

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

In re:)	Chapter 11
)	
UBI Liquidating Corp., et al.,¹)	Case No. 10-13005 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Objection Deadline: November 28, 2011 at 4:00 p.m. (ET)
)	Hearing Date: December 6, 2011 at 11:00 a.m. (ET)

**DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105, 363 AND 554
FOR ENTRY OF AN ORDER AUTHORIZING THE (I) ABANDONMENT
AND DESTRUCTION OF CERTAIN FILES AND ELECTRONIC RECORDS
AND (II) EXPENDITURE OF ESTATE FUNDS IN ACCORDANCE THEREWITH**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned counsel, hereby submit this motion (the “Motion”) for an order pursuant to sections 105, 363 and 554(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rule 6007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the Debtors (i) to dispose of certain documents, records, files and other materials in connection with the wind-down of their estates and (ii) to

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

expend estate funds in accordance therewith. In support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are section 105, 363 and 554(a) of the Bankruptcy Code and Bankruptcy Rule 6007.

A. Introduction

2. 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 other Debtors.

3. 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, the Creditors' Committee (the "Committee") was appointed by the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee").

B. The Debtors' Business

4. 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

UBTHC Liquidating Corp. (5909). The Debtors' corporate offices are located at 100 Metro Way, Secaucus, New Jersey 07094.

Ashley Stewart. The Debtors operated approximately 210 stores in 26 states with approximately 2,100 employees, the majority of which were 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.

5. 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

6. 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, the predecessor in interest to Ashley Stewart Holdings, Inc. and an affiliate of GB Merchant Partners, LLC

(“NAS”), executed an asset purchase agreement whereby NAS agreed to purchase substantially all of the Debtors’ assets.

7. On October 4, 2010, the Court entered an order [Docket No. 143] 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, NAS 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 NAS pursuant to an asset purchase agreement between the Debtors and NAS, dated as of October 27, 2011 (the “Asset Purchase Agreement”). The sale closed on October 29, 2010.

8. On September 9, 2011, the Debtors filed the *Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code*, dated July 20, 2011 [Docket No. 1384] (together with all exhibits attached thereto and the Plan Supplement filed on September 30, 2011 [Docket No. 1431], the “Plan”) and the *Disclosure Statement for Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 1385]. On October 19, 2011, the Court entered the *Order Confirming the Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 1447].

D. Relevant Background

9. In the ordinary course of their business, the Debtors maintained documents and files related to the operation of their business, including, but not limited to, employee records, invoices, business records, other documents, and electronic files and records (collectively, the “Business Documents”). Certain Business Documents, including, but not

limited to, those related to assets acquired by NAS or the Debtors' former employees hired by NAS, were transferred to NAS pursuant to the Asset Purchase Agreement; however, the Debtors still possess certain of their Business Documents. For example, in the late 1990s, certain of the Debtors acquired certain assets from a Puerto Rican company, Petrie (the "Purchase") by entering into an asset purchase agreement that required the Debtors to maintain numerous documents and files with respect to the acquired company (collectively, the "Purchase Documents") for a period of time following the Purchase. The Debtors are no longer required to retain the Purchase Documents. The Debtors have maintained the Purchase Documents since the date of the Purchase in a storage facility operated by Iron Mountain Information Management, Inc. ("Iron Mountain"). Currently, the Debtors are storing thousands of boxes of Purchase Documents with Iron Mountain in connection with the Purchase. In connection with the wind-down of the Debtors' business, the Debtors have determined that it is in the best interest of their estates to destroy Business Documents, including the Purchase Documents, which they determine are no longer needed in connection with the administration of the estates (the "Unnecessary Business Documents").

10. Given the volume of the Business Documents, the cost to the estates to store such records is significant. Additionally, the Debtors will incur expenses related to the destruction of the Unnecessary Business Documents. Iron Mountain has agreed to accept \$25,000 to destroy the Purchase Documents and in full and final satisfaction of any and all of their claims relating to storage of the Purchase Documents.²

11. Aside from the Purchase Documents, the Debtors also intend to abandon or destroy Unnecessary Business Documents, as the Debtors determine they are no longer

needed in connection with the wind-down of the Debtors' business or the administration of the liquidation of the Debtors' assets.

RELIEF REQUESTED

12. By this Motion, the Debtors request entry of an order pursuant to sections 105, 363 and 554 of the Bankruptcy Code authorizing the Debtors to abandon and destroy the Unnecessary Business Documents and to authorize the expenditure of estate funds in accordance therewith.

BASIS FOR RELIEF

13. The Debtors' proposed disposal of the Purchase Documents and other Unnecessary Business Documents is governed by section 554 of the Bankruptcy Code. Section 554 provides, in relevant part, as follows:

After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

11 U.S.C. § 554(a).

14. The disposition of the Debtors' property is also governed by Rule 6007 of the Federal Rules of Bankruptcy Procedure, which reads, in pertinent part:

Notice of Proposed Abandonment or Disposition; Objections; Hearing. Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 14 days of the mailing of the notice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct.

² The Debtors believe that Iron Mountain may have certain administrative expense and unsecured claims related to the storage of the Purchase Documents. In addition, Iron Mountain's fees to transport the Purchase Documents to a loading dock for transport by the Debtors would exceed \$25,000.

Fed. R. Bankr. P. 6007(a). The notice required by Bankruptcy Rule 6007 is further limited by Del. Bank. L.R. 2002-1(b), which limits service to the following parties: (i) the United States trustee; (ii) counsel for all official committees; (iii) all parties who file a request for service of notices under Bankruptcy Rule 2002(i); and (iv) all parties whose rights are affected by the Motion.

15. The Debtors respectfully submit that the abandonment of the Unnecessary Business Documents is warranted under section 554(a) of the Bankruptcy Code, and that the destruction – including the costs associated therewith – is permitted under section 363 of the Bankruptcy Code. The Debtors are in the process of winding-down their business and are liquidating their remaining assets. Accordingly, the Debtors no longer need the Unnecessary Business Documents for any business operations or in connection with their liquidation.

16. The Debtors submit that the Purchase Documents are of inconsequential value to their estates and the Unnecessary Business Documents will similarly be of inconsequential value to the estates. Further, the storage and maintenance of the numerous Unnecessary Business Documents will cause the Debtors to incur needless storage fees and costs.

17. Accordingly, the Debtors seek authority to destroy or otherwise dispose of Unnecessary Business Documents to preclude further storage costs, which will provide a benefit to the Debtors' estates and creditors. To the extent that the any of the Unnecessary Business Documents contain confidential or privileged information (*e.g.*, employee records or customer information), the Debtors will shred or pulp applicable documents, erase magnetic media, and take any and all additional steps as may be necessary to protect the confidential and/or privileged nature of such materials.

18. The Debtors will retain those Business Documents that they determine, in their sole discretion, are still necessary (for so long as the Debtors deem such materials necessary) to the wind-down of their estate, the liquidation of their remaining assets, the analysis and/or prosecution of the Debtors' or the estates' claims or causes of action, the completion of the claims reconciliation and resolution process and/or completion of these Chapter 11 Cases.

19. This Court also has the power to grant the relief requested herein under section 105(a) of the Bankruptcy Code. Section 105(a) grants bankruptcy courts broad authority and discretion to enforce the provisions of the Bankruptcy Code either under specific statutory fiat or under equitable common law principles. Specifically, section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent the abuse of process.

11 U.S.C. § 105(a).

20. The purpose of section 105(a) is “to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy ¶105.01 at 105-6 (16th ed. 2010) (collecting cases). This is consistent with the broad equitable authority of the bankruptcy courts. See, e.g., United States v. Energy Resources Co., Inc., 495 U.S. 545, 549 (1990); In re Continental Airlines, 203 F.3d 203, 211 (3d Cir. 2000) (“Section 105(a) of the Bankruptcy Code supplements courts’ specifically enumerated bankruptcy powers by authorizing orders necessary or appropriate to carry out provisions of the Bankruptcy Code”); Baron & Budd, P.C. v. Unsecured Asbestos Claimants Committee, 2005

WL 435207, *14 (D. N.J. Feb. 25, 2005) (reciting the power of the bankruptcy court to “... issue any order ... that is necessary or appropriate to carry out the provisions of ... [title 11]”).

21. In these cases, it is appropriate for the Court to allow abandonment and destruction of the Unnecessary Business Documents to aid in the exercise of its jurisdiction over the administration of the estates. Absent this relief, the estates, and ultimately the creditors, will continue to incur the cost of storage and maintenance of the Unnecessary Business Documents without realizing any corresponding benefit. Therefore, the Debtors respectfully request that the Court allow the Debtors to abandon and destroy the Unnecessary Business Documents.

NOTICE

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

NO PRIOR REQUEST

23. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors request entry of an order substantially in the form attached hereto as Exhibit A (i) authorizing the Debtors to abandon and destroy certain files and electronic records, (ii) authorizing the Debtors to expend estate funds for the purpose of disposing of the files and electronic records and (iii) granting such further relief as the Court deems just and proper.

Dated: November 11, 2011
Wilmington, Delaware

Respectfully submitted,



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