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**Hearing Date: May 17, 2011 at 10:00 a.m.  
Objection Deadline: May 10, 2011 at 4:00 p.m.**

*Counsel for the Reorganized Debtors  
(Successors to the Debtors and Debtors in Possession)*

**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)

**DEBTORS' OBJECTION TO THE MOTION OF MICO ARCHIBALD PARTNERS,  
LLC FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

Jennifer Convertibles, Inc. (“Jennifer Convertibles”) and its affiliated debtors, as debtors and debtors in possession (together, the “Debtors”, now known as the “Reorganized Debtors”), file this objection (the “Objection”) to the *Motion of MICO Archibald Partners, LLC for Allowance and Payment of Administrative Expense Claim* (docket no. 557) (the “Motion”). In support of this Objection, the Debtors respectfully state as follows:

<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).

### Summary of Objection

1. The Debtors object to the Motion on the grounds that MICO Archibald Partners, LLC ("MICO" or "Landlord") has improperly calculated the amounts the Debtors currently owe to MICO on account of the Lease (as defined below).

2. Specifically, the Debtors should not be held liable for (i) rent and additional obligations owed for the month of February, 2011; (ii) costs of repairs; and (iii) MICO's unliquidated attorney costs and fees. In addition, MICO is currently holding a security deposit, which should be applied to the administrative amount the Debtors owe MICO.

### Background of the Chapter 11 Cases

1. As set forth in greater detail in the Motion, the Debtors leased a store located at 2530-A Lindsay Privado, Ontario, California (the "Premises"), pursuant to a lease dated July 15, 2007 (the "Lease") between the Debtors and MICO.

2. On July 18, 2010 (the "Petition Date"), each of the Debtors commenced with the Bankruptcy Court a voluntary case pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. An Official Committee of Unsecured Creditors was appointed in these chapter 11 cases on July 23, 2010.

3. On September 16, 2010, this Court entered an Order for Filing Proofs and Approving the Form and Manner of Notice Thereof (docket no. 247) (the "Bar Date Order"). Among other things, the Bar Date Order established October 25, 2010 at 5:00 p.m. Eastern Time (the "General Bar Date") as the deadline to file proofs of claim (subject to certain limited exceptions) for all persons and entities wishing to assert a claim, as that term is defined in section

101(5) of the Bankruptcy Code, against any of the Debtors that arose prior to the Petition Date to file a proof of claim form (the "Proofs of Claim") with respect to each Claim.

4. On September 20, 2010, BMC Group, Inc., the claims and noticing agent in these cases (the "Claims Agent"), provided notice of the Bar Dates by mailing a notice of bar date approved by this Court (the "Bar Date Notice"), together with a proof of claim form, upon, all parties listed in the Bar Date Order. On September 27, 2010, a copy of the Bar Date Notice was published in the national edition of USA Today.

5. 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").

6. Also on December 22, 2010, the Bankruptcy Court entered an order approving the Amended Disclosure Statement (docket no. 397).

7. On January 10, 2011, pursuant to the *Order Approving Expedited Procedures for Rejection of Certain Unexpired Leases of Nonresidential Real Property* [Docket No. 199] (the "Lease Rejection Procedures Order"), the Debtors filed their *Notice of Proposed Rejection of Unexpired Leases* [Docket No. 422] (the "Lease Rejection Notice") under which the Debtors rejected the Lease.

8. On January 13, 2011, the Debtors filed their Notice Of Filing Of Schedule Of Rejected Contracts And Leases For Assumed Executory Contracts And Unexpired Leases Relating To The Amended Joint Chapter 11 Plan Of Reorganization Of Jennifer Convertibles, Inc. And Its Affiliated Debtors (docket no. 435) (the "Rejection Schedule"). The Rejection Schedule lists the Lease as rejected.

9. On February 9, 2011, the Bankruptcy Court entered the Findings of Fact and Conclusions of Law and Order Confirming the Amended Joint Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. and its Affiliated Debtors (docket no. 491).

10. 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).

11. In accordance with the Lease Rejection Notice, the Debtors unequivocally relinquished control of the Premises on January 31, 2011. In fact, on January 31, 2011 and continuing thereafter, the Debtors made multiple attempts to return the keys to MICO, but MICO refused to accept same. See email from Joe Schillero to Jordanna Nadritch, dated January 31, 2011 (attached hereto as Exhibit A). Finally, on February 8, 2011, the Debtors were able to turn the keys over to MICO.

### Objection

12. The Debtors hereby object to MICO's calculation of the amounts owed MICO pursuant to the Lease.

13. The Debtors do not dispute that MICO is owed: (i) \$17,519.88 in stub rent charges for the post-petition period of July 18, 2010-July 31, 2010; (ii) \$14,131.95 in post-petition real property taxes invoiced and owed in November, 2010; and (iii) post-petition rent and related charges for December, 2010 and January, 2011, totaling \$71,009.02.

14. The Debtors, however, do object to the amounts MICO claims it is owed on account of: (i) post-petition rent and related charges for February, 2011 in the amount of \$35,504.51; (ii) \$7,785.14 for site repair and maintenance defaults occurring during the post-petition and pre-rejection period, and (5) unliquidated amounts for legal costs. Furthermore, MICO is currently holding a security deposit of \$29,929.24, which should be offset against the amounts the Debtors owe. Thus, the Debtors would remit payment of \$72,731.61 to MICO. Each of the disputed charges is addressed in detail below.

15. **February, 2011 Rent.** As discussed above, the Debtors unequivocally relinquished control and vacated the Premises on January 31, 2011. Thus, there can be no rent or additional Lease obligations due and owing for February, 2011. MICO's refusal to accept the keys on January 31, 2011 or thereafter, without any basis, is in contravention of the Lease Rejection Notice. They cannot benefit from their actions. The Debtors fully complied with the rejection procedures set forth in the Lease Rejection Procedures Order and the Lease Rejection Notice, and took appropriate steps in compliance thereof. Accordingly, there is no basis for MICO to claim rent for February, and the Debtors should not be penalized for the actions of MICO as landlord.

16. **Repairs.** The Debtors have received no previous notice of any repairs that needed to be done to the Premises post-occupancy. The Motion is the first time the Debtors heard that the Premises were returned in an unacceptable condition, yet the Motion provides no description of what type of repairs purportedly needed to be made. The Motion merely provides that "Tenant failed to keep the Premises 'in good condition, order, and repair' and Tenant failed to maintain the Premises 'in an attractive, first-class, and fully operative condition' during the post-petition and pre-rejection period as required by Section 6.04 of the Lease. This default

under the Lease has forced Landlord to incur \$7,785.14 in Premises maintenance and repair costs.” See Motion at ¶ 18. Without additional information about what these repairs entailed, the Debtors should not be held liable for such costs.

17. **Legal Fees.** The Debtors should not be held liable for MICO’s unliquidated legal fees, as there is no basis for granting attorney’s fees in connection with MICO’s motion for payment of an administrative claim in bankruptcy. Even assuming MICO has a right to assert a claim for fees under the Lease, at a minimum, MICO must file a separate application with this Court providing the basis for payment of such fees.

18. **Security Deposit.** Upon the execution of the Lease, the Debtors provided MICO with a security deposit in the amount of \$29,929.24, as required by sections 1.07 and 3.03 of the Lease. Section 3.03(a) of the Lease states that the security deposit may be applied to any unpaid rent or other charges due from the Tenant (the Debtors). The Debtors have received no notice from MICO, nor has MICO obtained any relief from this Court to apply the security deposit. MICO would have had to apply to this Court to lift the automatic stay pursuant to section 362 of the Bankruptcy Code in order to setoff the security deposit against any prepetition rental amounts owed. Because MICO made no such motion, the security deposit provided by the Debtors must be offset against the administrative amounts the Debtors owe MICO, in accordance with section 3.03(c) of the Lease.

19. Thus, in summary, the Debtors owe MICO a total of \$102,660.85 less the security deposit in the amount of \$29,929.24, for a total of \$72,731.61. There are no additional amounts owed to MICO.

#### **Notice**

20. Notice of this Objection has been provided to: (i) Office of the United States Trustee for the Southern District of New York; (ii) Counsel to the Litigation Trust; (iii) Counsel

for MICO; and (iv) any other party who has filed a notice of appearance in these cases. The Debtors submit that such notice is sufficient under the circumstances.

**Waiver of Memorandum**

21. In as much as the relevant legal authorities are set forth herein, no novel issues of law are raised and the Debtors request that they not be required to file a separate memorandum of law in support of its response.

WHEREFORE, the Debtors respectfully request that the Court deny the Motion, and grant such further relief as may be equitable under the circumstances of this case.

Dated: New York, New York  
May 10, 2011

OLSHAN GRUNDMAN FROME  
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*Counsel for the Debtors and the  
Reorganized Debtors*

EXHIBIT A



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**From:** Jschillerocpa@aol.com  
**Sent:** Monday, January 31, 2011 4:29 PM  
**To:** Nadritch, Jordanna L.  
**Cc:** stevefinn1@aol.com  
**Subject:** California Warehouse

Hi Jordanna:

My man on the ground in California tried to return the keys to the landlord of our Ontario warehouse in California.

They refused to take it, stating that due the bankruptcy there is a certain protocol that must be followed.

Are you aware of this protocol?

Please let me know as soon as possible.

Thanks,

Joe