

WARNER & SCHEUERMAN
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Hearing Date: February 28, 2012, at 10:00 A.M.

Counsel For Claimant
Jara Enterprises, Inc.

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

JENNIFER CONVERTIBLES, INC., et. al.,

Case No. 10-13779 (ALG)

Debtors.

(Jointly Administered)

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**RESPONSE OF CLAIMANT JARA ENTERPRISES, INC.,
TO THE FOURTH OMNIBUS OBJECTION TO CERTAIN CLAIMS**

Jara Enterprises, Inc. (“Jara”), by its attorneys Warner & Scheuerman, hereby submits the following response to the Fourth Omnibus Objection To Certain Claims filed by The Trust Administrator (the “Trust Administrator”) for the Jennifer Convertibles Litigation Trust (the “Trust”) in its capacity as Trust Administrator of the above-captioned Debtors’ Estates (collectively, the “Debtors”), which objection classified Jara’s claim as “No Liability.”

1. Jara duly filed a Proof of Claim dated March 9, 2010, and Jara’s claim was assigned Claim No. 384. A copy of Jara’s Proof of Claim is annexed as Exhibit “1.”

2. Jara’s claim is for the amount of \$110,000.00, which represents the amount due and owing to Jara by Jennifer Convertibles, Inc. (the “Jennifer Convertibles”) pursuant to a written agreement between the parties.

3. Prior to December 31, 2009, Jara was the owner and operator of numerous retail stores licensed to sell "Jennifer Convertibles" trademarked products.

4. By agreement entered into as of December 31, 2009, operational control of Jara's stores, including all inventory therein, was transferred to the Debtor in exchange for certain payments and other consideration (the "Agreement"). A copy of the Agreement is annexed as Exhibit "2."

5. The Agreement provided, *inter alia*, that as of January 1, 2010, Jennifer Convertibles will operate all of Jara's stores for the benefit of Jennifer Convertibles, and that Jennifer Convertibles will collect all customer payments.

6. The Agreement further provided, *inter alia*, that all prior agreements between the parties were terminated and were of no further force and effect, including the Trademark Usage Agreement pursuant to which permitted to Jara was permitted to sell "Jennifer Convertibles" trademarked goods.

7. The Agreement further provided, *inter alia*, that Jennifer Convertibles was required to pay Jara the sum of \$635,000.00 for the inventory in Jara's twenty (20) stores, with such payments to be made in accordance with the schedule set forth on "Annex A" attached thereto. Annex A to the Agreement required Jennifer Convertibles to make six (6) separate payments to Jara from January 1, 2010, to May 15, 2010. Annex A of the Agreement provided:

Jennifer shall pay Jara \$635,000 in accordance with the schedule below:

- a. \$100,000 by January 1, 2010;

- b. \$100,000 by January 15, 2010;
- c. \$150,000 by February 10, 2010;
- d. \$100,000 by March 10, 2010;
- e. \$75,000 by April 10, 2010; and
- f. \$110,000 by May 10, 2010.

8. It is without dispute that Jennifer Convertibles assumed operational control over Jara's stores and took possession over all inventory therein pursuant to the Agreement. It is also without dispute that Jennifer Convertibles made the first five (5) payments to Jara provided by the Agreement, but breached the Agreement by failing and refusing to make the final payment on the amount of \$110,000.00 due and owing on May 10, 2010. Jara's Claim herein is for the sixth and final payment in the amount of \$110,000.00.

9. Although Jennifer Convertibles took operational control over Jara's stores and made the first five (5) payment due and owing to Jara under the Agreement, the Trust Administrator has objected to Jara's Claim for the final payment owed under the Agreement as a "no liability" claim pursuant to Section 502(b)(1) of the Bankruptcy Code.

10. The Trust Administrator requests that Jara's claim be disallowed as a no liability claim, without providing any factual or legal explanation for such request. The Trust Administrator has lumped Jara's Claim together with numerous other claims asserted by various other claimants, and has collectively rejected all "no liability claims" as "not valid 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 of their property under any agreement or applicable law; or (iii) the

claimant was waived, released, or is estopped from asserting any claims against the Debtors' estates."

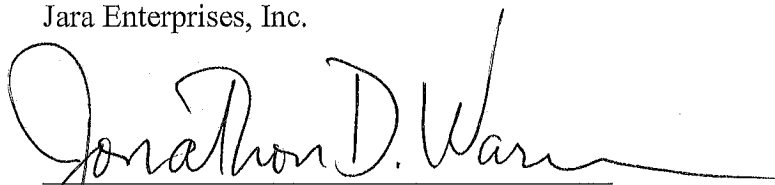
11. None of the grounds for rejection provided by the Trust Administrator is applicable to Jara's claim. First, it is uncontroverted that Jennifer Convertibles took operational control over Jara's stores on or after January 1, 2010, and possession over all inventory therein, as evidenced by the fact that Jennifer Convertibles subsequently made the first five (5) payments due and owing under the Agreement. There is thus no basis for the Trust Administrator's objection on the ground that "the product was not sold or the service was not provided to any of the Debtors." Second, it is uncontroverted that Jara's claim seeks the final payment due and owing to Jara pursuant to the Agreement attached hereto as Exhibit "2." There is thus no basis for the Trust Administrator's objection on the ground that Jara's claim is not enforceable "under any agreement or applicable law." Finally, Jara has not engaged in any conduct which could possibly be construed as a waiver or a release of its rights under the Agreement, and the Trust Administrator has failed to provide any evidence supporting its conclusory allegation that "the claimant waived, released, or is estopped from asserting any claims against the Debtors' estates."

WHEREFORE, claimant Jara Enterprises, Inc., respectfully requests that the Court deny the Trust Administrator's request for an Order disallowing and expunging the claim of Jara Enterprises, Inc., and granting such further relief as may be just.

Dated: New York, New York
February 21, 2012

WARNER & SCHEUERMAN
Attorneys for Claimant
Jara Enterprises, Inc.

By:



Jonathon D. Warner (JW 5195)
6 West 18th Street, 10th Floor
New York, New York 10011
Tel: (212) 924-7111
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To: **KELLEY DRYE & WARREN LLP**
(Attention James S. Carr, Esq., and Jason R. Adams, Esq.)
Attorneys for the Trust Administrator
101 Park Avenue
New York, New York 10178
Tel: (212) 808-7800
Fax: (212) 808-7897

EXHIBIT 1

B 10 (Official Form 10) (04/10)

UNITED STATES BANKRUPTCY COURT		PROOF OF CLAIM
Name of Debtor: Jennifer Convertibles, Inc.		Case Number: 10-13779 (ALG)
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): JARA ENTERPRISES, INC.		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: Jara Enterprises, Inc., c/o Jonathon D. Warner, Esq. Warner & Scheuerman, 6 West 18th Street, 10th Floor New York, New York 10011 Telephone number: 212.924.7111		Court Claim Number: _____ (If known)
Name and address where payment should be sent (if different from above): Same as above		Filed on: _____
Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed: \$ <u>110,000.00</u>	5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.	
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.	Specify the priority of the claim.	
If all or part of your claim is entitled to priority, complete item 5.	<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).	
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).	
2. Basis for Claim: <u>Rejection of attached Inventory Purchase Agreement as per attached Notice</u> (See instruction #2 on reverse side.)	<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).	
3. Last four digits of any number by which creditor identifies debtor: _____	<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7).	
3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)	<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).	
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.	<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(____).	
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other	Amount entitled to priority: \$ _____	
Describe:	*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
Value of Property: \$ _____ Annual Interest Rate _____ %		
Amount of arrearage and other charges as of time case filed included in secured claim,		
if any: \$ _____ Basis for perfection: _____		
Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)		
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.		
If the documents are not available, please explain:		
Date: March 9, 2011	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number, if different from the notice address above. Attach copy of power of attorney, if any. Jonathon D. Warner, Esq. Attorney for Jara Enterprises, Inc.	FOR COURT USE ONLY

EXHIBIT 2

AGREEMENT

1. This Agreement (this "Agreement") is hereby entered into as of December ~~21~~²¹, 2009 between Jara Enterprises Inc. ("Jara"), Jane Love and Jennifer Convertibles, Inc. ("Jennifer"). Jara has ceased operations of the 20 Jennifer stores controlled and operated by it or its subsidiaries, including a licensed store operated by Jara, the owner of which has consented to have its store treated as if such store was owned by Jara for the purposes of this Agreement (the "Stores") and Jennifer wishes to provide an orderly wind down of such operations to protect the brand and its customers.

2. The parties hereby agree that as of the January 1, 2010, Jennifer will, subject to Section 7, operate any or all of the Stores for the benefit of Jennifer and Jennifer will collect all customer payments from sales made at the Stores and after such date. Jennifer will offer to employ all Store location based employees currently employed by Jara, provided they sign an appropriate agreement to the effect that Jennifer is not responsible for any commissions, salary, health or other benefits or other compensation owed them prior to such date, and the parties hereby agree that Jennifer will not be, and is not, responsible for any such commissions, salary or compensation. Jennifer will be responsible for the costs of operating the Stores on and after January 1, 2010, except as provided in Section 7 with respect to Stores vacated by Jennifer.

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.

4. Jennifer hereby agrees to ship to customers, subject to customers' refusal or inability to accept delivery, the merchandise for sales written at the Stores ("Old Sales") on or prior to November 27, 2009 but not yet delivered. Jara shall not be required to make any further payment as to the merchandise to be delivered to fulfill Old Sales. Jara agrees to be responsible for and pay all sales taxes and commissions on Old Sales and Jennifer shall not be responsible for such taxes or commissions. In the event that an Old Sale is re-written with a date after November 27, 2009, Jara agrees to be responsible for payment of sales taxes, or reimburse Jennifer if Jennifer pays such taxes, and commissions on the rewritten Old Sale. Jennifer shall be entitled to any additional deposits or other payments received by Jara after December 21, 2009, for Old Sales. Jara shall not make any floor sales from inventory after December 26, 2009, with the exception of the Store located in Bedford-Stuyvesant, Brooklyn, New York (the "BED Store") that is being liquidated. Jara shall be responsible for all sales taxes and commissions on floor sales from inventory made prior to January 1, 2010 at any of the Stores. With respect to the BED Store, Jara is responsible for the sales tax, commissions, any other payments, including, delivery charges. Jennifer will not be responsible for delivery of any merchandise in the BED Store and Jara agrees to use its own services for delivery.

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.

6. Except as provided in Section 3, Jara agrees to pay Jennifer all amounts collected by it which exceed 35% of the collected sales price (excluding delivery costs and applicable sales taxes) for all sales subsequent to December 21, 2009 and prior to January 1, 2010, whether as part of an initial deposit or Additional Payments as defined below. Any amounts in excess of the 35% which Jara does not pay to Jennifer shall be offset against amounts due to Jara pursuant to Section 3. For purposes of this Agreement, "Additional Payments" shall mean any payments received by Jara with respect to sales after an initial deposit.

7. Beginning on January 1, 2010, Jennifer agrees to negotiate as to the existing leases for the Stores with each landlord and will endeavor to cancel or defer the rent arrearages, which to Jara's knowledge aggregate approximately \$300,000 as of the date of this Agreement. Jennifer will pay no more than \$300,000 to settle the arrearages at all 20 Stores and if the arrearages exceed \$300,000 Jara will reimburse Jennifer for such excess or such excess will be used to offset the amount Jennifer owes Jara pursuant to Section 3. Jara agrees to cooperate with Jennifer with respect to Jennifer's attempts to negotiate such settlements and new leases if Jennifer wants to take over the store location. While it is the intent of Jennifer to take over all 20 Stores, the parties hereby acknowledge that Jennifer may not be able to successfully negotiate for a new lease or other arrangement on terms satisfactory to Jennifer, in its sole discretion, in which case Jennifer will vacate the leased property and Jara shall arrange for closure of the Store and Jennifer shall not be responsible for any amounts still owed to the landlord with respect to such Store location, except for the removal of the showroom inventory which Jennifer shall arrange. Nothing herein shall require Jennifer to enter into a new lease or to spend all or any part of the \$300,000 except that Jennifer shall be obligated to cure arrearages (not to exceed \$300,000 in the aggregate) with respect to the leases for Stores at locations where Jennifer elects to enter into, and does enter into, a new lease on Jennifer's behalf. The parties hereby acknowledge and agree that Jennifer will not take over the Ricky's store lease. To the extent that Jennifer enters into a new lease with the existing landlord, any security deposit will remain with the landlord with respect to the new lease executed by Jennifer and be applied for Jennifer's benefit.

8. Except as specifically set forth herein, the parties agree that Jennifer will not be responsible for any liabilities of Jara.

9. Jane Love agrees to indemnify, defend and hold harmless Jennifer, from and against any and all losses, liabilities, claims, actions, damages and expenses (including without limitation reasonable attorney's fees and disbursements) arising out of Jara's obligations for sales taxes, commissions, payroll and normal store operating expenses through December 31, 2009, but excluding rent and related landlord charges.

10. Jara agrees to provide such information as may be necessary under this Agreement with respect to former Jara employees, shipping, leases and other matters surrounding Old Sales.

11. Each party hereto shall execute and/or cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions as the other parties, or any of them, may reasonably request in order to consummate and make effective the transactions contemplated in this Agreement. The parties will cause any of their affiliates to execute and/or cause to be delivered to each other party hereto such instruments and other documents, and take such other actions as the other parties, or any of them, may reasonably request in order to consummate and make effective the transactions contemplated in this Agreement.

12. The parties hereby acknowledge and agree that all previous agreements or arrangements between the parties, including, but not limited to, the Purchasing Agreement, the Warehousing Agreement, Warehousing Transition Agreement, Management Agreement and License, Hardware Lease, Software License Agreement, Option Agreement, the Royalty Agreement, the Trademark Usage Agreement, the Interim Agreement among Jennifer and Jara and certain of their affiliates and the other related agreements (as each may have been amended from time to time) are terminated and shall be of no further force or effect, including, without limitation, any provisions that purport to extend beyond the termination of the agreements (including any which purport to extend obligations or liabilities beyond such termination), except that Jennifer shall retain all rights, title and interest in, to and under any trademarks, leases and other assets previously conveyed to Jennifer or its affiliates under such agreements. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior and current understandings and agreements, whether written or oral, with respect to the parties. The parties will cause any of their affiliates as were parties to such agreements to execute any additional evidence of termination as may be reasonably requested.

IN WITNESS WHEREOF, the parties have signed this Agreement as of this 31 day of
December 2009.

Jara Enterprises, Inc.

By: Jane Love
Jane Love, President

Jane Love
Jane Love

Jennifer Convertibles, Inc.

By: Harley Greenfield
Harley Greenfield, Chief Executive Officer

ANNEX A

Jennifer shall pay Jara \$635,000 in accordance with the schedule below:

- a. \$100,000 by January 1, 2010;
- b. \$100,000 by January 15, 2010;
- c. \$150,000 by February 10, 2010;
- d. \$100,000 by March 10, 2010;
- e. \$75,000 by April 10, 2010; and
- f. \$110,000 by May 10, 2010.

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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Chapter 11

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Case No. 10-13779 (ALG)

Debtors.

(Jointly Administered)

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STATE OF NEW YORK)

:ss.:

COUNTY OF NEW YORK)

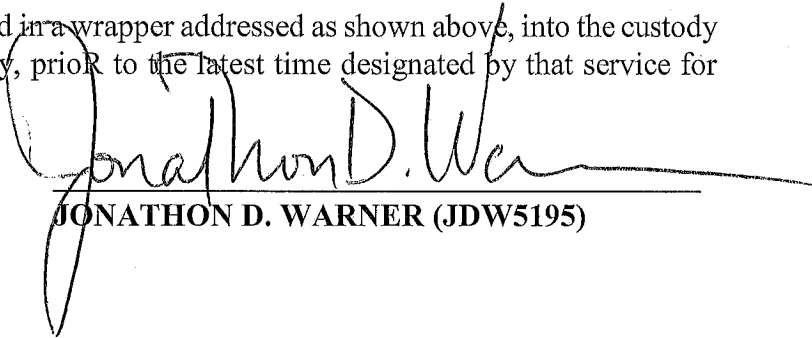
JONATHON D. WARNER, being duly sworn and deposed says:

1. I am a member of the firm of Warner & Scheuerman, attorneys for Jara Enterprises, Inc.

2. On February 21, 2012, I served Jara's Response to **Claimant Jara Enterprises, Inc. to the Fourth Omnibus Objection to Certain Claims**, upon the following:

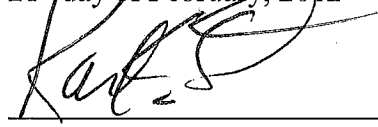
Kelly Dry & Warren LLP
(Attention James S. Carr, Esq., and Jason R. Adams, Esq.)
Attorneys for the Trust Administrator
101 Park Avenue
New York, new York 10178

by depositing a true copy thereof, enclosed in a wrapper addressed as shown above, into the custody of Federal Express for overnight delivery, prior to the latest time designated by that service for overnight delivery.



JONATHON D. WARNER (JDW5195)

Sworn to before me this
21st day of February, 2012



NOTARY PUBLIC

KARL E. SCHEUERMAN
Notary Public, State of New York
No. 02SC5016858
Qualified in Suffolk County
Commission Expires August 23, 2013