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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
Designs,

14 Debtor.
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18 Tax Id. # 95-4712564
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Case No. 2:08-bk-13518-SB

Chapter 11

**DEBTOR'S SECOND 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**

DATE: April 29, 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 two 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 Debtor shall promptly bring a motion, on regular notice, for rejection of the leases for the subject locations where stores are to be closed. The stores that are the subject of this motion are: (i) the store located in the "Glendale Galleria" in Glendale, California; and (ii) the store located in the "Westchester Mall" in White Plains, New York.

This is the Debtor's second 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. Since that time, as set forth below, the Debtor, has identified 2 additional retail stores where it desires to promptly commence store closing sales and thereafter close the stores. The Debtor had determined that the subject store locations cannot be operated profitably. The continued operation of these stores will be of no benefit to the estate and would create additional and substantial administrative expense claims that would reduce the Debtor's ability to successfully reorganize its remaining business. Additionally, some of the inventory at the stores designated for closure is seasonal and will decline in value unless store closure sales are conducted 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 sales. The leases for the stores may prohibit such sales, and non-bankruptcy laws may impose a variety of restrictions on such sales. Such lease provisions impermissibly interfere with the rights

1 of the estate under Section 363 to sell property of the estate in a manner that maximizes
2 value. The restrictions on store closure, liquidation, or going out of business sales
3 imposed by non-bankruptcy law should be modified with respect to these sales because
4 the Debtor is liquidating the subject stores and not managing or operating them on an
5 ongoing basis. The Debtor requests that the Court order that the sales be conducted in
6 accordance with the "Guidelines for Store Closing Sales" (the "Guidelines") attached
7 hereto as Exhibit 1 and incorporated herein by this reference. The Guidelines are the
8 same as those approved by the Court, following the Debtor's discussions with certain
9 landlords, with respect to the first store closing motion. The Guidelines adequately
10 protect the interests of lessors and legitimate local governmental concerns. *Prior to filing*
11 *this Motion, the Debtor consulted with both affected landlords, and obtained their*
12 *approval of the proposed Guidelines.* In support of the Motion, the Debtor relies on the
13 Declaration of Robert S. Kelleher (the "Kelleher Declaration") attached hereto. In further
14 support of this Motion, the Debtor respectfully represent as follows:

15 II.

16 **BACKGROUND**

17 **A. The Chapter 11 Filing**

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

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

28

1 **B. Business Operations**

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

10 Among other things, in recent weeks, the Debtor has identified and
11 evaluated unprofitable locations to be closed and leases for other locations where it is
12 necessary for the Debtor to negotiate improved rental terms. The Debtor reduced its
13 corporate office staff by 14 employees as part of a broader series of initiatives to reduce
14 overhead expense. As indicated above, pursuant to the first store closing motion, the
15 Debtor has been conducting store closing sales of 6 of its stores and has also filed a
16 motion to reject the leases for those 6 stores effective as of April 30, 2008.¹ As set forth
17 below, the Debtor has identified 2 additional, unprofitable stores that it plans to close in
18 the near future (in conjunction with seeking to maximize the recovery from the sale of
19 inventory at those locations). The Debtor is also continuing to explore whether a sale of
20 its business is a viable means for resolving this case.

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

22 The Debtor started as an ecommerce business in 1999 and added a direct
23 mail catalog approximately one year later. In 2002, the Debtor opened its first retail
24 store. In 2004, eStyle made a decision to significantly expand its retail store presence,

25 _____
26 ¹ The Debtor has obtained the landlord of its Mission Viejo's stores consent to extend the
27 store closing sale to the end of May, 2008 on the condition that the lease rejection will not
28 be effective until the earlier of (a) May 30, 2008; or (b) the date on which the Debtor
delivers possession of the property to the landlord in "broom swept condition".

1 and by early 2005 had negotiated leases that resulted in the opening of 9 new stores in
2 2005 and 3 new stores in 2006. The store expansion required significant changes in
3 systems, infrastructure and business processes, many of which were only addressed
4 concurrently with the store expansion, which negatively affected operating results.
5 During this period (2004-2006), the Debtor suffered from a lack of consistent
6 merchandise direction and insufficient merchandising disciplines, at a time when more
7 retailers were competing in this category. During 2006 and 2007, the Debtor took steps
8 to complete a repositioning of the business from an ecommerce business to a multi-
9 channel retailer positioned to support further new store growth. Changes were made to
10 address the merchandise leadership, merchandising disciplines and infrastructure
11 requirements, but continued operating losses during this repositioning have put pressure
12 on eStyle's cash availability.

13 The impact of general weakness in the economy and recent declines in mall
14 traffic has negatively impacted sales in the Debtor's stores. Poor performance of some of
15 the Debtor's stores has negatively impacted the Debtor's operating results. Moreover,
16 the Debtor has been unsuccessful in its efforts to obtain additional financing from
17 shareholders and third parties to support its efforts to complete the repositioning.
18 Recognizing the need to stabilize its operating results and eliminate losses, the Debtor
19 has recently taken cost cutting measures, including staff reductions and identifying stores
20 to be closed and those where lease terms require renegotiation. Further, the Debtor has
21 altered certain aspects of its operations in order to increase sales productivity and
22 enhance sales and is in the process of implementing a turnaround business plan in
23 conjunction with its chapter 11 case. The Debtor's rehabilitation requires a
24 reorganization of its operations, involving a reduction in the number of retail stores the
25 Debtor operates. At the same time, the Debtor is exploring whether a sale of its business
26 is a viable alternative means for resolving this case. As part of its turnaround plan, the
27 Debtor has determined that it is necessary to immediately begin the processing of closing
28 the 2 unprofitable stores identified below (in addition to the 6 stores that are the subject of

1 the first store closing motion, and maximizing the value of the inventory through store
2 closing sales at the subject locations.

3 III.

4 **STORES TO BE CLOSED**

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

7

8 Store Name	8 Store Address	8 Landlord
9 Westchester	125 Westchester Ave Space #3700A White Plains, NY 10601	Simon Property Group, Inc. Attn: Ronald M. Tucker, Esq. 225 W. Washington St. Indianapolis, IN 46204 Tel: (317) 263-2346 rtucker@simon.com
12 Glendale	1302 Glendale Galleria 1 st Floor, Space 1302 Glendale, CA 91210	General Growth Management, Inc., as Agent Attn: Kristen N. Pate, Assistant Gen. Counsel 110 N. Wacker Chicago, IL 60606 Tel: (312) 960-2940 Fax: (312) 442-6374 ggpbk@ggp.com

16

17 The Debtor has determined that the store locations listed above cannot be
18 operated profitably. The continued operation of the Stores will be of no benefit to the
19 estate and will create additional and substantial administrative expense claims that will
20 reduce the Debtor's ability to successfully reorganize its remaining business. The
21 monthly rent obligations for the subject stores are as follows: (1) Westchester
22 (\$15,636.50 plus percentage rent and other charges); and (2) Glendale (\$10,318.00 plus
23 percentage rent and other charges).² Some of the inventory at the Stores designated for
24 closure is seasonal and will decline in value unless store closure sales are commenced
25 immediately.

26 _____
27 ² The monthly rent at the Glendale Galleria store will escalate to \$11,055 on and after
28 August 1, 2008.

1 (the "Merchandise") over approximately 8 weeks is essential to enhance recoveries. The
2 Stores are currently stocked with seasonal merchandise which can be sold at an optimal
3 price during May and June, 2008. If the commencement of the Store Closing Sales is
4 delayed, the Merchandise will grow stale and its realizable sale value will decrease.
5 Moreover, inasmuch as the Stores are not profitable, each month that the Store Closing
6 Sales are delayed will only lead to continued operational losses. Finally, the risk of
7 inventory "shrink" will increase substantially if the sale process is delayed. Accordingly,
8 the Debtor requests authority to conduct the Store Closing Sales. The Debtor believes
9 that an approximate 8 week for the store Closing Sales and expects that the Store
10 Closing Sales will be completed by the end of June, 2008, but as soon as the end of May,
11 2008.

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

23 V.

24 APPLICABLE LAW

25 A. In General

26 Section 363 of the Bankruptcy Code provides that the Debtor "after notice
27 and a hearing, may use, sell or lease, other than in the ordinary course of business,
28 property of the estate." 11 U.S.C. § 363(b). To approve the use, sale or lease of property

1 out of the ordinary course of business, this Court must find “some articulated business
2 justification.” See e.g., Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel
3 Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); see also In re Abbott Dairies of Pa., Inc., 788
4 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting articulated business justification test
5 of Lionel Corp., and requiring showing of good faith); In re Delaware & Hudson Ry. Co.,
6 124 B.R. 169, 175-76 (D. Del. 1991) (concluding that Third Circuit adopted “sound
7 business purpose” after Abbott Dairies decision); Titusville Country Club v. PennBank (In
8 re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); In re Indus. Valley
9 Refrigeration and Air Conditioning Supplies, Inc., 77 B.R. 15, 19 (Bankr. E.D. Pa. 1987).

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

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

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

3 To facilitate the sale of the Merchandise, the Debtor requests authorization
4 to sell such property free and clear of any and all liens, encumbrances and interests
5 (collectively, the "Liens"), with valid Liens to attach to the net sale proceeds in the same
6 order of priority held with regard to the Merchandise on which they may be asserted. The
7 Debtor's secured lenders are the only parties, other than the Debtor, holding Liens on the
8 Merchandise. In recently granting the Debtor's motion for use of cash collateral motion
9 (final hearing conducted on April 17, 2008), the Court ruled that the Debtor's senior
10 secured creditor (Wachovia) is adequately protected by a substantial equity cushion. In
11 additional, replacement liens will be granted. Moreover, the Debtor's subordinated
12 secured lenders (the Bridge Lenders) have consented to the sale of the Merchandise free
13 and clear of their Liens.

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

16 The Debtor leases all of its stores. Thus, the contemplated Store Closing
17 Sales may be inconsistent with lease provisions with respect to the Stores that are
18 intended to protect the image of a shopping center or mall or avoid disruption of normal
19 commerce, including provisions purporting to restrict or prohibit the Debtor from
20 conducting store closing, going out of business, inventory liquidation or similar sales.
21 Such provisions have been deemed unenforceable in other chapter 11 cases as
22 impermissible restraints on a debtor's ability to maximize the value of its assets under
23 section 363 of the Bankruptcy Code. See In re Ames Dep't Stores, Inc., 136 B.R. 357,
24 359 (Bankr. S.D.N.Y. 1992) (enforcement of anti-going-out-of-business sales clause
25 would contravene overriding federal policy requiring debtors to maximize assets); In re
26 Tobago Bay Trading Co., 112 B.R. 463, 467 (Bankr. N.D. Ga. 1990) (anti-going-out-of-

1 business sales clause in lease is unenforceable); In re Lisbon Shops, Inc., 24 B.R. 693,
2 695 (Bankr. E.D. Mo. 1982) (same).⁴ In a case where the Debtor proposed certain Store
3 Closing Sales procedures, like the Guidelines proposed by the Debtor in this case, the
4 Court stated:

5 Debtors have not requested *carte blanche* approval to
6 conduct these sales without limitations, but have proposed
7 Store Closing Procedures which significantly regulate the
8 manner for conducting the sales. I find these restrictions
9 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.

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

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

17 In any event, store closing, liquidation, or going out of business sales, such
18 as the sales described herein, are a routine part of chapter 11 cases involving retail
19 debtors, especially store chains. Such sales are consistently ordered by courts, despite
20 lease provisions purporting to forbid such sales in the ordinary course of business. See
21 In re R.H. Macy & Co., 170 B.R. 69, 77 (Bankr. S.D.N.Y. 1994); Ames Depn't Stores, 136
22 B.R. at 359 ("to enforce the anti-GOB sale clause of the [l]ease would contravene
23 overriding federal policy requiring Debtors to maximize estate assets by imposing

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 additional constraints never envisioned by Congress"); In re Tobago Bay, 112 B.R. at
2 465-66; In re Libson Shops, Inc., 24 B.R. 693, 695 (Bankr. D.D. Mo. 1982). Thus, no
3 clause in any lease should be an impediment to the Store Closing Sales or the activities
4 connected therewith, especially given the Debtor's undertaking to immediately abide by
5 the terms and conditions of the Guidelines. To the extent such restrictive clauses may
6 exist in the Debtor's store leases, the lessors should not be permitted to interfere with, or,
7 otherwise seek to restrict the Debtor from conducting the Store Closing Sales.

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

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

23 Moreover, 28 U.S.C. § 959, which requires trustees and, by definition,
24 debtors in possession, to otherwise comply with state and other laws in performance of
25 their duties, does not apply to the Store Closing Sales. Courts have held that 28 U.S.C. §
26 959 does not apply to debtors or their agents liquidating assets. See, e.g., California
27 State Bd. of Equalization v. Goggin, 191 F. 2d 726 (9th Cir. 1951) (28 U.S.C. § 959 does
28 not apply to transactions that are in the nature of a liquidation), cert. denied, 342 U.S. 909

1 (1952); see also In re Borne Chemical Co., Inc., 54 B.R. 126, 135 (Bankr. D.N.J. 1984)
2 (holding that 28 U.S.C. § 959(b) is applicable only where the property is being managed
3 or operated for the purpose of continuing operations); but cf. In re White Crane Trading
4 Co Inc., 170 B.R. 694, 702-704 (Bankr. E.D. Cal. 1994) (noting that at juncture where the
5 debtors introduce new merchandise, prolong going-out-of-business sales for unlimited
6 duration, and mislead public with false advertising, state consumer protection laws
7 become significant); In re Lauriats, Inc., 219 B.R. 648, 649 (Bankr. D. Mass. 1998)
8 (holding that statutory construction does not permit waiver of 28 U.S.C. § 959(b)).

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

1 brings a bankruptcy estate into being and triggers an automatic stay, which prevents
2 creditors from enforcing their claims, thus preserving the Debtor's assets for ultimate
3 distributions by the bankruptcy trustee"). While preemption of state law is not always
4 appropriate, see In re Baker & Drake, 35 F.3d 1348, 1353-54 (9th Cir. 1994) (no
5 preemption where state law prohibiting taxicab leasing was promulgated in part as a
6 public safety measure), it is appropriate where, as here, the only state laws involved
7 concern economic regulation rather than the protection of public health and safety. Id. at
8 1353 (cases suggest that "federal bankruptcy preemption is more likely . . . where a state
9 statute is concerned with economic regulation rather than with protecting the public
10 health and safety").

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

26 Just as was the case with regard to the first store closing motion, the Debtor
27 also requests that no other person or entity including, but not limited to, any lessor or
28 federal, state or local agency, department or governmental authority, should be allowed

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

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

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

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

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

1 that the Debtor can promote the Store Closing Sales to the general public and commence
2 the Store Closing Sales.

3 VI.

4 NOTICE


5 The Debtor has provided notice of this motion to (a) the Office of the United
6 States Trustee, (b) its secured lenders, (c) landlords for each of the affected stores, (d)
7 the Attorneys General of each state in which the affected stores are located, (e) the
8 Debtor's twenty largest unsecured creditors, (f) members of the unsecured creditors'
9 committee (the "Committee") appointed on April 10, 2007, (g) counsel for the Committees
10 (h) the Internal Revenue Service and (i) any party who has requested special notice as of
11 the date of service of this Motion.

12 **WHEREFORE**, the Debtor respectfully requests that the Court enter an
13 interim order authorizing the Debtor to begin liquidating its inventory at the Stores and
14 through Store Closing Sales (in accordance with the Guidelines attached hereto as
15 Exhibit 1) and enter a final order (i) authorizing the Debtor to conduct the Store Closing
16 Sales on a final basis, (ii) authorizing the Debtor to discontinue operations at the Stores,
17 and (iii) granting such other and further relief as is just and proper. A copy of the Debtor's
18 proposed order granting the Motion is attached hereto as Exhibit 2.

19 DATED: April 18, 2008

Respectfully submitted,

21 **SulmeyerKupetz**
A Professional Corporation

22
23 By: 
24 David S. Kupetz
25 Mark S. Horoupian
26 Attorneys for Debtor, eStyle, Inc.
27
28

1 **DECLARATION OF ROBERT S. KELLEHER**

2 I, Robert S. Kelleher, declare as follows:

3 1. I am an individual over the age of eighteen, and I am the Chief
4 Executive Officer of eStyle, Inc., dba babystyle, Cadeau, and Cadeau Designs (the
5 "Debtor"). I have been the Chief Executive Officer of the Debtor since March 2006. I am
6 an authorized representative of the Debtor, with full authority to make the representations
7 and statements contained herein, on its behalf.

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

12 3. The Debtor has determined that the stores (the "Stores") located at
13 the Glendale Galleria Mall in Glendale, California, and the Westchester Mall, in White
14 Plains, New York cannot be operated profitably. The continued operation of the Stores
15 will be of no benefit to the estate and will create additional and substantial administrative
16 expense claims that will reduce the Debtor's ability to successfully reorganize its
17 remaining business. The monthly rent obligations for the subject stores are as follows:
18 (1) Westchester (\$15,636.50 plus percentage rent and other charges); and (2) Glendale
19 (\$10,318.00 plus percentage rent and other charges).⁵ Some of the inventory at the
20 Stores designated for closure is seasonal and will decline in value unless store closure
21 sales are commenced immediately.

22 4. The Debtor's estate will realize the greatest value for the inventory at
23 the Stores designated for closure if the inventory is sold through store closure, liquidation,
24 or going out of business sales. The leases for the Stores may prohibit such sales, and
25 local laws may impose a variety of restrictions on such sales. Such lease provisions,

26 _____
27 ⁵ The monthly rent at the Glendale Galleria store will escalate to \$11,055 on and after
28 August 1, 2008.

1 however, impermissibly interfere with the rights of the estate under Section 363 to sell
2 property of the estate in a manner that maximizes value. Further, the restrictions on
3 store closure, liquidation, or going out of business sales imposed by non-bankruptcy law
4 should be modified with respect to these sales because the Debtor is liquidating the
5 Stores and not managing or operating them on an on-going basis. The sales will be
6 conducted in accordance with the attached Guidelines that adequately protect the
7 interests of the affected lessors and legitimate local governmental concerns. The
8 Debtor, through its counsel, consulted with the affected lessors, and I understand that
9 they both approved the proposed Guidelines.

10 5. To best accomplish this strategy, the Debtor believes that the prompt
11 commencement of Store Closing Sales by the beginning of May, 2008, to sell store
12 inventory (the "Merchandise") over approximately 8 weeks is essential to enhance
13 recoveries. The Stores are currently stocked with seasonal merchandise which can be
14 sold at an optimal price during May and June, 2008. If the commencement of the Store
15 Closing Sales is delayed, the Merchandise will grow stale and its realizable sale value will
16 decrease. Moreover, inasmuch as the Stores are not profitable, each month that the
17 Store Closing Sales are delayed will only lead to continued operational losses. Finally,
18 the risk of inventory "shrink" will increase substantially if the sale process is delayed.
19 Accordingly, the Debtor requests authority to conduct the Store Closing Sales. The
20 Debtor believes that an approximate 8 week for the store Closing Sales and expects that
21 the Store Closing Sales will be completed by the end of June, 2008, but as soon as the
22 end of May, 2008.

23
24 I declare under penalty of perjury under the laws of the United States of America
25 that the foregoing is true and correct.

26 Executed April 21, 2008, at Los Angeles, California.

27
28 
Robert S. Kelleher

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 June 30, 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
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., 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.

EXHIBIT 2

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

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

10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**
12

13 In re
14 ESTYLE, INC. a Delaware corporation,
15 dba babystyle and Cadeau and Cadeau
Designs,
16
17 Debtor.
18

19 Tax Id # 95-4712564
20
21
22

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

Chapter 11

**INTERIM ORDER GRANTING DEBTOR'S
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: April 29, 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 Motion for Interim and Final Orders Authorizing the Debtor
24 (a) to Conduct Store Closing Sales, (b) to Discontinue Operations at Certain Stores, and
25 (c) Granting Ancillary and Other Relief" (the "Motion")¹, filed by eStyle, Inc. (the "Debtor"),
26

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

1 debtor and debtor in possession in the above-captioned chapter 11 case, came on for
2 hearing before the Court on April 29, 2008. Appearances at the hearing are reflected in
3 the record.

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

28

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

6 4. A final hearing on the Motion is hereby set for _____,
7 2008, at _____ a.m.

8
9 DATED: _____

HON. SAMUEL L. BUFFORD
UNITED STATES BANKRUPTCY JUDGE

10
11 PRESENTED BY:

12 **SulmeyerKupetz**
13 A Professional Corporation

14 By: _____
15 David S. Kupetz
16 Mark S. Horoupian
17 Bankruptcy Counsel for eStyle, Inc.,
Debtor and Debtor in Possession

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I 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.

On April 21, 2008, I served the following document(s) described as **DEBTOR'S SECOND 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** on the interested parties in this action as follows:

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the 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 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.

Attorney General's Office
California Department of Justice
Attn: Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550

State of New York
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

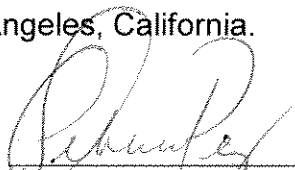
Westfield, LLC and
The Macerich Company
c/o Thomas J. Leanse, Esq., Brian D. Huben,
c/o Dustin P. Branch, Esq.
KATTEN MUCHIN ROSENMAN LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067-3012

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused the document(s) to be sent 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 transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE ATTACHED EMAIL SERVICE LIST

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

Executed on April 21, 2008, at Los Angeles, California.


Debbie A. Perez

E-MAIL SERVICE LIST

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DEBTOR

eStyle, Inc.
865 South Figueroa Street
Suite 2700
Los Angeles, CA 90017
BKelleher@babystyle.com
YBesvold@babystyle.com
EFabricant@babystyle.com

OFFICE OF THE UNITED STATES TRUSTEE

Office of the United States Trustee
Attn: Bruce Schildkraut, Esq.
Ernst & Young Plaza
725 South Figueroa St., 26th Floor
Los Angeles, CA 90017
Bruce.Schildkraut@usdoj.gov

ATTORNEY FOR COMMITTEE OF UNSECURED CREDITORS

Craig Margulies, Esq.
Landsberg Margulies LLP
16030 Ventura Blvd., Ste. 470
Encino, CA 91436-2731
cmargulies@lm-lawyers.com

REQUEST FOR SPECIAL NOTICE

American Express Travel Related Svcs Co
Inc Corp Card
c/o Becket and Lee LLP
POB 3001
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

Dream International USA, Inc.
c/o Samuel S. Oh, Esq.
Lim, Ruger & Kim, LLP
1055 West Seventh St., Ste. 2800
Los Angeles, CA 90017
sam.oh@lrklawyers.com

General Growth Management, Inc., as Agent
Attn: Kristen N. Pate, Assistant Gen. Counsel
110 N. Wacker
Chicago, IL 60606
gppbk@ggp.com

GRP II Investors, L.P.; GRP II Partners, L.P.;
GRP II, L.P.; Oak Investment Partners IX;

- 1 Oak IX Affiliates Fund, L.P.; & Oak IX Affiliates Fund – A, L.P.
c/o Michael Foreman, Esq.
- 2 c/o Michelle Kreidler Dove, Esq.
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- 3 250 Park Avenue
New York, NY 10177
- 4 foreman.michael@dorsey.com
dove.michelle@dorsey.com
- 5
- 6 New Breed, Inc.
c/o Franklin C. Adams, Esq.
c/o William J. Wall, Esq.
- 7 Best Best & Krieger LLP
3750 University Avenue, Suite 400
- 8 PO Box 1028
Riverside, CA 92502
- 9 franklin.adams@bbklaw.com
william.wall@bbklaw.com
- 10
- 11 Simon Property Group, Inc.
Attn: Ronald M. Tucker, Esq.
225 W. Washington St.
- 12 Indianapolis, IN 46204
rtucker@simon.com
- 13
- 14 Taubman Landlords
(West Farms Mall LLC;
Willow Bend Shopping Center LP, et al.)
- 15 c/o Taubman Realty Group Limited
The Taubman Company
- 16 Attn: Andrew S. Conway
200 E. Long Lake Road, Ste. 300
- 17 Bloomfield Hills, MI 48303-0200
aconway@taubman.com
- 18
- 19 The Irvine Company, LLC
c/o Ernie Zachary Park, Esq.
BEWLEY, LASSLEBEN & MILLER, LLP
- 20 13215 E. Penn St., Ste. 510
Whittier, CA 90602-1797
- 21 ernie.park@bewleylaw.com
- 22 Wachovia Capital Finance Corporation (Western)
Attn: Robin Van Meter, Vice President
- 23 251 South Lake Avenue, Suite 900
Pasadena, CA 91101
- 24 robin.vanmeter@wachovia.com
- 25 Wachovia Capital Finance Corporation (Western)
c/o William H. Kiekhofer III, Esq., c/o Anthony J. Napolitano, Esq.
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