

Objection Deadline: April 24, 2012 at 4:00 p.m.
Hearing Date: May 3, 2012 at 10:00 a.m.

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**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)
)	
)	

**APPLICATION OF OAKLAND SQUARE LLC
IN SUPPORT OF STIPULATION AND AGREED ORDER**

Oakland Square LLC ("Oakland Square"), by and through its undersigned counsel, hereby submits its application (the "Application") in support of the stipulation and agreed order (Dkt. No. 690) (the "Stipulation") entered into between it and 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"), and respectfully represents as follows:

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.

1. 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.

2. On August 16, 2010, Oakland Square's counsel wrote to Debtors' counsel (the "August 16 Letter"). A copy of the August 16 Letter is attached hereto as Exhibit A. In the August 16 Letter, Oakland Square advised the Debtors, *inter alia*, that: (i) their August 2010 rent payment was deficient and (ii) their July 2010 rent payment failed to account for unpaid stub rent. Oakland Square indicated that the August 16 Letter was "without prejudice to Landlord's right to seek future administrative expenses from the Bankruptcy Court, and to file a proof of claim in the Jennifer Bankruptcy Case." August 16 Letter n.2.

3. The Debtors did not respond to the August 16 Letter.

4. On September 8, 2010, the Debtors filed a Notice of Proposed Rejection of Unexpired Leases (Dkt. No. 222) (the "Rejection Notice"), which includes the Debtors' proposed rejection of their lease (the "Lease") with Oakland Square and abandonment of the subject premises (the "Premises") on September 28, 2010.

5. On September 16, 2010, Oakland Square's counsel emailed Debtors' counsel (the "September 16 Email"). A copy of the September 16 Email is attached hereto as Exhibit B. The August 16 Letter was attached to the September 16 Email. In the September 16 Email, Oakland Square advised the Debtors, *inter alia*, that: (i) September 2010 rent remained unpaid and (ii) the July 2010 stub rent remained unpaid.

6. The Debtors did not respond to the September 16 Email.

7. On October 25, 2010, Oakland Square filed proof of claim number 338 against Jennifer Convertibles, Inc. asserting claims against Jennifer Convertibles, Inc. in the amount of \$79,551.39 (“Claim 338”). A copy of Claim 338, along with its addendum (the “Addendum”) and corresponding exhibits, is attached hereto as Exhibit C.

8. On the face of the claim form, Claim 338 indicates that Oakland Square asserted a claim entitled to priority under 11 U.S.C. § 507(a)(2).²

9. Further, under the section entitled “Postpetition Claim Amounts,” the Addendum provides that Oakland Square is entitled to (i) “stub rent of \$8,801.79 for unpaid postpetition amounts due and owing for July 2010” and (ii) “\$13,894.76 for its postpetition attorney’s fees and costs under the Lease and the Settlement Agreement” entered into between Oakland Square and the Debtors (together, the “Administrative Claim”). Addendum at ¶¶ 19-20. Oakland Square explicitly relied on 11 U.S.C. § 365(d)(3) or, alternatively, 11 U.S.C. § 503(b)(1) as a basis for its Administrative Claim. Id. at ¶ 27.

10. On February 8, 2011, the Court entered an Order (Dkt. No. 491) (the “Confirmation Order”) confirming the Debtors’ Amended Joint Chapter 11 Plan of Reorganization For Jennifer Convertibles, Inc. and its Affiliated Debtors (Dkt. No. 399) (the “Plan”).

11. Pursuant to section 8.01 of the Plan, the Reorganized Debtors had until 180 days after the date on which the Plan became effective (the “Effective Date”) to object to claims other than general unsecured claims (the “Debtors’ Objection Deadline”).

12. Pursuant to section 9 of the Plan, the Trust was formed on the Effective Date, which occurred on February 22, 2011. Dkt. No. 503.

² Section 507(a)(2) of the Bankruptcy Code includes section 503(b) administrative expenses.

13. On March 14, 2011, the Debtors wrote to Oakland Square, recognizing that Oakland Square had asserted its Administrative Claim, and asked Oakland Square for a “breakdown” of its Administrative Claim (the “March 14 Letter”). A copy of the March 14 Letter is attached hereto as Exhibit D. On March 28, 2011, Oakland Square’s counsel responded to the March 14 Letter by referring to Claim 338 and the exhibits attached thereto.

14. On August 20, 2011, the Debtors’ Objection Deadline past without any objection to Claim 338 and/or the Administrative Claim.

15. On January 20, 2012, the Trust Administrator filed a fourth (substantive) omnibus objection to certain (a) overstated claims; (b) no liability claims; (c) misclassified claims; (d) rejection damages claims; (e) misclassified landlord claims; and (f) overstated landlord claims (Dkt. No. 658) (the “Fourth Omnibus Objection”). In the Fourth Omnibus Objection, the Trust objected to Claim 338 because the “Face of Proof of Claim form did not list a claim total” but instead referred to the Addendum. Fourth Omnibus Objection at 32.

16. On February 24, 2012, Oakland Square and the Trust filed the Stipulation, whereby Claim 338 would be allowed (as provided for in the Addendum) as (i) an administrative claim in the amount of \$22,695.55; and (ii) a general unsecured claim in the amount of \$56,855.84.

17. On March 6, 2012, the Debtors filed their objection to the Stipulation (Dkt. No. 698) (the “Objection”). In the Objection, the Debtors did not respond to the fact (i) that they had failed to object to the Administrative Claim by the Debtors’ Objection Deadline or (ii) that they still had not paid the stub rent to Oakland Square. Instead, the Debtors argued that they should not be responsible for paying that portion of the Administrative Claim that accounted for Oakland Square’s attorney’s fees and costs.

18. On April 3, 2012, this Court heard argument on the Stipulation and Objection. At that hearing, Debtors' counsel opined that the Debtors' failure to pay stub rent to Oakland Square was an "error and omission." Debtors' counsel indicated that the Debtors would immediately pay Oakland Square its stub rent. As for the issue of attorney's fees and costs, the Court encouraged the parties to independently resolve the issue but, in the event that they were unsuccessful, Oakland Square could file an Application no later than April 17, 2012.

19. Notwithstanding Oakland Square's efforts to amicably resolve the issue of attorney's fees and costs, it is hereby forced to file said Application before the Court.

20. As of the date hereof, Oakland Square has incurred \$19,042.42 in postpetition fees and expenses. Copies of the invoices evidencing those fees and expenses are attached hereto as Exhibit E. These fees and expenses are on account of, but not limited to, Oakland Square's counsel's unrequited efforts in seeking timely and complete payment of its (i) July 2010 rent, (ii) August 2010 rent, and (iii) September 2010 rent. Oakland Square's attorney's fees are only compounded by its counsel's analysis of the rejection motion and order, plan and disclosure statement, all of which are necessary as a result of the Debtors' refusal to pay amounts due and owing to Oakland Square under the Lease and Settlement Agreement. In fact, upon information and belief, Oakland Square still has not received any payment from the Debtors on account of its Administrative Claim, including its July 2010 stub rent.

21. The Debtors contend that notwithstanding the fact that they occupied the Premises for 2 ½ months postpetition without timely paying postpetition rent, no postpetition fees incurred by Oakland Square in effectuating the terms of the Lease and Settlement agreement are compensable as administrative claims. Objection at 4.

22. Yet, the Debtors' continued refusal to pay the Administrative Claim, including the July 2010 stub rent payment, has only compounded the amount of Oakland Square's fees that it is entitled to under the Lease and Settlement Agreement.

23. As detailed in Claim 338, because the Lease and Settlement Agreement provide for the payment of Oakland Square's fees upon the Debtors' default under these respective documents, Oakland Square's fees are compensable as administrative expenses of the Debtors' estates. See Urban Retail Props. v. Loews Cineplex Entm't Corp. (In re Loews Cineplex Entm't Corp.), No. 01-8946, 2002 WL 535479, at *9-10 (S.D.N.Y. Apr. 9, 2002) (Because lease provided for recovery of attorneys' fees and interest in an action to enforce the lease, their receipt deserved the same priority under section 365(d)(3) as any of the Debtor's other obligations that arise post-petition.); In re Ames Dep't Stores, Inc., 306 B.R. 43, 81 (S.D.N.Y. 2004) ("The payment of attorney fees *is* an obligation of the lease that must be satisfied under section 365(d)(3) when the lease at issue provides for such recovery as an obligation of the Debtor." (emphasis in original)).

WHEREFORE, Oakland Square respectfully requests that the Court enter an amended Stipulation that grants Oakland Square: (i) an administrative claim in the amount of \$27,844.21;³ and (ii) a general unsecured claim in the amount of \$56,855.84.

Dated: New York, New York
April 17, 2012

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³ This amount should be greater for fees and expenses incurred in conjunction with the May 3, 2012 hearing on this Application. However, for the purpose of this Application, Oakland Square will agree to fix its administrative claim at \$27,844.21, and not account for further fees related to the hearing that it would otherwise be entitled to under the Lease and the Settlement Agreement.