

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

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>UBI Liquidating Corp., et al.,<sup>1</sup></b>	)	<b>Case No. 10-13005 (KJC)</b>
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	<b>Objection Deadline: August 24, 2011 at 4:00 p.m.</b>
	)	<b>Hearing Date: September 7, 2011 at 1:30 p.m.</b>

**MOTION OF DEBTORS AND DEBTORS IN POSSESSION  
FOR AN ORDER (A) APPROVING FORM AND MANNER OF  
NOTICE OF DISCLOSURE STATEMENT HEARING, (B) ESTABLISHING  
PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES TO  
ACCEPT OR REJECT PROPOSED CHAPTER 11 PLAN, (C) SCHEDULING  
A HEARING ON CONFIRMATION OF PROPOSED CHAPTER 11 PLAN  
AND APPROVING RELATED NOTICE PROCEDURES, AND (D)  
EXTENDING THE DEBTORS' EXCLUSIVE SOLICITATION  
PERIOD THROUGH AND INCLUDING OCTOBER 31, 2011**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby move for the entry of an order, substantially in the form attached hereto as Exhibit A, (the “Disclosure Statement Order”) (i) approving the form and manner of notice of the hearing on the

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<sup>1</sup> 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.

*Disclosure Statement for the Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 1322], dated July 20, 2011 (the “Disclosure Statement”); (ii) establishing procedures for the solicitation and tabulation of votes (“Solicitation Procedures”) to accept or reject the *Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 1321], dated July 20, 2011 (the “Plan”), including approval of (a) the form of ballot (the “Ballot”) for submitting votes on the Plan, (b) the deadline for submission of Ballots, (c) the contents of the proposed solicitation packages to be distributed to creditors and other parties in interest in connection with the solicitation of votes on the Plan (the “Solicitation Package”), (d) the proposed record date for voting on the Plan, (e) the form of notice of the confirmation hearing and the deadline for objecting to confirmation of the Plan (the “Confirmation Hearing Notice”), (f) the form of notices of non-voting status for classes of claims that are deemed to accept or reject the plan, and (g) certain related relief; (iii) scheduling a hearing on confirmation of the Plan and approving related notice procedures; and (iv) extending the period during which the Debtors have the exclusive right to solicit acceptances of a chapter 11 plan (the “Exclusive Solicitation Period”) through and including October 31, 2011. In support of this Motion, the Debtors respectfully represent as follows:

### **JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 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 in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein is sections 105, 1125 and 1126 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 2002, 3016, 3017 and 3018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy

Rules”), and Rules 2002-1 and 3017-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

## **GENERAL BACKGROUND**

### **A. Introduction**

3. On September 21, 2010 (the “Petition Date”), the Debtors commenced the above-captioned chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. UBI Liquidating Corp., formerly known as Urban Brands, Inc., is the direct or indirect parent company of each of the Debtors.

4. The Debtors continued to operate their business as debtors in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, until the sale of substantially all of the Debtors’ assets was fully consummated. No trustee or examiner has been appointed in the Chapter 11 Cases. On October 1, 2010, an official committee of unsecured creditors (the “Creditors’ Committee”) was appointed by the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”).

### **B. The Debtors’ Business**

5. As of the Petition Date, the Debtors were a leading specialty retailer of fashion-forward and inspirational apparel for plus sized urban women under the brand name of Ashley Stewart. The Debtors operated approximately 210 stores in 26 states with approximately 2,100 employees, the majority of which are minority women. The store base was reinforced by a strong online presence through AshleyStewart.com, providing both a marketing tool as well as an additional outlet for Ashley Stewart customers.

6. 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. 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. Sale of the Debtors' Assets**

7. 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 of the Debtors' assets. Accordingly, the Debtors expanded their marketing efforts to solicit interest from prospective purchasers of the Debtors and their assets as a going-concern. As a result of such efforts, On September 21, 2010, the Debtors and New Ashley Stewart, LLC ("New Ashley"), an affiliate of GB Merchant Partners, LLC, executed an asset purchase agreement whereby New Ashley agreed to purchase substantially all of the Debtors' assets.

8. On October 4, 2010, the Court entered an order approving bidding procedures (the "Bidding Procedures") with respect to the sale of the Debtors' assets. In accordance with the Bidding Procedures, the Debtors received multiple competing bids for their assets and an auction (the "Auction") was held on October 25-26, 2010. Upon conclusion of the Auction, New Ashley was determined to be the Successful Bidder (as defined in the Bidding Procedures) for the

Debtors' assets. On October 27, 2010, the Court entered an order [Docket No. 434] approving the sale of the Debtors' assets to New Ashley. The sale closed on October 29, 2010.<sup>2</sup>

**D. The General Bar Date**

9. On November 23, 2010, the Court entered an order establishing January 24, 2011 as the deadline for general unsecured creditors to file proofs of claim against any of the Debtors. Additionally, March 21, 2011 was established as the deadline for governmental units to file any proofs of claim against any of the Debtors.

**REQUESTED RELIEF**

10. By this Motion, the Debtors seek the entry of an order (i) approving the form and manner of notice of the hearing on the Disclosure Statement; (ii) establishing Solicitation Procedures, including approval of (a) the Ballot for submitting votes on the Plan, (b) the deadline for submission of Ballots, (c) the contents of the Solicitation Packages to be distributed to creditors and other parties in interest in connection with the solicitation of votes on the Plan, (d) the proposed record date for voting on the Plan, (e) the form of the Confirmation Hearing Notice, (f) the form of notices of non-voting status for classes of claims that are deemed to accept or reject the plan, and (g) certain related relief; (iii) scheduling a hearing on confirmation of the Plan and approving related notice procedures; and (iv) extending the Exclusive Solicitation Period through and including October 31, 2011.

**A. Form and Manner of Notice for Disclosure Statement Hearing**

11. Rule 3017(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") provides that "the Court hold a hearing on at least 28 days' notice . . . to consider the disclosure statement and objections or modifications thereto." Fed. R. Bankr. P. 3017(a). In

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<sup>2</sup> Pursuant to the purchase agreement with New Ashley, the Debtors were required to change the corporate name of any Debtor entity whose name contained "Urban Brands" or "Ashley Stewart." On November 2, 2010, the Court entered an order authorizing the corporate name change of seven (7) of the Debtors.

accordance with Bankruptcy Rule 3017(a), the Debtors have noticed a hearing to consider approval of the Disclosure Statement for September 7, 2011 at 1:30 p.m. (Eastern Time) (the “Disclosure Statement Hearing”).

12. On or before July 27, 2011, the Debtors mailed or caused to be mailed, notices, substantially in the form attached hereto as Exhibit B (the “Disclosure Statement Hearing Notice”), to (i) the U.S. Trustee, (ii) counsel for the Creditors’ Committee, (iii) the Securities and Exchange Commission (the “SEC”), (iv) any known holders of claims against or equity interests in the Debtors and (v) all other parties that have filed requests for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. The Disclosure Statement Hearing Notice, among other things, provides notice of the Disclosure Statement Hearing and establishes 4:00 p.m. (Eastern Time) on August 24, 2011 as the deadline for filing any objections to the Disclosure Statement. Thus, the Debtors have provided interested parties with at least twenty-eight (28) days notice of the Disclosure Statement Hearing and related objection deadline.

13. The Debtors have also served a copy of this Motion, the Disclosure Statement and the Plan, which is Exhibit A to the Disclosure Statement, on the U.S. Trustee, the SEC, counsel for the Creditors’ Committee and all other parties that have filed requests for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. Additionally, pursuant to Bankruptcy Rule 3017(a), the Debtors will provide copies of the Disclosure Statement and the Plan to any additional party in interest that makes a request for such documents in the manner indicated in the Disclosure Statement Hearing Notice. Copies of the Plan and Disclosure Statement may also be viewed on the Voting Agent’s (as defined herein) website at [www.bmcgroup.com/urbanbrands](http://www.bmcgroup.com/urbanbrands).

14. The Debtors submit that the foregoing procedures provide adequate notice of the Disclosure Statement Hearing and, accordingly, request that the Court approve such notice as appropriate and in compliance with the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

**B. Procedures for Tabulation of Votes**

**(i) Form of Ballots**

15. Bankruptcy Rule 3017(d) requires that the Debtors mail a form of ballot only to “creditors and equity holders entitled to vote on the plan.” Fed. R. Bankr. P. 3017(d). Pursuant to the Bankruptcy Code, only those classes of claims or equity interests that are (i) “impaired” by a plan of reorganization and (ii) entitled to receive a distribution under such plan are entitled to vote on the plan. In these Chapter 11 Cases, only the holders of claims in Class 4 (the “Voting Class”) are entitled to vote to accept or reject the Plan. Classes 1, 2 and 3 (the “Unimpaired Non-Voting Classes”) under the Plan are unimpaired and, therefore, are conclusively presumed to accept the Plan in accordance with section 1126(f) of the Bankruptcy Code. Additionally, the holders of interests in Class 5 (the “Impaired Non-Voting Class”) under the Plan neither retain nor receive any property under the Plan and, therefore, are deemed to reject the Plan in accordance with section 1126(g) of the Bankruptcy Code.

16. The Debtors propose to distribute to creditors in the Voting Class a Ballot in the form attached to the Disclosure Statement Order as Exhibit 1. The Ballot is based on Official Form No. 14, but has been modified to address the particular terms of the Plan.

**(ii) Voting Deadline for Receipt of Ballots**

17. Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement, the Court may fix a time within which the holders of claims or equity interests may

accept or reject a plan. The Debtors anticipate commencing the Plan solicitation period by mailing Ballots and other approved solicitation materials within five (5) business days of the entry of an order approving the Disclosure Statement. Based on this schedule, the Debtors propose that to be counted as votes to accept or reject the Plan, all Ballots must be properly executed, completed and delivered to BMC Group, Inc., the Debtors' notice and balloting agent in the Chapter 11 Cases (the "Voting Agent"), either (a) by mail in the return envelope provided with each Ballot, (b) by overnight courier or (c) by personal delivery so that, in each case, such Ballots are received by the Voting Agent no later than 5:00 p.m. (Eastern Time) on October 12, 2011 or such other date that is established by the Debtors that is at least twenty-eight (28) days after the commencement of the solicitation period (the "Voting Deadline").

18. The Debtors submit that the proposed solicitation period provides sufficient time for creditors to make informed decisions to accept or reject the Plan and submit timely Ballots.

**(iii) Procedures for Vote Tabulation**

19. Section 1126(c) of the Bankruptcy Code provides:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c). Further, Bankruptcy Rule 3018(a) provides that the "court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan." Fed. R. Bankr. P. 3018(a).

20. Solely for purposes of voting to accept or reject the Plan, and not for the purpose of the allowance of, or distribution on account of, a claim and without prejudice to the rights of the Debtors in any other context, the Debtors propose that each claim within the Voting Class be



temporarily allowed in accordance with the following rules (collectively, the “Tabulation Rules”):

- a. Unless otherwise provided in the Tabulation Rules described below, a claim will be deemed temporarily allowed for voting purposes in an amount equal to (i) if a timely filed proof of claim has not been filed, the amount of such claim as set forth in the schedules of assets and liabilities, filed by each of the Debtors on October 21-22, 2010 as amended (collectively, the “Schedules”), provided that the claim is not listed therein as contingent, unliquidated or disputed, or (ii) the amount of such claim as set forth in a timely filed proof of claim;
- b. If a claim is deemed allowed in accordance with the Plan, such claim will be temporarily allowed for voting purposes in the deemed allowed amount set forth in the Plan;
- c. If a claim for which a proof of claim has been timely filed is marked in whole or in part as contingent, unliquidated or disputed on its face, such portion of the claim that is marked as contingent, unliquidated or disputed will be temporarily allowed for voting purposes in the amount of \$1.00;
- d. If a claim has been estimated or otherwise allowed for voting purposes by order of the Court, such claim will be temporarily allowed for voting purposes in the amount so estimated or allowed by the Court;
- e. If a claim is listed in the Schedules as contingent, unliquidated or disputed and a proof of claim was not timely filed, such claim will be disallowed for voting purposes;
- f. If the Debtors have filed and served an objection to a claim at least fifteen (15) days before the Voting Deadline, such claim will be temporarily allowed or disallowed for voting purposes in accordance with the relief sought in the objection; and
- g. If a claim holder identifies a claim amount on its Ballot that is less than the amount otherwise calculated in accordance with the Tabulation Rules, the claim will be temporarily allowed for voting purposes in the lesser amount identified on such Ballot.

21. The Debtors believe that the proposed Tabulation Rules will establish a fair and equitable voting process. Nevertheless, if any claimant seeks to challenge the allowance of its claim for voting purposes in accordance with the Tabulation Rules, the Debtors propose that

such claimant be required to file a motion, pursuant to Bankruptcy Rule 3018(a), for an order temporarily allowing such claim in a different amount or classification for purposes of voting to accept or reject the Plan (a “Rule 3018 Motion”) and serve such motion on the Debtors so that it is received no more than fifteen (15) days after the later of (a) the date of service of the Confirmation Hearing Notice (as such term is defined below) and (b) the date of service of a notice of an objection, if any, to the underlying claim. In accordance with Bankruptcy Rule 3018, the Debtors further propose that any Ballot submitted by a creditor that files a Rule 3018 Motion will be counted solely in accordance with the Debtors’ proposed Tabulation Rules and the other applicable provisions contained herein unless and until the underlying claim is temporarily allowed by the Court for voting purposes in a different amount, after notice and a hearing.

22. In tabulating the Ballots, the Debtors request that the following additional procedures be utilized: (a) if a creditor casts more than one Ballot voting the same claim before the Voting Deadline, the last dated properly executed Ballot received before the Voting Deadline will be deemed to reflect the voter’s intent and thus will supersede any prior Ballots; (b) creditors will be required to vote all of their claims either to accept or reject the Plan and may not split their votes; thus, a Ballot (or a group of Ballots received from a single creditor) that partially rejects and partially accepts the Plan will not be counted; (c) Ballots that are otherwise validly executed but do not indicate either acceptance or rejection of the Plan will not be counted; and (d) the Voting Agent will not accept Ballots by facsimile transmission.

**C. Confirmation Hearing and Notice; Voting Record Date and Procedures for Distribution and of Solicitation Packages and Notices of Non-Voting Status**

**(i) The Confirmation Hearing**

23. Bankruptcy Rule 3017(c) provides:

On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

Fed. R. Bankr. P. 3017(c).

24. In accordance with Bankruptcy Rule 3017(c) and consistent with the Debtors' proposed solicitation schedule, the Debtors request that the Confirmation Hearing be set for the Debtors' omnibus hearing scheduled for October 19, 2011 at 1:00 p.m. (Eastern Time). The Confirmation Hearing may be continued from time to time by the Debtors without further notice other than the announcement of the adjourned date(s) at the Confirmation Hearing or any continued hearing. The Debtors further propose that objections, if any, to confirmation of the Plan must: (a) be in writing; (b) state the name and address of the objecting party and the nature of the claim or interest of such party; (c) state with particularity the basis and nature of any objection to confirmation of the Plan; and (d) be filed with the Court and served on: (i) the Debtors: UBI Liquidating Corp., *et al.*, 100 Metro Way, Secaucus, New Jersey 07094-1906, (Attention: Stephen Feldman); (ii) counsel to the Debtors: Richards, Layton & Finger, One Rodney Square, 920 King Street, Wilmington, Delaware 19801 (Attention: Mark D. Collins, Esq.); (iii) counsel to the Creditors' Committee: Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attention: Lawrence C. Gottlieb, Esq.), and Ballard Spahr Andrews & Ingersoll, LLP, 919 North Market Street, 12th Floor, Wilmington, Delaware 19801-3034 (Attention: Leslie C. Heilman, Esq.); and (iv) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attention: David Buchbinder, Esq.) so that they are received no later than 4:00 p.m. (Eastern Time) on October 12, 2011 or such other date established by the Debtors that is at least twenty-eight (28) days after the commencement of the solicitation period (the "Confirmation Objection Deadline").

25. Bankruptcy Rule 2002(b) requires at least twenty-eight (28) days' notice by mail to all creditors and indenture trustees of the time set for filing objections to confirmation of a chapter 11 plan and the hearing to consider confirmation of a chapter 11 plan. Bankruptcy Rule 2002(d) requires that equity security holders be given notice of the foregoing in the manner and the form directed by the Court. In accordance with Bankruptcy Rules 2002 and 3017(d), the Debtors propose to serve on all creditors and equity security holders, not less than twenty-eight (28) days prior to the Confirmation Objection Deadline, a copy of a notice substantially in the form attached to the Disclosure Statement Order as Exhibit 2 (the "Confirmation Hearing Notice"), setting forth: (a) the Voting Deadline for the submission of Ballots to accept or reject the Plan; (b) the deadline for filing Rule 3018 Motions; (c) the Confirmation Objection Deadline; and (d) the time, date and place of the Confirmation Hearing.

26. In addition to mailing the Confirmation Hearing Notice as part of the Solicitation Packages, the Debtors propose to publish a notice substantially in the form of the Confirmation Hearing Notice not less than twenty (20) days before the Confirmation Hearing in the national edition of *The New York Times*.

**(ii) The Voting Record Date**

27. Bankruptcy Rule 3017(d) provides that, unless otherwise ordered by the Court, the "date [an] order approving the disclosure statement is entered," or such other date established by the court, is the record date for determining the "holders of stock, bonds, debentures, notes, and other securities" entitled to receive the materials specified in Bankruptcy Rule 3017(d), including ballots for voting on a plan of reorganization. See Fed. R. Bankr. P. 3017(d). Accordingly, the Debtors request that the Court establish September 7, 2011 as the record date pursuant to Bankruptcy Rule 3017(d) for purposes of determining which creditors are entitled to

receive Solicitation Packages and, where applicable, vote on the Plan (the “Voting Record Date”).

28. With respect to a transferred claim, the Debtors further propose that the transferee will be entitled to receive a Solicitation Package and cast a Ballot on account of such transferred claim only if by the Voting Record Date (a) all actions necessary to effect the transfer of the claim pursuant to Bankruptcy Rule 3001(e) have been completed or (b) the transferee files (i) the documentation required by Bankruptcy Rule 3001(e) to evidence the transfer and (ii) a sworn statement of the transferor supporting the validity of the transfer. Each transferee will be treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code and the other voting and solicitation procedures set forth herein.

**(iii) The Solicitation Package**

29. Bankruptcy Rule 3017(d) identifies the materials that must be provided to holders of claims and equity interests for purposes of soliciting their votes and providing adequate notice of the hearing on confirmation of a plan of reorganization:

Upon approval of a disclosure statement, — except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders — the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

- (1) the plan or a court-approved summary of the plan;
- (2) the disclosure statement approved by the court;
- (3) notice of the time within which acceptances and rejections of such plan may be filed; and
- (4) such other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders pursuant to Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan.

Fed. R. Bankr. P. 3017(d).

30. The Solicitation Package, comprised of the materials required to be provided to holders of claims and equity interests under Bankruptcy Rule 3017(d), will be mailed to such parties after the Court has approved the Disclosure Statement. Specifically, the Debtors propose to mail or cause to be mailed Solicitation Packages containing copies of: (a) the Confirmation Hearing Notice; (b) a CD containing the Disclosure Statement (together with the exhibits thereto, including the Plan, that have been filed with the Court before the date of the mailing) and the Disclosure Statement Order (exclusive of exhibits); and (c) for Solicitation Packages sent to holders of claims in the Voting Class, the form of Ballot, a Ballot return envelope and such other materials as the Court may direct.

31. The Solicitation Packages will be mailed no less than twenty-eight (28) days prior to the Confirmation Objection Deadline. In addition to mailing a Solicitation Package to each holder of a claim or claims in the Voting Class as of the Voting Record Date, the Debtors shall mail or cause to be mailed a Solicitation Package (exclusive of the Ballot) to: (a) the U.S. Trustee; (b) counsel to the Creditors' Committee; (c) counsel to Bank of America; (d) the SEC; (e) the Internal Revenue Service; (f) the United States Attorney for the District of Delaware; and (g) all entities requesting notice pursuant to Bankruptcy Rule 2002 as of the Voting Record Date.

32. Pursuant to sections 1126(f) and 1126(g) of the Bankruptcy Code and Bankruptcy Rule 3017(d), the holders of claims in the Unimpaired Non-Voting Classes are conclusively deemed to accept and holders of interests in the Impaired Non-Voting Class are conclusively deemed to reject the Plan. As a result, the Debtors propose to serve upon the Unimpaired Non-

Voting Classes a notice of non-voting status substantially in the form attached to the Disclosure Statement Order as Exhibit 3 (the “Notice of Unimpaired Non-Voting Status”) and upon the Impaired Non-Voting Class a notice of non-voting status substantially in the form attached to the Disclosure Statement Order as Exhibit 4 (the “Notice of Impaired Non-Voting Status,” and together with the Notice of Unimpaired Non-Voting Status, the “Notices of Non-Voting Status”).

33. The Debtors anticipate that a number of Disclosure Statement Notices will be returned by the United States Postal Service as undeliverable as a result of incomplete or inaccurate addresses (the “Undeliverable Addresses”). The Debtors believe that it would be costly and wasteful to mail Solicitation Packages, Confirmation Hearing Notices and/or Notices of Non-Voting Status to the Undeliverable Addresses. Therefore, the Debtors request that they be excused from mailing Solicitation Packages, Confirmation Hearing Notices and/or Notices of Non-Voting Status to those entities for which the Debtors have only Undeliverable Addresses unless the Debtors are provided with accurate addresses for such entities, in writing, on or before September 7, 2011. If a Solicitation Package, Confirmation Hearing Notice and/or Notice of Non-Voting Status is returned as undeliverable, the Voting Agent shall resend such Solicitation Package, Confirmation Hearing Notice and/or Notice of Non-Voting Status only once, provided that the United State Post Office has included a forwarding address at least ten (10) business days before the Voting Deadline.

34. The Debtors submit that the foregoing procedures for providing notice of the Confirmation Hearing, the Confirmation Objection Deadline and related matters fully comply with Bankruptcy Rules 2002 and 3017. Accordingly, the Debtors request that the Court approve such procedures as appropriate and in compliance with the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

**D. Extension of the Exclusive Solicitation Period**

35. Pursuant to section 1121(b) of the Bankruptcy Code, a debtor has the exclusive right to file a plan of reorganization during the first 120 days after the commencement of a chapter 11 case. If a debtor files a plan during this exclusive filing period, section 1121(c)(3) of the Bankruptcy Code grants the debtor an additional 60 days during which the debtor may solicit acceptances of that plan and no other party in interest may file a competing plan.

36. Section 1121(d) of the Bankruptcy Code provides that the Court may, “for cause,” extend these periods: “[o]n request of a party in interest . . . and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.” 11 U.S.C. § 1121(d). Although the Bankruptcy Code does not define “cause,” a number of courts have construed the term by examining the Bankruptcy Code’s underlying legislative history. *See, e.g., In re Perkins*, 71 B.R. 294, 297-98 (W.D. Tenn. 1987); *In re Lake in the Woods*, 10 B.R. 338, 343-45 (E.D. Mich. 1981); *In re Ravenna Indus., Inc.*, 20 B.R. 886, 889 (Bankr. N.D. Ohio 1982). As discussed below, the legislative history of section 1121(d) and the applicable case law support the Debtors’ requested extension of the Exclusive Solicitation Period.

37. In determining whether cause exists for an extension of a debtor’s exclusive periods, courts have relied on a variety of factors, each of which may constitute sufficient grounds for extending the periods. These factors include (a) the size and complexity of the case, (b) the debtor’s progress in resolving issues facing the estate and (c) whether an extension of time will harm the debtor’s creditors. *See, e.g., In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409-10 (E.D.N.Y. 1989); *In re Grand Traverse Dev. Co. Ltd. P’ship.*, 147 B.R. 418, 420 (Bankr. W.D. Mich. 1992); *In re Gen. Bearing Corp.*, 136 B.R. 361, 367 (Bankr. S.D.N.Y. 1992); *In re Southwest Oil Co. of Jourdanton, Inc.*, 84 B.R. 448, 451-54 (Bankr. W.D. Tex.



1987). The Debtors submit that, under all these factors, the Exclusive Solicitation Period for the Debtors should be extended.

38. With respect to the first factor, both Congress and the courts have recognized that the size and complexity of a debtor's case alone may constitute cause for the extension of a debtor's exclusive periods. "[I]f an unusually large company were to seek reorganization under Chapter 11, the Court would probably need to extend the time in order to allow the debtor to reach an agreement." H.R. Rep. No. 95-595, at 231, 232, 406 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 6191, 6362. In the Texaco reorganization, for example, the court stated: "[t]he large size of the debtor and the consequent difficulty in formulating a plan of reorganization for a huge debtor with a complex financial structure are important factors which generally constitute cause for extending the exclusivity periods." In re Texaco Inc., 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987). Here, the Debtors have thousands of creditors and, as of the Petition Date, operated hundreds of retail apparel stores in numerous states throughout the country. Moreover, the scope and breadth of the Debtors' operations were expansive as of the Petition Date and the Debtors' cases, involving fifty-five (55) debtor entities and a prepetition credit facility, are complex.

39. The second factor courts consider in determining whether cause exists to extend a debtors' exclusive periods — the Debtors' progress in resolving issues facing the Debtors' respective estates — also justifies an extension of the Exclusive Solicitation Period. See, e.g., In re McLean Indus. Inc., 87 B.R. 830, 835 (Bankr. S.D.N.Y. 1987); Texaco, 76 B.R. at 327; In re Swatara Coal Co., 49 B.R. 898, 899-900 (Bankr. E.D. Pa. 1985). Major progress in these cases has been achieved by the Debtors as of the date hereof. Since the Petition Date, the Debtors have focused on (a) maximizing the value of their businesses through the going-concern sale of their

business and (b) ensuring a smooth transition into chapter 11 while, at the same time, focusing on other time sensitive aspects of these cases. Among other significant tasks, in the first few months of these cases the Debtors focused on the marketing and sale of their assets and the closing of the sale to New Ashley. Following the closing of the sale of substantially all their assets, the Debtors have worked with New Ashley to seek the rejection and assumption and assignment of certain leases and contracts and to reconcile certain significant claims, including claims under section 365(b)(1) and 503(b)(9) of the Bankruptcy Code, that will be paid by New Ashley. In addition, the Debtors have prepared and filed the Plan and Disclosure Statement and, by this Motion, are seeking approval of the Disclosure Statement and procedures for solicitation of the Plan.

40. The third factor, whether the requested extension will harm creditors or other parties in interest, favors approval of the Debtors' requested extension of the Exclusive Solicitation Period. The Debtors do not believe that the requested extension will harm their creditors, rather, the Debtors are seeking the extension to maintain the *status quo* as they seek approval of the Disclosure Statement and solicit acceptances of the Plan. As set forth above, the Debtors are seeking approval of the Disclosure Statement and scheduling of the Confirmation Hearing for October 19, 2011. Extension of the Exclusive Solicitation Period through and including October 31, 2011 will permit the Debtors the opportunity to solicit acceptances and seek confirmation of the Plan. The Debtors have conducted these chapter 11 cases in a manner designed to maximize recoveries for their creditors. To that end, (i) numerous leases and contracts have been assumed and assigned to the going-concern purchaser of the Debtors' business resulting in significant cure payments being made to numerous lease and contract counter-parties; (ii) millions of dollars in employee and employee-related claims have been paid

in the ordinary course of business or pursuant to an order of this Court (see Docket No. 47); (iii) the Debtors have paid and continue to pay their undisputed obligations to taxing authorities in the ordinary course of business or as otherwise authorized by the Court (see Docket No. 38); and (iv) hundreds of thousands of dollars in undisputed claims filed in these chapter 11 cases pursuant to section 503(b)(9) of the Bankruptcy Code have been assumed by, and are to be paid by, New Ashley. Consequently, the Debtors are not seeking this extension to prejudice their creditors. Conversely, the Debtors are seeking the requested extension of the Exclusive Solicitation Period to maintain the *status quo* in the chapter 11 cases to permit solicitation and confirmation of the Plan. Accordingly, neither the Debtors' creditors nor any other party in interest will be harmed by the proposed extension of the Exclusive Solicitation Period.

41. For all the foregoing reasons, the Debtors' request to extend the Exclusive Solicitation Period should be approved.

#### **NOTICE**

42. No trustee or examiner has been appointed in the Chapter 11 Cases. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) the Creditors' Committee; (iii) the SEC; and (iv) all parties entitled to receive notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

#### **NO PRIOR REQUEST**

43. No prior request for the relief sought in this Motion has been made to this or any other court in connection with the Chapter 11 Cases.

## CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter the Disclosure Statement Order, substantially in the form attached hereto as a Exhibit A: (i) approving the form and manner of notice of the Disclosure Statement Hearing; (ii) establishing Solicitation Procedures, as described herein, including approval of (a) the form of Ballot for submitting votes on the Plan, (b) the Voting Deadline for the submission of Ballots, (c) the contents of the Solicitation Packages, (d) the Voting Record Date for Plan voting, (e) the Confirmation Hearing Notice, (f) the Notices of Non-Voting Status, and (g) and certain related relief; (iii) scheduling the Confirmation Hearing and approving the related notice procedures; (iv) extending the Exclusive Solicitation Period through and including October 31, 2011; and (v) granting such other and further relief as the Court may deem proper.

Dated: August 10, 2011  
Wilmington, Delaware

Respectfully submitted,



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