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Presentment Date: June 23, 2014 at 12:00 am

Objection Date: June 16, 2014 at 4:00 pm

*Counsel for the Reorganized Debtors
(Successors to the Debtors and Debtors in
Possession)*

**UNITED STATES BANKRUPTCY COURT
THE SOUTHERN DISTRICT OF NEW YORK**

In re:

JENNIFER CONVERTIBLES, INC.,¹

Debtors.

Chapter 11

Case No. 10-13779 (ALG)

(Jointly Administered)

**REORGANIZED DEBTORS' MOTION FOR FINAL DECREE
CLOSING CASE OF THE REORGANIZED DEBTORS**

Jennifer Convertibles, Inc. (“JCI”) and its affiliated debtors, as debtors and debtors in possession (together, the “Debtors”, now known as the “Reorganized Debtors”), by and through their undersigned counsel, respectfully submits this motion (the “Motion”) for entry of an Order granting the final decree in, and closing, the above-captioned case, and requiring the Liquidation Trustee to pay no less than half of any outstanding and unpaid post-confirmation United States Trustee Quarterly Fees (“Quarterly Fees”). In support of this Motion, the Reorganized Debtors respectfully represent as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: (i) Jennifer Convertibles, Inc. (4646); (ii) Jennifer Convertibles Boylston MA, Inc. (7904); (iii) Jennifer Chicago Ltd. (0505); (iv) Elegant Living Management, Ltd. (5049); (v) Hartsdale Convertibles, Inc. (1681); (vi) Jennifer Management III Corp. (3552); (vii) Jennifer Purchasing Corp. (7319); (viii) Jennifer Management II Corp. (9177); (ix) Jennifer Management V Ltd. (9876); (x) Jennifer Convertibles Natick, Inc. (2227); (xi) Nicole Convertibles, Inc. (5985); (xii) Washington Heights Convertibles, Inc. (0783).

BACKGROUND

1. On July 18, 2010, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). On July 22, 2010, this Court entered an order consolidating the Debtors’ cases for procedural purposes only (the “Joint Administration Order”) (docket no. 51).

2. On February 8, 2011, this Court entered an order (the “Confirmation Order”) (docket no. 491) confirming the Amended Joint Chapter 11 Plan of Reorganization for Jennifer Convertibles, Inc. and its Affiliated Debtors (as confirmed, the “Amended Plan”). The Amended Plan became effective in accordance with its terms on February 22, 2011 (the “Effective Date”). On the Effective Date, the Jennifer Convertibles Litigation Trust (the “Trust”) was established.

3. In accordance with the Plan, the Reorganized Debtors have made distributions as required with respect to all claims that have been allowed and have been filing all post-confirmation operating reports.

4. On July 7, 2011, the Court entered a Final Decree Order Closing Cases of Certain of the Reorganized Debtors (“Limited Final Decree”), closing twelve of the Reorganized Debtors’ chapter 11 cases that were jointly administered pursuant to the Joint Administration Order severing the cases from the Lead Case at the time.

5. In accordance with the terms of the Confirmation Order, KDW, Restructuring & Liquidation Services, LLC, as Litigation Trustee (the “Litigation Trustee”) for the Trust, has been prosecuting adversary proceedings against various defendants seeking the return of preferential and/or fraudulent transfers pursuant to Chapter 5 of the Bankruptcy Code (the “Avoidance Actions”). Pursuant to the Seventh Post Confirmation Status Report of the Trust

Administrator filed by the Trust on April 30, 2014 for the period of the first calendar quarter of 2014 [Docket No. 847] (the “Seventh Post Confirmation Report”), the Trust has completed the claims reconciliation process and the prosecution of claims and, at this time, all Avoidance Actions are resolved and closed. In addition, according to the Seventh Post Confirmation Report, the Trust is holding remaining cash in the amount of \$537,886.00.

6. As this Court is aware, in order for the Trust to prosecute the Adversary Proceedings, the Reorganized Debtors were constrained to keep open the chapter 11 case of JCI, Case Number 10-13779 (ALG) (the “Lead Case”). While the Plan was confirmed and went effective more than three years ago, the Trust has only now concluded the prosecution of the Avoidance Actions. If not for the length of time it took to prosecute the Avoidance Actions, the Reorganized Debtors would have moved for a final decree closing the Lead Case three years ago.

7. As a result of keeping the Lead Case open, the Reorganized Debtors were forced to incur significant Quarterly Fees each period as such fees are calculated based on the amount of operating disbursements made by the Reorganized Debtors. Thus, given that the Trust has more than \$530,000 of cash on hand, to the extent there are amounts owed and outstanding for post-confirmation Quarterly Fees, the cost of such fees should be shared at a minimum equally with the Trust. The Reorganized Debtors’ estates should have been closed two years ago.

JURISDICTION

8. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

9. The statutory predicates for the relief requested herein are sections 350 and 105(a) of the Bankruptcy Code, as supplemented by Bankruptcy Rule 3022.

RELIEF REQUESTED

10. By this Motion, the Reorganized Debtors seek entry of a final decree (the “Final Decree”), pursuant to sections 350 and 105(a) of the Bankruptcy Code and Rule 3022 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), closing the remaining case identified on Exhibit A hereto (the “Case to be Closed”) and directing the Trust to share in the expense of any outstanding Quarterly Fees incurred since the Effective Date.

11. In addition, all applicable fees and disbursements made in connection with the Reorganized Debtors’ cases were made under the Lead Case, the Reorganized Debtors request that the requirement of Rule 3022-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”) that a consolidated closing report under the Lead Case be filed contemporaneously with the entry of a closing decree in the Lead Case or shortly thereafter.

12. The entry of a final decree in the Lead Case will not prejudice any party’s rights and comports with the terms of the Confirmation Order. It is no longer necessary to keep the Reorganized Debtors Case open as all matters have been resolved. Thus, the Reorganized Debtors respectfully submits that it is appropriate at this time to close the Lead Case and enter a final decree.

BASIS FOR RELIEF REQUESTED

13. Section 350(a) of the Bankruptcy Code provides that “[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case.” 11 U.S.C. § 350(a). Bankruptcy Rule 3022 further provides that “[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.” Fed. R. Bankr. P. 3022. Section 105(a) of the Bankruptcy Code provides that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

14. Although neither the Bankruptcy Code nor the Bankruptcy Rules define “fully administered,” the Advisory Committee’s Note to Bankruptcy Rule 3022 states that:

Factors that the court should consider in determining whether the estate has been fully administered include [:] (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or management of the property under the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

Fed. R. Bankr. P. 3022, Advisory Committee’s Notes (1991). The foregoing factors are meant as a guide for determining whether a case should be closed; not all factors must be satisfied. See, e.g., In re Gates Community Chapel of Rochester, Inc., 212 B.R. 220, 223-24 (Bankr. W.D.N.Y. 1997) (noting that list of factors in Advisory Committee’s Note to Bankruptcy Rule 3022 is non-exclusive and such factors need only be considered by court when deciding whether to close case); In re Mold Makers, Inc., 124 B.R. 766, 768-69 (Bankr. N.D. Ill. 1990) (finding that all factors in Advisory Committee’s Note to Bankruptcy Rule 3022 need not be present before entering final decree).

15. When deciding whether entry of a final decree is appropriate, courts also consider whether the plan of reorganization has been substantially consummated. See Walnut Assocs. v. Saidel, 164 B.R. 487, 493 (Bankr. E.D. Pa. 1994) (substantial consummation is one factor to be considered); Gates Community Chapel, 212 B.R. at 224 (same). Similar to the factors described above, substantial consummation is deemed to occur upon the following:

- A. transfer of all or substantially all of the property proposed by the plan to be transferred;
- B. assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and

C. commencement of distribution under the plan.

11 U.S.C. § 1101(2).

16. As set forth above, the Plan has been substantially consummated in accordance with its terms. Among other things, the Reorganized Debtors have made distributions under the Amended Plan.

17. All claims filed in the Chapter 11 Cases have either been settled, expunged, or withdrawn and the Liquidation Trustee

18. Further, section 1930(a)(6) of title 28 of the U.S. Code requires that quarterly fees be paid to the United States Trustee after confirmation and consummation of a chapter 11 plan until a debtor's case is closed. Unless and until the Court enters a final decree closing the chapter 11 case of the Reorganized Debtors, quarterly fees will continue to be payable to the United States Trustee on their chapter 11 cases, which are an unnecessary financial burden on the Reorganized Debtors. As the Lead Case has been held open for the last three years for the benefit of the Trust, and given that the Trust has ample cash on hand, to the extent that any Quarterly Fees remain outstanding, the Debtors submit that the Trust equally share in the payment of such fees.

19. Based on the foregoing, the Reorganized Debtors submit that entry of a final decree closing the Lead Case is warranted under the circumstances, without prejudice to the rights of the Reorganized Debtors to seek to reopen the Lead Case for good cause shown.

The Closing Report

20. In accordance with the requirements of Local Bankruptcy Rule 3022-1 (Closing Reports in Chapter 11 Cases), annexed hereto as **Exhibit "A"** is a copy of the Bankruptcy Closing Report which describes, among other things, the fees and expenses awarded to the

Debtors' attorneys retained by the Debtor in its chapter 11 case. The Bankruptcy Closing Report has also been filed with the Clerk of the Court contemporaneously herewith.

NOTICE

21. Notice of this Motion will be provided to: (a) the U. S. Trustee; (b) the Litigation Trustee; and (c) all parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002 prior to the date hereof. The Reorganized Debtors submits that, under the circumstances, no other or further notice is required.

22. No previous motion for the relief sought herein has been made to this or any other court.

23. Because the authorities relied upon herein are set forth above, the Reorganized Debtors respectfully submit that the motion itself satisfies the requirements of Local Rule 9013-1(b) regarding the submission of a memorandum of law.

CONCLUSION

WHEREFORE, the Reorganized Debtors respectfully requests that the Court enter a final decree, substantially in the form annexed hereto as **Exhibit B**, granting the Motion and such other and further relief as may be just and proper.

Dated: New York, New York
May 28, 2014

OLSHAN FROME WOLOSKY LLP

By: /s/ Michael S. Fox

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*Counsel for the Reorganized Debtors
(Successors to the Debtors and Debtors
in Possession)*

EXHIBIT A

Case Closing Report

**UNITED STATES BANKRUPTCY COURT
THE SOUTHERN DISTRICT OF NEW YORK**

In re:

JENNIFER CONVERTIBLES, INC.,¹

Debtors.

Chapter 11

Case No. 10-13779 (ALG)

(Jointly Administered)

CLOSING REPORT IN CHAPTER 11 CASE

To the best of my knowledge and belief, the following is a breakdown in this case:

FEES AND EXPENSES (from case inception):

\$1,467,728 FEE for ATTORNEY for DEBTOR

\$2,780,087 OTHER PROFESSIONAL FEES and ALL EXPENSES

_____ TRUSTEE FEE (if applicable)

_____ FEE for ATTORNEY for TRUSTEE (if applicable)

_____ % DIVIDEND PAID/TO BE PAID

_____ FUTURE DIVIDENDS (check if % of future dividend under plan not yet
able to be determined)

\$3,967,105 INITIAL DISTRIBUTION UNDER THE PLAN COMPLETED

_____ OTHER: (explain)

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1. All matters to be completed on the effective date of the confirmed plan have been completed.

2. There are no pending adversary proceedings or contested matters in this case that would affect the substantial consummation of this case that are not currently anticipated to be resolved on or before the effective date of the Final Decree.

Dated: New York, New York
May 28, 2014

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EXHIBIT B

Proposed Final Decree

**UNITED STATES BANKRUPTCY COURT
THE SOUTHERN DISTRICT OF NEW YORK**

In re:

JENNIFER CONVERTIBLES, INC.,¹

Debtors.

Chapter 11

Case No. 10-13779 (ALG)

(Jointly Administered)

FINAL DECREE CLOSING CASES OF THE REORGANIZED DEBTORS

Upon the motion (the “Motion”) of the Reorganized Debtors in the above-captioned case (the “Reorganized Debtors”), seeking entry of a final decree (the “Final Decree”) closing the case of the Reorganized Debtors pursuant to sections 350(a) and 105(a) of title of the United States Code and Rule 3022 of the Federal Rules of Bankruptcy Procedure; and it appearing that notice was given in accordance with the Motion; and it appearing that no other or further notice is necessary; and the relief requested in the Motion being in the best interest of the Reorganized Debtors, the Debtor and their estates; and it being found that the closing of the Case will in no way prejudice the holder of an allowed claim’s rights to receive distributions under the Amended Plan, nor will the closing of the Case otherwise alter or modify the terms of the Amended Plan; and sufficient cause appearing therefore; it is hereby:

ORDERED, ADJUDGED and DECREED that:

1. The Motion is granted to the extent provided herein.
2. Capitalized terms that are not otherwise defined herein have the meanings

ascribed to such terms in the Motion.

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3. The case of the Reorganized Debtors identified on Appendix 1 hereto (the “Case”) will be closed effective as of the date of entry of this Final Decree, *provided, however*, that the Court shall retain such jurisdiction as is provided in Article XIII (Retention of Jurisdiction) of the Plan, and the entry of this final decree is without prejudice to the rights of the Reorganized Debtors or any party in interest to seek to reopen the Cases for good cause shown.

4. The Litigation Trust shall be required to pay half of any outstanding Quarterly Fees.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.

Dated: New York, New York
June __, 2014

HONORABLE ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE

Appendix 1

<u>Case Number</u>	<u>Name of Debtor</u>
10-13779	Jennifer Convertibles, Inc.