

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

In re:	)	Chapter 11
	)	
Urban Brands, Inc., <u>et al.</u> , <sup>1</sup>	)	Case No. 10-_____ ( )
	)	
Debtors.	)	Joint Administration Pending
	)	

**MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF AN  
ORDER APPOINTING BMC GROUP, INC. AS CLAIMS AND NOTICING AGENT**

The above-captioned debtors and debtors-in-possession (each, a “Debtor” and collectively, the “Debtors”) file this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit C, pursuant to 28 U.S.C. § 156(c), Rules 2002 and 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing and approving the appointment of BMC Group, Inc. (“BMC”) as the claims and noticing agent (the “Claims and Noticing Agent”) in these chapter 11 cases (the “Chapter 11 Cases”). In support of the Motion, the Debtors rely on

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Urban Brands, Inc. (3678), 100% Girls Ltd. (4150), 100% Girls of Georgia, Inc. (4159), 100% Girls of New York, Inc. (2149), 100 Percent Girls of New Jersey, Inc. (4167), A.S. Interactive, Inc. (3472), Ashley Stewart Ltd. (4541), Ashley Stewart Apparel Corporation (4049), Ashley Stewart Clothing Company, Inc. (4051), Ashley Stewart Management Co., Inc. (4053), Ashley Stewart Woman Ltd. (4152), ASIL 6, Inc. (3996), ASNJ 10, Inc. (4004), Carraizo Alto Apparel Corporation (4651), Church Street Retail, Inc. (5954), Kid Spot Ltd. (2585), Kidspot of Delaware, Inc. (2596), Kidspot of Illinois, Inc. (2606), Kidspot of Michigan, Inc. (2603), Kidspot of New Jersey, Inc. (2601), Kidspot of Ohio, Inc. (4705), Kidspot of Pennsylvania, Inc. (2599), Kidspot of Texas, Inc. (3809), Large Apparel of Alabama, Inc. (0624), Large Apparel of California, Inc. (2129), Large Apparel of Connecticut, Inc. (5161), Large Apparel of District of Columbia, Inc. (8613), Large Apparel of Florida, Inc. (2209), Large Apparel of Georgia, Inc. (3894), Large Apparel of Illinois, Inc. (4650), Large Apparel of Indiana, Inc. (4055), Large Apparel of Louisiana, Inc. (3790), Large Apparel of Maryland, Inc. (5158), Large Apparel of Michigan, Inc. (9420), Large Apparel of Mississippi, Inc. (5913), Large Apparel of Missouri, Inc. (2135), Large Apparel of New Jersey, Inc. (5157), Large Apparel of New York, Inc. (5956), Large Apparel of North Carolina, Inc. (8611), Large Apparel of Ohio, Inc. (3815), Large Apparel of Pennsylvania, Inc. (4057), Large Apparel of South Carolina, Inc. (2029), Large Apparel of Tennessee, Inc. (3895), Large Apparel of Texas, Inc. (3787), Large Apparel of Virginia, Inc. (2809), Large Apparel of Wisconsin, Inc. (3898), Marianne Ltd. (3940), Marianne USPR, Inc. (2193), Marianne VI, Inc. (2206), Metro Apparel of Kentucky, Inc. (7533), Metro Apparel of Massachusetts, Inc. (1367), The Essence of Body & Soul, Ltd. (4165), Urban Acquisition Corporation of New Jersey, Inc. (2976), Urban Acquisition Corporation of New York, Inc. (4103), and Urban Brands TM Holding Co. (5909). The Debtors’ corporate offices are located at 100 Metro Way, Secaucus, New Jersey 07094.

the *Declaration of Michael A. Abate in Support of First Day Motions* (the “Abate Declaration”) and the *Declaration of Tinamarie Feil, President of BMC* (the “Feil Declaration”)<sup>2</sup> and respectfully represent as follows:

### **JURISDICTION**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

#### **A. Introduction**

2. On September 21, 2010 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief (collectively, the “Chapter 11 Cases”) under chapter 11 of the Bankruptcy Code.

3. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or official committee of unsecured creditors has been appointed in these Chapter 11 Cases.

#### **B. Overview of the Debtors’ Business**

4. The Debtors are a leading specialty retailer of fashion-forward and inspirational apparel for plus sized urban women under the brand name of Ashley Stewart. Urban Brands, Inc., a Delaware corporation, is the direct or indirect parent company of all of the Debtors. Until 2009, the Debtors also operated stores under the brand name of Marianne.

5. The Ashley Stewart concept was founded in 1991 and has grown to become a nationally-recognized brand. According to an October 2009 industry survey by the NPD Group,

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<sup>2</sup> A copy of the Feil Declaration is attached hereto as Exhibit A.

a nationally recognized firm specializing in apparel research, plus sized African American women ranked Ashley Stewart third of all retailers, behind only Wal-Mart and Lane Bryant, as their favorite place to shop.

6. Ashley Stewart operates broadly in the women's apparel market, which the NPD Group estimates is approximately \$107 billion. Within women's fashion, Ashley Stewart focuses on the plus sized market, which is estimated to be over \$18 billion and growing. Within this subset of the market, Ashley Stewart focuses on the underserved urban market, particularly the African American and Hispanic consumer, two of the fastest growing segments of the U.S. population. Ashley Stewart is one of the few concepts focusing directly on these particular niche markets.

7. As of the Petition Date, the Debtors operate approximately 210 stores in 26 states with approximately 2,100 employees, the majority of which are minority women. The store base is reinforced by a strong online presence through AshleyStewart.com, providing both a marketing tool as well as an additional outlet for Ashley Stewart customers.

8. Despite the strength of their brand names and success at individual store locations, the Debtors began suffering from cash flow/liquidity problems in 2007, especially in their Marianne division. The Debtors' financial difficulties continued in 2008 with the slow down in the overall economy. As part of a strategic initiative to strengthen their balance sheet and improve their liquidity by focusing exclusively on the Ashley Stewart brand, in February 2008, the Debtors began divesting themselves of all of their Marianne stores. The proceeds from the Marianne divestitures, coupled with the reduction of the working capital investment needed to support the Marianne brand name, provided improvement in operating results and cash flow during fiscal year 2009 (ending January 30, 2010). Unfortunately, although the Debtors

significantly reduced their net losses from approximately \$44.3 million in 2008 to \$28.6 million in 2009, the business continued to operate at a loss. Additionally, from fiscal year 2008 to fiscal year 2009, the Debtors net sales decreased from \$179.6 million to \$174.6 million.

**C. The Debtors' Capital and Debt Structure**

9. The Debtors are borrowers under a Loan and Security Agreement dated as of September 3, 2004 (the "Prepetition Financing Agreement"), with Bank of America, N.A. (successor by merger to LaSalle Retail Finance, a Division of LaSalle Business Credit, LLC, as agent for LaSalle Bank Midwest National Association f/k/a Standard Federal Bank National Association) (the "Lender"). The Prepetition Financing Agreement was an asset-based facility with a maturity date of September 10, 2010. The availability for borrowings and letter of credit obligations under the Prepetition Financing Agreement was capped at \$6.5 million and is further limited to an amount supported by a borrowing base consisting of certain cash, certain accounts receivable and eligible inventory. As of the Petition Date, the Debtors owe only approximately \$2,251,651 plus interest on the facility with an additional \$2,366,324 in outstanding letters of credit (all of which are fully collateralized by the Debtors' cash).

10. In April 2004, the Debtors entered into a Note Purchase Agreement with a group of institutional investors led by Trimaran Fund II, L.L.C. ("Trimaran"), the Debtors' largest equity holder, and certain officers, employees and consultants of the Debtors. From August 2007 to November 2009, the Debtors entered into five additional note purchase agreements to raise additional capital. In total, the Debtors sold \$58,500,000 in senior unsecured notes (the "Notes"). As of the Petition Date, the Debtors owe approximately \$81.3 million on account outstanding principle and interest on the Notes.

**D. Objectives of Chapter 11 Filing**

11. In April 2010, the Debtors engaged Oppenheimer & Co. Inc. ("Oppenheimer") to assist the Debtors in searching for additional equity and/or mezzanine financing. Following exhaustive efforts to locate additional capital, the Debtors determined that there was insufficient interest in the market for this additional financing and, as a result, the Debtors' best alternative to preserve the Debtors' business as a going concern and maximize the value of their assets was to pursue a sale of all or substantially all the Debtors' assets.

12. Accordingly, in August 2010, Oppenheimer expanded its marketing efforts to solicit interest from prospective purchasers of the Debtors and their assets as a going-concern. As a result of this process, New Ashley Stewart, LLC ("New Ashley" or the "Stalking Horse Bidder") emerged as the party submitting the highest and best bid for the Debtors' assets. Accordingly, the Debtors, with the approval of their board of directors, engaged in active negotiations with New Ashley regarding a potential going concern transaction and, on September 8, 2010, the Debtors and New Ashley executed a non-binding letter of intent. Following the execution of the letter of intent, the Debtors and their advisors actively negotiated with New Ashley regarding the definitive terms and conditions of an asset purchase agreement. The Debtors expect that on or shortly after the Petition Date, they will execute an asset purchase agreement with New Ashley (the "New Ashley Purchase Agreement"), which the Debtors will seek Court approval of pursuant to section 363 of the Bankruptcy Code following a Court sanctioned auction process.

13. The Debtors believe that a going-concern sale of the Debtors' business presents the best opportunity to maximize recoveries for creditors and preserve thousands of jobs for the Debtors' employees. Accordingly, the Debtors expect to file a sale procedures motion on the

first day of these chapter 11 cases and continue their efforts to solicit bids from other potentially interested parties.

**RELIEF REQUESTED**

14. Pursuant to 28 U.S.C. § 156(c), as supplemented by Bankruptcy Rule 2002(f) and Local Rule 2002-1(f), the Debtors seek entry of an order authorizing them to retain and employ BMC as Claims and Noticing Agent under the terms of that certain services agreement (the “BMC Agreement”) attached hereto as Exhibit B, to, among other things, (i) serve as the Court’s noticing agent to mail certain notices to the Debtors’ creditors and parties in interest; (ii) provide computerized claims, claims objection and balloting services; and (iii) provide expertise, consultation, and assistance in claim and ballot processing and other administrative information related to the Debtors’ bankruptcy cases.

15. Pursuant to 28 U.S.C. § 156(c), the Court is empowered to utilize outside agents and facilities to send notices and perform other tasks, provided that the costs of these facilities and services are paid for out of the assets of the Debtors’ estates.<sup>3</sup> Additionally, Local Rule 2002-1(f) requires a debtor to file a motion to appoint a notice and/or claims agent within ten (10) days of the petition date in all cases that have in excess of two hundred (200) creditors.

16. The Debtors have well in excess of two hundred (200) creditors in these chapter 11 cases. The Debtors expect many creditors to file proofs of claim. It appears that the noticing, receiving, docketing, and maintaining of proofs of claim in this volume would be unduly time

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<sup>3</sup> 28 U.S.C. § 156(c), which governs the staffing and expenses of the Bankruptcy Court, states in pertinent part:

Any court may utilize facilities or services, either on or off the court’s premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the cost of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

consuming and burdensome for the Clerk's Office. In addition, the Debtors believe that there are many additional parties in interest who should receive notice of various matters in these cases.

17. Accordingly, the Debtors seek the entry of an order authorizing and approving the appointment of BMC as the Claims and Noticing Agent to perform the services described herein.

18. BMC has substantial experience in matters upon which it is to be engaged. It is one of the country's leading chapter 11 administrators with vast experience in noticing, claims processing, claims reconciliation, balloting and distributions. BMC specializes in noticing, claims agent and balloting services, and has a proprietary claims management system in which claims are effectively managed for the Clerk's Office. The Debtors have selected BMC as their Noticing, Claims and Balloting Agent because of the firm's experience in serving in such capacity in chapter 11 cases of this size and the reasonableness of its fees.

19. By appointing BMC as the Claims and Noticing Agent in these Chapter 11 Cases, parties in interest will benefit from BMC's significant experience and the efficient and cost-effective methods that it has developed.

**E. Services to be Provided**

20. Subject to the Court's approval, BMC has agreed to provide, at the request of the Debtors or the Clerk's Office, the following services, among others, in these cases:

- a. Prepare and serve required notices in the Chapter 11 Cases, including, as necessary:
  - (i) notice of the commencement of the Chapter 11 Cases and, if held, the initial meeting of creditors under section 341(a) of the Bankruptcy Code;
  - (ii) notice of the claims bar date;
  - (iii) notice of objections to claims;

- (iv) notice of any hearings on a disclosure statement and confirmation of a plan of reorganization;
  - (v) other miscellaneous notices to any entities as the Debtors or the Court may deem necessary or appropriate for an orderly administration of these chapter 11 cases; and
  - (vi) the publication of required notices, as necessary;
- b. Within ten (10) days after the mailing of a particular notice, file with the Clerk's Office a certificate or affidavit of service that includes a copy of the notice involved, a list of persons to whom the notice was mailed, and the date and manner of mailing;
- c. Maintain copies of all proofs of claim and proofs of interest filed;
- d. Maintain an official claims register by docketing all proofs of claim on a register containing certain information, including, but not limited to, the following:
  - (i) the name and address of the claimant and any agent thereof;
  - (ii) the date received;
  - (iii) the claim number assigned;
  - (iv) the asserted amount and classification of the claim (if applicable); and
  - (v) pertinent comments concerning disposition of claims;
- e. Create and administer a claims database;
- f. Maintain the original proofs of claim in correct claim number order, in an environmentally secure area, and protecting the integrity of these original documents from theft and/or alteration;
- g. Implement necessary security measures to ensure the completeness and integrity of the claims register;
- h. Transmit to the Clerk's Office a copy of the claims register on a monthly basis (unless requested on a more or less frequent basis) or, in the alternative, make available the Proof of Claim docket online to the Clerk's Office via the Claims Manager Claims System;
- i. Maintain an up to date mailing list of all entities that have requested service of pleadings in these cases and a master service list of creditors



and other parties in interest and all entities that have filed a proof of claim or proof of interest, which lists shall be available upon request of the Clerk's Office;

- j. Provide access to the public for examination of copies of the proofs of claim or proofs of interest filed in these cases without charge during regular business hours;
- k. Record all transfers of claims pursuant to Bankruptcy Rule 3001(e) and provide notice of such transfers as required by Bankruptcy Rule 3001(e);
- l. Assist the Debtors in the reconciliation and resolution of claims;
- m. Maintain court orders concerning claims resolution;
- n. Comply with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders and other requirements;
- o. Provide temporary employees to process claims, as necessary;
- p. Provide balloting services in connection with the solicitation process for any chapter 11 plan for which the court has approved a disclosure statement;
- q. Make all original documents available to the Clerk's Office upon request on an expedited/immediate basis;
- r. Provide such other claims processing, noticing, and related administrative services as may be requested from time to time by the Debtors; and
- s. Promptly comply with such further conditions and requirements as the Clerk's Office or the Court may at any time prescribe.

21. In connection with its appointment as Claims and Noticing Agent, BMC represents, among other things, that:

- a. BMC will not consider itself employed by the United States and shall not seek any compensation from the United States in its capacity as Noticing, Claims and Balloting Agent in these Chapter 11 Cases;
- b. By accepting appointment in these Chapter 11 Cases, BMC waives any rights to receive compensation from the United States;
- c. In its capacity as the Noticing, Claims and Balloting Agent in these Chapter 11 Cases, BMC will not be an agent of the United States and will not act on behalf of the United States;

- d. In its capacity as the Noticing, Claims and Balloting Agent in these Chapter 11 Cases, BMC will not misrepresent any fact to any person; and
- e. BMC will not employ any past or present employees of the Debtors in connection with its work as the Noticing, Claims and Balloting Agent in these Chapter 11 Cases.

**F. Terms of Compensation**

22. Subject to the Court's approval, BMC will provide the services set forth above pursuant to the terms of the BMC Agreement, attached hereto as Exhibit B.

23. The Debtors request authority to compensate and reimburse BMC in accordance with the payment terms of the BMC Agreement for all services rendered and expenses incurred in connection with the Chapter 11 Cases. The Debtors and BMC have agreed (subject to the Court's authorization hereof) that BMC shall invoice the Debtors monthly for services rendered to the Debtors during the preceding month. Under the BMC Agreement, the Debtors paid BMC a retainer of \$10,000.00 to be applied immediately in satisfaction of the Debtors' obligations under the BMC Agreement.

24. The Debtors believe that such terms are reasonable and appropriate for services of this nature and comparable to those charged by other providers of similar services.

25. In an effort to reduce the administrative expenses related to BMC retention, the Debtors seek authorization to pay BMC's fees and expenses, as set forth in the BMC Agreement, without the necessity for BMC to file formal fee applications. If any dispute arises between the Debtors and BMC with respect to fees and expenses, such dispute shall be presented to the Court for resolution.

26. BMC acknowledges that it will perform its duties if it is retained in the Chapter 11 Cases regardless of payment, and to the extent that BMC requires redress, it will seek appropriate relief from the Court.

27. In connection with the reimbursement of actual and necessary expenses, it is BMC's policy to charge its clients for direct expenses incurred in connection with providing client services. These expenses and charges include postage, long distance telephone charges, hand delivery and other delivery charges, travel expenses, computerized research, transcription costs and third-party photocopying charges.

28. After considering its quality of performance in other cases, the Debtors have concluded that BMC is the best choice for Claims and Noticing Agent in these cases. The Debtors believe that the BMC Agreement contemplates compensation at a level that is reasonable and appropriate for services of this nature and is consistent with BMC's compensation arrangement in other cases in which it has been retained to perform similar services. Subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and orders of the Court, the Debtors propose to pay BMC its customary hourly rates for services rendered that are in effect from time to time, as set forth in the BMC Agreement, and to reimburse BMC according to its customary reimbursement policies, and submits that such rates are reasonable.

**G. Disinterestedness**

29. To the best of the Debtors' knowledge, and based upon the Feil Declaration, neither BMC nor any of its officers or employees (i) holds or represents any interest adverse to the Debtors, the Debtors' creditors or any other party in interest or their respective attorneys and accountants, the United States Trustee or any person employed in the Office of the United States Trustee with respect to the services described herein and in the Engagement Letter, and (ii) does not hold or represent an interest adverse to the Debtors' estates.

30. Notwithstanding the foregoing, the Debtors hereby disclose to the Court, in connection with BMC's engagement by all of the Debtors, that there are certain

interrelationships between and among the Debtors. The Debtors do not believe, however, that their relationships to one another post any conflict of interest in the Chapter 11 Cases because of their general unity of interest at all levels. Accordingly, the Debtors submit that BMC's engagement by all of the Debtors is permissible under the Bankruptcy Code and is in the best interests of all parties in interest. The Debtors firmly believe that BMC is appropriately qualified to serve as Claims and Noticing Agent.

31. To the best of the Debtors' knowledge, BMC is a "disinterested person" as that term is defined in Bankruptcy Code section 101(14).

32. The Debtors have been advised that BMC will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new facts or circumstances are discovered, BMC will supplement its disclosure to the Court.

33. The Debtors have been advised that, other than with its own partners, affiliates and employees, BMC has agreed not to share with any person or firm the compensation to be paid for professional services rendered in connection with these cases.

34. The Debtors have been advised by BMC that it will be responsive to all constituencies, including, without limitation, the Court, the Clerk's Office, the United States Trustee, the Debtors' attorneys, the members of, and attorneys for, the official committee of unsecured creditors, if any, and the claimants themselves. All transmission of documents by BMC to the Clerk's Office and the United States Trustee will be by hand delivery or priority overnight delivery. If these cases were to convert from cases under chapter 11 of the Bankruptcy Code to cases under chapter 7 of the Bankruptcy Code, BMC has advised that it will perform its duties through the conversion process and shall continue its services as required, and BMC will continue to be paid in accordance with 28 U.S.C. § 156(c).

35. If BMC's services are terminated, BMC has advised the Debtors that it shall perform its duties until a complete transition with the Clerk's Office or any successor claims and noticing agent has been accomplished.

**NOTICE**

36. No trustee, examiner or creditors' committee has been appointed in these chapter 11 cases. The Debtors have provided notice of this Motion by facsimile and/or overnight mail to: (a) the Office of the United States Trustee for the District of Delaware; (b) each of the Debtors' creditors holding the twenty (20) largest unsecured claims on a consolidated basis; (c) counsel to the Debtors' proposed postpetition secured lender; (d) counsel to Trimaran; (e) the Internal Revenue Service; and (f) the United States Department of Justice. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

**NO PRIOR REQUEST**

37. No previous motion for the relief requested herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit C, approving the appointment of BMC as the Claims and Noticing Agent in the Chapter 11 Cases, and such other and further relief the Court deems just and proper.

Respectfully submitted this 21st day of September, 2010.

**URBAN BRANDS, INC. AND ITS RELATED  
ENTITIES, DEBTORS AND DEBTORS IN  
POSSESSION**



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Michael A. Abate  
Vice President Finance/Treasurer

# **EXHIBIT A**

**(Feil Declaration)**

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

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>Urban Brands, Inc., et al.,<sup>1</sup></b>	)	<b>Case No. 10-_____ (___)</b>
	)	
<b>Debtors.</b>	)	<b>Joint Administration Pending</b>
	)	

**DECLARATION OF TINAMARIE FEIL IN SUPPORT OF MOTION OF THE  
DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF AN ORDER  
APPOINTING BMC GROUP, INC. AS CLAIMS AND NOTICING AGENT**

Tinamarie Feil, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the President of BMC Group, Inc. ("BMC"), a firm whose services include a specialization in the administration of large bankruptcy cases with offices located at 600 First Avenue, Suite 300, Seattle, WA 98104 .
2. I submit this declaration (the "Declaration") in support of the motion of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") for entry of an

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Urban Brands, Inc. (3678), 100% Girls Ltd. (4150), 100% Girls of Georgia, Inc. (4159), 100% Girls of New York, Inc. (2149), 100 Percent Girls of New Jersey, Inc. (4167), A.S. Interactive, Inc. (3472), Ashley Stewart Ltd. (4541), Ashley Stewart Apparel Corporation (4049), Ashley Stewart Clothing Company, Inc. (4051), Ashley Stewart Management Co., Inc. (4053), Ashley Stewart Woman Ltd. (4152), ASIL 6, Inc. (3996), ASNJ 10, Inc. (4004), Carraizo Alto Apparel Corporation (4651), Church Street Retail, Inc. (5954), Kid Spot Ltd. (2585), Kidspot of Delaware, Inc. (2596), Kidspot of Illinois, Inc. (2606), Kidspot of Michigan, Inc. (2603), Kidspot of New Jersey, Inc. (2601), Kidspot of Ohio, Inc. (4705), Kidspot of Pennsylvania, Inc. (2599), Kidspot of Texas, Inc. (3809), Large Apparel of Alabama, Inc. (0624), Large Apparel of California, Inc. (2129), Large Apparel of Connecticut, Inc. (5161), Large Apparel of District of Columbia, Inc. (8613), Large Apparel of Florida, Inc. (2209), Large Apparel of Georgia, Inc. (3894), Large Apparel of Illinois, Inc. (4650), Large Apparel of Indiana, Inc. (4055), Large Apparel of Louisiana, Inc. (3790), Large Apparel of Maryland, Inc. (5158), Large Apparel of Michigan, Inc. (9420), Large Apparel of Mississippi, Inc. (5913), Large Apparel of Missouri, Inc. (2135), Large Apparel of New Jersey, Inc. (5157), Large Apparel of New York, Inc. (5956), Large Apparel of North Carolina, Inc. (8611), Large Apparel of Ohio, Inc. (3815), Large Apparel of Pennsylvania, Inc. (4057), Large Apparel of South Carolina, Inc. (2029), Large Apparel of Tennessee, Inc. (3895), Large Apparel of Texas, Inc. (3787), Large Apparel of Virginia, Inc. (2809), Large Apparel of Wisconsin, Inc. (3898), Marianne Ltd. (3940), Marianne USPR, Inc. (2193), Marianne VI, Inc. (2206), Metro Apparel of Kentucky, Inc. (7533), Metro Apparel of Massachusetts, Inc. (1367), The Essence of Body & Soul, Ltd. (4165), Urban Acquisition Corporation of New Jersey, Inc. (2976), Urban Acquisition Corporation of New York, Inc. (4103), and Urban Brands TM Holding Co. (5909). The Debtors' corporate offices are located at 100 Metro Way, Secaucus, New Jersey 07094.



order appointing BMC<sup>2</sup> as Claims and Noticing Agent. Except as otherwise noted, I have personal knowledge of the matters set forth herein.<sup>3</sup>

3. The services BMC proposes to render as Claims and Noticing Agent are described in the Motion and the BMC Agreement, which are incorporated herein by reference.

4. BMC is one of the country's leading chapter 11 administrators with experience in providing claims management and related services to chapter 11 debtors in connection with the administration of a chapter 11 case, solicitation and tabulation of votes to accept or reject plans of reorganization, and noticing to parties in interest in a chapter 11 case. BMC also specializes and has expertise in serving as outside claims agent to the Court with respect to all aspects of claims administration, including docketing and storage of claims, maintenance of claims registers, and related noticing services. BMC has provided identical or substantially similar services to other chapter 11 debtors in other cases in this District, including, among others: In re Alternative Distribution Systems, Inc., Case No. 09-13099(PJW), In re NV Broadcasting, LLC, Case No. 09-12473(KG), and In re Fleming Companies, Inc., Case No. 03- 10945(MFW). Accordingly, I believe BMC is well-qualified to act as Claims and Noticing Agent in the Chapter 11 Cases.

5. The compensation arrangement provided for in the BMC Agreement, including BMC's hourly rates, is consistent with and typical of arrangements entered into by BMC and other such firms with respect to rendering similar services in other chapter 11 cases.

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

<sup>3</sup> Certain of the disclosures herein may relate to matters within the knowledge of other associates at BMC and are based on information provided by them. In connection with the reimbursement of actual and necessary expenses, it is BMC's policy to charge its clients for direct expenses incurred in connection with providing client services. These expenses and charges include postage, long distance telephone charges, hand delivery and other delivery charges, travel expenses, computerized research, transcription costs, and third-party photocopying charges.

6. The BMC Agreement provides that the Debtors will pay BMC's fees and expenses upon the submission of monthly invoices by BMC that summarize, in reasonable detail, the services for which compensation is sought.

7. In connection with its appointment as Claims and Noticing Agent, BMC represents, among other things, that:

- a. BMC will not consider itself employed by the United States and shall not seek any compensation from the United States in its capacity as Noticing, Claims and Balloting Agent in these Chapter 11 Cases;
- b. By accepting appointment in these Chapter 11 Cases, BMC waives any rights to receive compensation from the United States;
- c. In its capacity as Claims and Noticing Agent in these Chapter 11 Cases, BMC will not be an agent of the United States and will not act on behalf of the United States;
- d. In its capacity as the Claims and Noticing Agent in these Chapter 11 Cases, BMC will not misrepresent any fact to any person; and
- e. BMC will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these Chapter 11 Cases.

8. To the best of my knowledge, and based solely upon information provided to me by the Debtors, neither BMC nor any employee thereof, has any connection with the Debtors, their creditors or any other party in interest herein. BMC may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which BMC serves or has served in a neutral capacity as noticing, claims and balloting agent for another chapter 11 debtor. To the best of my knowledge, such relationships are completely unrelated to the Chapter 11 Cases. In addition, BMC personnel may have relationships with some of the Debtors' creditors or other parties in interest. However, to the best of my knowledge, such relationships, to the extent they exist, are of a personal financial nature and completely unrelated to these chapter 11 cases. BMC has and will continue to represent clients in matters unrelated to

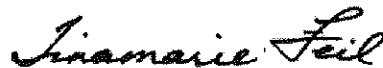
these Chapter 11 Cases. In addition, BMC has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals and other parties in interest that may be involved in the Debtors' case in matters unrelated to these cases. To the best of my knowledge, neither BMC nor any employees thereof, represents any interest adverse to the Debtors' estates with respect to any matter upon which BMC is to be engaged. Based on the foregoing, I believe that BMC is a "disinterested person" as that term is defined in 11 U.S.C. § 101(14), as modified by Bankruptcy Code section 1107(b).

9. At this time, we are not aware of any relationship which would present a disqualifying conflict of interest. To the extent BMC discovers any relationship, it will make appropriate disclosures to the Court in a supplemental declaration.

10. Except with respect to its partners, affiliates and employees, there is no agreement or understanding between BMC and any other party, or entity for sharing compensation received or to be received for services rendered by BMC in connection with these chapter 11 cases.

11. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21th day of September 2010.



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Tinamarie Feil  
President, Client Services

**EXHIBIT B**

**(BMC Agreement)**

## AGREEMENT FOR SERVICES

This Agreement dated as of September 20, is entered between Urban Brands, Inc. (collectively, "Customer"), and BMC Group, Inc. ("BMC"). The services rendered by BMC pursuant to this Agreement will commence on the date first set forth above and will continue until the Agreement is terminated as set forth below.

### TERMS AND CONDITIONS

#### I. SERVICES

In accordance with the terms and conditions contained in this Agreement and in the Fee Schedule annexed hereto, BMC agrees to provide services as follows: (a) assisting the Customer, Counsel and Office of the Clerk with noticing and claims docketing and (b) assisting Customer with the compilation, administration, evaluation and production of documents and information necessary to support a restructuring effort. At Customer's, Counsel's or the Clerk's Office's direction, as the case may be, and in accordance with any court orders or rules in the bankruptcy case(s) (including any court order authorizing BMC's engagement), BMC will (1) prepare and serve those notices required in the bankruptcy cases; (2) receive, record and maintain copies of all proofs of claim and proofs of interest filed in the bankruptcy cases; (3) create and maintain the official claims register(s); (4) receive and record all transfers of claims pursuant to Bankruptcy Rule 3001(e); (5) maintain an up-to-date mailing list for all entities who have filed proofs of claim and/or requests for notices in the bankruptcy cases; (6) assist Customer and Counsel with the administrative management, reconciliation and resolution of claims; (7) print, mail and tabulate ballots for purposes of plan voting; (8) assist with the preparation and maintenance of Customer's Schedules of Assets and Liabilities, Statements of Financial Affairs and other master lists and databases of creditors, assets and liabilities, (9) assist with the production of reports, exhibits and schedules of information or use by the Customer, Counsel or to be delivered the Court, the Clerk's Office, the U.S. Trustee or third parties; and (10) provide other technical and document management services of a similar nature requested by Customer or the Clerk's office; (11) facilitate or perform distributions, and (12) assist Customer with all analyses and/or collections of avoidance actions pursuant to chapter 5 of the United States Bankruptcy Code.

#### II. TECHNOLOGY SUPPORT

BMC agrees to provide computer software support and to educate and train Customer in the use of the support software, provide BMC's standard reports as well as consulting and programming support for Customer requested reports, program modifications, database modification, and/or other features.

#### III. PRICES, CHARGES AND PAYMENT

- A. BMC agrees to charge, and Customer agrees to pay, BMC's standard prices for its services, expenses and supplies at the rates or prices in effect on the day such services and/or supplies are provided to the Customer, in accordance with the Fee Schedule annexed hereto.
- B. At the commencement of the Agreement, Customer will provide BMC with an initial advance payment retainer ("Retainer") in the amount of ten thousand dollars (\$10,00.00). The Retainer or any portion thereof may be applied as set forth in Paragraph III.E below to payment for postage and courier charges. In addition, the Retainer will be applied to BMC's final bill for services and expenses rendered or incurred on behalf of Customer. After application to the final bill, the unapplied portion of the Retainer (if any) shall be

promptly refunded to the Customer. Wire transfer information for the transmission of the retainer is as follows:

Bank Name -	Wells Fargo Bank
Address -	933 3 <sup>rd</sup> Avenue, Seattle, WA 98104
ABA/Routing # -	121000248
Account Name -	BMC Group, Inc.
Account # -	0033022633

- C. BMC raises its rates from time to time and generally does so each January.
- D. Customer agrees to pay BMC for any necessarily incurred out-of-pocket reasonable expenses for transportation, lodging, meals and related items.
- E. In connection with noticing services, upon BMC's request, Customer agrees to prepay BMC estimated postage amounts with respect to each notice or shall authorize BMC to cause the courier's charges (such as UPS or FedEx) to be stated to Customer's own account with such courier.
- F. BMC agrees to invoice Customer for fees and expenses and Customer agrees that the amount invoiced is due and payable upon its receipt of the invoice. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, Customer further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) interest on the amount unpaid, accruing from the invoice date. In the case of a dispute in the invoice amount, notice shall be given to BMC within twenty (20) days of receipt of the invoice by Customer. Interest shall not accrue on any amounts in dispute. The balance of the invoice amount is due and payable in the normal course.
- G. BMC will look only to the Customer for payment of invoices and in no event shall Counsel be liable for any of BMC's invoices in connections with this Services Agreement.

#### **IV. WARRANTY**

The BMC warranty under the Agreement shall be limited to the re-running, at its expense, of any inaccurate reports, provided that such inaccuracies were caused solely as a result of BMC performance hereunder and provided further that BMC shall receive written notice of such inaccuracies within thirty (30) days of delivery of such report. If said notice is not made to BMC within the prescribed time limit Customer is liable for all charges. Customer agrees that the foregoing constitutes the exclusive remedy available with respect to inaccurate reports.

#### **V. RIGHTS OF OWNERSHIP**

- A. The parties understand that the software programs and other similar proprietary materials furnished by BMC pursuant to this Agreement and/or developed during the course of this Agreement by BMC are the sole property of BMC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, sub-routines, procedural manuals, and documentation. Customer agrees not to copy or permit others to copy for unauthorized use the source code from the support software or any other programs or similar proprietary materials furnished pursuant to this Agreement.
- B. Customer further agrees that any ideas, concepts, know-how or techniques relating to data processing or BMC's performance of its services developed during the course of its Agreement by BMC shall be exclusive property of BMC.

- C. Upon Customer's request at any time or times while this Agreement is in effect, BMC shall immediately deliver to Customer at Customer's sole expense, any or all of the non-proprietary data, information and records held or controlled by BMC pursuant to this Agreement, in the form requested by Customer. Any information, data and records, in whatever form existing, whether provided to BMC by Customer or developed by BMC for Customer under this Agreement, may be retained by BMC until all amounts due under this Agreement are paid in full, it being understood that neither party asserts rights of ownership in the official claims register or materials filed with BMC as an agent of the court.
- D. Customer shall remain liable for all charges imposed under this Agreement as a result of data or physical media maintained by BMC. BMC shall dispose of the data and media in the manner requested by Customer. Customer agrees to pay BMC for reasonable expenses incurred as a result of the disposition of the data or media. After giving Customer thirty (30) days advance notice, BMC reserves the right to dispose of data or media maintained by BMC for Customer if Customer has not utilized the services provided herein for a period of at least ninety (90) days or if Customer has not paid all charges due to BMC.

#### **VI. NON-SOLICITATION**

Customer agrees that it shall not, directly or indirectly, solicit for employment, employ or otherwise retain staff of BMC during the term of this Agreement, nor for a period of twelve (12) months after termination of this Agreement unless mutually agreed upon by both parties.

#### **VII. CONFIDENTIALITY**

- A. BMC agrees to, and shall cause its servants, agents, employees, licensees, and subcontractors to, safeguard and keep confidential all data, records, information and communications of any sort or form, regardless of whether written, oral, visual or otherwise recorded or transmitted, with respect to Customer, but excluding such data, records, information and communications that exist in the public domain by reason other than a breach of BMC's obligations under this Section VII "Confidentiality" (the "Confidential Information"). BMC will use the Confidential Information only for the benefit of Customer in connection with the provision of services under this Agreement. Customer agrees to, and will cause its servants, agents, employees, licensees, and subcontractors to, keep all information with respect to BMC's system, procedures and software confidential; provided, however, that if either party is required to produce any such information by order of any governmental agency or other regulatory body, it may, upon not less than five business days' written notice to the other party, release the required information. The obligations set forth in this paragraph shall survive termination of this Agreement.

#### **VIII. TERMINATION**

- A. This Agreement shall remain in force until terminated by Customer, or, by BMC upon thirty (30) days' prior written notice to the other party.
- B. In the event that this contract is terminated, regardless of the reason for such termination, BMC shall cooperate with Customer to orderly transfer to Customer or its designee (or destroy, at Customer's direction) data, records and information in its possession or control and to effect an orderly transition of record-keeping functions. BMC shall provide all necessary staff, services and assistance required for an orderly transfer and transition. Customer agrees to pay for such services in accordance with BMC's then existing prices for such services.

**IX. SYSTEM IMPROVEMENTS**

BMC's policy is to provide continuous improvements in the quality of service to the Customer. BMC, therefore, reserves the right to make changes in operations procedures, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the BMC data center serving the Customer.

**X. LIMITATIONS OF LIABILITY AND INDEMNIFICATION**

Except with respect to breaches under Section VII "Confidentiality" above, Customer shall indemnify and hold BMC, its officers, employees and agents harmless against any losses, claims, damages, judgments, liabilities and expense (including reasonable counsel fees and expenses) resulting from action taken or permitted by BMC in good faith with due care and without negligence in reliance upon instructions or orders received from Customer as to anything arising in connection with its performance under this Agreement. Except with respect to breaches under Section VII "Confidentiality" above, BMC shall be without liability to Customer with respect to any performance or non-performance, in accordance with the terms of this Agreement or instructions properly received pursuant hereto, if done in good faith and without negligence or willful or wanton misconduct. Except with respect to breaches under Section VII "Confidentiality" above, in no event shall liability to Customer for any losses or damages, whether direct or indirect, arising out of this Agreement exceed the total amount billed or billable to Customer for the portion of the particular work which gave rise to the loss or damage. Except with respect to breaches under Section VII "Confidentiality", in no event shall BMC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement.

**XI. NOTICES**

All notices in connection with this Agreement shall be given or made upon the respective parties in writing by facsimile or overnight courier and shall be deemed as given, if by facsimile, on the business day immediately following confirmed transmission, or if by courier, on the day it is delivered by such courier to the appropriate address set forth below:

BMC Group, Inc. Attn: Tinamarie Feil 600 1st Avenue Suite 300 Seattle, WA 98104  Telephone 206.516.3300 Fax 206.516.3304	[CUSTOMER INFORMATION] Attn: <i>Michael A. Abate</i> <i>100 Metro Way</i> <i>Secaucus, NJ 07094</i>  Telephone <i>201-319-9039</i> Fax
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Or to such other address as the party to receive the notice or request so designates by written notice to the other.



**XII. APPLICABLE LAW**

This agreement shall be construed in accordance with the laws of the State of Washington and may be modified only by a written instrument duly executed by an authorized representative of Customer and an officer of BMC.

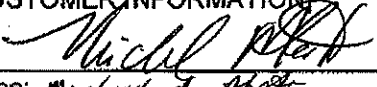
**XIII. ENTIRE AGREEMENT/ MODIFICATIONS**

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and other agreements, oral and written between the parties relating to the subject matter of this Agreement. The Agreement may not be modified or altered by written instrument duly executed by both parties. Customer represents that it has the authority to enter into this Agreement, may be subject to bankruptcy court approval, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. In the event of any conflict between a term of this Agreement and any order of the court exercising jurisdiction over the Customer bankruptcy cases, the term of the order shall govern.

**XIV. ASSIGNMENT**

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned by BMC to a wholly owned subsidiary of BMC.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

<p><b>BMC Group, Inc.</b></p> <p>By: _____ Name: Tinamarie Feil Title: President</p> <p>Date: _____</p>	<p>[ CUSTOMER INFORMATION ]</p> <p>By:  Name: Michael A. Abate Title: VP FINANCE / TREASURER</p> <p>Date: 9/20/10</p>
<p>[ CUSTOMER INFORMATION ]</p> <p>By: _____ Name: _____ Title: _____</p> <p>Date: _____</p>	

# **EXHIBIT C**

**(Proposed Order)**

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

In re:	)	<b>Chapter 11</b>
	)	
Urban Brands, Inc., <u>et al.</u> , <sup>1</sup>	)	<b>Case No. 10-_____ ( )</b>
	)	
Debtors.	)	<b>Joint Administration Pending</b>
	)	

**ORDER APPOINTING BMC GROUP, INC. AS CLAIMS AND NOTICING AGENT**

Upon consideration of the *Motion of the Debtors and Debtors-in-Possession for Entry of an Order Appointing BMC Group, Inc. as Claims and Noticing Agent* (the "Motion"), filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), in the above-captioned chapter 11 cases; the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (iii) notice of the Motion was sufficient under the circumstances and that no other or further notice need be provided, and (iv) capitalized terms not otherwise defined herein have the meaning given to them in the Motion; and the Court having determined that the

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Urban Brands, Inc. (3678), 100% Girls Ltd. (4150), 100% Girls of Georgia, Inc. (4159), 100% Girls of New York, Inc. (2149), 100 Percent Girls of New Jersey, Inc. (4167), A.S. Interactive, Inc. (3472), Ashley Stewart Ltd. (4541), Ashley Stewart Apparel Corporation (4049), Ashley Stewart Clothing Company, Inc. (4051), Ashley Stewart Management Co., Inc. (4053), Ashley Stewart Woman Ltd. (4152), ASIL 6, Inc. (3996), ASNJ 10, Inc. (4004), Carraizo Alto Apparel Corporation (4651), Church Street Retail, Inc. (5954), Kid Spot Ltd. (2585), Kidspot of Delaware, Inc. (2596), Kidspot of Illinois, Inc. (2606), Kidspot of Michigan, Inc. (2603), Kidspot of New Jersey, Inc. (2601), Kidspot of Ohio, Inc. (4705), Kidspot of Pennsylvania, Inc. (2599), Kidspot of Texas, Inc. (3809), Large Apparel of Alabama, Inc. (0624), Large Apparel of California, Inc. (2129), Large Apparel of Connecticut, Inc. (5161), Large Apparel of District of Columbia, Inc. (8613), Large Apparel of Florida, Inc. (2209), Large Apparel of Georgia, Inc. (3894), Large Apparel of Illinois, Inc. (4650), Large Apparel of Indiana, Inc. (4055), Large Apparel of Louisiana, Inc. (3790), Large Apparel of Maryland, Inc. (5158), Large Apparel of Michigan, Inc. (9420), Large Apparel of Mississippi, Inc. (5913), Large Apparel of Missouri, Inc. (2135), Large Apparel of New Jersey, Inc. (5157), Large Apparel of New York, Inc. (5956), Large Apparel of North Carolina, Inc. (8611), Large Apparel of Ohio, Inc. (3815), Large Apparel of Pennsylvania, Inc. (4057), Large Apparel of South Carolina, Inc. (2029), Large Apparel of Tennessee, Inc. (3895), Large Apparel of Texas, Inc. (3787), Large Apparel of Virginia, Inc. (2809), Large Apparel of Wisconsin, Inc. (3898), Marianne Ltd. (3940), Marianne USPR, Inc. (2193), Marianne VI, Inc. (2206), Metro Apparel of Kentucky, Inc. (7533), Metro Apparel of Massachusetts, Inc. (1367), The Essence of Body & Soul, Ltd. (4165), Urban Acquisition Corporation of New Jersey, Inc. (2976), Urban Acquisition Corporation of New York, Inc. (4103), and Urban Brands TM Holding Co. (5909). The Debtors' corporate offices are located at 100 Metro Way, Secaucus, New Jersey 07094.

legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors and their estates; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtors are hereby authorized to retain and employ BMC<sup>2</sup> under the terms of the BMC Agreement, attached to the Motion as Exhibit B, as the Claims and Noticing Agent in these Chapter 11 Cases for the purposes set forth in the Motion effective as of the date of commencement of these Chapter 11 Cases.
3. BMC is hereby directed to perform the services described in the Motion and the BMC Agreement.
4. The Debtors are authorized to pay BMC fees and expenses upon the submission by BMC of monthly invoices to the Debtors describing, in reasonable detail, the services for which compensation is sought, in accordance with the BMC Agreement, provided however, that the United States Trustee for the District of Delaware and any official committee appointed in the Chapter 11 Cases, if any (collectively, the "Notice Parties"), shall be provided copies of all of BMC invoices and shall have a period of ten (10) days to object to the amount of such invoice prior to the Debtors' payment of such amounts or such shorter time as agreed to by the Notice Parties.
5. Any dispute with respect to the fees and expenses by BMC shall be brought before this Court for a final determination.
6. Upon the closing of the Chapter 11 Cases, BMC shall return all proofs of claim received by it and the official claims registry to the Clerk's Office.

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

7. This Court shall, and hereby does, retain jurisdiction with respect to all matters arising from or related to the implementation and interpretation of this Order.

Date: \_\_\_\_\_, 2010  
Wilmington, Delaware

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE