

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<hr/>)	Chapter 11
)	
Urban Brands, Inc., <u>et al.</u> , ¹)	Case No. 10-_____ ()
)	
Debtors.)	Joint Administration Pending
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**MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION
FOR ENTRY OF AN ORDER (A) AUTHORIZING, BUT NOT DIRECTING,
DEBTORS TO PAY CERTAIN PREPETITION (I) WAGES, SALARIES AND
OTHER COMPENSATION, (II) REIMBURSABLE EMPLOYEE EXPENSES,
AND (III) EMPLOYEE MEDICAL AND SIMILAR BENEFITS; AND (B)
AUTHORIZING AND DIRECTING FINANCIAL INSTITUTIONS TO
HONOR ALL RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) file this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit A, (a) authorizing, but not directing, the Debtors to pay in the ordinary course of business certain prepetition (i) wages, salaries and other compensation, (ii) reimbursable

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Urban Brands, Inc. (3678), 100% Girls Ltd. (4150), 100% Girls of Georgia, Inc. (4159), 100% Girls of New York, Inc. (2149), 100 Percent Girls of New Jersey, Inc. (4167), A.S. Interactive, Inc. (3472), Ashley Stewart Ltd. (4541), Ashley Stewart Apparel Corporation (4049), Ashley Stewart Clothing Company, Inc. (4051), Ashley Stewart Management Co., Inc. (4053), Ashley Stewart Woman Ltd. (4152), ASIL 6, Inc. (3996), ASNJ 10, Inc. (4004), Carraizo Alto Apparel Corporation (4651), Church Street Retail, Inc. (5954), Kid Spot Ltd. (2585), Kidspot of Delaware, Inc. (2596), Kidspot of Illinois, Inc. (2606), Kidspot of Michigan, Inc. (2603), Kidspot of New Jersey, Inc. (2601), Kidspot of Ohio, Inc. (4705), Kidspot of Pennsylvania, Inc. (2599), Kidspot of Texas, Inc. (3809), Large Apparel of Alabama, Inc. (0624), Large Apparel of California, Inc. (2129), Large Apparel of Connecticut, Inc. (5161), Large Apparel of District of Columbia, Inc. (8613), Large Apparel of Florida, Inc. (2209), Large Apparel of Georgia, Inc. (3894), Large Apparel of Illinois, Inc. (4650), Large Apparel of Indiana, Inc. (4055), Large Apparel of Louisiana, Inc. (3790), Large Apparel of Maryland, Inc. (5158), Large Apparel of Michigan, Inc. (9420), Large Apparel of Mississippi, Inc. (5913), Large Apparel of Missouri, Inc. (2135), Large Apparel of New Jersey, Inc. (5157), Large Apparel of New York, Inc. (5956), Large Apparel of North Carolina, Inc. (8611), Large Apparel of Ohio, Inc. (3815), Large Apparel of Pennsylvania, Inc. (4057), Large Apparel of South Carolina, Inc. (2029), Large Apparel of Tennessee, Inc. (3895), Large Apparel of Texas, Inc. (3787), Large Apparel of Virginia, Inc. (2809), Large Apparel of Wisconsin, Inc. (3898), Marianne Ltd. (3940), Marianne USPR, Inc. (2193), Marianne VI, Inc. (2206), Metro Apparel of Kentucky, Inc. (7533), Metro Apparel of Massachusetts, Inc. (1367), The Essence of Body & Soul, Ltd. (4165), Urban Acquisition Corporation of New Jersey, Inc. (2976), Urban Acquisition Corporation of New York, Inc. (4103), and Urban Brands TM Holding Co. (5909). The Debtors’ corporate offices are located at 100 Metro Way, Secaucus, New Jersey 07094.

employee expenses, and (iii) employee medical and similar benefits; and (b) authorizing and directing financial institutions to receive, process, honor and pay all checks presented for payment and electronic payment requests relating thereto. In support of this Motion, the Debtors rely on *Declaration of Michael A. Abate in Support of First Day Motions* (the “Abate Declaration”) filed contemporaneously herewith. In further support of the Motion, the Debtors respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 105(a), 363, 507(a)(4)-(5), 1107(a) and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

A. Introduction

2. On September 21, 2010 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief (collectively, the “Chapter 11 Cases”) under chapter 11 of the Bankruptcy Code.

3. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or official committee of unsecured creditors has been appointed in these Chapter 11 Cases.

B. Overview of the Debtors' Business

4. The Debtors are a leading specialty retailer of fashion-forward and inspirational apparel for plus sized urban women under the brand name of Ashley Stewart. Urban Brands, Inc., a Delaware corporation, is the direct or indirect parent company of all of the Debtors. Until 2009, the Debtors also operated stores under the brand name of Marianne.

5. The Ashley Stewart concept was founded in 1991 and has grown to become a nationally-recognized brand. According to an October 2009 industry survey by the NPD Group, a nationally recognized firm specializing in apparel research, plus sized African American women ranked Ashley Stewart third of all retailers, behind only Wal-Mart and Lane Bryant, as their favorite place to shop.

6. Ashley Stewart operates broadly in the women's apparel market, which the NPD Group estimates is approximately \$107 billion. Within women's fashion, Ashley Stewart focuses on the plus sized market, which is estimated to be over \$18 billion and growing. Within this subset of the market, Ashley Stewart focuses on the underserved urban market, particularly the African American and Hispanic consumer, two of the fastest growing segments of the U.S. population. Ashley Stewart is one of the few concepts focusing directly on these particular niche markets.

7. As of the Petition Date, the Debtors operate approximately 210 stores in 26 states with approximately 2,100 employees, the majority of which are minority women. The store base is reinforced by a strong online presence through AshleyStewart.com, providing both a marketing tool as well as an additional outlet for Ashley Stewart customers.

8. Despite the strength of their brand names and success at individual store locations, the Debtors began suffering from cash flow/liquidity problems in 2007, especially in

their Marianne division. The Debtors' financial difficulties continued in 2008 with the slow down in the overall economy. As part of a strategic initiative to strengthen their balance sheet and improve their liquidity by focusing exclusively on the Ashley Stewart brand, in February 2008, the Debtors began divesting themselves of all of their Marianne stores. The proceeds from the Marianne divestitures, coupled with the reduction of the working capital investment needed to support the Marianne brand name, provided improvement in operating results and cash flow during fiscal year 2009 (ending January 30, 2010). Unfortunately, although the Debtors significantly reduced their net losses from approximately \$44.3 million in 2008 to \$28.6 million in 2009, the business continued to operate at a loss. Additionally, from fiscal year 2008 to fiscal year 2009, the Debtors net sales decreased from \$179.6 million to \$174.6 million.

C. The Debtors' Capital and Debt Structure

9. The Debtors are borrowers under a Loan and Security Agreement dated as of September 3, 2004 (the "Prepetition Financing Agreement"), with Bank of America, N.A. (successor by merger to LaSalle Retail Finance, a Division of LaSalle Business Credit, LLC, as agent for LaSalle Bank Midwest National Association f/k/a Standard Federal Bank National Association) (the "Lender"). The Prepetition Financing Agreement was an asset-based facility with a maturity date of September 10, 2010. The availability for borrowings and letter of credit obligations under the Prepetition Financing Agreement was capped at \$6.5 million and is further limited to an amount supported by a borrowing base consisting of certain cash, certain accounts receivable and eligible inventory. As of the Petition Date, the Debtors owe only approximately \$2,251,651 plus interest on the facility with an additional \$2,366,324 in outstanding letters of credit (all of which are fully collateralized by the Debtors' cash).

10. In April 2004, the Debtors entered into a Note Purchase Agreement with a group of institutional investors led by Trimaran Fund II, L.L.C. ("Trimaran"), the Debtors' largest equity holder, and certain officers, employees and consultants of the Debtors. From August 2007 to November 2009, the Debtors entered into five additional note purchase agreements to raise additional capital. In total, the Debtors sold \$58,500,000 in senior unsecured notes (the "Notes"). As of the Petition Date, the Debtors owe approximately \$81.3 million on account of outstanding principle and interest on the Notes.

D. Objectives of Chapter 11 Filing

11. In April 2010, the Debtors engaged Oppenheimer & Co. Inc. ("Oppenheimer") to assist the Debtors in searching for additional equity and/or mezzanine financing. Following exhaustive efforts to locate additional capital, the Debtors determined that there was insufficient interest in the market for this additional financing and, as a result, the Debtors' best alternative to preserve the Debtors' business as a going concern and maximize the value of their assets was to pursue a sale of all or substantially all the Debtors' assets.

12. Accordingly, in August 2010, Oppenheimer expanded its marketing efforts to solicit interest from prospective purchasers of the Debtors and their assets as a going-concern. As a result of this process, New Ashley Stewart, LLC ("New Ashley" or the "Stalking Horse Bidder") emerged as the party submitting the highest and best bid for the Debtors' assets. Accordingly, the Debtors, with the approval of their board of directors, engaged in active negotiations with New Ashley regarding a potential going concern transaction and, on September 8, 2010, the Debtors and New Ashley executed a non-binding letter of intent. Following the execution of the letter of intent, the Debtors and their advisors actively negotiated with New Ashley regarding the definitive terms and conditions of an asset purchase agreement. The

Debtors expect that on or shortly after the Petition Date, they will execute an asset purchase agreement with New Ashley (the “New Ashley Purchase Agreement”), which the Debtors will seek Court approval of pursuant to section 363 of the Bankruptcy Code following a Court sanctioned auction process.

13. The Debtors believe that a going-concern sale of the Debtors’ business presents the best opportunity to maximize recoveries for creditors and preserve thousands of jobs for the Debtors’ employees. Accordingly, the Debtors expect to file a sale procedures motion on the first day of these Chapter 11 Cases and continue their efforts to solicit bids from other potentially interested parties.

E. The Debtors’ Workforce

14. The Debtors’ workforce consists of both hourly and salaried employees (the “Employees”). The Debtors pay approximately 1,552 Employees on an hourly basis and pay approximately 527 Employees on a salaried basis. Additionally, the Debtors utilize 2 independent contractors in the ordinary course of business (the “Independent Contractors”). The Independent Contractors are critical to the management and operation of the Debtors. Of the Employees, approximately 1,515 are part-time Employees and approximately 564 are full-time Employees. None of the Debtors’ Employees are covered by a collective bargaining agreement.

15. The Debtors’ full-time Employees include executives, regional vice presidents, district managers, store managers, assistant managers, sales and support associates, home office employees and distribution center employees. Sales and support associates, assistant managers, non-executive home office and certain distribution center employees are paid by the hour, while executives, regional vice presidents, store managers, and district managers are on salary. The managers employed by the Debtors include store managers, assistant store managers, area

managers, district managers, and district sales managers, among others. Store managers report to the district managers, who report to a regional vice president.

F. Employee Obligations

i. Unpaid Compensation

16. In the ordinary course of business, the Debtors pay Employees on a weekly (distribution center employees), bi-weekly and alternate bi-weekly basis (corporate and store employees on an alternating bi-weekly basis). The Debtors' payroll obligations generally include wages and salaries, as applicable, as well as bonuses awarded for sales productivity and goal attainment.

17. Automatic Data Processing, Inc. ("ADP") provides payroll administration services for the Debtors. Approximately 46% of the Debtors' Employees are paid by direct deposit, and approximately 54% of the Debtors' Employees are paid by check. For Employees paid by direct deposit, the Debtors electronically transfer funds to ADP, which, in turn, transfers the funds to Employees by direct deposit. For Employees paid by check, ADP generates the checks on behalf of the Debtors, which contain the Debtors' name and are drawn on ADP's account. On average, the Debtors have gross payroll expenses totaling \$3.4 million per month. The Debtors estimate that, as of the Petition Date, approximately \$30,000 is outstanding in payroll administration expenses for the prepetition period (the "Payroll Administration Expenses"). Accordingly, the Debtors seek authority to pay up to \$30,000 in prepetition Payroll Administration Expenses.

18. Additionally, because the Debtors pay Employees in arrears, as of the Petition Date the Debtors estimate that approximately \$2.5 million would be due and owing to their Employees on account of accrued wages, salaries and other compensation earned prior to the Petition Date (the "Unpaid Compensation"). Such amounts will come due in the ordinary course

of business; consequently, the Debtors seek authority to pay up to \$2.5 million in Unpaid Compensation. The Debtors are not seeking to pay any Employee's prepetition claim for Unpaid Compensation and other benefits described herein in excess of the \$11,725 priority claim cap under section 507(a)(4) of the Bankruptcy Code.

ii. Deductions and Withholdings

19. During each applicable pay period, certain amounts are deducted from Employees' paychecks, including, without limitation, (a) garnishments, child support and similar deductions, and (b) other pre- and after-tax deductions payable pursuant to certain of the employee benefit plans discussed herein (such as an Employee's share of health care benefits and insurance premiums, contributions under flexible spending plans, 401(k) contributions, legally ordered deductions and miscellaneous deductions) (collectively, the "Non-Tax Deductions"). The Debtors effect these deductions in accordance with information provided by the Employees and forward the amount of the Non-Tax Deductions to the appropriate third-party recipients. On average, approximately \$167,000 is deducted from Employees' paychecks per month, and certain of the Non-Tax Deductions may not have been included in the most recent pre-Petition Date funding on account of those obligations. Accordingly, the Debtors seek authority to continue to forward these prepetition Non-Tax Deductions to the applicable third-party recipients on a postpetition basis, in the ordinary course of business, as routinely done prior to the Petition Date.

20. Federal and state laws require the Debtors to withhold amounts related to federal, state and local income taxes, as well as Social Security and Medicare taxes, for remittance to the appropriate federal, state or local taxing authority (collectively, the "Withheld Amounts"). The Debtors must then provide additional amounts for federal and state unemployment insurance (the

“Employer Payroll Taxes” and together with the Withheld Amounts, the “Payroll Taxes”). On average, the Payroll Taxes, including both the employee and employer portions, total approximately \$739,000 per month. Prior to the Petition Date, the Debtors, through ADP, withheld the appropriate amounts from Employees’ earnings for the Withheld Amounts, but such funds may not have been forwarded to the appropriate taxing authorities. Accordingly, the Debtors seek authority to continue to forward these prepetition Payroll Taxes (to the extent there are any that have not been forwarded by ADP) to the applicable third-party recipients on a postpetition basis, in the ordinary course of business, as routinely done prior to the Petition Date.

iii. Honoring Checks for, and Payment of, Reimbursable Expenses

21. In the ordinary course of business, the Debtors reimburse Employees for certain expenses incurred in the scope of their employment and on behalf of the Debtors (the “Reimbursable Expenses”). Employees incur, on average, approximately \$50,000 per month in Reimbursable Expenses such as business-related travel and relocation costs (e.g., meal, hotel and rental car costs) with the understanding that they will be reimbursed.

22. In addition to traditional expense-based reimbursement for out-of-pocket expenses incurred by the Employees on the Debtors’ behalf, approximately thirty (30) of the Employees also have company credit cards (each, a “Company Credit Card” and collectively, the “Company Credit Cards”). All of the Company Credit Cards are issued by American Express Corporate Services (“American Express”). The Company Credit Cards are issued in the name of the eligible Employee and feature both the Employee’s name as well as that of one of the Debtors on the face of the card. Prior to receiving a Company Credit Card, any Employee to whom a Company Credit Card will be issued must sign a *Company Issued American Express Credit Card Acknowledgement* pursuant to which the Employee acknowledges that the Company

Credit Card is exclusively for use in connection with valid businesses expenses (consistent with the Debtors' Travel and Expense Policy) and that the Employee is required to submit documented expense reimbursement reports in conjunction with any charge made on a Company Credit Card. The Employees are personally liable for all charges made on the Company Credit Cards and enter into a card member agreement with American Express before the Company Credit Card is issued. The Debtors are guarantors on all of the Company Credit Cards. The Employees receive physical credit card statements from American Express and are responsible for making all payments to American Express. All Company Credit Card balances must be paid in full each month. Once an Employee is terminated, the Debtors take prompt action to ensure that the terminated Employee's Company Credit Card is cancelled and that the outstanding balance is paid. The Debtors estimate that, as of the Petition Date, Reimbursable Expenses in the approximate amount of \$50,000 remain outstanding. Accordingly, the Debtors seek authority to pay up to \$50,000 in prepetition Reimbursable Expenses.

iv. Prepetition Employee Bonus Plans

23. In the ordinary course of business, the Debtors offer store-line performance bonus programs to management level Employees. Specifically, the Debtors offer the *Fall 2010 Urban Brands Store Management Incentive Bonus Plan* (the "Store Management Incentive Plan") and the *Fall 2010 Urban Brands DSM and ASM Incentive Bonus Plan* (the "DMS and ASM Incentive Plan") and together with the Store Management Incentive Plan, the "Employee Bonus Plans").

24. The *Store Management Incentive Plan*. Approximately 646 store managers and full and part -time co-store managers (the "Managers") are eligible to participate in the Store Management Incentive Plan. The Store Management Incentive Plan provides bonuses to

Managers who are on active status and are in a management level position at the time that the bonuses are paid. The amount of the bonus depends on the achievement of the company's pre-determined sales goals for each individual store. Each store is assigned a base sales goals at the beginning of the month that, if achieved, will allow the store management team to achieve its base incentive award. Unlike the part-time co-store managers, however, the store managers have an opportunity to earn higher bonus amounts by achieving 3%, 6% or 10% over the base goal.

25. Certain store management teams who meet the eligibility for payment criteria will receive 100% of the incentive award earned within thirty (30) days following the last day of the month in which the incentive was earned.

26. The *DSM and ASM Incentive Plan*. Approximately 25 district sales managers (the "DSMs") and area sales managers (the "ASMs") are eligible to participate in the Debtors' bonus program predicated upon achieving and exceeding the Debtors' sales goals for their respective districts consistent with prepetition practices. To be eligible, the DSM or ASM must be on active status and in that position at the time that the bonus is paid. Participants who become eligible to participate in the DSM and ASM Incentive Plan after the beginning of the month will be eligible for a pro-rated share of the incentive earned for the first month, as long as they are in a DSM or ASM position for a majority of that month. The DSM and ASM Incentive Plan operates similarly to the Store Management Incentive Plan such that if all of the stores in the DSM's or ASM's district achieve their base sales goal for the month, the DSM or ASM will earn a bonus. Like the store managers, the DSMs and ASMs will have an opportunity to earn higher bonuses by achieving 3% or 6% over the base goal. Additionally, the DSMs or ASMs who meet the eligibility for payment criteria will receive 100% of the incentive award earned within thirty (30) days following the last day of the month in which the incentive was earned.

27. The Debtors are seeking authority, in their sole discretion, to continue the Employee Benefit Plans in the ordinary course of their business going forward.

G. Employee Benefits

28. The Debtors offer their Employees the opportunity to participate in the following benefit programs: health and wellness programs; employee savings and retirement plans; life, disability, and accidental death and dismemberment plans; flexible benefit plans; vacation, sick leave and other leaves of absence; and employee assistance and counseling programs (collectively, the “Employee Benefit Programs”).

i. Health and Wellness Plans

29. All full-time Employees and all part-time store co-managers who have completed a minimum of two months of employment are eligible to receive medical, dental, and vision benefits (the “Health Plans”). Under the Health Plans, the Debtors provide Employees with a medical plan administered through CIGNA HealthCare (“CIGNA”). In addition, the Debtors provide Employees with a dental plan administered through Delta Dental and its network (“Delta”). Finally, the Debtors provide Employees with a vision plan administered through Vision Service Plan (“VSP”). Employee contributions to the Health Plans vary depending upon the type of plan/coverage an Employee elects and the number of dependents covered by the plan. The Debtors withhold the Employee’s contribution from their earnings, contribute the balance necessary to pay for the cost associated with the Health Plans, and then periodically remit the total cost of the Health Plans to CIGNA, Delta or VSP, respectively, as the case may be. Currently, the Debtors provide medical, dental and vision benefits to approximately 500 Employees per month. Moreover, the Debtors’ Health Plans provide health care coverage to approximately 350 dependents. The Health Plans cost the Debtors, on average, approximately \$151,000 per month. The Debtors estimate that, as of the Petition Date, approximately

\$250,000² is outstanding in incurred but unpaid expenses associated with administering and providing the Health Plans. Additionally, the Debtors estimate that, as of the Petition Date, approximately \$250,000 is outstanding in health-related claims paid by CIGNA and to be reimbursed by the Debtors. Accordingly, the Debtors seek authority to pay these amounts in their sole discretion.

30. In addition to the Health Plans, the Debtors offer employees wellness programs (the “Wellness Programs”) administered by CIGNA. Under the Wellness Programs, the participants are eligible to receive discounts, special offers and rewards for participating in programs and services designed to enhance the participant’s health and wellness. The Debtors also provide Employees with a Mammogram Incentive Program. The Debtors are seeking authority, in their sole discretion, to continue the Wellness Programs and Mammogram Incentive Program in the ordinary course of their business going forward.

ii. Employee Savings and Retirement Plans

31. *401(k)/Retirement Plan.* The Debtors maintain one capital accumulation plan meeting the requirements of section 401(k) of the Internal Revenue Code for the benefit of all eligible Employees (the “401(k) Plan”). This plan is administered by Associated Pension. The following Employees who attain one (1) year of service and 1,000 hours as of the semi-annual enrollment dates³ are eligible to participate in the 401(k) Plan: all home office and distribution center employees, store line managers, including full-time and part-time co-managers, and

² This amount includes approximately \$6,200 owed to Benefits Analysis Inc., which administers benefits enrollment for active Employees and COBRA activity for terminated employees; approximately \$23,000 owed to Deloitte Consulting, which provides consulting services to the Debtors with respect to the Health Plans; and approximately \$15,000 owed to TALX, which is responsible for unemployment claims administration and related services.

³ Enrollment dates are January 1st and July 1st for eligible employees who satisfy the service and hours worked requirement.

certain part-time associates hired prior to November 2002. Employees can contribute up to 20% of their compensation on a pretax basis (up to a total maximum of \$16,500 per year for “non-highly compensated” Employees), subject to regulations set by the Internal Revenue Service. If the Employee is age 50 or older, he/she may contribute an additional \$5,500 in “catch-up” contributions. Highly Compensated Employees (defined as those earning more than \$110,000 in prior calendar year) are restricted from contributing more than 3% of their compensation. Approximately 277 active and inactive Employees, in addition to approximately 372 former Employees, currently participate in the 401(k) Plan, and the approximate amount withheld from such Employees’ paychecks for 401(k) contributions is \$46,000 per month. Although the Debtors do not make any matching contributions to the 401(k) Plan, the Debtors pay Associated Pension semi-annually for administering the 401(k) Plan. The Debtors estimate that, as of the Petition Date, approximately \$8,600 remains outstanding for administrative expenses related to the 401(k) Plan. Accordingly, the Debtors seek authority to pay this amount in their sole discretion.

iii. Insurance and Flexible Benefit Plans

32. The Debtors provide each full-time Employee, who has completed a minimum of two months of employment, with group life insurance coverage through The Hartford (the “Life Insurance Plan”). The Debtors fully fund this plan and no Employee contribution is required. Under the Life Insurance Plan, the Debtors provide eligible Employees with coverage in the amount of their base annual salary, up to a maximum of \$500,000. Coverage is automatic for eligible employees and no enrollment is required.

33. Additionally, the Debtors offer each Employee the option to purchase supplemental and dependent life insurance at the Employee’s own and exclusive expense.

Employees may elect to purchase supplemental life insurance coverage, at their own expense, in \$10,000 increments, between \$10,000 and \$500,000, up to five times the respective Employee's annual salary. Employees can also elect to purchase, again at their own expense, dependent life insurance on their spouse (in units of \$5,000 up to a maximum of 50% of the Employee's own supplemental life insurance coverage amount) or their children (in units of \$5,000 for a child over 6 months of age and \$1,000 for child between 2 weeks and 6 months).

34. The Debtors also provide their Employees with accidental death and dismemberment coverage (the "AD&D Coverage"). The eligibility requirements and amounts of coverage are the same as those under the Life Insurance Plan. On average, the Life Insurance Plan and the AD&D Coverage costs the Debtors approximately \$3,000 per month. The Debtors estimate that, as of the Petition Date, approximately \$24,000 is outstanding in incurred but unpaid premium expenses related to Life Insurance Plans and AD&D Coverage for the prepetition period. Accordingly, the Debtors seek authority to pay this amount in their sole discretion.

35. In addition, the Debtors provide Employees with short-term and long-term disability coverage (the "LT/ST Disability Benefits"). The LT/ST Disability Benefits are administered by The Hartford. Short-term disability benefits are provided to all full-time employees and part-time store co-managers who have completed a minimum of two months of employment. Coverage is automatic for eligible employees and no enrollment is required. The Debtors' short-term disability coverage pays up to 60% of an eligible Employees' pre-injury earnings up to a maximum of \$1,000 per week (subject to a seven (7) day wait period) for up to

twenty-six (26) weeks of disability.⁴ On average, short-term disability coverage costs the Debtors approximately \$14,000 per month. Long-term disability benefits are provided to all full-time Employees who have completed a minimum of two months of employment. Long-term disability benefits pay eligible Employees up to 60% of their pre-injury earnings starting in the twenty-seventh week of an Employee's disability. Eligible Employees receive a maximum benefit of \$10,000 per month while disabled for a disability period that exceeds 6 months. Long-term disability benefits are offset by other income such as social security and workers compensation. An employee contribution of \$10 per bi-weekly period is required. Since this is primarily employee funded, the Debtors currently do not pay anything towards LT/ST Disability Benefits.

36. Finally, the Debtors offer certain eligible Employees the ability to contribute a portion of their pretax compensation to flexible spending accounts to pay for eligible out-of-pocket health care and dependent care premiums and expenses (the "Flexible Benefit Plan"). Currently, approximately 200 Employees participate in the Flexible Benefit Plan.

iv. Vacation, Sick Leave and Other Leaves of Absence

37. The Debtors provide paid vacation, sick and personal time ("PTO") through their PTO plan (the "PTO Plan") to certain full-time and part-time Employees.⁵ PTO benefits under the PTO Plan accrue based on a particular Employee's length of service and position as set forth below.

⁴ Employees in California, New Jersey and New York are covered in accordance with state mandated benefit levels.

⁵ In addition to PTO, all full-time and part-time Employees are eligible to receive certain paid holidays (the "Company Holidays") each year after thirty (30) days of active employment. If it is necessary for an Employee to work on a Company Holiday, the Employee will be compensated in accordance with the Debtors' benefits policy.

38. *Personal Days.* All full-time Employees who have completed ninety (90) days of continuous, active service are eligible for three (3) personal days per calendar year. Unused personal days cannot be carried over into the following calendar year and will not be paid out upon the Employee's termination.

39. *Sick Days.* All full-time, non-exempt Employees who have completed ninety (90) days or more of continuous, active service are entitled to four (4) sick days per calendar year. Part-time, non-exempt Employees who have completed one year or more of continuous active service are entitled to two (2) sick days per calendar year. As with personal days, unused sick days cannot be carried over into the following calendar year and will not be paid out upon the Employee's termination.

40. *Vacation Time.* All full-time Employees who have completed ninety (90) days of continuous, active service are entitled to vacation. The amount of vacation time that is allocated to an Employee can only be used throughout that calendar year and is subject to "black out" dates and business needs. The following schedule details the amount of vacation time that a full-time eligible Employee is allocated per calendar year:

Years of Service	Allocated Vacation Time
1-4 Years	2 weeks
5-14 Years	3 weeks
15 Years and thereafter	4 weeks

41. Part-time, non-exempt Employees who have completed one (1) full year of employment will accrue vacation at the rate of 3.33 hours for each month in which they work at least 88 hours, which equates to one (1) week of vacation per calendar year. Part-time, non-exempt Employees who have completed five (5) years of employment will start to accrue

vacation at a rate of 6.66 hours for each month in which they work at least 88 hours, which equates to two (2) weeks vacation per calendar year.

42. Employees who have vacation time that is accrued but unused in one (1) calendar year cannot carry it over into the following year (except where required by applicable law).⁶ Furthermore, unused vacation time cannot be paid out upon the Employee's termination.

43. The Debtors also allow their Employees to take certain other leaves of absence for personal reasons, many of which are required by law (the "Leaves of Absence"). Leaves of Absence include family medical leave, family care leave, pregnancy disability leave, bereavement leave and military leave.

44. The Debtors anticipate that their Employees will utilize accrued PTO and Leaves of Absence in the ordinary course of business, which will not create any material cash flow requirements beyond the Debtors' normal, ordinary course payroll obligations, and seek authority to honor such accrued benefits. The Debtors seek authority to honor the PTO and Leave of Absence programs.

v. Additional Employee Benefits

1. Employee Assistance and Counseling Programs

45. Because personal problems can have an impact on an employee's effectiveness at work, the Debtors make professional counseling services available to Employees and their dependents through an employee assistance program (the "Employee Assistance Program"). The program is administered by The Hartford. Under this program, Employees and their families

⁶ Although the Debtors expect Employees to use their accrued vacation time in each calendar year, Employees in California may carry over up to two (2) times their annual allotment of vacation time from one calendar year to the next. If an Employee accrues two (2) times their annual allotment, the accrual of vacation time is suspended until the Employee has used vacation time to reduce the balance of accrued days.

qualified counselors and up to five (5) sessions per year with a counselor, financial planner and/or legal advisor for help with emotional and work/life concerns, such as stress, family/marital conflicts, depression, effective parenting, child care and elder care, legal issues, financial concerns, tax issues and situational life problems. The cost to the Debtors of the Employee Assistance Program is included in the long-term disability premium payment, and as such, the Debtors incur no stand-alone cost on account of this program. In any event, out of an abundance of caution, the Debtors are seeking authority to continue to honor their obligations on account of the Employee Assistance Plan.

46. In addition to the Employee Assistance Program, the Debtors provide on-site counseling services through ComPsych (the “ComPsych Counseling Program”) on an ad-hoc basis where such services are necessary due to an unusual event that has occurred at a particular store location. The Debtors estimate that, as of the Petition Date, approximately \$2,000 is outstanding in incurred but unpaid expenses related to these on-site counseling services for the prepetition period. Accordingly, the Debtors seek authority to pay this amount in their sole discretion.

RELIEF REQUESTED

47. By this Motion, the Debtors seek authority, to be exercised in their sole discretion, to pay and honor certain prepetition claims for the previously described wages, salaries, bonuses and other compensation, federal and state withholding taxes and other amounts withheld (including garnishments, child support orders, Employees’ share of insurance premiums, taxes and 401(k) contributions), health benefits, insurance benefits, vacation time, sick leave, life and accidental death and dismemberment insurance, long-term disability coverage, and all other benefits that the Debtors have historically provided in the ordinary course of business

benefits that the Debtors have historically provided in the ordinary course of business (collectively, the “Employee Wages and Benefits”), and to pay all administrative costs associated with such Employee Wages and Benefits. The Debtors also seek authority, to be exercised in their sole discretion, to continue to reimburse Employees for business-related expenses they incur in the ordinary course of business. In addition, the Debtors request the right to modify, change and discontinue any of the Employee Wages and Benefits and the policy related to reimbursable expenses in the ordinary course of business, in their sole discretion, without the need for further Court approval.

48. Moreover, the Debtors request that the Court authorize and direct financial institutions to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtors also request the Court to authorize applicable financial institutions to rely on the Debtors’ designation of any particular check or electronic payment request as appropriate pursuant to this Motion.

BASIS FOR RELIEF

H. Ample Authority Exists to Support Payment of the Employee Obligations

49. Courts generally acknowledge that it is appropriate to authorize the payment (or other special treatment) of prepetition obligations in appropriate circumstances. See, e.g., In re Wickes Holdings, LLC, Case No. 08-10212 (KJC) (Bankr. D. Del. Feb. 5, 2008); In re Tweeter Home Entm’t Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 13, 2007); In re Pope & Talbot, Inc., Case No. 07-11738 (CSS) (Bankr. D. Del. Nov. 21, 2007); In re Hancock Fabrics, Inc., Case No. 07-10353 (BLS) (Bankr. D. Del. Mar. 22, 2007). In authorizing payments of certain prepetition obligations, courts rely on several legal theories rooted in sections 1107(a), 1108, 363(b) and 105(a) of the Bankruptcy Code.

50. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, a debtor-in-possession is a fiduciary “holding the bankruptcy estate and operating the business for the benefit of its creditors and (if the value justifies) equity owners.” In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the fiduciary duties of any debtor-in-possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” Id. Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” Id. The CoServ court specifically noted that the satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” Id.

51. Consistent with a debtor’s fiduciary duties, courts have also authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. See, e.g., In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of prepetition wages); see also Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.), 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors).

52. In addition, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a), which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “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). Under section 105(a), courts may permit preplan payments of

prepetition obligations when essential to the continued operation of the debtor's business. Specifically, the Court may use its power under section 105(a) to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity").

53. The "doctrine of necessity" or the "necessity of payment" rule originated in railway cases and was first articulated by the United States Supreme Court in Miltenberger v. Logansport, C.&S.W.R. Co., 106 U.S. 286 (1882). The doctrine was expanded to non-railroad debtors in the mid-century. See Dudley v. Mealey, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in a hotel reorganization case, that the court was not "helpless" to apply the rule to supply creditors of non-railroad debtors where the alternative was the cessation of operations).

54. The United States Court of Appeals for the Third Circuit recognized the "necessity of payment" doctrine in In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. Id. (stating that court may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); see also In re Penn Cent. Transp. Co., 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits "immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid"); In re Just for Feet, Inc., 242 B.R. 821, 824-845 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to continued operation of business); In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

55. Today, the rationale for the necessity of payment rule—the rehabilitation of a debtor in reorganization cases—is “the paramount policy and goal of Chapter 11.” In re Ionosphere Clubs, Inc., 98 B.R. at 176; see also Just For Feet, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); In re Quality Interiors, Inc., 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain prepetition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.), 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of “unequal treatment of pre-petition debts when necessary for rehabilitation” is appropriate); Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition workers’ compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”); 3 COLLIER ON BANKRUPTCY, 105.04[5][a] (15th ed. rev. 2004) (discussing cases in which courts have relied on the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

56. Courts also have permitted postpetition payment of prepetition claims pursuant to section 105(a) in other situations, such as if nonpayment of a prepetition obligation would trigger

a withholding of goods or services essential to the debtors' business reorganization plan. See In re UNR Indus., 143 B.R. 516, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors' successful reorganization); Ionosphere Clubs, 98 B.R. at 167-77 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

57. This flexible approach is particularly critical where a prepetition creditor provides vital goods or services to a debtor that would be unavailable if the debtors did not satisfy their prepetition obligations. In In re Structurlite Plastics Corp., 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), the bankruptcy court stated that "a bankruptcy court may exercise its equity powers under § 105(a) [of the Bankruptcy Code] to authorize payment of prepetition claims where such payment is necessary 'to permit the greatest likelihood of survival of the debtors and payment of creditors in full or at least proportionately.'" Id. The court explained that "a *per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code." Id. at 932.

I. Sufficient Cause Exists to Authorize the Debtors to Honor Employee Wage and Benefit Obligations

58. The majority of the prepetition wages and other employee claims the Debtors seek to pay would be entitled, in any event, to priority treatment to the extent of \$11,725 for each individual under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. See U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for (a) wages, salaries or commissions, including vacation, and sick leave pay earned by an individual, and (b) contributions to an employee benefit plan). Thus, granting the relief sought herein would only

cause such employee claims to be paid at the outset of these Chapter 11 Cases, rather than waiting until the confirmation of any potential plan in these Chapter 11 Cases, to the extent that they constitute priority claims.

59. By this Motion, the Debtors seek authority to pay outstanding prepetition obligations to their Employees in full. The Debtors do not believe that there are any Employees whose claims for prepetition obligations may exceed the \$11,725 cap under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. As such, the Debtors are not seeking authority to pay any amounts to Employees in excess of the \$11,725 cap under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code pursuant to this Motion. However, to the extent the Debtors later determine that certain Employees' claims for prepetition obligations do exceed \$11,725, the Debtors reserve the right to seek authority to pay these claims in full as well, following notice and a hearing. To the extent they exist, all prepetition claims exceeding \$11,725 would have arisen in the ordinary course of the business of the Debtors and are reasonable in relation to the value of the services rendered. As discussed above, there are several provisions of the Bankruptcy Code that authorize a debtor to honor prepetition obligations if the circumstances warrant and that therefore support the relief requested in this Motion. Such payments are justified by the critical nature of the services provided by such Employees.

60. The Debtors also seek authority to pay Non-Tax Deductions and Payroll Taxes to the appropriate entities. These amounts principally represent Employee earnings that governments, Employees and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain Non-Tax Deductions, including contributions to the Employee Benefit Programs and child support and alimony payments, are not the Debtors' property because they have been withheld from Employees' paychecks on another party's behalf.

See 11 U.S.C. § 541(b). Further, the Debtors and their officers are required by federal and state laws to make certain tax payments that have been withheld from its Employees' paychecks. See 26 U.S.C. § 6672 and 7501(a); see also City of Farrell v. Sharon Steel Corp., 41 F.3d 92, 95-97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); In re DuCharmes & Co., 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Non-Tax Deductions and Payroll Taxes are not property of the Debtors' estates, these amounts are not subject to the normal bankruptcy prohibitions against payment. The Debtors, therefore, request that the Court confirm that such trust fund withholding is not property of the Debtors' estates and that the Debtors may transmit the Non-Tax Deductions and Payroll Taxes to the proper parties in the ordinary course of business.

61. As described above, the majority of the Debtors' Employees rely exclusively on their compensation, benefits or reimbursement of their expenses to satisfy their daily living expenses. Consequently, these Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid compensation, benefits and reimbursable expenses. Moreover, if the Debtors are unable to satisfy such obligations, Employee morale and loyalty will be jeopardized at a time when their support is critical.

62. Furthermore, if the Debtors are not authorized to honor their various obligations under their insurance programs, their Employees will not receive health coverage and may become obligated for the payment of health care claims in cases when insurance providers and Health Plan administrators have not been paid by the Debtors. The loss of health care coverage

will result in considerable anxiety for Employees at a time when the Debtors needs such Employees to perform their jobs at peak efficiency.

63. For all of the foregoing reasons, the payment of the Debtors' prepetition Employee Wages and Benefits will benefit the estates and their creditors by allowing the Debtors' business operations to continue without interruption. In the absence of such payments, the Debtors' Employees may seek alternative employment opportunities. Such a development would deplete the Debtors' workforce, hindering the Debtors' ability to meet their customer obligations and likely diminishing creditor confidence in the Debtors. Moreover, the loss of valuable Employees and the recruiting efforts that would be required to replace such Employees would be a massive and costly distraction at a time when the Debtors should be focusing on stabilizing their operations. Accordingly, the Debtors must pursue all reasonable measures to retain their Employees by, among other things, continuing to honor all wages, benefits and related obligations, including those that accrued prepetition.

64. The importance of a debtor's employees to its operations has been repeatedly recognized by courts in this district and other jurisdictions in granting relief similar to the relief requested herein. See, e.g., In re Filene's Basement, Inc., Case No. 09-11525 (MFW) (Bankr. D. Del. May 5, 2009); In re AbitibiBowater Inc., Case No. 09-11296 (KJC) (Bankr. D. Del. Apr. 17, 2009); In re The Fairchild Corporation, Case No. 09-10899 (CSS) (Bankr. D. Del. Apr. 15, 2009) (final order); In re Sportsman's Warehouse, Inc., Case No. 09-10990 (CSS) (Bankr. D. Del. Mar. 23, 2009); In re Masonite Corporation, Case No. 09-10844 (PJW) (Bankr. D. Del. Apr. 14, 2009) (final order); In re Robbins Bros. Corporation, Case No. 09-10708 (PJW) (Bankr. D. Del. Mar. 5, 2009); In re Nortel Networks Inc., Case No. 09-10138 (KG) (Bankr. D. Del. Jan. 15, 2009); In re Motor Coach Industries International, Inc., Case No. 08-12136 (BLS) (Bankr. D. Del. Oct. 7,

2008) (final order); In re Linens Holding Co., Case No. 08-10832 (CSS) (Bankr. D. Del. May 2, 2008); In re Wickes Holdings, LLC, Case No. 08-10212 (KJC) (Bankr. D. Del. Feb. 5, 2008); In re Pope & Talbot, Inc., Case No. 07-11738 (CSS) (Bankr. D. Del. Nov. 21, 2007); In re Delta Financial Corp., Case No. 07-11880 (CSS) (Bankr. D. Del. Dec. 19, 2007); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 13, 2007).⁷

J. Failure to Honor Employee Obligations Within 21 Days of the Petition Date Would Cause Immediate and Irreparable Harm

65. Pursuant to Bankruptcy Rule 6003, the Court may grant relief regarding a motion to pay all or part of a prepetition claim within 21 days after the Petition Date if the relief is necessary to avoid immediate and irreparable harm.

66. As described above, the Debtors' Employees are integral to the Debtors' operations. Failure to satisfy obligations with respect to the Employees in the ordinary course of business during the first 21 days of these Chapter 11 Cases will jeopardize their loyalty and trust, causing Employees to leave the Debtors' employ and severely disrupting the Debtors' operations at this critical juncture.

67. Moreover, the Debtors' Employees rely on their compensation, benefits and reimbursement of expenses to pay their living expenses, and the effect could be financially ruinous if the Debtors cannot pay them in the ordinary course of business. Accordingly, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of their Employee obligations.

⁷ Critically, the Debtors do not at this time seek to assume any executory contracts or obligations, and the Motion should not be deemed to be an assumption or adoption of any employee agreements or policies. Rather, the Debtors merely seek to take steps that they believe are necessary to retain their existing workforce and to maximize the value of the bankruptcy estates. Also, the Debtors will retain the discretion not to make the payments contemplated by the Motion for particular Employees, and nothing in the Motion shall, in and of itself, confer upon any Employees or other parties an entitlement to administrative priority or other preferences in distribution from the Debtors' estates.

K. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers

68. The Debtors represent they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves, expected cash flows from ongoing business operations and anticipated access to debtor-in-possession financing. Also, under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an authorized payment in respect of the Employee obligations. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that the Court should authorize all applicable financial institutions (collectively, the "Cash Management Banks"), when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Employee obligations.

69. For all of the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interests of all parties in interest.

DEBTORS' RESERVATION OF RIGHTS

70. Nothing contained herein is intended to or should be construed as an admission of the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their right to contest any invoice of an Employee under applicable non-bankruptcy law. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to and should not be construed as an admission of the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

NOTICE

71. No trustee, examiner or creditors' committee has been appointed in these chapter 11 cases. The Debtors have provided notice of this Motion by facsimile and/or overnight mail to: (a) the Office of the United States Trustee for the District of Delaware; (b) each of the Debtors' creditors holding the twenty (20) largest unsecured claims on a consolidated basis; (c) counsel to the Debtors' proposed postpetition secured lender; (d) counsel to Trimaran; (e) the Internal Revenue Service; and (f) the United States Department of Justice. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

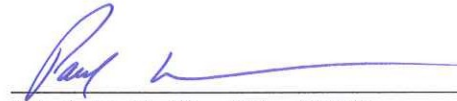
NO PRIOR REQUEST

72. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein and in the Abate Declaration, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A: (a) authorizing, but not directing, the Debtors to pay in the ordinary course of business certain prepetition (i) wages, salaries and other compensation, (ii) reimbursable employee expenses, and (iii) employee benefits; (b) authorizing and directing financial institutions to receive, process, honor and pay all checks presented for payment and electronic payment requests relating thereto; and (c) granting such other and further relief as the Court may deem just and proper.

Dated: September 21, 2010
Wilmington, Delaware

Respectfully submitted,



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*Proposed Attorneys for the Debtors and
Debtors-in-Possession*

EXHIBIT A

(Order)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<hr/>)	Chapter 11
)	
Urban Brands, Inc., <u>et al.</u> , ¹)	Case No. 10-_____ (____)
)	
Debtors.)	Joint Administration Pending
<hr/>)	

**ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY
CERTAIN PREPETITION (I) WAGES, SALARIES, BONUSES AND OTHER
COMPENSATION, (II) REIMBURSABLE EMPLOYEE EXPENSES, AND (III)
EMPLOYEE MEDICAL AND SIMILAR BENEFITS; AND (B) AUTHORIZING AND
DIRECTING FINANCIAL INSTITUTIONS TO HONOR ALL RELATED CHECKS
AND ELECTRONIC PAYMENT REQUESTS**

Upon the motion (the “Motion”) of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order (the “Order”) (a) authorizing, but not directing, the Debtors to pay in the ordinary course of business certain prepetition (i) wages, salaries and other compensation, (ii) reimbursable employee expenses, and (iii) employee benefits; and (b) authorizing and directing financial institutions to receive, process, honor and

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Urban Brands, Inc. (3678), 100% Girls Ltd. (4150), 100% Girls of Georgia, Inc. (4159), 100% Girls of New York, Inc. (2149), 100 Percent Girls of New Jersey, Inc. (4167), A.S. Interactive, Inc. (3472), Ashley Stewart Ltd. (4541), Ashley Stewart Apparel Corporation (4049), Ashley Stewart Clothing Company, Inc. (4051), Ashley Stewart Management Co., Inc. (4053), Ashley Stewart Woman Ltd. (4152), ASIL 6, Inc. (3996), ASNJ 10, Inc. (4004), Carraizo Alto Apparel Corporation (4651), Church Street Retail, Inc. (5954), Kid Spot Ltd. (2585), Kidspot of Delaware, Inc. (2596), Kidspot of Illinois, Inc. (2606), Kidspot of Michigan, Inc. (2603), Kidspot of New Jersey, Inc. (2601), Kidspot of Ohio, Inc. (4705), Kidspot of Pennsylvania, Inc. (2599), Kidspot of Texas, Inc. (3809), Large Apparel of Alabama, Inc. (0624), Large Apparel of California, Inc. (2129), Large Apparel of Connecticut, Inc. (5161), Large Apparel of District of Columbia, Inc. (8613), Large Apparel of Florida, Inc. (2209), Large Apparel of Georgia, Inc. (3894), Large Apparel of Illinois, Inc. (4650), Large Apparel of Indiana, Inc. (4055), Large Apparel of Louisiana, Inc. (3790), Large Apparel of Maryland, Inc. (5158), Large Apparel of Michigan, Inc. (9420), Large Apparel of Mississippi, Inc. (5913), Large Apparel of Missouri, Inc. (2135), Large Apparel of New Jersey, Inc. (5157), Large Apparel of New York, Inc. (5956), Large Apparel of North Carolina, Inc. (8611), Large Apparel of Ohio, Inc. (3815), Large Apparel of Pennsylvania, Inc. (4057), Large Apparel of South Carolina, Inc. (2029), Large Apparel of Tennessee, Inc. (3895), Large Apparel of Texas, Inc. (3787), Large Apparel of Virginia, Inc. (2809), Large Apparel of Wisconsin, Inc. (3898), Marianne Ltd. (3940), Marianne USPR, Inc. (2193), Marianne VI, Inc. (2206), Metro Apparel of Kentucky, Inc. (7533), Metro Apparel of Massachusetts, Inc. (1367), The Essence of Body & Soul, Ltd. (4165), Urban Acquisition Corporation of New Jersey, Inc. (2976), Urban Acquisition Corporation of New York, Inc. (4103), and Urban Brands TM Holding Co. (5909). The Debtors’ corporate offices are located at 100 Metro Way, Secaucus, New Jersey 07094.

pay all checks presented for payment and electronic payment requests relating thereto; and upon the *Declaration of Michael A. Abate in Support of First Day Motions*; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; and it appearing that failure to grant the relief requested in the Motion² immediately will cause immediate and irreparable harm to the Debtors; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2); and it appearing that venue of this proceeding and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of this Motion having been provided; and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED to the extent provided herein.
2. Subject to the requirements of sections 507(a)(4) and (a)(5) and pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors are authorized, but not required, to satisfy all prepetition Employee obligations without further order of the Court, including, without limitation, amounts related to Unpaid Compensation, Non-Tax Deductions, Payroll Taxes, Reimbursable Expenses, Health Plans, the 401(k) Plan, Life Insurance Plan, AD&D Coverage, the PTO Plan, and the ComPsych Counseling Program, including all costs related thereto. Amounts paid pursuant to this Motion shall not exceed \$3,114,600 in the aggregate absent further order of the Court.

² All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

3. The Debtors are authorized, but not required, to continue to honor all practices, programs, and policies with respect to the Employees as such practices, programs, and policies were in effect as of the date on which the Chapter 11 Cases were commenced and as may be modified in the ordinary course of the Debtors' business, including, but not limited to, the Employee Benefit Programs.

4. The Debtors are authorized, but not required, to pay costs and expenses incidental to the payment of the Employee Wages and Benefits, including all administration and processing costs and payments to outside professionals, in the ordinary course of business, in order to facilitate the administration and maintenance of the Debtors' programs and policies related to the Employee Wages and Benefits.

5. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of prepetition amounts owed to the Employees that are dishonored as a consequence of these Chapter 11 Cases and to the extent such prepetition amounts are authorized to be paid pursuant to this Order.

6. All applicable banks and other financial institutions are hereby authorized and directed to receive, process, honor and pay any and all checks evidencing amounts paid by the Debtors pursuant to the Motion, whether presented prior to or after the Petition Date.

7. Each of the Debtors' Cash Management Banks are authorized, subject to the terms of this Order, to debit the Debtors' accounts in the ordinary course of business on account of the relief requested in the Motion without the need for further order of the Court for: (i) all checks drawn on the Debtors' accounts that are cashed at such Cash Management Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition

Date; (ii) all checks or other items deposited in one of the Debtors' accounts with such Cash Management Bank prior to the Petition Date that have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors was responsible for such items prior to the Petition Date; and (iii) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Cash Management Bank as service charges for the maintenance of the cash management systems.

8. Any Cash Management Bank may rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and such Cash Management Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

9. The requirements set forth in Rule 6003(b) of the Bankruptcy Rules are satisfied by the contents of the Motion.

10. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing facility, any budget in connection therewith and any order regarding the use of cash collateral.

11. Nothing in the Motion or this Order, nor as a result of the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity or priority of any claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any claim, or (c) an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

12. The Debtors are authorized and directed to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

13. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2010
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE