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**UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF NEVADA**

In re:	Case No.: BK-S-18-14683-leb Chapter 11
GUMP'S HOLDINGS, LLC	
<input type="checkbox"/> Affects this Debtor.	<i>Jointly administered with:</i>
<input checked="" type="checkbox"/> Affects all Debtors.	No. BK-S-14684 (In re Gump's Corp.) No. BK-S-14685 (In re Gump's By Mail, Inc.)
<input type="checkbox"/> Affects Gump's Corp.	
<input type="checkbox"/> Affects Gump's By Mail, Inc.	Hearing Date: OST REQUESTED Hearing Time: OST REQUESTED

**MOTION FOR ORDERS PURSUANT TO SECTIONS 105, 363, AND 365 OF THE
 BANKRUPTCY CODE AND RULES 2002, 6004 AND 6006 OF THE FEDERAL RULES
 OF BANKRUPTCY PROCEDURE: (I) APPROVING BID PROCEDURES WITH
 RESPECT TO SALE OF CERTAIN IP ASSETS, SETTING THE SALE HEARING
 DATE; AND (II) APPROVING AND AUTHORIZING THE SALE OF IP ASSETS TO
 THE HIGHEST AND BEST BIDDER FREE AND CLEAR OF ALL LIENS,
 INTERESTS, CLAIMS AND ENCUMBRANCES, THE ASSUMPTION AND
 ASSIGNMENT OF CERTAIN RELATED EXECUTORY CONTRACTS, AND
WAIVING THE REQUIREMENTS OF BANKRUPTCY RULES 6004(h) AND 6006(d)**

Gump's Holdings, LLC, Gump's Corp., and Gump's By Mail, Inc. (collectively, "Debtors"),
 debtors and debtors-in-possession, hereby respectfully submit this motion (the "Motion") for orders

pursuant to Sections¹ 105, 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2004, 6004 and 6006, and Local Rule 6004: (i) approving bidding procedures with respect to the sale of its intellectual property assets described below (the “IP Assets”), (ii) setting the date for the auction and sale hearing; and (ii) approving and authorizing the sale of IP Assets to the highest and best bidder free and clear of all liens, interests, claims and encumbrances, the assumption and assignment of certain related executory contracts, and waiving the requirements of Bankruptcy Rules 6004(h) and 6006(d).

This Motion is made and based upon the following Memorandum of Points and Authorities, the August 7, 2018 *Declaration of Tony Lopez in Support of (I) Chapter 11 Petitions and (II) First Day Motions* [ECF No. 20]² (the “First Day Declaration”) and the August 9, 2018 *Declaration of Tony Lopez in Support of: (I) Motion [for Order] (A) Approving Agency Agreement, (B) Authorizing and Approving Store Closing Sale Free and Clear of all Liens, Claims, and Encumbrances, (C) Granting Liens, and (D) Granting Related Relief; (II) the Motion for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post-Petition Financing, (B) Granting Liens and Providing Administrative Expense Status, (C) Authorizing the Debtors' Use of Cash Collateral, (D) Granting Adequate Protection, (E) Modifying the Automatic Stay, and (F) Granting Related Relief; and (III) Motion for Order Authorizing Maintenance of Prepetition Cash Management System and Bank Accounts; and Granting Related Relief* [ECF No. 38] (the “Closing Sale Declaration”), the papers and pleadings on file herein, judicial notice of which is hereby respectfully requested, and the argument of counsel entertained by the Court at the time of the hearing of the Motion.

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¹ Unless otherwise stated, all references to “Section” herein shall be to title 11 of the U.S. Code (the “Bankruptcy Code”); all references to a “Bankruptcy Rule” shall refer to the Federal Rules of Bankruptcy Procedure; and all references to a “Local Rule” shall refer to the Local Rules of Bankruptcy Practice of the U.S. District Court for the District of Nevada.

² All references to “ECF No.” shall be to the docket in Gump’s Holdings, LLC, Case No. 18-14683-leb, unless otherwise stated.

I.
JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134 and Local Rule 1001(b)(1). Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Local Rule 9014.2, Debtors consent to entry of a final order or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders for judgment consistent with Article III of the U.S. Constitution.

2. Venue of the Debtors' chapter 11 cases in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory basis for the relief sought herein arises from Sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2004, 6004 and 6006, and Local Rule 6004.

II.
RELIEF REQUESTED

4. By this Motion, the Debtors request an order (the "Bid Procedures Order") (i) approving bidding procedures, (ii) setting the date and time of the auction and hearing to approve the sale of the IP Assets (the "Sale Hearing") and the various deadlines in connection therewith, (iii) finding that appointment of a consumer privacy ombudsman pursuant to Section 332 is not required, (iv) approving the form of notice in connection with the foregoing; and an order (the "Sale Order") for the approval of (i) the sale of the IP Assets to the winning bidder(s) at the auction free and clear of liens, claims, encumbrances and interests (the "Sale"), and (ii) the assumption, assignment, and sale of any related executory contracts or unexpired leases, if any, to the winning bidder(s).

5. The Debtors further request approval of (i) Bid Procedures, (ii) the form of notice of auction and sale (the "Sale Notice"), (iii) the form of notice of cure amounts (the "Cure Amount Notice") in connection with certain related executory contracts and/or unexpired leases, and (iv) the form of asset purchase agreement (the "Purchase Agreement"), all of which will be filed in a supplement at least three (3) business days before the hearing on the bidding procedures.

6. The Debtors believe that the proposed Bid Procedures, summarized below, provide a fair, open, and appropriate process for soliciting and selecting bids (each, a "Bid") from all

interested and qualified bidders that will culminate with the selection of the highest and best Bid(s) for the IP Assets.

- a. Form of Sale(s). The Debtors will consider offers for a sale, in one or a series of related transactions, of any material portion of the IP Assets and related executory contracts and unexpired leases. The Sale shall be pursuant to the terms and conditions of the Purchase Agreement (as may be amended pursuant to the Bid Procedures).
- b. Notice of Sale. The Debtors will provide notice of the proposed Bid Procedures and the date and time of the Sale Hearing to parties-in-interest pursuant to the Court's order limiting notice [ECF No. 67], every party that has previously expressed any interest in the potential purchase of the Debtors' IP Assets, and any other party that the Debtors believe might be interested in a possible purchase of the IP Assets.
- c. Bid Deadline. The deadline (the "Bid Deadline") for submission of a final and binding written proposal for the IP Assets is 5:00 p.m. (prevailing Pacific Time) on September 19, 2018.
- d. Purchase Price and Consideration of Bids. All Bids submitted by a bidder (each, a "Bidder") must state the total proposed purchase price (the "Purchase Price"), in U.S. dollars, including any cash to be paid and any liabilities to be assumed, identify the specific IP Assets to be purchased in the Bid, if appropriate, and not be subject to any further due diligence condition or financing contingencies.
- e. Deposit. All Bids must include a deposit of ten percent (10%) of the Purchase Price in cash, to be deposited in an escrow or trust account to be identified in the Bid Procedures.
- f. Content of Bids. In addition to the purchase price and consideration, the Bid Procedures require additional documents and information to be submitted with the Bid, including, without limitation, the submission of a copy of the Purchase Agreement, marked electronically to show any changes, and a clean, executed version of the Purchase Agreement (the "Modified Purchase Agreement").
- g. Closing Conditions to Bids. All conditions to closing required by a Bidder must be set forth in the Modified Purchase Agreement, provided, however, that no Bid may be subject to any financing, due diligence or other material conditions. To the extent a Bid relies on one or more third-party financing sources, the Bid must include a signed, binding and irrevocable commitment letter from such third-party financing source(s) or comparable commitment from any equity source. To the extent a Bid relies on financing sources of affiliates of the Bidder, the Bid must include sufficient evidence of financial capacity to consummate the Sale and satisfy all obligations and potential obligations pursuant to the Modified Purchase Agreement. Other than those conditions set forth in the Modified Purchase Agreement, each Bid shall be irrevocable until and unless the Debtors select a higher or otherwise better Qualified Bid (as defined below).
- h. Joint Bids. The Debtors will be authorized to approve joint Bids on a case by case basis.

- i. Evaluation of Bids. Each Bid will be evaluated by the Debtors and their advisors to determine if it fully satisfies the Bid Procedures' requirements after consultation with the Committee (each, a "Qualified Bid"). The Debtors will inform each Bidder as soon after such determination is made if such bidder has submitted a Qualified Bid (a "Qualified Bidder"). In evaluating the Bids, the Debtors will take into consideration, among other factors, the form and amount of the consideration, the presence of any closing conditions, the need and availability of financing, the extent of financial wherewithal to meet all commitments under the Bid, the required approvals (if any), and the transaction structure and execution risk.
- j. Stalking Horse. Based on the Bids received on or before September 5, 2018, the Debtors may designate one or more Qualified Bidders a "stalking horse" (the "Stalking Horse Bidder") setting a floor for subsequent Bids. In the event a Qualified Bidder is designated as a Stalking Horse Bidder, the Debtors may provide bid protections to the Stalking Horse Bidder in the form of an initial Bid Increment (defined below) in the amount of \$150,000, and, subject to the consent of Sterling (defined below), if the Stalking Horse Bidder is not the Winning Bidder (defined below), the Stalking Horse Bidder's reasonable, documented out-of-pocket expenses incurred in connection with submission of its Qualified Bid, subject to a \$75,000 cap.
- k. Notice of Qualified Bids. Following the Bid Deadline on September 19, 2018, the Debtors will file a notice with the Court (the "Notice of Qualified Bids"), which will identify the terms of the Qualified Bids (including any Stalking Horse Bid), along with a description of the Qualified Bidder(s), a copy of the Modified Purchase Agreement(s), and a list of the IP Agreements (defined below), if any, proposed to be assumed and assigned to the Qualified Bidder(s).
- l. Auction. The Debtors request that the Court schedule an auction and Sale Hearing on or about September 25, 2018, such that sale(s) of the IP Assets can occur by September 30, 2018 pursuant to the terms of the Interim DIP Order (defined below). The minimum interval for bidding at the auction (the "Bid Increment") shall be determined by the Debtors. There are additional provisions governing the auction in the Bid Procedures which shall be disclosed to Qualified Bidders, including selection of one or more winning Bids (the "Winning Bid" and such bidder, the "Winning Bidder") and one or more back-up Bids (the "Back-Up Bid"). The Debtors may choose one Qualified Bid as the Winning Bid and/or Back-Up Bid or several Qualified Bids, each for different IP Assets, as the Winning Bids and/or Back-Up Bids. If, at any time prior to or on September 30, 2018, the Winning Bidder cannot consummate the Winning Bid, the Debtors may choose to close with the Back-Up Bidder (as defined in the Bid Procedures) by accepting the Back-Up Bid for the relevant IP Asset(s).

III. BACKGROUND

A. Debtors' Business and the Chapter 11 Cases.

7. Established in 1861 by the Gump family as a frame and mirror shop, Gump's expanded its offerings in the late 19th century to sell moldings, gilded cornices, and European art

1 to those made wealthy by the California Gold Rush and by the early 20th Century, had become an
 2 iconic retailer of distinctive luxury home furnishings and décor known for its fine art, jewelry,
 3 antiques, and personalized service. See First Day Decl., ¶ 7.

4 8. Gump's is now comprised of two operating companies—Gump's Corp. and Gump's
 5 By Mail, Inc.—which are wholly owned by Gump's Holdings, LLC, a Nevada limited liability
 6 company. Gump's Corp. ("Retail") operates the flagship Gump's department store at 135 Post Street
 7 near Union Square in San Francisco, California, which also houses the Debtors' corporate offices
 8 (the "Store"). Gump's By Mail, Inc. ("Direct") operates the Debtors' distribution center (the
 9 "Distribution Center") in Olive Branch, Mississippi, which fulfills direct-to-consumer sales,
 10 including catalog and e-commerce sales, and delivers merchandise to the Retail store. In addition to
 11 the Store in San Francisco and the Distribution Center in Mississippi, Debtors hold certain furniture,
 12 fixtures, and equipment in a storage unit in Richmond, California (the "Richmond Storage Facility").
 13 Id. at ¶¶ 8-11.

14 9. On August 3, 2018 (the "Petition Date"), each of the Debtors commenced a voluntary
 15 case under Chapter 11 of the Bankruptcy Code, commencing the chapter 11 cases (the "Chapter 11
 16 Cases"). On August 10, 2018, the Bankruptcy Court entered orders jointly administering the
 17 Chapter 11 Cases. ECF No. 57.

18 10. On August 10, 2018, the Bankruptcy Court entered the *Order (A) Approving Agency*
 19 *Agreement, (B) Authorizing and Approving Store Closing Sale Free and Clear of All Liens,*
 20 *Claims, and Encumbrances, (C) Granting Liens, and (D) Granting Related Relief* [ECF No. 58]
 21 (the "Agency Order"), authorizing an agreement (the "Agency Agreement") for the conduct of an
 22 orderly liquidation sale of Debtors' merchandise and fixtures (the "Closing Sale") between the
 23 Debtors and a joint venture between Hilco Merchant Resources, LLC and Gordon Brothers Retail
 24 Partners, LLC (the "Agent"). The Closing Sale commenced on the same date.

25 11. On the same date, the Bankruptcy Court entered the *Interim Order (A) Authorizing*
 26 *the Debtors to Obtain Post-Petition Financing, (B) Granting Liens and Providing Administrative*
 27 *Expense Status, (C) Authorizing the Debtors' Use of Cash Collateral, (D) Granting Adequate*
 28 *Protection, (E) Modifying the Automatic Stay, and (F) Granting Related Relief* [ECF No. 60] (the

1 “Interim DIP Order”) approving, on an interim basis to August 24, 2018, the terms of postpetition
 2 financing from Sterling Business Credit, LLC (“Sterling”) and the use of cash collateral necessary
 3 to finance the Debtors’ liquidation process.

4 12. As a condition to the extension of credit and use of cash collateral, the Debtors are
 5 required to file a motion for authorization to sell Debtors’ intellectual property and approval of
 6 related sales processes and procedures no later than August 15, 2018, with the sale of the intellectual
 7 property to occur by September 30, 2018. See ECF No. 60 at ¶ 22. As provided in the Interim DIP
 8 Order, if the sale of the intellectual property occurs before the conclusion of the Closing Sale, the
 9 sale is subject to a temporary license in favor of the Agent, which will terminate on the earlier of
 10 December 31, 2018 or the date the Closing Sale is completed or otherwise terminated. See id.

11 **B. The IP Assets.**

12 13. Through the Agent, the Debtors are now in the process of liquidating their tangible
 13 assets through the Closing Sale. Upon completion of the Closing Sale, the Debtors will no longer
 14 have any continuing retail operations and will no longer require use of the IP Assets. Accordingly,
 15 Debtors have determined that it is in the best interests of the estates to conduct a separate sale (the
 16 “IP Sale”) of the IP Assets, which include the following:

- 17 (i) All trademarks, service marks, trade names, service names, brand names, all
 18 trade dress rights, logos, internet domain names and corporate names and
 19 general intangibles of a like nature, together with the goodwill associated with
 20 any of the foregoing, and all applications, registrations and renewals thereof,
 including, without limitation, any marks and names set forth on **Exhibit 1**
 hereto,³ which Debtors believe are owned by one or more of the Debtors;
- 21 (ii) IP addresses allocated to the Debtors;
- 22 (iii) Copyrights and copyright licenses;
- 23 (iv) Any claims or causes of action arising out of or related to any infringement,
 24 dilution, misappropriation or other violation of any of the foregoing;
- 25 (v) To the extent maintained by the Debtors and subject to compliance with the
 26 Debtors’ published privacy policy, membership lists, gift registries, customer

27 ³ The IP Assets exclude any intellectual property owned by Tobu Department Store Co., Ltd. or its successors
 28 pursuant to the Trademark Assignment dated October 10, 1991, to the extent still effective.

databases, including contact information and email addresses and other purchasing history and related information (the “Customer Data”); and

- (vi) Any property necessary for the transfer to and/or the operation by a buyer of any of the foregoing, subject to the Debtors’ or Agent’s rights, as applicable, to continued use, if necessary.

14. The Debtors are seeking to sell the IP Assets at an auction in whole to a single bidder or in part to multiple bidders, with each Winning Bidder for the relevant IP Assets.⁴ In addition, in connection with the Sale, depending on the Winning Bidder(s) and the IP Assets sold, it may be necessary to assume and assign certain related executory contracts (the “IP Agreements”) to the Winning Bidder(s). Accordingly, this Motion seeks authority, but not direction, to assume and assign the IP Agreements in connection with any sale of the IP Assets.

C. Liens on the IP Assets.

15. As described in detail in the First Day Declaration, the Debtors are parties to three secured loan agreements in which Retail and Direct are borrowers and Holdings is a guarantor. The first lien is held by Sterling pursuant to the Loan and Security Agreement (as amended and together with the ancillary documents, the “Prepetition Loan Agreement”), for a revolving credit facility of up to \$15,000,000, dated December 29, 2015. See First Day Decl., ¶ 13; Ex. 1 (Loan and Security Agreement dated December 29, 2015). As of the close of business on August 3, 2018 (the “Petition Date”), the aggregate principal amount outstanding under the Prepetition Loan Agreement was \$5,752,648.87. Id. at ¶ 19.

16. As security for payment and performance of the Retail and Direct’s obligations under the Prepetition Loan Agreement (with Debtors’ collective obligations under the Prepetition Loan Agreement, the “Prepetition Loan Obligations”), Sterling has a security interest and lien on

⁴ In connection with this Motion, Debtors expect to file an application to retain and employ Lincoln Partners Advisors LLC (“Lincoln”) as the Debtors’ agent to assist in the marketing and sale of the IP Assets. Lincoln will work with the Debtors’ management and advisors to collect and secure all of the available information and other data concerning the IP Assets, prepare marketing materials designed to advertise the availability of the IP Assets for sale or assignment, and develop and execute a sales and marketing program designed to elicit proposals to acquire the IP Assets from qualified bidders with a view toward consummating a sale or sales of the IP Assets on or before September 30, 2018. Lincoln, with the assistance of the Debtors, will be responsible for responding to requests for due diligence from potential Bidders after execution of a confidentiality agreement and any other documents reasonably required.

1 substantially all of the current and future assets of Retail and Direct (collectively, the “Borrower
 2 Collateral”). Id. at ¶¶ 15, 17; Ex. 1. Among other things, the Borrower Collateral includes general
 3 intangibles, trademarks, trade names, business names, service marks, logos, and certain related
 4 intellectual property, copyrights, copyright licenses, domain names, and proceeds from any of the
 5 foregoing, subject to certain exceptions and permitted liens. Id.

6 17. Retail and Direct also granted a security interest in trademarks, trade names,
 7 business names, service marks, logos, and certain related intellectual property to Seaker & Sons,
 8 a California limited partnership (the “Post Street Landlord”) to secure their obligations under the
 9 Lease Agreement dated February 10, 1994 (as amended, the “Post Street Lease”) pursuant to that
 10 certain Trademark Security Agreement dated as of October 14, 2009. The Post Street Landlord,
 11 Sterling, and Debtors are parties to that certain Subordination and Intercreditor Agreement dated
 12 as of December 29, 2015 (the “Trademark Subordination Agreement”), pursuant to which the Post
 13 Street Landlord agreed to subordinate its lien to the liens of Sterling. See First Day Decl., ¶¶ 9-
 14 10, 30-31; Ex. 21 (Trademark Security Agreement) and Ex. 22 (Trademark Subordination
 15 Agreement).

16 18. Retail and Direct, as borrowers, Holdings, as guarantor, and Corporate Partners II
 17 Limited (“Corporate Partners”) are parties to a Secured Promissory Note dated May 24, 2012, as
 18 amended September 12, 2012, January 10, 2014, November 25, 2014, May 1, 2015, and July 1,
 19 2016 by the Fifth Amendment to Secured Promissory Note, in the principal amount of \$5,200,000
 20 (the “Junior Note”). The Junior Note grants a security interest in all or substantially all of the
 21 assets of Retail and Direct, inclusive of general intangibles and intellectual property, while the
 22 Secured Guaranty of Holdings grants a security interest in all or substantially all of the assets of
 23 Holdings. The Junior Note is subordinate to the Prepetition Loan Obligations to Sterling pursuant
 24 to the Intercreditor and Subordination Agreement dated as of December 29, 2015 (the “Corporate
 25 Partners Subordination”) and is subordinate to the lien granted to the Post Street Landlord in the
 26 Trademark Security Agreement. The Junior Note bears interest at 14% and matures July 31, 2021.
 27 As of the Petition Date, the balance due on the Junior Note was approximately \$9,634,000. See
 28 First Day Decl., ¶¶ 20-23, 25-28; Ex. 9 (Secured Promissory Note dated May 24, 2012), Ex. 16

(Fifth Amendment to Secured Promissory Note dated July 1, 2016), and Ex. 19 (Intercreditor and Subordination Agreement dated December 29, 2015).

19. Retail and Direct, as borrowers, obtained an additional loan from Methuselah Capital Partners, L.P. (“Methuselah”), an affiliate of director John Chachas,⁵ in the principal amount of \$250,000 pursuant to that certain Secured Promissory Note dated July 21, 2017 (the “Methuselah Note”), having a maturity date of July 31, 2021. The Methuselah Note grants a security interest on substantially all assets of the borrowers and is guaranteed by Holdings. Methuselah and Sterling are parties to a Subordination Agreement dated as of July 13, 2017, with terms substantially similar to the Corporate Partners Subordination. Further, like the lien of Corporate Partners, Methuselah’s lien is subordinate to the lien granted to the Post Street Landlord in the Trademark Security Agreement. The Methuselah Note bears interest at 14% per annum, and the principal and interest due, as of August 3, 2018, was approximately \$289,000.00. See First Day Decl., ¶¶ 24, 29; Ex. 17 (Secured Promissory Note dated July 21, 2017) and Ex. 20 (Subordination Agreement dated July 13, 2017).

D. Prior Marketing.

20. For the past few years, Debtors have evaluated their strategic alternatives, including a sale of Gump’s as a going-concern or a sale of assets, including the IP Assets. However, as Debtors’ financial condition deteriorated rapidly in early 2018 and funding from Corporate Partners, Holdings’ controlling member, became uncertain due to fund limitations, Debtors retained Lincoln International, LLC (“Lincoln”) to pursue strategic alternatives, including, without limitation, a sale of the going-concern, a refinance of their obligations to Sterling under the Prepetition Loan Agreement, a capital raise, or a sale of a discrete assets or operations. Lincoln engaged in an aggressive marketing campaign, approaching over 200 prospective investors, and approached over 20 prospective lenders to potentially provide bridge financing or refinance the Prepetition Loan Obligations in full. See First Day Decl., ¶ 51.

⁵ Mr. Chachas resigned as a director of Holdings on August 3, 2018, but remains a member.

21. More than 40 prospective investors and 10 prospective lenders executed NDAs. However, prospective lenders were hesitant to lend without additional equity investment to provide needed liquidity and working capital in light of the Debtors' negative cashflow and overburdened capital structure. Several potential equity investors declined to continue diligence, expressing their belief that the value of the Debtors' assets did not substantially exceed its debt. Id. at ¶ 52.

22. After Sterling delivered a Notification of Certain Events of Default and Reservation of Rights on or about January 24, 2018, Debtors and Sterling entered into a Limited Forbearance Agreement and Reservation of Rights with the Debtors (the "Forbearance Agreement") for the period of March 27, 2018 through April 27, 2018 (the "Forbearance Period"). Among other things, the Forbearance Agreement required Debtors to deliver a letter of intent to Sterling on or before April 20, 2018 for the sale of certain assets, including customer lists, inventory, and trademarks relating to "Style by Gump's" and "Gump's Style" for \$9,000,000 or the amount necessary to pay in full Debtors' obligations to Sterling.⁶ Id. at ¶¶ 45-47.

23. Debtors were ultimately unable to deliver the required letter of intent. After expiration of the Forbearance Period and Sterling's delivery of another Notification of Certain Events of Default and Reservation of Rights on or about May 5, 2018,⁷ the Debtors' timeline for the exercise of a strategic alternative was radically reduced, and Lincoln began pursuing proposals for a stalking horse bid for the going-concern from potential investors and sought offers for the Debtors' tangible assets based on an orderly liquidation value, which ultimately resulted in the Agency Agreement for the sale of the Debtors' merchandise and furniture, fixtures, and equipment (the "Store Assets"). See First Day Decl., ¶ 48, Ex. 29.

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⁶ During the forbearance period under the Forbearance Agreement, Sterling continued to provide weekly advances, as requested by the Debtors. See First Day Decl., ¶ 47.

⁷ Again, Sterling continued to provide weekly advances as requested by the Debtors, with the last advance occurring on July 27, 2018. See First Day Decl., ¶ 49.

IV.
BASIS FOR RELIEF REQUESTED

A. The Sale of the IP Assets is Authorized Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code.

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). Section 363(b) permits a debtor to use, sell, or lease, estate property “other than in the ordinary course of business” after notice and a hearing. 11 U.S.C. § 363(b)(1). Courts generally require a debtor to demonstrate that a valid business purpose exists for the use of estate property in a manner that is not in the ordinary course of business. See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070-1071 (2d Cir. 1983) (“The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application.”); Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991) (“[D]ebtor in possession can sell property of the estate outside the ordinary course of business if . . . he has an ‘articulated business justification.’”); Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986) (authorizing sale of debtor’s assets pursuant to section 363 “when a sound business purpose dictates such action”) (citation omitted); Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996).

Once the debtor has articulated a valid business justification, a presumption arises that the debtor’s decision was made on an informed basis, in good faith, and in the honest belief the action was in the best interest of the company. See In re Integrated Res., Inc., 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992). Furthermore, once “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007); In re Chi-Feng Huang, 23 B.R. 798, 801 (B.A.P. 9th Cir. 1982); Pacific Shores Development, LLC v. At Home Corp. (In re At Home Corp.), 292 B.R. 195, 199 (N.D. Cal. 2003); In re Johns-Manville Corp., 60 B.R. 612,

616 (Bankr. S.D.N.Y. 1986). The business judgment rule shields a debtor's management from judicial second-guessing. See Integrated Res., 147 B.R. at 656; Johns-Manville, 60 B.R. at 615–16 (noting that “the Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions”). Thus, if a debtor's actions satisfy the business judgment rule, the actions in question should be approved under section 363(b)(1).

The Debtors are in the midst of liquidating their assets and closing their businesses. Thus, the Debtors no longer need their IP Assets. Moreover, as the Debtors' operations wind down, their relationship with their customers becomes less valuable. A sale of the IP Assets on an accelerated basis will monetize the estates' assets for the benefit of creditors while they continue to have significant value. Moreover, the IP Sale is a requirement of Sterling for providing postpetition financing that will allow the Debtors to maximize their recovery on the Store Assets for the benefit of the Debtors' estate and creditors. Accordingly, the Debtors have determined that the sale of the Debtors' IP Assets in accordance with the procedures described herein will maximize recoveries for their creditors and is, therefore, in the best interests of the Debtors, their estates, and creditors.

B. Sale of the IP Assets Free and Clear of Liens, Claims, and Encumbrances is Authorized Under Section 363 of the Bankruptcy Code.

A debtor in possession may sell property under section 363(b) and section 363(f) of the Bankruptcy Code “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied: (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).

Debtors request approval to sell the IP Assets on a final “as is” basis, free and clear of any liens, claims, and encumbrances in accordance with section 363(f) of the Bankruptcy Code. Debtors anticipate that they will be able to satisfy one or more of the conditions set forth in section 363(f) in connection with any lien or encumbrance a party may assert against the IP Assets.

Furthermore, the Debtors propose that any such liens, claims, and encumbrances be transferred and attached to the proceeds of the IP Sale, as applicable, with the same force, effect, and priority as such liens currently have on the IP Assets, subject to the same rights, claims, defenses, and objections, if any, of all parties with respect thereto.

Further, the assumption and assignment of the IP Agreements satisfy the requirements of Section 363(f). All relevant parties, including all known parties to the IP Agreements, will have sufficient notice and the ability to object to the transaction. Accordingly, if a party with an interest in the subject IP Asset(s) does not timely object to a transaction in accordance with the proposed procedures, the Debtors submit that such party should be deemed to have consented to the assumption and assignment within the meaning of section 363(f)(2) of the Bankruptcy Code. See Hargrave v. Township of Pemberton (In re Tabone, Inc.), 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)).

C. Assumption and Assignment of any IP Agreements.

In connection with the sale of the IP Assets, the Debtors anticipate that the Winning Bidder(s) shall have the right to require the Debtors to reject, or, alternatively, assume and assign to the Winning Bidder(s) the IP Agreements.

Section 365(a) of the Bankruptcy Code provides that a debtor in possession, “subject to the Court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). By this Motion, the Debtors seek the authority, but not the direction, to assume and assign, or, alternatively, reject any of the IP Agreements as part of a sale transaction for any of the IP Assets.

Similar to Section 363(b)(1), the standard to be applied by a court in determining whether an executory contract or unexpired lease should be assumed or rejected is the “business judgment” test, which is premised on the debtor’s business judgment that assumption would be beneficial to the estate. See In re Pomona Valley Med. Group, 476 F.3d at 670; In re ANC Rental Corp., Inc., 277 B.R. 226, 238 (Bankr. D. Del. 2002) (“In order to assume . . . an executory contract . . . the debtor must establish that the decision is one made in its sound business judgment.”) (citing In re

1 Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D.Del.1999)). In applying the “business
 2 judgment” standard, courts show substantial deference to the debtor’s business judgment—
 3 assumption or rejection should only be disapproved when the action is so manifestly unreasonable
 4 that it could not be based on sound business judgment, but only on bad faith, whim, or caprice. See
 5 Summit Land Co. v. Allen (In re Summit Land Co.), 13 B.R. 310, 315 (Bankr. D. Utah 1981)
 6 (absent extraordinary circumstances, court approval of debtor’s decision to assume or reject
 7 executory contract “should be granted as a matter of course”).

8 Section 365(b) of the Bankruptcy Code provides that “[i]f there has been a default⁸ in an
 9 unexpired lease of the debtor, the [debtor-in-possession] may not assume such contract or lease
 10 unless, at the time of assumption of such contract or lease, the [debtor-in-possession]” unless it:

- 11 (A) cures, or provides adequate assurance that the [debtor-in-possession]
 12 will promptly cure, such default . . .;
- 13 (B) compensates, or provides adequate assurance that the [debtor-in-
 14 possession] will promptly compensate, a party other than the debtor to
 15 such contract or lease, for any actual pecuniary loss to such party
 16 resulting from such default; and
- (C) provides adequate assurance of future performance under such contract
 or lease.

17 11 U.S.C. § 365(b). Section 365(f)(2) of the Bankruptcy Code provides that a debtor-in-possession
 18 may assign an unexpired executory contract or lease if

- 19 (A) the trustee assumes such contract or lease in accordance with the
 20 provisions of this section; and
- 21 (B) adequate assurance of future performance by the assignee of such
 22 contract or lease is provided, whether or not there has been a default in
 such contract or lease.

23 11 U.S.C. § 365(f)(2).

24 Pursuant to Section 365(b) and (f), Debtors request that the Court approve the form of the
 25

26
 27 ⁸ This section is inapplicable to a default that is a breach of a provision relating to the insolvency or financial
 28 condition of the debtor, the commencement of a case under the Bankruptcy Code, the appointment of a trustee
 or custodian, the satisfaction of any penalty rate or penalty provision relating to a default arising from the debtor’s
 failure to perform a nonmonetary obligation. 11 U.S.C. § 365(b)(2).

1 Cure Amount Notice at the hearing on Bid Procedures. No later than August 27, 2018, Debtors
 2 will file the Cure Amount Notice identifying each IP Agreement which may be implicated in the
 3 sale of the IP Assets and the amount the Debtors believe to be the cure amount based on the
 4 Debtors' books and records (each, a "Proposed Cure Amount"), and serve the Cure Amount Notice
 5 on each of the counterparties to the IP Agreements.

6 The Debtors request that unless a party to an IP Agreement files an objection to the Motion
 7 or to the Cure Amount Notice (a "Cure Objection"), on or before September 10, 2018 at 5:00 p.m.
 8 (prevailing Pacific Time) (the "Cure Objection Deadline"), such party should be bound by the
 9 Proposed Cure Amount set forth in the Cure Amount Notice and barred from asserting any
 10 additional cure or other amounts with respect to its IP Agreement relating to the period prior to
 11 assignment.

12 Following the Bid Deadline, the Debtors propose to file a notice with the Court (the "Notice
 13 of Qualified Bids"), identifying the terms of the Qualified Bids (including any Stalking Horse Bid),
 14 along with a description of the Qualified Bidder(s), a copy of the Modified Purchase
 15 Agreement(s), and a list of the IP Agreements, if any, proposed to be assumed and assigned to the
 16 Qualified Bidder(s). Debtors request that the deadline to file objections to adequate assurance
 17 proposed by the Qualified Bidder(s), if any, be at least one (1) business day before the Sale
 18 Hearing.

19 The Debtors submit that the foregoing procedures give the parties to the relevant IP
 20 Agreements notice of the assignee and an opportunity to object to adequate assurance, and satisfy
 21 Bankruptcy rule 6006(f).⁹

22
 23 ⁹ Bankruptcy Rule 6006(f) provides:

24 A motion to reject or, if permitted under subdivision (e), a motion to assume or assign multiple executory
 contracts or unexpired leases that are not between the same parties shall:

- 25 (1) state in a conspicuous place that parties receiving the omnibus motion should locate their names
 and their contracts or leases listed in the motion;
- 26 (2) list parties alphabetically and identify the corresponding contract or lease;
- 27 (3) specify the terms, including the curing of defaults, for each requested assumption or assignment;
- 28 (4) specify the terms, including the identity of each assignee and the adequate assurance of future
 performance by each assignee, for each requested assignment;

D. Appointment of a Consumer Privacy Ombudsman is Not Required by Sections 332 and 363(b)(1) of the Bankruptcy Code.

Section 363(b)(1) of the Bankruptcy Code provides, in connection with a sale outside of the ordinary course of business, that “if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case,” then the trustee or debtor-in-possession may not sell personally identifiable information unless--

- (A) such sale or such lease is consistent with such policy; or
- (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—
 - (i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
 - (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

11 U.S.C. § 363(b)(1). Section 332 provides

If a hearing is required under section 363(b)(1)(B), the court shall order the United States trustee to appoint, not later than 7 days before the commencement of the hearing, 1 disinterested person (other than the United States trustee) to serve as the consumer privacy ombudsman in the case and shall require that notice of such hearing be timely given to such ombudsman.

11 U.S.C. § 332(a) (emphasis added).

Accordingly, under the plain language of Sections 363(b)(1) and 332(a), the ombudsman provisions do not affect all sales of personally identifiable information, but apply only if three elements are met. First, the debtor must have disclosed a privacy policy to the individual in connection with offering the good or service. Second, the privacy policy must prohibit the transfer of the personally identifiable information to non-affiliate parties. Third, the privacy policy must

(5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and

(6) be limited to no more than 100 executory contracts or unexpired leases.

1 be in effect on the date of the commencement of the bankruptcy case. See Warren E.
 2 Agin, Handling Customer Data in Bankruptcy Mergers and Acquisitions Coping with the
 3 Consumer Privacy Ombudsman Provisions of Bapcpa, Am. Bankr. Inst. J., July/August 2005, at
 4 1, 59 (2005).

5 The second and third elements have not been met in this case. While the Debtors have a
 6 policy regarding the collection and use of personally identifiable information, the policy in effect
 7 on the Petition Date does not generally prohibit the transfer of such information to third parties.
 8 Rather, the Debtors' policy notifies customers that their information will not be sold or leased to
 9 third parties only if the customer requests that the information not be sold or leased (the "Opt-Out
 10 Option"). See Exhibit 2 ("We do not disclose customer information to third parties for their own
 11 direct marketing purposes if our customers have exercised their option to prevent that information
 12 from being disclosed for such purposes."); **Exhibit 3** (instructions for preventing name and mailing
 13 address from being shared with other catalogers or direct marketers).

14 Moreover, the Debtors' sale of the IP Assets does not conflict with the Debtors' policies
 15 governing the transfer of personally identifying information about individuals in effect on the
 16 Petition Date. The Debtors maintain a database of customers who have exercised the Opt-Out
 17 Option, and such customers' information is not included within the IP Assets. Accordingly, the
 18 Debtors submit that the appointment of an ombudsman is not necessary in connection with the sale
 19 of the IP Assets.

20 **E. Relief Under Bankruptcy Rule 6004(d) and (h).**

21 Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of
 22 property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders
 23 otherwise." Similarly, Bankruptcy Rule 6006(d) provides that an Order authorizing . . . [the
 24 assignment of] an executory contract . . . under § 365(f) is stayed until the expiration of 14 days
 25 after entry of the order, unless the court orders otherwise."

26 Under the facts and circumstances of these cases, including Sterling's requirement that the
 27 IP Sale occur by September 30, 2018, the Debtors request that any order approving the Sale and
 28

1 any assumption and assignment of any IP Agreements waive the 14-day stays under Bankruptcy
2 Rules 6004(h) and 6006(d) and be effective immediately upon entry.

3 **V.**
4 **CONCLUSION**

5 WHEREFORE the Debtors respectfully request entry of (i) the Bid Procedures Order,
6 (ii) the Sale Order, and (iii) such other and further relief as the Court deems just and proper.

7 DATED: August 15, 2018.

8 GARMAN TURNER GORDON LLP

9 By: /s/ Gabrielle A. Hamm

10 WILLIAM M. NOALL

11 GABRIELLE A. HAMM

12 MARK M. WEISENMILLER

13 650 White Drive, Suite 100

14 Las Vegas, Nevada 89119

15 *Attorneys for Debtors*

16 4812-0354-6224, v. 3

EXHIBIT 1**TRADEMARKS**

MARK	USPTO SERIAL NO./ REGISTRATION NO.	FILING/ REGISTRATION DATE	APPLICANT/ REGISTRANT
135 POST & DESIGN 	86/824499	November 18, 2015	Gump's Corp.
DESIGN 	86/733396	August 21, 2015	Gump's Corp.
THE RARE, THE UNIQUE, THE IMAGINATIVE	86/708075	July 29, 2015	Gump's Corp.
STYLE BY GUMP'S 	4742345	May 26, 2015	Gump's Corporation
GUMPS STYLE & DESIGN 	4168786	July 3, 2011	Gump's Corporation
 BAROQUE PEARL	3808534	June 22, 2010	Gump's Corp.
 BAROQUE PEARL	4070948	December 13, 2011	Gump's Corp.
 GUMP'S SAN FRANCISCO	3315468	October 23, 2007	Gump's Corp.

EXHIBIT 1

MARK	USPTO SERIAL NO./ REGISTRATION NO.	FILING/ REGISTRATION DATE	APPLICANT/ REGISTRANT
GUMP'S	2540352	February 19, 2002	Gump's Corp.
GUMP'S – Word	TMA552765 (Canada)	October 22, 2001	Gump's Corp.
<u>THE RARE, THE UNIQUE, THE</u> IMAGINATIVE	1913986	August 22, 1995	Gump's Corp.
GUMP'S – Word	1771023	May 18, 1993	Gump's Corp.
GUMP'S GALLERY	1719091	September 22, 1992	Gump's Corp.
GUMP'S GUMP'S	0526051	June 6, 1950	Gump's Inc.
GUMP'S GUMP'S	0506994	February 22, 1949	Gump's Corp.
GUMP'S GUMP'S	0516417	October 18, 1949	Gump's Corp.

EXHIBIT 1

MARK	USPTO SERIAL NO./ REGISTRATION NO.	FILING/ REGISTRATION DATE	APPLICANT/ REGISTRANT
GUMP'S GUMP'S	0516418	October 18, 1949	Gump's Corp.
Gump's GUMP'S	0512182	July 12, 1949	Gump's Corp.
GUMP'S	0515064	September 13, 1949	Gump's Corp.
GUMP'S GUMP'S	0506525	February 8, 1949	Gump's Corp

EXHIBIT 1**COPYRIGHTS**

TITLE	COPYRIGHT NO.	DATE	OWNER
GUMP's since 1861, a San Francisco legend /Janet Lynn Roseman, Nan Birmingham, Diane Dorrans Saeks; photos By John Clayton	Tx0003544126	1991	Gump's
Gump's since 1861, a San Francisco legend. TX3-544-126	V3564D117	2007	Gump's by Mail, Inc.
GUMP's since 1861, a San Francisco legen[t]. TX3-544-126	V3556D001	2007	Gump's by Mail, Inc.
GUMP'S since 1861, a San Francisco legend. TX3-544-126 (1993)	V3521D882	2005	Gump's by Mail, Inc.
Gump's since 1861, a San Francisco legend & 133 other titles	V3497D086	2003	Gump's Corporation
Gump's since 1861, a San Francisco legend/TX3-544-126 (1993)	V3540D805	2003	Gump's Corporation
GUMP'S since 1861, a San Francisco legend TX3544126	V3618D486	2012	Gump's Corporation

EXHIBIT 1**DOMAIN NAMES**

GoDaddy
 BabyGumps.net
 Gumpsbymail.net
 Gumpssf.com

Network Solutions, LLC
 babygumps.com
 giftregistration.com
 gumps.com
 gumps.net
 gumpsbridal.com
 gumpsbridal.net
 gumpsbridalregistry.com
 gumpsbridalregistry.net
 gumpsbymail.com
 gumpsgifts.com
 gumpsgifts.net
 santabythebay.biz
 santabythebay.com
 santabythebay.net

REGISTER	DOMAIN
godaddy	gumps.org.en
godaddy	gumps.cc
Marcaria	gumps.hk
godaddy	gumps.tw
godaddy	gumps.com.tw
godaddy	mimps.asia
godaddy	gumps.jp
Marcaria	gumps.fr
Marcaria	gumps.it

EXHIBIT 2

EXHIBIT 2

KEYWORD OR ITEM#

WHAT'S NEW DÉCOR FURNISHINGS ENTERTAINING BED & BATH APPAREL JEWELRY GIFTS REGISTRY SALE

CUSTOMER
SERVICE

SHIPPING INFORMATION

ORDER AND PAYMENT

RETURN AND EXCHANGE

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Gump's Holdings, LLC ("Gump's" or "we"), owner and operator of gumps.com ("Web Site"), values its customers and respects their privacy. We collect customer information in an effort to improve your shopping experience and to communicate with you about our products, services, sweepstakes, contests, and other promotions. As described in this Privacy Policy, we do share certain customer information, under certain circumstances, with third parties that provide services on our behalf or with whom we have partnered to offer a particular product or service. However, we do not sell or rent customer information to third parties if you ask us not to do so. Please carefully review this Privacy Policy to learn about how we collect, use, and protect any information you provide us and how you can manage your options not to have customer information disclosed. Because the Internet is global, information about you that we collect or that you submit may be transferred to, processed in, and held in countries (including the United States) other than the one in which you reside. By using the Web Site, you explicitly consent to such use of your information.

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When you visit the Web Site, our Web server automatically recognizes only your domain name, not your e-mail address. We collect only the domain name, but not the e-mail address of visitors to our Web Site; we collect aggregate information on what pages consumers access or visit, how many visits we get, and information such as where visitors arrived from on the Internet or if they directly typed our Web Site address into their Web browser. We only use this information for internal review in aggregate and not in personally-identifiable form.

Our Web Site uses "cookies." A cookie is a small amount of data that is sent to your Web browser from a Web server and stored on your computer's hard drive. Generally, we use cookies to remind us of who you are, tailor our products and services to suit your personal interests, estimate our audience size, process your order, track your status in our promotions, contests and sweepstakes, and/or analyze your visiting patterns. The use of cookies is an industry standard; you will find them at most major Web sites. Cookies make Web-surfing easier for you by saving your preferences while you are at our Web Site. We never save passwords or credit card or other payment information in cookies. You can generally set your Web browser not to accept cookies or to notify you when you are sent a cookie, giving you the chance to decide whether or not to accept it. If you set your Web browser not to accept cookies, it may affect your ability to utilize all features on the Web Site.

Your e-mail address-do we know it?

Your e-mail address and other personally-identifying data are known to us only when you voluntarily submit them to us. We collect your e-mail address only if you ask us to communicate with you by e-mail to, for example, confirm your order, or if you volunteer it for any reason, such as to sign up for a newsletter, to enter a sweepstakes, contest, or other promotion, or to register with the Web Site.

Your e-mail address-what do we do with it?

If you have at any time given us your e-mail address, we will use your e-mail address to communicate with you about the status of your order and to send you our own e-mails regarding sales, exclusive offers, and other promotions that we think will interest you.

If you would prefer not to receive any e-mails, including e-mails regarding the status of your order, please [contact us](#). Please note that it will take 2-3 weeks to process the removal of your e-mail address.

Please note, however, that if you place an online order, you will automatically receive a single order confirmation e-mail. That confirmation e-mail will contain an option for you to opt-out of future e-mails. If you have opted-out of receiving e-mails from Gump's and subsequently make an online purchase, you will receive the order confirmation e-mail but no additional e-mails; you do not need to opt-out again.

Customer information-how we use it and how you can communicate with us about it

We do not disclose customer information to third parties for their own direct marketing purposes if our customers have exercised their option to prevent that information from being disclosed for such purposes. The following paragraphs explain what we do with customer information and how you can communicate with us if you would like us to treat your information differently.

We do not currently rent e-mail addresses to outside parties or allow any outside parties to use them for their own e-mailing purposes.

We use your shipping and payment address and the address you give to us when you "register" your profile with us to send you our print catalog and print catalogs of third-party merchants that we feel will interest you, all by postal mail. Also, if you have requested a catalog from us or have purchased from us at any time, we may send you print catalogs by postal mail.

If you would prefer that we do not include you in lists to receive either our print catalogs or third party merchant print catalogs that we feel will interest you, [click here](#). If you would like to continue to receive our print catalogs but do not wish to receive print catalogs from third party merchants, [click here](#).

Live Chat

Call 1-844-346-5961

Email Customer Service

If you have given us your telephone number when registering your profile or when ordering merchandise, we or a party acting on our behalf may call you to follow up with you about your order or to gauge your satisfaction with our products and services. We do not share your telephone number with any outside parties for any other purpose whatsoever.

We indefinitely maintain all of the information you give to us to help serve you better and to understand our customers and their purchasing patterns over time. Any payment information that is maintained by us is masked to keep it protected in the unlikely event of unauthorized breaches of security.

We may contract with companies or persons to provide certain services including credit card processing, shipping, data management, promotional services, measuring the effectiveness of our advertising and how visitors use the Web Site, etc. We call them our Service Providers. We provide our Service Providers with the information needed for them to perform these services. We also ask our Service Providers to confirm that their privacy practices are consistent with ours.

Currently, one of our Service Providers uses certain customer information to help us manage and optimize our Internet business and communications. This Service Provider helps us measure the effectiveness of our advertising and how visitors use the Web Site. To do this, we use Web beacons and cookies (explained above) provided by this Service Provider on this Web Site. The type of information we collect includes the item numbers and prices for merchandise that visitors purchase and the pages visited. By supplementing our records, this information helps us learn things such as what pages are most attractive to our visitors, which of our products most interest our customers, and what kinds of offers our customers like to see. Although this Service Provider logs the information coming from the Web Site on our behalf, we control how that data may and may not be used.

Like many other online merchants, we participate in cooperative database services which help us match offline and online purchasing behavior so that we can understand the differences between print catalog purchasers and Web Site visitors; this enables us to maximize the benefit of postal mail and/or e-mail we send to you if you have signed up with us to receive postal mail and/or e-mail. This purchase information may be used by other cooperative database participants to send you offers of interest by postal mail.

If you would prefer that we do not include you in lists of information we provide the cooperative database services in which we participate, [click here](#).

Other disclosure scenarios

We may share your information: (1) in response to subpoenas, court orders, or legal process, or to establish, protect, or exercise our legal rights or defend against legal claims; (2) if we believe it is necessary in order to investigate, prevent, or take action regarding illegal activities, fraud, or situations involving potential threats to the safety of any person or property; (3) to our parent company, subsidiaries, joint ventures, or other companies under common control with us (in which case we will require such entities to honor this Privacy Policy); and (5) if we are acquired by or merged with another entity.

Correcting your profile with us

You can always edit or correct any customer information you give Gump's by sending us an e-mail at customerservice@gumps.com.

Problems

If you ever have a problem concerning the Web Site or an order or transaction or our compliance with this Privacy Policy, you may contact us by e-mail at customerservice@gumps.com. Please provide your first and last name, order number, if any, and, if you have a question about our merchandise, item number(s), and we will get back to you promptly.

Security

We use sophisticated encryption and authentication tools to protect the security of customer information that you share with us. However, no data transmission over the Internet can be guaranteed to be 100% secure. As a result, while we strive to protect customer information, we cannot guarantee or warrant the security of any information you transmit to or from our Web Site, and you do so at your own risk. Once we receive your transmission, we will do our best to protect its security on our systems.

We urge you to keep your password in a safe place and not to divulge it to anyone. Also remember to sign off your account and close your browser window when you have finished your visit. This is to ensure that others cannot access your account, especially if you are sharing a computer with someone else or are using a computer in a public place such as a library or Internet cafe.

Links to third party Web sites

Our Web Site may contain links to Web sites operated and maintained by third parties, over which we have no control. Privacy policies on such linked Web sites may be different from our Privacy Policy. You access such linked Web sites at your own risk. You should always read the privacy policy of a linked Web site before disclosing any personal information on such site.

Errors

Although the information on this site has been checked for accuracy, occasionally errors and omissions occur and are subject to correction.

Policy Changes

If we decide to change our Privacy Policy, in whole or in part, we will inform you by posting a notice on our Web Site. Those changes will go into effect on the date posted in the notice. The new policy will apply to all current and past users of our Web Site and will replace any prior policies that are inconsistent. This policy was last updated on November 10, 2008.

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EXHIBIT 3

EXHIBIT 3

KEYWORD OR ITEM#

WHAT'S NEW DÉCOR FURNISHINGS ENTERTAINING BED & BATH APPAREL JEWELRY GIFTS REGISTRY SALE

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Do you offer the same items in your San Francisco store as you do online?

Many of the products that you see online are available in our San Francisco store. We also feature several products or items that are exclusive to Gumps.com and our catalog. Our San Francisco store carries a wide assortment of merchandise that is not available online or in the Gump's catalog. If you are looking for a particular artisan or brand, please feel free to contact our San Francisco store at 1-800-766-7628.

Where is your store located and what are the store hours?

Our store is located at 135 Post Street between Grant and Kearny, one and a half blocks east of Union Square. Our store is open 10am to 6pm Monday through Saturday. During the Holiday season, we offer extended store hours. Please contact the store at 1-800-766-7628 for more information.

I don't want my name and mailing address shared with other catalogers or direct marketers. How do I stop this from happening?

To stop mailings from companies other than Gump's, please call 1-844-346-5961 or email us at customerservice@gumps.com. Be sure to include your name and address along with your request. Although we will process your request immediately, it may take several months for the mailings to stop completely. Please note that we never rent out email addresses to third parties.

I no longer wish to receive Gump's catalogs. How do I remove my name from your mailing list?

To be removed from our mailing list, please call us at 1-844-346-5961 or send an email to customerservice@gumps.com. Provide your complete name and mailing address, and if you have a catalog, please include the customer number found in the pink box above your name. We will promptly process your request, although it may take several months for the mailings to stop completely. If you have an account on Gumps.com, you may manage your catalog preferences in the Profile Section within My Account.

I no longer wish to receive promotional emails. How do I opt out?

If you would like to unsubscribe from our promotional emails please [click here](#). You may also unsubscribe by clicking on the "unsubscribe" link in the bottom of any of our emails. If you have an account on Gumps.com, you may manage your email preferences in the Profile Section within My Account.

I receive more than one copy of your catalog. What should I do?

Please call us at 1-844-346-5961 or contact us via email at customerservice@gumps.com. Be sure to tell us the full name and address as printed on each of the catalogs you are receiving and identify the correct one. We will promptly process your request, although it may take several months for the mailings to stop completely.

I'd like to receive your catalog. How do I sign up?

If you'd like to receive a free catalog or send one to a friend, just [click here](#).

I've moved. How do I inform you of my new address so that I can continue receiving your catalog?

Please call us at 1-844-346-5961 or send us an email at customerservice@gumps.com and provide your previous and current address. If you have an account on Gumps.com you may manage your catalog preferences in the Profile Section within My Account.

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