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7
8 Attorneys for Shiekh Shoes, LLC
Debtor and Debtor in Possession

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

11 In re
12
13 **SHIEKH SHOES, LLC,**
a California limited liability company

14 Debtor.
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Tax ID: 47-1479918

Case No. 2:17-bk-24626-VZ

Chapter 11

**DEBTOR'S NOTICE OF MOTION AND
MOTION FOR ORDER:**

**(1) AUTHORIZING STORE CLOSING SALES
PURSUANT TO STORE CLOSING SALE
GUIDELINES;**

**(2) AUTHORIZING SALE OF ASSETS FREE
AND CLEAR OF ALL LIENS, CLAIMS, AND
ENCUMBRANCES IN CONNECTION WITH
STORE CLOSING SALES;**

**(3) AUTHORIZING REJECTION OF
RELATED REAL PROPERTY LEASES
PURSUANT TO STREAMLINED LEASE
REJECTION PROCEDURES PREVIOUSLY
APPROVED BY COURT; AND**

(4) GRANTING ANCILLARY RELIEF;

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Declarations of Shiekh S. Ellahi and Sandra De
La Riva filed separately]

Date: To Be Determined
Time: To Be Determined
Place: Courtroom 1368
255 E. Temple Street
Los Angeles, CA 90012

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1 **TO THE HONORABLE VINCENT P. ZURZOLO, UNITED STATES**
2 **BANKRUPTCY JUDGE, SECURED CREDITORS, THE OFFICIAL COMMITTEE OF**
3 **UNSECURED CREDITORS, LANDLORDS, THE OFFICE OF THE UNITED STATES**
4 **TRUSTEE, AND OTHER PARTIES IN INTEREST:**

5 **PLEASE TAKE NOTICE** that, on a date and time to be set by the Court pursuant to a
6 concurrently-filed application for an order to shorten time for notice of the hearing (the “OST
7 Application”),¹ in Courtroom 1368 of the above-entitled Court, at 255 East Temple Street, Los
8 Angeles, California 90012, before the Honorable Vincent P. Zurzolo, United States Bankruptcy
9 Judge, Shiekh Shoes, LLC, the debtor and debtor in possession in the above-captioned chapter 11
10 bankruptcy case (the “Debtor”), will, and hereby does, move this Court (the “Motion”), for an
11 order:

12 (1) authorizing the Debtor to self-manage and conduct store closing sales at 45 of its stores
13 identified on Exhibit 1 hereto (each, a “Closing Store,” and collectively, the “Closing Stores”),
14 which sales will be conducted as “store closing,” “sale on everything,” “everything must go,”
15 “inventory liquidation,” or similar-themed sales (each, a “Closing Sale,” and collectively, the
16 “Closing Sales”);

17 (2) authorizing the Debtor to sell all of its personal property at the Closing Stores free and
18 clear of all liens, claims, and encumbrances pursuant to sections 363(b) and 363(f) of the
19 Bankruptcy Code in connection with the Closing Sales;

20 (3) approving the sale guidelines set forth on Exhibit 2 hereto (the “Sale Guidelines”) for
21 the Closing Sales;

22 (4) authorizing the Debtor to conduct the Closing Sales in accordance with the terms and
23 conditions of: (i) the proposed order attached hereto as Exhibit 3 (the “Order”), (ii) the Sale
24 Guidelines, (iii) any side letter agreements between the Debtor and the respective landlord of each
25

26 ¹ Pursuant to the OST Application, the Debtor is seeking a hearing on the present motion as soon as
27 possible. Separate notice identifying the date and time for the hearing on the Motion will be served
28 following the Court’s disposition of the OST Application.

1 Closing Store, and (iv) applicable general laws, but without requiring compliance with applicable
2 liquidation sale laws (subject to certain proposed expedited dispute resolution procedures set forth
3 in the Interim Order) or the terms of the Debtor’s leases for the Closing Stores (as set forth
4 below);

5 (5) in conducting the Closing Sales, exempting the Debtor from complying with: (i) any
6 provision in any of the Debtor’s leases or related contracts restricting the Closing Sales (the
7 “Contractual Restrictions”), (ii) state and local wage requirements for the Closing Sales (the “Fast
8 Pay Laws”), and (iii) applicable state and local statutes, rules, regulations, or ordinances, or any
9 license or other requirements, in respect of “going out of business,” “store closing,” “sale on
10 everything,” “everything must go,” “inventory liquidation,” or similarly-themed sales (including
11 laws restricting safe, professional, and non-deceptive, customary advertising, such as signs,
12 banners, posting of signage, use of sign walkers solely in connection with the Closing Sales and
13 ordinances establishing license or permit requirements, waiting periods, time limits or bulk sale
14 restrictions that would otherwise apply to the Closing Sales, but excluding those designed to
15 protect public health and safety (collectively with the Fast Pay Laws, the “Liquidation Sale
16 Laws”);

17 (6) authorizing the Debtor to reject any lease relating to a Closing Store (each, a “Lease,”
18 and collectively, the “Leases”) pursuant to the lease rejection procedures previously developed
19 with the Official Committee of Unsecured Creditors (the “Committee”) in the “Stipulation
20 Between Debtor And Official Committee of Unsecured Creditors Resolving Objection to Debtor’s
21 Motion For Order Approving Rejection of Unexpired Leases of Nonresidential Real Property”
22 [Dkt. No. 252] (the “Rejection Procedures Stipulation”) and approved by the Court in its “Order
23 on Debtor’s Motion For Order Approving Rejection of Unexpired Leases of Nonresidential Real
24 Property as of Later of December 31, 2017, or Return of Property to Landlords, Subject to
25 Debtor’s Option to Not Reject Upon Notice Prior to That Date” [Dkt. No. 311] (the “Rejection
26 Procedures Order”), a copy of which is attached hereto as Exhibit 4, to the extent any given Lease
27 is not already subject to the Rejection Procedures Order and related lease rejection procedures (the
28 “Rejection Procedures”);

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1 (7) waiving any applicable stay, including under Rule 6004(h) of the Federal Rules of
2 Bankruptcy Procedure, and authorizing the immediate effectiveness of the Order; and

3 (8) granting other related and ancillary relief (as more specifically set forth in the Order).²

4 The Motion is made pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code,
5 Rule 6004 of the Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rules 6004-1 and
6 9075-1, on the grounds that, as more particularly discussed in the accompanying memorandum of
7 points and authorities, the Closing Sales are necessary to generate essential cash for operations and
8 administrative expenses to help address the Debtor's severe liquidity issues, lessen the
9 administrative costs and burdens of maintaining stores that do not generate the level of revenues to
10 render them worth maintaining any longer, reduce the Debtor's store footprint to reflect the
11 contemplated supply of future product from Nike (including the Debtor's recent understanding
12 that the product to be provided will not support a larger store footprint), and to facilitate a viable
13 reorganization.³

14 In addition, the Debtor seeks to use its in-house staff and store managers -- who gained and
15 have the requisite familiarity with liquidation sales following their intimate involvement with the
16 Debtor's first round of such sales with Gordon Brothers -- to oversee and conduct the Closing
17 Sales, which will avoid the fees and costs of using a third party liquidator.

18 The Debtor has served this Motion by overnight mail, e-mail, facsimile, or hand delivery
19 on the following parties and/or to their counsel: (i) the Office of the United States Trustee (the
20 "UST"); (ii) the Committee; (iii) the landlords for the Closing Stores; (iv) State Bank And Trust

21 _____
22 ² The Debtor's prior motion to authorize store closing sales sought relief in two stages (interim and final) in
23 compliance with Rule 6003(b) of the Federal Rules of Bankruptcy Procedure given that the motion was
24 filed as a "first day" motion requesting a hearing immediately after commencement of this case. Because
25 the present Motion is filed much later in the case, the Debtor does not believe it needs to obtain approval of
26 the Motion in two phases. To the extent the Court concludes otherwise, the Debtor requests that the Court
27 deem the hearing on this Motion an interim hearing and set a subsequent hearing to approve the Motion on
28 a final basis.

³ The Debtor seeks authority to conduct Closing Sales at 45 stores. At this time, the Debtor has filed
27 notices of rejection pursuant to the Rejection Procedures for the leases for six of the Closing Stores (all of
28 which already are subject to the previously-approved Rejection Procedures).

1 Company (“State Bank”); (v) Comvest Capital II, L.P. (“Comvest”); (vi) all other known parties
2 with liens of record on assets of the Debtor as of the Petition Date; (vii) the Internal Revenue
3 Service; and (viii) all other parties required to receive notice under the Court’s order limiting
4 notice. In addition, the Debtor is serving this Motion on: (i) the attorneys general for the states in
5 which the Closing Stores are located; (ii) the consumer protection agencies for the states and
6 counties in which the Closing Stores are located; and (iii) the state and local taxing authorities
7 with jurisdiction where the Closing Stores are located.

8 This Motion is based upon this notice of Motion and Motion, exhibits hereto, the
9 accompanying memorandum of points and authorities, the concurrently-filed declaration of Shiekh
10 S. Ellahi and declaration of Sandra De La Riva, the record in this case, the arguments and
11 representations of counsel, and any other evidence or argument that may be presented prior to or at
12 the hearing on this Motion.

13 **PLEASE TAKE FURTHER NOTICE THAT** any party opposing the relief requested in
14 the Motion must file and serve a written opposition or other response no later than a date that will
15 be included in a subsequent notice served following and based on the Court’s disposition the OST
16 Application.

17 **PLEASE TAKE FURTHER NOTICE THAT**, pursuant to Local Bankruptcy Rule 9013-
18 1(h), the failure to timely file and serve an opposition or other response to the Motion may be
19 deemed by the Court to be consent to the relief requested in the Motion.

20 **WHEREFORE**, the Debtor respectfully requests that the Court enter an order in the form
21 attached hereto as Exhibit 3: (1) granting the Motion; (2) authorizing (but not directing) the Debtor
22 to conduct the Closing Sales as set forth herein and the Order; (3) approving the Sale Guidelines;
23 (4) authorizing (but not directing) the Debtor to sell all of its personal property at the Closing
24 Stores free and clear of all liens, claims, and encumbrances pursuant to sections 363(b) and 363(f)
25 of the Bankruptcy Code in connection with the Closing Sales; (5) exempting the Debtor from the
26 Contractual Restrictions and Liquidation Sale Laws; (6) authorizing (but not directing) the Debtor
27 to reject the Leases in accordance with the Rejection Procedures (to the extent a Lease is not
28 already subject to such Rejection Procedures); (7) granting other relief requested herein and in the

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1 Order; and (8) providing such other and further relief as is proper.

2 Dated: February 6, 2018

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4

By: /s/ Asa S. Hami

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David S. Kupetz

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Asa S. Hami

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Steven F. Werth

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Attorneys for Shiekh Shoes, LLC

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Debtor and Debtor in Possession

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**⁴

2 **I.**

3 **INTRODUCTION**

4 This Motion seeks authority for the Debtor to conduct a second round of inventory
5 clearance sales at certain identified stores for an estimated period of 30 to 90 days. The Closing
6 Stores simply are not profitable and the Debtor presently lacks the liquidity to purchase necessary
7 product to change this reality. Moreover, however, the Debtor understands that the product to be
8 supplied by Nike on a go-forward basis will not be sufficient to render the Closing Stores
9 profitable or otherwise worth maintaining going forward. Therefore, the Motion should be
10 granted to allow the Debtor to start the Closing Sales immediately.⁵

11 From the outset of this case, the Debtor contemplated closing certain stores in pursuit of
12 reorganization. The decision to close or maintain any particular store is based on multiple factors,
13 including the profitability of the store, the costs and expenses of maintaining the store, the
14 Debtor's success in negotiating more favorable rent payment structures, the supply of product
15 from key vendors, and the Debtor's cash position and level of liquidity.

16 Following the Debtor's evaluation of its existing stores, negotiations with landlords of the
17 Closing Stores, and multiple discussions with the Committee and key vendors regarding the
18 Debtor's exit strategy over the past few weeks, the Debtor determined that, at this time, it needs to
19 immediately commence the Closing Sales. The contemplated sales are designed to achieve a
20 number of goals critical to the Debtor's ongoing viability, including: (i) generating essential cash
21 for operations and administrative expenses to help address the severe liquidity issues, (ii)
22 minimizing the administrative costs and burdens of maintaining the Closing Stores given the
23 insufficient levels of revenues they generate; and (iii) reducing the Debtor's store footprint to

24 _____
25 ⁴ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the motion to
which this memorandum of points and authorities is appended.

26 ⁵ The Debtor seeks authority to conduct the Closing Sales at a total of 45 stores; however, the Debtor just
27 filed notices of rejection in accordance with the Rejection Procedures with respect to six stores (all of
whose leases already are subject to the Court's prior order approving the Rejection Procedures).
28

1 reflect the contemplated supply of future product from key suppliers, and to align the number of
2 go-forward stores to a level that would support a viable reorganization based on the revised
3 business plan the Debtor currently is developing or potentially a going-concern sale.

4 The Debtor is developing, and continues a dialogue with the Committee and major
5 constituencies in the case regarding, a revised business plan to emerge from this case as a going
6 concern. Based on the considerations noted above, an evaluation of its current operations,
7 discussions with key vendors regarding future supply of product, and general business judgment,
8 the Debtor believes that continued maintenance of the Closing Stores would impede the Debtor's
9 prospects for a viable reorganization and would impose unnecessary administrative expense on the
10 Estate. Whereas negotiated lease modifications relating to the Closing Stores potentially could
11 have permitted the Debtor to retain these stores, to date, the Debtor has been unable to reach such
12 agreements with the respective landlords. Under existing circumstances, however, none of the
13 Closing Stores generates a sufficient level of revenues worth maintaining on a go-forward basis in
14 comparison to associated expenses, especially in light of the Debtor's constrained liquidity
15 position.

16 The Closing Sales will generate much-needed revenues for the Estate, while at the same
17 time lessening substantial operations and administrative costs. Based on the Debtor's evaluation
18 of the Closing Sales at the Closing Stores, the Debtor projects generating gross revenues in the
19 estimated aggregate amount of approximately \$8,000,000. Closing the stores and rejecting the
20 underlying lease, the Estate will shed expenses in the estimated aggregate monthly amount of
21 approximately \$800,000.

22 Furthermore, the Debtor's proposal to internally manage and run the Closing Sales will
23 result in considerable savings to the Estate. By using the Debtor's employees, the Estate will
24 avoid having to pay the fees and expenses associated with using a third party liquidator. At the
25 same time, the Debtor projects generating similar levels of revenues. The employees who will
26 handle the Closing Sales are capable of overseeing and conducting the sales. Having been
27 intimately involved in co-running the Debtor's first round of store closing sales with Gordon
28 Brothers, the Debtor's in-house staff acquired and have the requisite experience and knowledge to

1 successfully manage the process on their own.

2 Based on the foregoing, the Debtor believes conducting the Closing Sales, followed by
3 rejection of the underlying leases, is the best option for the Debtor, the Estate, and its creditors.

4 **II.**

5 **FACTS**

6 **A. Brief Background**

7 On November 29, 2017 (the "Petition Date"), the Debtor filed its voluntary petition for
8 relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and
9 manage its affairs as a debtor in possession in this case.

10 The Debtor is a retailer of footwear, apparel, and accessories, with its corporate
11 headquarters in Ontario, California. As of the Petition Date, the Debtor was operating 124
12 specialty retail stores (under 126 leases) across ten states, as well as various websites. All of the
13 Debtor's store locations are leased.

14 The Debtor's primary assets include: (a) inventory; (b) fixtures, furniture, and equipment;
15 and (c) trademarks and various intellectual properties. As of the Petition Date: (a) the Debtor had
16 secured debt in the aggregate amount of approximately \$17,169,546 held by two parties -- State
17 Bank and Comvest (as agent for other lenders); and (b) the Debtor's top 20 general unsecured
18 creditors held claims in the aggregate of approximately \$24,745,201 (certain claims of which are
19 disputed, contingent, and unliquidated).

20 **B. Critical Vendor Nike And Debtor's Current Business Model**

21 The Debtor is a longtime customer of Nike. For approximately 25 years, Nike shipped
22 product to the Debtor on credit (like most vendors), which the Debtor paid down monthly. Nike
23 holds the largest unsecured claim against the Debtor. As of the Petition Date, Nike asserted a
24 general unsecured trade vendor claim in the sum of approximately \$16,040,021.01.

25 Nike is the Debtor's critical, key supplier and vendor. Nike's products account for more
26 than 60% of the Debtor's gross revenues. In addition, the Nike product: (i) is premium product
27 that the Debtor is able to sell at a relatively high margin, generating substantially more than the
28 cost of the product; (ii) sells quickly; and (iii) drives more traffic to the Debtor's stores and

1 websites.

2 Nike product is essential to the Debtor's current overall business model. First, aside from
3 representing a large majority of the Debtor's gross revenues, as just noted, Nike product drives
4 traffic to the Debtor's stores. With the level of availability of Nike product significantly impacting
5 the level of traffic to the Debtor's stores, Nike product is also essential to the Debtor's sales of
6 other, non-Nike product.

7 Second, in early 2015, the Debtor commenced store remodels according to various Nike
8 designs and specifications. As of the Petition Date, the Debtor had remodeled 61 of its 124 stores
9 at a cost of approximately \$30 million.

10 The Debtor does not believe it would be in a position to successfully reorganize its affairs
11 in a manner that maintains its current product presentation, product mix, and overall business
12 concept and operations absent Nike's continued supply of products and its cooperation in this
13 case. With the holiday season at hand at the time the Debtor filed this case, the Debtor needed the
14 immediate shipment of Nike products to ensure the Debtor had sufficient time to receive,
15 catalogue, and properly display the products at the Debtor's various stores and to otherwise be in a
16 position to leverage and take full advantage of the holiday season.

17 As a result, following extensive negotiations, the Debtor and Nike reached an agreement
18 under which Nike would continue supplying the Debtor with product immediately (the "Nike
19 Agreement"). Under the Nike Agreement, the Debtor commenced payments to Nike on account
20 of its pre-petition debt, in exchange for Nike's resumption of shipments to the Debtor on credit
21 terms, with all outstanding indebtedness owed to Nike afforded superpriority administrative status.

22 **C. Liquidity Issues And Postpetition Financing**

23 On several occasions throughout this case, aside from the Nike Agreement, the Debtor has
24 required and sought expedited approval of various forms of postpetition financing to attempt to
25 address an ongoing liquidity crisis.

26 **1. The State Bank DIP Facility**

27 Due to the Debtor's financial condition at or about the time this case was filed, and State
28 Bank's prepetition freezing of the Debtor's credit line with State Bank, the Debtor required

1 funding to maintain its business and preserve the value of its assets and to otherwise operate its
2 business. Therefore, on November 29, 2017, the Debtor filed an emergency “first day” motion to
3 approve a postpetition debtor-in-possession secured credit facility from State Bank (the “State
4 Bank DIP Facility”).

5 After entering an interim order approving that facility, and a January 9, 2018, final hearing
6 on the motion, the Court entered a final order on that motion.

7 **2. The Replacement Financing**

8 Following various defaults under the State Bank DIP Facility, the consequent accrual of
9 high default interest, and other factors, in advance of the final hearing on the State Bank DIP
10 Facility, the Debtor determined it was in the best interests of the Estate to retire the State Bank
11 DIP Facility. The Debtor contemplated two stages of funding to replace the State Bank DIP
12 Facility: (a) an initial term loan in the sum of \$5,000,000 to be used to pay the then-outstanding
13 balance under the State Bank DIP Facility (the “Term Loan”); and (b) a second term loan in the
14 sum of \$10,000,000 to provide the Debtor with capital to fund operations.

15 On January 3, 2018, the Debtor filed a motion to approve the Term Loan. The Court
16 granted that motion on an interim basis. The Term Loan funded and was used to pay State Bank.
17 A final hearing is set for February 6, 2018.

18 To date, the Debtor has been unable to secure the initially-contemplated second phase of
19 funding of \$10,000,000.

20 **3. The Nike Vendor Financing**

21 Having retired the State Bank DIP Facility, and unable to procure the second stage funding
22 as originally planned, by late January 2018, the Debtor again faced severe liquidity problems that,
23 among other things, precluded it from purchasing vital product from Nike. The problem was
24 exacerbated given the time of year.

25 Historically, the Debtor usually realizes increased sales and revenues in February. It is a
26 seasonal highpoint for the Debtor. This year February is specifically important given the NBA
27 All-Star Game weekend scheduled for February 16-18, 2018, in Los Angeles, and the various
28 promotional events surrounding the All-Star Weekend. The Debtor believed this event would

1 drive further increased traffic to stores with consequent higher sales and revenues; but the Debtor
2 needed the product to meet customer demand.

3 On January 25, 2018, Nike informed the Debtor that it would agree to extend to the Debtor
4 up to \$4,000,000 worth of Nike product on credit, payable in 30 days, secured by a senior, priming
5 lien on all assets (the “Nike Postpetition Credit”). The Debtor agreed, and on January 26, 2018,
6 filed an emergency motion to approve the Nike Postpetition Credit on an interim basis.

7 Following an interim hearing, on January 31, 2018, the Court entered an order granting the
8 motion on an interim basis. A final hearing is set for February 15, 2018.

9 **D. Restructuring Goals And Means of Maximizing The Value of The Estate**

10 **1. General**

11 Various challenges relating to particular investments the Debtor made in connection with
12 its operations, declining store revenues due to the rise of e-commerce, the generally weakening
13 retail environment (among other financial and operational issues), have made it increasingly
14 difficult for the Debtor to turn a profit in recent years. As a result, with a growing liquidity crisis,
15 and a need for reorganization, the Debtor filed this chapter 11 case.

16 The Debtor commenced this reorganization case in order to pursue implementation of a
17 restructuring of its operations, leases, and debt. The Debtor believes that a successful overall
18 reorganization would maximize the value of the Estate, provide for payment to unsecured
19 creditors, and allow the Debtor to emerge from chapter 11 with a reorganized and viable ongoing
20 business. However, a successful restructuring that maintains the Debtor’s current business model
21 may likely require cooperation of certain stakeholders in the Debtor, including certain suppliers
22 and landlords. Among the means of achieving its restructuring goals is the Debtor’s pursuit of
23 inventory clearance/store closing sales at certain retail stores, the rejection of various leases, and
24 negotiations with landlords for lease modifications, rent reductions, or other lease concessions.

25 **2. Progress Towards Reorganization Goals**

26 The Debtor has taken several steps over the course of this case to improve its prospects for
27 a healthy reorganization. This included filing various motions seeking authority to conduct store
28 closing sales and rejection of leases, and engaging in extensive negotiations with landlords

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1 directly and through the Debtor’s Court-approved real property lease consultants.

2 In addition, on January 18, 2018, the Debtor filed a motion to approve sale and bidding
3 procedures in connection with the pursuit of a going concern sale of substantially all assets (the
4 “Bidding Procedures Motion”). The Debtor filed that motion and agreed to pursue this track at the
5 request of and in coordination with the Committee as a potential “back-up” plan to reorganization.
6 The Court granted the Bidding Procedures Motion, with a sale hearing currently set for March 7,
7 2018, following the submission of bids by February 20, 2018.

8 **3. Negotiations And Dialogue With Committee And Key Constituencies**

9 In addition to the foregoing, over the past several weeks, the Debtor has engaged in
10 extensive discussions with primary constituencies in this case. First, as noted above, the Debtor
11 engaged in negotiations with many landlords in an attempt to reach agreements for various rent
12 concessions and other modifications to the Debtor’s leases. With respect to certain stores, whether
13 or not the Debtor is capable of reaching an agreement for more favorable rental arrangements is
14 essential to the Debtor’s decision to maintain or close the store.

15 Second, the Debtor has engaged in settlement discussions with Comvest. As the Debtor
16 indicated on several occasions, the Debtor disputes Comvest’s claim and challenges its asserted
17 security interests and liens. To this end, on January 19, 2018, the Debtor filed a complaint against
18 Comvest and related parties asserting multiple claims for relief, including, but not limited to,
19 claims for fraud, avoidance of the Comvest lien, and disallowance of the Comvest claim.

20 Over the past few weeks, Comvest and the Debtor have exchanged various proposals to
21 resolve their disputes. The Debtor and Comvest have reached an agreement regarding Comvest’s
22 claim and participation in this case, subject to documentation and Court approval.

23 Third, the Debtor has discussed future operations and product mix, including upon
24 emergence from this case, with certain key suppliers.

25 Fourth, aside from maintaining continued contact with the Committee regarding this case,
26 the Debtor and the Committee, together with their respective representatives, counsel, and
27 financial advisors, have engaged in discussions regarding the Debtor’s proposed business plan and
28 exit strategy. After initial rounds of discussions with the Committee, the Debtor is in the process

1 of developing a revised business plan based on modified assumptions, including the need to
2 further reduce its store footprint going forward, for the Committee’s consideration.

3 **E. Initial Store Closing Sales And Retention of Gordon Brothers**

4 As noted above, among the steps the Debtor has taken to date to position itself for
5 reorganization is the filing of a “first day” motion to retain Gordon Brothers to conduct a first
6 round of inventory clearance/store closing sales at 31 identified stores (the “First Store Closing
7 Motion”). After an earlier interim order, on January , 2018, the Court entered a final order
8 authorizing such relief.

9 Whereas the Debtor had authority to conduct these sales at 31 stores, to date, the Debtor
10 conducted inventory clearance sales at only 17 of the stores subject to the First Store Closing
11 Motion.⁶ With respect to those 17 stores, the Debtor has generated gross revenues in the
12 approximate aggregate amount of slightly less than \$3,000,000.

13 As discussed below, the Debtor, including its in-house staff and store managers, were
14 intimately and actively involved in these store closing sales.

15 **F. Lease Rejection Procedures**

16 On December 6, 2017, the Debtor filed a motion to authorize the rejection of certain
17 identified leases, subject to certain qualifications [Dkt. No. 125] (the “Rejection Motion”). The
18 Committee opposed certain aspects of the request. Following negotiations, the Debtor and the
19 Committee entered the Rejection Procedures Stipulation [Dkt. No. 252], which addressed the
20 leases to be rejected and fixed a procedure for the future rejection of leases subject to the
21 Rejection Motion. On January 10, 2018, the Court entered the Rejection Procedures Order, which
22 approved the Rejection Procedures Stipulation. To date, aside from the leases identified in the
23 Rejection Procedures Order, the Debtor used the Rejection Procedures to reject another two leases.

24 ///

25 ///

26 _____

27 ⁶ Certain of those 31 stores are part of the Closing Stores identified for the present Motion.

28

1 **G. Current Proposed Store Closing Sales**

2 **1. The Closing Stores**

3 The decision to close or maintain any particular store is based on, among other things, the
4 profitability of the store, the costs and expenses of maintaining the store, whether the level of
5 revenues generated from a store and the costs of maintaining it make it worthwhile to continue
6 operating it in light of the Debtor's contemplated business plan and reorganization, whether the
7 Debtor was able to negotiate more favorable rental payment structures or other forms of lease
8 modifications for a store, the store's location and overall significance and necessity to the Debtor's
9 business model and operations, the administrative expenses of the particular lease, the Debtor's
10 cash position and level of liquidity, and the overall benefits and burdens of maintaining the
11 particular store and related lease.

12 The Debtor, in the exercise of its business judgment, has determined that, considering such
13 factors and based on present circumstances (including, but not limited to, the need to reduce its
14 store footprint as part of a viable reorganization and the liquidity challenges the Debtor faces), it is
15 no longer feasible or appropriate to maintain the Closing Stores. The Closing Stores are not
16 profitable and the Debtor presently lacks the liquidity to purchase necessary product to change this
17 reality. Moreover, last week, Nike confirmed the Debtor's understanding the product to be
18 supplied will not be sufficient to support a future store footprint that includes the Closing Stores.
19 With Nike being the Debtor's critical vendor and its product generally representing more than
20 60% of the Debtor's gross revenues, maintaining the Closing Stores on a go-forward basis under
21 such circumstances would not be economical or otherwise worthwhile.

22 To reduce operating and administrative expenses as quickly as possible, the Debtor seeks
23 and is prepared to immediately commence the Closing Sales, followed by rejection of the
24 underlying leases pursuant to the Rejection Procedures. The Debtor will continuously evaluate the
25 status of any given Closing Store as the Closing Sales progress to assess the ultimate disposition
26 of the Closing Store and related lease.

27 A list of the 45 Closing Stores, together with the store number, location name, address,
28 lessor name and information, and lessee, is set forth in Exhibit 1 hereto. All but 11 of the Closing

1 Stores were part of the Rejection Motion and, in turn, already are subject to the Rejection
2 Procedures Order and may be rejected pursuant to the Rejection Procedures.⁷ Whereas the Debtor
3 seeks authority to conduct Closing Sales at all stores on Exhibit 1, the Debtor has just filed notices
4 of rejection of the leases for six of the Closing Stores (Nos. 10, 101, 110, 111, 113, and 121)
5 pursuant to the Rejection Procedures.

6 Further, 18 of the Closing Stores were part of the First Store Closing Motion. Those
7 stores, however, had not yet been closed either at the request of landlords of the underlying real
8 properties (certain of which were owned by the same landlord) and given that the Debtor was
9 engaged in ongoing negotiations with such landlords regarding potential rent concessions and
10 other lease modifications and/or based on the Debtor's business judgment considering
11 developments following the commencement of this case. In light of the current status of those
12 negotiations and the Debtor's need for cash and to further advance towards completion of a final
13 proposed business plan and reorganization, the Debtor determined it could and should no longer
14 maintain these stores.⁸

15 **2. The Sale Guidelines**

16 The Debtor seeks to conduct the Closing Sales in accordance with the Sale Guidelines
17 (Exhibit 2 hereto). Those guidelines are identical to those the Court previously approved in
18 connection with the First Store Closing Motion, save for provisions in the prior guidelines that
19 related to or were associated with the Debtor retention and use of Gordon Brothers to conduct and
20 manage the sale process.

21 **3. Projected Timing And Revenues**

22 The Debtor currently maintains inventory at the Closing Stores in the aggregate estimated
23 amount of approximately \$8,000,000.⁹ Without intending to impose any particular time
24 _____

25 ⁷ Those 11 Closing Stores include store numbers 8, 15, 31, 37, 59, 60, 66, 71, 78, 112, 139.

26 ⁸ Whereas the Debtor already has authority to conduct inventory clearance sales at these particular Closing
27 Stores under the First Store Closing Motion, the Debtor includes them in the present Motion given that the
28 Debtor now seeks to conduct the sales without Gordon Brothers.

⁹ Depending on the velocity and level of sales and the type of product available at any given Closing Store,
(footnote continued)

1 limitation, the Debtor anticipates conducting the Closing Sales over a period ranging from 30 to
2 90 days. Based on the Debtor's evaluation of the Closing Sales at the Closing Stores, the Debtor
3 projects generating gross revenues in the estimated aggregate amount of approximately
4 \$8,000,000. By closing the Closing Stores and rejecting the underlying leases, the Estate will shed
5 expenses in the estimated aggregate monthly amount of approximately \$800,000.

6 **4. The Debtor's Internal Management of Closing Sales**

7 The Debtor seeks to manage and conduct the Closing Sales with its in-house staff and store
8 managers, and without any third party liquidator. The Debtor is capable of conducting the Closing
9 Sales on its own without outside assistance.

10 As an initial matter, although Gordon Brothers used some of its own personnel, it also used
11 the Debtor's staff and store managers to manage and conduct the sales. As discussed in the De La
12 Riva Declaration, De La Riva was the Debtor's in-house point of contact for Gordon Brothers for
13 the 31 stores subject of the First Store Closing Motion. She worked closely with the Gordon
14 Brothers analyst and project manager.

15 During that time, De La Riva learned the process and procedures for executing the
16 liquidation sales. In fact, 80% of her workday was spent implementing the liquidation sales and
17 store closings. As more particularly discussed in the De La Riva Declaration, the
18 Debtor's employees, including De La Riva and store managers, were actively involved in all
19 aspects of the sales, including, but not necessarily limited to: (a) signage for the sales; (b)
20 inventory analysis; (c) any price changes; and (d) communications with the store and its managers
21 relevant to the liquidation sales.

22 Allowing the Debtor to implement and run the Closing Sales internally and without a third
23 party liquidator will result in substantial costs savings to the Estate in the aggregate estimated
24 amount of approximately \$400,000 (and without hurting projected sales). Such costs savings will
25 come by: (a) eliminating charges Gordon Brothers passed on to the Debtor for lodging, mileage,

26 _____
27 following commencing the Closing Sale at such store, the Debtor may determine to close the store and
28 relocate the remaining inventory to another Closing Store or other store not part of the Closing Stores.

1 car rentals, and meals; (b) eliminating the compensation due Gordon Brothers for the store closing
2 sale services; and (c) reducing the number of signage ordered for the prior store closing sales
3 (which the Debtor believes may have been more than necessary).

4 **III.**

5 **THE COURT SHOULD GRANT THE MOTION**

6 **A. The Court Should Permit The Debtor to Conduct The Closing Sales Pursuant to The**
7 **Sale Guidelines**

8 **1. Standard**

9 Section 363(b) of the Bankruptcy Code allows the debtor in possession to use or sell
10 property of the estate outside of the ordinary course of business, after notice and a hearing. *See*
11 11 U.S.C. § 363(b)(1). This includes going out of business sales. *See In re Ames Dept. Stores,*
12 *Inc.*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992).

13 A sale pursuant to section 363(b) requires a demonstration that the sale has a valid business
14 justification. *See In re 240 North Brand Partners, Ltd.*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996).
15 The sale must be in the best interests of the estate and the price must be fair and reasonable. *See*
16 *In re Canyon Partnership*, 55 B.R. 520 (Bankr. S.D. Cal. 1985). *See also, In re Wilde Horse*
17 *Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991) (sale must have fair/reasonable price,
18 accurate/reasonable notice to creditors and sale made in good faith). In addition, the trustee or
19 debtor in possession must articulate some “business justification” for selling estate property out of
20 the “ordinary course of business” before the court may approve the transaction. *See In re Lionel*
21 *Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Ernst Home Ctr., Inc.*, 209 B.R. 974, 979 (Bankr.
22 W.D. Wash. 1997).

23 As discussed below, the proposed Closing Sales satisfy the applicable standard and should
24 be authorized.

25 **2. The Closing Sales Are Predicated on a Valid Business Justification And Are in**
26 **The Best Interests of the Estate**

27 The Closing Sales are designed to achieve three goals: (a) the further reduction of the
28 Debtor’s overall store footprint consistent with the Debtor’s revised business plan and necessary to

1 achieve a viable reorganization; (b) the generation of additional cash on an expedited basis to help
2 address the Debtor's ongoing severe liquidity problems; and (c) eliminating operations and
3 administrative expenses that are burdening the estate without providing adequate benefits.

4 The need to reduce its store footprint has been a necessary goal from the outset of this case.
5 To that end, throughout this case, the Debtor has continuously evaluated various factors impacting
6 whether or not to maintain any given store. The Debtor also has had numerous discussions with
7 the Committee and other major constituencies regarding the store footprint on a go-forward basis
8 and after exiting this case. Following an initial round of discussions and negotiations with the
9 Committee and other major constituencies in this case (which dialogue continues), the Debtor
10 currently is developing a revised business plan to emerge from this case as a going concern.
11 Based on the Debtor's evaluation of its current operations, discussions with key vendors regarding
12 future supply of product, and general business judgment, maintaining the Closing Stores would
13 impede the Debtor's prospects for a viable reorganization.

14 Under existing circumstances, none of the Closing Stores generates a sufficient level of
15 revenues worth maintaining on a go-forward basis, especially in light of the Debtor's current cash
16 position and the expenses connected with continuing to operate the stores. In addition, since the
17 case commenced, the Debtor sought to renegotiate various lease modifications with landlords of
18 the underlying real properties for the Closing Stores that potentially could have permitted the
19 Debtor to retain these Closing Stores. At this time, however, the Debtor has been unable to reach
20 such agreements with these landlords. Additionally, it has been determined that based on
21 anticipated supply of key product going forward, the Debtor must reduce its store footprint and
22 terminate operation of the Closing Stores following completion of Closing Sales that will help
23 generate additional cash needed to assist in addressing ongoing liquidity problems.

24 The Closing Sales also are necessary to generate much-needed revenues for the Debtor.
25 Based on the Debtor's evaluation of the contemplated Closing Sales, as discussed above, the
26 Debtor projects generating substantial gross revenues and will result in the Debtor's substantial
27 reduction of operating and administrative expenses.

28 Further, in order to achieve maximum value from the Closing Sales, the Debtor will

1 conduct the sales in accordance with the Sale Guidelines. Those guidelines are identical to the
2 previously-approved guidelines (save for provisions relating to the use of a third-party liquidator).
3 As discussed above, based on the Debtor's intimate involvement in the prior store closing sales,
4 the Debtor is familiar with and capable of self-managing the process to achieve maximum results,
5 while at the same time realizing substantial savings compared to using a third party liquidator run
6 the sales.

7 For these reasons, the Debtor believes the Sale Guidelines Closing Sales are justified, are
8 in the best interests of the Estate, and should be approved.

9 **3. The Asset Sales Should be Free And Clear of Liens And Encumbrances**

10 Section 363(f) of the Bankruptcy Code permits the sale of property of the bankruptcy
11 estate "free and clear of any interest in such property of an entity other than the estate" if one of
12 certain enumerated conditions is satisfied. The Debtor believes that one or more of these
13 requirements will be satisfied.

14 The Debtor seeks to sell its inventory at the Closing Sales. At this time, four parties assert
15 security interests in the Debtor's merchandise: State Bank (on account of a contingent claim based
16 on whether or not the Committee or other party in interest challenges its claim or lien by February
17 15, 2018), Nike (on account of the recent \$4.0 Nike Postpetition Credit), Anjum Shiekh (the Term
18 Lender), and Comvest. The Debtor believes it is entitled to sell the assets free and clear of any of
19 their liens.

20 The Debtor believes all of these parties consent to the Closing Sales, with their respective
21 liens to attach to the proceeds with the same validity and priority. The Debtor's ordinary course of
22 business involves the sale of the inventory, and having extended credit to the Debtor with
23 knowledge of the Debtor's business, including through, at times, various promotional sales and
24 discounts, parties should be deemed to consent to the sales.

25 Furthermore, all such parties will have received notice of the Motion and will be given
26 sufficient opportunity to object to the relief requested. Any such any entity that does not object to
27 the sale will be deemed to have consented. *See Hargrave v. Township of Pemberton (In re*
28 *Tabone, Inc.)*, 175 B.R. 855, 858 (Bank. D.N.J. 1994) (finding that failure to object to sale after

1 receiving notice of such sale constitutes consent and satisfies section 363(f)). *See also, In re*
2 *Enron Corp.*, 2003 WL 21755006, at *2 (Bankr. S.D.N.Y. July 28, 2003) (order deeming all
3 parties who did not object to proposed sale to have consented under section 363(f)(2)).

4 Based on the foregoing, the Debtor believes it is permitted to sell the inventory at the
5 Closing Sales free and clear of any liens, claims, encumbrances, or other interests that may exist
6 (collectively, the “Liens”), with all such Liens to attach to the proceeds of the sales with the same
7 validity and priority that such Liens had against the assets.

8 **4. The Court Should Approve The Sale Guidelines And Exempt The Debtor**
9 **From Complying With Various Restrictions And Laws**

10 The Sale Guidelines (Exhibit 2) are designed to protect consumers and create the least
11 amount of burden on the Debtor’s lessors during the Closing Sales, while at the same time
12 maximizing the recovery to the Estate. The Debtor requests that the Court authorize the Debtor to
13 conduct the Closing Sales pursuant to the terms of the Sale Guidelines, regardless of any contrary
14 lease provisions or state or local law. The Debtor believes that the Sale Guidelines are based upon
15 similar guidelines approved in other chapter 11 retail cases in the Ninth Circuit.

16 **a. The Debtor Should Not be Required to Comply With Any Lease**
17 **Restrictions And State or Local Laws That May Impact Negatively on**
18 **Its Ability to Conduct The Closing Sales**

19 Some of the Leases may contain clauses that restrict or prohibit the Debtor from
20 conducting the Closing Sales. Such provisions have been deemed unenforceable in other chapter
21 11 cases as an impermissible restraint on a debtor’s ability to maximize the value of its assets
22 under section 363 of the Bankruptcy Code. *See Ames Dept.*, 136 B.R. at 359 (enforcement of anti-
23 going-out-of business sale would contravene overriding federal policy requiring debtors to
24 maximize assets); *In re Tobago Bay Trading Co.*, 112 B.R. 463, 467 (Bankr. N.D. Ga. 1990) (anti-
25 going-out-of-business sale clause in lease is unenforceable); *In re Lisbon Shops, Inc.*, 24 B.R. 693,
26 695 (Bankr. E.D. Pa. 1982).

27 Store closing or liquidation sales, such as the Closing Sales described herein, are a routine
28 part of chapter 11 cases involving retail debtors. Such sales are consistently authorized by courts,

1 despite lease provisions purporting to forbid such sales in the ordinary course of business. *See In*
2 *re R.H. Macy & Co.*, 170 B.R. 69, 77 (Bankr. S.D.N.Y. 1994) (stating that showroom closing or
3 liquidation sales are routine in retail chapter 11 cases). In addition, although Bankruptcy Code
4 section 365(d)(3) requires that the Debtor timely perform all lease obligations, the provisions of
5 the section expressly exempt from this requirement provisions relating to the insolvency and
6 financial condition of the debtor as set forth in Bankruptcy Code section 365(b)(2). *See Tobago*
7 *Bay*, 112 B.R. at 467.

8 In *Ames Dept. Showrooms*, the lessor opposed the debtor's proposed going-out-of-business
9 sale based on a lease provision prohibiting such sales. The court in that case rejected the lessor's
10 argument, stating:

11 to enforce the anti-GOB sale clause of the Lease would contravene
12 overriding federal policy requiring Debtor to maximize estate
13 assets by imposing additional constraints never envisioned by
14 Congress . . . Section 363(e) reserves for bankruptcy courts the
15 discretion to condition the time, place and manner of Phase I GOB
16 Sale, thereby providing adequate safeguards to protect shopping
17 center landlords and their other tenants, while allowing the Trustee
18 to fulfill its fiduciary obligations.

16 *Id.* at 359.

17 Similarly, in *Tobago Bay*, a lessor argued that the debtor's liquidation sale violated a lease
18 provision prohibiting "going-out-of-business, auction, distress, fire or bankruptcy or similar sale."
19 The court in *Tobago Bay*, however, refused to enforce the lease provision finding that "[w]here
20 provisions of an unexpired lease conflict with these policies [to facilitate the debtor's
21 reorganization and maximize the returns for the benefit of creditors] to prevent or hinder
22 reorganization, the court may find such provisions to be unenforceable." *Tobago Bay*, 112 B.R. at
23 467.

24 Here, the Sale Guidelines provide adequate safeguards to protect the Debtor's Closing
25 Stores' respective lessors, while at the same time permitting the Debtor to fulfill its fiduciary
26 obligations to obtain the greatest recovery for the Estate. The Debtor believes that the lessors
27 cannot prove that any real economic harm will result from the non-enforcement of any lease
28 provisions purporting to prohibit the Closing Sales. On the other hand, the Debtor has provided

1 evidence demonstrating that the Closing Sales are in the best interest of the Estate. Indeed, the
2 Closing Sales may actually benefit the lessors. *See Lisbon Shops*, 24 B.R. at 695 (“[a]s a result of
3 the continued operation of the debtor’s Showrooms and the advertising in connection with the sale
4 to the public, the other shopping center tenants will benefit from the anticipated increased
5 customer traffic”).

6 In any event, even if the lessors could establish economic harm from the proposed Closing
7 Sales, bankruptcy courts have recognized these concerns are outweighed by the more important
8 goal of protecting the estates and all their creditors. Accordingly, in *Tobago Bay*, the court held:

9 Here, as in most cases, the prohibition of a bankruptcy or similar
10 sale would result in onerous and burdensome costs to an already
11 financially distressed debtor's estate by requiring removal of assets
12 to an off-site location. Further, the debtor's estate would lose the
13 benefit of the market that it had developed. The potential harm
14 and injury to creditors and to the debtor's estate is substantially
15 greater than the potential harm to the objectors.

16 *Id.* at 467. *See also In re Win’s Showrooms*, 177 B.R. 253 (Bankr. W.D. Tex. 1995) (authorizing
17 liquidation sale of assets conditioned on adequate protection of secured creditors lien); *In re*
18 *Joshua Slocum, Ltd.*, 99 B.R. 250, 259 (Bankr. E.D. Pa. 1989), vacated on other grounds, 922 F.2d
19 1081 (3rd Cir. 1990) (“fire sale” provision held unenforceable where landlord failed to establish
20 provision was material, or that its breach economically jeopardized him or his other tenants); *In re*
21 *Rawson Food Services, Inc.*, 61 B.R. 207, 208 (Bankr. M.D. Fla. 1986) (noting that court had
22 previously approved liquidation sale of substantially all assets based on finding it would attain
23 greatest return to the estate); *In re Fred’s Dollar Showrooms of Hernando, Inc.*, 44 B.R. 491
24 (Bankr. N.D. Miss. 1984) (authorizing liquidation sales based on finding it would maximize return
25 to the estate).

26 **b. Certain State And Local Requirements That Do Not Implicate**
27 **Applicable General Laws Should Be Waived**

28 The Debtor understands that certain states in which the Debtor operates have laws and
regulations that require the Debtor to pay an employee substantially contemporaneously with his
or her termination. In many cases, these laws require the payment to occur either immediately or

1 within a period of only a few days from the date such employee is terminated. The nature of the
2 Closing Sales contemplated by this Motion may result in a substantial number of employees being
3 terminated during the Closing Sales. The Debtor's payroll systems may be unable to process the
4 payroll information associated with these terminations in a manner that will be compliant with
5 these state laws and regulations.

6 While the Debtor intends to pay its terminated employees as expeditiously as possible, the
7 requirements imposed by these state laws and regulations are unworkable in light of these
8 extraordinary circumstances. If the Debtor is required to comply with these state laws and
9 regulations, its efforts to wind down its operations and mitigate unnecessary payroll costs will be
10 hampered. Indeed, if forced to comply, the Debtor will face the choice of (a) having to incur the
11 costs of keeping employees employed after the conclusion of the Closing Sale while payroll is
12 being prepared, or (b) staging terminations to the detriment of the Estate. Both of these options
13 will provide no benefit to the Estate and will only increase the administrative costs of conducting
14 the Closing Sales. Accordingly, the Debtor respectfully submits that in this instance, the wage
15 requirements are at odds with the underlying policies of the Bankruptcy Code and therefore the
16 Debtor should be granted relief from these requirements. *See In re Linens Holding Co.*, Case No.
17 08-10832 (Bankr. D. Del. Oct. 28, 2008) (waiving "fast pay" laws and regulations in connection
18 with approval of store closing sales).

19 The Closing Stores are located in seven different states and various municipalities. Certain
20 state statutes and local ordinances in which the Closing Stores are located may have licensing or
21 permit requirements, statutory or regulatory waiting periods, signage restrictions, and/or time
22 limits which would normally affect the conduct of liquidation or other similar closing sales. Some
23 localities also have statutes or regulations requiring creditor notification before bulk sales are
24 conducted. In the context of a chapter 11 case such as this, however, where creditors are given
25 notice of the proposed Closing Sale in advance, as well as an opportunity to be heard before this
26 Court, the application of such statutes and regulations would be redundant and unnecessary. The
27 Debtor's ability to conduct the Closing Sales within the time-frame contemplated is premised
28 upon its ability to conduct the sales in an orderly manner, without the need to comply with such

1 regulations. Accordingly, the Debtor believes such requirements should be waived for the limited
2 purpose of conducting the Closing Sales.

3 Courts have held that section 959(b) of Title 28 of the United States Code (which generally
4 provides that a debtor in possession shall manage and operate property in its possession according
5 to the laws of the state in which such property is situated) does not apply to debtors or their agents
6 liquidating assets. *See, e.g., California State Bd. Of Equalization v. Goggin*, 191 F.2d 726, 730
7 (9th Cir. 1951) (28 U.S.C. § 959 does not apply to transactions that are in the nature of a
8 liquidation), cert. denied, 342 U.S. 909 (1952).

9 Here, the Closing Sales will be of limited duration (estimated between 30 to 90 days), all
10 advertising will fairly describe the Closing Sales and no aspect of the relief sought is intended to
11 alter any applicable general laws, including laws or regulations affecting public safety.
12 Accordingly, section 959(b) of Title 28 should not apply to the Closing Sales as the Debtor will
13 be ceasing its operations at the Closing Stores with the knowledge and oversight of their creditors
14 and this Court.

15 Moreover, bankruptcy courts have recognized that federal bankruptcy law preempts state
16 and local laws which contravene the underlying policies of the Bankruptcy Code. *See, e.g., In re*
17 *Shenango Group, Inc.*, 186 B.R. 623, 628 (Bankr. W.D. Pa, 1995) (“Trustees and Debtors-in
18 possession have unique fiduciary and legal obligations pursuant to the Bankruptcy Code . . .[A]
19 state statute cannot place burdens on them where the result would contradict the priorities
20 established by the Federal Bankruptcy Code”). While preemption of state law is not always
21 appropriate, it is appropriate where, as here, the only state or local laws involved concern
22 economic regulation rather than the protection of public health and safety. *See Baker & Drake,*
23 *Inc. v. Pub. Serv. Comm’n of Nevada (In re Baker & Drake, Inc.)*, 35 F.3d 1348, 1353-54 (9th Cir.
24 1994).

25 In addition, pursuant to section 105(a) of the Bankruptcy Code, the Court has the authority
26 to permit the Closing Sales to proceed notwithstanding contrary Liquidation Sale Laws. Section
27 363 of the Bankruptcy Code, which requires debtors to operate their businesses in a way that
28 maximizes recoveries for creditors, will be undermined if the Court does not provide for a waiver

1 of state and local statutes and regulations establishing licensing or permitting requirements,
2 waiting periods, time limits or bulk sale restrictions that would otherwise apply to the Sale. *See In*
3 *re Blockbuster Inc.*, Case No. 10-14997 (BRL) (Bankr. S.D.N.Y. Jan. 20, 2011) (authorizing the
4 debtors to conduct store closing sales notwithstanding federal, state, and local laws governing the
5 conduct of store closing and liquidation sales); *In re Finlay Enters., Inc.*, Case No. 09-14873
6 (JMP) (Bankr. S.D.N.Y. Sept. 25, 2009) (authorizing debtors to conduct “going out of business”
7 sales “without the necessity of compliance” with certain “going out of business” laws); *In re Steve*
8 *& Barry’s Manhattan LLC*, Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. Aug. 22, 2008)
9 (authorizing store closing sales without requiring compliance with laws affecting store closing or
10 liquidation sales).

11 Importantly, the requested waiver is narrowly-tailored to facilitate the successful conduct
12 of the Closing Sales. The Debtor does not seek a general waiver of all state and local
13 requirements which would otherwise apply to the Closing Sales. Rather, the requested waiver is
14 restricted as follows: (a) the Debtor is requesting that this Court authorize the Debtor to conduct
15 the Closing Sales without the necessity of, and the delay associated with obtaining various state
16 licenses or permits, observing state and local waiting periods or time limits and/or satisfying any
17 additional requirements with respect to advertising, conducting the Closing Sales as a store closing
18 or similar type sale; and (b) similarly, the Debtor requests that bulk sale laws to the extent
19 applicable, be waived, as creditors are protected by the notice provided hereunder and the
20 jurisdiction of this Court. The Debtor fully intends to be bound by and comply with remaining
21 statutes and regulations, such as health and safety laws. The Closing Sales and the requested
22 waiver are scheduled for a discrete period of time, and the Closing Sales will be conducted in
23 accordance with the Sale Guidelines, which are subject to review by creditors and approval by this
24 Court.

25 Accordingly, the Debtor requests this Court authorize the Closing Sales in accordance with
26 the Sale Guidelines, and any side letter agreement entered into between the Debtor and a landlord
27 of an affected Closing Store. The Debtor also requests the Court waive and eliminate any
28 requirement of having to obtain various state licenses or comply with specific wage requirements,

1 observe state and local waiting periods or time limits, and/or satisfy any additional requirements in
2 connection therewith with respect to advertising and conducting the sale as a store closing or
3 similar type sale.

4 **5. The Debtor Should be Authorized to Abandon Remaining Property**

5 Section 554 of the Bankruptcy Code provides that after notice and a hearing, a debtor “may
6 abandon any property of the estate that is burdensome to the estate or that is of inconsequential
7 value and benefit to the estate.” 11 U.S.C. § 554(a). *See also, Hanover Ins. Co. v. Tyco Indus.,*
8 *Inc.*, 500 F.2d 654, 657 (3d Cir. 1974) (“[A trustee] may abandon his claim to any asset, including
9 a cause of action, he deems less valuable than the cost of asserting that claim.”); *In re Contract*
10 *Research Solutions, Inc.*, Case No. 12-11004, 2013 WL 1910286, at *4 (Bankr. D. Del. May 1,
11 2013) (“[A debtor] need only demonstrate that [it] has exercised sound business judgment in
12 making the determination to abandon.”).

13 Here, in accordance with the Sale Guidelines, the Debtor will make every reasonable effort
14 to sell all Closing Store assets at the Closing Stores as quickly and efficiently as possible.
15 However, during the course of the Closing Sales, the Debtor may determine that the costs
16 associated with the continued storage and sale efforts respecting certain merchandise or FF&E is
17 likely to exceed the projected proceeds that could be realized from the sale thereof, or that certain
18 merchandise, FF&E or other remaining Closing Stores’ assets may have low prospects for resale.
19 In such event, any remaining Closing Store assets would likely impose a financial burden on the
20 Estate, in the form of storage and removal costs, but are unlikely to provide much, if any, value in
21 return to the estate.

22 To maximize the value of the Debtor’s assets and to minimize unnecessary costs to the
23 estate, the Debtor requests authority to designate any property located at the Closing Stores as
24 “Remaining Property” and to abandon such Remaining Property located at any of the Closing
25 Stores once the applicable Closing Sale has terminated without incurring liability to any person or
26 entity. Before designating any assets as Remaining Property or abandoning any Remaining
27 Property at any Closing Store, the Debtor will have determined in the exercise of its sound
28 business judgment that such Remaining Property to be abandoned by the Debtor is either (a)

1 burdensome to the Estate because removal and storage costs for the Remaining Property are likely
2 to exceed any net proceeds therefrom or (b) of inconsequential value or benefit to the Estate.¹⁰

3 Notably, the Debtor will use all commercially reasonable efforts to remove, or cause to be
4 removed, any confidential or personal identifying information (which alone or in conjunction with
5 other information identifies an individual, including, but not limited to, an individual's name,
6 social security number, date of birth, government-issued identification number, account number,
7 and credit or debit card number) in any of the Debtor's hardware, software, computers or cash
8 registers or similar equipment that constitute any FF&E or any Remaining Property before any
9 such property is sold or abandoned.

10 Accordingly, the Debtor requests Court authorization to designate and thereafter abandon
11 Remaining Property if it determines that the benefits of retaining such property for storage or
12 resale are greater than the costs of retention.

13 **B. The Court Should Authorize Rejection of Leases Pursuant to The Rejection**
14 **Procedures**

15 The majority of the leases for the Closing Stores already are authorized for rejection
16 pursuant to the Rejection Procedures. Only 11 of the Closing Stores related to leases that were not
17 the subject of the Rejection Motion and are not subject to the Rejection Procedures. The Court
18 should authorize the rejection of those leases pursuant to those same rejection procedures.

19 Section 365 of the Bankruptcy Code permits a debtor to reject an unexpired leases. *See* 11
20 U.S.C. § 365. The decision to reject or assume an unexpired lease falls within a debtor's business
21 judgment. As discussed above, the Debtor considers a variety of factors before determining to
22 reject any of its leases. The Debtor has considered those factors in determining that, at this time,
23 and based on present circumstances, the Leases should be rejected. Of course, should
24 circumstances change, the Debtor may determine to maintain a Closing Store and the related lease.

25 Moreover, the Rejection Procedures -- which the Debtor developed with the Committee

26 _____
27 ¹⁰ As noted above, the Debtor also will consider whether it is appropriate or feasible to relocate any such
28 remaining inventory to another store.

1 and which this Court approved -- require the Debtor to serve notice of its intended rejection of any
2 of the Leases. Parties in interest will have the opportunity to object to such notice and otherwise
3 be heard in respect of the intended rejection. Therefore, although the Debtor intends to reject the
4 Leases, any final rejection remains subject to further proceedings.

5 **C. The Waiver of Rule 6004 is Appropriate**

6 Bankruptcy Rule 6004 provides that an order authorizing the sale of a debtor's property is
7 stayed for a period of 14 days after entry of the order unless the court orders otherwise. See Fed.
8 R. Bankr. P. 6004(h). In the present case, the Debtor seeks to commence the Closing Sales
9 immediately and, in turn, requests that any order approving the relief requested herein be effective
10 immediately. As described above, the relief sought herein is necessary for the Debtor to, among
11 other things, realize maximum return from the Closing Sales and liquidations to provide essential
12 operating liquidity to the Debtor, minimize operating and administrative expenses, and preserve
13 maximum value for the Estate and creditors. There is no reason to delay the effectiveness of any
14 such order entered by the Court.

15 **IV.**

16 **CONCLUSION**

17 Based on the foregoing, the Court should grant this Motion.

18 Dated: February 6, 2018

SulmeyerKupetz
A Professional Corporation

19
20
21 By: /s/ Asa S. Hami

David S. Kupetz

Asa S. Hami

Steven F. Werth

Attorneys for Debtor and Debtor in Possession

Shiekh Shoes, LLC

EXHIBIT 1

Store #	Location Name	Address	City	State	ZIP	Lessors Name	Lessor Contact Info	Lessee
6	Newpark Mall	1240 Newpark Road #1240	Newark	CA	94560	Alameda Mall Associates (50% co-tenant) & GGP- Newpark, L.L.C. (50% co-tenant) -- as assigned to NewPark Mall, LP	Notice: NewPark Mall, L.P., 1114 Avenue of the Americas, Suite 2800, New York, NY 10036, Attn: General Counsel, With Copy to: NewPark Mall, L.P., 2086 NewPark Mall, Newark, CA 94560, Attn: General Manager, Payment Address: Rouse Properties, Inc- New Park Mall, SDS-12-3050, PO Box 86, Minneapolis, MN 55486-3050	Shiekh Shoes, LLC
8	Sherwood Mall	5308 Pacific Ave #33, #8	Stockton	CA	95207	Brixton Sherwood LLC	Brixton Sherwood, LLC, c/o Brixton Capital, 120 South Sierra Ave, Solana Beach, CA 92075, Attn: Property Manager	Shiekh Shoes, LLC
9	WFS Solano Mall	1350 Travis Blvd. #L25	Fairfield	CA	94533	Solano Mall LP	Solano Mall, LP, c/o Westfield Corporation, Inc., 11601 Wilshire Blvd., 11th floor, Los Angeles, CA 90025, Attn: Legal Department	Shiekh Shoes, LLC
10	Coronado Mall	6600 Menaul NE, #G-4	Albuquerque	NM	87110	Cononado Center, L.L.C.	Notice: Coronado Center c/o Coronado Center, L.L.C., 110 N. Wacker Dr., Chicago, IL 60606, Attn: Law/Lease Administration Dept.; With Copy to: Coronado Center Mall, 6600 Menaul Blvd., NE, Albuquerque, NM 871110, Attn: General Manager	Shiekh Shoes, LLC
12	Del Amo Fashion Center	21880 Hawthorne Blvd. #334	Torrance	CA	90503	Del Amo Fashion Center Operating Company, L.L.C.	Del Amo Fashion Center Operating Company, L.L.C., c/o M.S. Management Associates Inc., 225 West Washington Street, Indianapolis, Indiana 46204-3438	Shiekh Shoes, LLC
15	Somersville Towne Center	2550 Somersville Rd. #65	Antioch	CA	94509	The Macerich Partnership, LP	The Macerich Partnership, L.P., 2556 Somersville Road, Antioch, CA 94509, Attn: Center Manager; With copy to: The Macerich Partnership, L.P., c/o Macerich Company, PO Box 2172, 401 Wilshire Blvd, Suite 700, Santa Monica, CA 90407, Attn: Legal Dept.	Shiekh Shoes, LLC
19	Santa Rosa Plaza	1051 Santa Rosa Plaza #1051	Santa Rosa	CA	95401	EMI Santa Rosa Limited Partnership	EMI Santa Rosa Limited Partnership, c/o M.S. Management Associates, Inc., 225 West Washington Street, Indianapolis, IN 46204-3438	Shiekh Shoes, LLC
22	Pacific View Mall	3301 E. Main St. #1385	Ventura	CA	93003	Macerich Buenaventura Limited Partnership	Macerich Buenaventura Limited Partnership, 3301-1 East Main Street, Ventura, California 93003, Attn: Center Manager, With a Copy to: Macerich Buenaventura Limited Partnership, c/o Macerich, PO Box 2172, 401 Wilshire Blvd., Suite 700, Santa Monica, CA 90407, Attn: Legal Dept.	Shiekh Shoes, LLC
24	Cielo Vista	8401 Gateway Blvd West, #A01B	El Paso	TX	79925	Simon Property Group (Texas), L.P.	Simon Property Group (Texas), L.P., c/o M.S. Management Associates, Inc., 225 West Washington Street, Indianapolis, IN 46204-3438	Shiekh Shoes, LLC
26	Great Mall of Bay Area	447 Great Mall Dr. #164A	Milpitas	CA	95035	Milpitas Mills Limited Partnership	Milpitas Mills Limited Partnership, c/o M.S. Management Associates Inc., 225 West Washington Street, Indianapolis, Indiana 46204-3438	Shiekh Shoes, LLC
30	Sunrise Mall	6149 Sunrise Mall, #D-9	Citrus Heights	CA	95610	Steadfast Sunrise V, LLC	Steadfast Commercial Management Co., Inc., Attn: Ana Maria Del Rio, Chief Administrative Officer, 4343 Von Karman, Suite 300, Newport Beach, CA 92660; With copy to: Steadfast Commercial Management Co., Inc., Attn: Lisa Whitney, VP, 4343 Von Karman, Suite 300, Newport Beach, CA 92660	Shiekh Shoes, LLC
31	Downtown L.A.	434 East Washington Blvd.	Los Angeles	CA	90015	Eagles's Nest Property, LLC	Eagle's Nest Real Estate Corp., c/o Dennis Needleman, 813 Santee Street, Los Angeles, CA 90014	Shiekh Shoes, LLC
37	Hanford Mall	1675 West Lacey Blvd. #G-5	Hanford	CA	93230	Passco Hanford Mall, LLC	Hanford Mall, 1675 West Lacey Boulevard, Hanford, CA 93230, Attn: General Manager; with copy to PASSCO Property Management Services, LP, 2050 Main Street, Suite 650, Irvine, CA 92614, Attn: Asset Manager/Hanford Mall	Shiekh Shoes, LLC
39	Merced Mall	740 Merced Mall	Merced	CA	95340	Merced Mall Ltd.	Merced Mall Ltd. P.O. Box 6655, Santa Rosa, California 95406	Shiekh Shoes, LLC
40	WFS Valley Fair	2855 Stevens Creek Blvd. #B471	Santa Clara	CA	95050	VF Mall LLC	VF Mall LLC, 11601 Wilshire Boulevard, 11th Floor, Los Angeles, California 90025, Attention: Legal Department	Shiekh Shoes, LLC
55	Fashion Fair Mall (outside)	711 East Shaw Ave. #E20	Fresno	CA	93710	Macerich Fresno, L.P. (CA); a Macerich Lease	Macerich Fresno Limited Partnership, 4841 North First Street, Fresno, CA 93726 Attn: Center Manager and copy to: Macerich Fresno Limited Partnership c/o Macerich Company, P.O. Box 2172, 401 Wilshire Blvd, Suite 700, Santa Monica, CA 90407 Attn: Legal Dept.	Shiekh Shoes, LLC
56	Mission Valley Mall	1640 Camino del Rio N. #218	San Diego	CA	92108	Mission Valley Shoppingtown, LLC	Mission Valley Shoppingtown, LLC, 2049 Century Park East, 41st Floor, Los Angeles, CA 90067, Attn: Legal Dept.	Shiekh Shoes, LLC
59	Northridge Fashion Center	9301 Tampa Ave. #68	Northridge	CA	91324	Formerly U.K.-American Properties, Inc.; currently GGP Northridge Fashion Center, LP	Northridge Fashion Center, 110 N. Wacker Dr., Chicago, IL 60606, Attn: Law/Lease Admin. Dept.	Shiekh Shoes, LLC
60	Inland Center	764 Inland Center Drive	San Bernardino	CA	92408	Ten Brothers Holding Co.	2565 Euclid Crescent East 2565 Euclid Crescent East, Upland, CA 91784	Shiekh Shoes, LLC
64	Valencia Town Center	24201 W. Valencia Blvd. #2520	Valencia	CA	91355	Valencia Town Center Venture, L.P. (Delaware) a Westfield Lease	Valencia Town Center Venture, L.P., 2049 Century Park East, 41st Floor, Los Angeles, CA 90067, Attn: Legal Dept.	Shiekh Shoes, LLC
66	Metrocenter Mall	9617 N. Metro Parkway #1144A	Phoenix	AZ	85051	Carlyle ER Metro, LLC (Delaware) by assignment from DVM Co. (AZ) A Simon Lease	Carlyle ER Metro, LLC, 2700 Westchester Ave, Suite 303, Purchase NY 10577-2532; Attn: Lease Administration with a copy to: Metrocenter Mall, 9617 N. Metro Parkway West, Suite 1001, Phoenix, AZ 85051-1409, Attn: General Manager	Shiekh Shoes, LLC
67	Paradise Valley Mall	4568 E. Cactus Road, #C048	Phoenix	AZ	85032	Paradise Valley Mall SPE LLC (Delaware) (a Macerich Company)	Westday Associates Limited Partnership, 4568 East Cactus Road, Phoenix, AZ 85032 Attn: Center Manager and copy to: Westday Associates Limited Partnership c/o Macerich Company, P.O. Box 2172, 401 Wilshire Blvd, Suite 700, Santa Monica, CA 90407 Attn: Legal Dept.	Shiekh Shoes, LLC
71	Chandler Fashion Center	3111 West Chandler Blvd. #1088	Chandler	AZ	85226	TWC Chandler LLC (Macerich)	TWC-Chandler, L.L.C., Suite 214, 3111 West Chandler Blvd., Chandler, AZ 85226 Attn: Center Manager and TWC-Chandler, L.L.C. c/o Macerich Company, P.O. Box 2171, 401 Wilshire Blvd., Suite 700, Santa Monica, CA 90407 attn: Legal Dept.	Shiekh Shoes, LLC
78	West Oaks Mall	1000 West Oaks Mall Sp #304	Houston	TX	77082	West Oaks Mall Owner, LP	West Oaks Owner LLC, 100 North Sepulveda Blvd., Suite 1925, El Segundo, CA 90245, Attn: Managing Principal; with copy to West Oaks Mall, 1000 West Oaks Mall, Houston, Texas 77082, Attn: Mall Manager	Shiekh Shoes, LLC
81	Otay Ranch Town Center	2015 Birch Rd Ste 1001	Chula Vista	CA	91915	GGP-Otay Ranch, L.P.	GGP-Otay Ranch, L.P. c/o Otay Ranch Town Center, 110 N. Wacker Dr., Chicago, IL 60606, Attn: Law/Lease Administration Department; with copy to Otay Ranch Town Center, 2015 Birch Road, Suite 500, Chula Vista, CA 91915, Attn: General Manager	Shiekh Shoes, LLC
83	Park Place Mall	5870 East Broadway Blvd. #110	Tucson	AZ	85711	Park Mall L.L.C.	Park Place Mall c/o Park Mall L.L.C., 110 N. Wacker Dr., Chicago, IL 60606, Attn: Law/Lease Administration Department	Shiekh Shoes, LLC

84	Tucson Mall	4500 North Oracle Rd, Suite #327	Tucson	AZ	85705	GGP-Tucson Mall L.L.C.	Tucson Mall c/o GGP-Tucson Mall L.L.C., 110 N. Wacker Dr., Chicago, IL 60606, Attn: Law/Lease Administration Department; with copy to Tucson Mall, 4500 N. Oracle Rd., Tucson, AZ 85705, Attn: General Manager	Shiekh Shoes, LLC
88	Deerbrook Mall	20121 Eastex Freeway	Humble	TX	77338	Ten Brothers Holding Co.	2565 Euclid Crescent East, Upland, CA 91784	Shiekh Shoes, LLC
89	Galleria at Sunset	1300 Sunset Road Suite #1370	Henderson	NV	89014	BPC HENDERSON, LLC	BPC Henderson, LLC, Terminal Tower, 50 Public Square, Suite 1360, Cleveland, OH 44113	Shiekh Shoes, LLC
101	Cottonwood Mall	10000 Coors Bypass NW, #C-13	Albuquerque	NM	87114	Simon Property Group, L.P.	Simon Property Group, L.P.; M.S. Management Associates Inc.; 225 West Washington Street; Indianapolis, Indiana 46204-3438	Shiekh Shoes, LLC
102	The Shops at Tanforan	1150 El Camino Real, #115	San Bruno	CA	94066	Tanforan Park Shopping Center LLC	Tanforan Park Shopping Center LLC; 3600 Birch Street, Suite 250; Newport Beach, CA 92660; Attn: Senior Vice President - Tanforan; copy to: General Growth Management, Inc.; 110 North Wacker Drive; Chicago, IL 60606; Attn: Managed Property/Legal	Shiekh Shoes, LLC
104	Burbank Town Center	201 East Magnolia Blvd. Suite 294	Burbank	CA	91502	CAPREF Burbank LLC	Burbank Mall Associates, LLC c/o Crown Realty & Development Corp., 18201 Von Karman Avenue, #950, Irvine, CA 92612; with copy to Burbank Town Center, 201 East Magnolia Boulevard, Suite 151, Burbank, CA 91501, Attn: General Manager; with copy to General Growth Management, Inc., 110 North Wacker Drive, Chicago, IL 60606, Attn: Management Services/Burbank Town Center	Shiekh Shoes, LLC
107	WSF West Covina	454 Plaza Drive	West Covina	CA	91790	Plaza West Covina, LP	Plaza West Covina, LP; 112 Plaza Drive, West Covina, CA 91790; with copy to: Starwood Retail Partners, LLC; 1 East Wacker, Suite 3700; Chicago, IL 60601; Attn: Specialty Leasing	Shiekh Shoes, LLC
110	Northgate Mall	401 NE Northgate Way #527	Seattle	WA	98125	Northgate Mall Partnership	Northgate Mall Partnership c/o M.S. Management Associates Inc.; 225 West Washington Street; Indianapolis, Indiana 46204-3438	Shiekh Shoes, LLC
111	Westfield Capital	625 Black Lake Blvd #E14	Olympia	WA	98502	Capital Mall Company	Capital Mall Company; 11601 Wilshire Boulevard, 11th Floor; Los Angeles, California 90025; Attention: Legal Department	Shiekh Shoes, LLC
112	Northgate Mall San Rafael	5800 Northgate Mall #087	San Rafael	CA	94903	Northgate Mall Partnership	Northgate Mall Partnership; Management Office; 5800 Northgate Drive; San Rafael, California 94903; Attention: Center Manager; w/ copy to: Northgate Mall Associates c/o Macerich; PO Box 2172; 401 Wilshire Boulevard, Suite 700; Santa Monica, CA 90407; Attention: Legal Department	Shiekh Shoes, LLC
113	Galleria Dallas	13350 Dallas Parkway #3600	Dallas	TX	75240	Galleria Mall Investors LP	Galleria Mall Investors LP c/o M.S. Management Associates, Inc.; 225 W. Washington Street; Indianapolis, Indiana 46204-3438; and to UBS Realty Investors LLC; 12001 North Central Expressway, Suite 650; Dallas, TX 75243-3735	Shiekh Shoes, LLC
117	Alderwood Mall	3000 184th Street #522	Lynnwood	WA	98037	Alderwood Mall L.L.C.	Alderwood Mall c/o Alderwood Mall L.L.C.; 110 N. Wacker Dr. Chicago, IL 60606; Attn: Law/Lease Administration Department; with copy to Alderwood Mall; 3000 184th St. S.W. Room 127; Lynnwood, WA 98037; Attention: General manager	Shiekh Shoes, LLC
118	SouthCenter Mall	1031 Southcenter Mall	Tukwilla	WA	98188	WEA Southcenter LLC	WEA Southcenter LLC; 11601 Wilshire Boulevard, 11th Floor; Los Angeles, CA 90025; Attention: Legal Department	Shiekh Shoes, LLC
121	The Parks @ Arlington	3811 S. Cooper St. #1096	Arlington	TX	76120	Parks at Arlington, LLC	Parks at Arlington, LLC c/o The Parks at Arlington; 110 N. Wacker Drive; Chicago, IL 60606; Attn: Law/Lease Administrative Department; with copy to: The Parks at Arlington; 3811 South Cooper Street; Arlington, TX 76015; Attn: General Manager	Shiekh Shoes, LLC
122	Imperial Highway	700 W. Imperial Highway #108	Los Angeles	CA	90044	3829 South Broadway LLC	3829 Broadway LLC, Reliant Real Estate Management, Inc., c/o The REMM Group 15991 Red Hill Ave., Suite 200, Tustin, CA 92780	Shiekh Shoes, LLC
123	River Oaks Center	96 River Oaks Center #0A15	Calumet City	IL	60409	Valley/River Oaks Partnership	Fox Valley/River Oaks Partnership c/o M.S. Management Associates Inc.; 225 West Washington Street; Indianapolis, Indiana 46204-3438	Shiekh Shoes, LLC
125	Highland Plaza	1631 East Highland Ave Suite B-D	San Bernardino	CA	92404	HM Suns Investment, Inc.	HM SUNS INVESTMENT, INC. 5681 Beach Blvd., Suite 200, Buena Park, CA 90621	Shiekh Shoes, LLC
139	Visalia	1100 S. Mooney Blvd	Visalia	CA	93277	Ten Brothers Holding Co.	2565 Euclid Crescent East, Upland, CA 91784	Shiekh Shoes, LLC
145	Plaza Bonita	3030 Plaza Bonita RD. #2530	National City	CA	91950	Plaza Bonita LLC	Plaza Bonita LLC; 11601 Wilshire Boulevard, 11th Floor; Los Angeles, CA 90025; Attn: Legal Department	Shiekh Shoes, LLC

EXHIBIT 2

SHIEKH SHOES, LLC (hereafter, “Merchant”)

GUIDELINES FOR STORE CLOSING SALES (each, a “Sale”)¹

- A. The Sale shall be conducted so that the stores in which sales are to occur (collectively, “Stores”; each, a “Store”) will remain open no longer than during the normal hours of operation provided for in the respective leases for the Stores.
- B. The Sale shall be conducted in accordance with applicable state and local “Blue Laws”, where applicable, so that no Sale shall be conducted on Sunday unless the Merchant had been operating such Store on a Sunday.
- C. On “shopping center” property, Merchant shall not distribute handbills, leaflets or other written materials to customers outside of any Store’s premises, unless permitted by the lease or, if distribution is customary in the “shopping center” in which such Store is located; provided that Merchant may solicit customers in the Stores themselves. On “shopping center” property, the Merchant shall not use any flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
- D. Merchant may advertise the Sale as a “store closing,” “sale on everything”, “everything must go”, or similar themed sale.
- E. Merchant shall be permitted to utilize display, hanging signs, and interior banners in connection with the Sale; provided, however, that such display, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. Merchant shall not use neon or day-glo on its display, hanging signs, or interior banners. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Sale Guidelines. In addition, Merchant shall be permitted to utilize exterior banners at (i) non-enclosed mall Stores and (ii) enclosed mall Stores to the extent the entrance to the applicable Store does not require entry into the enclosed mall common area; provided, however, that such banners shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store, shall not be wider than the storefront of the Store, and shall not be larger than 4 feet x 40 feet. In addition, Merchant shall be permitted to utilize sign walkers in a safe and professional manner and in accordance with the terms of the Order. Nothing contained in these Sale Guidelines shall be construed to create or impose upon Merchant any additional restrictions not contained in the applicable lease agreement.
- F. Conspicuous signs shall be posted in the cash register areas of each of the affected Stores to effect that “all sales are final.”

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the related motion to authorize the store closing sales.

G. Except with respect to the hanging of exterior banners, Merchant shall not make any alterations to the storefront or exterior walls of any Stores.

H. Merchant shall not make any alterations to interior or exterior Store lighting. No property of the landlord of a Store shall be removed or sold during the Sale. The hanging of exterior banners or in-Store signage and banners shall not constitute an alteration to a Store.

I. Merchant shall keep Store premises and surrounding areas clear and orderly consistent with present practices.

J. Merchant shall have the right to sell all furniture, fixtures, and equipment located at the Stores (the "FF&E"). Merchant may advertise the sale of the FF&E in a manner consistent with these guidelines at the Stores. The purchasers of any FF&E sold during the sale shall be permitted to remove the FF&E either through the back shipping areas at any time, or through other areas after Store business hours. For the avoidance of doubt, as of the conclusion of a Sale, Merchant may abandon, in place and without further responsibility, any FF&E.

K. Merchant may include additional inventory or goods in the Sale, in each case in accordance with the terms of the Order and these Sale Guidelines.

L. At the conclusion of the Sale at each Store, pending assumption or rejection of applicable leases, the landlords of the Stores shall have reasonable access to the Stores' premises as set forth in the applicable leases. Merchant and its consultants and representatives shall continue to have exclusive and unfettered access to the Stores.

M. Post-petition rents shall be paid by Merchant as required by the Bankruptcy Code until the rejection or assumption and assignment of each lease.

N. The rights of landlords against Merchant for any damages to a Store shall be reserved in accordance with the provisions of the applicable lease.

O. If and to the extent that the landlord of any Store affected hereby contends that Merchant is in breach of or default under these Sale Guidelines, such landlord shall email or deliver written notice by overnight delivery on Merchant's counsel as follows:

David S. Kupetz
SulmeyerKupetz, A Professional Corporation
333 S. Hope St., 35th Floor
Los Angeles, CA 90071

EXHIBIT 3

1 David S. Kupetz (CA Bar No. 125062)
dkupetz@sulmeyerlaw.com
2 Asa S. Hami (CA Bar No. 210728)
ahami@sulmeyerlaw.com
3 Steven F. Werth (CA Bar No. 205434)
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4 **SulmeyerKupetz**
A Professional Corporation
5 333 South Hope Street, Thirty-Fifth Floor
Los Angeles, California 90071-1406
6 Telephone: 213.626.2311

7 Attorneys for Shiekh Shoes, LLC
Debtor and Debtor in Possession
8

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

12 In re
13
14 SHIEKH SHOES, LLC,
a California limited liability company

15 Debtor.
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21 Tax ID: 47-1479918
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Case No. 2:17-bk-24626-VZ

Chapter 11

**ORDER GRANTING DEBTOR'S
MOTION FOR ORDER: (1)
AUTHORIZING STORE CLOSING
SALES PURSUANT TO STORE
CLOSING SALE GUIDELINES; (2)
AUTHORIZING SALE OF ASSETS FREE
AND CLEAR OF ALL LIENS, CLAIMS,
AND ENCUMBRANCES IN
CONNECTION WITH STORE CLOSING
SALES; (3) AUTHORIZING REJECTION
OF RELATED REAL PROPERTY
LEASES PURSUANT TO STREAMLINED
LEASE REJECTION PROCEDURES
PREVIOUSLY APPROVED BY COURT;
AND (4) GRANTING ANCILLARY
RELIEF**

Date: February __, 2018
Time: __:__.m.
Place: Courtroom 1368
255 E. Temple Street
Los Angeles, CA 90012

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1 The “Motion For Order: (1) Authorizing Store Closing Sales Pursuant to Store Closing
2 Sale Guidelines; (2) Authorizing Sale of Assets Free And Clear of All Liens, Claims, And
3 Encumbrances in Connection With Store Closing Sales; (3) Authorizing Rejection of Related Real
4 Property Leases Pursuant to Streamlined Lease Rejection Procedures Previously Approved by
5 Court; And Granting Ancillary Relief” (the “Motion”), filed by Shiekh Shoes, LLC, the debto and
6 debtor in possession in the above-captioned case (the “Debtor”), came on for hearing on shortened
7 notice on February ____, 2018, at ____:___.m., in Courtroom 1368 of the above-entitled Court,
8 before the Honorable Vincent P. Zurzolo, United States Bankruptcy Judge. Appearances at the
9 hearing were as noted on the record of the hearing.

10 This Court having considered the Motion and all other papers filed in support of or in
11 connection with the Motion, the record in this case, and all arguments, statements, and
12 representations of counsel on the record at the hearing; and the Motion and notice of the Motion
13 having been timely and properly served on all necessary parties in accordance with applicable
14 rules and the directions of the Court and the Local Bankruptcy Rules; and good cause appearing
15 therefor, it is hereby **ORDERED** as follows:

16 1. The Motion is GRANTED.
17 2. The Debtor is authorized, pursuant to section 363(b)(1) of the Bankruptcy Code, to
18 conduct the Closing Sales (as defined in the Motion) at the Closing Stores (as defined in the
19 Motion, and with such Closing Stores identified on Exhibit 1 to the Motion) in accordance with
20 this Order, the Sale Guidelines (as defined in the Motion, and with such Sale Guidelines set forth
21 in Exhibit 2 to the Motion), and any side letter entered into between the Debtor and a landlord of
22 an affected Closing Store, which sales may be conducted as “store closing,” “sale on everything,”
23 “everything must go,” “inventory liquidation,” or similar-themed sales.. In furtherance thereof,
24 the Debtor and each of its respective officers, employees, and agents are hereby authorized to
25 execute such documents and to do such acts as are necessary or desirable to carry out the Closing
26 Sales and each of the transactions and related actions contemplated or set forth therein.

27 3. The Sale Guidelines are approved in their entirety. To the extent there is any
28 conflict between this Order and the Sale Guidelines, , the terms of this Order shall control over all

1 other documents.

2 4. Except as provided herein, neither Debtor nor any of its officers, employees, or
3 agents shall be required to obtain the approval of any third party, including (without limitation)
4 any governmental unit (as defined in section 101(27) of the Bankruptcy Code) or any landlord, to
5 conduct the Closing Sales at the Closing Stores and any related activities in accordance with the
6 Sale Guidelines.

7 5. Notwithstanding any contrary provision in any lease or occupancy agreement
8 governing Debtor's occupancy of a Closing Store, the Debtor is authorized to discontinue
9 operations at the Closing Stores in accordance with this Order and the Sale Guidelines.

10 6. All newspapers and other advertising media in which the Closing Sales may be
11 advertised and all landlords of the Closing Stores are directed to accept this Order as binding
12 authority so as to authorize the Debtor to conduct the Closing Sales and the sale of the Debtor's
13 personal property (the "Personal Property"), including any inventory and any fixtures, furniture,
14 and equipment pursuant to the Sale Guidelines, including, without limitation, to conduct and
15 advertise the sale of the Personal Property in the manner contemplated by, and in accordance with,
16 this Order, the Sale Guidelines, and any side letter agreement entered into between the Debtor and
17 any landlord of an affected Closing Store.

18 7. Nothing in this Order or the Sale Guidelines releases the Debtor from complying
19 with laws and regulations of general applicability, including, without limitation, public health and
20 safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic and
21 consumer protection laws, including consumer laws regulating deceptive practices and false
22 advertising.

23 8. To the extent that the Closing Sales at the Closing Stores are conducted in
24 accordance with this Order and the Sale Guidelines, and are therefore conducted under the
25 supervision of this Court, such Closing Sales are authorized notwithstanding (a) state and local
26 wage requirements for the Closing Sales (the "Fast Pay Laws"), and (b) any federal, state or local
27 statute, ordinance, rule or licensing requirement directed at regulating "going out of business,"
28 "store closing," similar inventory liquidation sales, or bulk sale laws, including laws restricting

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1 safe, professional and non-deceptive, customary advertising such as signs, banners, posting of
2 signage, and use of sign-walkers in connection with the sale, and including ordinances establishing
3 license or permit requirements, waiting periods, time limits or bulk sale restrictions that contain
4 exemptions for court-ordered sales (together with the Fast Pay Laws, the “Liquidation Laws”).
5 Given such exemptions, the Debtor shall be presumed to be in compliance with any Liquidation
6 Laws and are authorized to conduct the Closing Sales in accordance with the terms of this Order
7 and the Sale Guidelines without the necessity of showing compliance with any Liquidation Laws.

8 9. To the extent that any governmental unit disputes the Debtor’s compliance with any
9 Liquidation Law, such governmental unit may assert a dispute (a “Liquidation Dispute”) by
10 serving written notice (a “Dispute Notice”) of such Liquidation Dispute on the counsel for the
11 Debtor so as to ensure delivery thereof within 14 days following entry of this Order. If the Debtor
12 and such governmental unit are unable to resolve the Liquidation Dispute within 14 days of
13 service of the Dispute Notice, such governmental unit may file a motion with this Court requesting
14 consideration and resolution of the Liquidation Dispute (a “Dispute Resolution Motion”) on an
15 expedited basis. The filing of a Dispute Resolution Motion shall not be deemed to affect the
16 finality of this Order or to limit or interfere with the Debtor’s ability to conduct or to continue to
17 conduct the Closing Sales pursuant to this Order and in accordance with the Sale Guidelines,
18 absent further order of this Court. The dispute resolution procedures relating to any Liquidation
19 Disputes described in this paragraph are referred to as the “Resolution Procedures.”

20 10. In furtherance of the foregoing, within two (2) business days of the entry of this
21 Order, the Debtor shall serve copies of this Order and the Sale Guidelines via regular mail on each
22 of the following parties: (i) the Attorney General for each state where the Closing Sales are being
23 held, (ii) the county consumer protection agency or similar agency for each county where the
24 Closing Sales are being held, (iii) the division of consumer protection for each state where the
25 Closing Sales are being held, (iv) the chief legal counsel for the local jurisdiction the Closing
26 Sales are being held, and (v) the landlords for each of the Closing Stores.

27 11. The Debtor is hereby authorized to take such actions as may be necessary and
28 appropriate to advertise the sale as a “store closing,” “sale on everything,” “everything must go,”

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1 “liquidation sale,” “clearance outlet,” or similar themed sale through the posting of signs in
2 accordance with the Sale Guidelines (including, without limitation, through the use of sign-
3 walkers, banners, and other forms of advertising), notwithstanding any applicable non-bankruptcy
4 laws that restrict such sales and activities, and notwithstanding any provision in any lease,
5 sublease, license or other agreement related to occupancy, “going dark,” or abandonment of assets,
6 or other provisions that purport to prohibit, restrict, or otherwise interfere with the Closing Sales.

7 12. To the extent that disputes arise during the course of the Closing Sales regarding
8 laws regulating the use of sign-walkers, banners, or other forms of advertising, and the Debtor is
9 unable to resolve the matter consensually with a governmental unit, any party may request an
10 expedited hearing before this Court pursuant to these provisions.

11 13. All sales of all Personal Property shall be “as is” and final. Pursuant to section
12 363(f) of the Bankruptcy Code, all sales of Personal Property shall be free and clear of any and all
13 liens, claims, and encumbrances; provided, however, that any liens, claims, and encumbrances
14 shall attach to the proceeds of the sale of the applicable Personal Property with the same validity
15 and priority and to the same extent and amount that any such liens, claims, and encumbrances had
16 with respect to such Personal Property, subject to any claims and defenses that the Debtor may
17 possess with respect thereto and otherwise in accordance with the terms of any debtor in
18 possession financing and/or cash collateral order entered in this case.

19 14. The Debtor shall remain responsible for the payment of any and all sales taxes.
20 The Debtor is directed to remit all taxes accruing from the Closing Sales to the applicable
21 governmental units as and when due.

22 15. The Debtor and the respective landlord of each Closing Store are authorized to
23 enter into a side letter agreement to govern the conduct of the Closing Sales at the applicable
24 Closing Store and such side letter agreements shall control over the Sale Guidelines.

25 16. With respect to any lease relating to a Closing Store (as defined in the Motion) (a
26 “Lease”), the Debtor is authorized (but not required) to reject any Lease on the following terms
27 and conditions (the “Rejection Procedures”):

28 a. The Debtor must serve on both the counsel for the Official Committee of

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1 Unsecured Creditors (the “Committee”), the landlord for such Lease (or its counsel), and the
2 lessor of personal property that is leased from a third party (the “Personal Property Lessor”) that is
3 at the premises, if any (the “Leased Personal Property”) (or its counsel), and file with the Court,
4 written notice of the Debtor’s rejection of the Lease (“Rejection Notice”), which notice shall
5 include: (1) the location of the premises that is the subject of the Lease to be rejected; (2) the
6 Debtor’s monthly payment obligation under the subject Lease; (3) the name and address of the
7 lessor under the subject Lease; (4) a brief description and estimated value of any remaining
8 personal property anticipated to be abandoned, (5) a statement as to whether or not any Leased
9 Personal Property is at the premises and, if so, that the Personal Property Lessor must remove such
10 property immediately upon rejection of the particular Lease or such property will be deemed
11 abandoned as set forth in paragraph 17 below; and (6) a disclosure describing the procedures for
12 filing any objections to the Rejection Notice;

13 b. The Debtor’s service of the Rejection Notice pursuant to the immediately
14 preceding paragraph must be by e-mail, facsimile, Federal Express, or overnight mail;

15 c. The Debtor may serve any Rejection Notice immediately upon entry of this
16 Order;

17 d. Should a party in interest object to the proposed rejection by the Debtor of
18 any Lease that is the subject of a Rejection Notice, such party in interest must file and serve a
19 written objection so that such objection is filed with the Court and is actually received no later
20 than the date that is five (5) business days after the date the Debtor served the Rejection Notice by
21 each of the Debtor’s counsel, counsel to the Committee, counsel to the Debtor’s postpetition
22 lender(s), and the Office of the United States Trustee;

23 e. The Debtor may withdraw a Rejection Notice prior to the tenth day
24 following the Debtor’s service of the Rejection Notice;

25 f. To the extent the Debtor complies with the foregoing Rejection Procedures
26 for any Lease and no timely objection is filed and served in accordance with these procedures,
27 rejection of the applicable Lease shall be effective as of the later of (1) the tenth day following the
28 Debtor’s service of the Rejection Notice, or (2) the date the Debtor surrenders possession of the

1 subject premises to the applicable landlord in broom clean condition with delivery of the keys or
2 “key codes” (as applicable) for the premises to such landlord (a “Surrender Date”); and
3 g. if an objection to a Rejection Notice is timely filed and served in
4 accordance with these Rejection Procedures, the Debtor shall schedule a hearing for the
5 consideration of such objection. If such objection is overruled or withdrawn, the rejection of such
6 Lease shall be deemed to have occurred as of the later of (1) the tenth day following the Debtor’s
7 service of the Rejection Notice, or (2) the Surrender Date.

8 17. On the effective date of each Lease rejection pursuant to this Order, any and all
9 personal property remaining in the leased premises shall be deemed abandoned under section 554
10 and/or section 363 of the Bankruptcy Code (the “Abandoned Property”). The applicable landlord
11 is authorized to dispose of the Abandoned Property in its sole and absolute discretion without
12 further order of the Court and without notice or liability to the Debtor or any third-party claiming
13 an interest in such Abandoned Property.

14 18. Nothing herein shall or is intended to alter the “Order on Debtor’s Motion For
15 Order Approving Rejection of Unexpired Leases of Nonresidential Real Property as of Later of
16 December 31, 2017, or Return of Property to Landlords, Subject to Debtor’s Option to Not Reject
17 Upon Notice Prior to That Date” [Dkt. No. 311], or its applicability (if any) to any of the Closing
18 Stores.

19 19. To the extent that the Debtor proposes to sell or abandon Closing Store assets that
20 may contain any personal or confidential information about the Debtor’s employees or customers,
21 the Debtor shall remove all such confidential information from such assets before they are sold or
22 abandoned.

23 20. This Order shall be binding upon and shall govern the acts of all entities, including,
24 without limitation, all filing agents, filing officers, title agents, title companies, recorders of
25 mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental
26 departments, secretaries of state, federal, state and local officials, and all other persons and entities
27 who may be required by operation of law, the duties of their office, or contract, to accept, file,
28 register or otherwise record or release any documents or instruments, or who may be required to

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1 report or insure any title or state of title in or to the Store Assets.

2 21. This Order shall be binding on all of the Debtor' creditors (whether known or
3 unknown), the Debtor, and its affiliates, successors and assigns, and any affected third parties
4 including, but not limited to, all persons asserting an interest in the Closing Stores' assets,
5 notwithstanding any subsequent appointment of any trustee, party, entity or other fiduciary under
6 any section of the Bankruptcy Code with respect to the forgoing parties, and as to such trustee,
7 party, entity or other fiduciary, such terms and provisions likewise shall be binding.

8 22. The provisions of this Order and any actions taken pursuant hereto or thereto shall
9 survive the entry of any order which may be entered confirming or consummating any plan of the
10 Debtor or converting the Debtor' cases from chapter 11 to chapter 7, as well as the rights and
11 interests granted pursuant to this Order, shall continue in these or any superseding case and shall
12 be binding upon the Debtor and its successors and permitted assigns, including any trustee or other
13 fiduciary hereafter appointed as a legal representative of the Debtor under chapter 7 or chapter 11
14 of the Bankruptcy Code.

15 23. Notwithstanding Bankruptcy Rule 6004(h), this order shall be effective and
16 enforceable immediately upon its entry.

17 24. This Court shall retain exclusive jurisdiction with regard to all issues or disputes
18 arising from or relating to the implementation, interpretation, or enforcement of this Order,
19 including, but not limited to, any claim or issue relating to any efforts by any party or person to
20 prohibit, restrict or in any way limit the Closing Sales in accordance with this Order and the Sale
21 Guidelines, or any other disputes related to the Closing Sales. No parties or person shall take any
22 action against the Debtor until this Court has resolved such dispute. This Court shall hear the
23 request of such parties or persons with respect to any such disputes on an expedited basis, as may
24 be appropriate under the circumstances.

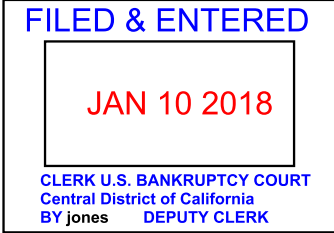
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EXHIBIT 4

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7 Attorneys for Debtor and Debtor in Possession
8 Shiekh Shoes, LLC

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

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12 In re
13 SHIEKH SHOES, LLC,
14 a California limited liability company,
15 Debtor.

Case No. 2:17-bk-24626-VZ
Chapter 11

**ORDER ON DEBTOR'S "MOTION FOR
ORDER APPROVING REJECTION OF
UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY
AS OF LATER OF DECEMBER 31, 2017,
OR RETURN OF PROPERTY TO
LANDLORDS, SUBJECT TO DEBTOR'S
OPTION TO NOT REJECT UPON
NOTICE PRIOR TO THAT DATE"**

Date: December 28, 2017
Time: 11:00 a.m.
Place: Courtroom 1368
255 E. Temple St.
Los Angeles, CA 90012

1 The “Motion For Order Approving Rejection of Unexpired Leases of Nonresidential Real
2 Property as of Later of December 31, 2017, or Return of Property to Landlords, Subject to
3 Debtor’s Option to Not Reject Upon Notice Prior to That Date” (the “Motion”), filed by Shiekh
4 Shoes, LLC, a California limited liability company, debtor and debtor in possession in the above-
5 captioned case (the “Debtor”), came on for hearing on December 28, 2017, at 11:00 a.m., before
6 the Honorable Vincent P. Zurzolo, United States Bankruptcy Judge, in Courtroom 1368 of the
7 above-entitled Court. Appearances were as noted on the record of the hearing on the Motion.

8 This Court having considered the Motion, all documents and papers submitted in support
9 of the Motion, all objections, oppositions, or other responses filed in connection with the Motion,
10 (collectively, the “Oppositions”), the Debtor’s reply memorandum in support of the Motion and
11 response to the Oppositions [Dkt. No. 234] (the “Debtor Reply”), the “Stipulation Between Debtor
12 And Official Committee of Unsecured Creditors Resolving Objections to Debtor’s Motion For
13 Order Approving Rejection of Unexpired Leases of Nonresidential Real Property” [Dkt. No. 252]
14 (the “Committee Stipulation”), the record in this case, and all arguments, statements, and
15 representations of counsel on the record at the hearing on the Motion; the Motion and notice of the
16 Motion having been timely and properly served on all necessary parties; and good cause appearing
17 therefor, it is hereby **ORDERED** as follows:

- 18 1. The Committee Stipulation is approved in its entirety.
- 19 2. The Motion is GRANTED specifically as set forth herein.
- 20 3. Each of the Designated Closing Store Leases (as that term is defined in the
21 Committee Stipulation) is rejected, with the rejection of each such Designated Closing Store Lease
22 effective as of the later of: (a) December 31, 2017, or (b) the date the Debtor surrenders possession
23 of the subject premises to the applicable landlord in broom clean condition with delivery of the
24 keys or “key codes” (as applicable) for the premises to such landlord (a “Surrender Date”), but in
25 no event shall such surrender of the premises occur later than January 15, 2018, absent consent of
26 the affected landlord. The Designated Closing Store Leases are those identified on Exhibit 1
27 hereto. Any Closing Store Lease (as that term is defined in the Committee Stipulation) not among
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1 the Designated Closing Store Leases are not rejected pursuant to this paragraph 3 (though the
2 Debtor may seek to reject such Lease pursuant to paragraph 4 below).

3 4. With respect to any Remaining Lease (as that term is defined in the Committee
4 Stipulation), the Debtor is authorized (but not required) to reject any such Remaining Lease on the
5 following terms and conditions:

6 a. the Debtor must serve on both the Committee's counsel, the landlord for
7 such Remaining Lease (or its counsel), and the lessor of personal property that is leased from a
8 third party (the "Personal Property Lessor") that is at the premises, if any (the "Leased Personal
9 Property") (or its counsel), and file with the Court, written notice of the Debtor's rejection of the
10 Remaining Lease ("Rejection Notice"), which notice shall include: (1) the location of the premises
11 that is the subject of the Remaining Lease to be rejected; (2) Debtor's monthly payment obligation
12 under the subject Remaining Lease; (3) the name and address of the lessor under the subject
13 Remaining Lease; (4) a brief description and estimated value of any remaining personal property
14 anticipated to be abandoned, (5) a statement as to whether or not any Leased Personal Property is
15 at the premises and, if so, that the Personal Property Lessor must remove such property
16 immediately upon rejection of the particular Remaining Lease or such property will be deemed
17 abandoned as set forth in paragraph 5 below; and (6) a disclosure describing the procedures for
18 filing any objections to the Rejection Notice;

19 b. the Debtor's service of the Rejection Notice pursuant to the immediately
20 preceding paragraph 4.a. must be by e-mail, facsimile, Federal Express, or overnight mail;

21 c. the Debtor may serve a Rejection Notice as early as December 28, 2017;

22 d. should a party in interest object to the proposed rejection by the Debtor of
23 any Remaining Lease that is the subject of a Rejection Notice, such party in interest must file and
24 serve a written objection so that such objection is filed with the Court and is actually received no
25 later than the date that is five (5) business days after the date the Debtor served the Rejection
26 Notice by each of the Debtor's counsel, counsel to the Committee, counsel to the Debtor's
27 postpetition lender, and the Office of the United States Trustee;

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1 e. the Debtor may withdraw a Rejection Notice prior to the tenth day
2 following the Debtor's service of the Rejection Notice;

3 f. to the extent the Debtor complies with the foregoing rejection procedures
4 for the Remaining Leases and no timely objection is filed and served in accordance with the
5 foregoing paragraph 4.d., rejection of the applicable Remaining Lease shall be effective as of the
6 later of (1) the tenth day following the Debtor's service of the Rejection Notice, or (2) the
7 Surrender Date; and

8 g. if an objection to a Rejection Notice is timely filed and served in
9 accordance with these procedures, the Debtor shall schedule a hearing for the consideration of
10 such objection. If such objection is overruled or withdrawn, the rejection of such Remaining
11 Lease shall be deemed to have occurred as of the later of (1) the tenth day following the Debtor's
12 service of the Rejection Notice or (2) the Surrender Date.

13 5. On the effective date of each Lease rejection pursuant to this Order, any and all
14 personal property remaining in the leased premises shall be deemed abandoned under section 554
15 and/or section 363 of the Bankruptcy Code (the "Abandoned Property"). The applicable landlord
16 is authorized to dispose of the Abandoned Property in its sole and absolute discretion without
17 further order of the Court and without notice or liability to the Debtor or any third-party claiming
18 an interest in such Abandoned Property.

19 6. Nothing in this Order applies to any of the Debtor's nonresidential real property
20 leases other than the Leases.

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EXHIBIT 1

Internal Store No.	Store Name	Store Address	City	State	Zip Code	Lessor Address (Notice Purposes)	Square Feet
67	Paradise Valley Mall	4568 East Cactus Road #C048	Phoenix	AZ	85032	Westday Associates Limited Partnership 4568 East Cactus Road Phoenix, AZ 85032 Paradise Valley Mall SPE LLC c/o Macerich 401 Wilshire Boulevard Suite 700 Santa Monica, CA 90401	4,062
70	WFS North County Mall	200 East Via Rancho #419	Escondido	CA	92025	EWB Escondido Associates LP 11601 Wilshire Boulevard 11th Floor Los Angeles, CA 90025	3,185
77	Westside Pavilion	10800 West Pico Boulevard #372	Los Angeles	CA	90064	Macerich Westside Limited Partnership 10800 West Pico Boulevard Suite 312 Los Angeles, CA 90064 Macerich Westside Limited Partnership c/o Macerich 401 Wilshire Boulevard Suite 700 Santa Monica, CA 90407	2,576
80	Capitola Mall	1855 41st Avenue #J06	Capitola	CA	95010	MGP XI Capitola, LLC Re: Capitola Mall, Unit #727-J06 425 California Street, 10th Floor San Francisco, CA 94104	1,921
90	First Colony Mall	16535 Southwest Freeway #620	Sugar Land	TX	77479	First Colony Mall LLC c/o GGP-Sugar Land Mall, L.P. 110 North Wacker Drive Chicago, IL 60606	5,087
93	Topanga Plaza	6600 Topanga Canyon Boulevard #1070A	Canoga Park	CA	91303	Westfield Topanga Owner LP 2049 Century Park East 41st Floor Los Angeles, CA 90067	1,499
129	Ford City Mall	7601 South Cicero Avenue #1364	Chicago	IL	60652	Mid-America Asset Management, Inc. One Parkview Plaza 9th Floor Oakbrook Terrace, IL 60181	2,511
132	Southland Mall	1215 SouthLand Mall #264 & #268	Memphis	TN	38116	1215 East Shelby Drive Holdings, LLC c/o CW Capital Asset Management LLC 7501 Wisconsin Avenue Suite 500, West Bethesda, MD 20814 1215 East Shelby Drive Holdings, LLC 1215 Southland Mall Memphis, TN 38116	3,150
142	Eastland Center	18000 Vernier #840	Harper Wood	MI	48225	New Eastland Mall Developer, LLC c/o Ashkenazy Acquisition Corp. 150 East 58th Street Penthouse New York, NY 10022	2,673
501	Topanga Sole	6600 Topanga Canyon Boulevard #11	Canoga Park	CA	91303	Westfield Topanga Owner LLC 2049 Century Park East 41st Floor Los Angeles, CA 90067	2,025
502	Southcenter Sole	984 Southcenter Mall	Tukwila	WA	98188	WEA Southcenter LLC 2049 Century Park East 41st Floor Los Angeles, CA 90067	2,454