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6  
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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 THIRD 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;  
DECLARATION OF EMILIA FABRICANT**

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19 Tax Id. # 95-4712564

DATE: [To Be Set]  
TIME: [To Be Set]  
PLACE: U.S. Bankruptcy Court  
Courtroom 1575  
255 East Temple Street  
Los Angeles, CA 90012

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TABLE OF CONTENTS

1			
2			<u>Page</u>
3			
4	I.	SUMMARY .....	1
5	II.	BACKGROUND.....	2
6	A.	The Chapter 11 Filing .....	2
7	B.	Business Operations.....	3
8	C.	Factors Precipitating Chapter 11 Filing.....	4
9	III.	STORES TO BE CLOSED .....	5
10	IV.	RELIEF REQUESTED.....	8
11	V.	APPLICABLE LAW.....	9
12	A.	In General.....	9
13	B.	The Sale of Merchandise Should be Free and Clear of Liens, Claims, and Encumbrances.....	10
14	C.	The Court Should Invalidate any Lease Restrictions that May Impair the Debtor, Ability to Conduct the Store Closing Sales.....	11
15	D.	The Store Closing Sales Should be Exempt from Certain Federal, State, and Local Laws, Statutes, Rules and Ordinances Related to Store Closing and Liquidation Sales.....	12
16	E.	The Immediate Interim Relief Requested by this Motion is Appropriate and in the Best Interests of the Debtor's Estate and Creditors.....	16
17			
18	VI.	NOTICE.....	16
19			
20			
21		DECLARATION OF EMILIA FABRICANT.....	18
22			
23			
24			
25			
26			
27			
28			

**TABLE OF AUTHORITIES**

	<u>Page</u>
<b><u>CASES</u></b>	
California State Bd. of Equalization v. Goggin, 191 F. 2d 726 (9th Cir. 1951) .....	13
Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063 (2d Cir. 1983) .....	9
In re Abbott Dairies of Pa., Inc., 788 F.2d 143 (3d Cir. 1986) .....	9
In re Ames Dep't Stores, Inc., 136 B.R. 357 (Bankr. S.D.N.Y. 1992) .....	11, 12
In re Baker & Drake, 35 F.3d 1348 (9th Cir. 1994) .....	14
In re Big V. Holding Corp., Case No. 00-04372 (PJW) (Bankr. D. Del.) .....	10
In re Borne Chemical Co., Inc., 54 B.R. 126 (Bankr. D.N.J. 1984) .....	13
In re Delaware & Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991) .....	9
In re Friedman's, Inc., 336 B.R. 880 (Bankr. S.D. GA. 2005) .....	12
In re Hechinaer Investment Company of Delaware, Inc., Case No. 99-02261 (PJW) (Bankr. D. Del.) .....	11
In re Homeplace Stores, Inc., Case No. 98-8 (PJW) (Bankr. D. Del.) .....	10, 11
In re Indus. Valley Refrigeration and Air Conditioning Supplies, Inc., 77 B.R. 15 (Bankr. E.D. Pa. 1987) .....	9
In re Lauriats, Inc., 219 B.R. 648 (Bankr. D. Mass. 1998) .....	13
In re Levitz Furniture Corporation, Case No. 97-1843 (MFW) (Bankr. D. Del.) .....	10
In re Libson Shops, Inc., 24 B.R. 693 (Bankr. D.D. Mo. 1982) .....	12
In re Lisbon Shops, Inc., 24 B.R. 693 (Bankr. E.D. Mo. 1982) .....	11

1	<u>In re Montgomery Ward Holding Corp.,</u> Case No. 97-1409 (P JW) (Bankr. D. Del.).....	10, 11
2		
3	<u>In re R.H. Macy &amp; Co.,</u> 170 B.R. 69 (Bankr. S.D.N.Y. 1994).....	12
4	<u>In re Shenanao Group, Inc.,</u> 186 B.R. 623 (Baker. W.D. Pa. 1995).....	14
5		
6	<u>In re Tobago Bay Trading Co.,</u> 112 B.R. 463 (Bankr. N.D. Ga. 1990).....	11, 12
7	<u>In re White Crane Trading Co Inc.,</u> 170 B.R. 694 (Bankr. E.D. Cal. 1994).....	13
8		
9	<u>In re WSR Corp.,</u> Case No. 98-1241 (MFW) (Bankr. D. Del.).....	10, 11
10	<u>Sherwood Partners, Inc. v. Lycos, Inc.,</u> 384 F.3d 1198 (9 <sup>th</sup> Cir. 2005) .....	14
11		
12	<u>Titusville Country Club v. PennBank (In re Titusville Country Club),</u> 128 B.R. 396 (Bankr. W.D. Pa. 19910).....	9
13		
14	<b><u>STATUTES</u></b>	
15	11 U.S.C. § 105.....	1, 3
16	11 U.S.C. § 105(a) .....	13
17	11 U.S.C. § 1107(a) .....	2
18	11 U.S.C. § 1108.....	2
19	11 U.S.C. § 363.....	passim
20	11 U.S.C. § 363(b) .....	9
21	28 U.S.C. § 1334.....	3
22	28 U.S.C. § 1408.....	3
23	28 U.S.C. § 1409.....	3
24	28 U.S.C. § 157.....	3
25	28 U.S.C. § 157(b)(2).....	3
26	28 U.S.C. § 959.....	13
27	28 U.S.C. § 959(b) .....	13
28		

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**RULES**

Fed. R. Bankr. P. 6004..... 1, 3

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 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 6004 authorizing the Debtor to immediately begin liquidating its inventory at 7 additional stores (described below), 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 stores that are the subject of this motion are: (1) Burlington (Burlington Mall, Burlington, Massachusetts); (2) Atrium (Atrium Mall, Chestnut Hill, Massachusetts); (3) North Park (North Park Center, Dallas, Texas); (4) Santa Monica (Montana Avenue, Santa Monica, California); (5) Burlingame (Burlingame Avenue, Burlingame, California); (6) Scottsdale (Scottsdale Fashion Square, Scottsdale, Arizona); and (7) Valley Fair (Westfield Valley Fair, Santa Clara, California).

This is the Debtor's third motion seeking authority to conduct store closing sales and to discontinue operations thereafter at certain stores. The Debtor's first motion involved 6 stores and was filed on the day (March 19, 2008) that this chapter 11 case was commenced. Thereafter, at a hearing conducted on April 29, 2008, the Court approved the Debtor's first store closing motion on a final basis and granted interim approval of the Debtor's second store closing motion (the second motion involved 2 stores), authorizing the Debtor to commence store closing sales at two additional stores. Since that time, as set forth below, the Debtor, has identified 7 additional retail stores where it currently desires to commence store closing sales and thereafter close the stores. It appears that the subject store locations cannot be operated profitably. The Debtor believes that it is prudent and appropriate to obtain the authority sought by this Motion at this time since the continued operation of these stores may 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 and/or



1 Bankruptcy Code. On April 10, 2008, an unsecured creditors' committee was appointed  
2 in this case.

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

8 **B. Business Operations**

9 The Debtor is a multichannel retailer that sells maternity, baby and kids  
10 apparel, and toys, gear and related products direct to the consumer. As of the Petition  
11 Date, the Debtor sold its products at 23 retail stores (21 babystyle and 2 Cadeau stores),  
12 through its babystyle.com website, and through a direct mail program. The Debtor's  
13 operations have not been profitable. The Debtor's rehabilitation requires reorganization  
14 of the Debtor's operations and capital structure. The Debtor is in the process of  
15 implementing a turnaround business plan designed to reduce costs, improve operations,  
16 eliminate unprofitable locations, and enhance the Debtor's long-term viability.

17 Among other things, in recent weeks, the Debtor has identified and  
18 evaluated unprofitable locations to be closed and leases for other locations where it is  
19 necessary for the Debtor to negotiate improved rental terms. Shortly prior to the  
20 commencement of this case, the Debtor reduced its corporate office staff by 14  
21 employees as part of a broader series of initiatives to reduce overhead expense. As  
22 indicated above, pursuant to the first store closing motion, the Debtor has conducted  
23 store closing sales at 6 of its stores and has also filed a motion that the Court has  
24 granted, approving the rejection of the leases for those 6 stores.<sup>1</sup> Pursuant to the

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<sup>1</sup> For 5 of the 6 stores that were the subject of the Debtor's first store closing motion, the lease rejection was effective as of April 30, 2008. With respect to the Debtor's Mission Viejo Store, the lease rejection will not be effective until the earlier of (a) May 30, 2008; or (footnote continued)

1 Debtor's second store closing motion, the Debtor obtained Court authorization at a  
2 hearing conducted on April 29, 2008, to commence store closing sales at 2 stores  
3 (Glendale and Westchester). As set forth below, the Debtor has identified 7 additional,  
4 stores that it currently plans to close in the near future (in conjunction with seeking to  
5 maximize the recovery from the sale of inventory at those locations). The Debtor has  
6 also made some management changes and is intending to implement further overhead  
7 and other cost reductions. The Debtor is also continuing to explore whether a sale of its  
8 business is a viable means for resolving this case.

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

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

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26  
27 (b) the date on which the Debtor delivers possession of the property to the landlord in  
28 "broom swept condition".

1 The impact of general weakness in the economy and recent declines in mall  
2 traffic has negatively impacted sales in the Debtor's stores. Poor performance of some of  
3 the Debtor's stores has negatively impacted the Debtor's operating results. Moreover,  
4 the Debtor has been unsuccessful in its efforts to obtain additional financing from  
5 shareholders and third parties to support its efforts to complete the repositioning.  
6 Recognizing the need to stabilize its operating results and eliminate losses, the Debtor  
7 has recently taken cost cutting measures, including staff reductions and identifying stores  
8 to be closed and those where lease terms require renegotiation. Further, the Debtor has  
9 altered certain aspects of its operations in order to increase sales productivity and  
10 enhance sales and is in the process of implementing a turnaround business plan in  
11 conjunction with its chapter 11 case. The Debtor's rehabilitation requires a  
12 reorganization of its operations, involving a reduction in the number of retail stores the  
13 Debtor operates. At the same time, the Debtor is exploring whether a sale of its business  
14 is a viable alternative means for resolving this case. The Debtor has determined that it is  
15 prudent and appropriate to obtain Court authorization to promptly begin the processing of  
16 closing the 7 stores identified below (in addition to the 8 stores that were the subject of  
17 the first and second store closing motions), and maximizing the value of the inventory  
18 through store closing sales at the subject locations.

19 III.

20 **STORES TO BE CLOSED**

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

23 Store Name	24 Store Address	25 Landlord
26 Burlington	Burlington Mall 75 Middlesex Turnpike, Space 1039A Burlington, MA 01803	Bellwether Properties of Massachusetts Limited Partnership c/o MS Management Associates Inc. National City Center 115 West Washington Indianapolis, Indiana 46204
27		Bellwether Properties of Massachusetts Limited Partnership c/o Simon Property Group, Inc.
28		

1			Attn: Ronald M. Tucker, Esq. 225 W. Washington St. Indianapolis, IN 46204 <a href="mailto:rtucker@simon.com">rtucker@simon.com</a>
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3			
4	Atrium	Atrium Mall 300 Boylston St. Chestnut Hill, MA 02467	Mayflower Atrium, LLC c/o MS Management Associates Inc. National City Center 115 West Washington Indianapolis, Indiana 46204
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6			
7			Mayflower Atrium, LLC c/o Simon Property Group, Inc. Attn: Ronald M. Tucker, Esq. 225 W. Washington St. Indianapolis, IN 46204 <a href="mailto:rtucker@simon.com">rtucker@simon.com</a>
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10	North Park	North Park Center 8687 North Central Expressway Dallas, TX 75225	North Park Partners, LP 8080 N. Central Expressway, Ste. 1100 Dallas, TX 75206-1807
11			
12			
13	Scottsdale	Scottsdale Fashion Square 7014-2304 East Camelback Road Scottsdale, AZ 85251	Scottsdale Fashion Square Partnership Attention: Center Manager 7014-590 E. Camelback Road Scottsdale, AZ 85251
14			
15			
16			Scottsdale Fashion Square Partnership c/o The Macerich Company P.O. Box 2172 401 Wilshire Blvd., Ste. 700 Santa Monica, CA 90407 Attention: Legal Department
17			
18			
19			
20			The Macerich Company (Agent of Scottsdale Fashion Square Partnership) c/o Thomas J. Leanse, Esq. c/o Brian D. Huben, Esq. c/o Dustin P. Branch, Esq. KATTEN MUCHIN ROSENMAN LLP 2029 Century Park East, Suite 2600 Los Angeles, CA 90067-3012
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23			
24			
25	Burlingame	1319 Burlingame Ave. Burlingame, CA 94010	Burlingame Drug Inc. 2501 Poppy Drive Burlingame, CA 94101
26			
27	Valley Fair	Westfield Shoppingtown Valley Fair 2855 Stevens Creek Blvd.	VF Mall LLC Attention: Legal Department 11601 Wilshire Blvd., 12 <sup>th</sup> Floor Los Angeles, CA 90025
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	Santa Clara, CA 95050	Westfield, LLC (Agent of VF Mall LLC) c/o Thomas J. Leanse, Esq. c/o Brian D. Huben, Esq. c/o Dustin P. Branch, Esq. KATTEN MUCHIN ROSENMAN LLP 2029 Century Park East, Suite 2600 Los Angeles, CA 90067-3012
Santa Monica	1324 Montana Ave. Santa Monica, CA 90403	Maxtana Avenue, LLC c/o J.S. Rosenfield & Co. 919 Montana Ave. Santa Monica, CA 90403

If the store locations listed above cannot be operated profitably, the continued operation of the Stores will be of no benefit to the estate and will create additional and substantial administrative expense claims that will reduce the Debtor's ability to successfully reorganize its remaining business. The monthly rent obligations for the subject stores are as follows: (1) Burlington (\$16,212.33 plus percentage rent); (2) Atrium (\$17,180 plus percentage rent); (3) North Park (\$11,847.92 plus percentage rent and other charges); (4) Valley Fair (\$10,844.16 plus percentage rent); (5) Scottsdale (\$11,328.75 plus percentage rent and other charges); (6) Santa Monica (\$18,500 plus percentage rent); and (7) Burlingame (\$15,747.80). Some of the inventory at the Stores designated for closure is seasonal and will decline in value unless store closure sales are commenced promptly.

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 closing sales. The leases for the Stores may prohibit such sales, and local laws may impose a variety of restrictions on such sales. Such lease provisions, however, impermissibly interfere with the rights of the estate under Section 363 to sell property of the estate in a manner that maximizes value. Further, 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 Stores and not managing or operating them on an on-going basis. The sales will be conducted in accordance with the attached

1 Guidelines that adequately protects the interests of lessors and legitimate local  
2 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 Guidelines attached  
9 hereto as Exhibit 1.<sup>2</sup> 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 that the prompt commencement of  
15 Store Closing Sales by the beginning of June, 2008 to sell store inventory (the  
16 "Merchandise") over approximately 8 weeks is essential to enhance recoveries. The  
17 Stores are currently stocked with seasonal merchandise which can be sold at an optimal  
18 price during June and July, 2008. If the commencement of the Store Closing Sales is  
19 delayed, the Merchandise will grow stale and its realizable sale value will decrease.  
20 Moreover, inasmuch as the Stores are not profitable, each month that the Store Closing  
21 Sales are delayed will only lead to continued operational losses. Finally, the risk of  
22 inventory "shrink" will increase substantially if the sale process is delayed. Accordingly,  
23 the Debtor requests authority to conduct the Store Closing Sales. The Debtor believes  
24 that an approximate 8 week for the store Closing Sales and expects that the Store

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27 <sup>2</sup> The Guidelines are identical (except for changed dates) to those that were attached to  
28 the order approving the Debtor's first and second store closing motions.

1 Closing Sales will be completed by the end of July, 2008, and possibly (at least in some  
2 cases) as soon as the end of June, 2008.

3 The Debtor has determined, as of this time, that its business operations at  
4 the Stores are not profitable and that the Store Closing Sales are the best and most  
5 orderly and efficient manner of winding up operations at those stores while generating a  
6 fair return to the Debtor's estate. To minimize any potential conflicts with landlords or  
7 other interested parties, the Debtor proposes that the Store Closing Sales will be  
8 conducted in accordance with the Guidelines attached hereto as Exhibit 1. As stated  
9 above, the Guidelines are the same as those approved by Court pursuant to the first  
10 store closing motion filed in this case. The Debtor believes the proposed Guidelines  
11 strike a fair balance between the rights of landlords and other interested parties to  
12 maintain the integrity of their properties with the rights of the Debtor, the estate, and  
13 creditors to maximize proceeds from the Store Closing Sales.

## 14 V.

### 15 APPLICABLE LAW

#### 16 A. In General

17 Section 363 of the Bankruptcy Code provides that the Debtor "after notice  
18 and a hearing, may use, sell or lease, other than in the ordinary course of business,  
19 property of the estate." 11 U.S.C. § 363(b). To approve the use, sale or lease of property  
20 out of the ordinary course of business, this Court must find "some articulated business  
21 justification." See e.g., Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel  
22 Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); see also In re Abbott Dairies of Pa., Inc., 788  
23 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting articulated business justification test  
24 of Lionel Corp., and requiring showing of good faith); In re Delaware & Hudson Ry. Co.,  
25 124 B.R. 169, 175-76 (D. Del. 1991) (concluding that Third Circuit adopted "sound  
26 business purpose" after Abbott Dairies decision); Titusville Country Club v. PennBank (In  
27 re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); In re Indus. Valley  
28 Refrigeration and Air Conditioning Supplies, Inc., 77 B.R. 15, 19 (Bankr. E.D. Pa. 1987).

1           There is ample business justification for conducting Store Closing Sales at  
2 the Stores and, thereafter, for discontinuing operations at the Stores. As noted above,  
3 the Debtor has analyzed the subject Stores and their projected performance and has  
4 determined that such operations are unprofitable and that continued operations at the  
5 Stores would be burdensome and harmful to the estate. Continued operations would  
6 deplete the assets of the estate and require substantial additional funding that is simply  
7 not available. Accordingly, the Debtor now believes that a continued operation of the  
8 Stores is not feasible and, even if it were, would not be in the best interests of the Debtor,  
9 creditors, and estate.

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

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

19           To facilitate the sale of the Merchandise, the Debtor requests authorization  
20 to sell such property free and clear of any and all liens, encumbrances and interests  
21 (collectively, the "Liens"), with valid Liens to attach to the net sale proceeds in the same  
22 order of priority held with regard to the Merchandise on which they may be asserted. The  
23 Debtor's secured lenders are the only parties, other than the Debtor, holding Liens on the  
24 Merchandise. In recently granting the Debtor's motion for use of cash collateral motion  
25 (final hearing conducted on April 17, 2008), the Court ruled that the Debtor's senior  
26 secured creditor (Wachovia) is adequately protected by a substantial equity cushion. In  
27 additional, replacement liens will be granted. Moreover, the Debtor's subordinated  
28

1 secured lenders (the Bridge Lenders) have consented to the sale of the Merchandise free  
2 and clear of their Liens.

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

5 The Debtor leases all of its stores. Thus, the contemplated Store Closing  
6 Sales may be inconsistent with lease provisions with respect to the Stores that are  
7 intended to protect the image of a shopping center or mall or avoid disruption of normal  
8 commerce, including provisions purporting to restrict or prohibit the Debtor from  
9 conducting store closing, going out of business, inventory liquidation or similar sales.  
10 Such provisions have been deemed unenforceable in other chapter 11 cases as  
11 impermissible restraints on a debtor's ability to maximize the value of its assets under  
12 section 363 of the Bankruptcy Code. See In re Ames Dep't Stores, Inc., 136 B.R. 357,  
13 359 (Bankr. S.D.N.Y. 1992) (enforcement of anti-going-out-of-business sales clause  
14 would contravene overriding federal policy requiring debtors to maximize assets); In re  
15 Tobago Bay Trading Co., 112 B.R. 463, 467 (Bankr. N.D. Ga. 1990) (anti-going-out-of-  
16 business sales clause in lease is unenforceable); In re Lisbon Shops, Inc., 24 B.R. 693,  
17 695 (Bankr. E.D. Mo. 1982) (same).<sup>3</sup> In a case where the Debtor proposed certain Store  
18 Closing Sales procedures, like the Guidelines proposed by the Debtor in this case, the  
19 Court stated:

20 Debtors have not requested *carte blanche* approval to  
21 conduct these sales without limitations, but have proposed  
22 Store Closing Procedures which significantly regulate the  
23 manner for conducting the sales. I find these restrictions  
24 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.

25 <sup>3</sup> 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 (PJW) (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 (PJW); In re Montgomery  
Ward Holding Corp., Case No. 97-1409 (PJW) (Bankr. D. Del).

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

2           The Debtor proposes to conduct the Store Closing Sales in accordance with  
3 the Guidelines to fairly balance the rights of landlords to maintain the integrity of their  
4 properties against the rights of the Debtor to maximize recoveries from liquidation sales.  
5 Thus, any potential prejudice to landlords is greatly lessened by immediate  
6 implementation of the Guidelines. As stated above, both landlords affected by this  
7 Motion have reviewed and approved the Guidelines.

8           In any event, store closing, liquidation, or going out of business sales, such  
9 as the sales described herein, are a routine part of chapter 11 cases involving retail  
10 debtors, especially store chains. Such sales are consistently ordered by courts, despite  
11 lease provisions purporting to forbid such sales in the ordinary course of business. See  
12 In re R.H. Macy & Co., 170 B.R. 69, 77 (Bankr. S.D.N.Y. 1994); Ames Depn't Stores, 136  
13 B.R. at 359 ("to enforce the anti-GOB sale clause of the [l]ease would contravene  
14 overriding federal policy requiring Debtors to maximize estate assets by imposing  
15 additional constraints never envisioned by Congress"); In re Tobago Bay, 112 B.R. at  
16 465-66; In re Libson Shops, Inc., 24 B.R. 693, 695 (Bankr. D.D. Mo. 1982). Thus, no  
17 clause in any lease should be an impediment to the Store Closing Sales or the activities  
18 connected therewith, especially given the Debtor's undertaking to immediately abide by  
19 the terms and conditions of the Guidelines. To the extent such restrictive clauses may  
20 exist in the Debtor's store leases, the lessors should not be permitted to interfere with, or,  
21 otherwise seek to restrict the Debtor from conducting the Store Closing Sales.

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

25           Although the Debtor believes that the Store Closing Sales will generally  
26 comply with federal, state and local laws, statutes, rules and ordinances as well as  
27 leasehold prohibitions, certain states in which the stores are located have or may have  
28 licensing and other requirements with respect to the conduct of store closing, liquidation

1 or other inventory clearance sales. Typical statutes and regulations provide that if a  
2 liquidation or bankruptcy sale is court authorized, however, then a company need not  
3 comply with certain regulatory policies. Because the Debtor and its assets are subject to  
4 this Court's jurisdiction, the Court will be able to supervise the Store Closing Sales and  
5 the liquidation of the Merchandise, the Debtor, requests that, pursuant to Bankruptcy  
6 Code section 105(a), this Court authorize the Debtors to conduct the Store Closing Sales  
7 without the necessity of, and the delay associated with, obtaining various state licenses  
8 and/or satisfying any additional requirements in connection with the sales.

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

23           Here, the Store Closing Sales will be of limited duration, only merchandise  
24 of the Debtors will be sold, all advertising will fairly describe the Store Closing Sales, and  
25 no aspect of the relief sought is intended to alter laws or regulations affecting public  
26 safety. For these and other reasons, 28 U.S.C. § 959(b) should not be read to apply to  
27 the Store Closing Sales, as the Debtor is ceasing its operations at the Stores with the  
28 knowledge and oversight of its creditors and this Court. Even if state or local laws do not

1 expressly except bankruptcy sales from their ambit, the Debtor submits that, to the extent  
2 the state or local laws conflict with federal bankruptcy laws, they are preempted by the  
3 Supremacy Clause. To hold otherwise would severely impair the relief otherwise  
4 available under Bankruptcy Code section 363. In concert with this premise, bankruptcy  
5 courts have consistently recognized that federal bankruptcy law preempts state and local  
6 laws which contravene the underlying policies of the Bankruptcy Code. See, e.g., In re  
7 Shenanao Group, Inc., 186 B.R. 623, 628 (Baker. W.D. Pa. 1995) ("Trustees and  
8 debtors-in-possession have unique fiduciary and legal obligations pursuant to the  
9 bankruptcy code. . . . [A] state statute cannot place burdens on them where the result  
10 would contradict the priorities established by the federal bankruptcy code."); Sherwood  
11 Partners, Inc. v. Lycos, Inc., 384 F.3d 1198, 1203-04 (9<sup>th</sup> Cir. 2005). ("Bankruptcy law  
12 accomplishes equitable distribution through a distinctive form of collective proceeding.  
13 This is a unique contribution of the Bankruptcy Code that makes bankruptcy different  
14 from a collection of actions by individual creditors. . . . The filing of a bankruptcy petition  
15 brings a bankruptcy estate into being and triggers an automatic stay, which prevents  
16 creditors from enforcing their claims, thus preserving the Debtor's assets for ultimate  
17 distributions by the bankruptcy trustee"). While preemption of state law is not always  
18 appropriate, see In re Baker & Drake, 35 F.3d 1348, 1353-54 (9th Cir. 1994) (no  
19 preemption where state law prohibiting taxicab leasing was promulgated in part as a  
20 public safety measure), it is appropriate where, as here, the only state laws involved  
21 concern economic regulation rather than the protection of public health and safety. Id. at  
22 1353 (cases suggest that "federal bankruptcy preemption is more likely . . . where a state  
23 statute is concerned with economic regulation rather than with protecting the public  
24 health and safety").

25 In this case, section 363 of the Bankruptcy Code, which requires debtors to  
26 operate their businesses in a way that maximizes recovery for creditors, will be severely  
27 undermined if the Court does not provide for the waiver of state and local statutes and  
28 regulations establishing licensing or permitting requirements, waiting periods, time limits

1 or bulk sale restrictions that would otherwise apply to the Store Closing Sales.  
2 Importantly, the requested waiver is narrowly tailored to facilitate the successful conduct  
3 of the Store Closing Sales. The Debtor does not seek a general waiver of all state and  
4 local requirements which would otherwise apply to the Store Closing Sales. Rather, the  
5 Debtor only requests that this Court authorize the Debtor to conduct the Store Closing  
6 Sales without the necessity of, and the delay associated with, obtaining various state  
7 licenses or permits; observing state and local waiting periods or time limits; and/or  
8 satisfying any additional requirements with respect to advertising, conducting the Store  
9 Closing Sales as a store closings or similar type sales, or transferring Merchandise  
10 between the Stores. The Debtor fully intends to be bound by and comply with remaining  
11 statutes and regulations, such as health and safety laws.

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

27  
28



1 Exhibit 1) and enter a final order (i) authorizing the Debtor to conduct the Store Closing  
2 Sales on a final basis, (ii) authorizing the Debtor to discontinue operations at the Stores,  
3 and (iii) granting such other and further relief as is just and proper. A copy of the Debtor's  
4 proposed order granting the Motion is attached hereto as Exhibit 2.

5 DATED: May 9, 2008

Respectfully submitted,

**SulmeyerKupetz**  
A Professional Corporation

8  
9 By:   
10 David S. Kupetz  
11 Mark S. Horoupian

Attorneys for Debtor, eStyle, Inc.

SulmeyerKupetz, A Professional Corporation  
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR  
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TEL. 213.626.2311 • FAX 213.629.4520

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**DECLARATION OF EMILIA FABRICANT**

I, Emilia Fabricant, declare as follows:

1. I am an individual over the age of eighteen, and I am the President and Chief Merchandising Officer of eStyle, Inc., dba babystyle, Cadeau, and Cadeau Designs (the "Debtor"). I am an authorized representative of the Debtor, with full authority to make the representations and statements contained herein, on its behalf.

2. Except as otherwise indicated, all statements made herein are based on my personal knowledge or my review of relevant documents. If called to testify as a witness in this matter, I could and would competently testify under oath to the truth of the statements set forth herein.

3. The Debtor commenced the above-captioned reorganization case (the "Case") by filing a voluntary chapter 11 petition on March 19, 2008.

4. The Debtor's rehabilitation requires a reorganization of its operations, involving a reduction in the number of retail stores the Debtor operates. At the same time, the Debtor is exploring whether a sale of its business is a viable alternative means for resolving this case. The Debtor has determined that it is necessary at this time to obtain Court authorization to close the 7 stores identified below and maximize the value of the inventory through store closing sales at the subject locations.

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

Store Name	Store Address	Landlord
Burlington	Burlington Mall 75 Middlesex Turnpike, Space 1039A Burlington, MA 01803	Bellwether Properties of Massachusetts Limited Partnership c/o MS Management Associates Inc. National City Center 115 West Washington Indianapolis, Indiana 46204  Bellwether Properties of Massachusetts Limited Partnership c/o Simon Property Group, Inc. Attn: Ronald M. Tucker, Esq. 225 W. Washington St. Indianapolis, IN 46204 rtucker@simon.com

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Atrium	Atrium Mall 300 Boylston St. Chestnut Hill, MA 02467	Mayflower Atrium, LLC c/o MS Management Associates Inc. National City Center 115 West Washington Indianapolis, Indiana 46204  Mayflower Atrium, LLC c/o Simon Property Group, Inc. Attn: Ronald M. Tucker, Esq. 225 W. Washington St. Indianapolis, IN 46204 <a href="mailto:rtucker@simon.com">rtucker@simon.com</a>
North Park	North Park Center 8687 North Central Expressway Dallas, TX 75225	North Park Partners, LP 8080 N. Central Expressway, Ste. 1100 Dallas, TX 75206-1807
Scottsdale	Scottsdale Fashion Square 7014-2304 East Camelback Road Scottsdale, AZ 85251	Scottsdale Fashion Square Partnership Attention: Center Manager 7014-590 E. Camelback Road Scottsdale, AZ 85251  Scottsdale Fashion Square Partnership c/o The Macerich Company P.O. Box 2172 401 Wilshire Blvd., Ste. 700 Santa Monica, CA 90407 Attention: Legal Department  The Macerich Company (Agent of Scottsdale Fashion Square Partnership) c/o Thomas J. Leanse, Esq. c/o Brian D. Huben, Esq. c/o Dustin P. Branch, Esq. KATTEN MUCHIN ROSENMAN LLP 2029 Century Park East, Suite 2600 Los Angeles, CA 90067-3012
Burlingame	1319 Burlingame Ave. Burlingame, CA 94010	Burlingame Drug Inc. 2501 Poppy Drive Burlingame, CA 94101
Valley Fair	Westfield Shoppingtown Valley Fair 2855 Stevens Creek Blvd. Santa Clara, CA 95050	VF Mall LLC Attention: Legal Department 11601 Wilshire Blvd., 12 <sup>th</sup> Floor Los Angeles, CA 90025  Westfield, LLC (Agent of VF Mall LLC) c/o Thomas J. Leanse, Esq.

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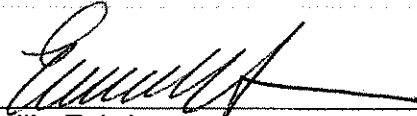
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		c/o Brian D. Huben, Esq. c/o Dustin P. Branch, Esq. KATTEN MUCHIN ROSENMAN LLP 2029 Century Park East, Suite 2600 Los Angeles, CA 90067-3012
Santa Monica	1324 Montana Ave. Santa Monica, CA 90403	Maxtana Avenue, LLC c/o J.S. Rosenfield & Co. 919 Montana Ave. Santa Monica, CA 90403

6. Under current circumstances, the Debtor believes that the store locations listed above cannot be operated profitably. Accordingly, if the Stores cannot be operated profitably, the continued operation of the Stores will not benefit the estate and will create additional and substantial administrative expense claims that will reduce the Debtor's ability to successfully reorganize its remaining business. The foregoing Motion has been brought in order to put the Debtor in a position where it can maximize the value of its assets and in order to protect the estate. The Debtor is continuing to evaluate the subject stores on an ongoing basis. Some of the inventory at the Stores designated for closure is seasonal and will decline in value unless store closure sales are commenced promptly.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed May 9, 2008, at Los Angeles, California.

  
Emilia Fabricant

# EXHIBIT 1

## **GUIDELINES FOR STORE CLOSING SALES**

1. So long as the Premises are being occupied or used to conduct a Sale, and except to the extent provided herein or the Final Order or other order of the Bankruptcy Court, all of the provisions of the applicable Lease shall be complied with.
2. The "Conclusion" of the Sale shall be deemed to be three (3) days after the last date that the Premises are open to the public for the Sale, but in any event not later than July 31, 2008, unless such date is extended by written consent of the affected lessor, or by order of the Bankruptcy Court, upon showing of good cause.
3. During or in anticipation of the Sale, there shall be no augmentation of the merchandise currently being offered for sale by the Debtor, except that during or in anticipation of the Sale, merchandise may be moved from store to store or from the warehouse(s) to the stores.
4. Business shall be conducted so that the Premises remain open during the normal hours of operation provided for in the Lease.
5. Any Sale shall be conducted in accordance with applicable state and local "Blue Laws".
6. Handbills, leaflets, or other written materials shall not be distributed to customers outside of the Premises, but customers may be solicited within the Premises themselves. No flashing lights, strobe lights, large spotlights or any type of amplified sound shall be used to advertise the sales or solicit customers.
7. The Debtor shall not be permitted to use "sign walkers" on the affected premises. "Sign walkers" may be employed outside the shopping center in which the affected property is located.
8. At the Conclusion of the Sale (a) the Premises shall be vacated in broom-clean condition, except for the removal of furniture, fixtures, equipment and remaining supplies; (b) the Premises shall be left in the same condition as on the commencement of the Sale, ordinary wear and tear excepted; and (c) with the Debtor's consent, the keys shall be returned to the Landlord.
9. All display and hanging signs used in connection with a Sale shall be professionally lettered, and all hanging signs shall be hung in a professional manner.
10. If sales are to be considered "final", conspicuous signs shall be posted in the Premises to the effect that all sales are "final" and customers shall be provided with a named representative and a telephone number that customers can contact with any questions or complaints.
11. There shall be no alterations made to the Premises (excluding the removal of store signs, unless such removal is prohibited by the Lease). If removal is permitted by the Lease, then such removal will be in accordance with the terms of the Lease.
12. There shall be no alterations made to the interior or exterior Premises lighting.

13. The Premises and surrounding area shall be kept clean and orderly consistent with present practices and consistent with the terms of the Lease.
14. Landlord shall have reasonable access to the Premises a) for any purposes consistent with the Leases and; b) upon conclusion of any Sale for the purpose of dressing windows to minimize the appearance of a dark store.
15. Landlord shall be provided with seven (7) days advance written notice to Landlord of the conclusion of the Sales.
16. Signs shall be limited to one per window not to exceed 64 inches by 48 inches and set back from the window at least one foot.<sup>1</sup> In addition to the window signs, no more than eight signs for each 1,000 square feet of leasable space shall be posted in the interior of a store, each sign not to exceed 22 inches by 28 inches. "Toppers" shall not exceed 7½ inches by 11 inches, shall be of the same color as the store signs and be limited to one for every three racks, counters or shelves. Unless a mall manager agrees otherwise, all signs shall be of no more than three colors (not including white). No neon or "day-glo" colors may be employed. No signs may be affixed to any windows. If the premises are an enclosed shopping center or mall, no banners (i.e. signs of 2-3 feet by 8-10 feet, or similar length) may be hung inside or outside the store premises. Advertising for the Sale shall not include the terms "Bankruptcy", "Chapter 11", "Liquidation", "Court Ordered", or "Going Out of Business" or similar language. With respect to any Sale conducted in the states of Connecticut or Missouri, any advertisement shall indicate a termination date of the Sale and shall conspicuously disclose which stores will go out of business and which will remain open.
17. No auction of furniture, fixtures or equipment shall be allowed in the Premises; however, such furniture, fixtures and equipment (which do not belong to the Landlord) may be sold to customers provided that such customers remove said furniture, fixtures and equipment from the mall using means approved by the mall manager, whose approval shall not be unreasonably withheld.
18. There shall be no sale or removal of any property of the Landlord from the Premises, including fixtures, equipment and related improvements.
19. The party responsible for conducting the Sales (including without limitation Lenders, Debtor or a Trustee) shall be responsible for any and all damages to persons or property incident to the Sales or caused by removal of fixtures, furniture or equipment.
20. To the extent that any Landlord of any store affected hereby contends that the Debtor is in breach or default under these Guidelines, such lessor shall provide five (5) days' written notice, served by facsimile or overnight delivery, on both the Debtor and the Debtor's counsel at the following facsimile numbers and addresses:

---

<sup>1</sup> This notwithstanding, the Debtor may continue its past practice during seasonal sales of using window signs that have two components, one conforming sized sign announcing the sale, and one smaller sign next to it indicating the percentage discount on items.

Debtor

Robert Kelleher  
eStyle, Inc.  
865 South Figueroa Street  
Los Angeles, CA 90017  
Fax: (213) 228-6899

Debtor's Counsel

David S. Kupetz  
SulmeyerKupetz, PC  
333 South Hope St., 35<sup>th</sup> Floor  
Los Angeles, CA 90071  
Fax: (213) 629-4520

If the parties are unable to resolve the disputes between themselves, either the lessor or the Debtor shall have the right to schedule a "status hearing" before the Bankruptcy Court, on no less than five (5) days' written notice to the other party or parties.

## 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

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

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.

19 Tax Id # 95-4712564

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

Chapter 11

**INTERIM ORDER GRANTING DEBTOR'S  
THIRD 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: June 3, 2008  
TIME: 11:00 a.m.  
PLACE: U.S. Bankruptcy Court  
Courtroom 1575  
255 East Temple Street  
Los Angeles, CA 90012

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

27 <sup>1</sup> Capitalized terms defined in the Motion and not specifically defined in this order  
28 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 June 3, 2008. Appearances at the hearing are  
3 reflected in the record.

4 Having considered the Motion, the Declaration of Emilia Fabricant in  
5 support thereof, and any and all responses to the Motion, the representations of counsel  
6 made at the hearing, the facts and circumstances of this matter, and good cause  
7 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 sales (the "Store  
13 Closing Sales") in accordance with the terms and conditions set forth in the "Guidelines  
14 for Store Closing Sales" (the "Guidelines") attached hereto as Exhibit 1. The  
15 Merchandise to be sold at the Store Closing Sales will be sold free and clear of any and  
16 all liens, encumbrances and interests (collectively, the "Liens"), with valid Liens to attach  
17 to the net sale proceeds in the same order of priority held with regard to the Merchandise.  
18 The Store Closing Sales shall be exempt from certain federal, state, and local laws,  
19 statutes, rules and ordinances related to store closing and liquidation sales so long as the  
20 Store Closing Sales comply with the terms and conditions of the Guidelines. The Debtor  
21 is hereby authorized to conduct the Store Closing Sales without the necessity of, and the  
22 delay associated with, (i) obtaining various state licenses or permits, (ii) observing state  
23 and local waiting periods or time limits, and/or (iii) satisfying any additional requirements  
24 with respect to advertising and/or conducting the Store Closing Sales as store closings or  
25 similar type sales, or transferring Merchandise between the Stores. The Debtor shall be  
26 bound by and comply with remaining statutes and regulations, such as health and safety  
27 laws.

28

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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 against the Debtor or lessor of the affected premises 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 Guidelines.

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  
Mark S. Horoupian  
Bankruptcy Counsel for eStyle, Inc.,  
Debtor and Debtor in Possession

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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 At the time of service, I was over 18 years of age and **not a party to this action**. I  
4 am employed in the County of Los Angeles, State of California. My business address is  
333 South Hope Street, Thirty-Fifth Floor, Los Angeles, California 90071-1406.

5 On May 12, 2008, I served the following document(s) described as **DEBTOR'S**  
6 **SECOND MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING DEBTOR (a)**  
7 **TO CONDUCT STORE CLOSING SALES, (b) TO DISCONTINUE OPERATIONS AT**  
8 **CERTAIN STORES, AND (c) GRANTING ANCILLARY AND OTHER RELIEF** on the  
interested parties in this action as follows:

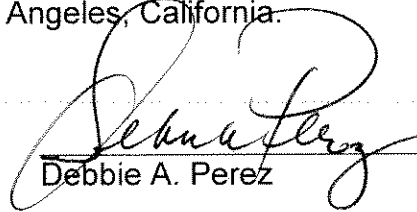
8 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the  
9 persons at the addresses listed in the Service List and placed the envelope for collection  
10 and mailing, following our ordinary business practices. I am readily familiar with  
11 SulmeyerKupetz's practice for collecting and processing correspondence for mailing. On  
the same day that the correspondence is placed for collection and mailing, it is deposited  
in the ordinary course of business with the United States Postal Service, in a sealed  
envelope with postage fully prepaid.

12 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused the document(s) to be sent  
13 from the e-mail address dperez@sulmeyerlaw.com to the persons at the e-mail  
14 addresses listed in the Service List, I did not receive, within a reasonable time after the  
transmission, any electronic message or other indication that the transmission was  
unsuccessful.

15 **SEE ATTACHED EMAIL SERVICE LIST**

16 I declare under penalty of perjury under the laws of the United States of America  
17 that the foregoing is true and correct and that I am employed in the office of a member of  
the bar of this Court at whose direction the service was made.

18 Executed on May 12, 2008, at Los Angeles, California.

19   
20 Debbie A. Perez

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**SERVICE LIST**

- 1 **DEBTOR**  
2 eStyle, Inc.  
3 865 South Figueroa Street  
4 Suite 2700  
5 Los Angeles, CA 90017  
6 [EFabricant@babystyle.com](mailto:EFabricant@babystyle.com)
- 7 **OFFICE OF THE UNITED STATES TRUSTEE**  
8 Office of the United States Trustee  
9 Attn: Bruce Schildkraut, Esq.  
10 Ernst & Young Plaza  
11 725 South Figueroa St., 26th Floor  
12 Los Angeles, CA 90017  
13 [Bruce.Schildkraut@usdoj.gov](mailto:Bruce.Schildkraut@usdoj.gov)
- 14 **ATTORNEY FOR COMMITTEE OF UNSECURED CREDITORS**  
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