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Hearing Date: November 16, 2011 @ 10:00 a.m.  
Objection Deadline: November 9, 2011 @ 4:00 p.m.

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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**TRUST ADMINISTRATOR’S FIRST (NON-SUBSTANTIVE) OMNIBUS  
OBJECTION TO CERTAIN (A) DUPLICATIVE CLAIMS; (B) WRONG  
DEBTOR CLAIMS; (C) AMENDED AND SUPERSEDED CLAIMS; (D) LATE  
FILED CLAIMS; (E) SATISFIED CLAIMS; AND (F) EQUITY CLAIMS**

The Trust Administrator (the “Trust Administrator”) for the Jennifer Convertibles Litigation Trust (the “Trust”), solely in its capacity as Trust Administrator of the above-captioned Debtors’ estates (collectively, the “Debtors”), by and through its undersigned counsel, hereby files this first (non-substantive) omnibus objection (the “First Omnibus Objection”) to the claims listed on Exhibits A through F attached hereto, pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007, seeking entry of an order disallowing, expunging or reclassifying such claims comprised of (a) duplicative claims; (b) wrong debtor claims;

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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.

(c) amended and superseded claims; (d) late claims; (e) satisfied claims; and (f) equity claims.

**Pursuant to Bankruptcy Rule 3007(e)(1), claimants receiving this First Omnibus Objection should locate their names and claims on Exhibits A through F attached hereto.** In support of this First Omnibus Objection, the Trust Administrator represents as follows:

### **JURISDICTION**

1. This Court has jurisdiction to consider the First Omnibus Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(1) and (b)(2)(A), (B) and (O). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are section 105(a) and 502(b) of the Bankruptcy Code and Bankruptcy Rules 3007 and 9014.

### **BACKGROUND**

#### **A. The Chapter 11 Cases**

3. 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. Following the Petition Date, the Debtors 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.

4. 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>

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

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

5. 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 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.

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 original deadline for the Trust Administrator to file objections to general unsecured claims was 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. On June 8, 2011, the Trust Administrator filed a motion to extend the Objection Deadline.<sup>5</sup> On July 12, 2011, the Court entered an order extending the Objection Deadline to October 20, 2011.<sup>6</sup>

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

<sup>5</sup> Docket Entry No. 589.

<sup>6</sup> Docket Entry No. 605.

**B. The Bar Date**

9. On August 31, 2010, the Debtors filed their motion (the “Bar Date Motion”) pursuant to sections 502(b)(9), 503(a) and 503(b)(9) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(3) for an order establishing deadline for filing proofs of claim and approving the form and manner of notice thereof.<sup>7</sup> On September 16, 2010, the Court entered an order (the “Bar Date Order”) approving the Bar Date Motion establishing (i) October 25, 2010 at 5:00 p.m. (EST) as the deadline for persons or entities other than governmental units to file proofs of claim; and (ii) January 18, 2011 at 5:00 p.m. (EST) as the last date for governmental units to file proofs of claim.<sup>8</sup>

10. On September 3, 2010, the Debtors filed their schedules of assets and liabilities for Jennifer Convertibles, Inc.<sup>9</sup> Also on September 3, 2010, the Debtors filed the schedules of assets and liabilities of Hartsdale Convertibles, Inc.<sup>10</sup>

11. On or about September 20, 2010, BMC Group, Inc., the Debtors’ claims and noticing agent, provided notice of the bar dates by mailing a notice of bar date approved by the Court, together with a proof of claim form, upon all parties listed in the Bar Date Order.

**C. The Claims Resolution Process**

12. In the ordinary course of business, the Debtors maintained books and records (the “Books and Records”) that reflect, among other things, the Debtors’ liabilities and the amounts owed to their creditors. The Reorganized Debtors retained the Books and Records after the effective date of the Plan. Pursuant to Section 9.05(d) of the Plan, the Reorganized

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<sup>7</sup> Docket Entry No. 203.

<sup>8</sup> Docket Entry No. 247.

<sup>9</sup> Docket Entry No. 215.

<sup>10</sup> Case No. 10-13783, Docket Entry No. 5.

Debtors agreed to cooperate with the Trust and provide the Trust with information and documentation in connection with the Trust's objections to general unsecured claim.

13. The Debtors' register of claims (the "Claims Register"), prepared by BMC Group, Inc., reflects that as of the date of this First Omnibus Objection, 405 proofs of claim (collectively, the "Proofs of Claim") have been filed in these chapter 11 cases. The Trust Administrator has been engaged in the process of reviewing and reconciling certain claims, including claims listed on the Debtors' schedules and asserted in the Proofs of Claim. This process includes identifying categories of claims that may be targeting for disallowance and expungement, reduction and/or reclassification. To reduce the number and amount of claims and to avoid possible double recovery or otherwise improper classification, the Trust Administrator is filing several omnibus objections to claims.

#### **RELIEF REQUESTED**

14. By this First Omnibus Objection and for the reasons described more fully below, the Trust Administrator objects to the claims set forth on Exhibits A through F attached hereto (the "Claims") pursuant to sections 105(a) and 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007. The Trust Administrator respectfully requests entry of an order (the "Proposed Order"), substantially in the form attached hereto as Exhibit G, disallowing, expunging or reclassifying the Claims.

#### **BASIS FOR RELIEF**

15. Section 502(a) of the Bankruptcy Code provides, in pertinent part, that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest ... objects." 11 U.S.C. § 502(a). Once an objection to a claim is filed, the Court, after notice and hearing, shall determine the allowed amount of the claim. 11 U.S.C. § 502(b). Section 502(b)(1) further provides that a claim may not be allowed to the extent that it

“is unenforceable against the debtor and property of the debtor, under any agreement or applicable law.” 11 U.S.C. § 502(b).

16. If an objection refuting at least one of the claim’s essential allegations is asserted, the claimant has the burden to demonstrate the validity of the claim. *See Sherman v. Novak (In re Reilly)*, 245 B.R. 768, 773 (2d Cir. BAP 2000); *In re Rockefeller Ctr. Props.*, 272 B.R. 524, 539 (Bankr. S.D.N.Y. 2000); *In re St. Johnsbury Trucking Co.*, 206 B.R. 318, 323 (Bankr. S.D.N.Y. 1997). The failure to allege facts and to provide sufficient support for a claim deprives the claim of *prima facie* validity. *See, e.g., In re Jorzak*, 314 B.R. 474, 481-82 (Bankr. D. Conn 2004) (discussing the evidentiary requirements and burden of proof with respect to the allowance of claims).

**A. Duplicative Claims**

17. During the Trust Administrator’s review of the Proofs of Claim, the Trust Administrator determined the Proofs of Claim identified as duplicative claims on Exhibit A (the “Duplicative Claims”) are identical to corresponding Proofs of Claim filed by the same claimant asserting a claim for the same liability. Accordingly, the Trust Administrator seeks entry of an order disallowing and expunging each of the Duplicative Claims listed on Exhibit A pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007 because such claims are unenforceable against the Debtors. Expunging the Duplicative Claims will ensure the claimants do not receive duplicative recoveries on account of a single claim.

18. Expunging the Duplicative Claims will not prejudice the claimants because the claimants will retain their respective surviving claims, also identified on Exhibit A (the “Surviving Claims”). Expunging the Duplicative Claims pursuant to this Section A of the First Omnibus Objection will not affect any of the Surviving Claims and does not constitute any

admission or finding with respect to any of the Surviving Claims. All of the Trust Administrators' right to object to any Surviving Claim, including in other sections of this First Omnibus Objection, on any basis are reserved. Furthermore, the Trust Administrator reserves all rights to object to any Duplicative Claim as to which the Court does not grant the relief requested herein.

**B. Wrong Debtor Claims**

19. During the Trust Administrator's review of the Proofs of Claim, the Trust Administrator determined the Proofs of Claim identified on Exhibit B (the "Wrong Debtor Claims") have been filed against a Debtor for liabilities that are owed (if at all) by a different Debtor. Pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007, the Trust Administrator objects to allowance of the Wrong Debtor Claims because they are invalid and unenforceable against the Debtor identified in the respective Proofs of Claim. Accordingly, the Trust Administrator seeks entry of an order reclassifying each of the Wrong Debtor Claims listed on Exhibit B to assert liability against the Debtor identified in the "Reclassified Claim" column of Exhibit B.

Reclassifying the Wrong Debtor Claims will not prejudice the claimants because the claimants will retain their respective claims against the appropriate Debtor. Reclassifying the Wrong Debtor Claims pursuant to this Section B of the First Omnibus Objection will not affect any of the Reclassified Claims and does not constitute any admission or finding with respect to any of the Reclassified Claims. All of the Trust Administrators' right to object to any Reclassified Claim, including in other sections of this First Omnibus Objection, on any basis are reserved. Furthermore, the Trust Administrator reserves all rights to object to any Wrong Debtor Claim as to which the Court does not grant the relief requested herein.

**C. Amended and Superseded Claims**

20. During the Trust Administrator’s review of the Proofs of Claim, the Trust Administrator determined that the Proofs of Claim identified as amended and superseded claims on Exhibit C (the “Amended Claims”) have been amended and superseded by a corresponding Proof of Claim filed by the same claimant asserting a claim for the same liability. Accordingly, the Trust Administrator seeks entry of an order disallowing and expunging each of the Amended Claims listed on Exhibit C pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007 because such claims are unenforceable against the Debtors. Expunging the Amended Claims will ensure that the claimants do not receive duplicative recoveries on account of a single claim.

21. Expunging the Amended Claims will not prejudice the claimants because the claimants will retain their remaining claims (the “Remaining Claims”), also identified on Exhibit C. Expunging the Amended Claims pursuant to this Section C of the First Omnibus Objection will not affect any of the Remaining Claims and does not constitute any admission or finding with respect to any of the Remaining Claims. All of the Trust Administrators’ right to object to any Remaining Claim, including in other sections of this First Omnibus Objection, on any basis are reserved. Furthermore, the Trust Administrator reserves all rights to object to any Amended Claim as to which the Court does not grant the relief requested herein.

**D. Late Claims**

22. Pursuant to section 502(b)(9) of the Bankruptcy Code, a claim shall not be allowed “to the extent that ... proof of such claim is not timely filed[.]” 11 U.S.C. § 503(b)(9). *See also First Fidelity Bank, N.A. v. Hooker Inves. Inc. (In re Hooker Inves. Inc.)*, 937 F.2d 833, 840 (2d Cir. 1991) (enforcing bar date and stating, *inter alia*, that a “bar date order does not



function merely as a procedural gauntlet”); *In re Keene Corp.*, 188 B.R. 903, 907 (Bankr. S.D.N.Y. 1995) (stating the “[b]ar date is akin to a statute of limitations, and must be strictly observed”).

23. During the Trust Administrator’s review of the Proofs of Claim, the Trust Administrator determined that the Proofs of Claim identified on Exhibit D (the “Late Filed Claims”) were filed after the Bar Date. Accordingly, the Trust Administrator seeks entry of an order disallowing and expunging each of the Late Filed Claims listed on Exhibit D pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007 because such claims are unenforceable against the Debtors. All of the Trust Administrators’ right to object to any Late Filed Claim, including in other sections of this First Omnibus Objection, on any basis are reserved.

**E. Satisfied Claims**

24. During the Trust Administrator’s review of the Proofs of Claim, the Trust Administrator determined that the Proofs of Claim identified on Exhibit E (the “Satisfied Claims”) assert claims that have been satisfied by the Reorganized Debtors, released or modified and satisfied in connection with the Reorganized Debtors’ assumption of executory contracts and unexpired leases. Accordingly, the Trust Administrator seeks entry of an order disallowing and expunging each of the Satisfied Claims listed on Exhibit E pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007 because such claims have been satisfied or released during the case. All of the Trust Administrators’ right to object to any Satisfied Claim, including in other sections of this First Omnibus Objection, on any basis are reserved.

**F. Equity Claims**

25. During the Trust Administrator's review of the Proofs of Claim, the Trust Administrator determined that the Proofs of Claim identified on Exhibit F (the "Equity Interests") seek to assert general unsecured claims on account of equity interests of the Debtors that the claimants owned. Accordingly, the Trust Administrator seeks entry of an order disallowing and expunging each of the Equity Interests listed on Exhibit F pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007 because such claims are interest, rather than claims. All of the Trust Administrators' right to object to any Equity Interests, including in other sections of this First Omnibus Objection, on any basis are reserved.

**RESPONSES TO OMNIBUS OBJECTIONS**

26. To contest an objection, a claimant must file and serve a written response to this First Omnibus Objection (a "Response") so that it is received no later than **November 9, 2011 at 4:00 p.m. (Eastern Daylight Time)** (the "Response Deadline"). Every Response must be filed with the Office of the Clerk of the United States Bankruptcy Court for the Southern District of New York and served upon the following entities, so the Response is received no later than the Response Deadline, at the following addresses:

Kelley Drye & Warren LLP  
101 Park Avenue  
New York, New York 10178  
Attn: James S. Carr, Esq.  
Jason R. Adams, Esq.

27. Every Response to this First Omnibus Objection must contain at a minimum the following information:

- (a) a caption setting forth the name of the Court, the name of the Debtors, the case number, and the title of objection to which the Response is directed;

- (b) the name of the claimant, his/her/its claim number, and a description of the basis for the amount of the Claim;
- (c) the specific factual basis and supporting legal argument upon which the party will rely in opposing this First Omnibus Objection;
- (d) any supporting documentation, to the extent it was not included with the Proof of Claim previously filed with the clerk or claims agent, upon which the party will rely to support the basis for and amounts asserted in the Proof of Claim; and
- (e) the name, address, telephone number, email address and fax number of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Trust Administrator should communicate with respect to the Claim or the First Omnibus Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

28. If a claimant fails to file and serve a timely Response by the Response Deadline, the Trust Administrator will present to the Court an appropriate order modifying or disallowing such claimant's claim, as set forth in Exhibits A through E, without further notice to the claimant.

#### **SEPARATE CONTESTED MATTERS**

29. To the extent that a Response is filed regarding any Claim listed in this First Omnibus Objection and the Trust Administrator is unable to resolve the Response, the objection by the Trust Administrator to each such Claim asserted herein shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in the First Omnibus Objection shall be deemed a separate order with respect to each Claim.

#### **RESERVATION OF RIGHTS**

30. The Trust Administrator hereby reserves the right to object in the future to any of the Claims that are the subject of this First Omnibus Objection on any ground, and to amend, modify, and/or supplement this First Omnibus Objection, including, without limitation,

to object to amended or newly-filed claims. Without limiting the generality of the foregoing, the Trust Administrator specifically reserves all rights under section 502(d) of the Bankruptcy Code to object further to any of the Claims.

31. Notwithstanding anything contained in this First Omnibus Objection or the attached exhibits, nothing herein shall be construed as a waiver of any rights the Trust Administrator may have: (a) to bring avoidance actions under the applicable sections of the Bankruptcy Code against the holders of claims subject to the First Omnibus Objection; or (b) to exercise rights of setoff against the holders of such claims relating to such avoidance actions.

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

32. Since this First Omnibus Objection 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 this First Omnibus Objection is not necessary under Local Bankruptcy Rule 9013-1.

#### **NOTICE**

33. Notice of this First Omnibus Objection has been provided to: (i) the Office of the United States Trustee for the Southern District of New York; (ii) each of the claimants whose claim is subject to this First Omnibus Objection; and (iii) counsel to the Reorganized Debtors. 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**

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

**CONCLUSION**

**WHEREFORE**, the Trust Administrator respectfully request that the Court enter an order (i) substantially in the form attached hereto as Exhibit G, granting the relief requested; and (ii) granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
October 11, 2011

KELLEY DRYE & WARREN LLP

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