Application Period. The full breadth of Olshan's services is reflected in Olshan's time records.

A. **Asset Analysis and Recovery**

30. This Subject Matter describes work that Olshan attorneys performed during the Final Application Period resulting from a review of the Debtors' ongoing leases. In particular, Olshan attorneys and paraprofessionals spent time:

- drafting lease modification agreements and lease summaries and communications with landlords and Keen CF Realty, formerly known as KPMG CF Realty LLC ("**Keen**") regarding same; and
- communicating and attending to matters related to Jennifer Acquisitions Corp.

A. **Asset Disposition**

31. This Subject Matter describes work that Olshan attorneys performed during the Final Application Period resulting from the rejection of certain of the Debtors' leases and executory contracts. In particular, Olshan attorneys and paraprofessionals spent time:

- selecting a liquidation agent for the Debtors' store locations subject to store losing sales, and drafting the corresponding motion and pleadings to establish bid procedures and to conduct store closing sales;

- drafting the motions to reject leases, establishing lease rejection procedures and rejection notices, as well as communications with landlords regarding same; and
- responding to objections filed by the landlords of rejected leases.

B. **Business Operations**

32. This Subject Matter describes work that Olshan attorneys performed during the Final Application Period resulting from issues related to the Debtors' ongoing business operations. In particular, Olshan attorneys and paraprofessionals spent time:

- communications with the Debtors' financial institutions and credit card processors, including Merrick Bank ("**Merrick**"), and drafting and negotiating the various stipulations with Merrick, Discover, and American Express;
- communications with Mengnu, and drafting and negotiating the escrow agreement with Mengnu and corresponding motion and stipulation;
- communicating with utility companies regarding adequate assurance and establishing post-petition accounts;
- reviewing the Debtors' D&O insurance policy and various related issues;
- drafting of the motions to extend exclusivity and rejection periods; and
- communications with Ashley, researching intellectual property issues, and drafting the motion to assume the Ashley Trademark Usage Agreements and the related document requests.

C. **Case Administration**

33. This Subject Matter describes work that Olshan attorneys performed during the Final Application Period resulting from significant communication among the Debtors' management and other professionals employed by the Debtors. In particular, Olshan attorneys and paraprofessionals spent time:

- conducting and participating in routine conference calls and meetings throughout the Final Application Period among the Debtors' management and other employees, Olshan and the Debtors' other professionals;
- preparing for and attending hearings with the Court;

- communicating with the court and United States Trustee;
- drafting the schedules of assets and liabilities and the statements of financial affairs;
- attending to the Debtors' monthly operating reports; and
- drafting notices of stay and suggestions of bankruptcy in various non-Bankruptcy Court actions.

D. **Claims Administration and Objections**

34. This Subject Matter describes work that Olshan attorneys performed during the Final Application Period resulting from the regular and numerous communications from creditors usually received in chapter 11 cases of this size. In particular, Olshan attorneys and paraprofessionals spent time:

- attending to specific claim inquiries and the claims register, and calls with BMC Group, Inc. regarding same;
- drafting and revising of the bar date motion, notice and order;
- assisting the Debtors in expunging or reducing claims; and
- filing various omnibus objections and other claims objections and stipulations resolving claims.

E. **Employee Benefits/Pensions**

35. This Subject Matter describes work that Olshan attorneys performed during the Final Application Period resulting from negotiating and drafting the employment agreements for the Reorganized Debtors' officers and the consulting agreement for Harley Greenfield.

F. **Fee/Employment Applications**

36. This Subject Matter describes work that Olshan attorneys performed during the Final Application Period resulting from actions to prepare and serve Monthly Fee



Statements in accordance with the Interim Compensation Order. In particular, Olshan attorneys and paraprofessionals spent time:

- preparing monthly fee statements for Olshan and revising monthly fee statements for TM Capital;
- drafting and revising the interim compensation procedures and the retention applications and supplemental declarations for Olshan, Keen, TM Capital, EisnerAmper LLP, and KGS LLP;
- coordinating the information flow to and among the Debtors' professionals and professionals of key constituents in these cases;
- ensuring that such professionals complied with orders of the Court regarding compensation, as well as the Local Rules and guidelines; and
- communicating with the U.S. Trustee and the Debtors on various retention issues.

G. **Fee/Employment Objections**

37. This Subject Matter describes work that Olshan attorneys performed during the Final Application Period resulting from communications with the U.S. Trustee with respect to specific retention issues that arose during the course of these chapter 11 cases.

H. **Financing**

38. This Subject Matter describes work that Olshan attorneys performed during the Final Application Period resulting from negotiations and drafting of documentation related to the Debtors' DIP financing and exit financing. In particular, Olshan attorneys and paraprofessionals spent time:

- drafting the motion to approve DIP financing and communications with Mengnu and other parties with respect to same; and
- preparing for the final DIP hearing.

I. **Litigation**

39. This Subject Matter describes work that Olshan attorneys performed during the Final Application Period resulting from litigation with respect to the California class action and the motion of TMCC, Inc. for an order compelling payment of post-petition lease obligations.

J. **Plan and Disclosure Statement**

40. This Subject Matter describes work that Olshan attorneys performed during the Final Application Period resulting from Olshan's considerable attention to matters related to the negotiation and solicitation of the Plan and preparation of the attendant Disclosure Statement. In particular, Olshan attorneys and paraprofessionals spent time:

- engaging in extensive negotiations with the Creditors' Committee, Mengnu, and their respective counsel, which ultimately resulted in the Amended Plan;
- researching issues regarding classification and treatment under the Amended Plan, and negotiating and drafting all of the documents related to both the Amended Plan and Amended Disclosure Statement;
- assisting the Debtors in obtaining Court approval of the Amended Disclosure Statement on December 22, 2010;
- coordinating with the Debtors' claims and balloting agent in the solicitation of the Plan;
- preparing and submitting briefs in support of the Plan, as well as research and drafting responses to the objection filed by Ashley;
- arranging for the Debtors to make the distributions contemplated under the Plan;
- attending to the cure and rejection schedules and the plan supplement; and
- preparing witnesses for the confirmation hearing.

K. **Relief from Stay Proceeding**

41. This Subject Matter describes work that Olshan attorneys performed during the Final Application Period resulting from work with respect to the relief from stay motion filed by JP Morgan Chase Bank, N.A.

L. **Creditor's Committee**

42. This Subject Matter describes work that Olshan attorneys performed during the Final Application Period resulting from communications with the Creditors' Committee. In particular, Olshan attorneys and paraprofessionals spent time:

- calls, emails, communications and meeting with committee counsel; and
- reviewing and revising committee bylaws and non-disclosure agreements.

M. **SEC Matters**

43. This Subject Matter describes work that Olshan attorneys performed during the Final Application Period resulting from drafting and revisions to the Debtors' mandatory filings with the Securities and Exchange Commission. In particular, Olshan attorneys and paraprofessionals spent time:

- drafting and reviewing the Debtors' 8-Ks, 10-Q, and 10-K; and
- attending to SEC issues related to the Debtors' emergence from bankruptcy and new stock issuance in accordance with the plan and communications with respect to same.

**EVALUATING OLSHAN'S SERVICES**

44. The allowance of interim compensation for services rendered and reimbursement of expenses incurred in bankruptcy cases is expressly provided for in section 331 of the Bankruptcy Code:

[A] debtor's attorney, or any professional person... may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits,

for such compensation for services rendered... as is provided under section 330 of this title.

11 U.S.C. § 331.

45. Concerning the level of compensation, section 330(a)(1) of the Bankruptcy Code provides, in pertinent part, that the court may award to a professional person, including the debtor's attorney

reasonable compensation for actual, necessary services rendered by the... professional person, or attorney and by any paraprofessional person employed by any such person. .

11 U.S.C. § 330.

46. The Congressional intent and policy expressed in section 330 of the Bankruptcy Code is to provide for adequate compensation to continue to attract qualified and competent practitioners to bankruptcy cases.

47. In the instant case, Olshan respectfully submits that the services for which it seeks compensation in this Final Fee Application were necessary for and beneficial to the Debtors and the Debtors' estates, and were rendered to protect and preserve the Debtors' estates. Olshan respectfully submits that the services rendered to the Debtors were performed economically, effectively and efficiently and that the results obtained to date have benefited not only the Debtors but all stakeholders in the Debtors' chapter 11 cases. Olshan further submits that the compensation requested herein is reasonable in light of the nature, extent and value of such services to the Debtors, the Debtors' estates and all parties in interest.

48. As demonstrated by this Final Fee Application and all of the exhibits submitted in support hereof, Olshan spent its time economically and without unnecessary duplication. In addition, the work conducted was carefully assigned to appropriate attorneys or

paraprofessionals according to the experience and level of expertise required for each particular task.

49. In sum, the services rendered by Olshan were necessary and beneficial to the Debtors and the Debtors' estates, and were consistently performed in a timely manner commensurate with the complexity, importance, novelty and nature of the issues involved. Accordingly, approval of the compensation sought herein is warranted.

#### **OLSHAN 'S REQUEST FOR FINAL COMPENSATION**

50. Olshan submits that its request for final allowance of compensation is reasonable. The services rendered by Olshan, as highlighted above, required substantial time and effort, resulting in the timely resolution of various issues presented in these cases. Furthermore, the Debtors' Plan was confirmed less than seven (7) months after the Petition Date, which resulted in large part from the efforts of Olshan.

51. The services rendered by Olshan during the Final Application Period were performed diligently and efficiently. When possible, Olshan delegated tasks to lower cost junior attorneys, or to attorneys with specialized expertise in the particular task at issue. While that approach may have required intra-office conferences or involved individual attorneys who spent only a few hours on the matter at hand, the net result was enhanced cost efficiency.

52. In many instances, Olshan has been able to successfully resolve disputes without the need to resort to the Court. When necessary, however, Olshan actively represented the Debtors' interests before the Court and substantially furthered the Debtors' reorganization efforts while preserving the value of the Debtors' estates for their creditors.

53. During the Final Application Period, Olshan encountered a variety of challenging legal issues, often requiring substantial research and negotiation. Olshan brought to

bear legal expertise in many areas, including bankruptcy, corporate, litigation, and employee benefits. Olshan attorneys have rendered advice in all of these areas with skill and dispatch.

54. As required, Exhibit C, attached hereto, set forth a list of such individuals, the aggregate amount of time expended by each, and the current hourly billing rate for each.

55. Olshan's hourly rates and fees charged are consistent with the market rate for comparable services. As set forth in the Fox Affidavit, the hourly rates and fees charged by Olshan are the same as those generally charged to, and paid by, Olshan's other clients. Indeed, unlike fees paid by most Olshan clients, due to the "holdback" of fees from prior monthly periods and the delays inherent in the fee application process, the present value of the fees paid to Olshan by the Debtors may be less than fees paid monthly by other Olshan clients.

#### **DISBURSEMENTS**

56. Olshan incurred actual and necessary out-of-pocket expenses during the Final Application Period, in connection with the rendition of the professional services described above, in the amounts set forth in Exhibits D. By this Final Fee Application, Olshan respectfully requests final allowance of such reimbursement in full.

57. The disbursements for which Olshan seeks reimbursement include the following:

- (a) Duplicating - Charged at \$0.18 per page, based upon the cost of supplies. The charge per page includes a charge for maintaining the duplicating facilities;
- (b) Telecommunications - Long distance calls are billed at actual cost. Outgoing domestic facsimile transmittals are billed at \$1.00 per page, while there is no charge for incoming facsimiles. This rate is based upon costs incurred by Olshan for machine maintenance, phone line rental, and supplies used in operating the fax machine;
- (c) Computer Research Charges - Olshan's practice is to bill clients for Westlaw research at actual cost, which does not include amortization for maintenance and equipment;

- (d) Overtime Expenses - Olshan's practice is to allow any attorney working later than 8:00 p.m. and any legal assistant working later than 7:30 p.m. to charge a working meal to the appropriate client. The meal charge is limited to \$10 per legal assistant and \$20 per attorney;
- (e) Local Car Service - Olshan's practice is to allow attorneys, legal assistants, and secretaries to charge car service to the appropriate client after 8:30 p.m.; and
- (f) Delivery Services - Olshan's practice is to charge postal, overnight delivery, and courier services at actual cost.

### **PROCEDURE**

58. Olshan has provided notice of this Final Fee Application to: (a) the U.S. Trustee; (b) counsel to the Creditors' Committee; (c) counsel to Mengnu; and (d) all parties that have requested notice pursuant to Bankruptcy Rule 2002 prior to the date of service hereof. Olshan submits that given the circumstances and the notice of the relief requested herein, no other or further notice is required.

59. Because the authority for the relief requested is referenced herein, Olshan respectfully requests the Court waive the requirement of Local Rule 9013-1(b) that a memorandum of law be submitted herewith.

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

### **CONCLUSION**

WHEREFORE, Olshan respectfully requests that the Court enter an order, substantially in the form annexed hereto as Exhibit G:

- (a) allowing final compensation to Olshan for services rendered from July 18, 2010 through February 22, 2011, inclusive, in the amount of \$1,436,806.50;
- (b) allowing final reimbursement to Olshan of actual, necessary expenses incurred in connection with the rendition of such services from July

18, 2010 through February 22, 2011, inclusive, in the amount of \$37,633.57; and

(c) such other relief as may be just.

Dated: March 24, 2011

OLSHAN GRUNDMAN FROME  
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