

**Platzer, Swergold, Karlin, Levine,
Goldberg & Jaslow, LLP**

*Counsel for KDW Restructuring & Liquidation Services LLC
as Trustee of the Jennifer Convertibles Litigation Trust
1065 Avenue of the Americas, 18th Floor
New York, New York 10018
(212) 593-3000
Clifford Katz, Esq.*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re JENNIFER CONVERTIBLES, INC., *et al*,
Debtors.

Case No. 10-13779 (ALG)
(Jointly Administered)
CONFIRMED CHAPTER 11

KDW RESTRUCTURING & LIQUIDATION
SERVICES LLC, AS TRUSTEE OF THE JENNIFER
CONVERTIBLES LITIGATION TRUST,
Plaintiff,

Adversary Proceeding No.

v.

COMPLAINT

HARLEY GREENFIELD, EDWARD G. BOHN,
KEVIN L. COYLE, RAMI ABADA,
MARK J. BERMAN, EDWARD B. SEIDNER,
KEVIN MATTLER, and LESLIE FALCHOOK,
Defendants.

KDW Restructuring & Liquidation Services LLC, as Trustee (the "Trustee") of the Jennifer Convertibles Litigation Trust (the "Trust"), held for the benefit of the Official Committee of Unsecured Creditors (the "Committee") of Jennifer Convertibles, Inc., *et al* (collectively, the "Debtors"), for and on behalf of itself and the Debtors' estates, by and through its attorneys, alleges as follows:¹

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.

GENERAL BASIS FOR CLAIMS FOR RELIEF

1. In 2009 and 2010, Jennifer Convertibles, Inc.'s ("Jennifer") Board of Directors and Officers failed to act with care, good faith or appropriate judgment in authorizing several transactions designed to forgive significant debt owed to Jennifer by Jara Enterprises, Inc. ("Jara"), a company owned and operated by the sister of Jennifer's Chairman and Chief Executive Officer. As a result of these bad faith and non-arm's length transactions, Jennifer was deprived of over \$5 million that should have been paid to it by Jara. Accordingly, Jennifer's directors and officers caused Jennifer at least \$5 million in damages.

2. This adversary proceeding seeks to recover damages arising out of the defendants', Harley Greenfield ("Greenfield"), Edward Bohn ("Bohn"), Kevin L. Coyle ("Coyle"), Rami Abada ("Abada"), Mark J. Berman ("Berman"), Edward B. Seidner ("Seidner"), Kevin Mattler ("Mattler") and Leslie Falchhook ("Falchhook," collectively referred to with Greenfield, Bohn, Coyle, Abada, Berman, Seidner, and Mattler as the "Defendants") breaches of fiduciary duties and mismanagement related to transactions with Jara.

JURISDICTION AND VENUE

3. On July 18, 2010 (the "Petition Date"), the Debtors filed with this Court a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

4. On July 23, 2010, the United States Trustee for the Southern District of New York appointed the Committee pursuant to 11 U.S.C. § 1102.

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334(b) and 157(b). This adversary proceeding is non-core.

6. Venue for this adversary proceeding is proper in this Court pursuant to 28 U.S.C. § 1409.

7. Pursuant to Article 9 of the *Second Amended Joint Chapter 11 Plan of Reorganization for Jennifer Convertibles, Inc and its Affiliated Debtors* [Docket No. 466] (the “Chapter 11 Plan”), all Litigation Trust Causes of Action, which includes the instant cause of action, were transferred to the Litigation Trust. The Court granted to the Litigation Trust the power to litigate all causes of action by or on behalf of the Debtors or the Reorganized Debtors.

8. The Chapter 11 Plan was confirmed on February 9, 2011 and became effective on February 22, 2011.

THE PARTIES

9. Plaintiff is the Trustee of the Litigation Trust held on behalf of the Debtors’ Estates (the “Plaintiff.”)

10. Jennifer was and is incorporated in Delaware in 1986 and has its principal place of business at 417 Crossways Park Drive, Woodbury New York, 11797.

11. Jennifer is the largest sofa bed specialty retail dealer and leather specialty retail dealer in the United States.

12. Upon information and belief, and all times relevant hereto, Defendants are or were Jennifer's Board of Directors and Officers.

13. Upon information and belief, and all times relevant hereto, Defendant Greenfield was and is a member of the Board of Directors and Chief Executive Officer of Jennifer.

14. Upon information and belief, and all times relevant hereto, Defendant Abada was and is President of Jennifer and a member of its Board of Directors.

15. Upon information and belief, and all times relevant hereto, Defendant Bohn was and is a member of Jennifer's Board of Directors.

16. Upon information and belief, and all times relevant hereto, Defendant Coyle was and is a member of Jennifer's Board of Directors.

17. Upon information and belief, and all times relevant hereto, Defendant Berman was and is a member of Jennifer's Board of Directors.

18. Upon information and belief, and all times relevant hereto, Defendant Seidner was and is Jennifer's Executive Vice President and at one time was a member of Jennifer's Board of Directors.

19. Upon information and belief, and all times relevant hereto, Defendant Falhook was and is a Vice President at Jennifer.

20. Upon information and belief, and all times relevant hereto, Defendant Mattler was and is Jennifer's Vice President of Store Operations.

SUBSTANTIVE ALLEGATIONS

Defendants Were Motivated In Dealing With Jara By Concerns Which Conflicted With Jennifer's Best Interest And Did Not And Could Not Benefit Jennifer.

21. Defendants Greenfield, Seidner, Abada, Falhook, and Mattler were either personally or professionally affiliated with Jara and/or its founders.

22. Upon information and belief, Jennifer was founded by Greenfield, Seidner and Fred Love.

23. Upon information and belief, Greenfield, along with Seidner and Fred Love, also founded Jara, a private company whose business substantially involved day to day dealings with Jennifer which included (i) providing services to Jennifer, including site selection and warehousing services, and (ii) acting as Jennifer's licensee.

24. Upon information and belief, prior to the wrongful acts alleged herein, Seidner was an Officer of Jara.

25. Upon information and belief, prior to the wrongful acts complained of herein, Greenfield and Seidner were principal shareholders of Jara and eventually sold their shares in Jara to Fred Love who was married to Greenfield's sister, Jane Love.

26. Upon Fred Love's death, his widow, Jane Love, became Jara's President.

27. Upon information and belief, Jane Love became the controlling shareholder of Jara and exercised substantial control over the operations and affairs of Jara during all relevant times mentioned herein.

28. Upon information and belief, Jara had a significant equity interest in Jennifer, namely the ownership of 93,579 shares of common stock.

29. Upon information and belief, Defendants Abada, Falchook and Mattler, prior to the acts of wrongdoing complained of herein, had been key employees of Jara, and were intimately familiar with Jara's operations and key personnel.

30. Upon information and belief, all of the Defendants knew or should have known of the conflicts of interest presented by the Defendants' close relationship with Jara.

Defendants' Non-Arm's Length Relationships With Jara's Operating Personnel Have Resulted In Investigations And Litigation At Various Times Prior To This Action.

31. In 1995, a formal SEC investigation was commenced as well as several class action and derivative lawsuits against Jennifer's Directors. As an outgrowth of the formal SEC investigation and lawsuits commenced against Jennifer's Directors, including one or more of the Defendants, the disputants entered into various settlement agreements (the "2005 Settlement Agreements") which, among other things, required a restructuring of the relationship between Jennifer and Jara and the institution of a "Monitoring Committee" charged with scrutinizing future dealings between Jennifer and Jara.

32. Among the 2005 Settlement Agreements were: (i) a “Purchasing Agreement” pursuant to which Jennifer bought merchandise from Jara at a stipulated price which Jara was required to pay; (ii) a “Warehouse Agreement,” pursuant to which Jennifer provided warehousing services to Jara in exchange for a fee of 7.5% of the net sales prices of goods paid by Jara; and (iii) a “Management Agreement and License,” under which Jara was required to contribute at least \$150,000 per month to Jennifer for certain advertising fees.

Commencing in 2009, the Defendants Wrongfully, Inappropriately and in Violation of Their Fiduciary Duties to Jennifer Approved Various Transactions Designed to Avoid and/or Waive the Enforceability of Claims and Rights Against Jara.

33. In 2009, Defendants approved a series of transactions with Jara (the “2009 Transactions”) which inured entirely to Jara's benefit and at great expense to Jennifer, its shareholders and its estate.

34. The 2009 Transactions, without adequate or sufficient consideration therefore, effectively absolved Jara of substantial obligations to Jennifer, causing Jennifer significant financial loss and jeopardizing its assets and impairing its ability to continue operating.

35. Upon information and belief, the Defendants were influenced in their wrongful conduct by their personal relationships with Jara and/or its principals and not by their loyalty or fiduciary duty to Jennifer.

36. Defendants, who have had professional and personal ties to Jara, approved the 2009 Transactions without good faith, arm’s length and appropriate deliberation, analysis, or a discernable decision making protocol.

37. Upon information and belief, Defendants purposefully approved these transactions in complete dereliction of their obligations as Directors and Officers of Jennifer and

by so doing participated in a course of conduct designed to divest Jennifer of substantial assets and receivables and to divert the same to Jara without any benefit to Jennifer.

38. Upon information and belief, throughout 2009, Jara was in material breach and default of the terms of the 2005 Settlement Agreements by reason of, among other things, its failure to pay \$947,000 in current charges and its continued failure and refusal to make such payments even though they were grossly overdue.

39. Upon information and belief, the Defendants caused Jennifer to take an “allowance for loss” of the entire amount owed by Jara to Jennifer in order to create the appearance that the debt was uncollectible and removed the accounts receivables from its own financial statements.

40. Upon information and belief, the principal motivation of the Defendants in taking the so-called “allowance for loss” was to justify their desire to excuse Jara’s obligation to pay this debt and to justify Jennifer’s failure to collect and protect its own assets in the ordinary course of its business, all to the benefit of Jara and the detriment of Jennifer.

41. Notwithstanding Jara's default in paying huge sums of money it owed to Jennifer, Defendants permitted Jennifer to continue doing business with Jara and allowed Jara to accumulate other significant debt which it did not pay to Jennifer.

42. Upon information and belief, while “looking the other way” with respect to Jara’s failure to meet even a minimal level of credit worthiness, the Defendants continued to extend credit to Jara when, in the exercise of sound business principles, it would not do so with any other business relationship.

43. Subsequently, Defendants authorized Jennifer to record an additional “allowance for loss” of \$3,167,000 for the 13-week period ending November 28, 2009, and to not enforce

Jennifer's rights under the 2005 Settlement Agreements. Despite Jara's horrific delinquencies, the Defendants allowed Jara to be sheltered from yet another \$3,167,000 in liabilities.

44. On or about December 11, 2009, Defendants worked out a deal with Jara which resulted in the termination of the Purchasing Agreement with Jara and permitted Jennifer to enter into an interim agreement with Jara (the "Interim Agreement").

45. Rather than mandating that Jara pay its overdue balance, the Interim Agreement provided that Jara would receive compensation equal to 35% of the sales price of merchandise sold during a given time period.

46. In so doing, the parties effectively whitewashed the actual character of their relationship under the 2005 Settlement Agreements by camouflaging the same as a consignment arrangement, when in fact it was a purchase and sale. The Interim Agreement imposed no penalty on Jara if it was unsuccessful in making sales.

47. Jara defaulted on the Interim Agreement, and on December 31, 2009, Defendant Greenfield, with the other Defendants' approval, and Jane Love entered into an agreement (the "2009 Agreement") whereby Jennifer acquired Jara's business assets.

48. The 2009 Agreement read, in pertinent part, as follows:

3. Subject to receipt of a bill of sale or other appropriate evidence of conveyance of title, Jennifer will pay to Jara \$635,000 for the current inventory in each of the Stores. Jennifer shall make such payments in accordance with the schedule set forth on Annex A attached hereto. Jara shall also be entitled to receive, the remaining balance collected from customers on Old Sales, as defined below, which were delivered on December 23, 2009, December 24, 2009 and December 26, 2009. Except as set forth in the prior sentence, Jara is not entitled to any payments by customers with respect to amounts received by Jennifer for Old Sales or any other sales written at the Stores.

5. Jennifer acknowledges and agrees that amounts owed under the Interim Agreement estimated at \$301,000, and due to Jennifer pursuant to Interim Agreement (the "Balance"), are hereby deemed paid in full, except as otherwise

provided herein, subject to the transfer by Jara to Jennifer of 93,579 shares of Jennifer common stock, par value \$0.01 per share, owned by Jara.

49. Under the 2009 Agreement, Jennifer paid Jara \$635,000 for its inventory, notwithstanding the millions of dollars still owed by Jara to Jennifer.

50. The 2009 Agreement authorized by the Defendants without having received sufficient or adequate consideration therefore and without any reasonable business purpose for doing so, required Jennifer to (i) absolve Jara of \$301,000 due under the Interim Agreement, and (ii) take on substantial liabilities for, among other things, Jara's lifetime fabric and leather protection plans.

51. Thereafter, in January 2010, Defendants, without having received sufficient or adequate consideration therefore and without any reasonable business purpose for doing so chose to permanently relieve Jara of over \$4,000,000 of prior obligations.

52. Upon information and belief, in an effort to conceal their true motivations and to create the appearance of justifiable and arm's length dealings with Jara, the Defendants "seeded" the minutes of meetings of Jennifer's Board of Directors with pointed references to contract enforcement procedures, which were never invoked, and other language calculated to create the appearance that they were aware of their fiduciary duties and that they were relying upon purported opinions of counsel. In fact, however, Defendants ignored and failed to fulfill their fiduciary duties.

53. For example:

a) During a November 23, 2009 meeting of the Board of Directors, it was repeatedly stated by an individual present that Harley Greenfield "owned" Jara. These were met with responses from the Board's counsel that the Defendants were "carefully following their fiduciary duties." Yet, Defendant Greenfield remained in the meeting and his obvious influence and

control over the board was asserted, whether or not accompanying language appeared in the meeting minutes;

b) During a December 18, 2009 meeting of the Board of Directors, Defendant Greenfield voted in favor of continuing to ship stock to Jara despite previous advice from inside counsel that he not vote on matters concerning Jara;

c) In numerous Board Meetings, one of the members of the Board, and an Officer of Jennifer, repeatedly suggested that he did not believe the Board was adhering to its fiduciary duties;

d) The Defendants ultimately approved the 2009 Agreement which effectively cancelled the prior agreements; and

e) At a November 25, 2009 Special Meeting of the Board of Directors, it was noted that Jara had provided no financial information to the Defendants, nor had an expert opinion been provided to the Defendants regarding the desirability and appropriateness of canceling prior agreements. Despite the absence of these key elements of due diligence, the Defendants thereafter voted to keep shipping stock to Jara and entered into the Interim Agreement to abrogate the terms of previous contracts between Jennifer and Jara on terms more favorable to Jara.

54. Upon information and belief, Defendants intentionally adopted the 2009 Transactions (i) without consideration of their implications, (ii) without due care, (iii) in bad faith, (iv) without any valid advice from outside consultants, (v) with the intention of forgiving Jara's debt and with a palpable conflict of interest as fiduciaries of Jennifer, its shareholders and its estate.

55. The 2009 Transactions caused Jennifer to suffer tremendous financial losses. For example, in the first and second quarters of fiscal year 2010², when the bulk of these transactions took place, Jennifer reported losses of \$6,870,000 and \$6,413,000, respectively.

56. Upon information and belief, Jennifer had adopted a Code of Ethics which includes a section entitled “Conflicts of Interest.”

57. The Code of Ethics, under the heading “Conflicts of Interest,” instructed that:

No associate or immediate family member of an associate shall have a significant financial interest in, or obligation to, any outside enterprise which does or seeks to do business with the company or which is an actual or potential competitor of the company, without prior approval from the Compliance Committee Member, or in the case of executive officers or members of the Board of Directors, the full Board of Directors or a committee thereof.

58. Upon information and belief, Defendant Greenfield was in breach of this section as his sister had a “significant financial interest” in Jara which was an “outside enterprise which does...business with the company.” Upon information and belief, the remaining Defendants knew or should have known about this conflict of interest yet wrongfully and recklessly failed to require Greenfield’s recusal during all votes involving Jara or to take other appropriate action.

59. At the end of Fiscal Year 2009, Jennifer reported a net loss of \$11,008,000 and in Fiscal Year 2008 Jennifer reported a net loss of \$3,329,000. Upon information and belief, throughout Fiscal Year 2009 and the first two quarters of fiscal year 2010, Jennifer closed several stores and began to engage in extreme cost cutting programs in a “last ditch effort” to continue its operations in the ordinary course of its business. Upon information and belief, despite the disastrous financial situation in which Jennifer found itself, the Defendants caused

² The First and Second Quarters of Fiscal 2010 correspond with the end of calendar year 2009.

Jennifer to effectively forgive Jara's debt, which constituted approximately 40% of Jennifer's net reported loss in fiscal year 2009.

CAUSE OF ACTION

Breach of Fiduciary Duty

60. Plaintiff repeats and realleges paragraphs 1 through 59 as if fully set forth herein.

61. The 2009 Transactions were conducted in bad faith, not at arm's length and were adverse to Jennifer's best interests. While these transactions absolved Jara of all liability to Jennifer, they caused Jennifer enormous and irreversible financial loss.

62. The Defendants knew or should have known of the self-dealing, conflicts of interest and preferential treatment towards Jara presented by the 2009 Transactions, but despite their knowledge they refused to rectify the 2009 Transactions, acquiesced to the 2009 Transactions and/or actively engaged in the furtherance of the 2009 Transactions. This activity constitutes a pattern of sustained, intentional and systematic failure to exercise oversight in managing Jennifer's affairs.

63. Defendants' foregoing conduct constituted a "rubber-stamping" of the 2009 Transactions in bad faith and were instituted in gross negligence, and/or conscious disregard for their duties as officers and directors.

64. By reason of the foregoing, the Defendants' approval of the 2009 Transactions constituted a breach of their fiduciary duties to Jennifer.

WHEREFORE, Plaintiff demands judgment against Greenfield, Bohn, Coyle, Abada, Berman, Seidner, Falchook, and Mattler as follows:

A. In an amount to be determined at trial, but in no event less than \$5 million, plus interest, attorneys' fees, and costs; and

B. Such other and further relief as the Court may deem just and proper.

Dated: New York, New York

November 2, 2011

**Platzer, Swergold, Karlin, Levine,
Goldberg & Jaslow, LLP**
*Special Counsel for KDW Restructuring &
Liquidation Services LLC as Trustee of the
Jennifer Convertibles Litigation Trust*

By: /s/ Clifford A. Katz
Clifford A. Katz, Esq.
A Member of the Firm
1065 Avenue of the Americas, 18th Floor
New York, New York 10018
(212) 593-3000