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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 FOURTH 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**

16
17
18
19 Tax Id. # 95-4712564

DATE: June 4, 2008
TIME: 11:00 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 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 6004 authorizing the Debtor to immediately begin liquidating its inventory at "The Mall at Short Hills", in Short Hills, New Jersey (the "Short Hills Store"), through a store closing sale and for a final order (i) authorizing the Debtor to conduct the store closing sale on a final basis, (ii) authorizing the Debtor to discontinue operations at the Short Hills Store, and (iii) granting ancillary and other relief.

This is the Debtor's fourth motion requesting authorization to conduct store closing sales (the "Store Closing Sales"). The Court has previously authorized the Debtor to conduct Store Closing Sales at the following stores: (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, California); (7) Valley Fair (Westfield Valley Fair, Santa Clara, California); (8) Glendale Galleria (Glendale, California); (9) The Westchester Mall (White Plains, New York); (10) Roosevelt Field Mall (Garden City, New York); (11) Barton Creek Square (Austin, Texas); (12) the Shops at Willow Bend (Plano, Texas); (13) Melrose Avenue Store (Los Angeles, California); (14) the Shops at Mission Viejo (Mission Viejo, California); and (15) the Westfarms Mall (Farmington, Connecticut). The Debtor has completed the Store Closing Sales at seven stores, and will commence store closing sales at four more stores shortly. It should be noted, that despite seeking and obtaining court approval to close all of the stores noted above, the Debtor has decided to continue operations at the following stores for the time being: Santa Monica, Burlingame, Scottsdale, and Santa Clara.

In addition to the stores listed above, the Debtor has identified the Short Hills Store as a location which it believes should be closed after liquidating the inventory

1 through a Store Closing Sale. It appears that the subject store location cannot be
2 operated profitably. The Debtor believes that it is prudent and appropriate to obtain the
3 authority sought by this Motion at this time since the continued operation of this store
4 may be of no benefit to the estate and would create additional and substantial
5 administrative expense claims that would reduce the Debtor's ability to successfully
6 reorganize its remaining business and/or maximize the value of its assets. Additionally,
7 some of the inventory at the store designated for closure is seasonal and will decline in
8 value unless store closure sale is conducted promptly. Finally, the closure of the Short
9 Hills Store will complete a decision made by the Debtor to only keep stores in the Central
10 and Western United States, leaving no stores open on the East Coast. The Debtor
11 believes that it is not logistically or economically feasible to maintain operations in one
12 store in the East Coast (with all East Coast babystyle stores other than Short Hills Store
13 either already closed, or in the process of being closed)¹.

14 The Debtor's estate will realize the greatest value for the inventory at the
15 Short Hills Store if the inventory is sold through Store Closing Sales. The lease for the
16 store may prohibit such sales, and non-bankruptcy laws may impose a variety of
17 restrictions on such sales. Such lease provisions impermissibly interfere with the rights
18 of the estate under Section 363 to sell property of the estate in a manner that maximizes
19 value. The restrictions on store closure, liquidation, or going out of business sales
20 imposed by non-bankruptcy law should be modified with respect to these sales because
21 the Debtor is liquidating the subject store and not managing or operating it on an ongoing
22 basis. The Debtor requests that the Court order that the sale be conducted in
23 accordance with the "Guidelines for Store Closing Sales" (the "Guidelines") attached
24 hereto as Exhibit 1 and incorporated herein by this reference. The Guidelines are the
25 same as those approved by the Court, following the Debtor's discussions with certain

26

27 ¹ The Debtor continues to operate a Cadeau Maternity store in New York City.
28

1 landlords, with respect to the first store closing motion and, thereafter, again proposed
2 and approved by the Court with respect to the Debtor's second and third store closing
3 sale motions. The Guidelines adequately protect the interests of lessors and legitimate
4 local governmental concerns. In support of the Motion, the Debtor relies on the
5 Declaration of Emilia Fabricant (the "Fabricant Declaration") attached hereto. In further
6 support of this Motion, the Debtor respectfully represent as follows:

7
8 **II.**

9 **BACKGROUND**

10 **A. The Chapter 11 Filing**

11 On March 19, 2008 (the "Petition Date"), the Debtor filed a voluntary
12 chapter 11 petition commencing this case. The Debtor continues to operate and manage
13 its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the
14 Bankruptcy Code. On April 10, 2008, an unsecured creditors' committee was appointed
15 in this case.

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

21 **B. Business Operations**

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

1 Among other things, in an ongoing process since the commencement of the
2 case, the Debtor has identified and evaluated unprofitable locations to be closed and
3 leases for other locations where it is necessary for the Debtor to negotiate improved
4 rental terms. Shortly prior to the commencement of this case, the Debtor reduced its
5 corporate office staff by 14 employees as part of a broader series of initiatives to reduce
6 overhead expense. As indicated above, pursuant to the first store closing motion, the
7 Debtor has conducted store closing sales at 6 of its stores and has also filed a motion
8 that the Court has granted, approving the rejection of the leases for those 6 stores.²
9 Pursuant to the Debtor's second store closing motion, the Debtor obtained Court
10 authorization at a hearing conducted on April 29, 2008, to commence store closing sales
11 at 2 stores (Glendale and Westchester). On May 27, 2008, pursuant to the Debtor's third
12 store closing motion, the Court authorized the closing of 7 additional (at the current time,
13 the Debtor only intends to commence store closing sales at 3 of the 7 locations subject to
14 the third store closing motion). The Debtor has also made some management changes
15 and is intending to implement further overhead and other cost reductions. The Debtor is
16 also continuing to explore whether a sale of its business is a viable means for resolving
17 this case.

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

19 The Debtor started as an ecommerce business in 1999 and added a direct
20 mail catalog approximately one year later. In 2002, the Debtor opened its first retail
21 store. In 2004, eStyle made a decision to significantly expand its retail store presence,
22 and by early 2005 had negotiated leases that resulted in the opening of 9 new stores in
23 2005 and 3 new stores in 2006. The store expansion required significant changes in
24 _____

25 ² For 5 of the 6 stores that were the subject of the Debtor's first store closing motion, the
26 lease rejection was effective as of April 30, 2008. With respect to the Debtor's Mission
27 Viejo Store, the lease rejection will not be effective until the earlier of (a) May 30, 2008; or
28 (b) the date on which the Debtor delivers possession of the property to the landlord in
"broom swept condition".

1 systems, infrastructure and business processes, many of which were only addressed
2 concurrently with the store expansion, which negatively affected operating results.
3 During this period (2004-2006), the Debtor suffered from a lack of consistent
4 merchandise direction and insufficient merchandising disciplines, at a time when more
5 retailers were competing in this category. During 2006 and 2007, the Debtor took steps
6 to complete a repositioning of the business from an ecommerce business to a multi-
7 channel retailer positioned to support further new store growth. Changes were made to
8 address the merchandise leadership, merchandising disciplines and infrastructure
9 requirements, but continued operating losses during this repositioning have put pressure
10 on eStyle's cash availability.

11 The impact of general weakness in the economy and recent declines in mall
12 traffic has negatively impacted sales in the Debtor's stores. Poor performance of some of
13 the Debtor's stores has negatively impacted the Debtor's operating results. Moreover,
14 the Debtor has been unsuccessful in its efforts to obtain additional financing from
15 shareholders and third parties to support its efforts to complete the repositioning.
16 Recognizing the need to stabilize its operating results and eliminate losses, the Debtor
17 has recently taken cost cutting measures, including staff reductions and identifying stores
18 to be closed and those where lease terms require renegotiation. Further, the Debtor has
19 altered certain aspects of its operations in order to increase sales productivity and
20 enhance sales and is in the process of implementing a turnaround business plan in
21 conjunction with its chapter 11 case. The Debtor's rehabilitation requires a
22 reorganization of its operations, involving a reduction in the number of retail stores the
23 Debtor operates. At the same time, the Debtor is exploring whether a sale of its business
24 is a viable alternative means for resolving this case. The Debtor has determined that it is
25 prudent and appropriate to obtain Court authorization to promptly begin the processing of
26 closing the Short Hills Store.

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III.

STORE TO BE CLOSED

At this time, the Debtor has identified the following additional store that it intends to close:

Store Name	Store Address	Landlord
Short Hills	The Mall at Short Hills 1200 Morris Turnpike #A123	Short Hills Associates, LLC 200 E. Long Lake Road Bloomfield Hills, MI 48303-0200 Short Hills Associates, LLC c/o Andrew S. Conway 200 E. Long Lake Road Bloomfield Hills, MI 48303-0200

If the Short Hills Store cannot be operated profitably, the continued operation of the store 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 Short Hills Store is \$28,479.50. Some of the inventory at the store 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 Short Hills Store if the inventory is sold through a Store Closing Sale. The lease for the store may prohibit such sales, and local laws may impose a variety of restrictions on such sale. 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 the proposed sale because the Debtor is proposing to liquidate the Short Hills Store rather than managing or operating it on an on-going basis. The sale will be conducted in accordance with the

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

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4 **IV.**

5 **RELIEF REQUESTED**

6 By this Motion, the Debtor seeks an interim order immediately authorizing
7 the Debtor to begin liquidating its inventory at the Shore Hills Store through store closing,
8 liquidation, or going out of business sale (the "Store Closing Sale") in accordance with the
9 terms and conditions set forth herein and in the Guidelines attached hereto as Exhibit 1.³

10 In addition, the Debtor seeks a final order (i) authorizing the Debtor to conduct the Store
11 Closing Sale on a final basis, (ii) authorizing the Debtor to discontinue operation at the
12 Short Hills Store, and (iii) granting ancillary and other relief. The Debtor believes it is in
13 the best interests of the estate and creditors to dispose of its inventory located at the
14 Short Hills Store to be closed in an orderly fashion to maximize recovery. To best
15 accomplish this strategy, the Debtor believes that the prompt commencement of store
16 closing sale as soon as possible after the hearing on this Motion to sell store inventory
17 (the "Merchandise") over approximately 8 weeks is essential to enhance recoveries (the
18 Debtor proposes to conduct the sales through the end of July, 2008). The Short Hills
19 Store is currently stocked with seasonal merchandise which can be sold at an optimal
20 price during June and July, 2008. If the commencement of the store closing sale is
21 delayed, the Merchandise will grow stale and its realizable sale value will decrease.
22 Moreover, inasmuch as the Short Hills Store has been identified as not profitable, each
23 month that the store closing sale is delayed will only lead to continued operational losses.
24 Finally, the risk of inventory "shrink" will increase substantially if the sale process is
25 delayed. Accordingly, the Debtor requests authority to conduct the store closing sale at
26 the Short Hills Store. The Debtor believes that an approximate 8 week for the store

27 ³ 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 and expects that the Store Closing Sales will be completed by or near the
2 end of July, 2008, and possibly (at least in some cases) as soon as the end of June,
3 2008.

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

15 V.

16 **APPLICABLE LAW**

17 A. **In General**

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

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

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

19 **B. The Sale of Merchandise Should be Free and Clear of Liens, Claims,**
20 **and Encumbrances—50% of Proceeds to Be Paid to Wachovia**

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

1 additional, replacement liens will be granted. Moreover, the Debtor's subordinated
2 secured lenders (the Bridge Lenders) have consented to the sale of the Merchandise free
3 and clear of their Liens. Furthermore, pursuant to an agreement reached with Wachovia
4 immediately prior to the hearing on the Third Store Closing Motion, the Debtor will pay to
5 Wachovia, on account of its secured claim against the Debtor, an amount equal to fifty
6 percent (50%) of the store sale receipts for the Store Closing Sales at the following
7 stores: Short Hills, Atrium, Burlington, NorthPark, and Westchester. Such payments will
8 be made to Wachovia by the Debtor by wire transfer each Friday, in arrears, for the week
9 ended the previous Saturday, with the first wire transfer commencing June 13, 2008, or
10 such other date as the case may be based on the commencement of the Store Closing
11 Sales.

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

14 The Debtor leases all of its stores. Thus, the contemplated Store Closing
15 Sale may be inconsistent with lease provisions with respect to the Short Hills Store that
16 are intended to protect the image of a shopping center or mall or avoid disruption of
17 normal commerce, including provisions purporting to restrict or prohibit the Debtor from
18 conducting store closing, going out of business, inventory liquidation or similar sales.

19 Such provisions have been deemed unenforceable in other chapter 11 cases as
20 impermissible restraints on a debtor's ability to maximize the value of its assets under
21 section 363 of the Bankruptcy Code. See In re Ames Dep't Stores, Inc., 136 B.R. 357,
22 359 (Bankr. S.D.N.Y. 1992) (enforcement of anti-going-out-of-business sales clause
23 would contravene overriding federal policy requiring debtors to maximize assets); In re
24 Tobago Bay Trading Co., 112 B.R. 463, 467 (Bankr. N.D. Ga. 1990) (anti-going-out-of-
25 business sales clause in lease is unenforceable); In re Lisbon Shops, Inc., 24 B.R. 693,
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1 695 (Bankr. E.D. Mo. 1982) (same).⁴ In a case where the Debtor proposed certain Store
2 Closing Sales procedures, like the Guidelines proposed by the Debtor in this case, the
3 Court stated:

4 Debtors have not requested *carte blanche* approval to
5 conduct these sales without limitations, but have proposed
6 Store Closing Procedures which significantly regulate the
7 manner for conducting the sales. I find these restrictions
8 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.

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

10 The Debtor proposes to conduct the Store Closing Sales in accordance with
11 the Guidelines to fairly balance the rights of landlord to maintain the integrity of its
12 property against the rights of the Debtor to maximize recoveries from liquidation sales.
13 Thus, any potential prejudice to landlords is greatly lessened by immediate
14 implementation of the Guidelines.

15 In any event, store closing, liquidation, or going out of business sales, such
16 as the sales described herein, are a routine part of chapter 11 cases involving retail
17 debtors, especially store chains. Such sales are consistently ordered by courts, despite
18 lease provisions purporting to forbid such sales in the ordinary course of business. See
19 In re R.H. Macy & Co., 170 B.R. 69, 77 (Bankr. S.D.N.Y. 1994); Ames Depn't Stores, 136

20 B.R. at 359 ("to enforce the anti-GOB sale clause of the [l]ease would contravene
21 overriding federal policy requiring Debtors to maximize estate assets by imposing
22 additional constraints never envisioned by Congress"); In re Tobago Bay, 112 B.R. at
23 465-66; In re Libson Shops, Inc., 24 B.R. 693, 695 (Bankr. D.D. Mo. 1982). Thus, no

24 _____
25 ⁴ 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 clause in any lease should be an impediment to the Store Closing Sale or the activities
2 connected therewith, especially given the Debtor's undertaking to immediately abide by
3 the terms and conditions of the Guidelines. To the extent such restrictive clauses may
4 exist in the Debtor's store lease, the lessor should not be permitted to interfere with, or,
5 otherwise seek to restrict the Debtor from conducting the Store Closing Sales.

6 **D. The Store Closing Sale Should be Exempt from Certain Federal, State,**
7 **and Local Laws, Statutes, Rules and Ordinances Related to Store**
8 **Closing and Liquidation Sales**

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

21 Moreover, 28 U.S.C. § 959, which requires trustees and, by definition,
22 debtors in possession, to otherwise comply with state and other laws in performance of
23 their duties, does not apply to the Store Closing Sale. Courts have held that 28 U.S.C. §
24 959 does not apply to debtors or their agents liquidating assets. See, e.g., California
25 State Bd. of Equalization v. Goggin, 191 F. 2d 726 (9th Cir. 1951) (28 U.S.C. § 959 does
26 not apply to transactions that are in the nature of a liquidation), cert. denied, 342 U.S. 909
27 (1952); see also In re Borne Chemical Co., Inc., 54 B.R. 126, 135 (Bankr. D.N.J. 1984)
28 (holding that 28 U.S.C. § 959(b) is applicable only where the property is being managed

1 or operated for the purpose of continuing operations); but cf. In re White Crane Trading
2 Co Inc., 170 B.R. 694, 702-704 (Bankr. E.D. Cal. 1994) (noting that at juncture where the
3 debtors introduce new merchandise, prolong going-out-of-business sales for unlimited
4 duration, and mislead public with false advertising, state consumer protection laws
5 become significant); In re Lauriats, Inc., 219 B.R. 648, 649 (Bankr. D. Mass. 1998)
6 (holding that statutory construction does not permit waiver of 28 U.S.C. § 959(b)).

7 Here, the Store Closing Sale will be of limited duration, only merchandise of
8 the Debtors will be sold, all advertising will fairly describe the Store Closing Sale, and no
9 aspect of the relief sought is intended to alter laws or regulations affecting public safety.
10 For these and other reasons, 28 U.S.C. § 959(b) should not be read to apply to the Store
11 Closing Sale, as the Debtor is ceasing its operations at the Short Hills Store with the
12 knowledge and oversight of its creditors and this Court. Even if state or local laws do not
13 expressly except bankruptcy sales from their ambit, the Debtor submits that, to the extent
14 the state or local laws conflict with federal bankruptcy laws, they are preempted by the
15 Supremacy Clause. To hold otherwise would severely impair the relief otherwise
16 available under Bankruptcy Code section 363. In concert with this premise, bankruptcy
17 courts have consistently recognized that federal bankruptcy law preempts state and local
18 laws which contravene the underlying policies of the Bankruptcy Code. See, e.g., In re
19 Shenanao Group, Inc., 186 B.R. 623, 628 (Baker. W.D. Pa. 1995) ("Trustees and
20 debtors-in-possession have unique fiduciary and legal obligations pursuant to the
21 bankruptcy code. . . . [A] state statute cannot place burdens on them where the result
22 would contradict the priorities established by the federal bankruptcy code."); Sherwood
23 Partners, Inc. v. Lycos, Inc., 384 F.3d 1198, 1203-04 (9th Cir. 2005) ("Bankruptcy law
24 accomplishes equitable distribution through a distinctive form of collective proceeding.
25 This is a unique contribution of the Bankruptcy Code that makes bankruptcy different
26 from a collection of actions by individual creditors. . . . The filing of a bankruptcy petition
27 brings a bankruptcy estate into being and triggers an automatic stay, which prevents
28 creditors from enforcing their claims, thus preserving the Debtor's assets for ultimate

1 distributions by the bankruptcy trustee"). While preemption of state law is not always
2 appropriate, see In re Baker & Drake, 35 F.3d 1348, 1353-54 (9th Cir. 1994) (no
3 preemption where state law prohibiting taxicab leasing was promulgated in part as a
4 public safety measure), it is appropriate where, as here, the only state laws involved
5 concern economic regulation rather than the protection of public health and safety. Id. at
6 1353 (cases suggest that "federal bankruptcy preemption is more likely . . . where a state
7 statute is concerned with economic regulation rather than with protecting the public
8 health and safety").

9 In this case, section 363 of the Bankruptcy Code, which requires debtors to
10 operate their businesses in a way that maximizes recovery for creditors, will be severely
11 undermined if the Court does not provide for the waiver of state and local statutes and
12 regulations establishing licensing or permitting requirements, waiting periods, time limits
13 or bulk sale restrictions that would otherwise apply to the Store Closing Sale. Importantly,
14 the requested waiver is narrowly tailored to facilitate the successful conduct of the Store
15 Closing Sale. The Debtor does not seek a general waiver of all state and local
16 requirements which would otherwise apply to the Store Closing Sale. Rather, the Debtor
17 only requests that this Court authorize the Debtor to conduct the Store Closing Sale
18 without the necessity of, and the delay associated with, obtaining various state licenses
19 or permits; observing state and local waiting periods or time limits; and/or satisfying any
20 additional requirements with respect to advertising, conducting the Store Closing Sale as
21 a store closings or similar type sales, or transferring Merchandise between any of the
22 other stores conducting Store Closing Sales. The Debtor fully intends to be bound by and
23 comply with remaining statutes and regulations, such as health and safety laws.

24 Just as was the case with regard to the first, second and third store closing
25 motions, the Debtor also requests that no other person or entity including, but not limited
26 to, any lessor or federal, state or local agency, department or governmental authority,
27 should be allowed to take any action to prevent, interfere with, or otherwise hinder
28 consummation of the Store Closing Sale, or the advertising and promotion (including

1 through the posting of signs) of such Store Closing Sale, in the manner set forth herein.
2 Accordingly, the Debtor requests this Court to authorize the Debtors to conduct the Store
3 Closing Sale without the necessity of, and the delay associated with, obtaining various
4 state licenses, observing state and local waiting periods or time limits, and/or satisfying
5 any additional requirements in connection therewith with respect to advertising and
6 conducting the Store Closing Sale as a store closing or similar type sale and the transfer
7 of merchandise between the Debtor's stores. For the reasons set forth above and in the
8 Fabricant Declaration, the Debtor believes that the proposed Store Closing Sale program
9 is the most efficient means of maximizing the value of the Merchandise for the benefit of
10 the Debtor's estates and creditors while limiting administrative costs.

11
12
13 **E. The Immediate Interim Relief Requested by this Motion is Appropriate**
14 **and in the Best Interests of the Debtor's Estate and Creditors**

15 There is more than adequate business justification to support immediate
16 approval of the proposed sale of the Merchandise pursuant to the procedures set forth
17 above and in the attached Guidelines. The Debtor's management has determined
18 already that ceasing operations of the Short Hills Store is advisable and that conducting
19 the Store Closing Sale, as set forth herein, is the most efficient means of disposing of the
20 Merchandise, while limiting administrative costs and maximizing the value of the Short
21 Hills Store's assets. Accordingly, the Debtor respectfully submits that granting the relief
22 requested herein is in the best interest of the Debtor's estate, creditors and other parties
23 in interest.

24 As stated earlier, to ensure that the Store Closing Sale can be conducted
25 successfully, the Debtor needs to immediately begin the Store Closing Sale. Accordingly,
26 the Debtor respectfully requests the Court to grant the relief requested herein on an
27 interim basis and schedule a final hearing at the earliest practicable time so that the
28

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Debtor can promote the Store Closing Sale to the general public and commence the Store Closing Sale at the Short Hills Store.

VI.
NOTICE


The Debtor has provided notice of this motion to (a) the Office of the United States Trustee, (b) its secured lenders, (c) landlord of the Short Hills Store (d) the Attorney General of New Jersey, (d) members of the unsecured creditors' committee (the "Committee"), (e) counsel for the Committee (f) the Internal Revenue Service and (i) any party who has requested special notice as of the date of service of this Motion.

WHEREFORE, the Debtor respectfully requests that the Court enter an interim order authorizing the Debtor to begin liquidating its inventory at the Short Hills Store and through Store Closing Sale (in accordance with the Guidelines attached hereto as Exhibit 1) and enter a final order (i) authorizing the Debtor to conduct the Store Closing Sale on a final basis, (ii) authorizing the Debtor to discontinue operations at the Short Hills Store, and (iii) granting such other and further relief as is just and proper.

DATED: May 21, 2008

Respectfully submitted,

SulmeyerKupetz
A Professional Corporation

By. 
David S. Kupetz
Mark S. Horoupian
Attorneys for Debtor, eStyle, Inc.

1 **DECLARATION OF EMILIA FABRICANT**

2 I, Emilia Fabricant, declare as follows:

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

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

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

13 4. The Debtor's rehabilitation requires a reorganization of its
14 operations, involving a reduction in the number of retail stores the Debtor operates. At
15 the same time, the Debtor is exploring whether a sale of its business is a viable
16 alternative means for resolving this case. The Debtor has determined that it is necessary
17 at this time to obtain Court authorization to close the store at "The Mall at Short Hills", in
18 Short Hills, New Jersey (the "Short Hills Store") and maximize the value of the inventory
19 through a store closing sale at that location.

20 5. Under current circumstances, the Debtor believes that the Short Hills
21 Store cannot be operated profitably. Accordingly, if the store cannot be operated
22 profitably, the continued operation of the store will not benefit the estate and will create
23 additional and substantial administrative expense claims that will reduce the Debtor's
24 ability to successfully reorganize its remaining business. The foregoing Motion has been
25 brought in order to put the Debtor in a position where it can maximize the value of its
26 assets and in order to protect the estate. Some of the inventory at the Short Hills Store is
27 seasonal and will decline in value unless store closure sales are commenced promptly.

28

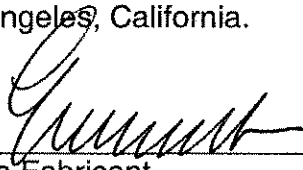
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6. The closure of the Short Hills Store will complete a decision made by the Debtor to only keep stores in the Central and Western United States, leaving no stores open on the East Coast. Management of the Debtor has concluded that it is not logistically or economically feasible to maintain operations in one store in the East Coast (with all East Coast babystyle stores other than Short Hills Store either already closed, or in the process of being closed). The Debtor continues to operate a Cadeau Maternity store in Manhattan (New York, New York).

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

Executed May 29, 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.¹ 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:

¹ 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
Emilia Fabricant
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., 35th 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.

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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 29, 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
and mailing, following our ordinary business practices. I am readily familiar with
10 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
11 in the ordinary course of business with the United States Postal Service, in a sealed
envelope with postage fully prepaid.

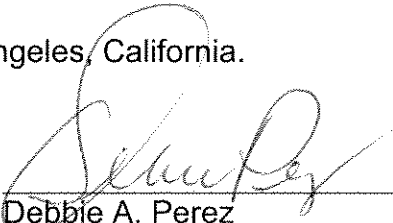
12 **OFFICE OF THE ATTORNEY GENERAL**
Attn: Attorney General Anne Milgram
13 Richard J. Hughes Justice Complex (HJC)
8th Floor, West Wing
14 25 Market Street
Trenton, NJ 08625-0080

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

18 **SEE ATTACHED EMAIL SERVICE LIST**

19 I declare under penalty of perjury under the laws of the United States of America
20 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.

21 Executed on May 29, 2008, at Los Angeles, California.

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Debbie A. Perez

E-MAIL SERVICE LIST

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DEBTOR

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OFFICE OF THE UNITED STATES TRUSTEE

Office of the United States Trustee
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Wachovia Capital Finance Corporation (Western)
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REQUEST FOR SPECIAL NOTICE

American Express Travel Related Svcs Co
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Malvern, PA 19355-0701
notices@becket-lee.com

Bellevue Square Managers, Inc.
c/o John S. Kaplan, Esq.
Perkins Coie LLP
1201 Third Avenue, 40th Floor
Seattle, WA 98101-3099
JKaplan@perkinscoie.com

Comptroller of Public Accounts of
the State of Texas
c/o Jay W. Hurst, Asst. Attorney Gen.
Bankruptcy & Collections Division
P.O. Box 12548
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jay.hurst@oag.state.tx.us

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- 3 Westfield, LLC and
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- 4 c/o Thomas J. Leanse, Esq.
c/o Brian D. Huben, Esq.
- 5 c/o Dustin P. Branch, Esq.
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- 7 brian.huben@kattenlaw.com
- 8 **LANDLORD**
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- 10 aconway@taubman.com
- 11 West Farms Mall LLC
- 12 c/o Nicholas B. Warnoff, Esq.
c/o Ivan M. Gold, Esq.
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