

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

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| In re: |) | Chapter 11 |
| UBI Liquidating Corp., <u>et al.</u> , ¹ |) | Case No. 10-13005 (KJC) |
| Debtors. |) | Jointly Administered |
| |) | Re: Docket No. 1226, 1243 |

**ORDER AUTHORIZING EMPLOYMENT AND APPROVING
COMPENSATION OF BDO USA, LLP AS TAX CONSULTATION
PROVIDER TO THE DEBTORS *NUNC PRO TUNC* TO MARCH 30, 2011**

This matter having come before the Court on the application (the "Application") filed by the above-captioned debtors and debtors in possession (the "Debtors"), for an order pursuant to 11 U.S.C. § 327(a) and 328(a) authorizing the retention and employment of BDO USA, LLP ("BDO") as tax consultant to the Debtors; and the Court having reviewed the Application and the Declaration;² and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are UBI Liquidating Corp. (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), ASL Liquidating Corp. (4541), Ashley Stewart Apparel Corporation (4049), Ashley Stewart Clothing Company, Inc. (4051), ASMCI Liquidating Corp. (4053), ASWL Liquidating Corp. (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), UACONJI Liquidating Corp. (2976), UACONYI Liquidating Corp. (4103), and UBTHC Liquidating Corp. (5909). The Debtors' corporate offices are located at 100 Metro Way, Secaucus, New Jersey 07094.

² Capitalized terms not otherwise defined herein shall have the meanings attributed to them in the Application.

U.S.C. § 157(b); (c) notice of the Application is sufficient under the circumstances and no further notice is required; and (d) capitalized terms not otherwise defined herein have the meaning given to them in the Application; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Application is in the best interests of the Debtors and their estates; and after due deliberation and sufficient cause appearing, it is hereby:

ORDERED, ADJUDGED AND DECREED THAT:

1. The Application is GRANTED, as set forth herein.
2. Pursuant to 11 U.S.C. § 327(a) of the Bankruptcy Code, the Debtors are authorized to employ and retain BDO as tax consultation services provider *nunc pro tunc* to March 30, 2011 on the terms and conditions substantially set forth in the Engagement Letter except as modified herein.
3. BDO shall file monthly fee applications pursuant to sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the *Order Granting Motion of the Debtors and Debtors In Possession for an Administrative Order Pursuant To 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, dated, dated October 13, 2010* [Docket No. 192]; provided, however, the fee applications filed by BDO with respect to the tax preparation services for FYE January 29, 2011 and FYE January 28, 2012, shall be subject to review only pursuant to the standard of review set forth in section 328(a) of the Bankruptcy Code.
4. Notwithstanding the preceding paragraph of this Order and any provision to the contrary in the Application or the Engagement Letter, the United States Trustee shall have the right to object to BDO's request for interim and final compensation and reimbursement based on

the reasonableness standard provided in section 330 of the Bankruptcy code, not section 328 of the Bankruptcy Code.

5. BDO's fee applications shall include, among other things, time records setting forth in a summary format a description of the services rendered by each professional, and the amount of time spent on each date and by each such individual in rendering services on behalf of the Debtors in one-half hour increments, but shall be excused from keeping time in one-tenth of an hour increments for the tax preparation services for FYE January 29, 2011 and FYE January 28, 2012. However, if BDO performs additional services, fees for which services are charged at BDO's standard hourly rates, then fee applications for such services shall be billed and reported in one-tenth of an hour increments.

6. The indemnification provision of the Engagement Letter is approved, subject during the pendency of the Chapter 11 Cases to the following modification as follows:

- a. Subject to the provisions of subparagraphs (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, BDO in accordance with the Engagement Letter for any claim arising from, related to or in connection with their performance of the services described in the Engagement Letter;
- b. BDO shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Letter for services other than those provided under the Engagement Letter, unless such services and the indemnification, contribution, or reimbursement therefor are approved by this Court;
- c. Notwithstanding anything to the contrary in the Engagement Letter, the Debtors shall have no obligation to indemnify any person, or provide contribution, or reimbursement to any person, for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from that person's gross negligence or willful misconduct, or (ii) settled prior to a judicial determination as to that person's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Letter as modified by the proposed order on this Application; and

d. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these chapter 11 cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these chapter 11 cases, BDO believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Engagement Letter (as modified by this order), including without limitation the advancement of defense costs, BDO must file an application before this Court, and the Debtors may not pay any such amounts before the entry of an order by this Court approving the payment. This subparagraph (d) is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and expenses for indemnification, contribution, or reimbursement, and is not a provision limiting the duration of the Debtors' obligation to indemnify BDO.

7. The Debtors are authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order.

8. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: ^{May 24}~~June~~, 2011
Wilmington, Delaware



THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE