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6
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Debtor and Debtor in Possession
8
9

10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

12
13 In re
14 ESTYLE, INC. a Delaware corporation,
dba babystyle, Cadeau, and Cadeau
15 Designs,

16 Debtor.
17

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19 Tax Id # 95-4712564
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Case No. 2:08-bk-13518-SB

Chapter 11

**DEBTOR'S EMERGENCY MOTION FOR
ORDER: (1) DEEMING UTILITY
COMPANIES ADEQUATELY ASSURED
OF FUTURE PERFORMANCE, (2)
ESTABLISHING PROCEDURES FOR
REQUESTS FOR ADDITIONAL
ASSURANCE, AND (3) RESTRAINING
UTILITY COMPANIES FROM
DISCONTINUING, ALTERING, OR
REFUSING SERVICE**

DATE: March 21, 2008
TIME: 10:00 a.m.
PLACE: U.S. Bankruptcy Court
Courtroom 1575
255 East Temple Street
Los Angeles, CA 90012

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RULES

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1 eStyle, Inc. (the "Debtor"), the above-captioned debtor and debtor in
2 possession, respectfully represents:

3 I.

4 **SUMMARY**

5 The Debtor is a multichannel retailer that sells maternity, baby and kids
6 apparel and toys, gear and related products direct to the consumer. The Debtor
7 commenced this case by filing a voluntary chapter 11 petition on March 19, 2008 (the
8 "Petition Date"). As of the Petition Date, the Debtor sells its products at its 23 retail
9 stores, through its babystyle.com website, and through a direct mail program. In addition
10 to its retail stores, the Debtor has its corporate headquarters in downtown Los Angeles.

11 In accordance with Bankruptcy Code Section 366, the Debtor hereby
12 makes its adequate assurance proposal to utilities. The terms of the adequate assurance
13 proposal are set forth in Section III below and proposed procedures in connection
14 therewith are set forth in Sections IV and V below. Pursuant to this Motion, the Debtor
15 requests that the Court issue an order (the "Order"): (1) determining that utility providers
16 have been provided with adequate assurance of payment within the meaning of section
17 366 of the Bankruptcy Code; (2) approving the Proposed Adequate Assurance (as
18 defined below) and the Adequate Assurance Procedures (as defined below); (3)
19 prohibiting utility providers from discontinuing, altering, or refusing service to, or
20 discriminating against, the Debtor; (4) establishing procedures for utility providers to opt
21 out of the proposed Adequate Assurance Procedures; and (5) determining that the
22 Debtor is not required to provide any additional assurance, beyond what is proposed in
23 this Motion. This Motion is brought in accordance with Local Bankruptcy Rule 2081-
24 1(b)(2)(C). A copy of the Debtor's proposed order granting this Motion is attached
25 hereto as Exhibit 3. Facts in support of this Motion are also set forth in the Omnibus
26 Declaration of Robert S. Kelleher in Support of Debtor's Emergency "First Day" Motions.

1 II.

2 **DEBTOR'S UTILITIES**

3 In connection with the operation of its business, the Debtor obtains
4 electricity, natural gas, water/sewage, trash removal/waste, telephone and other similar
5 services from a number of different utility suppliers (the "Utility Providers").¹ The Utility
6 Providers are identified to the best of the Debtor's ability in the chart attached as Exhibit 1
7 hereto.² Exhibit 1 details the name and address of the providers, the type of service
8 provided, the Debtor's location for which the service is provided, and the amounts of the
9 Debtor's average monthly bill and average charges for each two week period of service
10 during the 6 months prior to the commencement of the Debtor's chapter 11 case.
11 Attached hereto as Exhibit 2 is a chart setting forth those Utility Providers who are
12 holding deposits provided to them by the Debtor, the amount of the deposit provided, and
13 the location with respect to which the deposit applies. The Utility Providers supply the
14 Debtor with services essential to the continuation of the Debtor's business. Any
15 interruption in the utility services provided to the Debtor would seriously disrupt the
16 Debtor's operations and could jeopardize the reorganization of the Debtor. The Debtor
17 estimates that its projected average monthly utility payments to the Utility Providers is
18 approximately \$35,500. As set forth below, the Debtor hereby furnishes adequate
19 assurance of payment to its Utility Providers.

20 _____
21 ¹ The Debtor leases its corporate headquarters and all of the retail locations where
22 it conducts its business. These retail locations are a mixture of street, lifestyle center,
23 regional and local mall spaces. Pursuant to many of the Debtor's leases, certain utility
services are provided to the Debtor under its leases. In such situations, the Debtor does
not have any contractual relationship with the utility provider and the utility provider does
not have any claim against the Debtor.

24 ² In abundance of caution, Exhibit 1 includes certain entities that the Debtor
25 believes do not qualify as utilities under Bankruptcy Code § 366, including (without
26 limitation) providers of security service and internet access. Nonetheless, such entities
27 are included in Exhibit 1 to protect the estate in the event that such entities assert that
28 they are utilities under Bankruptcy Code § 366. The Debtor's decision to list the parties
included in Exhibit 1 shall not be deemed an acknowledgement that such a party is a
utility within the purview of § 366 of the Bankruptcy Code. The Debtor reserves the right
to subsequently argue whether any given entity is properly deemed a utility provider for
purposes of this Motion and § 366.

The Debtor's business has the following locations:

| No. | Location Name | Location Address |
|-----|------------------|---|
| 1 | Manhattan Beach | 3200 Sepulveda Blvd., # C-5 Manhattan Beach, CA 90266 |
| 2 | Newport Beach | 1103A Newport Center Drive Newport Beach, CA 92660 |
| 3 | Santa Monica | 1324 Montana Ave. Santa Monica, CA 90403 |
| 4 | Burlingame | 1319 Burlingame Ave. Burlingame, CA 94010 |
| 5 | Mission Viejo | 555 The Shops at Mission Viejo Mission Viejo, CA 92691 |
| 6 | Sherman Oaks | 14006 Riverside Drive, Space #112 Sherman Oaks, CA 91423 |
| 7 | Kierland Commons | 15215 N. Kierland Blvd. Suite 175 Scottsdale, AZ 85254 |
| 8 | Scottsdale | 7014-2304 E. Camelback Scottsdale, AZ 85251 |
| 9 | Barton Creek | 2901 S. Capital of Texas Space # K06 Austin, TX 78746 |
| 10 | Westchester | 125 Westchester Avenue Space #3700A White Plains, NY 10601 |
| 11 | West Farms | 562 Westfarms Mall Farmington, CT 06032 |
| 12 | Atrium | 300 Boylston St. Suite D402A Chestnut Hill, MA 02467 |
| 13 | Valley Fair | 2855 Stevens Creek Blvd. Suite A73 Santa Clara, CA 95050 |
| 14 | Willow Bend | 6121 West Park Blvd. Suite C121A Plano, TX 75093 |
| 15 | Glendale | 1302 Glendale Galleria 1 st Floor, Space 1302 Glendale, CA 91210 |
| 16 | Burlington | 75 Middlesex Turnpike Space 1039A Burlington, MA 01803 |
| 17 | Roosevelt Field | 630 Old Country Road Space #1073A Garden City, NY 11530 |

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| | | |
|----|------------------------|--|
| 18 | North Park | 8687 N. Central Express Dallas, TX 75225 |
| 19 | Short Hills | 1200 Morris Turnpike, #A Short Hills, NJ 07078 |
| 20 | Bellevue Square | 168 Bellevue Square Bellevue, WA 98004 |
| 21 | Cadeau New York | 254 Elizabeth St. New York, NY 10012 |
| 22 | Cadeau Los Angeles | 8113 Melrose Ave. Los Angeles, CA 90046 |
| 23 | Cherry Creek | 3000 E. First Avenue Suite 159 Denver, CO 80206 |
| 24 | Corporate Headquarters | eStyle, Inc. 865 S. Figueroa Street, Ste. 2700 Los Angeles, CA 90017 |

III.

ADEQUATE ASSURANCE PROPOSAL

The Debtor fully intends to pay all postpetition obligations owed to the Utility Providers in a timely manner. Further, the Debtor expects that anticipated authorized use of cash collateral will be more than sufficient to pay all postpetition utility obligations.

Nevertheless, the Debtor proposes to provide adequate assurance to the Utility Providers by making a deposit equal to two weeks of utility service, calculated as a historical average over the past six months, to all Utility Providers as adequate assurance (the "Adequate Assurance Deposit") within ten (10) business days of this Court's entry of the Order, **provided** that such Utility Provider is not currently paid in advance for its services and/or does not already hold a deposit equal to or greater than the Adequate Assurance Deposit (which existing deposit, if any, shall be deemed to be the Adequate Assurance Deposit). As a condition of accepting an Adequate Assurance Deposit, the requesting Utility Provider shall be deemed to have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of future payment to such Utility Provider within the meaning of Section 366 of the Bankruptcy Code, and shall further be deemed to have waived any right to seek additional adequate assurance during this chapter 11 case, unless the Utility Provider makes an additional adequate assurance

1 request no later than thirty (30) days after entry of the Order by the Court. Finally, the
2 Utility Provider will be required to return the Adequate Assurance Deposit to the Debtor
3 within fifteen days of the effective date of any confirmed plan of reorganization in this
4 case, if not returned or applied sooner.

5 The Debtor submits that the Adequate Assurance Deposit, in conjunction
6 with the Debtor's ability to pay for future utility services in the ordinary course of business
7 (collectively, the "Proposed Adequate Assurance"), constitutes sufficient adequate
8 assurance to the Utility Providers. If any Utility Provider believes additional assurance is
9 required, it may request such assurance pursuant to the procedures described below.

10 IV.

11 PROPOSED ADEQUATE ASSURANCE PROCEDURES

12 Section 366(a) of the Bankruptcy Code recognizes the necessity of
13 continuous utility services and prohibits Utility Providers from altering, refusing or
14 discontinuing utility services to, or discriminating against, a debtor due to either its
15 bankruptcy filing or any outstanding prepetition obligations for a period of 30 days after
16 the filing.³ At the conclusion of the 30 day period, however, a utility company may
17 discontinue services if a debtor has not furnished adequate assurance of payment. 11

18 _____
19 ³ There is an apparent discrepancy between subsections (b) and (c) of section 366
20 of the Bankruptcy Code because these two subsections set forth different time periods
21 during which a utility is prohibited from altering, refusing or discontinuing utility service.
22 Specifically, section 366(b) of the Bankruptcy Code allows a utility to alter, refuse or
23 discontinue service "if neither the trustee nor the debtor, within 20 days after the date of
24 the order for relief, furnishes adequate assurance of payment," while section 366(c)(2) of
25 the Bankruptcy Code allows a utility in a case filed under chapter 11 "to alter, refuse or
26 discontinue service to a chapter 11 debtor" if during the 30-day period beginning on the
27 date of the filing of the petition, the utility does not receive from the debtor or the trustee
28 adequate assurance of payment for utility service...." (emphasis added).

24 Under the statutory construction canon *lex specialis derogat legi generali*
25 ("specific language controls over general"), the language of section 366(c)(2) controls
26 here because the Debtor is a chapter 11 debtor. See 3 *Collier on Bankruptcy* ¶
27 366.03121 (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2006) ("It is unclear
28 how the 30-day period [in section 366(c)(2) of the Bankruptcy Code] meshes with the
normal 20-day period in section 366(b). The better view is that, because section 366(c)
is more specifically applicable to chapter 11 cases, the 30-day period, rather than the 20-
day period in section 366(b), should apply.").

1 U.S.C. § 366(c)(2). In this case, and absent the procedures proposed in this Motion,
2 Utility Providers may discontinue service, without warning, on the date that is 30 days
3 following the Petition Date, if they claim they have not yet received a "satisfactory"
4 adequate assurance of payment (at least from their subjective point of view). Although
5 the Debtor could contest this action – or pay a Utility Provider's late demand – by the time
6 that they did so, irreparable damage will have already been done to the Debtor's
7 operations and customer relations.

8 In light of the severe consequences to the Debtor of any interruption in
9 utility services, but recognizing the right of Utility Providers to evaluate the Proposed
10 Adequate Assurance on a case-by-case basis, the Debtor is proposing procedures that
11 will enable it to cooperatively work with the Utility Providers in a coordinated manner to
12 consensually resolve any adequate assurance issues. If the Debtor and the Utility
13 Provider cannot consensually resolve such issues, the Court should determine first
14 whether an additional adequate assurance of payment is necessary (in view of the
15 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005) and, if so, how
16 much it should be before the Utility Provider may cease performance for failure of
17 adequate assurance. The procedures the Debtor proposes to effectuate this result are
18 as follows (the "Adequate Assurance Procedures"):

19 1. The Debtor will fax, email, serve by overnight mail or otherwise
20 expeditiously send a copy of this Motion, together with the proposed utility order,
21 which Motion includes the proposed procedures, to each Utility Provider at the
22 time the Motion is filed.

23 2. The Debtor will pay each Utility Provider an Adequate Assurance
24 Deposit within ten (10) business days of entry of the order (the "Order") of the
25 Court approving this Motion; provided that such Utility Provider is not currently
26 paid in advance for its services and/or does not already hold a deposit equal to or
27 greater than the Adequate Assurance Deposit (which existing deposit shall be
28 deemed to be the Adequate Assurance Deposit).

1 3. A Utility Provider desiring additional assurances of payment in the
2 form of deposits, security or otherwise must serve a request (an "Additional
3 Assurance Request") upon the Debtor (through the Debtor's bankruptcy counsel)
4 at the following address: SulmeyerKupetz, a professional corporation, 333 South
5 Hope Street, 35th Floor, Los Angeles, California 90071, attn: David Kupetz, (fax)
6 213.629-4520, (email) dkupetz@sulmeyerlaw.com. (the "Service Party"). The
7 Additional Assurance Request must be sent to the Service Party to be deemed
8 valid.

9 4. The Additional Assurance Request must be made and **actually**
10 **received** by all the Service Party listed above by **no later than thirty (30) days**
11 **after entry of the Order by this Court**. If a Utility Company fails to timely file and
12 serve its request, it shall be: (i) forbidden to discontinue, alter or refuse service to,
13 or discriminate against, the Debtor on account of any unpaid prepetition charges
14 or the commencement of this Chapter 11 case, or require additional adequate
15 assurance of payment other than the two-week Proposed Adequate Assurance
16 described above; and (ii) deemed to have received adequate assurance of
17 payment in compliance with section 366 of the Bankruptcy Code.

18 5. Any Additional Assurance Request must: (i) be made in writing; (ii)
19 set forth the location for which utility services are provided; (iii) identify the Utility
20 Provider; (iv) briefly describe the type of utility service provided; (v) include a
21 summary of the Debtors' payment history relevant to the affected account(s),
22 including any security deposits; and (vi) set forth why the Utility Provider believes
23 the Proposed Adequate Assurance is not sufficient adequate assurance of future
24 payment.

25 6. Upon the Debtor's receipt of any Additional Assurance Request at
26 the address set forth above, the Debtor shall have the greater of (a) fourteen (14)
27 days from the receipt of any such Additional Assurance Request or (b) thirty (30)
28 days from the Petition Date (collectively, the "Resolution Period") to negotiate with

1 the Utility Provider to endeavor to resolve that Utility Provider's request for
2 additional assurance of payment. During this period, Utility Providers may not
3 discontinue, alter or refuse service to, or discriminate against, the Debtor on
4 account of any unpaid prepetition charges or the commencement of this Chapter
5 11 case.

6 7. The Debtor may, in its discretion, resolve any Additional Assurance
7 Request by mutual agreement with the Utility Provider and without further order of
8 the Court, and may, in connection with any such agreement, in its discretion,
9 provide a Utility Provider with additional adequate assurance of future payment
10 including, but not limited to, cash deposits, prepayment and/or other forms of
11 security, without further order of this Court, if the Debtor believes such additional
12 assurance is reasonable.

13 8. If the Debtor determines that the Additional Assurance Request is
14 not reasonable and is not able to reach an alternative resolution with the Utility
15 Provider during the Resolution Period, the Debtor, during or immediately after the
16 Resolution Period, will request a hearing before this Court to determine the
17 adequacy of assurances of payment with respect to a particular Utility Provider
18 (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy
19 Code.

20 9. Pending resolution of any such Determination Hearing, such
21 particular Utility Provider shall be restrained from discontinuing, altering, or
22 refusing service to, or discriminating against, the Debtor on account of unpaid
23 charges for prepetition services or the Debtor's bankruptcy filing.

24 The Debtor does not anticipate any problems in honoring its utility
25 obligations. The Debtor expects that its anticipated authorized use of cash collateral will
26 be more than sufficient to pay all postpetition utility obligations. Accordingly, the Debtor
27 believes that additional adequate assurance payments will ultimately prove unnecessary
28 and, if forced to bring this matter before the Court, would argue the same.

V.

PROCESS FOR OPTING OUT OF ADEQUATE ASSURANCE PROCEDURES

Historically, chapter 11 debtors were able to put the onus on utility providers, under section 366 of the Bankruptcy Code, to argue that whatever form of adequate assurance proposed by the debtor was insufficient. The 2005 modifications to section 366 of the Bankruptcy Code arguably shift the burden onto debtors to provide adequate assurance the utility provider finds satisfactory, and to seek court review if the utility provider does not accept the proposed adequate assurance. Under this reading of revised section 366, a Utility Provider could, on the 30th day following the Petition Date, announce that the proposed adequate assurance is not acceptable, demand an unprecedented deposit or prepayment in any amount it deems fit and threaten to terminate utility service the next day unless the Debtor complied with the demand. While the Debtor does not concede that the foregoing scenario reflects a correct interpretation of revised section 366, the Debtor nonetheless believes it is prudent to require Utility Providers to raise any objections to the Adequate Assurance Procedures so that such objections may be heard by the Court before the running of the 30-day period following the Petition Date.

To avoid this type of situation, the Debtor proposes the following procedures:

1. Any Utility Provider who objects to the Adequate Assurance Procedures outlined above must file an objection to such procedures (a "Procedure Objection") so that it is actually received **no later than twenty (20) days after entry of the Order by this Court** by the Debtor (through is bankruptcy counsel) at the following address: SulmeyerKupetz, a professional corporation, 333 South Hope Street, 35th Floor, Los Angeles, California 90071, attn: David Kupetz, (fax) 213.629-4520, (email) dkupetz@sulmeyerlaw.com.

2. Any Procedure Objection must (i) be made in writing; (ii) set forth the location for which utility services are provided, (iii) identify the Utility Provider; (iv) briefly

1 describe the type of utility service provided; (v) include a summary of the Debtor's
2 payment history relevant to the affected account(s), including any security deposits; (vi)
3 set forth why the Utility Provider believes the Proposed Adequate Assurance is not
4 sufficient adequate assurance of future payment; and (vii) set forth why the Utility
5 Provider believes it should be exempted from the Adequate Assurance Procedures.

6
7 3. The Debtor may, in its discretion, resolve any Procedure Objection
8 by mutual agreement with the Utility Provider and without further order of the Court, and
9 may, in connection with any such agreement, in its discretion, provide a Utility Provider
10 with additional adequate assurance of future payment including, but not limited to, cash
11 deposits, prepayments and/or other forms of security, without further order of this Court if
12 the Debtor believes such additional assurance is reasonable.

13 4. If the Debtor determines that the Procedure Objection is not
14 reasonable and is not able to reach a prompt alternative resolution with the Utility
15 Provider, the Procedure Objection will be heard on an expedited basis, if possible, based
16 on the Court's calendar. During this period, Utility Providers may not discontinue, alter or
17 refuse service to, or discriminate against, the Debtor on account of any unpaid prepetition
18 charges or the commencement of this Chapter 11 case.

19 5. All Utility Providers that do not timely file a Procedure Objection are
20 deemed to consent to the Adequate Assurance Procedures and shall be bound by the
21 Adequate Assurance Procedures. The sole recourse of all Utility Providers that do not
22 timely file a Procedure Objection shall be to submit an Additional Assurance Request
23 pursuant to the Adequate Assurance Procedures, and such Utility Providers shall be
24 enjoined from altering, refusing, or discontinuing service to, or discriminating against, the
25 Debtor pending any Determination Hearing, that may be conducted pursuant to the
26 Adequate Assurance Procedures.
27
28

1 VI.

2 **SUBSEQUENT MODIFICATIONS OF UTILITY SERVICE LIST**

3 The Debtor has made an extensive and good faith effort to identify its Utility
4 Providers and include them on the Utility Service List. Nonetheless, it is possible that the
5 Debtor has not yet identified or included certain Utility Providers on the Utility Service
6 List. To the extent that the Debtor identifies additional Utility Providers (the "Additional
7 Utility Providers"), the Debtor will file amendments to the Utility Service List and shall
8 serve a copy of the Order on such Additional Utility Providers. The Debtor requests that
9 the Order be binding on all Utility Providers, including the Additional Utility Providers,
10 regardless of when such Utility Provider was added to the Utility Service List; provided
11 that, with respect to any Additional Utility Provider, the thirty (30) day and twenty (20) day
12 periods of the above described procedures shall commence at of the date that the
13 Debtors serve the Order on such Additional Utility Provider as opposed to entry of the
14 Order. Any request for adequate assurance, or any opt-out request, by such Additional
15 Utility Provider must otherwise comply with the requirements set forth in this Motion and
16 the Order or shall be deemed an invalid adequate assurance and opt-out request.

17 VII.

18 **BASIS FOR RELIEF**

19 Congress enacted section 366 of the Bankruptcy Code to protect debtors
20 from utility service cutoffs upon a bankruptcy filing while, at the same time, providing
21 utility companies with adequate assurance that the debtors will pay for post-petition
22 services. See H.R. Rep. No. 95-595, at 350 (1978), reprinted in 1978 U.S.C.C.A.N.
23 5963, 6306. Accordingly, section 366 protects debtors by enjoining utilities from altering,
24 refusing or discontinuing services solely on account of unpaid prepetition amounts or
25 commencement of a bankruptcy case for a period of 30 days after the bankruptcy filing.
26 At the same time, section 366 protects utilities by permitting them to alter, refuse or
27 discontinue service after 30 days if the debtor has not furnished "adequate assurance" of
28 payment in a form "satisfactory" to the utility.

1 Section 366(c) of the Bankruptcy Code, which was enacted as part of the
2 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"),
3 significantly modified the existing statutory framework. It has two primary purposes: first,
4 it permits a utility to alter, refuse or discontinue utility service if a debtor has not provided
5 "satisfactory" adequate assurance within 30 days of its bankruptcy filing, subject to the
6 court's ability to modify the amount of adequate assurance. It also restricts the factors
7 that a court can consider when determining whether an adequate assurance payment is,
8 in fact, adequate. Specifically, courts may no longer consider (i) the absence of a
9 security deposit before the debtor's petition date, (ii) the debtor's history of timely
10 payment or (iii) the availability of an administrative expense priority, when determining the
11 amount of a deposit. Notwithstanding these noteworthy changes, it does not appear that
12 Congress intended to – or did – abrogate the bankruptcy court's right to determine the
13 amount of adequate assurance necessary or change the fundamental requirement that
14 assurance of payment must simply be "adequate."

15 First, while section 366(c) of the Bankruptcy Code does limit the factors a
16 court can consider when determining whether a debtor has provided adequate assurance
17 of payment, it does not limit the court's ability to determine the amount of payment
18 necessary, if any, to provide such adequate assurance. Instead, section 366(c) of the
19 Bankruptcy Code gives courts the same discretion in determining the amount of payment
20 necessary for adequate assurance as they previously had under section 366(b) of the
21 Bankruptcy Code. Compare 11 U.S.C. § 366(b) ("On request of a party in interest and
22 after notice and a hearing, the court may order reasonable modification of the amount of
23 the deposit or other security necessary to provide adequate assurance") with 11 U.S.C. §
24 366(c)(3)(A) ("On request of a party-in-interest and after notice and a hearing, the court
25 may order modification of the amount of an assurance payment under paragraph (2)");
26 see also Richard Levin & Alesia Ramley-Marinelli, The Creeping Repeal of Chapter 11:
27 The Significant Business Provisions of the Bankruptcy Abuse Protection and Consumer
28 Protection Act of 2005, 79 Am. Bankr. L.J. 603, 608-09 (2005) (stating that Courts would

1 likely continue to determine the amount and form of adequate protection after the
2 implementation of the BAPCPA). It is well established that section 366(b) of the
3 Bankruptcy Code permits a court to find that no adequate assurance payment at all is
4 necessary to provide a utility with adequate assurance of payment. See Virginia Elec. &
5 Power Co. v. Caldor, Inc., 117 F.3d 646, 650 (2d Cir. 1997) ("Even assuming that 'other
6 security" should be interpreted narrowly, we agree with the appellees that a bankruptcy
7 court's authority to 'modify' the level of the 'deposit or other security' where none is
8 necessary to provide a utility supplier with 'adequate assurance of payment.'"); In re Penn
9 Jersey Corp., 72 B.R. 981, 986 (Bankr. E.D. Pa. 1987) (utility company's request for
10 additional security denied because debtor had never been delinquent prior to
11 bankruptcy). This may be particularly true in cases where the debtor has made
12 prepetition deposits or prepayments for services that utilities will ultimately render post-
13 petition. 11 U.S.C. § 366(c)(1)(A)(v) (recognizing a prepayment for post-petition services
14 as adequate assurance). Accordingly, courts continue to have discretion to determine
15 the amount of adequate assurance payment and, where appropriate, to determine that no
16 such payment is necessary. See In re Astle, 338 B.R. 855, 861 n. 14 (Bankr. D. Idaho
17 2006) ("Since BAPCPA did not amend § 366(b), the case law interpreting that subsection
18 [prior to BAPCPA] is still applicable)

19 Additionally, section 366(c) of the Bankruptcy Code, like section 366(b),
20 simply requires a utility's assurance of payment be "adequate." Courts have long
21 recognized that adequate assurance of performance does not require an absolute
22 guarantee of a debtor's ability to pay. See In re Adelpia Bus. Solutions, Inc., 280 B.R.
23 63, 80 (Bankr. S.D.N.Y. 2002); In re Caldor, 199 B.R. 1, 3 (S.D.N.Y. 1996) (Section of
24 the Bankruptcy Code "does not require an 'absolute guarantee of payment'") aff'd by
25 Virginia Elec. & Power Co. v. Caldor, Inc., 117 F.3d 646 (2nd Cir. 1997). See also In re
26 Steinebach, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) ("Adequate assurance of payment
27 is not, however, absolute assurance . . . all § 366(b) requires is that a utility receive only
28 such assurance of payment as is necessary to protect its interest given the facts of the

1 debtor's financial circumstances"); In re Santa Clara Circuits W., Inc., 27 B.R. 680, 685
2 (Bankr. D. Utah 1982); In re George C. Frye Co., 7 B.R. 856, 858 (Bankr. D. Me. 1980).
3 Courts have also recognized that in determining the amount of adequate assurance,
4 bankruptcy courts should focus "on the need of the utility for assurance, and to require
5 that the debtor supply *no more than that*, since the debtor almost performe has a
6 conflicting need to conserve scarce financial resources." In re Caldor, 117 F.2d at 665
7 (emphasis in original).; see also In re Penn. Cent. Transp. Co., 467 F.2d 100, 103-04 (3d
8 Cir. 1972) (affirming bankruptcy court's ruling that no utility deposits were necessary
9 where such deposits would likely "jeopardize the continuing operating of the [debtor]
10 merely to give further security to suppliers who are already reasonably protected").
11 Accordingly, demands by a utility for a guarantee of payment when they already have
12 adequate assurance of payment in light of the Debtor's specific circumstances should be
13 refused.

14 Based upon the foregoing, the Debtor believes that all of its Utility Providers
15 have adequate assurance of payment without any additional adequate assurance
16 provisions. As previously discussed and as set forth in the Kelleher Declaration, the
17 Debtor's anticipated use of cash collateral will enable the Debtor to pay its operating
18 costs, including utility costs, as they come due. Moreover, the Debtor has powerful
19 incentive to stay current on its utility obligations because of its significant reliance on
20 utility services for the operation of its business. Without utility services the Debtor will be
21 unable to operate. These factors – which the Court may (and should) consider when
22 considering the amount of any adequate assurance payments – justify a finding that no
23 adequate assurance payment is required at all. In light of the foregoing, the Debtor
24 submits that the Proposed Adequate Assurance is more than sufficient to assure the
25 Utility Providers of future payment.

26 If the Utility Providers disagree with the Debtor's analysis, however, the
27 procedures proposed in this Motion will enable the parties to negotiate and, if necessary,
28 seek Court intervention without jeopardizing the Debtor's continuing operations. The

1 Court has authority to approve the proposed procedures under section 105(a) of the
2 Bankruptcy Code. Section 105(a) of the Bankruptcy Code provides that the Court "may
3 issue any order, process or judgment that is necessary or appropriate to carry out the
4 provisions of this title." The purpose of section 105(a) of the Bankruptcy Code is "to
5 assure the bankruptcy courts [sic] power to take whatever action is appropriate or
6 necessary in aid of the exercise of their jurisdiction." 2 Collier on Bankruptcy ¶ 105.01, at
7 105-5 to 105-6 (15th ed. rev. 2003).

8 The proposed procedures are necessary for the Debtor to carry out its
9 reorganization efforts. If the Court does not approve the proposed procedures, the
10 Debtor could be forced to address multiple requests by its Utility Providers in a
11 disorganized manner at a critical point in its reorganization. Moreover, the Debtor could
12 be blindsided by a Utility Provider unilaterally deciding – on the thirty-first day – that it is
13 not adequately protected and discontinuing service or making an exorbitant demand for
14 payment to continue service. As set forth above, discontinuation of utility service,
15 particularly electricity, would essentially halt the Debtor's operations in the affected
16 store(s), putting the Debtor's reorganization effort in extreme jeopardy. The proposed
17 procedures set forth a fair process that will enable all parties to negotiate their respective
18 positions and, where necessary, seek Court intervention without jeopardizing the
19 Debtor's reorganization efforts.⁴

20
21
22 ⁴ The proposed procedures allow the Debtor to negotiate or seek a hearing after
23 the 30-day deadline set forth in section 366(c) of the Bankruptcy Code where a Utility
24 Provider does not submit its demand within 16 days of the filing. For example, where a
25 Utility Provider files its request on the twentieth day, the Debtor will have 14 days – or
26 until the thirty-fourth day after the filing – to negotiate with that Utility Provider or to seek a
27 court determination. The Debtor believes that this process is fair and necessary to avoid
28 the situation where all of the Debtor's Utility Providers make last minute demands, leaving
the Debtor without the ability to address those demands before services may be cutoff. If
Utility Providers wish to have their matter determined within 30 days of the bankruptcy
filing, they need only file their request within 16 days thereof – something they are
undoubtedly prepared to do in light of the amendments to section 366 of the Bankruptcy
Code.

VIII.

NOTICE

No trustee, examiner or creditors' committee has been appointed in this Chapter 11 Case. The Debtor has provided notice of this Motion to: (a) the United States Trustee; (b) the Debtor's secured lenders; (c) the creditors listed on the Debtor's list of 20 largest unsecured creditors, as filed with the chapter 11 petition; (d) the Utility Providers; and (e) any parties who have requested special notice in the case as of the time of the filing. In light of the nature of the relief requested, the Debtor submits that no further notice is required or needed under the circumstances.

IX.

NO PRIOR REQUEST

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

WHEREFORE, the Debtor respectfully requests that the Court enter the Order, substantially in the form attached hereto as Exhibit 3, (i) determining that Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code, (ii) approving the Debtor's Proposed Adequate Assurance and the Adequate Assurance Procedures, (iii) prohibiting Utility Providers from discontinuing, altering, or refusing service to, or discriminating against, the Debtor, (iv) establishing procedures to Utility Providers to opt-out of the proposed Adequate Assurance Procedures, (v) determining that the Debtor is not required to provide any additional assurance, beyond what is proposed by this Motion, and (vi) granting such other and further relief as the Court deems appropriate.

DATED: March 19, 2008 Respectfully submitted,

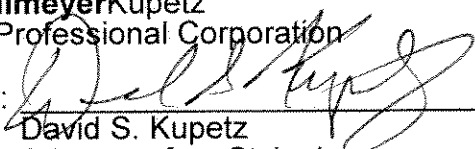
SulmeyerKupetz
A Professional Corporation
By: 
David S. Kupetz
Attorneys for eStyle, Inc.
Debtor and Debtor in Possession

EXHIBIT 1

UTILITIES ALL LOCATIONS

| Flexfield | Name | Address | Utility Type | Location | 6 Month | Avg Month |
|-------------------------|----------------------|--|----------------|------------------------------|--------------|--------------|
| 01-05-450-86311-000-22- | VERIZON | P.O. BOX 9688, MISSION HILLS, CA, 91346 | Telephone | Atrium | | |
| 01-05-450-86131-000-22- | NSTAR | P.O. BOX 4508, WOBURN, MA, 01888-4508 | Electrical | Atrium | \$ 13,011.76 | \$ 2,166.63 |
| 01-05-450-86311-000-19- | AT&T | 1154995 PAYMENT CENTER, SACRAMENTO, CA, 95887-0001 | Telephone | Atrium Total | | |
| 01-05-450-86131-000-32- | PUGET SOUND ENERGY | P.O. BOX 91269, BELLEVUE, WA, 98009-9269United States | Power | Barton Creek Total | \$ 1,753.71 | \$ 292.29 |
| 01-05-450-86131-000-32- | PUGET SOUND ENERGY | P.O. BOX 91269, BELLEVUE, WA, 98009-9269United States | Power | Bellvue Square Total | \$ 2,447.39 | \$ 407.90 |
| 01-05-450-86131-000-14- | PACIFIC GAS AND ELEC | P.O. BOX 997300, SACRAMENTO, CA, 95899-7300United States | Gas & Electric | Cherry Creek Total | \$ 2,095.56 | \$ 349.26 |
| 01-05-450-86311-000-14- | AT&T | 1154995 PAYMENT CENTER, SACRAMENTO, CA, 95887-0001 | Telephone | Burlingame | | |
| 01-05-450-86131-000-14- | ALLIED WASTE SERVICE | P.O. BOX 78624, PHOENIX, AZ, 85062 | Waste Disposal | Burlingame | | |
| 01-05-450-86131-000-14- | CITY OF BURLINGAME | PO BOX 191, BURLINGAME, CA, 94101-0191United States | Water | Burlingame | | |
| 01-05-450-86311-000-25- | AT&T | 1154995 PAYMENT CENTER, SACRAMENTO, CA, 95887-0001 | Telephone | Burlingame Total | \$ 8,878.76 | \$ 1,479.79 |
| 01-05-450-86131-000-25- | NSTAR | P.O. BOX 4508, WOBURN, MA, 01888-4508 | Electrical | Burlington | | |
| 01-05-450-86311-000-34- | XO COMMUNICATIONS | 14239 COLLECTIONS CENTER DRIVE, CHICAGO, IL, 60693 | Telephone | Burlington Total | \$ 18,928.65 | \$ 3,154.78 |
| 01-05-450-86131-000-34- | LA DWP | P.O. BOX 30808P.O. BOX 30808LOS ANGELES, CA, 90030 | Water & Power | Cadeau LA | | |
| 01-05-450-86131-000-33- | CON EDISON COMPANYO | P.O. BOX 1702, NEW YORK, NY, 10116-1702 | Electric | Cadeau LA Total | \$ 3,783.88 | \$ 630.65 |
| 01-05-450-86311-000-33- | XO COMMUNICATIONS | 14239 COLLECTIONS CENTER DRIVE, CHICAGO, IL, 60693 | Telephone | Cadeau NY | | |
| 01-05-450-86131-000-33- | STAR RUBBISH REMOVAL | 40 LORTEL AVE. STATENISLAND, NY, 10314 | Waste Disposal | Cadeau NY | | |
| 01-01-550-68121-000-00- | AT&T | 1154995 PAYMENT CENTER, SACRAMENTO, CA, 95887-0001 | Hosting | Cadeau NY Total | \$ 8,199.49 | \$ 1,366.58 |
| 01-01-550-68111-000-00- | AT&T | 1154995 PAYMENT CENTER, SACRAMENTO, CA, 95887-0001 | T1 | Corporate | | |
| 01-01-550-68121-000-00- | COGENT COMMUNICATION | P.O. BOX 791087, BALTIMORE, MD, 21279-1087 | T1 | Corporate | | |
| 01-01-000-86311-000-00- | AT&T | 1154995 PAYMENT CENTER, SACRAMENTO, CA, 95887-0001 | Telephone | Corporate | | |
| 01-01-550-86311-000-00- | VERIZON | P.O. BOX 9688, MISSION HILLS, CA, 91346 | Telephone | Corporate | | |
| 01-01-000-86311-000-00- | TMC COMMUNICATIONS | PO BOX 512870, LOS ANGELES, CA, 90051-0870United States | Telephone | Corporate | | |
| 01-05-450-86131-000-12- | SOUTHERN CALIFORNIA | P.O. BOX 600, ROSEMEAD, CA, 91771-1United States | Power | Corporate Total | \$ 81,300.97 | \$ 13,550.16 |
| 01-05-450-86311-000-12- | AT&T | 1154995 PAYMENT CENTER, SACRAMENTO, CA, 95887-0001 | Telephone | Fashion Island | | |
| 01-05-450-86311-000-24- | AT&T | 1154995 PAYMENT CENTER, SACRAMENTO, CA, 95887-0001 | Telephone | Glendale | | |
| 01-05-450-86131-000-24- | WASTE MANAGEMENT | P.O. BOX 4648, CAROL STREAM, IL, 60197-4648United States | Waste Disposal | Fashion Island Total | \$ 7,432.20 | \$ 1,238.70 |
| 01-05-450-86131-000-18- | APS | P.O. BOX 2906, PHOENIX, AZ, 85062-2906United States | Electric | Glendale | | |
| 01-05-450-86131-000-18- | WASTE MANAGEMENT | P.O. BOX 4648, CAROL STREAM, IL, 60197-4648United States | Waste Disposal | Glendale Total | \$ 2,182.23 | \$ 363.71 |
| 01-05-450-86131-000-11- | SOUTHERN CALIFORNIA | P.O. BOX 600, ROSEMEAD, CA, 91771-1United States | Power | Kierland | | |
| 01-05-450-86311-000-11- | VERIZON | P.O. BOX 9688, MISSION HILLS, CA, 91346 | Telephone | Kierland | | |
| 01-05-450-86131-000-15- | SAN DIEGO GAS & ELEC | P.O. BOX 25111, SAN ANA, CA, 92739-5111United States | Gas & Electric | Kierland Total | \$ 4,998.86 | \$ 833.14 |
| 01-05-450-86311-000-15- | AT&T | 1154995 PAYMENT CENTER, SACRAMENTO, CA, 95887-0001 | Telephone | Manhattan Beach | | |
| 01-05-450-86311-000-30- | AT&T | 1154995 PAYMENT CENTER, SACRAMENTO, CA, 95887-0001 | Telephone | Manhattan Beach Total | \$ 5,472.21 | \$ 912.04 |
| 01-05-450-86131-000-29- | LIPA | P.O. BOX 9039, HICKSVILLE, NY, 1182843812 | Power | Mission Viejo | | |
| 01-05-450-86311-000-29- | AT&T | 1154995 PAYMENT CENTER, SACRAMENTO, CA, 95887-0001 | Telephone | Mission Viejo Total | \$ 4,597.25 | \$ 766.21 |
| 01-05-450-86131-000-29- | TOWN OF HEMPSTEAD | 1995 PROSPECT AVE, EAST MEADOW, NY, 11554 | Water | Northpark | | |
| 01-05-450-86131-000-13- | SOUTHERN CALIFORNIA | P.O. BOX 600, ROSEMEAD, CA, 91771-1United States | Power | Northpark Total | \$ 5,217.18 | \$ 869.53 |
| 01-05-450-86311-000-13- | VERIZON | P.O. BOX 9688, MISSION HILLS, CA, 91346 | Telephone | Roosevelt Field | | |
| 01-05-450-86121-000-17- | INTERNATIONAL ENVIRO | P.O. BOX 101398, ATLANTA, GA, 30392United States | Waste Disposal | Roosevelt Field | | |
| 01-05-450-86311-000-16- | AT&T | 1154995 PAYMENT CENTER, SACRAMENTO, CA, 95887-0001 | Telephone | Roosevelt Field Total | \$ 7,140.71 | \$ 1,190.12 |
| 01-05-450-86131-000-16- | INTERNATIONAL ENVIRO | P.O. BOX 101398, ATLANTA, GA, 30392United States | Waste Disposal | Santa Monica | | |
| 01-05-450-86131-000-16- | LA DWP | P.O. BOX 30808P.O. BOX 30808LOS ANGELES, CA, 90030 | Water & Power | Santa Monica Total | \$ 3,437.56 | \$ 572.93 |
| 01-05-450-86311-000-31- | VERIZON | P.O. BOX 9688, MISSION HILLS, CA, 91346 | Telephone | Scottsdale | | |
| 01-05-450-86131-000-31- | WASTE MANAGEMENT | P.O. BOX 4648, CAROL STREAM, IL, 60197-4648United States | Waste Disposal | Scottsdale Total | \$ 1,601.41 | \$ 266.90 |
| UNITS ALL III JIS | | | | Sherman Oaks | | |
| UNITS ALL III JIS | | | | Sherman Oaks Total | \$ 5,953.73 | \$ 992.29 |
| UNITS ALL III JIS | | | | Short Hills | | |
| UNITS ALL III JIS | | | | Short Hills Total | \$ 4,340.12 | \$ 723.95 |
| UNITS ALL III JIS | | | | Valley Fair | | |
| UNITS ALL III JIS | | | | Valley Fair Total | \$ - | \$ - |

| | | | | | |
|-------------------------|----------------------|--|------------------|--------------------------------|--------------|
| 01-05-450-86131-000-23- | INTERNATIONAL ENVIRO | P.O. BOX 101398, ATLANTA, GA, 30382United States | Waste Disposal | Valley Fair | \$ - |
| 01-05-450-86131-000-20- | CON EDISON COMPANY | P.O. BOX 1702, NEW YORK, NY, 10116-1702 | Electric | Valley Fair Total | \$ 3,327.02 |
| 01-05-450-86311-000-20- | VERIZON | P.O. BOX 9688, MISSION HILLS, CA, 91346 | Telephone | Westchester | \$ 554.50 |
| 01-05-450-86311-000-21- | AT&T | 1154995 PAYMENT CENTER, SACRAMENTO, CA, 95887-0001 | Telephone | Westchester | \$ - |
| 01-05-450-86131-000-21- | WASTE MANAGEMENT | P.O. BOX 4648, CAROL STREAM, IL, 60197-4648United States | Waste Disposal | Westchester Total | \$ 1,146.67 |
| 01-05-450-86311-000-26- | AT&T | 1154995 PAYMENT CENTER, SACRAMENTO, CA, 95887-0001 | Telephone | Westfarms | \$ - |
| 01-05-450-86131-000-26- | WASTE MANAGEMENT | P.O. BOX 4648, CAROL STREAM, IL, 60197-4648United States | Waste Disposal | Westfarms | \$ 952.84 |
| 01-05-450-68121-000-22- | COVAD COMMUNICATIONS | P.O. BOX 39000, SAN FRANCISCO, CA, 94139-0001 | Internet Access | Willow Bend | \$ - |
| 01-05-450-86151-000-19- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Willow Bend | \$ - |
| 01-05-450-86311-000-32- | QWEST | P.O. BOX 173638, DENVER, CO, 80217-3638 | Phone & Internet | Willow Bend Total | \$ 775.60 |
| 01-05-450-86151-000-32- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | UTILITIES Total | \$ 4,853.59 |
| 01-05-450-86151-000-14- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | | \$ 35,558.55 |
| 01-05-450-68121-000-25- | COVAD COMMUNICATIONS | P.O. BOX 39000, SAN FRANCISCO, CA, 94139-0001 | Internet Access | | |
| 01-05-450-86151-000-34- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | INTERNET & SECURITY | |
| 01-05-450-86151-000-33- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Altium | |
| 01-05-450-87801-000-35- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Atrium Total | \$ 349.00 |
| 01-05-450-86311-000-35- | QWEST | P.O. BOX 173638, DENVER, CO, 80217-3638 | Internet | Barton Creek | \$ 171.31 |
| 01-01-000-86311-000-00- | QWEST | P.O. BOX 173638, DENVER, CO, 80217-3638 | Internet | Barton Creek Total | \$ 171.31 |
| 01-05-450-86151-000-12- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Bellvue Square | \$ 420.84 |
| 01-05-450-86151-000-24- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Bellvue Square | \$ 420.84 |
| 01-05-450-68121-000-18- | COVAD COMMUNICATIONS | P.O. BOX 39000, SAN FRANCISCO, CA, 94139-0001 | Internet Access | Bellvue Square Total | \$ 420.84 |
| 01-05-450-86311-000-18- | QWEST | P.O. BOX 173638, DENVER, CO, 80217-3638 | Phone & Internet | Burlingame | \$ 129.00 |
| 01-05-450-86151-000-18- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Burlingame Total | \$ 129.00 |
| 01-05-450-86151-000-11- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Burlington | \$ 349.00 |
| 01-05-450-86151-000-15- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Burlington Total | \$ 349.00 |
| 01-05-450-86151-000-30- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Cadeau LA | \$ 117.00 |
| 01-05-450-68121-000-17- | COVAD COMMUNICATIONS | P.O. BOX 39000, SAN FRANCISCO, CA, 94139-0001 | Internet Access | Cadeau LA Total | \$ 117.00 |
| 01-05-450-86311-000-17- | QWEST | P.O. BOX 173638, DENVER, CO, 80217-3638 | Phone & Internet | Cadeau NY | \$ 237.34 |
| 01-05-450-86151-000-17- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Cadeau NY Total | \$ 237.34 |
| 01-05-450-86151-000-16- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Cherry Creek | \$ 718.58 |
| 01-05-450-86151-000-31- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Cherry Creek | \$ 718.58 |
| 01-05-450-86151-000-23- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Cherry Creek Total | \$ 718.58 |
| 01-05-450-86151-000-20- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Corporate | \$ 5.25 |
| 01-05-450-86151-000-22- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Corporate Total | \$ 5.25 |
| 01-05-450-86151-000-20- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Fashion Island | \$ 165.57 |
| 01-05-450-86151-000-26- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Fashion Island Total | \$ 165.57 |
| 01-05-450-86151-000-23- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Glendale | \$ 123.44 |
| 01-05-450-86151-000-17- | COVAD COMMUNICATIONS | P.O. BOX 39000, SAN FRANCISCO, CA, 94139-0001 | Internet Access | Glendale Total | \$ 123.44 |
| 01-05-450-86311-000-17- | QWEST | P.O. BOX 173638, DENVER, CO, 80217-3638 | Phone & Internet | Kierland | \$ 732.24 |
| 01-05-450-86151-000-17- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Kierland | \$ 732.24 |
| 01-05-450-86151-000-16- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Kierland Total | \$ 732.24 |
| 01-05-450-86151-000-15- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Kierland Total | \$ 732.24 |
| 01-05-450-86151-000-30- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Manhattan Beach | \$ 173.13 |
| 01-05-450-86151-000-29- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Manhattan Beach Total | \$ 173.13 |
| 01-05-450-86151-000-17- | COVAD COMMUNICATIONS | P.O. BOX 39000, SAN FRANCISCO, CA, 94139-0001 | Internet Access | Mission Viejo | \$ 160.23 |
| 01-05-450-86311-000-17- | QWEST | P.O. BOX 173638, DENVER, CO, 80217-3638 | Phone & Internet | Mission Viejo Total | \$ 160.23 |
| 01-05-450-86151-000-17- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Northpark | \$ 157.60 |
| 01-05-450-86151-000-16- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Northpark Total | \$ 157.60 |
| 01-05-450-86151-000-31- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Roosevelt Field | \$ 171.90 |
| 01-05-450-86151-000-23- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Roosevelt Field Total | \$ 171.90 |
| 01-05-450-86151-000-20- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Scottsdale | \$ 747.30 |
| 01-05-450-86151-000-22- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Scottsdale | \$ 747.30 |
| 01-05-450-86151-000-26- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Scottsdale | \$ 747.30 |
| 01-05-450-86151-000-28- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Scottsdale Total | \$ 747.30 |
| 01-05-450-86151-000-26- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Sherman Oaks | \$ 165.04 |
| 01-05-450-86151-000-26- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Sherman Oaks Total | \$ 165.04 |
| 01-05-450-86151-000-23- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Short Hills | \$ 125.19 |
| 01-05-450-86151-000-20- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Short Hills Total | \$ 125.19 |
| 01-05-450-86151-000-22- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Valley Fair | \$ 123.44 |
| 01-05-450-86151-000-26- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Valley Fair Total | \$ 123.44 |
| 01-05-450-86151-000-22- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Westchester | \$ 170.71 |
| 01-05-450-86151-000-26- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Westchester Total | \$ 170.71 |
| 01-05-450-86151-000-28- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Westfarms | \$ 123.44 |
| 01-05-450-86151-000-26- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Westfarms Total | \$ 123.44 |
| 01-05-450-86151-000-26- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Willow Bend | \$ 133.62 |
| 01-05-450-86151-000-26- | ADT SECURITY SERVICE | P.O. BOX 371956, PITTSBURGH, PA, 15250United States | Security Service | Willow Bend Total | \$ 133.62 |

INTERNET & SECURITY Total
GRAND TOTAL

\$ 5,770.17

\$ 41,328.72

EXHIBIT 2

eStyle, Inc.
Security Deposit - Utilities

| <u>Account</u> | <u>Posted</u> | <u>Period</u> | <u>Journal Entry</u> | <u>Description</u> | <u>Vendor</u> | <u>Amount</u> |
|--|---------------|---------------|------------------------------|---------------------------------------|---|-----------------|
| 11665 | 19-Jun-05 | Apr-05 | JE310DGDG 19-JUN-05 15:23:19 | ATRIUM POWER - NSTAR SECURITY DEPOSIT | | 1,530.00 |
| 11665 | 27-May-07 | May-07 | Payables 7180742: A 264013 | NSTAR | Deposit | (355.78) |
| 11665 | 20-Apr-05 | Apr-05 | Payables 5103599: A 112357 | Westchester - Utility Deposit | CONSOLIDATED EDISON COMPANY OF NEW YORK | 920.00 |
| 11665 | 28-Oct-05 | Oct-06 | Payables 5598718: A 150073 | ConEd Deposit - WCH 2nd Deposi | CONSOLIDATED EDISON COMPANY OF NEW YORK | 1,700.00 |
| 11665 | 1-Aug-06 | Aug-06 | Payables 6336044: A 201576 | BSQ 5/23/06-7/21/06 | PUGET SOUND ENERGY | 557.00 |
| 14211 | 9-Nov-04 | Nov-05 | Payables 4677345: A 96825 | Kierland Commons Power Deposit | APS | 1,560.00 |
| 14211 | 5-Apr-05 | Apr-05 | Payables 5064617: A 111106 | Sherman Oaks Deposit | LOS ANGELES DEPARTMENT OF WATER AND POWER | 1,900.00 |
| Security Deposit Balance as of Dec 22, 2007 | | | | | | 7,841.22 |

EXHIBIT 3

SulmeyerKupetz, A Professional Corporation
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

1 David S. Kupetz (CA Bar No. 125062)
Email:dkupetz@sulmeyerlaw.com
2 Mark S. Horoupian (CA Bar No. 175373)
Email:mhoroupian@sulmeyerlaw.com
3 **SulmeyerKupetz**
A Professional Corporation
4 333 South Hope Street, Thirty-Fifth Floor
Los Angeles, California 90071-1406
5 Telephone: 213.626.2311
Facsimile: 213.629.4520
6

7 Bankruptcy Counsel for eStyle, Inc.,
Debtor and Debtor in Possession
8
9

10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

12
13 In re

14 ESTYLE, INC., a Delaware corporation,
dba babystyle, Cadeau, and Cadeau
15 Designs,

16 Debtor.
17

18
19 Tax Id # 95-4712564
20

Case No. 2:08-bk-13518-SB

Chapter 11

**ORDER PURSUANT TO 11 U.S.C.
§§ 105(a) and 366 (1) PROHIBITING
UTILITIES FROM DISCONTINUING,
ALTERING, OR REFUSING SERVICE,
(2) ESTABLISHING PROCEDURES FOR
DETERMINING ADEQUATE ASSURANCE
OF PAYMENT, AND (3) ESTABLISHING
PROCEDURES FOR THE UTILITIES TO
OPT OUT OF THE DEBTOR'S PROPOSED
ADEQUATE ASSURANCE PROCEDURES**

DATE: March 21, 2008

TIME: 10:00 a.m.

PLACE: U.S. Bankruptcy Court
Courtroom 1575
255 East Temple Street
Los Angeles, CA 90012

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25 Upon consideration of the motion (the "Motion")¹ of eStyle, Inc. (the
26 "Debtor"), debtor in possession, for entry of an order (i) prohibiting utilities from altering,
27

28 ¹ Capitalized terms used but not defined herein shall have the same meaning
ascribed to them in the Motion.

1 refusing, or discontinuing service to, or discriminating against, the Debtor, (ii) establishing
2 procedures for determining adequate assurance of payment and (iii) establishing
3 procedures for utilities to opt out of the Debtor's proposed procedures for adequate
4 assurance; and it appearing that the relief requested is in the best interests of the
5 Debtor's estate, its creditors, and other parties in interest; and upon the Omnibus
6 Declaration of Robert S. Kelleher, Chief Executive Officer of the Debtor, in support of
7 Debtor's "First-Day" Motions, filed contemporaneously with the Motion; and it appearing
8 that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334;
9 and it appearing that the Motion is a core proceeding pursuant to 28 U.S.C. § 157; and
10 that adequate notice of the Motion and opportunity to objection having been given; and it
11 appearing that no other notice need be given; and after due deliberation and sufficient
12 cause therefor,

13 **IT IS HEREBY ORDERED** as follows:

- 14 1. The Motion is granted.
- 15 2. Absent compliance with the procedures set forth in the Motion and
16 this Order, the Utility Providers are (i) forbidden and prohibited from discontinuing,
17 altering, or refusing service to, or discriminating against, the Debtor on account of unpaid
18 charges for prepetition services or the Debtor's bankruptcy filing and (ii) deemed to have
19 received adequate assurance of payment in compliance with section 366 of the
20 Bankruptcy Code.
- 21 3. That any Utility Provider who has accepted an Adequate Assurance
22 Deposit and did not make an Additional Assurance Request **prior to thirty (30) days**
23 **after entry of this Order** is hereby deemed to have stipulated that the Adequate
24 Assurance Deposit constitutes adequate assurance of future performance provided to
25 such Utility Provider, and such Utility Provider is further deemed to have waived any right
26 to seek additional adequate assurance during the course of this chapter 11 case.
- 27 4. That any Utility Provider who provided an Adequate Assurance
28 Deposit shall be required to return the Adequate Assurance Deposit to the Debtor within

1 15 days of the effective date of any confirmed plan of reorganization in this case, if not
2 returned or applied sooner.

3 5. That the following Adequate Assurance Procedures are approved in
4 full and in all respects:

5 a. The Debtor will fax, email, serve by overnight mail or
6 otherwise expeditiously send a copy of this Order to each Utility Provider
7 within three (3) business days after entry of this Order by the Court.

8 b. The Debtor will pay each Utility Provider an Adequate
9 Assurance Deposit (as set forth in the Motion), within ten (10) business
10 days of entry of this Order; provided that such Utility Provider is not
11 currently paid in advance for its services and/or does not already hold a
12 deposit equal to or greater than the Adequate Assurance Deposit (which
13 existing deposit shall be deemed to be the Adequate Assurance Deposit).

14 c. A Utility Provider desiring additional assurances of payment in
15 the form of deposits, security or otherwise must serve a request (an
16 "Additional Assurance Request") upon the Debtors (through the Debtor's
17 bankruptcy counsel) at the following address: SulmeyerKupetz, a
18 professional corporation, 333 South Hope Street, 35th Floor, Los Angeles,
19 California 90071; attn: David S. Kupetz, (fax) 213.629.4520; (email)
20 dkupetz@sulmeyerlaw.com (the "Service Party"). The Additional
21 Assurance Request must be sent to all of the above notice party to be
22 deemed valid.

23 d. The Additional Assurance Request must be made and
24 actually received by all the Service Party listed above by no later than thirty
25 (30) days after entry of this Order. If a Utility Provider fails to timely file and
26 serve its request, it shall be: (i) forbidden to discontinue, alter or refuse
27 service to, or discriminate against, the Debtor on account of any unpaid
28 prepetition charges or the commencement of the Debtor's Chapter 11 case,

1 or require additional adequate assurance of payment other than the two-
2 week Proposed Adequate Assurance described in the Motion; and (ii)
3 deemed to have received adequate assurance of payment in compliance
4 with section 366 of the Bankruptcy Code.

5 e. Any Additional Assurance Request must: (i) be made in
6 writing; (ii) set forth the location for which utility services are provided; (iii)
7 identify the Utility Provider; (iv) briefly describe the type of utility service
8 provided; (v) include a summary of the Debtors' payment history relevant to
9 the affected account(s), including any security deposits; and (vi) set forth
10 why the Utility Provider believes the Proposed Adequate Assurance is not
11 sufficient adequate assurance of future payment.

12 f. Upon the Debtor's receipt of any Additional Assurance
13 Request at the address set forth above, the Debtor shall have the greater of
14 (a) fourteen (14) days from the receipt of any such Additional Assurance
15 Request or (b) thirty (30) days from the Petition Date (collectively, the
16 "Resolution Period") to negotiate with the Utility Provider to endeavor to
17 resolve that Utility Provider's request for additional assurance of payment.
18 During this period, Utility Providers may not discontinue, alter or refuse
19 service to, or discriminate against, the Debtor on account of any unpaid
20 prepetition charges or the commencement of this Chapter 11 case.

21 g. The Debtor may, in its discretion, resolve any Additional
22 Assurance Request by mutual agreement with the Utility Provider and
23 without further order of the Court, and may, in connection with any such
24 agreement, in its discretion, provide a Utility Provider with additional
25 adequate assurance of future payment including, but not limited to, cash
26 deposits, prepayment and/or other forms of security, without further order of
27 this Court, if the Debtor believes such additional assurance is reasonable.
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h. If the Debtor determines that the Additional Assurance Request is not reasonable and is not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtor, during or immediately after the Resolution Period, will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code.

i. Pending resolution of any such Determination Hearing, such particular Utility Provider shall be restrained from discontinuing, altering, or refusing service to, or discriminating against, the Debtor on account of unpaid charges for prepetition services or the Debtor's bankruptcy filing.

6. That the following opt-out procedures are approved in full and in all respects:

a. Any Utility Provider who objects to the Adequate Assurance Procedures outlined above must file an objection to such procedures (a "Procedure Objection") so that it is actually received no later than twenty (20) days after entry of the Order by this Court by the Debtor (through its bankruptcy counsel) at the following address: SulmeyerKupetz, a professional corporation, 333 South Hope Street, 35th Floor, Los Angeles, California 90071; attn: David S. Kupetz, (fax) 213.629.4520; (email) dkupetz@sulmeyerlaw.com.

b. Any Procedure Objection must (i) be made in writing; (ii) set forth the location for which utility services are provided, (iii) identify the Utility Provider; (iv) briefly describe the type of utility service provided; (v) include a summary of the Debtor's payment history relevant to the affected account(s), including any security deposits; (vi) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (vii) set forth why the Utility

1 Provider believes it should be exempted from the Adequate Assurance
2 Procedures.

3 c. The Debtor may, in its discretion, resolve any Procedure
4 Objection by mutual agreement with the Utility Provider and without further
5 order of the Court, and may, in connection with any such agreement, in
6 their discretion, provide a Utility Provider with additional adequate
7 assurance of future payment including, but not limited to, cash deposits,
8 prepayments and/or other forms of security, without further order of this
9 Court if the Debtor believes such additional assurance is reasonable.

10 d. If the Debtor determines that the Procedure Objection is not
11 reasonable and are not able to reach a prompt alternative resolution with
12 the Utility Provider, the Procedure Objection will be heard on an expedited
13 basis, if possible, based on the Court's calendar. During this period, Utility
14 Providers may not discontinue, alter or refuse service to, or discriminate
15 against, the Debtor on account of any unpaid prepetition charges or the
16 commencement of this Chapter 11 case.

17 e. All Utility Providers that do not timely file a Procedure
18 Objection are deemed to consent to the Adequate Assurance Procedures
19 and shall be bound by the Adequate Assurance Procedures. The sole
20 recourse of all Utility Providers that do not timely file a Procedure Objection
21 shall be to submit an Additional Assurance Request pursuant to the
22 Adequate Assurance Procedures, and such Utility Providers shall be
23 enjoined from altering, refusing, or discontinuing service to, or
24 discriminating against, the Debtor pending any Determination Hearing, that
25 may be conducted pursuant to the Adequate Assurance Procedures.

26 7. That the Debtor is authorized in its discretion, to amend the Utility
27 Service List attached hereto as Exhibit 1 in order to add or delete any Utility Provider, and
28 this Order shall apply as of the Petition Date to any such Utility Provider that is

1 subsequently added to the Utility Service List; provided that, with respect to any
2 additional Utility Provider, the thirty (30) day and twenty (20) day periods described in
3 paragraphs 3, 5 and 6 above, respectively, of the procedures shall commence as of the
4 Debtor's service of this Order on such additional Utility Provider as opposed to the entry
5 of the Order. Any request for adequate assurance, or opt-out requests, by such
6 Additional Utility Provider must otherwise comply with the requirements set forth in the
7 Motion and this Order or shall be deemed an invalid adequate assurance and opt-out
8 request.

9 8. That nothing herein or in the Utility Service List constitutes a findings
10 that any entity is or is not a Utility Provider hereunder or under section 366 of the
11 Bankruptcy Code, whether or not such entity is listed on the Utility Service List.

12 9. That this Order shall be deemed a final Order with respect to any
13 Utility Provider that does not file a timely Procedures Objection as described herein.

14 10. That any payment or transfer made or service rendered by the
15 Debtor pursuant to this Order is not, and shall not be deemed, an admission as to the
16 validity of the underlying obligation, a waiver of any rights that the Debtor may have to
17 dispute such obligation or waiver of any other rights or remedies of the Debtor, or an
18 approval of assumption of any agreement, contract, or lease under section 365 of the
19 Bankruptcy code.

20 11. That the Debtor is authorized and empowered to take all actions
21 necessary to implement the relief granted in this Order.

22 12. That the terms and conditions of this Order shall be immediately
23 effective and enforceable upon its entry.

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SulmeyerKupetz, A Professional Corporation
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

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

DATED: _____

HON. SAMUEL L. BUFFORD
UNITED STATES BANKRUPTCY JUDGE

PRESENTED BY:

SulmeyerKupetz
A Professional Corporation

By: _____

David S. Kupetz
Bankruptcy Counsel for eStyle, Inc.,
Debtor and Debtor in Possession