

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

In re: URBAN BRANDS, INC., et al.,¹ Debtors.	Chapter 11 Case No. 10-13005 (KJC) Jointly Administered Objections Due: October 21, 2010 at 4:00 p.m. Hearing Date: October 27, 2010 at 11:00 a.m.
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**LIMITED OBJECTION OF KIMCO BATON ROUGE 1183, LLC (“Baton Rouge”) and
KIR AUGUSTA II L.P. (“AUGUSTA) TO ENTRY OF AN ORDER (A) APPROVING
SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS FREE AND
CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCE AND INTERESTS;
(B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (C) ESTABLISHING
ASSUMPTION AND REJECTION PROCEDURES FOR CERTAIN ADDITIONAL
EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING
GUIDELINES FOR CONDUCTING STORE CLOSING SALES; (E) APPROVING
AGENCY AGREEMENT; AND (F) EXTENDING THE DEADLINE TO ASSUME OR
REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
PURSUANT TO 11 U.S.C. § 364(d)(4) [RELATED TO DOCKET NOS. 34 AND 104]**

Kimco Baton Rouge 1183, LLC (“Baton Rouge”) and KIR Augusta II L.P. (“Augusta”), (collectively, “Kimco Landlord”), by its undersigned counsel, submits this limited objection

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.

(“Limited Objection”) to the Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004 and 6006 for (I) Entry of an Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Substantially All of the Debtors’ Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and Leases to Be Assigned; and (E) Granting Certain Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Establishing Assumption and Rejection Procedures for Certain Additional Executory Contracts and Unexpired Leases; (D) Approving Guidelines for Conducting Store Closing Sales; (E) Approving Agency Agreement; and (F) Extending the Deadline to Assume or Reject Unexpired Leases of Nonresidential Real Property Pursuant to 11 U.S.C. § 365(d)(4) (the “Sale Motion”) (Docket No. 34). In support of this Limited Objection, Kimco Landlord respectfully states

BACKGROUND

1. On September 21, 2010 (the “Petition Date”), the above-captioned debtors (the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware.

2. Upon information and belief, since the Petition Date, the Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. Debtor is a party to a non-residential real property lease located in Hammond Aire Plaza, Baton Rouge, Louisiana, and identified by Debtors as Store Number 222 (“Baton Rouge Lease”).

4. Debtor is a party to a non-residential real property lease located at Robert C. Daniel Parkway, Augusta, Georgia, and identified by Debtors as Store Number 326 (also identified as Landlord Name AE VII, LLC c/o Kimco) (the “Augusta Lease”).

5. The Leased Premises are located in “shopping centers” as that term is used in section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081 (3d Cir. 1990).

6. On September 22, 2010, the Debtors filed the Sale Motion. By the Sale Motion, the Debtors request, among other things, the entry of two orders: (1) the Bidding Procedures Order (as defined below); and (2) the Sale Order (as defined in the Sale Motion).

7. On October 4, 2010, this Court entered an *Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Substantially All of the Debtors’ Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and Leases to Be Assigned; and (E) Granting Certain Related Relief* (the “Bidding Procedures Order”) (Docket No. 143).

8. Pursuant to the Bidding Procedures Order, a Sale Hearing (as defined in the Bidding Procedures Order) has been scheduled for October 27, 2010 at 11:00 a.m. (ET). In addition, pursuant to the Bidding Procedures Order, this Court has established October 21, 2010 at 4:00 p.m. (ET) as the deadline for parties to object to the relief requested by the Debtors to be granted by the Sale Order and this Court established October 19, 2010 at 4:00 p.m. (ET) as the deadline for non-debtor parties to any executory contracts and real property leases to object to the Debtors’ proposed cure amounts in connection with the potential assumption and/or assignment of such executory contracts or real property leases.

9. On October 19, 2010, Kimco Landlord filed its *Limited Objection to Debtors' (1) Proposed Lease Cure Amounts and (2) Potential Assumption and Assignment of Certain Unexpired Leases [Related to Docket Nos. 34, 104, and 143]* (the "Cure and Assumption Objection") (Docket No. 236). Kimco Landlord incorporates the objections raised in the Cure and Assumption Objection as if set forth fully herein.

10. For the reasons set forth below and in the Cure and Assumption Objection, Kimco Landlord objects to the relief sought in the Sale Motion and entry of the Sale Order.

LIMITED OBJECTION

A. Lease Rejection and Assumption and Assignment Procedures

11. Kimco Landlord does not object to the Debtors' establishment of rejection procedures ("Rejection Procedures") or assumption and/or assignment procedures ("Assumption Procedures"). Kimco Landlord does, however, object to certain aspects of the proposed Rejection Procedures and Assumption Procedures. Kimco Landlord joins in the objections of other Landlords as they relate to enforcement of the requirement that any assignment of Kimco Landlord Leases comply fully with the adequate assurance obligations under the Bankruptcy Code as set for in 11 U.S.C. § 365(b)(3).

12. The Assumption Notice (as defined in the Sale Motion) and the Rejection Notice (as defined in the Sale Motion) should be served via facsimile, electronic mail and/or overnight mail on both Kimco Landlord and its undersigned counsel.

13. In addition, pursuant to the Debtors' proposed Assumption Procedures, it is possible that an Assumption Notice for any proposed post-closing assumption and/or assignment of the Kimco Landlord Leases may not be served until more than four (4) months after the Debtors' provision of the initial cure and adequate assurance information to Kimco Landlord and the filing of the Cure and Assumption Objection by Kimco Landlord. The Assumption Notice for any proposed post-closing assumption and/or assignment of the Kimco Landlord Leases should provide updated adequate assurance of future performance information and should also provide the current proposed cure amount at the time of the proposed assumption and/or assignment of the Kimco Landlord Leases.

14. Kimco Landlord should also be allowed the opportunity to finalize the cure amount with respect to any of the Kimco Landlord Leases to include any additional defaults that may have occurred during the designation rights period. Accordingly, the proposed Assumption Procedures should also provide Kimco Landlord with the opportunity to file an objection to the proposed cure amount contained in the Assumption Notice with respect to the Kimco Landlord Leases by the deadline to object to the Assumption Notice.

15. The proposed Rejection Procedures should provide that upon rejection of any of the Kimco Landlord Leases, the Debtors will return the Leased Premises to Kimco Landlord in accordance with the terms and conditions of such Kimco Landlord Lease, including but not limited to, broom clean condition. The proposed Rejection Procedures should further provide that any property remaining at the Leased Premises as of the effective date of rejection shall be deemed abandoned free and clear of all liens, claims, interests and encumbrances and that Kimco Landlord, in its sole discretion and without further notice, may dispose of such property without

any liability whatsoever to the Debtors or to any other person or entity claiming an interest in such property.

16. The proposed Rejection Procedures should provide that the effective date of rejection of any of the Kimco Landlord Leases is the later of (i) ten (10) days from the date that the applicable Rejection Notice was served on Kimco Landlord; (ii) the date that the Debtors vacate and surrender the Leased Premises to Kimco Landlord in broom clean condition and turnover the keys and/or key codes to Kimco Landlord; and (iii) the date otherwise ordered by this Court.

B. Store Closing Guidelines

17. The Debtors have requested that this Court authorize the Debtors to potentially conduct Store Closing Sales (as defined in the Sale Motion) at the Leased Premises.

18. If this Court authorizes the Debtors to conduct Store Closing Sales at the Leased Premises, this Court should modify the proposed Store Closing Guidelines (as defined in the Sale Motion) to expressly restrict the activity of the Debtors and/or their Agent (as defined in the Sale Motion) so as to minimize any harm to Kimco Landlord and its respective tenants.

19. Kimco Landlord requests that this Court require that the Debtors and/or the Agent must comply with all terms of the Kimco Landlord Leases while conducting any Store Closing Sales, except as modified by any Court-approved store closing guidelines.

20. In addition, if the Debtors are authorized to conduct any Store Closing Sales at the Leased Premises, then the duration of such sales should be limited in order to minimize the

irreparable harm to the respective shopping centers and their tenants.

21. Kimco Landlord requests that any Store Closing Sales at the Debtors' stores located at the Leased Premises (the "Stores") be subject to the following modified store closing guidelines:

a. The Debtors and/or the Agent shall agree to comply in all other material respects with the terms and conditions of the Kimco Landlord Leases, including but not limited to, the prompt payment of all amounts owing by the Debtors to Kimco Landlord under the Kimco Landlord Leases.

b. Kimco Landlord shall continue to have access to the Leased Premises under the terms of the Kimco Landlord Leases. After the completion of any Store Closing Sale, Kimco Landlord shall have access to the Leased Premises not only to "dress" or barricade the windows but shall continue to have access to the Leased Premises under the terms of the Kimco Landlord Leases.

c. Any Store Closing Sale shall be conducted so that the Stores will remain open during the normal hours of operation provided for in the Kimco Landlord Leases. The Debtors and/or the Agent shall not conduct an auction or fire sale and shall abide by any applicable guidelines concerning, among other things, hours of operation, maintenance, and security and trash removal, set forth in the Kimco Landlord Leases.

d. Essentially the same “window dressings” shall be maintained and essentially the same “good housekeeping” standards (including providing adequate walk-ways in the Store) and operating procedures shall be observed during the course of any sale at the Store.

e. The Debtors and/or the Agent shall keep the premises of the Stores and surrounding area clear and orderly, consistent with present practices.

f. Any Store Closing Sale shall be conducted in accordance with applicable state and local “Blue Laws” and thus, where applicable, no Store Closing Sale shall be conducted on Sunday, unless the Debtors have been operating such Store on a Sunday.

g. Any Store Closing Sale should be limited in duration to no more than eight weeks.

h. All display and hanging signs used by the Debtors and/or the Agent in connection with any Store Closing Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Signs describing any sale by the Debtors and/or the Agent at any Store shall be no larger than twenty-two (22”) inches by twenty-eight (28”) inches and shall be composed of a uniform color package comprised of no more than three colors. No neon or “day glo” colors should be used in the signage. Up to six (6) signs per 1000 square feet of

retail space may be posted in the interior of the Stores. No signs should be taped, push-pinned, or otherwise affixed to the walls of the Stores.

i. Window signs should be recessed at least twelve inches (12") from the glass. Such window signs should also be limited to one such window sign per window that does not exceed 50% of the window total area. Window signs must not be stapled, taped or otherwise affixed together to exceed the 22" by 28" limitation. Each sign shall be consistent with the form and content of the signs described herein.

j. Only one (1) banner may be hung in the interior of the Stores, and such banner shall be no larger than three (3') feet by six (6') feet and shall be hung in the back third of the Stores.

k. To the extent used, "toppers" should not exceed eight and one half inches (8 ½") by eleven inches (11") and should be limited to one per rack, counter or shelf.

l. The use of sign walkers, sandwich boards, A-frames, exterior banners, tethered, hot-air or other balloons, inflatable images, rooftop advertising or other street signage or solicitation shall not be permitted at or near the Leased Premises. The Debtors and/or the Agent shall not place any sign and/or advertising or marketing of any Store Closing Sale in any common area, parking

lot, sidewalk, building façade or other shopping center property owned by KIMCO LANDLORD.

m. No exterior signs or banners of any kind may be used.

n. The Debtors and/or the Agent shall not distribute handbills, leaflets or other written materials to customers outside of the premises of the Stores. Otherwise, the Debtors and/or the Agent may solicit customers in the Stores themselves. The Debtors and/or the Agent shall not use flashing lights, strobe lights, large spotlights, bullhorns or any type of amplified sound to advertise any Store Closing Sale or solicit customers.

o. Neither the Debtors nor the Agent shall make any alterations to the storefront or exterior walls of the Stores.

p. Neither the Debtors nor the Agent shall make any alterations to interior or exterior lighting of the Stores.

q. Advertising and signage may indicate that the sale is a “Store Closure Sale”, a “Store Closing Sale” or use language of similar import, but shall not refer to the sale as a “going out of business sale”, a “bankruptcy sale”, a “court ordered sale” or a “liquidation sale.”

r. No auction of furniture, fixtures, equipment or other property shall be conducted at the Stores. There shall be no auction of inventory and outside sales, sidewalk sales, tent sales, or any sale of any merchandise outside of the Stores.

s. The Debtors and/or the Agent may not transfer inventory from any other merchant, including inventory of the Agent, to the Stores for inclusion in any Store Closing Sale. In addition, the Debtors and/or the Agent may not transfer inventory from any other store of the Debtors unless such inventory is of like kind and quality.

t. There should be conspicuous signs stating whether gift cards issued by the Debtors and/or the shopping center will be honored during any Store Closing Sale.

u. Conspicuous signs shall be posted in the Stores to the effect that all sales are "final".

v. The Debtors and/or the Agent shall designate a representative to be contacted by Kimco Landlord should an issue arise concerning the conduct of any Store Closing Sale.

w. At the conclusion of any Store Closing Sale, the Debtors and/or the Agent shall vacate the Stores in a broom-clean condition, and shall leave the Stores in the same condition as at the commencement of any Store Closing Sale, ordinary

wear and tear excepted. No permanent fixtures may be removed without Kimco Landlord's written consent. No property of Kimco Landlord shall be removed or sold during any Store Closing Sale.

x. Any fixtures or personal property of the Debtors left at the Stores after the earlier of (i) the completion of the Store Closing Sale at such Store; or (ii) the time that the Debtors and/or the Agent vacate such Store shall be abandoned to Kimco Landlord, and Kimco Landlord shall incur no liability whatsoever with respect to any action or actions taken in connection therewith.

22. The foregoing restrictions are reasonable in nature and consistent with guidelines entered in other retail bankruptcy cases and should be adhered to by the Debtors and the Agent

23. During the term of any Store Closing Sales at the Stores, the Debtors must, pursuant to section 365(d)(3) of the Bankruptcy Code, "timely perform all the obligations...under any unexpired lease of nonresidential real property until such lease is assumed or rejected . . ." Among the Debtors' various obligations under the Kimco Landlord Leases are rent, common area charges, and real estate taxes; payment of these obligations is mandatory and failure to do so has been held by at least one court to give rise to a super priority claim. *See In re Compuadd Corp.*, 166 B.R. 862, 864-865 (Bankr. W.D. Texas 1994). Payment of rent due under the Kimco Landlord Leases must be made by the Debtors at the full contract rate. *In re Pacific Atlantic Trading Co.*, 27 F.3d 401 (9th Cir. 1994) (citing *Wingspread*, 116 B.R. 915, 925 Bankr. S.D.N.Y. 1990).

JOINDER

24. Kimco Landlord joins in the objections filed by other landlords to the Sale Motion to the extent not inconsistent with the objections raised herein.

WHEREFORE, Kimco Landlord respectfully requests that this Court: (a) sustain this Limited Objection; and (b) grant Kimco Landlord such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: October 21, 2010
Wilmington, Delaware

Respectfully submitted,

Monzack, Mersky, McLaughlin & Browder, P.A.

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