

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
	:	Chapter 11
In re:	:	
APP WINDDOWN, LLC, et al., ¹	:	Case No. 16-12551 (BLS)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	Hearing Date: January 29, 2018 at 1:30 p.m. (Eastern Time)
		Objection Deadline: January 22, 2018 at 4:00 p.m. (Eastern Time)

**DEBTOR'S MOTION FOR AN ORDER (I) AUTHORIZING (A) THE
SALE OF SHARES OF A FOREIGN AFFILIATE FREE AND CLEAR
OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, AND (B) THE
RELEASE AND WAIVER OF CLAIMS, AND (II) GRANTING RELATED RELIEF**

APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.) ("APP Retail" or the "Debtor")), one of the above-captioned debtors and debtors in possession (the "Debtors") files this motion (the "Motion") pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code"), rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") for entry of an order, substantially in the form attached hereto as **Exhibit A**, (i) authorizing APP Retail to enter into an agreement with Mr. Huh Bong Jae ("Mr. Huh") pursuant to which APP Retail will sell and Mr. Huh will buy all of APP Retail's shares of

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): APP Winddown, LLC (f/k/a American Apparel, LLC) (0601); APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC) (8940); APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.) (7829); APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.) (0324); APP Knitting Winddown, LLC (f/k/a KCL Knitting, LLC) (9518); and APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.) (3870). The address of each of the Debtors is 107 Millcreek Corners, Suite B, P O Box 5129, Brandon, MS 39047.

American Apparel Korea Co. Ltd ("AA Korea") (the "Sale"), (ii) authorizing the release and waiver of claims in connection with the Sale, (iii) authorizing, but not directing, the APP Retail to execute, deliver, perform under, consummate and implement the Sale, and (iv) granting certain related relief. In support of the Motion, APP Retail relies upon and incorporate by reference the declaration of Bradley E. Scher (the "Scher Declaration"), attached hereto as Exhibit B, and respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a), 363(b), 363(f), and 363(m) of Title 11 of the Bankruptcy Code, and Rule 6004 of the Bankruptcy Rules.

BACKGROUND

A. Case Background

3. On November 14, 2016 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are continuing in possession of their properties and are managing their businesses, as debtors in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On November 22, 2016, the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the "Committee").

5. On January 12, 2017, the Court entered the *Order Approving the Sale of Stalking Horse Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (II)*

Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith and (III) Granting Related Relief [Docket No. 491], which approved the sale of certain assets to Gildan Activewear SRL (“Gildan”). On January 12, 2017, the Court also entered the *Order Authorizing and Approving the Debtors’ Entry into Lease Termination Agreements and the Assumption and Assignment of Unexpired Leases in Connection Therewith* [Docket No. 494], which approved the sale and termination of certain of the Debtors’ leases. These Orders allowed the Debtors to begin the wind down process by liquidating certain valuable assets and leases. The Debtors continue their wind down efforts with goals of reducing administrative costs and disposing of assets which provide little or no benefit to their estates.

6. Additional information regarding the Debtors and these Cases, including the Debtors’ businesses, corporate structure, financial condition and the reasons for and objectives of these cases, is set forth in the *Declaration of Mark Weinstein in Support of First Day Pleadings* (Docket No. 24) (the “First Day Declaration”), filed on November 14, 2016 and incorporated herein by reference.

B. American Apparel Korea Co. Ltd.

7. AA Korea is a limited company domiciled in the Republic of Korea, and is a wholly owned subsidiary of APP Retail. APP Retail owns 80,000 shares of AA Korea (the “Shares”).

8. Prior to AA Korea ceasing its business operations at the end of 2016, AA Korea operated five stores in South Korea. In addition, as a result of intercompany transactions between AA Korea and APP Retail, AA Korea has asserted that it owes APP Retail approximately KRW 9.5 billion (approximately \$8.9 million)², and that APP Retail owes it

² The conversion rate used in this Motion is .0009392 KRW to \$1 USD and is based on rates as of January 3, 2018.

approximately KRW 7 billion (approximately \$6.6 million). As set forth in its Schedules of Assets and Liabilities filed with the Court on January 11, 2017, APP Retail believes that it is owed more than \$3.3 million by AA Korea net any claims AA Korea may have against AA Retail.

9. Mr. Huh, a national of the Republic of Korea, is the sole director of AA Korea.³

C. The Proposed Sale of AA Korea

10. The Debtors are in the process of winding down their estates, which includes their efforts to monetize their remaining assets. Among those assets is APP Retail's ownership interest in AA Korea.

11. As AA Korea ceased operations at the end of 2016, the value in those shares is, essentially, whatever funds in AA Korea remain after it winds down its affairs. Since the spring of 2017, APP Retail has been engaged in efforts to realize value for its ownership of the Shares. As APP Retail believed that few, if any, third parties would be willing to acquire the Shares given AA Korea's current non-operating status, APP Retail determined to engage with Mr. Huh in an attempt to monetize the Shares in the near term.

12. As a director of AA Korea, Mr. Huh is an insider of the Debtors by virtue of sections 101(2) and 101(31)(E) of the Bankruptcy Code (as he is an insider of an affiliate), Mr. Huh is not an interest holder, director, or officer any of the Debtors, and thus this is not a typical insider transaction.

13. The Debtors' Chief Wind-Down Officer (Bradley E. Scher, the "CWO") led the negotiations relating to the proposed sale transaction, which were primarily conducted by

³ In addition, Mr. Huh is a former employee of one of the Debtors.

email and telephone calls with AA Korea's advisors (FTI) as they were based in Asia and Mr. Huh's English was limited.⁴ The negotiations were conducted at arm's-length and in good faith. Prior to these discussions, the CWO had no interactions with Mr. Huh regarding AA Korea (or anything else for that matter).

D. The Transaction

14. APP Retail, Mr. Huh, and AA Korea have reached an agreement pursuant to which (a) APP Retail will sell 80,000 Shares to Mr. Huh and receive KRW 850,000,000 (approximately, \$798,000), and (b) the parties (which include AA Korea for purposes of the releases) will release various claims against each other, including intercompany balances). A substantially final form of the Share Purchase and Release Agreement (the "Purchase Agreement") between Mr. Huh, APP Retail and (solely with respect to the release provisions, AA Korea) is attached as Exhibit 1 to the proposed order.

15. Pursuant to Local Rule 6004-1, the other significant terms of the Purchase Agreement and the Transfer Request are as follow:⁵

- (a) **Total Price.** Mr. Huh will purchase 80,000 Shares from APP Retail for a total amount of KRW 850,000,000 (approximately \$798,000) (the "Purchase Price"). (Purchase Agreement §1.1).
- (b) **Sale/Transfer to Insider (Local Rule 6004-1(b)(iv)(A)).** Mr. Huh is an insider because he is a director (and thus insider) of AA Korea, an affiliate of the Debtors. AA Korea is an insider as it is an affiliate of APP Retail (and the other Debtors).
- (c) **Releases by Debtors (Local Rule 6004-1(b)(iv)(C)).** APP Retail's claims against AA Korea (including the KRW 9.5 billion intercompany balances owed by AA Korea), its management and employees (including Mr. Huh) will be released. (Purchase Agreement §§2.3, 2.4)

⁴ As set forth in the Debtors' application to retain FTI Consulting Inc. ("FTI"), FTI was retained to provide services to the non-debtor in Korea (i.e., AA Korea).

⁵ To the extent the summary of the Purchase Agreement's terms contained herein conflicts with the Purchase Agreement, the Purchase Agreement shall control in all respects.

- (d) **Releases by AA Korea and by Mr. Huh (Local Rule 6004-1(b)(iv)(C)).** AA Korea's claims against the Debtors (including the KRW 7 billion intercompany balance owed by APP Retail) will be extinguished, and AA Korea will waive any claims against the Debtors and their directors, officers, and employees. Mr. Huh will release and waive claims against the Debtors and their directors, officers, and employees. (Purchase Agreement §§2.3, 2.4)
- (e) **Private Sale (Local Rule 6004-1(b)(iv)(D)).** No auction is contemplated by this Motion. The Debtors are to use commercially reasonable efforts to obtain Court approval of the transaction.
- (f) **Conditions (Local Rule 6004-1(b)(iv)(E)).** Closing conditions include, among other things, receipt by the parties of any approvals (including Court approval).
- (g) **Delivery of Funds.** The Purchase Price will be paid by Buyer on the Closing Date (Purchase Agreement §1.2).
- (h) **Termination.** Failure to close due to failure to obtain requisite approvals results in the termination of the Purchase Agreement and the relief of the parties of their obligations thereunder, unless the party responsible for obtaining approval did not use commercially reasonable efforts to obtain approval. In addition, APP Retail may terminate the Agreement prior to Court approval with no liability upon receipt by Seller of a higher or otherwise better offer if the Bankruptcy Court approves the sale to such other party. Either party may terminate the Purchase Agreement without liability if the representations and warranties by the other party are incorrect and cannot be made correct within 10 days of notice thereof. The Purchase Agreement will terminate automatically if the Court does not approve the transaction (Purchase Agreement §§5.1-5.5).
- (i) **No Good Faith Deposit (Local Rule 6004-1(b)(iv)(F)).** The Purchase Agreement does not require a good faith deposit.
- (j) **Agreements with Management (Local Rule 6004-1(b)(iv)(B)).** None.
- (k) **Interim Agreements with Buyer (Local Rule 6004-1(b)(iv)(G)).** None.
- (l) **Use of Proceeds (Local Rule 6004-1(b)(iv)(H)).** None.
- (m) **Tax Exemption (Local Rule 6004-1(b)(iv)(I)).** None.
- (n) **Record Retention (Local Rule 6004-1(b)(iv)(J)).** This section is not applicable as the Debtors are not seeking to sell substantially all of their assets pursuant to this Motion.
- (o) **Successor Liability Findings (Local Rule 6004-1(b)(iv)(K)).** None.

- (p) **Sale Free and Clear of Unexpired Leases (Local Rule 6004-1(b)(iv)(M)).** None.
- (q) **Credit Bid (Local Rule 6004-1(b)(iv)(N)).** None
- (r) **Relief From Bankruptcy Rule 6004(h) (Local Rule 6004-1(b)(iv)(O)).**
To maximize the value received for the Sale, the Debtors seek to close the Sale as soon as possible after entry of an order approving the Sale.

RELIEF REQUESTED

16. By this Motion, the Debtor requests that the Court enter an order (a) authorizing APP Retail's entry into the Purchase Agreement, (b) authorizing AAPRW to waive and release its claims against AA Korea, and (c) authorizing, but not directing, the Debtor to execute, deliver, and/or perform under any agreements, instruments, powers of attorney, or other documents related to, and to consummate and implement, the Sale. APP Retail also request certain protections for the Buyer in connection with the Sale, including that the Sale of the Shares be free and clear of all claims, liens, interests and encumbrances.

ARGUMENT

A. Entry Into the Purchase Agreement and the Sale of the Assets Should be Approved Under Bankruptcy Code Section 363(b).

17. Section 363(b)(1) of the Bankruptcy Code authorizes the debtor to "use, sell, or lease" property of the estate with the Court's approval. 11 U.S.C. § 363(b)(1). The Debtor's assets may be sold outside of the ordinary course of business, pursuant to section 363(b)(1) of the Bankruptcy Code, if a sound business purpose exists for doing so. *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F. 2d 1063, 1070 (2d. Cir. 1983); *see also The Dai-Ici Kangyo Bank Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate . . . courts require the debtor to show that a sound business purpose justifies such actions"). In evaluating whether a sound

business purpose exists, "courts consider a variety of factors which essentially represent a business judgment test." *Id.* (internal quotations and citations omitted).

18. Section 105(a) of the Bankruptcy Code provides, in relevant part, that "[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

19. As part of the winding down of their estates, the Debtors determined, in their business judgment, that it is in their interests (and that of their stakeholders) to monetize APP Retail's interest in AA Korea now rather than waiting for the conclusion of AA Korea's winding down. The Sale allows APP Retail to obtain funds for Shares in a non-operating foreign affiliate. Given AA Korea's winding down, Mr. Huh is the logical person to acquire the Shares as he is familiar with AA Korea and its winding down process to date.

20. Proceeding with the Sale now allows APP Retail to realize significant value in upcoming months. APP Retail believes that this is preferable to the likely alternative, which is waiting for AA Korea to be in a position to make a distribution to shareholders at the conclusion of its winding down. The alternative is uncertain as to both timing and amount.

21. The terms of the Purchase Agreement are fair and reasonable and are the product of arm's-length negotiation. As noted above, the negotiations on behalf of APP Retail were primarily conducted by their CWO, who had not had any dealings with Mr. Huh prior to the negotiations related to the Sale, and most of the communications were directed through FTI. In any event, if another purchaser emerges following the filing of this Motion, the Purchase Agreement may be terminated without liability if the Court approves a sale to another party submitting a higher or otherwise better offer.

22. Approving the Purchase Agreement will enable APP Retail to generate near-term value for its estate, from an otherwise illiquid asset. There is no management available to wind down AA Korea, and, in any event, it could take years for APP Retail to realize value in that scenario. For the forgoing reasons, APP Retail submits that the Sale constitute sound exercises of the APP Retail's business judgment and respectfully requests that the Court approve the Purchase Agreement and the Sale.

B. The Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code, Such that the Debtor may Sell the Assets Free and Clear of Claims, Liens, Interests and Encumbrances.

23. The Debtor further seeks to sell the Assets free and clear of claims, liens, interests and encumbrances. Section 363(f) of the Bankruptcy Code provides:

The Trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

24. As section 363(f) of the Bankruptcy Code is stated in the disjunctive, when proceeding pursuant to section 363(b), it is only necessary for a debtor to meet one of the five conditions of section 363(f). *See id.*; *Mich. Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) written in disjunctive; holding that court may approve sale "free

and clear" provided at least one of the subsections of Bankruptcy Code 363(f) is met); *In re Zeigler*, 320 B.R. 362, 381 (Bankr. N.D.Ill. 2005); *In re Dundee Equity Corp.*, No. 89-B-10233 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. Mar. 6, 1992) ("[s]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of §363(f) have been met"); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same).

25. APP Retail should be authorized to sell and transfer the Shares free and clear of all claims, liens, interests and encumbrances. Moreover, APP Retail has been informed that a majority of APP Retail's prepetition secured lenders—who have a lien on some of the Shares pursuant to that certain credit agreement dated February 5, 2016 (as amended, amended and restated, supplemented or otherwise modified through the date hereof, the "Prepetition Credit Agreement") between and among American Apparel (USA), LLC (n/k/a APP USA Winddown, LLC), as borrower and borrower representative, American Apparel Retail, Inc. (n/k/a APP Retail Winddown, Inc.), American Apparel Dyeing & Finishing, Inc. (n/k/a APP D&F Winddown, Inc.), and KCL Knitting, LLC (n/k/a APP Knitting Winddown, LLC), as other borrowers, American Apparel, LLC (n/k/a APP Winddown, LLC) and Fresh Air Freight, Inc. (n/k/a APP Shipping Winddown, Inc.), as guarantors, Wilmington Trust, National Association, as administrative agent, and certain financial institutions from time to time party to thereto, as lenders—have consented to the Sale. Therefore, the proposed Sale should be approved under section 363(f) of the Bankruptcy Code and APP Retail should be authorized to sell and transfer the Shares free and clear of all claims, liens, interests and encumbrances. To the extent the Shares are encumbered, any holders of claims, liens interests or encumbrances in or against the

Shares would be adequately protected as any such rights or interests would attach to the net proceeds of the Sale.

C. Mr. Huh is Entitled to the Protections of Section 363(m) and Section 363(n) of the Bankruptcy Code.

26. APP Retail requests that this Court make a finding that Mr. Huh will be acquiring the Shares in good faith within the meaning of section 363(m) of the Bankruptcy Code and that the transaction contemplated by the Purchase Agreement is not avoidable under section 363(n) of the Bankruptcy Code.

27. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization *to an entity that purchased or leased such property in good faith*, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m) (emphasis added). While the Bankruptcy Code does not define "good faith", the Seventh Circuit has held that:

[t]he requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

In the Matter of Andy Frain Services, Inc., 798 F.2d 1113, 1125 (7th Cir. 1986) (internal citations omitted); *see also In re Colony Hill Assocs.*, 111 F.3d 269, 276 (2d Cir. 1997)

("[t]ypically, the misconduct that would destroy a [purchaser]'s good faith status at a judicial sale involves fraud, collusion between the [purchaser] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders"); *In re Rock Industries Machinery Corp.*, 572

F.2d 1195, 1198 (7th Cir. 1978); *In re Marina City Associates, Ltd.*, 1995 WL 444366, at *10 (N.D.Ill. 1995); *In re Bakalis*, 220 B.R. 525, 537 (Bankr. E.D.N.Y. 1998).

28. Section 363(n) of the Bankruptcy Code provides that "[t]he trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated"

11 U.S.C. § 363(n); *see also In re Edwards*, 228 B.R. 552, 566-67 (Bankr. E.D. Pa. 1998).

29. The Sale is entitled to the requested protections. As discussed above and as will be discussed in the Scher Declaration, the consideration Mr. Huh will provide for the Shares under the Purchase Agreement is fair and reasonable. The Purchase Agreement was negotiated at arm's-length, and Mr. Huh, AA Korea, and APP Retail have at all times during the negotiation process acted in good faith. The Sale are not the result of any fraud or collusion as that term is defined in the Bankruptcy Code.

30. Accordingly, APP Retail requests that the Court finds that (a) the Mr. Huh will be purchasing and acquiring the Shares in good faith within the meaning of section 363(m) of the Bankruptcy Code and, thus, is entitled to the protections of section 363(m) of Bankruptcy Code and (b) the Sale or any part of the transaction contemplated by the Purchase Agreement will not be avoidable under section 363(n) of the Bankruptcy Code.

D. Relief Under Bankruptcy Rule 6004(h) is Appropriate.

31. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of fourteen days after the entry of the order, unless the court orders otherwise." The Debtors request that the Sale Order be effective immediately upon its entry by providing that the fourteen day stay under Bankruptcy Rule 6004(h) is waived.

32. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the fourteen day stay period, the leading treatise on bankruptcy suggests that the fourteen day stay should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to procedure.” 10 *Collier on Bankruptcy* ¶ 6004.11 (16th rev. ed. 2009). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

33. To maximize the value received for the Sale, the Debtors seek to close the Sale as soon as possible after entry of an order approving the Sale. Accordingly, the Debtors hereby request that the Court waive the fourteen day stay period under Bankruptcy Rule 6004(h).

NOTICE

34. Notice of this Motion shall be given to (a) the U.S. Trustee; (b) all parties filing a notice of appearance and request for notices pursuant to Bankruptcy Rule 2002; (c) Milbank, Tweed, Hadley & McCloy LLP and Fox Rothschild LLP, as counsel to the Committee of Lead Lenders; (d) Covington & Burling LLP, as counsel to Wilmington Trust, National Association, as administrative agent to the Debtors' prepetition secured lenders; (e) Klehr Harrison Harvey Branzburg LLP, as counsel to the Litigation Trustee; (f) Debevoise & Plimpton LLP, as counsel to Standard General, L.P.; (g) Cooley LLP, as counsel to the Creditors' Committee; (h) Mr. Huh, and (i) the Internal Revenue Service, the Securities and Exchange Commission and any other federal, state or local governmental agency to the extent required by

the Bankruptcy Code, the Bankruptcy Rules, the Local Rules or order of the Court. The Debtors submit that no other or further notice need be provided.

NO PREVIOUS REQUEST

35. No previous request for the relief sought herein has been made by the Debtors to this Court or any other court.

[Remainder of page intentionally left blank.]

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed as Exhibit A hereto, granting the relief requested in the Application and such other and further relief as may be just and proper.

Dated: January 8, 2018
Wilmington, Delaware

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

APP WINDDOWN, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 16-12551 (BLS)

(Jointly Administered)

Objection Deadline: January 22, 2018 at 4:00 p.m. (ET)

Hearing Date: January 29, 2018 at 1:30 p.m. (ET)

**NOTICE OF DEBTOR'S MOTION FOR AN ORDER (I) AUTHORIZING (A) THE
SALE OF SHARES OF A FOREIGN AFFILIATE FREE AND CLEAR
OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, AND (B) THE
RELEASE AND WAIVER OF CLAIMS, AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on January 8, 2017, the above-captioned debtors (collectively, the "Debtors"), filed the *Debtor's Motion for an Order (I) Authorizing (A) the Sale of Shares of a Foreign Affiliate Free and Clear of All Liens, Claims, Encumbrances And Interests, and (B) the Release and Waiver of Claims, and (II) Granting Related Relief* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the "Bankruptcy Court"). A copy of the Motion is attached hereto.

PLEASE TAKE FURTHER NOTICE that any response or objection to the entry of an order with respect to the relief sought in the Motion must be filed with the Bankruptcy Court on or before **January 22, 2018 at 4:00 p.m. prevailing Eastern time.**

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): APP Winddown, LLC (f/k/a American Apparel, LLC) (0601); APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC) (8940); APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.) (7829); APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.) (0324); APP Knitting Winddown, LLC (f/k/a KCL Knitting, LLC) (9518); and APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.) (3870). The address of each of the Debtors is 107 Millcreek Corners, Suite B, P O Box 5129, Brandon, MS 39047.

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the response or objection upon: (i) counsel to the Debtors, (a) Jones Day, 555 S. Flower St., 50th Floor, Los Angeles, CA 90071 (Attn: Erin Brady, Esq.), enbrady@jonesday.com and 250 Vesey Street, New York, NY 10281 (Attn: Scott J. Greenberg, Esq.), sgreenberg@jonesday.com, and (b) Pachulski Stang Ziehl & Jones, LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801 (Attn: Laura Davis Jones, Esq.), ljones@pszjlaw.com; (ii) counsel to the Debtors' prepetition secured lenders, (a) Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005-1413 (Attn: Gerard Uzzi, Esq.) guzzi@milbank.com, and (b) Fox Rothschild LLP, 919 North Market Street, Suite 300 Wilmington DE 19899-2323 (Attn: Jeffrey M. Schlerf, Esq.) jschlerf@foxrothschild.com; (iii) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jane Leamy, Esq.), jane.m.leafy@usdoj.gov; (iv) counsel to the official committee of unsecured creditors, (a) Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Cathy Herschopf, Esq.) and (b) Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, Delaware 19801 (Attn: Justin R. Alberto, Esq.); and (v) Covington & Burling LLP, 620 Eighth Avenue, New York, NY 10018-1405 (Attn: R. Alexander Clark, Esq.), aclark@cov.com, as counsel to Wilmington Trust, National Association, as administrative agent to the Debtors' prepetition secured lenders.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE RELIEF SOUGHT IN THE MOTION WILL BE HELD ON JANUARY 29, 2018 AT

1:30 P.M. PREVAILING EASTERN TIME BEFORE THE HONORABLE BRENDAN L. SHANNON, CHIEF UNITED STATES BANKRUPTCY COURT JUDGE, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6TH FLOOR, COURTROOM NO. 1, WILMINGTON, DELAWARE 19801.

Dated: January 8, 2018
Wilmington, Delaware

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

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Co-Counsel for the Debtors
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EXHIBIT A

PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
APP WINDDOWN, LLC, et al., ¹	:	Case No. 16-12551 (BLS)
Debtors.	:	(Jointly Administered)
	:	

**ORDER APPROVING DEBTOR'S MOTION FOR AN ORDER (I) AUTHORIZING
(A) THE SALE OF SHARES OF A FOREIGN AFFILIATE FREE AND CLEAR
OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, AND (B) THE
RELEASE AND WAIVER OF CLAIMS, AND (II) GRANTING RELATED RELIEF**

This matter coming before the Court on the *Debtor's Motion for an Order (I) Authorizing (A) the Sale of Shares of a Foreign Affiliate Free and Clear of All Liens, Claims, Encumbrances And Interests, and (B) the Release and Waiver of Claims, and (II) Granting Related Relief* (the "Motion"),² filed by APP Retail Winddown, Inc. (the "Debtor") pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") for entry of an order (i) authorizing APP Retail to enter into an agreement with Mr. Huh to sell him shares of AA Korea (the "Sale"), (ii) authorizing the release and waiver of claims in connection therewith, (iii) authorizing, but not directing, the APP Retail to execute, deliver, perform under, consummate and implement the Sale, and (iv) granting

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): APP Winddown, LLC (f/k/a American Apparel, LLC) (0601); APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC) (8940); APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.) (7829); APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.) (0324); APP Knitting Winddown, LLC (f/k/a KCL Knitting, LLC) (9518); and APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.) (3870). The address of each of the Debtors is 107 Millcreek Corners, Suite B, PO Box 5129, Brandon, MS 39407.

² Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

certain related relief; the Court having reviewed the Motion and having heard the statements of counsel regarding the relief requested in the Motion at any hearing before the Court (the "Hearing"); and it appearing that the relief requested in the Motion is in the best interests of APP Retail, its estate, its stakeholders, and all other parties-in-interest; and after due deliberation thereon, and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction over the Motion and the relief requested thereby pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. Notice of this Motion and the Hearing was good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Purchase Agreement or the transactions contemplated therein is required.

C. The legal predicates for the relief requested herein are sections 105 and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and Local Bankruptcy Rule 6004-1.

D. APP Retail has demonstrated good, sufficient, and sound business purposes and justification for the Sale and the releases set forth in the Purchase Agreement.

E. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to interested persons and entities, including without limitation: (i) Mr. Huh; (ii) the official committee of unsecured creditors;

³ The findings of fact and the conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

(iii) the prepetition secured lenders; (iv) the United States Trustee; and (v) all other parties who have filed a notice of appearance and request for service of documents in this case; and (vi) such other entities as are required to be served with notices. [No parties objected to the Sale or otherwise demonstrated and interest in acquiring the Shares after the filing of the Motion.]

F. The Purchase Agreement was negotiated, proposed, and entered into by APP Retail, Mr. Huh, and (solely with respect to the release provisions) AA Korea without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtor nor the Buyer has engaged in any conduct that would cause or permit the Sale or any part of the transactions contemplated by the Purchase Agreement to be avoidable under 11 U.S.C. § 363(n).

G. Mr. Huh is a good faith purchaser under 11 U.S.C. § 363(m) and, as such, is entitled to all of the protections afforded thereby. Mr. Huh will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing the Sale after the entry of this Order.

H. The consideration provided by the Mr. Huh for the Shares in connection with the Sale is fair and reasonable.

I. The Sale of 80,000 Shares to the Mr. Huh will be a legal, valid, and effective transfer of the Shares and shall vest Mr. Huh with all right, title, and interest of APP Retail to the Shares free and clear of any and all liens, claims, interests, and encumbrances of any type whatsoever (whether known or unknown, secured or unsecured or in the nature of setoff or recoupment, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the chapter 11 cases, and whether imposed by agreement, understanding, law, equity, or otherwise,

including claims otherwise arising under doctrines of successor liability) (all such liens, claims, interests, and encumbrances, the "Interests and/or Claims").

J. If the Sale of the Shares of the Shares were not free and clear of all Interests and/or Claims as set forth in this Order and the Purchase Agreement, Mr. Huh would not have entered into the Purchase Agreement and would not consummate the Sale or the transactions contemplated by the Purchase Agreement, thus adversely affecting APP Retail, its estate, and its stakeholders.

K. The Debtor may sell or transfer their interests in the Share free and clear of all Interests and/or Claims because, in each case, one or more of the standards set forth in 11 U.S.C. § 363(f)(1)-(5) has been satisfied. All holders of Interests and/or Claims who did not object, or withdrew their objections to the Sale, are deemed to have consented to the Sale pursuant to 11 U.S.C. § 363(f)(2), and all holders of Interests and/or Claims are adequately protected by having their Interests and/or Claims, if any, attach to the cash proceeds of the Sale ultimately attributable to the property against or in which they claim an Interest and/or Claim with the same priority, validity, force, and effect as they attached to such property immediately before the closing of the Sale.

L. Approval of the Purchase Agreement and consummation of the Sale at this time are in the best interests of APP Retail, its estate, and its stakeholders, and other parties-in-interest.

M. Nothing in the Purchase Agreement creates any third party beneficiary rights in any entity not a party to the Purchase Agreement.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

A. General Provisions

1. The Motion is GRANTED as set forth herein. Any remaining objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections are overruled on the merits with prejudice and denied. All parties and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief sought therein.

B. Approval of the Purchase Agreement

2. Pursuant to sections 105 and 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and Local Bankruptcy Rules 6004-1, the Purchase Agreement and all of the terms and conditions thereof are hereby approved. APP Retail is authorized, but not directed, to execute and deliver, and empowered to perform under, consummate, and implement the Purchase Agreement a, together with all additional instruments and documents as may be reasonably necessary or desirable to implement and close the Sale, and to take all further actions necessary or appropriate to perform its obligations under the Purchase Agreement as may be reasonably requested by Mr. Huh for the purpose of assigning, transferring, granting, conveying, and conferring to the Shares to him.

3. This Order and the Purchase Agreement shall be binding in all respects upon the APP Retail, its estate, and its stakeholders, Mr. Huh, AA Korea, and its affiliates, successors, and assigns, and any affected third parties, including, but not limited to, all entities asserting an Interest and/or Claim against or in the Shares to be sold to Mr. Huh notwithstanding any subsequent appointment of any trustee or other fiduciary under any section of any chapter of the Bankruptcy Code, as to which trustee or other fiduciary such terms and provisions likewise shall be binding.

4. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court; provided that any such modification, amendment, or supplement does not have a material adverse effect on the APP Retail's estate in the good faith business judgment of APP Retail.

C. Sale of the Shares

5. Except as expressly permitted or otherwise specifically provided for in the Purchase Agreement or this Order, pursuant to 11 U.S.C. §§ 363(b) and 363(f), upon the consummation of the Sale and receipt by APP Retail of the purchase price, APP Retail's right, title, and interest in 80,000 Shares shall be transferred to Mr. Huh free and clear of all Interests and/or Claims, with all such Interests and/or Claims to attach to the cash proceeds of the Sale in the order of their priority, with the same validity, force, and effect that they had as against the Shares immediately before such transfer, subject to any claims and defenses APP Retail may possess with respect thereto. In addition, in accordance with the Court's January 12, 2017 Order Approving Settlement [Docket No. 493, Ex. 1, ¶6], all of the cash proceeds of the Sale shall constitute collateral of the Prepetition Secured Parties (as defined in such order) and shall therefore be subject to the Final Order (I) Authorizing the Debtors to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties and (III) Granting Related Relief [Docket No. 492].

6. The Sale of 80,000 Shares to Mr. Huh pursuant to the Purchase Agreement constitutes a legal, valid, and effective transfer of the Shares, and, upon receipt by APP Retail of the purchase price, shall vest the Mr. Huh with all right, title, and interest of APP Retail in and to the Shares free and clear of all Interests and/or Claims of any kind or nature whatsoever.

7. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the APP Retail to sell and transfer the Shares, in each case in accordance with the terms of the Purchase Agreement or this Order.

8. Upon the closing of the Sale, each of APP Retail's creditors is authorized and directed to execute such documents and take all other such actions as may be necessary to release their respective Interests and/or Claims against the Shares, if any, as such Interests and/or Claims may have been recorded or may otherwise exist.

9. Each and every United States federal, state, and local governmental agency or department, and any other person or entity, is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

10. All entities which are currently, or as of the closing of the Sale may be, in possession of some or all of the Shares to be sold, transferred, or conveyed pursuant to the Purchase Agreement are hereby directed to surrender possession of such Shares to the Mr. Huh upon the closing of the Sale.

11. All entities holding Interests and/or Claims against or in APP Retail or the Shares of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests and/or Claims of any kind or nature whatsoever against Mr. Huh, his property, his assigns, or the Shares with respect to any Interest and/or Claim of any kind or nature whatsoever which such person or entity had, has, or may have against or in the APP Retail, its estate, its officers, its directors, its shareholders, or the Shares.

E. Approval of the Releases

12. APP Retail is authorized, upon receipt of the purchase price, to release claims against AA Korea (including any intercompany balance (including, without limitation, the \$3.3 million scheduled claim or the KRW9.5 billion claim AA Korea has acknowledged), its management, and its employees and against Mr. Huh.

13. Mr. Huh and AA Korea shall not demand, commence any action, pursue, or otherwise seek any recovery or funds from the Debtors or any of their directors, officers, or employees, with respect to any claims that are released pursuant to the Purchase Agreement (including, without limitation, the KRW7 billion claim AA Korea asserts it is owed) .

E. Additional Provisions

14. The transactions contemplated by the Purchase Agreement are undertaken by Mr. Huh in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale and transfer of the Shares shall not affect the validity of the Sale to Mr. Huh, unless such authorization is duly stayed pending such appeal. Mr. Huh is a purchaser in good faith of the Assets pursuant to section 363(m) of the Bankruptcy Code, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

15. The consideration provided by Mr. Huh for 80,000 Shares under the Purchase Agreement fair and reasonable and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

16. The failure specifically to include or to reference any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in their entirety.

17. To the extent any other order in this case (including any order confirming a chapter 11 plan, any order entered after a conversion of this case under chapter 7 of the Bankruptcy Code or any order dismissing these chapter 11 cases) alters, conflicts with, or derogates from the provisions of this Order, the provisions of this Order shall control.

18. This Court retains exclusive jurisdiction to interpret, construe, enforce, and implement the terms and provisions of this Order, the Purchase Agreement, all amendments to any of the foregoing, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Shares to Mr. Huh, (b) compel delivery of the purchase price or performance of other obligations owed pursuant to the Purchase Agreement, (c) resolve any disputes arising under or related to the Purchase Agreement, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, and (e) protect Mr. Huh against any Interests and/or Claims against or in APP Retail or the Shares, of any kind or nature whatsoever, attaching to the proceeds of the Sale. For cause shown, pursuant to Bankruptcy Rule 6004(h), this Order shall not be stayed, shall be effective immediately upon entry, and the APP Retail and Mr. Huh are authorized to close the Sale immediately upon entry of this Order.

19. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted pursuant to this Order.

20. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

Dated: Wilmington, Delaware

_____, 2018

THE HONORABLE BRENDAN L. SHANNON
CHIEF UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Form of Purchase Agreement

SHARE PURCHASE AND RELEASE AGREEMENT

This SHARE PURCHASE AND RELEASE AGREEMENT (this "Agreement") is entered into as of _____ by and among the following parties (collectively the "Parties" and each a "Party");

APP Retail Winddown, Inc. (the "Seller"), incorporated and validly existing under the laws of the State of California, United States of America;

Huh, Bong Jae (the "Buyer"), a national of Republic of Korea, having a resident registration number of [600424 - *] and residing at 1711-1402 Munchon Maeul 17 Danji APT., 120 Juyeop-dong, Ilsanseo-gu, Goyang-si, Gyeonggi-do, Republic of Korea;

American Apparel Co., Ltd., a company organized under the laws of Korea with its registered principal office at B – 2305 Mapo Trapalace, 559 Dowha-dong, Mapo-gu, Seoul, Republic of Korea (the "Company"), solely with respect to Sections 2.3 and 2.4,

RECITALS:

- A. As of the date hereof, the Seller is the owner of 80,000 shares of common stock (the "Shares"), par value KRW 5,000 per share, of the Company, representing 100% of the issued and outstanding shares of the Company;
- B. As of the date hereof, the Seller is a debtor in a chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the District of Delaware ("US Bankruptcy Court") in jointly administered case No. 16-12551 (BLS);
- C. As of the date hereof, the Seller has a monetary obligation to pay KRW 7,013,202,357 to the Company (the "Obligation") and has the right to receive payment from the Company in the amount of KRW 9,517,107,130 (the "Right");
- D. Subject to the terms and conditions herein, the Seller desires to sell and transfer to the Buyer, and the Buyer desires to acquire from the Seller, the Shares (the "Purchased Shares"), which will represent 100% of the outstanding shares of the Company.

Article 1. Transfer of Shares and Payment of the Purchase Price

- 1.1 The aggregate consideration for the Shares payable by the Buyer shall be equal to an amount of KRW 850,000,000 (the "Purchase Price"), which is approximately \$750,000.
- 1.2 The Buyer shall pay the Purchase Price on the Closing Date, which Closing Date is subject to the satisfaction of all of the Conditions Precedent set forth in Article 3.

Article 2. Closing

2.1 The purchase and sale of the Shares (the "Closing") provided for in this Agreement will take place on a date agreed between the Parties (the "Closing Date").

2.2 At the Closing, the Seller shall deliver to the Buyer a copy (which may be in pdf format) of the Order of the US Bankruptcy Court authorizing Seller to perform under this Agreement. At or prior to the Closing, the Buyer shall deliver to the Seller a certificate that any governmental approvals, approvals of third parties, or approvals by Buyer for Buyer to acquire the Purchased Shares from Seller, in accordance with the terms of this Agreement.

2.3 The Seller shall, at Closing, duly and completely extinguish all or any of the rights to receive payments from the Company (including, without limitation, the Right) or the obligations (including, without limitation, the Obligation) to make payments to the Company before the Closing Date and such extinguishment shall be accurately reflected on the Company's accounting books. The Company shall, at Closing, duly and completely extinguish all or any of the rights to receive payments from the Seller (including, without limitation, the Obligation or the obligations to make payments to the Seller (including, without limitation, the Right) before the Closing Date and such extinguishment shall be accurately reflected on the Company's accounting books. The Company shall deliver to the Seller that any governmental approvals, approvals of third parties, or corporate approvals have been obtained.

2.4 Except for any obligations under this Agreement or breaches thereof, (a) the Seller, at Closing, shall release all claims and have no right or claim against the Company or its management and employees presently or in the future (for acts or omissions occurring prior to Closing) and the Seller hereby waives such right or claim; (b) the Company, at Closing, shall release all claims and have no right or claim against the Seller, its US affiliates (together with the Seller, the "Seller Parties"), or the directors, officers, and employees of any of the US Seller Parties

presently or in the future (for acts or omissions occurring prior to Closing) and the Company hereby waives such right or claim; and (c) the Buyer, at Closing, shall release all claims and have no right or claim against the Seller, its US affiliates (together with the Seller, the "Seller Parties"), or the directors, officers, and employees of any of the US Seller Parties presently or in the future (for acts or omissions occurring prior to Closing) and the Buyer hereby waives such right or claim.

Article 3. Conditions Precedent and Representations

3.1 All obligations of the Buyer to acquire and of the Seller to sell, the Purchased Shares from the Seller under this Agreement are subject to and conditioned upon satisfaction or waiver of each of the following conditions:

- (1) Any approvals required to be obtained by the Seller from any governmental authorities or any third parties including the US Bankruptcy Court for the acquisition of the Purchased Shares by the Buyer shall have been obtained
- (2) Any approvals required to be obtained by the Buyer from any governmental authorities or any third parties for the acquisition of the Purchased Shares by the Buyer shall have been obtained.
- (3) Any approvals required to be extinguish the Right and the Obligation shall have been obtained by the Seller and the Company from any governmental authorities or any third parties including the US Bankruptcy Court therefor shall have been obtained.
- (4) The Order of the Bankruptcy Court authorizing Seller to enter into this Agreement, to sell the Purchased Shares, and to release the Company, shall be in form and substance satisfactory to Seller.
- (5) The representations and warranties in this Agreement shall be true and correct in all respects.
- (6) The Conditions Precedent in this paragraph shall have been performed to the satisfaction of the Buyer and Seller before the Closing Date.

Article 4. Post-Closing Covenants

4.1 After the Closing, the Parties and the Company hereto shall execute and deliver such additional instruments, documents, conveyances or assurances and take such other actions as shall be necessary, or otherwise reasonably be requested by the Parties and the Company, to

confirm and assure the rights and obligations provided for in this Agreement and render effective the consummation of the purchase and sale of the Purchased Shares contemplated hereby, or otherwise to carry out the intent and purposes of this Agreement.

Article 5. Termination

5.1 Failure to consummate the Closing on the Closing Date as a result of the failure to obtain any requisite governmental or third party approval (including approval by the US Bankruptcy Court) or consent will result in the termination of this Agreement and will relieve any of the Parties of any of its obligations under this Agreement, unless the Party responsible for obtaining such approval did not use commercially reasonable efforts to obtain such approval or consent.

5.2 Seller may terminate this Agreement prior to approval by the Bankruptcy Court with no liability upon receipt by Seller of a higher or otherwise better offer if the Bankruptcy Court approves the sale to such other party.

5.3 Seller may terminate this Agreement prior to Closing with no liability if the representations and warranties by Buyer are incorrect and cannot be made correct within 10 days of notice thereof.

5.4 Buyer may terminate this Agreement prior to Closing with no liability if the representations and warranties by Seller (other than any representation or warranty relating to Bankruptcy Court approval) are incorrect and cannot be made correct within 10 days of notice thereof.

5.5 This Agreement shall terminate if the Bankruptcy Court denies entry of an Order approving the transaction contemplated by this Agreement.

Article 6. Others

6.1 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

6.2 The Bankruptcy Court shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection to this

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Agreement. Each of the parties consents to the personal jurisdiction of the Bankruptcy Court, and waives any objection to such forum. Each of the parties further consents to the Bankruptcy Court hearing and determining such matters. If the Bankruptcy Court declines to exercise jurisdiction, the state and federal courts located in Los Angeles, California shall have exclusive jurisdiction.

6.3 This Agreement may be executed in counterparts, by either an original signature transmitted by facsimile transmission, portable document format (.pdf), or other similar process and each copy so executed shall be deemed to be an original and all copies so executed shall constitute one and the same agreement.

6.4 The Seller represents and warrants that the Seller is the lawful and beneficial owner of his Shares and has good and marketable title thereto, and that, upon Closing, the Purchased Shares will be free and clear of all pledges, liens, claims or other encumbrances or restrictions on transfer created by Seller.

6.5 Buyer represents and warrants that he has sufficient funds available to it in cash to pay or cause to be paid the Purchase Price and the fees and expenses (if any) required to be paid by Buyer in connection with the purchase of the Purchased Shares, and to effect the purchase of the Purchased Shares. Upon purchase of the Purchased Shares, (a) Buyer will not be insolvent as defined in Section 101 of the Bankruptcy Code (and as defined in any analogous state, federal, or non-US law), (b) Buyer will not be left with unreasonably small capital, and (c) Buyer will not have incurred debts beyond its ability to pay such debts as they mature.

6.6 The Parties each declare that their respective decisions in executing this Stipulation are not predicated on or influenced by any declaration or representation of the other Party, except as otherwise expressly provided herein. The Parties agree that they or their counsel have carefully read this Stipulation, and that they understand all of its terms and conditions know its contents, and have signed below as their respective free and voluntary acts. All representations, warranties, inducements, and/or statements of intention made by the Parties are embodied in this Agreement, and no Party relied upon, will be bound by, or will be liable for any alleged representation, warranty, inducement, or statement of intention that is not expressly set forth in this Agreement.

6.7 The undersigned each represent and warrant that the undersigned is duly authorized and empowered to enter into this Agreement on behalf of, and to bind, each Party as applicable

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(in the case of the Debtors, subject to the Bankruptcy Court's approval), and that each such Party has full knowledge and has consented to this Agreement.

6.8 This Agreement is the product of negotiations between the Parties and any rule of construction that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Agreement.

6.9 This Agreement may not be modified, amended or supplemented except by a written agreement executed by all Parties hereto.

6.10 This Agreement constitutes the complete, final, and exclusive embodiment of the Parties' entire agreement. All prior and/or contemporaneous agreements, representations, promises, or discussions are superseded and shall have no further force and effect.

6.11 Buyer represents and warrants that neither it nor any of its employees is a person or entity with whom U.S. entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under statute, executive order or other governmental action.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of date first above written.

SELLER:

APP Retail Winddown, Inc.

By: _____

Name:

Title:

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BUYER:

Name: Huh, Bong Jae

Resident registration number: [600424 - *]

COMPANY (With respect to Sections 2.3 and 2.4)

:

AMERICAN APPAREL CO., LTD.

By: _____

Name: Huh, Bong Jae

Title:

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EXHIBIT B
DECLARATION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
APP WINDDOWN, LLC, <i>et al.</i> , ¹	:	Case No. 16-12551 (BLS)
Debtors.	:	(Jointly Administered)

**DECLARATION OF BRADLEY E. SCHER IN SUPPORT
OF DEBTOR'S MOTION FOR AN ORDER (I) AUTHORIZING
(A) THE SALE OF SHARES OF A FOREIGN AFFILIATE FREE AND
CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, AND (B)
THE RELEASE AND WAIVER OF CLAIMS, AND (II) GRANTING RELATED RELIEF**

I, Bradley E. Scher, hereby submit this declaration (this "Declaration") in support of the the *Debtor's Motion for an Order (I) Authorizing (A) the Sale of Shares of a Foreign Affiliate Free and Clear of All Liens, Claims, Encumbrances And Interests, and (B) the Release and Waiver of Claims, and (II) Granting Related Relief* (the "Motion")² filed contemporaneously herewith, and declare that the following is true and correct to the best of my knowledge, information, and belief:

1. I am the Chief Wind-Down Officer of each of the Debtors.
2. Except as otherwise indicated, all statements set forth herein are based upon my personal knowledge of APP Retail's interest in AA Korea gained during my service as

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): APP Winddown, LLC (f/k/a American Apparel, LLC) (0601); APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC) (8940); APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.) (7829); APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.) (0324); APP Knitting Winddown, LLC (f/k/a KCL Knitting, LLC) (9518); and APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.) (3870 The address of each of the Debtors is 107 Millcreek Corners, Suite B, P O Box 5129, Brandon, MS 39047

² Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

the Debtors' Chief Wind-Down Officer, my discussions with members of my team and those under my supervision, and/or my opinion based upon my experience. If called to testify, I could and would testify to each of the facts set forth herein based upon such personal knowledge and/or opinion.

AA Korea

3. AA Korea is a limited company domiciled in the Republic of Korea. AA Korea is a wholly owned subsidiary APP Retail, which owns 80,000 shares of AA Korea (the "Shares"), which is all of the outstanding shares of AA Korea. Mr. Huh is a representative director of AA Korea.

4. Prior to AA Korea ceasing its business operations at the end of 2016, AA Korea operated five stores in South Korea. AA Korea and its affiliates also engaged in various intercompany transactions with APP Winddown, LLC and/or its affiliates. In addition, as a result of intercompany transactions between AA Korea and APP Retail, AA Korea has asserted that it owes APP Retail approximately KRW 9.5 billion (approximately \$8.9 million)³, and that APP Retail owes it approximately KRW 7 billion (approximately \$6.6 million). As set forth in its Schedules of Assets and Liabilities filed with the Court on January 11, 2017, APP Retail believes that it is owed more than \$3.3 million by AA Korea.

The Negotiations

5. As Chief Wind-Down Officer, I determined that monetizing APP Retail's interest in AA Korea in the short term was in the best interests of its estates. As AA Korea was not operating, its only material asset was cash on hand.

³ The conversion rate used in this Declaration is .0009392 KRW to \$1 USD and is based on rates as of January 3, 2018

6. Based on my experience, I determined that the most efficient means of realizing value in this circumstance would be a transaction with Mr. Huh, a national of the Republic of Korea. Mr. Huh, as a director, was already familiar with AA Korea and its finances, and what it would take to wind down AA Korea. Given that AA Korea's only material asset is its cash, any outside acquirer would likely require additional diligence (some of which could require the cooperation of Mr. Huh or the staff of AA Korea). In addition, any purchaser would likely require a fair return on its investment, discounted over an uncertain recovery period. Given the amount of cash on hand at AA Korea and the idiosyncrasies of Korean law, I believed the additional costs incurred in running an auction for an estimated recovery of cash would likely not be economically beneficial once a certain price was achieved.

7. For these reasons, APP Retail engaged in discussions with Mr. Huh, AA Korea, and its advisors (FTI). This negotiations were primarily conducted by email and telephone calls with AA Korea's advisors (FTI) as they were based in Asia and Mr. Huh's English was limited. The negotiations ultimately resulted in the offer set forth in the Purchase Agreement. I believe this offer is fair and reasonable, and that the costs of uncertainties of an auction outweigh the benefits of the current proposal.

8. I have been informed that Mr. Huh and AA Korea are insiders of the Debtors. Further, until the spring of 2017, Mr. Huh was also an employee of APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC), one of the Debtors.

9. Except in connection with my efforts to monetize AA Korea for the benefit of APP Retail (and the termination of his employment), I have not had any other dealings with AA Korea or Mr. Huh. I was the sole decision maker regarding the transaction, and

conducted the negotiations in an arm's-length manner. The proposed transaction is a culmination of the good faith, arm's-length, negotiations.

10. I believe that the Court should determine that Mr. Huh has negotiated in good faith and, as a result, are entitled to the full protections of a good faith purchaser. To the best of my knowledge, there was no fraud or collusion between Mr. Huh and the Debtors. Before agreeing to the transaction, the parties engaged in arm's-length discussions to reach agreement.

The Exercise of Sound Business Judgment

11. Determining to move forward with the transaction (including the Sale) represents an exercise of sound business judgment. As part of the decision, I considered whether this transaction would be more beneficial than the current alternative – waiting for AA Korea to make a distribution after winding down. There is no management available to wind down AA Korea, and, in any event, it could take years for APP Retail to realize value in that scenario. Given the amounts at issue, the amounts APP Retail is to be paid, and the uncertainties regarding the timing and amount of any ultimate distribution for APP Retail, I believe this transaction is in the best interests of APP Retail and its estates.

Conclusion

12. Based upon the foregoing, I believe that granting the relief requested in the Motion is in the best interests of APP Retail, their estates, and their creditors.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
is true and correct.

Executed this 8th day of January 2018.

/s/ Bradley E. Scher

Bradley E. Scher