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Debtor and Debtor in Possession

8
9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

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

Case No. 2:08-bk-13518-SB
Chapter 11

**DEBTOR'S EMERGENCY MOTION FOR
INTERIM AND FINAL ORDERS
AUTHORIZING DEBTOR (a) TO
CONDUCT STORE CLOSING SALES,
(b) TO DISCONTINUE OPERATIONS AT
CERTAIN STORES, AND (c) GRANTING
ANCILLARY AND OTHER RELIEF**

18
19 Tax Id. # 95-4712564
20
21

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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I.

SUMMARY

eStyle, Inc. (the "Debtor"), debtor in possession in the above-captioned case (the "Debtor"), hereby moves (the "Motion") the Court for an interim order under U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 6004 authorizing the Debtor to immediately begin liquidating its inventory at certain of its stores through store closing sales and for a final order (i) authorizing the Debtor to conduct the store closing sales on a final basis, (ii) authorizing the Debtor to discontinue operations at certain stores, and (iii) granting ancillary and other relief. The Motion is brought on an emergency basis pursuant to Local Bankruptcy Rule 2081-1(b)(2)(L). The Debtor shall promptly bring a motion, on regular notice, for rejection of the leases for the subject locations where stores are to be closed.

As set forth below, the Debtor, at this time, has identified 6 of its retail stores that it intends close. The Debtor had determined that the subject store locations cannot be operated profitably. The continued operation of these stores will be of no benefit to the estate and would create additional and substantial administrative expense claims that would reduce the Debtor's ability to successfully reorganize its remaining business. Additionally, some of the inventory at the stores designated for closure is seasonal and will decline in value unless store closure sales are conducted immediately.

The Debtor's estate will realize the greatest value for the inventory at the stores designated for closure if the inventory is sold through store closure, liquidation, or going out of business sales. The leases for the stores may prohibit such sales, and non-bankruptcy laws may impose a variety of restrictions on such sales. Such lease provisions impermissibly interfere with the rights of the estate under Section 363 to sell property of the estate in a manner that maximizes value. The restrictions on store closure, liquidation, or going out of business sales imposed by non-bankruptcy law should be modified with respect to these sales because the Debtor is liquidating the subject stores and not managing or operating them on an ongoing basis. The Debtor

1 requests that the Court order that the sales be conducted in accordance with the
2 "Protocol for Store Closing/Liquidation/Going Out of Business Sales" (the "Protocol")
3 attached hereto as Exhibit 1 and incorporated herein by this reference. The Protocol
4 adequately protects the interests of lessors and legitimate local governmental concerns.
5 In support of the Motion, the Debtor relies on the Omnibus Declaration of Robert S.
6 Kelleher in Support of "First Day" Motions (the "Kelleher Declaration") submitted
7 contemporaneously with this Motion. In further support of this Motion, the Debtor
8 respectfully represent as follows:

9 II.

10 **BACKGROUND**

11 **A. The Chapter 11 Filing**

12 On March 19, 2008 (the "Petition Date"), the Debtor filed a voluntary
13 chapter 11 petition commencing this case. The Debtor continues to operate and manage
14 its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the
15 Bankruptcy Code. As of this time, no creditors' committee has been appointed in this
16 case.

17 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157
18 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core
19 proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief
20 requested herein are sections 105 and 363 of the Bankruptcy Code and Rule 6004 of the
21 Federal Rules of Bankruptcy Procedure.

22 **B. Business Operations**

23 The Debtor is a multichannel retailer that sells maternity, baby and kids
24 apparel, and toys, gear and related products direct to the consumer. As of the Petition
25 Date, the Debtor sells its products at its 23 retail stores (21 babystyle and 2 Cadeau
26 stores), through its babystyle.com website, and through a direct mail program.

27 The Debtor's operations have not been profitable. The Debtor's rehabilitation requires
28 reorganization of the Debtor's operations and capital structure. The Debtor is in the

1 process of implementing a turnaround business plan designed to reduce costs, improve
2 operations, eliminate unprofitable locations, and enhance the Debtor's long-term viability.

3 Among other things, in recent weeks, the Debtor has identified and
4 evaluated unprofitable locations to be closed and leases for other locations where it is
5 necessary for the Debtor to negotiate improved rental terms. In February 2008, the
6 Debtor reduced its corporate office staff by 13 employees as part of a broader series of
7 initiatives to reduce overhead expense. As set forth below, the Debtor has identified 6
8 unprofitable stores that it plans to close in the near future (in conjunction with seeking to
9 maximize the recovery from the sale of inventory at those locations). The Debtor is also
10 exploring whether a sale of its business is a viable means for resolving this case.

11 **C. Factors Precipitating Chapter 11 Filing**

12 The Debtor started as an ecommerce business in 1999 and added a direct
13 mail catalog approximately one year later. In 2002, the Debtor opened its first retail
14 store. In 2004, eStyle made a decision to significantly expand its retail store presence,
15 and by early 2005 had negotiated leases that resulted in the opening of 9 new stores in
16 2005 and 3 new stores in 2006. The store expansion required significant changes in
17 systems, infrastructure and business processes, many of which were only addressed
18 concurrently with the store expansion, which negatively affected operating results.
19 During this period (2004-2006), the Debtor suffered from a lack of consistent
20 merchandise direction and insufficient merchandising disciplines, at a time when more
21 retailers were competing in this category. During 2006 and 2007, the Debtor took steps
22 to complete a repositioning of the business from an ecommerce business to a multi-
23 channel retailer positioned to support further new store growth. Changes were made to
24 address the merchandise leadership, merchandising disciplines and infrastructure
25 requirements, but continued operating losses during this repositioning have put pressure
26 on eStyle's cash availability.

27 The impact of general weakness in the economy and recent declines in mall
28 traffic has negatively impacted sales in the Debtor's stores. Poor performance of some of

1 the Debtor's stores has negatively impacted the Debtor's operating results. Moreover,
2 the Debtor has been unsuccessful in its efforts to obtain additional financing from
3 shareholders and third parties to support its efforts to complete the repositioning.
4 Recognizing the need to stabilize its operating results and eliminate losses, the Debtor
5 has recently taken cost cutting measures, including staff reductions and identifying stores
6 to be closed and those where lease terms require renegotiation. Further, the Debtor has
7 altered certain aspects of its operations in order to increase sales productivity and
8 enhance sales and is in the process of implementing a turnaround business plan in
9 conjunction with its chapter 11 case. The Debtor's rehabilitation requires a
10 reorganization of its operations, involving a reduction in the number of retail stores the
11 Debtor operates. At the same time, the Debtor is exploring whether a sale of its business
12 is a viable alternative means for resolving this case. As part of its turnaround plan, the
13 Debtor has determined that it is necessary to close its unprofitable stores identified
14 below.

15 III.

16 STORES TO BE CLOSED

17 At this time, the Debtor has identified the following stores (the "Stores") that
18 it intends to close:

19 Store Name	Store Address	Landlord
20 Barton Creek	2901 S. Capital of Texas Space #K06 Austin, TX 78746	Simon Property Group (Texas), L.P. M.S. Management Associates, Inc. National City Center 115 West Washington Indianapolis, IN 46204
23 Cadeau Los Angeles	8113 Melrose Avenue Los Angeles, CA 90046	JC/SC, LLC c/o Property Management Assoc. 5120 W. Gold Leaf Circle Suite 300 Los Angeles, CA 90056
26 Mission Viejo	555 The Shops at Mission Viejo Mission Viejo, CA 92691	Mission Viejo Associates, L.P. M.S. Management Associates, Inc. National City Center 115 West Washington Indianapolis, IN 46204

1	Roosevelt Field	630 Old Country Road Space #1073A Garden City, NY 11530	The Retail Property Trust M.S. Management Associates, Inc. National City Center 115 West Washington Indianapolis, IN 46204
4	West Farms	562 West Farms Mall Farmington, CT 06032	West Farms Mall, LLC Department 55501 P.O. Box 67000 Detroit, MI 48267-0555
7	Willow Bend	6121 West Park Blvd. Suite 121A Plano, TX 75093	Willow Bend Shopping Center Limited Partnership Department 178001 P.O. Box 67000 Detroit, MI 48267-1780

10 The Debtor has determined that the store locations listed above cannot be
11 operated profitably. The continued operation of the Stores will be of no benefit to the
12 estate and will create additional and substantial administrative expense claims that will
13 reduce the Debtor's ability to successfully reorganize its remaining business. The
14 monthly rent obligations for the subject stores are as follows: (1) Barton Creek (\$20,713);
15 (2) Cadeau Los Angeles (\$8,000); (3) Mission Viejo (\$16,188); (4) Roosevelt Field
16 (\$28,879); (5) West Farms (\$24,274); and (6) Willow Bend (\$11,769). Some of the
17 inventory at the Stores designated for closure is seasonal and will decline in value unless
18 store closure sales are commenced immediately.

19 The Debtor's estate will realize the greatest value for the inventory at the
20 Stores designated for closure if the inventory is sold through store closure, liquidation, or
21 going out of business sales. The leases for the Stores may prohibit such sales, and local
22 laws may impose a variety of restrictions on such sales. Such lease provisions, however,
23 impermissibly interfere with the rights of the estate under Section 363 to sell property of
24 the estate in a manner that maximizes value. Further, the restrictions on store closure,
25 liquidation, or going out of business sales imposed by non-bankruptcy law should be
26 modified with respect to these sales because the Debtor is liquidating the Stores and not
27 managing or operating them on an on-going basis. The sales will be conducted in
28

1 accordance with the attached Protocol that adequately protects the interests of lessors
2 and legitimate local governmental concerns.

3 **IV.**

4 **RELIEF REQUESTED**

5 By this Motion, the Debtor seeks an interim order immediately authorizing
6 the Debtor to begin liquidating its inventory at its Stores identified above through store
7 closing, liquidation, or going out of business sales (the "Store Closing Sales") in
8 accordance with the terms and conditions set forth herein and in the Protocol attached
9 hereto as Exhibit 1. In addition, the Debtor seeks a final order (i) authorizing the Debtor
10 to conduct the Store Closing Sales on a final basis, (ii) authorizing the Debtor to
11 discontinue operation at the Stores, and (iii) granting ancillary and other relief. The
12 Debtor believes it is in the best interests of the estate and creditors to dispose of its
13 inventory located at the Stores to be closed in an orderly fashion to maximize recovery.
14 To best accomplish this strategy, the Debtor believes the immediate commencement of
15 Store Closing Sales to sell store inventory (the "Merchandise") over approximately the
16 next 5 weeks is essential to enhance recoveries. The Stores are currently stocked with
17 seasonal merchandise which can be sold now at an optimal price. If the commencement
18 of the Store Closing Sales is delayed, the Merchandise will grow stale and its realizable
19 sale value will decrease. Moreover, inasmuch as the Stores are not profitable, each
20 month that the Store Closing Sales are delayed will only lead to continued operational
21 losses. Finally, the risk of inventory "shrink" will increase substantially if the sale process
22 is delayed. Accordingly, the Debtor requests authority to conduct the Store Closing
23 Sales. The Debtor expects that the Store Closing Sales will be completed prior to the
24 end of April, 2008.

25 The Debtor has determined that its business operations at the Stores are
26 not profitable and that the Store Closing Sales are the best and most orderly and efficient
27 manner of winding up operations at those stores while generating a fair return to the
28 Debtor's estate. To minimize any potential conflicts with landlords or other interested

1 parties, the Debtor proposes that the Store Closing Sales will be conducted in
2 accordance with the Protocol attached hereto as Exhibit 1. The Debtor believes the
3 proposed Protocol strikes a fair balance between the rights of landlords and other
4 interested parties to maintain the integrity of their properties with the rights of the Debtor,
5 the estate, and creditors to maximize proceeds from the Store Closing Sales.

6 V.

7 APPLICABLE LAW

8 A. In General

9 Section 363 of the Bankruptcy Code provides that the Debtor "after notice
10 and a hearing, may use, sell or lease, other than in the ordinary course of business,
11 property of the estate." 11 U.S.C. § 363(b). To approve the use, sale or lease of property
12 out of the ordinary course of business, this Court must find "some articulated business
13 justification." See e.g., Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel
14 Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); see also In re Abbott Dairies of Pa., Inc., 788
15 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting articulated business justification test
16 of Lionel Corp., and requiring showing of good faith); In re Delaware & Hudson Ry. Co.,
17 124 B.R. 169, 175-76 (D. Del. 1991) (concluding that Third Circuit adopted "sound
18 business purpose" after Abbott Dairies decision); Titusville Country Club v. PennBank (In
19 re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 19910; In re Indus. Valley
20 Refrigeration and Air Conditioning Supplies, Inc., 77 B.R. 15, 19 (Bankr. E.D. Pa. 1987).

21 There is ample business justification for conducting Store Closing Sales at
22 the Stores and, thereafter, for discontinuing operations at the Stores. As noted above,
23 the Debtor has analyzed the subject Stores and their projected performance and has
24 determined that such operations are unprofitable and that continued operations at the
25 Stores would be burdensome and harmful to the estate. Continued operations would
26 deplete the assets of the estate and require substantial additional funding that is simply
27 not available. Accordingly, continued operation of the Stores is not feasible and, even if it
28 were, would not be in the best interests of the Debtor, creditors, and estate.

1 The disposition of the Merchandise pursuant to the Protocol and similar
2 store closing procedures represents an accepted method for the sale of assets that has
3 been approved in numerous chapter 11 cases of retailers. See e.g., In re Big V. Holding
4 Corp., Case No. 00-04372 (PJW) (Bankr. D. Del.) (interim order); In re WSR Corp., Case
5 No. 98-1241 (MFW) (Bankr. D. Del.); In re Homeplace Stores, Inc., Case No. 98-8 (PJW)
6 (Bankr. D. Del.); In re Levitz Furniture Corporation, Case No. 97-1843 (MFW) (Bankr. D.
7 Del.); In re Montgomery Ward Holding Corp., Case No. 97-1409 (PJW) (Bankr. D. Del.).

8 **B. The Sale of Merchandise Should be Free and Clear of Liens, Claims,**
9 **and Encumbrances**

10 To facilitate the sale of the Merchandise, the Debtor requests authorization
11 to sell such property free and clear of any and all liens, encumbrances and interests
12 (collectively, the "Liens"), with valid Liens to attach to the net sale proceeds in the same
13 order of priority held with regard to the Merchandise on which they may be asserted. The
14 Debtor's secured lenders are the only parties, other than the Debtor, holding Liens on the
15 Merchandise. As set forth in the Debtor's cash collateral motion filed contemporaneously
16 with this Motion, the Debtor's senior secured creditor (Wachovia) is adequately protected
17 by a substantial equity cushion. In additional, replacement liens will be granted.
18 Moreover, the Debtor's subordinated secured lenders (the Bridge Lenders) have
19 consented to the sale of the Merchandise free and clear of their Liens.

20 **C. The Court Should Invalidate any Lease Restrictions that May Impair**
21 **the Debtor, Ability to Conduct the Store Closing Sales**

22 The Debtor leases all 23 of its stores. Thus, the contemplated Store
23 Closing Sales may be inconsistent with lease provisions with respect to the Stores that
24 are intended to protect the image of a shopping center or mall or avoid disruption of
25 normal commerce, including provisions purporting to restrict or prohibit the Debtor from
26 conducting store closing, going out of business, inventory liquidation or similar sales.
27 Such provisions have been deemed unenforceable in other chapter 11 cases as
28 impermissible restraints on a debtor's ability to maximize the value of its assets under

1 section 363 of the Bankruptcy Code. See In re Ames Dep't Stores, Inc., 136 B.R. 357,
2 359 (Bankr. S.D.N.Y. 1992) (enforcement of anti-going-out-of-business sales clause
3 would contravene overriding federal policy requiring debtors to maximize assets); In re
4 Tobago Bay Trading Co., 112 B.R. 463, 467 (Bankr. N.D. Ga. 1990) (anti-going-out-of-
5 business sales clause in lease is unenforceable); In re Lisbon Shops, Inc., 24 B.R. 693,
6 695 (Bankr. E.D. Mo. 1982) (same).¹ In a case where the Debtor proposed certain Store
7 Closing Sales procedures, like the Protocol proposed by the Debtor in this case, the
8 Court stated:

9 Debtors have not requested *carte blanche* approval to
10 conduct these sales without limitations, but have proposed
11 Store Closing Procedures which significantly regulate the
12 manner for conducting the sales. I find these restrictions
13 sufficient to establish a *prima facie* case that additional
adequate protection, beyond payment of rent has been
offered in exchange for landlord's loss of their right to enforce
lease terms which may prohibit these sales.

14 In re Friedman's, Inc., 336 B.R. 880, 884 (Bankr. S.D. GA. 2005).

15 The Debtor proposes to conduct the Store Closing Sales in accordance with
16 the Protocol to fairly balance the rights of landlords to maintain the integrity of their
17 properties against the rights of the Debtor to maximize recoveries from liquidation sales.
18 Thus, any potential prejudice to landlords is greatly lessened by immediate
19 implementation of the Protocol.

20 In any event, store closing, liquidation, or going out of business sales, such
21 as the sales described herein, are a routine part of chapter 11 cases involving retail
22 debtors, especially store chains. Such sales are consistently ordered by courts, despite
23 lease provisions purporting to forbid such sales in the ordinary course of business. See

24 _____
25 ¹ Courts have routinely have entered orders in retail chapter 11 cases permitting
26 liquidation sales. See e.g. In re Hechinaer Investment Company of Delaware, Inc., Case
27 No. 99-02261 (P JW) (Bankr. D. Del.); In re WSR Corp., Case No. 98-1241 (MFW)
28 (Bankr. D. Del.); In re Homeplace Stores, Inc., Case No. 98-8 (P JW); In re Montgomery
Ward Holding Corp., Case No. 97-1409 (P JW) (Bankr. D. Del).

1 In re R.H. Macy & Co., 170 B.R. 69, 77 (Bankr. S.D.N.Y. 1994); Ames Depn't Stores, 136
2 B.R. at 359 ("to enforce the anti-GOB sale clause of the [l]ease would contravene
3 overriding federal policy requiring Debtors to maximize estate assets by imposing
4 additional constraints never envisioned by Congress"); In re Tobago Bay, 112 B.R. at
5 465-66; In re Libson Shops, Inc., 24 B.R. 693, 695 (Bankr. D.D. Mo. 1982). Thus, no
6 clause in any lease should be an impediment to the Store Closing Sales or the activities
7 connected therewith, especially given the Debtor's undertaking to immediately abide by
8 the terms and conditions of the Protocol. To the extent such restrictive clauses may exist
9 in the Debtor's store leases, the lessors should not be permitted to interfere with, or,
10 otherwise seek to restrict the Debtor from conducting the Store Closing Sales.

11 **D. The Store Closing Sales Should be Exempt from Certain Federal,**
12 **State, and Local Laws, Statutes, Rules and Ordinances Related to**
13 **Store Closing and Liquidation Sales**

14 Although the Debtor believes that the Store Closing Sales will generally
15 comply with federal, state and local laws, statutes, rules and ordinances as well as
16 leasehold prohibitions, certain states in which the stores are located have or may have
17 licensing and other requirements with respect to the conduct of store closing, liquidation
18 or other inventory clearance sales. Typical statutes and regulations provide that if a
19 liquidation or bankruptcy sale is court authorized, however, then a company need not
20 comply with certain regulatory policies. The Debtor, therefore, requests that, pursuant to
21 Bankruptcy Code section 105(a), this Court authorize the Debtors to conduct the Store
22 Closing Sales without the necessity of, and the delay associated with, obtaining various
23 state licenses and/or satisfying any additional requirements in connection with the sales.

24 Because the Debtor and its assets are subject to this Court's jurisdiction,
25 the Court will be able to supervise the Store Closing Sales and the liquidation of the
26 Merchandise. These Store Closing Sales are a legitimate attempt by the Debtor to
27 maximize the return from the sale of assets for the benefit of its estate and creditors.
28 Accordingly, the Court should dispense with any requirement that the Debtors comply

1 with technical requirements that are not intended to curtail persons from conducting store
2 closing sales with bankruptcy court supervision.

3 Moreover, 28 U.S.C. § 959, which requires trustees and, by definition,
4 debtors in possession, to otherwise comply with state and other laws in performance of
5 their duties, does not apply to the Store Closing Sales. Courts have held that 28 U.S.C. §
6 959 does not apply to debtors or their agents liquidating assets. See, e.g., California
7 State Bd. of Equalization v. Goggin, 191 F. 2d 726 (9th Cir. 1951) (28 U.S.C. § 959 does
8 not apply to transactions that are in the nature of a liquidation), cert. denied, 342 U.S. 909
9 (1952); see also In re Borne Chemical Co., Inc., 54 B.R. 126, 135 (Bankr. D.N.J. 1984)
10 (holding that 28 U.S.C. § 959(b) is applicable only where the property is being managed
11 or operated for the purpose of continuing operations); but cf. In re White Crane Trading
12 Co Inc., 170 B.R. 694, 702-704 (Bankr. E.D. Cal. 1994) (noting that at juncture where the
13 debtors introduce new merchandise, prolong going-out-of-business sales for unlimited
14 duration, and mislead public with false advertising, state consumer protection laws
15 become significant); In re Lauriats, Inc., 219 B.R. 648, 649 (Bankr. D. Mass. 1998)
16 (holding that statutory construction does not permit waiver of 28 U.S.C. § 959(b)).

17 Here, the Store Closing Sales will be of limited duration, only merchandise
18 of the Debtors will be sold, all advertising will fairly describe the Store Closing Sales, and
19 no aspect of the relief sought is intended to alter laws or regulations affecting public
20 safety. For these and other reasons, 28 U.S.C. § 959(b) should not be read to apply to
21 the Store Closing Sales, as the Debtor is ceasing its operations at the Stores with the
22 knowledge and oversight of its creditors and this Court. Even if state or local laws do not
23 expressly except bankruptcy sales from their ambit, the Debtor submits that, to the extent
24 the state or local laws conflict with federal bankruptcy laws, they are preempted by the
25 Supremacy Clause. To hold otherwise would severely impair the relief otherwise
26 available under Bankruptcy Code section 363. In concert with this premise, bankruptcy
27 courts have consistently recognized that federal bankruptcy law preempts state and local
28 laws which contravene the underlying policies of the Bankruptcy Code. See, e.g., In re

1 Shenanao Group, Inc., 186 B.R. 623, 628 (Baker. W.D. Pa. 1995) ("Trustees and
2 debtors-in-possession have unique fiduciary and legal obligations pursuant to the
3 bankruptcy code. . . . [A] state statute cannot place burdens on them where the result
4 would contradict the priorities established by the federal bankruptcy code."); Sherwood
5 Partners, Inc. v. Lycos, Inc., 384 F.3d 1198, 1203-04 (9th Cir. 2005) ("Bankruptcy law
6 accomplishes equitable distribution through a distinctive form of collective proceeding.
7 This is a unique contribution of the Bankruptcy Code that makes bankruptcy different
8 from a collection of actions by individual creditors. . . . The filing of a bankruptcy petition
9 brings a bankruptcy estate into being and triggers an automatic stay, which prevents
10 creditors from enforcing their claims, thus preserving the Debtor's assets for ultimate
11 distributions by the bankruptcy trustee"). While preemption of state law is not always
12 appropriate, see In re Baker & Drake, 35 F.3d 1348, 1353-54 (9th Cir. 1994) (no
13 preemption where state law prohibiting taxicab leasing was promulgated in part as a
14 public safety measure), it is appropriate where, as here, the only state laws involved
15 concern economic regulation rather than the protection of public health and safety. Id. at
16 1353 (cases suggest that "federal bankruptcy preemption is more likely . . . where a state
17 statute is concerned with economic regulation rather than with protecting the public
18 health and safety").

19 In this case, section 363 of the Bankruptcy Code, which requires debtors to
20 operate their businesses in a way that maximizes recovery for creditors, will be severely
21 undermined if the Court does not provide for the waiver of state and local statutes and
22 regulations establishing licensing or permitting requirements, waiting periods, time limits
23 or bulk sale restrictions that would otherwise apply to the Store Closing Sales.
24 Importantly, the requested waiver is narrowly tailored to facilitate the successful conduct
25 of the Store Closing Sales. The Debtor does not seek a general waiver of all state and
26 local requirements which would otherwise apply to the Store Closing Sales. Rather, the
27 Debtor only requests that this Court authorize the Debtor to conduct the Store Closing
28 Sales without the necessity of, and the delay associated with, obtaining various state

1 licenses or permits; observing state and local waiting periods or time limits; and/or
2 satisfying any additional requirements with respect to advertising, conducting the Store
3 Closing Sales as a store closings or similar type sales, or transferring Merchandise
4 between the Stores. The Debtor fully intends to be bound by and comply with remaining
5 statutes and regulations, such as health and safety laws.

6 The Debtor also requests that no other person or entity including, but not
7 limited to, any lessor or federal, state or local agency, department or governmental
8 authority, should be allowed to take any action to prevent, interfere with, or otherwise
9 hinder consummation of the Store Closing Sales, or the advertising and promotion
10 (including through the posting of signs) of such Store Closing Sales, in the manner set
11 forth herein. Accordingly, the Debtor requests this Court to authorize the Debtors to
12 conduct the Store Closing Sales without the necessity of, and the delay associated with,
13 obtaining various state licenses, observing state and local waiting periods or time limits,
14 and/or satisfying any additional requirements in connection therewith with respect to
15 advertising and conducting the Store Closing Sales as a store closing or similar type sale
16 and the transfer of merchandise between the Debtor's stores. For the reasons set forth
17 above and in the Kelleher Declaration, the Debtor believes that the proposed Store
18 Closing Sales program is the most efficient means of maximizing the value of the
19 Merchandise for the benefit of the Debtor's estates and creditors while limiting
20 administrative costs.

21 **E. The Immediate Interim Relief Requested by this Motion is Appropriate**
22 **and in the Best Interests of the Debtor's Estate and Creditors**

23 There is more than adequate business justification to support immediate
24 approval of the proposed sale of the Merchandise pursuant to the procedures set forth
25 above and in the attached Protocol. The Debtor's management has determined already
26 that ceasing operations of the subject stores is advisable and that conducting the Store
27 Closing Sales, as set forth herein, is the most efficient means of disposing of the
28 Merchandise, while limiting administrative costs and maximizing the value of the Stores'

1 assets. Accordingly, the Debtor respectfully submits that granting the relief requested
2 herein is in the best interest of the Debtor's estate, creditors and other parties in interest.

3 As stated earlier, to ensure that the Store Closing Sales can be conducted
4 successfully, the Debtor needs to immediately begin the Store Closing Sales.
5 Accordingly, the Debtor respectfully requests the Court to grant the relief requested
6 herein on an interim basis and schedule a final hearing at the earliest practicable time so
7 that the Debtor can promote the Store Closing Sales to the general public and commence
8 the Store Closing Sales. Courts have authorized immediate, interim relief to Debtor to
9 conduct store closing sales in similar circumstances. See Interim Order Pursuant to 11
10 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 6004 Authorizing the Liquidation of
11 Inventory at Certain Closing Stores, In re Big V Stores, Case No. 00-4372 (PJW) (Bankr.
12 D. Del.), dated November 27, 2000.

13 VI.

14 NOTICE

15 The Debtor has provided notice of this motion by hand or overnight delivery
16 service to (a) the Office of the United States Trustee, (b) its secured lenders, (c) landlords
17 for each of the affected stores, (d) the Attorneys General of each state in which the
18 affected stores are located, (e) the Debtor's twenty largest unsecured creditors, and (f)
19 any party who has requested special notice as of the date of service of this Motion. The
20 Debtor submits that, under the circumstances, no other or further notice is required. No
21 prior motion for the relief requested herein has been made to this or any other court.

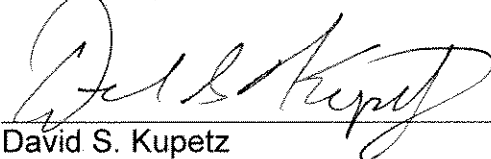
22 **WHEREFORE**, the Debtor respectfully requests that the Court enter an
23 interim order authorizing the Debtor to begin liquidating its inventory at the Stores and
24 through Store Closing Sales (in accordance with the Protocol attached hereto as Exhibit
25 1) and enter a final order (i) authorizing the Debtor to conduct the Store Closing Sales on
26 a final basis, (ii) authorizing the Debtor to discontinue operations at the Stores, and (iii)

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granting such other and further relief as is just and proper. A copy of the Debtor's proposed order granting the Motion is attached hereto as Exhibit 2.

DATED: March 19, 2008 Respectfully submitted,

SulmeyerKupetz
A Professional Corporation

By: 

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

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

EXHIBIT 1

**PROTOCOL FOR STORE CLOSING/LIQUIDATION/GOING OUT OF BUSINESS
SALES**

The following procedure shall apply to the store closing/liquidation/going out of business sales (the "Sales") to be conducted at certain stores (the "Stores") of eStyle, Inc. (the "Debtor"), pursuant to Court order:

1. The Sales shall be conducted so that the Stores in which the Sales are to occur will remain open during the normal hours of operation provided for in the respective leases for such Stores. The Debtor (and/or its agents) 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 applicable lease for the Store.

2. The Sales shall be conducted in accordance with applicable state and local "Blue Laws" and thus, where applicable, no Sales shall be conducted on Sunday, unless the Debtor has been operating such Store on a Sunday.

3. The Debtor (and/or its agents) shall not distribute handbills, leaflets or other written materials to customers outside of any Store premises, unless permitted by the lease (or if distribution is customary in the shopping center in which Store is located). Otherwise, the Debtor (and/or its agents) may solicit customers in the Stores themselves. The Debtor (and/or its agents) shall not use flashing lights or any type of amplified sound to advertise the Sales or solicit customers.

4. At the conclusion of the Sales, the Debtor shall vacate the Stores in a broom-clean condition, and shall leave the Stores in the same condition as at the commencement of the Sales, ordinary wear and tear expected. No permanent fixtures

may be removed without the landlord's written consent. No property of any landlord of a Store shall be removed or sold during the Sales.

5. All display and hanging signs used by the Debtor (and/or its agents) in connection with the Sales shall be professionally produced and all hanging signs shall be hung in a professional manner. Nothing contained herein shall be construed to create or impose upon the Debtor (or any agent of the Debtor) any additional restrictions not contained in the applicable lease agreement. In addition, the Debtor (and/or its agent) shall be permitted to utilize exterior banners.

6. Unless the print media requires the bankruptcy case number, the Debtor (and/or its agent) may only use the terms "Store Closing Sale", "Going Out of Business Sale" or "Total Liquidation Sale" as applicable, to advertise the Sales in the Stores.

7. Conspicuous signs shall be posted in each of the affected Stores to the effect that all Sales are "final".

8. Except with respect to the hanging of exterior banners, neither the Debtor (and/or its agents) shall make any alterations to the storefront or exterior walls of any Store.

9. Neither the Debtor (nor any agent of the Debtor) shall make any alternations to interior or exterior Store lighting.

10. The Debtor (and/or the Debtor's agents) shall keep Store premises and surrounding area clear and orderly consistent with present practices.

11. The landlords of the Stores shall have reasonable access to the Stores premises upon conclusion of the Sales solely for the purpose of dressing Store windows to minimize the appearance of a dark store.

12. _____ shall be designated to represent and be contacted by landlords and the State Attorney Generals should an issue arise concerning the conduct of the Sales, as follows:

[insert contact information]

13. The Debtor shall not mark-up or raise prices before applying the applicable discount.

14. The Debtor shall post a sign on the window of each Store, seven days before closing, stating how many more days are left to the Sale and instructing customers to inquire within regarding any remaining Stores.

EXHIBIT 2

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**

13 In re

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

16 Debtor.
17
18

19 Tax Id # 95-4712564
20
21
22

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

Chapter 11

**INTERIM ORDER GRANTING DEBTOR'S
EMERGENCY MOTION FOR INTERIM AND
FINAL ORDERS AUTHORIZING THE
DEBTOR (a) TO CONDUCT STORE
CLOSING SALES, (b) TO DISCONTINUE
OPERATIONS AT CERTAIN STORES,
AND (c) GRANTING ANCILLARY AND
OTHER RELIEF**

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

23
24 The "Debtor's Emergency Motion for Interim and Final Orders Authorizing
25 the Debtor (a) to Conduct Store Closing Sales, (b) to Discontinue Operations at Certain
26 Stores, and (c) Granting Ancillary and Other Relief" (the "Motion")¹, filed by eStyle, Inc.

27 _____
28 ¹ Capitalized terms defined in the Motion and not specifically defined in this order
shall have the meaning set forth in the Motion.

1 (the "Debtor"), Debtor and debtor in possession in the above-captioned chapter 11 case,
2 came on for hearing before the Court on March ____, 2008. Appearances at the hearing
3 are reflected in the record.

4 Having considered the Motion, the Omnibus Declaration of Robert S.
5 Kelleher in Support of Debtor's "First-Day" Motions, and any and all responses to the
6 Motion, the representations of counsel made at the hearing, the facts and circumstances
7 of this matter, and good cause appearing therefor,

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

- 9 1. The interim relief requested in the Motion, as set forth below, is
10 hereby granted.
- 11 2. The Debtor is hereby authorized to immediately begin liquidating its
12 inventory at its Stores identified in the Motion through store closing, liquidation, or going
13 out of business sales (the "Store Closing Sales") in accordance with the terms and
14 conditions set forth in the "Protocol for Store Closing/Liquidation/Going Out of Business
15 Sales" (the "Protocol") attached hereto as Exhibit 1. The Merchandise to be sold at the
16 Store Closing Sales will be sold free and clear of any and all liens, encumbrances and
17 interests (collectively, the "Liens"), with valid Liens to attach to the net sale proceeds in
18 the same order of priority held with regard to the Merchandise. The Store Closing Sales
19 shall be exempt from certain federal, state, and local laws, statutes, rules and ordinances
20 related to store closing and liquidation sales so long as the Store Closing Sales comply
21 with the terms and conditions of the Protocol. The Debtor is hereby authorized to
22 conduct the Store Closing Sales without the necessity of, and the delay associated with,
23 (i) obtaining various state licenses or permits, (ii) observing state and local waiting
24 periods or time limits, and/or (iii) satisfying any additional requirements with respect to
25 advertising and/or conducting the Store Closing Sales as store closings or similar type
26 sales, or transferring Merchandise between the Stores. The Debtor shall be bound by
27 and comply with remaining statutes and regulations, such as health and safety laws.

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3. No person or entity, including, but not limited to, any lessor or federal, state or local agency, or department of any governmental authority, shall take any action to prevent, interfere with, or otherwise hinder consummation of the Store Closing Sales, or the advertising and promotion of such Store Closing Sales, in the manner set forth in the Protocol.

4. A final hearing on the Motion is hereby set for _____, 2008, at _____ a.m.

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