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Hearing Date: July 12, 2011 at 10:00 a.m. (EST)  
Objection Deadline: June 28, 2011 at 4:00 p.m. (EST)

Counsel to The Trust Administrator For  
The Jennifer Convertibles Litigation Trust

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

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

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**MOTION OF THE TRUST ADMINISTRATOR FOR THE JENNIFER  
CONVERTIBLES LITIGATION TRUST FOR AN ORDER EXTENDING THE  
TIME TO FILE OBJECTIONS TO GENERAL UNSECURED CLAIMS**

The Trust Administrator (the “Trust Administrator”) for the Jennifer Convertibles Litigation Trust (the “Trust”) of Jennifer Convertibles, Inc., *et al.*, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through its counsel, Kelley Drye & Warren LLP, hereby files this motion (the “Motion”) for entry of an order extending the time for the Trust Administrator to file objections to general unsecured claims from August 21, 2011 to June 1, 2012. In support of this Motion, the Trust Administrator respectfully states as follows:

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<sup>1</sup> 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.

## **JURISDICTION**

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, section 13.01 of the Plan (as defined below) and paragraph 39 of the Confirmation Order (as defined below). This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are section 105(a) of the Bankruptcy Code and Rule 9006(b) of the Federal Rules of Bankruptcy Procedure.

## **BACKGROUND**

2. On July 18, 2010 (the “Petition Date”), each of 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 to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

3. On February 8, 2011, the Court entered an Order (the “Confirmation Order”)<sup>2</sup> confirming the Debtors’ Amended Joint Chapter 11 Plan of Reorganization For Jennifer Convertibles, Inc. and its Affiliated Debtors (the “Plan”).<sup>3</sup>

4. Pursuant to section 9 of the Plan, the Trust was formed on February 22, 2011, which was the date the Plan became effective (the “Effective Date”).<sup>4</sup> The Trust was formed for the purpose of (i) liquidating and distributing, among other things, the Litigation Trust Causes of Action, the Tranche A Note, the Tranche C Note, 9.9% of the New Common Stock and any other assets acquired by the Trust (the “Litigation Trust Fund”); and (ii) pursuing

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<sup>2</sup> Docket Entry No. 491.

<sup>3</sup> Docket Entry No. 399.

<sup>4</sup> Docket Entry No. 503.

objections to general unsecured claims. Pursuant to section 8.01 of the Plan, on the Effective Date the Debtors were deemed to have assigned to the Trust the exclusive right to object to disputed general unsecured claims. The appointment of the Trust Administrator was approved pursuant to paragraph 17 of the Confirmation Order.

5. Pursuant to the Plan, on the Effective Date the Trust was funded with \$100,000 of cash to allow the Trust to handle numerous administrative expenses when the first payment is made to the Trust. The first payment will be made on February 22, 2012, when the Tranche A Note matures. At that time, the Trust will receive \$1.4 million.

6. The right to object to disputed general unsecured claims was assigned to the Trust Administrator because it has the greatest incentive to ensure that holders of legitimate general unsecured claims receive the maximum possible distribution from the fixed assets allocated to the payment of general unsecured claims under the Plan.

7. Pursuant to section 8.01 of the Plan, the current deadline for the Trust Administrator to file objections to general unsecured claims is August 21, 2011 (180 days after the Effective Date) (the “Objection Deadline”), subject to the right to seek an extension of the Objection Deadline from the Court.

8. Since the Effective Date, the Trust Administrator has made progress in facilitating the liquidation of the Litigation Trust Fund. The Trust Administrator has retained ASK Financial LLP (“ASK”) to investigate and pursue chapter 5 avoidance actions. ASK has worked closely with the Trust Administrator and the Debtors to assemble necessary information to analyze the viability of such avoidance actions and is in the process of finalizing such analysis so that appropriate actions can be commenced to recover further assets to be distributed to the general unsecured creditors.

9. The Trust Administrator also sought and received proposals from nine law firms to pursue the claim that was assigned to the Trust against the Debtors' former directors and officers. The Trust Administrator has selected the law firm of Platzer, Swergold, Karlin, Levine, Goldberg & Jaslow, LLP to pursue this claim and is in the process of finalizing an engagement agreement.

10. The Trust Administrator, mindful of the limited cash on hand until recovery on chapter 5 avoidance actions or payment of the Tranche A Note in February 2012, has not yet begun any review of the outstanding claims filed against the Debtors' estates. The Trust Administrator will start this review in February 2012 after the Trust receives the funds from the Tranche A Note.

#### **RELIEF REQUESTED**

11. By the Motion, the Trust Administrator seeks entry of an order, pursuant to section 105(a) of the Bankruptcy Code and Rule 9006(b) of the Federal Rules of Bankruptcy Procedure, extending the Objection Deadline from August 21, 2011 through and including June 1, 2012, without prejudice to the Trust Administrator's right to request additional extensions, if necessary.

#### **BASIS FOR RELIEF**

12. Section 8.01 of the Plan expressly contemplates the potential extension of the Objection Deadline. Section 8.01 provides that objections to claims shall be filed:

no later than: (a) 180 days after the Effective Date; or (b) such other date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (a) hereof. The Filing of a motion to extend such objection deadline shall automatically extend such deadline until a Final Order is entered on such motion. In the event that such a motion to extend the objection deadline is denied by the Bankruptcy Court, or approved by the Bankruptcy Court and reversed on appeal, such objection deadline shall be the later of the current deadline (as previously extended, as

applicable) or 30 days after entry of a Final Order denying the motion to extend the objection deadline.<sup>5</sup>

13. Section 105(a) of the Bankruptcy Code authorizes the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this Title.”<sup>6</sup> Furthermore, Bankruptcy Rule 9006(b) provides that, subject to certain inapplicable exceptions:

[w]hen any act is required or allowed to be done at or within a specified period by these rules or by notice given thereunder or by order of the court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.<sup>7</sup>

14. Extending the current Objection Deadline for the Trust Administrator to object to disputed general unsecured claims will not harm general unsecured creditors and is in the best interest of the Debtors’ estates and the holders of valid general unsecured claims. The Trust Administrator currently has no liquid assets to distribute and does not anticipate any cash will be available for distribution until after the Tranche A Note is paid in February 2012. Accordingly, extending the Objection Deadline will not harm holders of general unsecured creditors. Given the limited cash available to the Trust at this time, forcing the Trust Administrator to file objections now would significantly harm holders of legitimate claims because the Trust Administrator will not be able to sufficiently analyze all of the claims.

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<sup>5</sup> Plan at § 8.01.

<sup>6</sup> 11 U.S.C. § 105(a).

<sup>7</sup> Fed. R. Bankr. P. 9006(b).

15. Instead, the requested extension will give the Trust Administrator time to focus on the liquidation of assets to create a fund to finance the prosecution of the objections to disputed claims, which will ultimately reduce the pool of unsecured creditors and provide for greater distributions to holders of legitimate claims. The requested extension will also ensure the Trust Administrator has adequate time to (i) assemble and review information from the Debtors related to the proper allowance of claims; (ii) prepare and file objections; and (iii) try and resolve claims without the need for litigation. Such an extension will avoid the undesirable alternative of having the Trust Administrator hastily file protective objections to claims or the allowance of improper claims.

#### **WAIVER OF MEMORANDUM OF LAW**

16. Since this Motion does not present any novel issues of law and the appropriate citations relied on by the Trust Administrator are cited herein, the Trust Administrator submits that a separate memorandum of law in support of the Motion is not necessary under Local Bankruptcy Rule 9013-1.

#### **NOTICE**

17. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the Southern District of New York; (ii) counsel to the Reorganized Debtors; and (iii) all parties requesting notice under Bankruptcy Rule 2002. The Trust Administrator submits that such notice is sufficient under the circumstances and that no other or further notice need be provided.

#### **NO PREVIOUS REQUEST**

18. No previous request for the relief sought herein has been made by the Trust Administrator to this or any other court.

