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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**

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

**TRUST ADMINISTRATOR’S SECOND (SUBSTANTIVE) OMNIBUS
OBJECTION TO CERTAIN (A) OVERSTATED CLAIMS;
(B) NO LIABILITY CLAIMS; AND (C) REJECTION DAMAGES 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 second (substantive) omnibus objection (the “Second Omnibus Objection”) to the claims listed on Exhibits A through C attached hereto, pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007, seeking entry of an order (a) disallowing, in part, the overstated claims listed on Exhibit A; (b) disallowing and expunging in full the no liability

¹ 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.

claims listed on Exhibit B; and (c) reducing the rejection damages claims listed on Exhibit C.

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

JURISDICTION

1. This Court has jurisdiction to consider the Second 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”)² confirming the Debtors’ Amended Joint Chapter 11 Plan of Reorganization For Jennifer Convertibles, Inc. and its Affiliated Debtors (the “Plan”).³

² Docket Entry No. 491.

³ 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”).⁴ 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.⁵ On July 12, 2011, the Court entered an order extending the Objection Deadline to October 20, 2011.⁶

⁴ Docket Entry No. 503.

⁵ Docket Entry No. 589.

⁶ 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.⁷ 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, 2001 at 5:00 p.m. (EST) as the last date for governmental units to file proofs of claim.⁸

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

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

⁷ Docket Entry No. 203.

⁸ Docket Entry No. 247.

⁹ Docket Entry No. 215.

¹⁰ 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 Second 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 Second Omnibus Objection and for the reasons described more fully below, the Trust Administrator objects to the claims set forth on Exhibits A through C 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 D, reducing, disallowing and/or expunging 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. Overstated Claims

17. After reconciling each of the Claims and supporting materials available to the Trust Administrator, the Trust Administrator has identified certain Claims listed in Exhibit A to the Proposed Order (the “Overstated Claims”) that were filed in incorrect amounts.

18. The claimants asserting the Overstated Claims (a) asserted amounts that are higher than the actual amount of liabilities of the Debtors, or (b) asserted charges, fees, interest or other amounts to which the respective claimant is not entitled to under contract or applicable law.

19. Accordingly, the Overstated Claims should be modified by reducing the amounts to the dollar values listed under the column titled “Modified Claims” in Exhibit A. Failure to modify the Overstated Claims will result in the respective claimants receiving an excessive recovery against the Trust to the detriment of other general unsecured creditors. Accordingly, the Trust Administrator (a) objects to the allowance of each of the Overstated

Claims, and (b) seeks entry of an order reducing the amount of the Overstated Claims to the correct amount as listed in Exhibit A under the heading “Modified Claims.”

20. Reducing the Overstated Claims pursuant to this Section A of the Second Omnibus Objection does not constitute any admission or finding with respect to any of the Modified Claims. All of the Trust Administrators’ right to object to any Modified Claim, including in other sections of this Second Omnibus Objection, on any basis are reserved. Furthermore, the Trust Administrator reserves all rights to object to any Overstated Claim as to which the Court does not grant the relief requested herein.

B. No Liability Claims

21. Section 502(b)(1) of the Bankruptcy Code provides that a claim asserted in a proof of claim shall be allowed, except to the extent “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law.” 11 U.S.C. § 502(b)(1).

22. The Trust Administrator has identified certain Claims listed on Exhibit B (the “No Liability Claims”) for which the Trust Administrator believes the Debtors are not liable. The Trust Administrator believes that the No Liability Claims are not valid claims because: (i) the product was not sold or the service was not provided to any of the Debtors; (ii) the claims are not enforceable against the Debtors or their property under any agreement or applicable law; or (iii) the claimant waived, released, or is estopped from asserting any claims against the Debtors’ estates.

23. Accordingly, the Trust Administrator (i) objects to the No Liability Claims, and (ii) requests entry of an order disallowing each of the No Liability Claims listed on Exhibit B. Disallowing the No Liability Claims pursuant to this Section B of the Second

Omnibus does not constitute any admission or finding with respect to any of the No Liability Claims. Furthermore, the Trust Administrator reserves all rights to object to any No Liability Claim as to which the Court does not grant the relief requested herein.

C. Rejection Damages 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 C (the "Rejection Damages Claims") assert amounts in excess of the statutory cap imposed by section 502(b)(6) of the Bankruptcy Code. Section 502(b)(6) caps a landlord's claim in bankruptcy for damages resulting from the termination of a real property lease. Pursuant to section 502(b)(6) of the Bankruptcy Code, a landlord's Rejection Damages Claim is capped at the rent reserved by such lease, without acceleration, for the greater of one year, or fifteen percent, not to exceed three years, of the remaining term of such lease, following the earlier of the date of the filing of the petition and the date on which such lessor repossessed, or the lessee surrendered, the leased property (the "502(b)(6) Cap"). 11 U.S.C. § 502(b)(6).

25. The purpose of the 502(b)(6) Cap is to "limit lease termination claims to prevent landlords from receiving a windfall over other creditors." *In re PPI Enters., Inc.*, 324 F.3d at 207-08 (citing H.R. Rep. No. 95-595, at 353 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6309 ("[The cap] limits the damages allowable to a landlord of the debtor. . . . It is designed to compensate the landlord for his loss while not permitting a claim so large (based on a long-term lease) as to prevent other general unsecured creditors from recovering a dividend

from the estate. The damages a landlord may assert from termination of a lease are limited”); (further citation omitted)).¹¹

26. The Trust Administrator objects to the Rejections Damages Claims identified on Exhibit C because each of the respective claimants failed to properly calculate the 502(b)(6) Cap. Accordingly, the Trust Administrator seeks entry of an order reducing each of the Rejection Damages Claims listed on Exhibit C to the amount listed in the column “Adjusted Claim” pursuant to section 502(b)(6) of the Bankruptcy Code and Bankruptcy Rule 3007 because such claims are unenforceable against the Debtors. Reducing the Rejection Damages Claims will ensure that the claimants do not receive recoveries in excess of the 502(b)(6) Cap.

27. Reducing the Rejection Damages Claims does not constitute any admission or finding with respect to any of the Adjusted Claims. All of the Trust Administrators’ right to object to any Adjusted Claim, including in other sections of this Second Omnibus Objection, on any basis are reserved. Furthermore, the Trust Administrator reserves all rights to object to any Rejection Damages Claim as to which the Court does not grant the relief requested herein.

RESPONSES TO OMNIBUS OBJECTIONS

28. To contest an objection, a claimant must file and serve a written response to this Second 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

¹¹ The Bankruptcy Court of the District of Delaware has found that the 502(b)(6) Cap applies to a non-residential real property rejected lease. *In re Foamex International Inc.*, 368 B.R. 383, 391 (Bankr. D. Del. 2007).

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.

29. Every Response to this Second 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 Second 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 Second Omnibus Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

30. 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 C, without further notice to the claimant.

SEPARATE CONTESTED MATTERS

31. To the extent that a Response is filed regarding any Claim listed in this Second 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 Second Omnibus Objection shall be deemed a separate order with respect to each Claim.

RESERVATION OF RIGHTS

32. The Trust Administrator hereby reserves the right to object in the future to any of the Claims that are the subject of this Second Omnibus Objection on any ground, and to amend, modify, and/or supplement this Second 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.

33. Notwithstanding anything contained in this Second 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 Second 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

34. Since this Second 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 Second Omnibus Objection is not necessary under Local Bankruptcy Rule 9013-1.

NOTICE

35. Notice of this Second 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 the Second 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

36. 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 C, 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

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