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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

11 In re
12 R & S ANTIQUES, INC.,
13 Debtor.

Case No. 2:17-bk-23986-WB

Chapter 11

**MOTION FOR ORDER AUTHORIZING
DEBTOR TO (1) CONDUCT STORE
CLOSING SALE; (2) SELL ASSETS FREE
AND CLEAR OF ALL LIENS,
ENCUMBRANCES, AND INTERESTS
PURSUANT TO BANKRUPTCY CODE
SECTIONS 363(b) AND (f); (3)
APPROVING STORE CLOSING SALE
GUIDELINES AND (4) WAIVING THE
FOURTEEN DAY STAY PROVIDED BY
BANKRUPTCY RULE 6004;
MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION OF
KOROSH SOLTANI IN SUPPORT
THEREOF**

[Application for Order Shortening Time Filed
Concurrently Herewith]

Date: [To be set]
Time: [To be set]
Place: U.S. Bankruptcy Court
Courtroom 1375
255 East Temple Street
Los Angeles, CA 90012

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TABLE OF AUTHORITIES

Cases

California State Bd. of Equalization v. Goggin, 191 F. 2d 726 (9th Cir. 1951) (28 U.S.C. § 959 does not apply to transactions that are in the nature of a liquidation), *cert. denied*, 342 U.S. 909 (1952) 9

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1 **TO THE HONORABLE JULIA W. BRAND, UNITED STATES BANKRUPTCY JUDGE;**
2 **THE OFFICE OF THE UNITED STATES TRUSTEE; THE DEBTOR'S LANDLORD,**
3 **SLOANE TWO RODEO, LLC, BY AND THROUGH ITS ATTORNEYS OF RECORD; AND**
4 **OTHER INTERESTED PARTIES:**

5 R&S Antiques, Inc., a California corporation (the "Debtor"), debtor and debtor in possession in
6 the above-captioned case, hereby moves this Court for an order authorizing it to immediately begin
7 selling its remaining inventory (the "Merchandise") (i) first at its store location at 262 North Rodeo
8 Drive, Beverly Hills, California 90210 (the "Store") until the effective date of the Debtor's rejection of
9 its lease for the Store location and (ii) thereafter at an alternate location until the earlier of March 31,
10 2018 or the date upon which the last of the Merchandise has been sold, through a store closing sale
11 (the "Store Closing Sale"), in accordance with the terms and conditions set forth in the *Guidelines For*
12 *Store Closing Sale* (the "Guidelines") that are attached hereto as Exhibit 1. Additionally, to the extent
13 that consignment vendors are willing to provide the Debtor with goods on consignment during the
14 Store Closing Sale, the Debtor seeks authority to obtain such consigned goods and sell them alongside
15 the Merchandise. Lastly, the Debtor requests that any order approving this motion contain a waiver of
16 the fourteen day stay provided by Bankruptcy Rule 6004.

17 This Motion is brought in accordance with 11 U.S.C. § 363 and Federal Rule of Bankruptcy
18 Procedure 6004(h), and is made on the ground that the Debtor has determined that without a
19 substantial reduction in its monthly rental obligation to its landlord, it cannot operate on a profitable
20 basis and therefore has no choice but to close the Store and sell its remaining Merchandise through a
21 store closing sale.

22 This Motion is based on the Memorandum of Points and Authorities, the declaration, and the
23 exhibit(s) attached hereto; all judicially noticeable facts; all other admissible evidence properly before
24 the Court; and any arguments and/or testimony to be presented at the hearing on the motion.

25 **WHEREFORE**, the Debtor respectfully requests that the Court enter an order:

26 1. Authorizing (but not directing) the Debtor to immediately begin conducting a Store
27 Closing Sale in accordance with the Guidelines;

1 2. Authorizing the Debtor to conduct the Store Closing Sale at the Store location until the
2 effective date of the Debtor's rejection of its lease for the Store location;

3 3. Authorizing the Debtor to thereafter conduct the Store Closing Sale at an alternate
4 location until the earlier of March 31, 2018 or the date upon which the last of the Merchandise has
5 been sold;

6 4. Authorizing the Debtor to obtain goods on consignment and sell such goods alongside
7 the Merchandise during the Store Closing Sale;

8 5. Ordering that the Merchandise sold through the Store Closing Sale shall be free and
9 clear of all liens, encumbrances, and other interests, with such liens, encumbrances, and other interests
10 to attach to the net sale proceeds with such sales proceeds to be paid as described in this Motion;

11 6. Ordering that the Store Closing Sale shall be exempt from certain federal, state, and
12 local laws, statutes, rules and ordinances related to store closing and liquidation sales so long as the
13 Store Closing Sale complies with the terms and conditions of the Guidelines – i.e. authorizing the
14 Debtor to conduct the Store Closing Sale without the necessity of, and the delay associated with, (i)
15 obtaining various state licenses or permits, (ii) observing state and local waiting periods or time limits,
16 and/or (iii) satisfying any additional requirements with respect to advertising and/or conducting the
17 Store Closing Sale that generally apply to store closings or similar type sales (the Debtor shall remain
18 bound by and comply with remaining statutes and regulations, such as health and safety laws);

19 7. Ordering that no person or entity, including, but not limited to, any lessor or federal,
20 state or local agency, or department of any governmental authority, shall take any action against the
21 Debtor or lessor of the affected premises to prevent, interfere with, or otherwise hinder consummation
22 of the Store Closing Sale, or the advertising and promotion of such Store Closing Sales, in the manner
23 set forth in the Guidelines;

24 8. Waiving the fourteen (14) day stay proscribed by Federal Rule of Bankruptcy
25 Procedure 6004(h); and

26 9. Granting such other and further relief as is just and proper.
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1 DATED: January 8, 2018

Respectfully submitted,

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SulmeyerKupetz

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A Professional Corporation

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By: /s/ Victor A. Sahn

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Victor A. Sahn

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Attorneys for R & S Antiques, Inc., Debtor and
Debtor in Possession

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**¹

2 **I.**

3 **BACKGROUND**

4 The Debtor commenced the above-captioned reorganization case on November 13, 2017 (the
5 "Petition Date"). The Debtor operates a high-end giftware store (the "Business") on Rodeo Drive in
6 Beverly Hills, California. The Business has not been profitable recently or in a number of years. This
7 is demonstrated by the claim held by the Debtor's principal, Mr. Rahim Soltani. Mr. Soltani holds a
8 claim against the Debtor in excess of \$9 million. This represents advances or loans he has made to the
9 Debtor prepetition in order to permit the Debtor to meet its operating expenses. Further, the rate of his
10 advances has accelerated in the past few years, as he has advanced as much as \$6 Million since the
11 beginning of 2014. Other issues related to the commencement of this bankruptcy case including
12 market declines being suffered by "brick and mortar" retail businesses apply to the Debtor's business
13 problems. This industry-wide decline is particularly hard hitting to high end retail businesses like the
14 one operated by the Debtor.

15 One of the most significant high-cost items of the Debtor's operations are its monthly rent
16 obligations required under the Debtor's commercial lease (the "Lease") for its operating location at
17 262 N. Rodeo Drive, Beverly Hills, California. The Debtor made regular, monthly payments, on time,
18 for approximately eight years under the Lease. However, the Debtor stopped paying its rent
19 obligation in July, 2017. Prior to that time, the Debtor attempted to negotiate new terms with respect
20 to the Lease including a potential early termination of the Lease. In July 2017, Sloane Two Rodeo,
21 LLC ("Sloane Two") the landlord under the Lease initiated a civil action against the Debtor to recover
22 damages following the Debtor's cessation of rent payments. Sloane Two elected to treat the Lease as
23 still in force and effect under California Civil Code Section 1951.4 and sued for the unpaid rent
24 including the amount due for the remaining term of the Lease. Initially, after filing the civil action,
25 Sloane Two sought an Ex Parte Writ of Attachment, however, based upon the failure to show an

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28 ¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the foregoing motion.

1 emergency, the Ex Parte Writ was denied. The Writ of Attachment request was set for hearing on
2 regular notice, however, when the regularly noticed hearing was continued on the Court's own
3 initiative, Sloane Two set a second Ex Parte when the Debtor did not oppose the Writ of Attachment
4 based upon its decision to file this Chapter 11 case. Before the second Ex Parte Writ of Attachment
5 request could be heard by the Superior Court, this Chapter 11 case was filed.

6 On the Petition Date, the Debtor commenced this reorganization case in order to maximize the
7 value of its estate through an orderly Chapter 11 process. On December 4, 2017, the Debtor filed a
8 motion to approve debtor in possession financing [Dkt. No. 20], which motion was granted on an
9 interim and then a final basis. The Debtor utilized the funds from this financing to make rent
10 payments to Sloane Two in December 2017 and January 2018. The Debtor determined that it was in
11 its best interests to continue operations through the holiday season because sales are normally
12 significant during that time period. However, now that the holiday season has ended, the Debtor has
13 determined that continued operations are not sustainable and not in the best interests of the estate.

14 The Debtor therefore seeks authorization to immediately begin selling its remaining inventory
15 (the "Merchandise") (i) first at its store location at 262 North Rodeo Drive, Beverly Hills, California
16 90210 (the "Store") until the effective date of the Debtor's rejection of its lease for the Store location
17 and (ii) thereafter at an alternate location until the earlier of March 31, 2018 or the date upon which
18 the last of the Merchandise has been sold, through a store closing sale (the "Store Closing Sale"), in
19 accordance with the terms and conditions set forth in the *Guidelines For Store Closing Sale* (the
20 "Guidelines") that are attached hereto as Exhibit 1. Additionally, to the extent that consignment
21 vendors are willing to provide the Debtor with goods on consignment during the Store Closing Sale,
22 the Debtor seeks authority to obtain such consigned goods and sell them alongside the Merchandise.
23 Lastly, the Debtor requests that any order approving this motion contain a waiver of the fourteen day
24 stay provided by Bankruptcy Rule 6004.

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1 II.

2 ARGUMENT

3 A. The Court Should Authorize the Debtor to Conduct the Store Closing Sale

4 Section 363 of the Bankruptcy Code provides that the Debtor “after notice and a hearing, may
5 use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. §
6 363(b). To approve the use, sale or lease of property out of the ordinary course of business, this Court
7 must find “some articulated business justification.” *See, e.g., Committee of Equity Sec. Holders v.*
8 *Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *see also In re Abbott Dairies of*
9 *Pa., Inc.*, 788 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting articulated business justification
10 test of *Lionel Corp.*, and requiring showing of good faith); *In re Delaware & Hudson Ry. Co.*, 124
11 B.R. 169, 175-76 (D. Del. 1991) (concluding that Third Circuit adopted “sound business purpose”
12 after *Abbott Dairies* decision); *Titusville Country Club v. PennBank (In re Titusville Country Club)*,
13 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Indus. Valley Refrigeration and Air Conditioning*
14 *Supplies, Inc.*, 77 B.R. 15, 19 (Bankr. E.D. Pa. 1987).

15 There is ample business justification for conducting the Store Closing Sale. The Debtor's
16 operations are not profitable and the Debtor cannot even make its monthly rent payments without the
17 incursion of debtor in possession financing. Moreover, the Debtor has determined that continuation of
18 its lease with Sloane Two would not provide a benefit commensurate with its cost and has filed a
19 motion to reject that lease. Simply put, the Debtor's business is not sustainable with rental payments
20 at their current level, and a Store Closing Sale is the best mechanism for the Debtor to monetize the
21 Merchandise for the benefit of the estate.

22 B. The Sale of Merchandise Should be Free and Clear of Liens, Claims, and
23 Encumbrances

24 To facilitate the sale of the Merchandise, the Debtor requests authorization to sell such
25 property free and clear of any and all liens, encumbrances and other interests (collectively, the
26 "Liens"), with valid Liens to attach to the net sale proceeds in the same order of priority held with
27 regard to the Merchandise on which they may be asserted. The lien of Panache Productions, Inc., the
28 Debtor's postpetition lender, will be paid in full from the proceeds of sale.

1 **C. The Court Should Invalidate any Lease Restrictions that May Impair the Debtor's**
2 **Ability to Conduct the Store Closing Sales**

3 To the extent that contemplated Store Closing Sale may be inconsistent with certain lease
4 provisions that are intended to protect the image of a shopping center or avoid disruption of normal
5 commerce under the lease with Sloane Two, including provisions purporting to restrict or prohibit the
6 Debtor from conducting store closing, going out of business, inventory liquidation, or similar sales,
7 the Debtor requests that such provisions be invalidated with respect to the Store Closing Sale. Such
8 provisions have been deemed unenforceable in other chapter 11 cases as impermissible restraints on a
9 debtor's rights under Section 363 sell property of the estate in a manner that maximizes the value of its
10 assets. *See In re Ames Dep't Stores, Inc.*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (enforcement of
11 anti-going-out-of-business sales clause would contravene overriding federal policy requiring debtors
12 to maximize assets); *In re Tobago Bay Trading Co.*, 112 B.R. 463, 467 (Bankr. N.D. Ga. 1990) (anti-
13 going-out-of-business sales clause in lease is unenforceable); *In re Lisbon Shops, Inc.*, 24 B.R. 693,
14 695 (Bankr. E.D. Mo. 1982) (same).² In a case where the Debtor proposed certain store closing sale
15 procedures like the Guidelines proposed by the Debtor in this case, the Court stated:

16 Debtors have not requested carte blanche approval to conduct these
17 sales without limitations, but have proposed Store Closing
18 Procedures which significantly regulate the manner for conducting
19 the sales. I find these restrictions sufficient to establish a prima
20 facie case that additional adequate protection, beyond payment of
21 rent has been offered in exchange for landlord's loss of their right to
22 enforce lease terms which may prohibit these sales.

20 *In re Friedman's, Inc.*, 336 B.R. 880, 884 (Bankr. S.D. Ga. 2005).

21 The Debtor believes the proposed Guidelines strike a fair balance between the rights of
22 landlords and other interested parties to maintain the integrity of their properties with the rights of the
23 Debtor, the estate, and creditors to maximize proceeds from the Store Closing Sale. Thus, any
24 potential prejudice to landlords is greatly lessened by immediate implementation of the Guidelines.

25 _____
26 ² Courts have routinely have entered orders in retail chapter 11 cases permitting liquidation sales.
27 *See, e.g., In re Hechinaer Investment Company of Delaware, Inc.*, Case No. 99-02261 (PJW)
28 (Bankr. D. Del.); *In re WSR Corp.*, Case No. 98-1241 (MFW) (Bankr. D. Del.); *In re Homeplace
Stores, Inc.*, Case No. 98-8 (PJW); *In re Montgomery Ward Holding Corp.*, Case No. 97-1409
(PJW) (Bankr. D. Del.); *In re eStyle, Inc.*, Case No. 2:08-bk-13518-SB (Bankr. C.D. Cal.).

1 In any event, store closing, liquidation, or going out of business sales, such as the sales
2 described herein, are a routine part of chapter 11 cases involving retail debtors, especially store chains.
3 Such sales are consistently ordered by courts, despite lease provisions purporting to forbid such sales
4 in the ordinary course of business. *See In re R.H. Macy & Co.*, 170 B.R. 69, 77 (Bankr. S.D.N.Y.
5 1994); *Ames Dep't Stores*, 136 B.R. at 359 ("to enforce the anti-GOB sale clause of the [l]ease would
6 contravene overriding federal policy requiring Debtors to maximize estate assets by imposing
7 additional constraints never envisioned by Congress"); *In re Tobago Bay*, 112 B.R. at 465-66; *In re*
8 *Libson Shops, Inc.*, 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982). Thus, no clause in any lease should be
9 an impediment to the Store Closing Sale or the activities connected therewith, especially given the
10 Debtor's undertaking to immediately abide by the terms and conditions of the Guidelines. To the
11 extent such restrictive clauses may exist in the lease, Sloane Two should not be permitted to interfere
12 with, or, otherwise seek to restrict the Debtor from conducting the Store Closing Sale.

13 The disposition of the Merchandise pursuant to the Guidelines and similar store closing
14 procedures represents an accepted method for the sale of assets that has been approved in numerous
15 chapter 11 cases of retailers. *See, e.g., In re Big V. Holding Corp.*, Case No. 00-04372 (PJW) (Bankr.
16 D. Del.) (interim order); *In re WSR Corp.*, Case No. 98-1241 (MFW) (Bankr. D. Del.); *In re*
17 *Homeplace Stores, Inc.*, Case No. 98-8 (PJW) (Bankr. D. Del.); *In re Levitz Furniture Corporation*,
18 Case No. 97-1843 (MFW) (Bankr. D. Del.); *In re Montgomery Ward Holding Corp.*, Case No. 97-
19 1409 (PJW) (Bankr. D. Del.); *In re eStyle, Inc.*, Case No. 2:08-bk-13518-SB (Bankr. C.D. Ca.).

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

22 Although the Debtor believes that the Store Closing Sale will generally comply with federal,
23 state and local laws, statutes, rules and ordinances as well as leasehold prohibitions, certain states in
24 which the stores are located have or may have licensing and other requirements with respect to the
25 conduct of store closing, liquidation or other inventory clearance sales (the Debtor does not believe
26 that any such restrictions in California, Los Angeles County or Beverly Hills prevent the store closing
27 sale contemplated by this Motion). Typical statutes and regulations provide that if a liquidation or
28 bankruptcy sale is court authorized, then a company need not comply with certain regulatory policies.

1 The Debtor, therefore, requests that, pursuant to Bankruptcy Code section 105(a), this Court authorize
2 the Debtors to conduct the Store Closing Sale without the necessity of, and the delay associated with,
3 obtaining various state licenses and/or satisfying any additional requirements in connection with the
4 sales.

5 Because the Debtor and its assets are subject to this Court's jurisdiction, the Court will be able
6 to supervise the Store Closing Sale and the sale of the Merchandise. The Store Closing Sale is a
7 legitimate attempt by the Debtor to maximize the return from the sale of assets for the benefit of its
8 estate and creditors. Accordingly, the Court should dispense with any requirement that the Debtor
9 comply with technical requirements that are not intended to curtail persons from conducting store
10 closing sales with bankruptcy court supervision.

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

24 Here, the Store Closing Sale will be of limited duration, ending on the earlier of the sale of the
25 last of the Merchandise or March 31, 2018; only the Debtor's Merchandise and goods consigned to the
26 Debtor will be sold; all advertising will fairly describe the Store Closing Sale; and no aspect of the
27 relief sought is intended to alter laws or regulations affecting public safety. For these and other
28 reasons, 28 U.S.C. § 959(b) should not be read to apply to the Store Closing Sale, as the Debtor is

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

23 In this case, section 363 of the Bankruptcy Code, which requires debtors to operate their
24 businesses in a way that maximizes recovery for creditors, will be severely undermined if the Court
25 does not provide for the waiver of state and local statutes and regulations establishing licensing or
26 permitting requirements, waiting periods, time limits or bulk sale restrictions that would otherwise
27 apply to the Store Closing Sale. The requested waiver is narrowly tailored to facilitate the successful
28 conduct of the Store Closing Sale. The Debtor does not seek a general waiver of all state and local

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1 requirements which would otherwise apply to the Store Closing Sale. Rather, the Debtor only
2 requests that this Court authorize the Debtor to conduct the Store Closing Sale without the necessity
3 of, and the delay associated with, obtaining various state licenses or permits; observing state and local
4 waiting periods or time limits; and/or satisfying any additional requirements with respect to
5 advertising and conducting the Store Closing Sale as a "store closing" or similar type sale. The Debtor
6 fully intends to be bound by and comply with remaining statutes and regulations, such as health and
7 safety laws.

8 The Debtor also requests that no other person or entity including, but not limited to, any lessor
9 or federal, state or local agency, department or governmental authority, should be allowed to take any
10 action to prevent, interfere with, or otherwise hinder consummation of the Store Closing Sale, or the
11 advertising and promotion (including through the posting of signs) of such Store Closing Sale, in the
12 manner set forth herein. Accordingly, the Debtor requests this Court to authorize the Debtor to
13 conduct the Store Closing Sale without the necessity of, and the delay associated with, obtaining
14 various state licenses, observing state and local waiting periods or time limits, and/or satisfying any
15 additional requirements in connection therewith with respect to advertising and conducting the Store
16 Closing Sale as a "store closing" or similar type sale. For the reasons set forth above, the Debtor
17 believes that the proposed Store Closing Sale program is the most efficient means of maximizing the
18 value of the Merchandise for the benefit of the Debtor's estate and creditors while limiting
19 administrative costs.

20 **E. The Debtor Should be Authorized to Obtain Goods on Consignment During the Store**
21 **Closing Sale**

22 To the extent that consignment vendors are willing to provide the Debtor with goods on
23 consignment during the Store Closing Sale, the Debtor should be authorized to obtain such consigned
24 goods and sell them alongside the Merchandise. It is the Debtor's experience that consignment
25 vendors often provide the Debtor with goods that are more attractive to the Debtor's customers than
26 much of the Merchandise. The Debtor believes that the presence of consignment goods, which are
27 often in higher demand than the existing Merchandise, will result in more customers attending and
28 participating in the Store Closing Sale than if such goods were not available. This in turn will likely

1 cause more of the existing Merchandise to be sold than if the Merchandise were presented for sale
2 alone. In other words, the Debtor's receipt and marketing of consignment goods will help the Debtor
3 sell more Merchandise. For this reason, the Debtor respectfully submits that its receipt and marketing
4 of consignment goods alongside the Merchandise during the Store Closing Sale is in the best interests
5 of the estate and should be approved.

6 **F. The Debtor will Pay its Postpetition Lender During the Course of the Store Closing**
7 **Sale or Upon its Completion**

8 Upon the earlier of either the accumulation of sufficient proceeds or the conclusion of the
9 Store Closing Sale, the post-petition secured claim and lien of Panache Productions, Inc. ("Panache")
10 shall be paid in full. Debtor believes that Panache, the post-petition lender, is owed approximately
11 \$100,000.

12 **G. Waiver of the Rule 6004 Stay is Appropriate**

13 Bankruptcy Rule 6004 provides that an order authorizing the sale of a debtor's property is
14 stayed for a period of fourteen days after entry of the order unless the court orders otherwise. *See* Fed.
15 R. Bankr. P. 6004(h). In the present case, the Debtor requests that any order approving the motion be
16 effective immediately. As described in the motion, the Debtor seeks to immediately begin selling the
17 Merchandise (i) first at the Store until the effective date of the Debtor's rejection of its lease for the
18 Store location and (ii) thereafter at an alternate location until the earlier of March 31, 2018 or the date
19 upon which the last of the Merchandise has been sold. The Debtor has filed a motion to reject its lease
20 for the Store location as of January 31, 2018. It is the Debtor's position that in order to obtain
21 maximum value from its Store Closing Sale, it must be permitted to commence marketing the
22 Merchandise immediately so it may conduct as much of the Store Closing Sale as possible at the
23 Store, a location with which the Debtor's customers have associated the Debtor's business for years.
24 There is no just reason for delaying the effectiveness of the order. Accordingly, the Debtor submits
25 that waiver of the fourteen day stay is in the best interests of the estate and should be included in any
26 order approving the motion.

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III.

CONCLUSION

For the foregoing reasons, the Debtor respectfully requests entry of an order granting the Motion in all respects and providing for such other and further relief as the Court deems just and proper.

DATED: January 8, 2018

Respectfully submitted,

SulmeyerKupetz
A Professional Corporation

By: /s/ Victor A. Sahn
Victor A. Sahn
Attorneys for R & S Antiques, Inc., Debtor and
Debtor in Possession

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DECLARATION OF KOROSH SOLTANI³

I, Korosh Soltani, declare as follows:

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

2. I am the Vice President of the Debtor and am authorized to submit this declaration on its behalf. I have been employed by the Debtor for 20 years. My responsibilities include sales, handling of personnel, purchasing, limited supervision of accounting functions, and working along with Rahim Soltani (who is my father) to operate the Debtor's business. I am familiar with the Debtor's business, its operations and its personnel.

3. The Debtor commenced the above-captioned reorganization case on November 13, 2017 (the "Petition Date"). The Debtor operates a high-end giftware store (the "Business") on Rodeo Drive in Beverly Hills, California. The Business has not been profitable recently or in a number of years. This is demonstrated by the claim held by the Debtor's principal, Mr. Rahim Soltani. Mr. Soltani holds a claim against the Debtor in excess of \$9 million. This represents advances or loans he has made to the Debtor prepetition in order to permit the Debtor to meet its operating expenses. Further, the rate of his advances has accelerated in the past few years, as he has advanced as much as \$6 Million since the beginning of 2014. Other issues related to the commencement of this bankruptcy case including market declines being suffered by "brick and mortar" retail businesses apply to the Debtor's business problems. This industry-wide decline is particularly hard hitting to high end retail businesses like the one operated by the Debtor.

4. One of the most significant high-cost items of the Debtor's operations are its monthly rent obligations required under the Debtor's commercial lease (the "Lease"). The Debtor made regular, monthly payments, on time, for approximately eight years under the Lease. However, the

³ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the foregoing motion and memorandum of points and authorities.

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1 Debtor stopped paying its rent obligation in July, 2017. Prior to that time, the Debtor attempted to
2 negotiate new terms with respect to the Lease including a potential early termination of the Lease. In
3 July 2017, as a result of its payment default, Sloane Two Rodeo, LLC ("Sloane Two") the landlord
4 under the Lease initiated a civil action against the Debtor to recover damages following the Debtor's
5 cessation of rent payments. Sloane Two elected to treat the Lease as still in force and effect under
6 California Civil Code Section 1951.4 and sued for the unpaid rent including the amount due for the
7 remaining term of the Lease. Initially, after filing the civil action, Sloane Two sought an Ex Parte
8 Writ of Attachment, however, based upon the failure to show an emergency, the Ex Parte Writ was
9 denied. The Writ of Attachment request was set for hearing on regular notice, however, when the
10 regularly noticed hearing was continued on the Court's own initiative, Sloane Two set a second Ex
11 Parte when the Debtor did not oppose the Writ of Attachment based upon its decision to file this
12 Chapter 11 case. Before the second Ex Parte Writ of Attachment request could be heard by the
13 Superior Court, this Chapter 11 case was filed.

14 5. On the Petition Date, the Debtor commenced this reorganization case in order to
15 maximize the value of its estate through an orderly Chapter 11 process. On December 4, 2017, the
16 Debtor filed a motion to approve debtor in possession financing [Dkt. No. 20], which motion was
17 granted on an interim and then a final basis. The Debtor utilized the funds from this financing to
18 make rent payments to Sloane Two in December 2017 and January 2018. The Debtor determined that
19 it was in its best interests to continue operations through the holiday season because sales are normally
20 significant during that time period. However, now that the holiday season has ended, the Debtor has
21 determined that continued operations are not sustainable and not in the best interests of the estate.

22 6. The Debtor therefore seeks authorization to immediately begin selling its remaining
23 inventory (the "Merchandise") (i) first at its store location at 262 North Rodeo Drive, Beverly Hills,
24 California 90210 (the "Store") until the effective date of the Debtor's rejection of its lease for the Store
25 location and (ii) thereafter at an alternate location until the earlier of March 31, 2018 or the date upon
26 which the last of the Merchandise has been sold, through a going out of business sale (the "Store
27 Closing Sale"), in accordance with the terms and conditions set forth in the *Guidelines For Store*
28 *Closing Sale* (the "Guidelines") that are attached hereto as Exhibit 1.

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1 7. Additionally, to the extent that consignment vendors are willing to provide the Debtor
2 with goods on consignment during the Store Closing Sale, the Debtor seeks authority to obtain such
3 consigned goods and sell them alongside the Merchandise. It is my experience that consignment
4 vendors often provide the Debtor with goods that are more attractive to the Debtor's customers than
5 much of the Merchandise. I believe that the presence of consignment goods, which are often in higher
6 demand than the existing Merchandise, will result in more customers attending and participating in the
7 Store Closing Sale than if such goods were not available. This in turn will likely cause more of the
8 existing Merchandise to be sold than if the Merchandise were presented for sale alone. In the past, the
9 Debtor has conducted inventory sales at substantial price reductions, at off-site locations which were
10 obtained for the purpose of conducting such sales. My experience in conducting these kinds of sales
11 is that having the more desirable consignment inventory makes it easier to sell the balance of the
12 inventory which would be less likely to sell absent the customers who come in to such sales because
13 of the more attractive available, consignment inventory.

14 8. The Debtor requests additional authority to pay the secured claim of Panache
15 Productions, Inc. As of the filing of this Motion, it is owed approximately \$100,000.

16 9. Further, the Debtor will comply with the guidelines applicable to store closing sales
17 which are attached to this Motion. The Debtor will also comply with all local and state-wide laws that
18 normally govern the operation of its business, particularly those laws and regulations that relate to the
19 health and safety of the public.

20 10. The Debtor requests that any order approving this motion contain a waiver of the
21 fourteen day stay provided by Bankruptcy Rule 6004. The Debtor seeks to immediately begin selling
22 the Merchandise (i) first at the Store until the effective date of the Debtor's rejection of its lease for the
23 Store location and (ii) thereafter at an alternate location until the earlier of March 31, 2018 or the date
24 upon which the last of the Merchandise has been sold. The Debtor has filed a motion to reject its lease
25 for the Store location as of January 31, 2018. I believe that in order to obtain maximum value from its
26 Store Closing Sale, the Debtor must be permitted to commence marketing the Merchandise
27 immediately so it may conduct as much of the Store Closing Sale as possible at the Store, a location
28 with which the Debtor's customers have associated the Debtor's business for years.

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

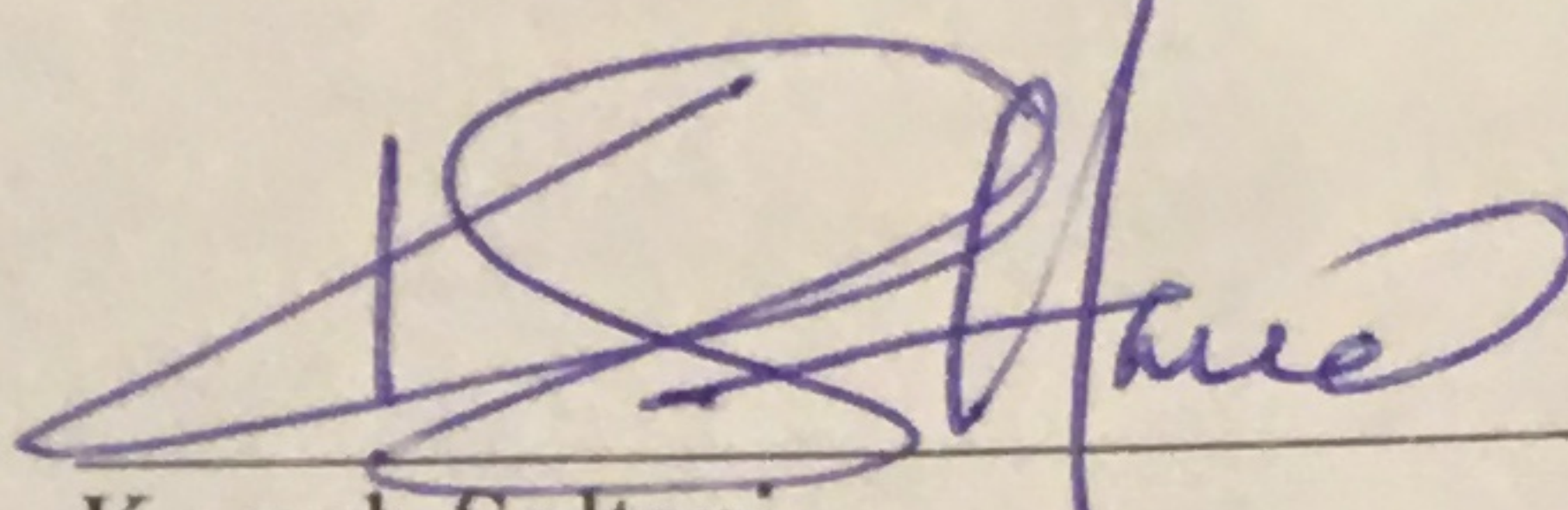
3 Executed this ____ day of January 2018 at Beverly Hills, California.
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6 Korosh Soltani
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1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 Executed this 8TH day of January 2018 at Beverly Hills, California.

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7 Korosh Soltani

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EXHIBIT 1

GUIDELINES FOR STORE CLOSING SALE

1. So long as any premises are being occupied or used to conduct the store closing sale ("Premises"), and except to the extent provided herein or other order of the Bankruptcy Court, all of the provisions of the applicable lease ("Lease") shall be complied with.
2. During or in anticipation of the sale, there shall be no augmentation of the Merchandise currently being offered for sale by the Debtor, except that during or in anticipation of the sale, the Debtor may receive goods on consignment from consignment vendors. However, this augmentation of inventory will stop no later than March 31, 2018.
3. Business shall be conducted so that the Premises remain open during the normal hours of operation provided for in the Lease.
4. Any Sale shall be conducted in accordance with applicable state and local "Blue Laws".
5. Handbills, leaflets, or other written materials shall not be distributed to customers outside of the Premises, but customers may be solicited within the Premises themselves. No flashing lights, strobe lights, large spotlights or any type of amplified sound shall be used to advertise the sales or solicit customers.
6. The Debtor shall not be permitted to use "sign walkers" on the affected Premises. "Sign walkers" may be employed outside the shopping center in which the affected property is located.
7. At the conclusion of the sale (a) the Premises shall be vacated in broom-clean condition, except for the removal of furniture, fixtures, equipment and remaining supplies; (b) the Premises shall be left in the same condition as on the commencement of the sale, ordinary wear and tear excepted; and (c) with the Debtor's consent, the keys shall be returned to the Landlord.
8. All display and hanging signs used in connection with a sale shall be professionally lettered, and all hanging signs shall be hung in a professional manner.
9. If sales are to be considered "final", conspicuous signs shall be posted in the Premises to the effect that all sales are "final" and customers shall be provided with a named representative and a telephone number that customers can contact with any questions or complaints.
10. There shall be no alterations made to the Premises (excluding the removal of store signs, unless such removal is prohibited by the Lease). If removal is permitted by the Lease, then such removal will be in accordance with the terms of the Lease.
11. There shall be no alterations made to the interior or exterior Premises lighting.
12. The Premises and surrounding area shall be kept clean and orderly consistent with present practices and consistent with the terms of the Lease.

13. The landlord under any Lease ("Landlord") shall have reasonable access to the Premises .
14. There shall be no sale or removal of any property of the Landlord from the Premises.
This provision does not apply to property of the Debtor.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

333 South Hope Street, Thirty-Fifth Floor, Los Angeles, California 90071-1406

A true and correct copy of the foregoing document entitled (*specify*): **MOTION FOR ORDER AUTHORIZING DEBTOR TO (1) CONDUCT STORE CLOSING SALE; (2) SELL ASSETS FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES, AND INTERESTS PURSUANT TO BANKRUPTCY CODE SECTIONS 363(b) AND (f); (3) APPROVING STORE CLOSING SALE GUIDELINES AND (4) WAIVING THE FOURTEEN DAY STAY PROVIDED BY BANKRUPTCY RULE 6004; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF KOROSH SOLTANI IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On January 8, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Jason Balitzer** jbalitzer@sulmeyerlaw.com, jbalitzer@ecf.inforuptcy.com, dwalker@ecf.inforuptcy.com, kmccamey@sulmeyerlaw.com
- **Alan F Broidy** alan@broidylaw.com, sherrie@broidylaw.com
- **Alvin Mar** alvin.mar@usdoj.gov
- **Victor A Sahn** vsahn@sulmeyerlaw.com, agonzalez@sulmeyerlaw.com, agonzalez@ecf.inforuptcy.com, asokolowski@sulmeyerlaw.com, vsahn@ecf.inforuptcy.com
- **Michael A Shakouri** mshakouri@goodkinlynch.com, paralegal@goodkinlynch.com
- **United States Trustee (LA)** ustpreion16.la.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On January 8, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on January 8, 2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

BY PERSONAL DELIVERY

Honorable Julia W. Brand
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1382 / Courtroom 1375
Los Angeles, CA 90012

Service information continued on attached page

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

January 8, 2018
Date

Kelli Mccamey
Printed Name

/s/ Kelli Mccamey
Signature