IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: EDDIE BAUER HOLDINGS, INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 09-12099 (__) Joint Administration Pending

DECLARATION OF MARVIN EDWARD TOLAND OF EDDIE BAUER HOLDINGS, INC., IN SUPPORT OF FIRST DAY MOTIONS

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, Marvin Edward Toland, hereby declare:

1. I am the Senior Vice President and Chief Financial Officer ("**CFO**") of Eddie Bauer Holdings, Inc., a publicly traded corporation incorporated under the laws of the State of Delaware. Eddie Bauer Holdings, Inc. is the direct or indirect parent corporation of each of the debtors and debtors-in-possession (collectively, the "**Debtors**") in the above captioned chapter 11 cases (collectively, the "**Chapter 11 Cases**") and as depicted on the corporate organization chart attached hereto as Exhibit A. In that capacity, I am familiar with the day-to-day operations, business and financial affairs of the Debtors.

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[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Eddie Bauer Holdings, Inc., a Delaware corporation (2352); Eddie Bauer, Inc., a Delaware corporation (9737); Eddie Bauer Fulfillment Services, Inc., a Delaware corporation (0882); Eddie Bauer Diversified Sales, LLC, a Delaware limited liability company (1567); Eddie Bauer Services, LLC, an Ohio limited liability company (disregarded), Eddie Bauer International Development, LLC, a Delaware limited liability company (1571); Eddie Bauer Information Technology, LLC, a Delaware limited liability company (disregarded); Financial Services Acceptance Corporation, a Delaware corporation (7532); and Spiegel Acceptance Corporation, a Delaware corporation (7253). The mailing address for Eddie Bauer, Inc. is 10401 N.E. 8th Street, Suite 500, Bellevue, WA 98004. On or about the Petition Date, Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services, Inc., affiliates of the Debtors, commenced a proceeding before the Superior Court of Justice, Commercial List, for the Judicial District of Ontario, for a plan of compromise or arrangement under the Companies' Creditors Arrangement Act.

2. On the date hereof (the "**Petition Date**"), the Debtors filed their voluntary petitions for relief under title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the District of Delaware (the "**Court**"). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

3. To minimize the adverse effects of filing for bankruptcy protection on their businesses, the Debtors have requested various types of "first day" relief (collectively, the "**First Day Motions**").[2] The First Day Motions seek relief intended to allow the Debtors to perform and meet those obligations necessary to fulfill their duties as debtors-in-possession. I am familiar with the contents of each First Day Motion (including the exhibits thereto), and believe that the relief sought in each First Day Motion: (a) is necessary to enable the Debtors to operate in chapter 11 with minimal disruption or loss of productivity or value, (b) constitutes a critical element in achieving a successful reorganization of the Debtors and (c) best serves the Debtors' estates and creditors' interests.

4. I submit this declaration (the "**Declaration**") in support of the First Day Motions. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, information supplied to me by other members of the Debtors' management and professionals or learned from my review of relevant documents or upon my opinion based upon my experience and knowledge of the Debtors' operations and financial condition. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am authorized to submit this Declaration.

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[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the relevant First Day Motion or the Sale Motion (as defined herein), as applicable.

5. Part I of this Declaration describes the Debtors' businesses, their capital structure and the circumstances surrounding the commencement of these Chapter 11 Cases. Part II sets forth the relevant facts in support of each First Day Motion.

PART I

I. OVERVIEW OF THE DEBTORS' BUSINESS OPERATIONS

A. Description and History of the Business

6. The Debtors and their Canadian Debtor Affiliates (collectively, "**Eddie Bauer**") sell outerwear, apparel and accessories, all of which reflect Eddie Bauer's distinctive outdoor heritage, as well as selected products for the home such as comforters, pillows and throws. The Eddie Bauer brand is an internationally recognized brand and Eddie Bauer products are available at approximately 370 retail and outlet stores throughout the United States and Canada, through catalog sales and on Eddie Bauer's website located at www.eddiebauer.com.

7. Eddie Bauer's primary target customers are men and women thirty (30) to fifty-four (54) years of age with an average annual household income of $77,000. In fiscal year 2008, Eddie Bauer recorded $1.023 billion in net sales and total revenues.

8. Headquartered in Bellevue, Washington, Eddie Bauer's origins can be traced back to 1920, when founder Eddie Bauer (the person) opened his first store in Seattle, Washington, to sell sporting equipment, clothing and accessories. The first Eddie Bauer store specialized in sporting goods such as tennis rackets and fishing tackle. Later, Eddie Bauer began to focus on outerwear, a change that occurred partially as the result of Mr. Bauer's personal experience with hypothermia on a winter fishing trip in 1935. After nearly freezing to death, Mr. Bauer designed a quilted down parka called the "Skyliner" that he went on to patent in 1940. This innovation in down outerwear would become a cornerstone of the Eddie Bauer business and one of the sources of its vaunted reputation as "The Original Outdoor Outfitter®."

9. During World War II, the United States Army commissioned more than 50,000 "Eddie Bauer B-9 Flight Parkas" to keep pilots warm during high altitude flights. Eddie Bauer also produced 250,000 down sleeping bags and many other items to meet military purchase orders. Eddie Bauer was the first government supplier given license to put a brand label on its products during World War II, which raised brand awareness with service personnel and the public at large and created a wider market for Eddie Bauer merchandise.

10. Throughout its history, Eddie Bauer has outfitted notable scientific and exploratory expeditions in Eddie Bauer outerwear, including a number of notable "first ascents" such as that of Jim Whittaker, who became the first American to reach the summit of Mount Everest in 1963, wearing Eddie Bauer outerwear.[3] From 1953 to 1983, Eddie Bauer outfitted more than forty (40) major mountaineering expeditions, including the first American ascents of Mount Everest, Mount Dhaulagiri, Peak Lenin and Mount Makalu; as well as the first worldwide ascents of Gasherbrum I and Vinson Massif. Through these expeditions, Eddie Bauer honed and field-tested its designs and gear under the most demanding of conditions.

11. Eddie Bauer's heritage is more than just interesting lore, however. It is a wellspring of inspiration for new Eddie Bauer products, innovation and commercial ideas. For example, in 2008 Eddie Bauer contracted with a design team of world-class mountain climbers and creative and production personnel (the "**First Ascent Contractors**"). The First Ascent collaboration combines Eddie Bauer's legacy as the original expedition outfitter with the expertise of some of today's most renowned mountain guides and climbers, including Peter Whittaker, Ed Viesturs and Dave Hahn. The First Ascent Contractors collaborate with Eddie

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[3] The designation "first ascent" has a special meaning among mountain climbing professionals and enthusiasts, referring to the first documented successful climb to the top of a mountain, or the first to follow a particular climbing route. Because of the significant challenges and risks entailed, a "first ascent" is always a momentous occasion. "Big Jim" Whittaker's first American ascent of Mount Everest in 1963 in Eddie Bauer gear is regarded by many as a symbolic Cold War triumph and was inspirational to an entire generation of Americans.

Bauer's corporate personnel and Rainier Mountaineering, Inc. — the largest mountain guide service in the U.S. — to create, test, launch and promote the First Ascent™ line of world-class mountaineering outerwear. As part of the development of the First Ascent™ line of products, the First Ascent Contractors have just completed testing their latest mountaineering outerwear on a much publicized climb of Mount Everest (the "**First Ascent Return to Everest**").

12. The First Ascent Contractors, described in greater detail below in Part II (E), provide ongoing consulting services related to the design of First Ascent products as well as public relations opportunities and publicity, reinforcing Eddie Bauer's image as a leading provider of outdoor apparel and accessories and thereby helping Eddie Bauer to increase sales, brand loyalty and market share. The First Ascent collaboration and products enhance Eddie Bauer's reputation for active, adventure-oriented outerwear — an area of strength that originally established the brand's acclaim — and add to and complement the wide array of more casual, recreation-oriented sportswear products that Eddie Bauer offers.

13. In addition, Eddie Bauer continues to modernize and promote many of its historic best selling outerwear items, such as the Kara Koram™ parka and Yukon Classic™ down vest, as well as field and stream jackets. These heritage pieces, along with the First Ascent line of outerwear, reinforce Eddie Bauer's positioning as "The Original Outdoor Outfitter®."

B. Sales Channels

14. Eddie Bauer offers it products through three interdependent sales channels that share product sourcing, design and marketing resources: (i) retail stores, which sell premium Eddie Bauer merchandise; (ii) outlet stores, which sell a value priced version of Eddie Bauer merchandise as well as inventory overstocks at clearance price points and (iii) direct sales, which consist of sales through Eddie Bauer catalogs and the Eddie Bauer website.

15. Eddie Bauer retail stores generated net merchandise sales (net of returns) of $443.9 million in fiscal year 2008, comprising 45.7% of Eddie Bauer net merchandise sales. Eddie Bauer retail stores are generally located in regional malls and lifestyle centers and in metropolitan areas. Eddie Bauer also has retail stores in smaller markets where large concentrations of its target customers exist.

16. Eddie Bauer outlet stores generated net merchandise sales of $253.2 million in fiscal year 2008, comprising 26.1% of Eddie Bauer net merchandise sales. Eddie Bauer outlet stores target customers seeking Eddie Bauer apparel at lower prices. Eddie Bauer outlet merchandise consists of apparel designed exclusively for the outlet stores and excess inventory from its retail stores. Eddie Bauer outlet stores are located predominantly in outlet centers, value strip centers and "destination" outlet areas such as Palm Springs, California and Hilton Head, South Carolina.

17. In fiscal year 2008, Eddie Bauer's direct channel sales generated net merchandise sales of $274.2 million, comprising 28.2% of net merchandise sales. The Eddie Bauer catalogs and website offer the broadest assortment of available colors, styles and sizes, including petite, tall and plus sizes, as well as certain products, such as swimwear, dresses and footwear, that are not available in the stores.

18. A key sales strategy for Eddie Bauer has been to leverage synergies among its multiple sales and marketing channels, maximizing cross-promotional opportunities. Eddie Bauer's U.S. stores offer a direct phone connection to customer call centers that allows an in-store customer to order for home delivery a particular size, color or item that may not be available in the store. Eddie Bauer's website and catalogs are linked through its "Catalog Quick Order" feature, which allows a customer to input a catalog item number to place an order on the

website. In addition, Eddie Bauer structures its operations to offer customers a seamless transition between sales channels. Customers can purchase products through any of the sales channels and return or exchange products at any of the Company's stores, regardless of the channel of purchase.

19. Eddie Bauer's sales follow a seasonal pattern, with sales and earnings peaking during the fourth quarter, particularly during the November through December holiday periods. In addition, Eddie Bauer typically experiences higher sales of men's products and accessories in June for Father's Day. In response to these seasonal sales patterns, Eddie Bauer increases inventory levels during peak selling periods, and, as discussed in greater detail below in Part II(D), Eddie Bauer places its orders for peak seasons approximately six (6) months in advance of such seasons. As a result, June and July and the next six (6) to eight (8) weeks represent Eddie Bauer's peak product ordering, shipping and manufacturing period

C. Employees

20. As of the Petition Date, Eddie Bauer has approximately 7,700 U.S. employees and 933 Canadian employees. Approximately 7,144 of its U.S. employees are outlet and retail associates and the remaining employees are corporate personnel. Eddie Bauer hires additional temporary staff at its retail stores and at its distribution and call centers during the peak fourth quarter sales season. Eddie Bauer's associates are not represented by unions and are not covered by any collective bargaining agreements. Eddie Bauer has had no labor-related work stoppages and Eddie Bauer management considers its relations with associates to be good. Eddie Bauer's employees are discussed in greater detail below in Part II(E).

21. As part of its turnaround efforts in January 2008, Eddie Bauer eliminated 123 positions from its non-retail support personnel. In January 2009, as a result of the downturn in the economy, in an effort to reduce its administrative costs, Eddie Bauer completed a

reduction in work force that eliminated an additional 193 non-retail personnel from the organization.

D. Product Sourcing

22. Eddie Bauer contracts with third-party sourcing agents and directly with vendors for sourcing and manufacturing of all of its merchandise. This sourcing strategy to date has helped Eddie Bauer maintain quality control standards while allowing it to enhance speed to market to respond to customers' preferences. To ensure that Eddie Bauer's standards of product quality and timely product delivery are met, Eddie Bauer retains close control over brand image, design standards and product quality by designing and developing most clothing and accessory products in-house. In addition, Eddie Bauer enforces quality control standards through inspection of pre-production samples, periodic site visits to vendor factories and selective inspections of inbound shipments at distribution centers.

23. Eddie Bauer has four (4) sourcing seasons per year and typically places orders with its vendors approximately six (6) to eight (8) months prior to the initial sale date, with approximately eleven (11) to twelve (12) weeks for reorders and seven (7) to nine (9) weeks for replenishment of its basic non-seasonal items. Eddie Bauer uses a similar sourcing calendar for each of its sales channels. It purchases approximately 85% to 90% of inventory for its stores in advance so as to permit all of its stores to have sufficient product to meet demand. In the case of direct sales, Eddie Bauer limits its purchases to approximately 75% to 80% of inventory in advance in order to better gauge anticipated demand for products through its preview catalog, which is typically sent to customers approximately ten (10) to twelve (12) weeks in advance of a season's product launch. Eddie Bauer's product sourcing is discussed in greater detail below in Part II(D).

24. In 2008, Eddie Bauer reviewed its sourcing and supply procedures and sourcing agency relationships to further reduce costs while improving adherence to new, higher quality standards. In 2009, to improve its pricing for goods and increase its speed of delivery, Eddie Bauer added a new Asian sourcing agent without prior affiliations to the company, and opened an office in Hong Kong (operating under the name Pacific Northwest Sourcing Co., Ltd.) to enable it to source more product directly from Asian vendors. Eddie Bauer manages cost negotiations and production directly with factories in Mexico, Central and South America and the Caribbean for basic bottoms and knit products.

25. Eddie Bauer's sourcing network consists of more than 250 vendors, who operate in thirty-seven (37) countries, primarily Asia. Indeed, a critical and material component of inventory in Eddie Bauer's stores is manufactured in Asia. Eddie Bauer's top thirty (30) vendors have supplied it for an average of approximately ten (10) years and are essential to Eddie Bauer's continued operations. These long-term relationships with vendors ensure an efficient flow of supply to Eddie Bauer at favorable pricing terms, further improving Eddie Bauer's overall cost structure.

E. <u>Joint Ventures</u>

26. Eddie Bauer owns 30% of Eddie Bauer Japan, Inc., a joint venture with Otto Japan Inc. (a joint venture company of Otto KG, a former Spiegel, Inc. affiliate, and Sumitomo Corporation), under which Eddie Bauer granted the joint venture a license to the "Eddie Bauer" brand name in order to sell a mixture of Eddie Bauer apparel and accessories from the U.S. core assortment of products, in addition to products developed by the joint venture partner exclusively for the Japanese market, in retail stores and through the direct channel. Eddie Bauer also licenses its brand name to the joint venture. Eddie Bauer provides oversight on product development, catalogs, merchandising, store design and marketing efforts, and retains

the right to approve all products offered by the joint venture that carry the Eddie Bauer brand. In exchange, Eddie Bauer shares, as an equity holder, in the earnings or losses of the joint venture, and royalty revenues from the sales of products. Eddie Bauer Japan, Inc. reported joint venture net sales of $152.5 million in fiscal year 2008. In fiscal year 2008, Eddie Bauer received approximately $4.8 million in royalties from the joint venture and recorded a loss of approximately $5.0 million for its equity share, which included an impairment of $3.7 million recorded during the fourth quarter of 2008. As of January 3, 2009, Eddie Bauer's equity investment balance was approximately $9.5 million in Eddie Bauer Japan, Inc.

27. Eddie Bauer previously owned a 40% interest in Eddie Bauer GmbH & Co., a joint venture established to sell Eddie Bauer merchandise in Germany. The remaining 60% was held by former Spiegel affiliates and subsidiaries of Otto KG. Effective March 2008, Eddie Bauer transferred its interest in the German joint venture to a third party in exchange for a release of liabilities and the execution of a new licensing arrangement for a five (5) year period in exchange for specified royalties.

F. Trademarks and Licensing

28. Eddie Bauer trademarks are key assets with substantial value that are critical to the ongoing operation of the company as a recognized brand name. They are registered with the U.S. Patent and Trademark Office and with governmental agencies in other countries, particularly where Eddie Bauer products are manufactured and/or sold. Eddie Bauer works vigorously to enforce and protect its trademark rights by filing for appropriate trademark protection, engaging in monitoring services, issuing cease-and-desist letters against third parties infringing or denigrating Eddie Bauer trademarks and initiating litigation as necessary. As of June 1, 2009, Eddie Bauer had sixty-eight (68) active U.S. trademark registrations and eighty-five (85) pending U.S. trademark applications, as well as 310 active foreign registrations and 121

pending foreign registrations. Eddie Bauer's primary trademarks include Eddie Bauer®, the Eddie Bauer signature logo, the Eddie Bauer goose logo and First Ascent™.

29. Eddie Bauer selectively licenses its brand name and logo to be included on products sold by other companies to enhance and extend the Eddie Bauer brand. Eddie Bauer received $12.8 million in royalty revenues in fiscal 2008 relating to its licensing arrangements. Eddie Bauer seeks licensees who are leaders in the outdoor, juvenile, home, SUV, personal and other categories. The Company typically enters into multi-year license agreements with one licensee per product category to prevent price competition and market saturation of the brand.

II. THE SPIEGEL ERA AND SPIEGEL BANKRUPTCY

30. A key event in the corporate history of Eddie Bauer was the acquisition of Eddie Bauer, Inc. by the catalog retailer Spiegel, Inc. ("**Spiegel**") in July 1988. Spiegel acquired Eddie Bauer, Inc. and its subsidiaries from General Mills, Inc., who had owned Eddie Bauer, Inc. since 1971. Spiegel was the 100% owner of Eddie Bauer, Inc. from 1988 until 2005.

31. The Spiegel era was one of rapid growth for Eddie Bauer. By the end of fiscal year 2002, Eddie Bauer, Inc.'s retail stores had increased from 58 to 399 and outlet stores from 3 to 102. In addition, from fiscal year 1990 to fiscal year 2002, Eddie Bauer, Inc.'s catalog circulation increased from 61.2 million to 101.6 million. During the Spiegel era, Eddie Bauer also altered its focus and brand identity, as the Eddie Bauer brand shifted from its outdoor outfitter heritage to the market for casual apparel aimed primarily at women.

32. During 2001 and 2002, net sales at Spiegel's three merchant divisions, including Eddie Bauer, Inc., declined. In addition, Spiegel's special-purpose bank, which offered private-label and standard credit cards, expanded credit to high risk, low-credit score customers. These events led to lower liquidity and contributed to the noncompliance by Spiegel and its affiliates with certain financial and other covenants under their financing arrangements.

Governmental action against the bank further limited the availability of excess cash flow from the securitizations of credit card receivables, which was diverted to repay principal to investors in the securitization vehicles. Accordingly, Spiegel and its nineteen (19) affiliates (including Eddie Bauer, Inc.) lost a significant source of liquidity that they previously enjoyed to fund their operations.

33. These difficulties led Spiegel, together with its subsidiaries and affiliates, including Eddie Bauer, Inc., to file petitions for chapter 11 relief on March 17, 2003 in the U.S. Bankruptcy Court for the Southern District of New York. See In re Spiegel, Inc. et al., Case No. 03-11540 (BRL) (jointly administered case in which other Debtors included Eddie Bauer, Inc., Eddie Bauer Diversified Sales, LLC, Eddie Bauer International Development LLC and Eddie Bauer Services, LLC) (Filed March 17, 2003) (the "**Spiegel Bankruptcy**").[4] Eddie Bauer emerged from the Spiegel Bankruptcy as a stand-alone company pursuant to Eddie Bauer, Inc. and its related Debtor affiliates' Amended Joint Plan of Reorganization (the "**Plan**"). The bankruptcy court confirmed the Plan on May 25, 2005 and the Plan became effective on June 21, 2005.

34. Under the Plan, Eddie Bauer Holdings, Inc. was formed as a new holding company to serve as the parent company for Eddie Bauer, Inc. and its subsidiaries. In exchange for Eddie Bauer Holdings, Inc.'s issuance of thirty (30) million shares of common stock to certain unsecured creditors of Eddie Bauer, Inc. and its related Debtor affiliates, certain subsidiary operations were transferred to Eddie Bauer Holdings, Inc.

35. In addition, Eddie Bauer, Inc., and Eddie Bauer Holdings, Inc., along with their U.S. subsidiaries as guarantors, entered into a $300 million senior secured term loan

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4 In addition, Eddie Bauer of Canada, Inc. and Spiegel Group Teleservices – Canada, Inc. (now known as Eddie Bauer Customer Service, Inc.) filed proceedings for bankruptcy relief concurrently in Canada.

agreement, the proceeds from which were used to pay Spiegel creditors and not to fund operations of Eddie Bauer Holdings, Inc. or its subsidiaries.

36. Pursuant to the Plan, in June 2005, Eddie Bauer emerged from bankruptcy as a stand-alone company. Eddie Bauer Holdings, Inc.'s common stock is traded on the NASDAQ Global Market under the trading symbol "EBHI." As of March 11, 2009, there were 30,829,530 shares of EBHI common stock outstanding and approximately 456 holders of record. Stockholders' equity as of January 3, 2009 totaled $72.8 million, down $183.5 million from December 29, 2007.

III. SUMMARY OF PREPETITION LOANS

A. Senior Secured Term Loan

37. On June 21, 2005, Eddie Bauer, Inc. entered into a $300 million senior secured term loan agreement (the "**Original Term Loan Agreement**") upon its emergence from bankruptcy. In order to (a) reduce the principal balance of the loans outstanding under the Original Term Loan Agreement (the "**Original Term Loan**") from $273.8 million to $225 million, (b) extend the maturity date of the Original Term Loan to April 1, 2014, and (c) authorize the issuance of not less than $75,000,000 of convertible notes, Eddie Bauer Holdings, Inc., Eddie Bauer, Inc., Wilmington Trust FSB (as successor by assignment to JPMorgan Chase Bank, N.A.), as administrative agent, Goldman Sachs Credit Partners L.P., as syndication agent and the several banks and other financial institutions or entities from time to time parties thereto (collectively, the "**Term Loan Lenders**") entered into that certain Amended and Restated Term Loan Agreement (the "**Amended Term Loan Agreement**") on April 4, 2007 which refinanced the Original Term Loan.

38. The Amended Term Loan Agreement is secured by a first lien on, among other things, certain real estate assets, equipment, general intangibles, capital stock and

intellectual property and by a second lien on substantially all of the other assets of Eddie Bauer Holdings, Inc., Eddie Bauer, Inc. and their subsidiaries.

39. After two proposals to the Term Loan Lenders to amend the Amended Term Loan Agreement at market rates, both of which were turned down, and facing potential violations of various financial covenants contained in the Amended Term Loan Agreement due to increased leverage, Eddie Bauer, Inc. was forced to enter into an amendment to the Amended Term Loan Agreement on April 2, 2009 (the "**Term Loan First Amendment**"). The Term Loan First Amendment, among other things, allowed Eddie Bauer, Inc. to increase its permitted senior secured leverage ratio and decrease its permitted fixed charge coverage ratio through the fourth quarter 2009 and to extend to do the same through the fourth quarter 2010 if Eddie Bauer was able to cause the maturity date of its Revolving Loan Agreement (as defined below) to be extended and if Eddie Bauer met certain quotas for raising proceeds from the issuance of stock and convincing outstanding convertible noteholders to convert their outstanding notes to equity. In exchange for the extension to 2010, the Term Loan Lenders would receive warrants for Eddie Bauer Holdings, Inc. common stock in different amounts if certain milestones for additional noteholder to equity conversion were not met.

40. Unfortunately, despite extensive and repeated attempts to negotiate a conversion of its outstanding convertible notes to equity, Eddie Bauer was unable to reach any agreement with its convertible noteholders.

B. Senior Secured Revolving Credit Facility

41. Upon its emergence from bankruptcy, Eddie Bauer, Inc. also entered into a $150 million senior secured revolving loan and security agreement dated as of June 21, 2005 (the "**Original Revolving Loan Agreement**") with, among others, Bank of America, N.A., as agent for the lenders and as co-syndication agent, Banc of America Securities LLC, as sole lead

arranger and book manager, General Electric Capital Corporation, as Documentation Agent and the CIT Group/Business Credit, Inc., as co-syndication agent.

42. In order to facilitate (i) the issuance of the Convertible Notes and (ii) the amendment and restatement of the Original Term Loan Agreement, the Revolving Loan Agreement was amended by a First Amendment and Waiver to Loan and Security Agreement dated as of April 4, 2007 (the Original Revolving Loan Agreement, as so amended, the "**Revolving Loan Agreement**").

43. Amounts borrowed under the Revolving Loan Agreement are secured by a first lien on, among other assets, Eddie Bauer, Inc.'s inventory and certain accounts receivable balances and by a second lien on all of Eddie Bauer, Inc.'s other assets other than the Groveport, Ohio distribution facility. The Revolving Loan Agreement is guaranteed by Eddie Bauer Holdings, Inc., and certain of its subsidiaries. The funds available under the Revolving Loan Agreement equaled $88.4 million as of January 3, 2009. Eddie Bauer, Inc. had $8.7 million of letters of credit outstanding and no amounts drawn under the Revolving Loan Agreement as of January 3, 2009. Borrowings under the Revolving Loan Agreement bear interest at LIBOR plus 1.25% if the average aggregate outstanding (based upon the preceding calendar month) is less than $75 million; or LIBOR plus 1.50% if the average aggregate outstanding is greater than or equal to $75 million. The Revolving Loan Agreement is scheduled to mature on June 21, 2010.

C. Convertible Senior Unsecured 5.25% Notes Due 2014

44. In addition, on April 4, 2007, the Eddie Bauer Holdings, Inc. completed an offer of a $75 million aggregate principal amount, 5.25% convertible senior notes (the "**Convertible Notes**"). The Convertible Notes have a maturity date of April 1, 2014 and pay interest at an annual rate of 5.25% semiannually in arrears on April 1 and October 1 of each year, beginning October 1, 2007 unless earlier redeemed, repurchased or converted.

45. The Convertible Notes are fully and unconditionally guaranteed by all of Eddie Bauer Holdings, Inc.'s existing and future subsidiaries that are parties to any domestic credit facilities, whether as a borrower, co-borrower or guarantor, including Eddie Bauer, Inc. The Convertible Notes are unsecured and senior obligations of Eddie Bauer Holdings, Inc. and rank equally in right of payment with all existing and future senior unsecured indebtedness and senior in right of payment to any subordinated indebtedness.

46. Under the indenture governing the Convertible Notes (the "**Indenture**"), the Convertible Notes may be converted to stock or cash depending on when they are converted. The Convertible Notes were not convertible prior to January 4, 2009 except upon the occurrence of specified corporate transactions. Subsequent to January 4, 2009 and prior to April 1, 2013, holders may convert all or a portion of their Convertible Notes under certain circumstances identified in the Indenture. The initial conversion rate, which is subject to adjustment, for the Convertible Notes was 73.8007 shares per $1,000 principal amount of Convertible Notes (which represented an initial conversion price of approximately $13.55 per share).

IV. EVENTS LEADING TO THE COMMENCEMENT OF CHAPTER 11 FILING AND EDDIE BAUER'S PLANS AND STRATEGIES MOVING FORWARD

47. Various internal and external events and factors have had a severe negative impact on Eddie Bauer — most prominently, the debt loan taken on by Eddie Bauer as a result of the Spiegel Bankruptcy, a diminishment in brand identity by owners of Eddie Bauer over time and the historic economic upheaval that began to affect Eddie Bauer in the fourth quarter of 2008 and has greatly affected retail markets worldwide.

A. The Spiegel Bankruptcy and its Aftermath

48. As discussed in greater detail in Section III, above, as a result of the Spiegel Bankruptcy, and in order to emerge and continue to operate its business, Eddie Bauer took on $300 million in debt.

49. In addition, upon Eddie Bauer, Inc.'s emergence from bankruptcy, the Spiegel post-retirement, defined-benefit healthcare and life insurance plans and pension plan were transferred to and assumed in total by Eddie Bauer. As a result, Eddie Bauer was saddled with obligations and liabilities associated not with its own historical obligations but with those of Spiegel, such as Spiegel benefits and pension plan obligations.

50. Furthermore, in the aftermath of the Spiegel Bankruptcy, Eddie Bauer inherited support facilities, including a 50,000 square foot information technology center in Westmont, Illinois and a 2.2 million square foot distribution center in Groveport, Ohio, that were not optimally suited for Eddie Bauer's operations and, as a result, Eddie Bauer had to bear the overhead costs of these facilities.

51. From 2005 to early 2007, Eddie Bauer focused significant efforts on navigating and emerging from the Spiegel bankruptcy filing, while preserving and maintaining its existing Business, rather than strategizing for business growth. In addition, much of the revenue generated by Eddie Bauer during the Spiegel bankruptcy was used to support Spiegel operating costs rather than re-invested in the Eddie Bauer brand or devoted to capital spending.

52. In 2007, Eddie Bauer hired a new management team that it tasked with reducing debt load and focusing on brand renewal..

53. However, as a result of the economic downturn, the high leverage that Eddie Bauer assumed as a result of the Spiegel bankruptcy became a greater debt than Eddie Bauer could carry in the current depressed economic and retail market environment. As of the

Petition Date, Eddie Bauer's total consolidated debt (excluding trade debt) is $304,175,468. This debt level, in turn, is projected to result in an annual cash interest expense for Eddie Bauer of over $21 million. Approximately 50% of EBITDA (earnings before interest, taxes and depreciation and amortization) is dedicated to the servicing of the existing indebtedness and, in turn, funds available for operations have been greatly reduced.

54. This substantial amount of debt service has adversely affected the financial health and business operations of Eddie Bauer in other ways by, among other things, limiting its ability to fund working capital and capital expenditure needs and increasing its vulnerability to adverse economic conditions.

B. The Recession and Decline in Consumer Spending

55. Eddie Bauer, like all other businesses, and especially retail businesses, is suffering as a result of the worst global economic downturn since the Great Depression. The effects of this crisis have been deep and widespread in the specialty retail apparel industry, which is heavily dependent upon discretionary consumer spending patterns.

56. Adverse economic conditions in general and increased levels of unemployment have led to a decrease in consumer confidence and a decline in consumer spending in the second half of 2008. This decline in consumer spending translated into anemic sales in the retail apparel industry. In 2008, the retail industry experienced slowing sales growth in the first half of the year and negative sales growth in the second half of the year.

57. In addition, with the downturn in the U.S. economy and the decline in consumer spending, the competition for consumer dollars became much more promotional, even prior to and during the holiday season. Eddie Bauer competes with a variety of retailers, including national department store chains, national and international specialty apparel chains, global discount chains, outdoor specialty stores, catalog businesses, sportswear marketers and

online businesses that sell similar lines of merchandise. Some of these competitors have greater financial, distribution, logistics and marketing resources than Eddie Bauer.

C. <u>Erosion of Brand Identity</u>

58. The rapid era of growth that began in 1988 when Eddie Bauer was acquired by Spiegel was also accompanied by a slow erosion of Eddie Bauer's brand identity as the brand shifted from its outdoor outfitter heritage and began to become associated more with casual apparel aimed primarily at mature women.

59. This shift in focus led to a decrease in profitability; whereas Eddie Bauer had previously averaged $440 in sales per square foot, this figure dropped to $230 in sales per square foot when focus shifted away from men's apparel and gear to women's apparel.

D. <u>Prepetition Marketing and Sale Related Efforts</u>

60. Prior to the commencement of these Chapter 11 Cases, Eddie Bauer retained Peter J. Solomon Company, L.P. (the "**<u>Investment Bankers</u>**"), on December 1, 2008, to act as investment banker in an advisory capacity to evaluate financial and strategic alternatives to preserve Eddie Bauer as a going concern and pursue a sale process. As part of the engagement and the Investment Bankers' evaluation, Eddie Bauer and the Investment Bankers pursued a potential sale of the Assets. Eddie Bauer and the Investment Bankers undertook efforts to solicit interest in Eddie Bauer's business from private equity investors and strategic buyers with the potential to acquire any portion of or substantially all of Eddie Bauer's assets.

61. Prior to the Petition Date, Eddie Bauer and the Investment Bankers identified and contacted approximately fifty-five (55) potential financial and strategic counterparties. Approximately twenty (20) of these parties entered into confidentiality agreements with Eddie Bauer and were provided extensive due diligence materials on an electronic data site (the "**<u>Data Site</u>**"), as well as the opportunity to speak with Eddie Bauer and

their advisors and to conduct site visits with respect to the Assets. Five (5) of these parties submitted non-binding letters of intent to the Debtors (each a "**Letter of Intent**", collectively the "**Letters of Intent**").

62. After an extensive review and in consultation with the Investment Bankers, Eddie Bauer's board of directors, selected Rainier Holdings LLC (the "**Stalking Horse Bidder**") to be the stalking horse for the sale of substantially all of the Debtors' assets (or in whatever form such a sale takes to any purchaser, the "**Sale**"). The Debtors and their advisors actively negotiated with the Stalking Horse Bidder regarding the terms and conditions of an asset purchase agreement (the "**Stalking Horse Asset Purchase Agreement**") and facilitated various diligence requests made by the Stalking Horse Bidder's representatives and advisors. On June 17, 2009, Eddie Bauer and the Stalking Horse Bidder executed the Stalking Horse Asset Purchase Agreement.

63. While negotiating the Stalking Horse Asset Purchase Agreement, the Stalking Horse Bidder indicated to Eddie Bauer that a relatively expedited sale process with respect to the Assets was critical to their decision to provide a stalking horse bid. In addition, the postpetition financing (the "**DIP Facility**") is conditioned on Eddie Bauer's pursuit of a Sale process within a specified time frame. Given Eddie Bauer's liquidity situation, I believe that a Sale process that includes a Sale of substantially all of the Assets will maximize the value of Eddie Bauer's estates. Consequently, I believe that it is in the best interest of their estates, creditors and other parties-in-interest to move forward with the Sale process set forth in Part II(K) below. Furthermore, I believe that a failure to consummate the sale on an expedited basis could compromise the Sale and bid process.

E. The Turnaround and Strategy Looking Forward

64. Eddie Bauer is confident that the merchandising, management and marketing initiatives that are underway, coupled with the arrangement of a Sale, will revitalize Eddie Bauer's business and that the strategies and goals established during these Chapter 11 Cases will provide the best opportunity for returning to financial vigor.

65. Eddie Bauer's new management is currently turning around and restoring this classic, iconic American brand and has demonstrated real, tangible progress, even while in the midst of a historic global economic downturn. In the deepest depths of the recession year 2008, Eddie Bauer still made $55 million in EBITDA — $10.7 million higher than the previous year. Eddie Bauer's comparable store sales outpaced most of the specialty retail sector and competitors by a substantial margin.

66. Eddie Bauer has consistently outperformed the majority of its competitors in the retail sector over the past six (6) quarters and actually increased its EBITDA for 2008 relative to 2007. Through cost cutting measures, Eddie Bauer has become leaner and more efficient, trimming $48 million out of the operating cost structure of its business last year, with another $15 million to be cut in 2009. In the first quarter of 2009, principally as a result of cost-cutting measures, Eddie Bauer's simple cash flow was comparable relative to the first quarter of 2008. Thus far, Eddie Bauer's new management team has been committed to delivering on its promise to refocus and begin revitalizing the company.

67. For example, First Ascent™ products have already been enthusiastically received and strong early selling is ahead of expectations. It will roll out to 180 stores in the fall of 2009, merchandised in a First Ascent™ "shop" within each store featuring a 65-inch plasma TV playing highlights of our expeditions. It will re-establish Eddie Bauer's traditional credibility in the outerwear category while bringing "street cred" in the form of excitement and

emotion to the store experience. A few minutes of Eddie Bauer video dispatches from Mount Everest will bring the entire adventure to life.

68. In addition, Eddie Bauer is launching a heritage collection, built in the tradition of Eddie Bauer field and stream. By the fall of 2009, consumers will see a revitalized Eddie Bauer store with field and stream-inspired merchandise in the front of the store, expedition-inspired product in the back. The "old" Eddie Bauer will be back, but with a fresh, innovative and exciting new twist in product and marketing. Heritage brands always have comeback potential and few have a heritage as rich and compelling as Eddie Bauer's. There is no other brand that more fittingly embodies both the spirit of the American sportsman and the spirit of the American explorer/adventurer than Eddie Bauer.

69. Unfortunately, a crushing debt burden inherited from the Spiegel Bankruptcy combined with the current severe, prolonged recession have left the company with no choice but to restructure the company's balance sheet. Eddie Bauer has made every effort possible to do this out of court, but has been unsuccessful in getting the various and diverse parties in its capital structure to agree to either a process or a plan.

70. Eddie Bauer's management has always understood that the turnaround would not be easy. It has been working on a focused five-part turnaround agenda for nearly two years. And there are results to show for it. Eddie Bauer has weathered the recession, that has so battered the market, better than many because it got ahead of the curve. Because of economic circumstances beyond its control, however, Eddie Bauer has been forced to play "defense" over the past couple of years, but has kept pushing forward with a vigorous "offense" — new products and new ideas that will generate sales growth and elevate the brand. Without a heavy debt burden, I am confident that Eddie Bauer can be successful. Eddie Bauer's management has

made steady progress so far and knows what needs to be done next. But it needs help and that need is acute, given that the upcoming weeks and months are critical for holiday ordering.

71. Eddie Bauer believes that these Chapter 11 Cases will be an essential tool in its reemergence as a healthier and profitable company, capable of carrying on the great tradition of Eddie Bauer, and reestablishing its renowned reputation as "The Original Outdoor Outfitter®." In short, these Chapter 11 Cases will help complete the turnaround and restoration of a good company with a great American brand but a bad balance sheet.

PART II

FIRST DAY MOTIONS

72. In order to enable the Debtors to minimize the adverse effects of the commencement of the Chapter 11 Cases on their businesses, the Debtors have requested various types of relief in the following First Day Motions, all of which are being filed concurrently with this Declaration.[5] For the reasons discussed below, I believe that the relief requested in each of the First Day Motions is necessary and appropriate and is in the best interest of Eddie Bauer's estates, creditors and other parties-in-interest.

A. MOTION FOR AN ORDER DIRECTING JOINT ADMINISTRATION OF RELATED CHAPTER 11 CASES ("Joint Administration Motion")

73. As reflected in the corporate organization chart attached to this Declaration as Exhibit A, Eddie Bauer Holdings, Inc. is the direct or indirect parent of all of the Debtors. The Debtors seek entry of an order directing joint administration of their Chapter 11 Cases for procedural purposes only.

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[5] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the relevant First Day Motion. In each subsection of Part II, I use the defined term "**Motion**" in reference to the First Day Motion bearing the same title as the heading of the subsection in which the term has been used, and the term "Order" in reference to the proposed order, if any, attached to that motion.

74. I believe that entry of an order directing joint administration of these Chapter 11 Cases will avoid duplicative notices, applications and orders, thereby saving the Debtors considerable time and expense. I believe that the rights of creditors will not be adversely affected as this motion requests only administrative, and not substantive, consolidation of the estates. Each creditor may still file its claim against a particular estate, and the rights of all creditors will be enhanced by the reduced costs that will result from the joint administration of these Chapter 11 Cases. I also believe that this Court will be relieved of the burden of entering duplicative orders and maintaining duplicative files, and that supervision of the administrative aspects of these Chapter 11 Cases by the United States Trustee for the District of Delaware (the "**U.S. Trustee**") will be simplified.

B. MOTION FOR AN ORDER APPROVING CROSS-BORDER INSOLVENCY PROTOCOL ("Cross-Border Protocol Motion")

75. The Debtors seek entry of an order approving the Cross-Border Protocol (defined below), in substantially the form attached to the Cross-Border Protocol Motion. The Debtors' Canadian debtor affiliates (the "**Canadian Debtor Affiliates**") are simultaneously seeking approval of the proposed Cross-Border Protocol by the Canadian Court.

76. On the date hereof, the Debtors' Canadian Debtor Affiliates will file an application with the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**") under the Companies' Creditors Arrangement Act (Canada) (the "**CCAA**"), seeking relief from their creditors (collectively, the "**Canadian Proceedings**"). The Canadian Debtor Affiliates will continue to manage their properties and operate their businesses under the supervision of the Canadian Court.

77. In light of the transnational nature of the Debtors' business and the fact that all management decisions regarding the Canadian Debtor Affiliates are made by the

Debtors' officers and directors in the United States, the I believe that it is necessary to implement a cross-border protocol between this Court and the Canadian Court to address certain issues that are anticipated to arise in coordinating the Insolvency Proceedings.

78. Specifically, I believe a cross-border protocol is needed to ensure that: (i) the Insolvency Proceedings are coordinated to avoid inconsistent, conflicting or duplicative rulings by the Courts; (ii) all parties-in-interest are provided sufficient notice of key issues in both Insolvency Proceedings; (iii) the substantive rights of all parties in interest are protected and (iv) the jurisdictional integrity of the Courts is preserved. The Cross-Border Protocol is designed to achieve these objectives by implementing a framework of general principles and timing considerations to address the basic administrative and procedural issues arising out of the cross-border nature of the Insolvency Proceedings. I believe such coordination is essential and should, among other things, maximize the efficiency of the Insolvency Proceedings and reduce the associated costs.

79. The Cross-Border Protocol provides that it shall not divest or diminish the independent jurisdiction of this Court over the Chapter 11 Cases or of the Canadian Court over the Canadian Proceedings. In particular, nothing in the Cross-Border Protocol shall be construed to, among other things, (a) require this Court to take any action inconsistent with the laws of the United States, (b) require the Canadian Court to take any action inconsistent with the laws of Canada, (c) require the Debtors or any estate professionals to take any action, or refrain from taking any action, that would result in a breach of duty imposed on them by applicable law, (d) authorize any action that otherwise requires the specific approval of this Court, except to the extent such action is specifically provided for in the Cross-Border Protocol as approved by this

Court or (e) preclude the Debtors or any party-in-interest from asserting such party's substantive rights under the applicable laws of the United States, Canada, or any other jurisdiction.

80. By reason of the foregoing, I believe that the interests of the Debtors, their estates and their stakeholders would be best served by an order granting the Cross-Border Protocol Motion.

C. MOTION TO CONTINUE USE OF EXISTING CASH MANAGEMENT SYSTEM (**"Cash Management Motion"**)

81. The Debtors' business and financial affairs are complex, requiring the collection, disbursement and movement of funds through numerous bank accounts throughout the United States and Canada ("**Cash Management System**"). To lessen the disruption caused by these Chapter 11 Cases and to maximize the value of the Debtors' estates, I believe that it is essential that the Debtors be allowed to maintain their well-developed Cash Management System.

A. Description of the Debtors' Cash Management System

82. In the ordinary course of business the Debtors utilize a centralized cash management system controlled by Eddie Bauer, Inc. ("**EBI**") and in which all Debtors participate. Eddie Bauer of Canada, Inc. ("**EBC**"), a Canadian Debtor Affiliate, controls the company's Canadian bank accounts. The Cash Management System is funded by receipts and revenues generated primarily through the Debtors' retail and outlet stores, e-commerce operations and telephonic and mail catalog transactions.

83. The flow of funds into the Cash Management System is described in detail below and in the flowchart of the Cash Management System attached as Exhibit B to the Motion. Under that system, the funds generated through the operations of Debtors and their Canadian Debtor Affiliates are deposited daily into depository accounts and thereafter, transferred to

concentration accounts maintained at Bank of America ("**BofA**") and Scotiabank in Canada ("**Scotia**"), respectively. The Debtors and EBC maintain multiple disbursement accounts from which obligations to vendors, employees and customers are paid. The majority of these accounts are zero balance accounts that are funded by one of the concentration accounts. It is customary to have a separate disbursement sub-account for each type of obligation which sub-account is linked to the main controlled disbursement account to which it relates. These include such accounts as an accounts payable disbursement account in U.S. dollars, a payroll disbursement account for Canadian payroll or a customer refund account, as required.

84. A list of all of the Debtors' and EBC's bank accounts and the bank names and addresses (the "**Bank Accounts**") are annexed as Exhibit C to the Motion. The Bank Accounts are described in detail below.

a. Cash Collection and Concentration – United States

BofA Master Concentration Account. The focal point of the Debtors' Cash Management System is a master concentration account maintained at BofA by EBI (the "**BofA Master Concentration Account**"). The BofA Master Concentration Account pools all deposits for EBI and is the primary account that provides the funds for the BofA Master Disbursement Account (defined below). The BofA Master Concentration Account receives funds from two store depository concentration accounts, a retail bankcard depository concentration account, electronic transfers from various credit cards, wire transfers from credit card and corporate customers and transfers from separate depository accounts controlled by affiliate Debtors Eddie Bauer Fulfillment Services, Inc. ("**EBFS**"), Eddie Bauer Diversified Sales, LLC ("**EBDS**") and Eddie Bauer International Development ("**EBID**"). The BofA Master Concentration Account also receives excess funds from the Canadian Master Depository Account, maintained at Scotia in Canada by EBC (the "**Scotia Canadian Master Concentration Account**").

Store Depository Accounts. EBI maintains approximately 15 local U.S. depository bank accounts (the "**Store**

Depository Accounts") at 14 banks (the "**Store Depository Banks**") with branches located across 47 states. These accounts receive deposits from the Debtors' approximately 336 U.S. stores. Sales at each of the Debtors' U.S. retail stores are made by customers paying by cash, debit or credit card. Cash and checks received at each of the Debtors' retail stores are deposited on a daily basis (or several times throughout a given week, depending on the location of the store and the time of year) into the Store Depository Accounts. Weekly deposits in the Store Depository Accounts range from approximately $4 million during peak selling seasons to approximately $1 million in non-peak periods. A list of the Store Depository Accounts is included in the list annexed to the Cash Management Motion.

Store Depository Concentration Accounts. The funds on deposit in the Store Depository Accounts are transmitted via automated clearing house drawdowns ("**ACH**") on a daily basis to one of two BofA concentration accounts for the Store Depository Banks (the "**Store Depository Concentration Accounts**"). The funds from these concentration accounts are then transferred each day by ACH drawdowns into the BofA Master Concentration Account.

Card Depository Accounts. Retail Bankcard, Direct Bankcards, Amex, Discover and ADS Credit Deposits are collected in two separate depository accounts at BofA and transferred each day into the BofA Master Concentration Account. Corporate deposits and other credit card receipts are directly transferred by the remitting party through wire transfers and ACH drawdowns into the BofA Master Concentration Account.

Affiliate Debtor Depository Accounts. EBDS, EBFS and EBID all hold BofA depository accounts in their respective names and transfer deposits by ACH on a daily basis into the BofA Master Concentration Account.

b. Cash Collection and Concentration – Canada

Canadian Store Depository Accounts. EBC holds three local Canadian depository bank accounts (the "**Canadian Store Depository Accounts**") at three separate Canadian banks (the "**Canadian Store Depository Banks**") located across 8 provinces. These accounts receive deposits

denominated in Canadian dollars from approximately 36 of EBC's stores across Canada. Sales at each of EBC's retail stores are made by customers paying by cash, debit or credit card and deposited on a daily basis into the Canadian Store Depository Accounts, maintained by the Canadian Store Depository Banks. A list of the Canadian Store Depository Accounts is also included in the list annexed to the Cash Management Motion.

Scotia Concentration Accounts. The funds on deposit in the Canadian Store Depository Accounts are transmitted via ACH drawdowns on a daily basis to one of two Scotia concentration accounts. These accounts are then emptied into the Scotia Canadian Master Concentration Account.

Canadian Card Depository Accounts. Canadian Amex payments are transferred by ACH drawdowns directly by the remitting party into the Scotia Canadian Master Concentration Account. Customer payments made by Canadian MasterCard, Visa and Debit cards are all held in separately named Scotia depository accounts and transferred daily into the Scotia Canadian Master Concentration Account.

c. Disbursements – United States

BofA Master Disbursement Account. EBI pays its obligations out of a master operating disbursement account maintained by BofA (the "**<u>BofA Master Disbursement Account</u>**"). Each morning, the company analyzes the day's total disbursements and transfers required funds from the BofA Master Depository Concentration Account to the Master Disbursement Account.

BofA Zero Balance Disbursement Accounts. The BofA Master Concentration Account then funds the obligations of the Debtors and their Canadian Debtor Affiliates through wire and ACH transfers to various zero-balance disbursement accounts established at BofA. These zero balance disbursement accounts are named for their separate purposes, including the Accounts Payable Electronic Disbursement Account, the Payroll Disbursement Account and the Refund Check Disbursement Account.

VEBA Benefit Accounts. The BofA Master Concentration Account also transfers funds into two VEBA Benefit tax exempt trust accounts. Funds transferred into the VEBA

accounts include employee contributions made through payroll deductions as well as premiums paid by the Debtors as part of the Debtors' benefits program. The VEBA accounts are then used to pay healthcare and FSA claims on behalf of the Debtors' employees. One imprest account is held at Citibank and is used to process healthcare claims to CIGNA. CIGNA requires that the Debtors maintain a balance of $413,000 in this account. The second imprest account is held at JP Morgan Chase on behalf of EBFS and is used to process healthcare claims to United Healthcare ("**UHG**"). UHG requires that the Debtors maintain a balance of $76,000 in this account.

d. Disbursements – Canada

Scotia Canadian Master Disbursement Account. EBC and EBCS pay their Canadian obligations using two disbursement accounts. The first is a master disbursement account denominated in Canadian dollars and maintained at Scotia by EBC (the "**Scotia Canadian Master Disbursement Account**"). The Scotia Canadian Master Concentration Account directly funds the Scotia Canadian Master Disbursement Account and is used to pay for the obligations of the Canadian Debtor Affiliate's payroll, customer refunds and accounts payable that are denominated in Canadian dollars.

USD Canadian Disbursement Account. A second disbursement account for EBC is held in U.S. dollars and maintained at BofA by EBC (the "**USD Canadian Disbursement Account**") but funded by the BofA Master Depository Concentration Account. The USD Canadian Disbursement Account is used to pay EBC's and EBCS's accounts payable that are denominated in US dollars. Canadian receipts and disbursements are analyzed on a daily basis. Excess receipts that will not be required for short term payments are wired each day from the Scotia Canadian Master Concentration Account to the BofA Master Depository Concentration Account. When necessary, funds are also wired back to the Scotia Canadian Master Concentration Account to handle cash shortfalls.

e. Disbursements – International

Foreign Escrow Account. An escrow account used for payments to the Debtors' logistics services provider, Expeditor's International, is maintained at BofA by EBI

(the "**Foreign Escrow Account**"). The Foreign Escrow Account is used to fund logistics services and payment of customs fees for the shipment of merchandise into the United States.

f. Investments

BofA Overnight Sweep Account. The Debtors maintain accounts for investing excess cash with BofA. The first is a short-term Overnight Investment Sweep Account (the "**BofA Overnight Sweep Account**") which transfers daily excess balances from the BofA Master Concentration Account into Eurodollars overnight and returns these funds to the BofA Master Concentration Account the following day.

BofA Directed Investment Account. The third account is an Investment Account maintained at Banc of America Securities (the "**BofAS Directed Investment Account**"). At the end of each business day, if a balance in excess of the discretionary balance remains in the BofA Master Concentration Account, the excess balance is transferred into the BofAS Directed Investment Account for investment in treasury funds. Amounts deposited in the BofAS Directed Investment Account are then transferred back to the Concentration Account, as cash is needed by the Debtors. The Directed Investment Account may only invest in "Permitted Investments," as defined therein.

B. Continuing the Debtors' Integrated Cash Management Is in the Best Interest of the Debtors' Estates and Creditors

85. The Debtors utilize their Cash Management System substantially in their current structure as part of their ordinary, usual and essential business practices. I believe that the Cash Management System resembles those commonly employed by large retail enterprises comparable in size and complexity to the Debtors. Such large, complex retail businesses tend to use such systems because of the numerous benefits they provide, including the ability to: (a) quickly create status reports on the location and amount of funds, allowing management to track and control corporate funds; (b) invest idle cash at higher returns; (c) ensure cash availability and (d) reduce administrative expenses by facilitating the movement of funds. These

controls are particularly important here, in a retail context, given the significant amount of cash that flows through the Debtors' integrated Cash Management System.

86. Given the Debtors' complex corporate and financial structure, I believe that it would be difficult to establish an entirely new system of accounts and a new cash management system for each Debtor entity. For example, as described in more detail below, if the Debtors had to open separate accounts as debtors-in-possession and rearrange their Cash Management System, it would necessitate opening numerous new accounts for receipts, cash concentration and disbursements. The delays that would result from opening new accounts, revising cash management procedures, modifying technology systems and instructing customers and other third parties to redirect payments would negatively impact the Debtors' ability to operate their businesses while pursuing these arrangements.

87. Under these circumstances, I believe that maintaining the Debtors' Cash Management System is both essential and in the best interests of the Debtors' respective estates and creditors. Furthermore, preserving the "business as usual" atmosphere and avoiding the unnecessary distractions that would inevitably be associated with any substantial disruption in the Debtors' Cash Management System will facilitate the Debtors' Sale efforts. The Debtors will continue their historical practice of maintaining records with respect to transfers of cash, so that transactions can be ascertained, traced and recorded properly on applicable intercompany accounts. For these reasons, the Debtors request the authority to continue to use their Cash Management System.

88. In conjunction with the authority to continue to use their Cash Management System, the Debtors request that no bank participating in the Cash Management System (collectively, the "**Cash Management Banks**") that honors a prepetition check or other

item drawn on any account that is the subject of this Motion (a) at the direction of the Debtors, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored or (c) as a result of an innocent mistake made despite implementation of reasonable item handling procedures, be deemed to be liable to the Debtors or to their estates on account of such prepetition check or other item being honored postpetition. I believe that such flexibility accorded the Cash Management Banks is necessary to induce the Cash Management Banks to continue providing cash management services without additional credit exposure.

C. The Debtors Should Be Granted Authority to Maintain Their Existing Bank Accounts

89. If enforced in these Chapter 11 Cases, I believe that the bank account closing requirements imposed by the UST Guidelines would cause enormous disruption in the Debtors' businesses. Specifically, the Debtors would be subject to significant administrative burdens and expenses if they were required to close existing accounts and reopen new accounts, execute new signatory cards and/or depository agreements and create an entirely new manual system for issuing checks and paying postpetition obligations, as generally required by the UST Guidelines.

90. I believe that maintaining the Bank Accounts would greatly facilitate the Debtors' seamless transition to postpetition operations. To avoid delays in paying debts incurred postpetition, and to ensure as smooth a transition into Chapter 11 as possible, I believe that the Debtors should be permitted to continue to maintain the existing Bank Accounts and, if necessary, to open new accounts and close existing accounts in the normal course of operations. To prevent the possible inadvertent payment of prepetition claims, except those otherwise authorized by the Court, the Debtors will work closely with the Cash Management Banks to

ensure appropriate procedures are in place to prevent checks issued prepetition from being honored absent this Court's approval.

D. The Debtors Should Be Granted Authority to Use Existing Business Forms and Checks

91. In the ordinary course of their businesses, the Debtors use a multitude of checks and other business forms, including certain pre-printed letterhead, purchase orders, invoices and other such related forms (the "**Business Forms**"). The Debtors request that they be authorized to continue to use all such Business Forms existing immediately before the Petition Date without reference to the Debtors' status as debtors-in-possession.

92. By virtue of the nature and scope of the Debtors' business operations and the large number of suppliers of goods and services with whom the Debtors deal on a regular basis, I believe it is important that the Debtors be permitted to continue to use their existing checks and other business forms without alteration or change, except as requested herein. Indeed, because parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as a debtor-in-possession as a result of the large and highly publicized nature of these Chapter 11 Cases, I believe that changing business forms would be unnecessary and burdensome to the estates, as well as expensive and disruptive to the Debtors' business operations.

E. The Debtors Should Be Authorized to Continue Using Debt, Wire and Automatic Clearing House Payments

93. The Debtors should be granted further relief from the UST Guidelines to the extent that they require the Debtors to make all disbursements by check. In particular, the UST Guidelines require that all disbursements of estate funds be by check with a notation representing the reason for the disbursement.

94. Considering the complexity of the Debtors' operations, I believe that it is necessary for the Debtors to conduct transactions by debit, wire or ACH payments and other similar methods, as discussed above. To deny the Debtors the opportunity to conduct transactions by debit, wire or ACH payments or other similar methods would interfere with the Debtors' performance of their contracts and unnecessarily disrupt the Debtors' business operations, as well as create additional costs to the Debtors.

F. Request For a Waiver of the Deposit Requirements of 11 U.S.C. § 345(B)

95. The Debtors are requesting that the Court waive the requirements of 11 U.S.C. § 345(b) and permit them to maintain deposits in their accounts in accordance with their existing deposit practices.

G. Description of the Debtors' Postpetition Intercompany Claims

96. The Debtors maintain business relationships with each other and with their Canadian Debtor Affiliates. As a result, the Debtors' hold numerous intercompany claims and cross-border intercompany claims that reflect intercompany receivables and payments made in the ordinary course of the Debtors' businesses throughout the United States and Canada (the "**Intercompany Claims**"). These include, but are not limited to:

> *Accrued interest.* The Debtors owe interest between and among each other and their Canadian Debtor Affiliates on outstanding Intercompany Claims. Such interest is charged monthly based on the net Intercompany Claims outstanding at the end of the prior month.
>
> *Administrative fees.* Certain Debtors and the Canadian Debtor affiliates are charged administrative fees for services rendered to support Debtor's affiliates, including some services associated with billing and accounts payable. Services and fees vary depending on the Debtor and the service provided, as defined in each intercompany agreement.

Centrally-billed expenses. In the ordinary course of business, the Debtors and their Canadian Debtor affiliates incur centrally billed expenses, such as insurance premiums, payroll, 401(k) payments, benefits, payroll taxes, other taxes (e.g., real estate, franchise sales, etc.), workman's compensation obligations and technology equipment. Centrally-billed expenses are then invoiced to each Debtor entity and charged through intercompany accounts.

Intercompany transfers. In the ordinary course of business, the daily operations of the Debtors' entities and Debtor affiliates are funded via cash transfers between the concentration and disbursement accounts. These transfers consist of revenues earned and expenses incurred that are transferred to and from the concentration accounts in order to process and fund the ongoing operations of the Debtor entities and Debtor affiliates. These transfers are not related to any loans or outstanding obligations between Debtor entities and Debtor affiliates.

Royalties. Royalties are charged either with reference to costs incurred or as a percentage of sales to certain Debtors and Debtors for the use of certain intellectual property of the Debtors.

97. Also, in many instances, the Debtors' funds and their Canadian Debtor affiliates' funds are commingled throughout the Cash Management System. Accordingly, at any given time, there may be Intercompany Claims owing between the Debtors and their Canadian Debtor affiliates. These transactions, including those examples listed above, are made between and among the Debtors and their Canadian Debtor affiliates in the ordinary course of the Debtors' and their Canadian Debtor affiliates' businesses as part of their Cash Management System (the "**Intercompany Transactions**"). The Debtors maintain records of all fund transfers and can ascertain, trace and account for Intercompany Transactions.

H. The Debtors Request That the Court Allow Administrative Expense Status for Intercompany Claims and for Authorization to Continue Performing Under the Intercompany Transactions and Historical Practices

98. As described above, the Debtors and their Canadian Debtor affiliates engage in certain usual and customary business practices in the ordinary course of their businesses that govern the various intercompany relationships among the Debtors and their Canadian Debtor affiliates, including, among other practices, incurring centrally billed expenses, making and receiving payments on behalf of each other, and making intercompany loans. I believe that continued performance under the Intercompany Transactions is not only essential to their Sale prospects of the Debtors' businesses, but is absolutely integral to ensure the Debtors' ability to operate their businesses as debtors-in-possession. Were the Debtors required to obtain the services they currently receive under the Intercompany Transactions on a per company basis, aside from incurring excessive financial burdens in identifying appropriate providers of these services and entering into individual agreements for providing these services, the Debtors would be required to divert their attention and efforts from ensuring a smooth transition into the Chapter 11 process and, ultimately, working towards a successful Sale and restructuring. Moreover, as noted above, the services provided under the Intercompany Transactions are ordinary course type tasks and functions.

99. Further, despite the fact that the **Canadian Debtor Affiliates** are self-funding on an aggregate basis, the cyclical nature of the retail industry and the need to build inventory before peak sales periods means that the **Canadian Debtor Affiliates** may incur cash deficits and require short-term financing on a periodic basis from the Debtors. Since the **Canadian Debtor Affiliates** do not carry any independent third-party financial debt, they have historically met their short-term financing needs, as well as some long-term capital expenditures

by downstream loans provided by the Debtors using funds from their secured and unsecured financing facilities.

100. Without such short-term financing, the **Canadian Debtor Affiliates** would be unable to satisfy their commitments to existing vendors and suppliers, meet payroll and fund ordinary course operations. Such inability would, aside from endangering the overall value of the Debtors' equity interest in the **Canadian Debtor Affiliates**, jeopardize the Debtors' relationships with vendors and manufacturers in Canada and worldwide.

101. The Debtors' current funding requirements are based on forecasts created by the Debtors in consultation with their financial advisor. Specifically, the Debtors forecast that the foreseeable funding requirements of the **Canadian Debtor Affiliates** over the next 90 days will be $6.0 million.

102. The Debtors' Debtor-In-Possession Facility, memorialized by the Debtor-In-Possession Credit Agreement, contemplates and allows the Debtors to advance up to $7.5 million to the **Canadian Debtor Affiliates** (the "Permitted Loans").

103. Absent the ability to timely provide short-term financing or pay prepetition intercompany claims, I believe that the Debtors may be forced to shut down certain **Canadian Debtor Affiliates** since such Debtor affiliates may be unable to procure goods and services from their vendors and thus be forced to cease operation. This result would be disastrous for the Debtors for two principal reasons. First, the Debtors share many of the same vendors with their **Canadian Debtor Affiliates** so any disruption to the **Canadian Debtor Affiliates** relationships with vendors would likewise impair the Debtors' relationships with vendors. This could disrupt the Debtors' supply and distribution of goods in the United States as well as in Canada. Second, the **Canadian Debtor Affiliates**' inability to timely provide

merchandise to customers could lead customers to migrate to other Canadian competitors to the Debtors' direct detriment.

104. To the extent that they extend, receive, defer, subordinate or repay the permitted loans to or from **Canadian Debtor Affiliates**, the Debtors will (i) record such payments, subordination or receipts appropriately in their books and records; and (ii) provide such notice as is set forth in the Order.

105. By reason of the foregoing, I believe that the interests of the Debtors, their estates and their stakeholders would be best served by an order granting the Cash Management Motion.

D. MOTION FOR AN ORDER (A) AUTHORIZING DEBTORS TO PAY PREPETITION CLAIMS OF (I) CRITICAL VENDORS, (II) ADMINISTRATIVE CLAIMHOLDERS, (III) CUSTOMS AGENTS AND SHIPPERS, (B) AUTHORIZING THE DEBTORS TO PAY FOR POSTPETITION DELIVERY OF OUTSTANDING ORDERS AND GRANTING CERTAIN RELIEF ("Critical Vendors Motion")

106. I believe that payment of the Critical Vendor Claims, Priority Vendor Claims and Outstanding Orders is vital to the operations of the Debtors' businesses because the Critical Vendors (a) supply goods that are specifically created and produced for the Debtors, (b) supply goods for which a change in supplier would detrimentally affect the timeframe and price at which the Debtors could provide their customers with goods and services, (c) provide services that are essential to the continued flow of product to the Debtors' stores and customers, and/or (d) are foreign vendors that may not have the same understanding or customs with respect to the bankruptcy process. I believe that a failure to pay the Critical Vendor Claims, Priority Vendor Claims, Shipping and Priority Customs Claims and Outstanding Orders is likely to result in the Critical Vendors being unable or unwilling to provide goods and services to the Debtors postpetition, may force the Debtors to obtain such goods and services, if available, elsewhere at

higher prices, will cripple the Debtors' distribution systems to their stores and to customers and/or may preclude the Debtors from obtaining the quantity or quality required by the Debtors.

107. In light of the fact that many of the national and regional retailers who have filed for Chapter 11 protection in the past few months have experienced issues due to vendor refusal to supply inventory for retail sale that is critical for continued retail operations, and given the weakness in the global economy overall, but especially in the retail sale of apparel, I believe that certain of the Critical Vendors will not, absent full payment of their prepetition claims, continue to supply the Critical Goods and Services for the Debtors on a postpetition basis.

108. As discussed in more detail below, I strongly believe that any failure of the Debtors to continue to obtain the benefit of the postpetition Critical Goods and Services could have an immediate and adverse impact upon the Debtors' ability to generate revenue, and ultimately, their ability to effectuate the Sale. This is particularly true in light of the critical timing for placing orders for the holiday shopping season. Absent Critical Vendor, Priority Vendors and Shippers confidence in the Debtors' ability to pay for such orders, the Critical Vendors, Priority Vendors and Shippers may refuse to ship holiday orders or accept orders for the spring selling season.

109. Furthermore, I believe that as to those certain Critical Vendors, Priority Vendors and Shippers that are foreign, payment of the Critical Vendor, Priority Vendors and Shippers Claims is of paramount importance because they may not be subject to the jurisdiction of this Court. Accordingly, efforts by the Debtors to enforce the Bankruptcy Code against them will be expensive, time-consuming and, ultimately, of little practical value. Furthermore, the Debtors are concerned that, if these foreign Critical Vendors, Priority Vendors and Shippers do

not believe that the Bankruptcy Code can be enforced against them, some may (a) file lawsuits in foreign courts and obtain judgments against the Debtors or (b) exercise "self help" remedies and seize valuable assets that the Debtors hold abroad to secure payment on their claims.

110. I therefore believe that any interruption in the supply of the Critical Goods and Services would immediately jeopardize the Debtors' ability to maintain their operations and, in turn, their Sale efforts. Indeed, the Stalking Horse Bidder and other potential buyers with whom the Debtors have spoken have indicated to the Debtors that the maintenance of the Debtors' relationships with their Critical Vendors, Priority Vendors and Shippers are of utmost importance and a critical factor in determining the purchase price for the Debtors' assets and businesses.

111. The Debtors consulted with the appropriate members of their management team to identify those vendors that are most essential to the Debtors' operations using the following criteria: (a) whether the vendor in question is a "sole-source" or "limited source" provider, (b) whether the Debtors receive advantageous pricing or other terms from such vendor such that replacing the vendor postpetition would result in significantly higher costs to the Debtors, (c) whether Debtors could successfully purchase goods or services from another source and receive such goods and services on a timely basis if such vendor refused to accept orders or ship goods, (d) the overall impact on the Debtors' operations if such vendor ceased or delayed shipments, (e) the likelihood that such vendor would extend trade terms postpetition despite the Debtors' failure to pay such vendor's pre-petition outstanding trade debt, and (f) whether such vendor was a foreign vendor that may not have the same understanding or customs (or be subject to this Court's jurisdiction) with respect to the U.S. bankruptcy process. After carefully assessing the universe of vendors against the foregoing criteria, the Debtors identified certain

parties as critical vendors and estimated the total payments that would be necessary to ensure the continued supply of critical goods and services to the Debtors in calculating the Critical Vendor Cap. The Debtors set forth terms for payment of the Critical Vendors in more detail in the Critical Vendor Motion.

THE CRITICAL VENDOR CLAIMS

112. I am mindful of the Debtors' duty to preserve and maximize the value of their estates by sustaining the Debtors' enterprise as a going concern as they transition into the Chapter 11 Cases. This is particularly true in light of the Debtors' desire to consummate the Sale because the preservation of the Debtors' business value is of utmost importance to the Proposed Stalking Horse Bidder or any other potential buyer. The types of vendors described below provide goods and services that the Debtors have determined are critical to their ability to operate their retail and outlet stores, website, catalog sales, general business operations and to the preservation of consumer confidence in the Debtors' brand (the "**Critical Goods and Services**"). Additionally, this is a critical time for the Debtors and for their relationships with their vendors. June and July represent the Debtors' peak product ordering, shipping and manufacturing period — even the slightest disruption of their relationships with their Critical Vendors will have a crippling effect upon the Debtors' ability to preserve their going concern value and therefore their ability to consummate a Sale. The Critical Vendors include:

113. ***Direct Selling Support Vendors***. Certain of the Debtors' vendors produce and deliver essential services related to the Debtors' catalogs, advertising and promotional services and provide certain services related to the Debtors' e-commerce sites and to the store operations of the Debtors (collectively, the "**Direct Selling Support Vendors**"). These include the printers and distributors of the Debtors' merchandise catalogs, the service providers who

maintain and modify the Debtors' website www.eddiebauer.com, the call center support service providers who answer customer calls, place catalog orders, respond to customer questions and process returns, and other vendors who provide critical services to support and maintain the Debtors' direct (online and catalog) selling channel.

114. Direct sales are a critical component of the Debtors' continued business operations. Direct sales represent an important component of the Debtors' sales channels and direct selling support services play an integral role in facilitating such operations. In fiscal year 2008, Eddie Bauer's direct channel sales generated net merchandise sales of $274.2 million, comprising 28.2% of net merchandise sales. I believe that it is necessary and essential to the Debtors' continued business operations and the success of their Sale efforts to make payments to the Direct Selling Support Vendors on account of certain prepetition claims estimated as of the Petition Date to be approximately $2,450,000.

115. ***Foreign Purchasing Agents***. The Debtors work with two main foreign purchasing agents — Li & Fung (Trading) Limited and Eddie Bauer International, Ltd. — which provide essential services in procuring the manufacture and purchase of certain apparel, hardgoods and accessories abroad and send such products to the Debtors (the "**Foreign Purchasing Agents**"). The Foreign Purchasing Agents locate suppliers, negotiate pricing and timing of delivery, serve as a conduit for purchase orders and change orders, inspect goods to maintain quality control, arrange for appropriate documentation for export and invoicing and, in general, expedite the process of procuring merchandise in foreign areas. The Debtors pay to the Foreign Purchasing Agents a fee for their services based on the price of the goods sourced.

116. In 2008, over 76% of the Debtors' products were purchased through their Foreign Purchasing Agents. With their extensive networks of vendors throughout Asia, the

Foreign Purchasing Agents are able to provide essential sourcing services for the Debtors' unique goods while adhering to the Debtors' high quality standards. By managing the payment process with each vendor, the Foreign Purchasing Agents also eliminate the need for the Debtors to obtain costly letters of credit with each vendor.

117. Given that the Foreign Purchasing Agents place orders with vendors approximately six (6) months in advance of the date that products are expected to go on sale, June and July are the Debtors' peak season for order placement and processing for items that they will carry for sale in the holiday shopping season. Absent uninterrupted sourcing and purchasing by their Foreign Purchasing Agents in the next six (6) to eight (8) weeks, the Debtors will not be able to meet their inventory needs and will suffer sales losses during the peak holiday shopping season. As of the Petition Date, the Debtors estimate the amount of such prepetition claims to be $50,000.

118. I believe that it is therefore necessary and essential to the Debtors' continued business operations and the success of their Sale efforts to make payments to the Foreign Purchasing Agents on account of certain prepetition claims.

SHIPPING AND PRIORITY CUSTOMS CLAIMS

119. ***Shipping Claims***. An integral component of the Debtors' retail operations is the efficient flow of inventory and merchandise from manufacturers and suppliers to their distribution centers, and from those distribution centers to retail and outlet stores and directly to customers purchasing through catalogs or the Debtors' website. In the ordinary course of business, the Debtors purchase overseas the majority of the goods they sell to customers and then import such goods into the United States and Canada. Products are then moved through the Debtors' domestic channels to flow to distribution centers, stores, out to customers and, in the

case of returns, back from customers. Accordingly, the Debtors rely heavily on numerous foreign and domestic commercial common carriers, movers, shippers, warehousemen and certain third-party vendors and logistics service providers to ship, transport, store, move through customs and deliver goods through established domestic and international distribution networks (the "**Shippers**"). Without the uninterrupted purchase and delivery of the Imported Goods, the Debtors could not maintain normal business and uninterrupted distribution of products to their customers.

120. In addition, the majority of the Debtors' shipping processes are coordinated by logistics providers who consolidate and prepare the requisite data and documentation that the U.S. and Canadian Customs Services require for the import of such goods across the U.S. and Canadian borders. For other limited manufacturers, the goods are delivered through the manufacturers' carriers to the Debtors.

121. I believe that it is therefore necessary and essential to the Debtors continued business operations and the success of their Sale and reorganization efforts to make payments to the Shippers on account of certain prepetition claims estimated as of the Petition Date to be $1,300,000.

122. ***Priority Customs Claims***. When goods arrive in the United States the Debtors arrange for the custom's "entry" — an estimated duty is assessed and paid to the U.S. Customs Service by the Debtors within a certain period from the time that U.S. Customs releases the goods to the Debtors. In the 12 months preceding the Petition Date, the Debtors paid approximately $37,009,068 in U.S. Customs' Fees.

123. If the Priority Customs Claims are not timely paid, the U.S. Customs Service may demand, pursuant to U.S. Customs Regulations, liquidated damages far in excess of

the Priority Customs Claims, in addition to other sanctions. I believe that it is therefore in the best interests of the Debtors' estates that the Debtors be authorized to pay all Priority Customs Claims when they become due, including prepetition Priority Customs Claims, in order to ensure continuous manufacturing operations and product distribution and to avoid paying significant amounts in damages and sanctions and the assertion of various liens against the Debtors' goods.

124. The Debtors estimate that as of the Petition Date the amount of Priority Customs Claims will not exceed $2,500,000.

THE OUTSTANDING ORDERS

125. In the ordinary operation of the Debtors' businesses, numerous vendors provide the Debtors with millions of dollars of goods, materials, products and related items ("**Goods**") on a monthly basis. On a daily basis, many truckloads of Goods are in transit and delivered to the Debtors' distribution center. As of the Petition Date, and in the ordinary course of their businesses, the Debtors had numerous Outstanding Orders with their vendors for such Goods. As a result of the Debtors' filing these Chapter 11 Cases, I believe that many of the vendors may be concerned that delivery or shipment of Goods after the Petition Date pursuant to an Outstanding Order will render a vendor who makes such shipment a general unsecured creditor of the Debtors' estates.

126. Accordingly, unless (i) the Debtors issue substitute purchase orders postpetition, or (ii) this Court issues an order confirming that all of the Debtors' obligations arising from Outstanding Orders are to be granted administrative status pursuant to the Bankruptcy Code, the vendors who have Outstanding Orders may instruct their shippers not to deliver the Goods to the Debtors. Therefore, the Debtors seek entry of an order reaffirming for their vendors that any Outstanding Orders are afforded administrative expense priority pursuant

to the Bankruptcy Code and that the Debtors have the authority to honor all obligations that arise in connection with the postpetition delivery of Goods, irrespective of the time the orders were first placed.

127. By reason of the foregoing, I believe that the interests of the Debtors, their estates and their stakeholders would be best served by granting the Motion and authorizing, but not directing, payment of the Critical Vendor Claims, Priority Vendor Claims, Shipping and Priority Customs Claims and Outstanding Orders, as well as authorizing the payment of Shipping and Priority Custom Claims.

E. MOTION OF THE DEBTORS FOR AN ORDER AUTHORIZING (A) DEBTORS TO PAY CERTAIN PREPETITION: (I) WAGES, SALARIES AND OTHER COMPENSATION; (II) EMPLOYEE, MEDICAL AND SIMILAR BENEFITS; (III) REIMBURSABLE EMPLOYEE EXPENSES; (IV) OTHER MISCELLANEOUS EMPLOYEE EXPENSES AND BENEFITS; AND (V) INDEPENDENT CONTRACTOR FEES AND EXPENSES; AND (B) DIRECTING BANKS TO RECEIVE, PROCESS, HONOR AND PAY ALL CHECKS PRESENTED FOR PAYMENT AND ELECTRONIC PAYMENT REQUESTS RELATING TO THE FOREGOING ("Wages and Benefits Motion")

128. The Debtors seek authority, in their discretion and in the exercise of their business judgment, (a) to pay or otherwise honor, as the case may be, their employee compensation obligations, deductions, reimbursable expenses, ordinary course incentives, vacation and severance payments and obligations arising in the ordinary course of business (collectively, as described in greater detail below, the "**Employee Obligations**") to or for the benefit of, the Employees (as defined herein), (b) to continue post-petition various Employee benefit plans, policies, programs and practices that were in effect immediately prior to the Petition Date, as described herein (collectively, the "**Employee Benefits**"), and (c) to pay or otherwise honor, as the case may be, their Independent Contractor (as defined herein) obligations and reimbursable expenses arising in the ordinary course of business (collectively, as described in greater detail below, the "**Independent Contractor Obligations**").

129. I believe that if there is an interruption in the Employee Obligations, Employee Benefits and Independent Contractor Obligations, Employees may suffer personal hardship and be unable to meet their living expenses or continue health benefits. The inevitable consequence would be Employee attrition, staff distraction and turnover, loss of goodwill and disintegration of employee morale, all to the detriment of the ongoing organizations.[6] Indeed, the Stalking Horse Bidder has indicated its intent to honor in full for Employees their accrued Vacation Days and Vacation Benefits (as defined below) in order to demonstrate its dedication to Employee satisfaction, the preservation of the Debtors' businesses and its belief in and support of the Employees who have weathered multiple layoffs and a difficult retail environment, resulting in added responsibility and work hours without increased compensation.

130. I believe that these factors would have a materially adverse effect upon the Debtors' operational efficiency and could threaten their ability to continue their business operations. At this critical stage in these Chapter 11 Cases, the Debtors cannot risk such a substantial disruption to their business operations. For these reasons, I believe that it is essential that any undue hardships to Employees and Independent Contractors as a consequence of the Debtors' Chapter 11 Cases be minimized.

EMPLOYEE OBLIGATIONS

131. The Debtors employ approximately 7,700 employees (the "**Employees**") across the United States, of whom approximately 25% are full-time employees and approximately 75% are part-time employees. Temporary, consulting and seasonal employees consist of less than 1% of the total workforce during the regular retail periods of February through October. During the peak period of November through January, these employees

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[6] In addition, if there is any interruption to the Independent Contractors' compensation, the Independent Contractors will likewise suffer hardship and may cease to provide important services to the Debtors.

represent 15% of all employees and are hired according to seasonal sales patterns at retail and outlet stores and at distribution and call centers. Approximately 81% of all employees are hourly wage earners (collectively, the "**Hourly Employees**") and the remaining 19% are salaried (collectively, the "**Salaried Employees**").

132. The Debtors' employees include approximately 1,375 full-time and 5,118 part-time and temporary retail and outlet store associates and distribution center employees who are integral to the sales of Debtors' products through three interdependent sales channels: (i) retail stores that sell Debtors' premium merchandise; (ii) outlet stores that sell a value priced version of Debtors' merchandise as well as inventory overstocks at clearance price points; and (iii) direct sales which consist of sales through the Debtors' catalogs and website. In addition, the Debtors have approximately 556 corporate personnel, who perform critical in-house design, ordering, quality assurance, advertising, administrative, accounting, management and other tasks. The Employees' skills, knowledge and understanding of the Debtors' infrastructure, operations, vendor and customer relations are essential to effect a successful asset sale. Maintaining employee morale is critical, since poor employee morale may impact all aspects of the business, including retail sales, vendor trust and distribution efficiency. Ensuring uninterrupted, ordinary course operations will maximize the value of Debtors' assets and businesses.

A. Unpaid Compensation

133. I believe that the Debtors' average aggregate monthly compensation for Employees, including wages, salaries and bonuses, is approximately $10.4 million. Approximately 60% of payroll is made by direct deposit through electronic transfer of funds directly to Employees and the remaining 40% of Employees are paid by checks. All Employees are paid on a bi-weekly basis approximately one week in arrears, with direct deposits or checks

issued on the Friday of each two-week period (each a "**Pay Day**"). The last payroll period ended on June 5, 2009 and was paid by the Debtors on June 12, 2009.

134. As of the Petition Date, some of the Debtors' Employees have not been paid all of their prepetition wages earned in arrears. Additionally, compensation may be due and owing as of the Petition Date because of:

a. ***Payroll Discrepancies***. Some discrepancies may exist between the amounts paid and amounts Employees or others believe should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees and

b. ***Check Clearing Delays***. Some payroll checks issued to Employees prior to the Petition Date may not have been presented for payment or cleared the banking system and, accordingly, have not been honored and paid as of the Petition Date.

135. I believe that, as of the Petition Date, the Debtors have approximately $2,900,000 in accrued wages, salaries, overtime pay, commissions and other compensation (excluding reimbursable expenses, vacation pay, deferred compensation and incentive bonus pay) earned prior to the Petition Date (the "**Unpaid Compensation**") remaining unpaid to Employees. The Debtors seek authority, in their discretion, to pay such Unpaid Compensation to the Employees.[7] The Debtors are requesting authority to honor all Unpaid Compensation claims subject to the limitations set forth herein and in the Motion. In addition to Unpaid Compensation, as discussed below and in the Motion, there are certain unpaid employee claims for vacation.

B. Deductions and Withheld Amounts

136. During each applicable pay period, the Debtors routinely deduct certain amounts from their Employees' paychecks, including, without limitation, (a) credit union

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[7] I believe that there is a few Employees whose Unpaid Compensation exceeds the $10,950 per employee cap. However, the Debtors are not seeking reimbursement of any amounts owed for Unpaid Compensation above the priority cap amount.

deposits and payments, (b) garnishments, child support and similar deductions and (c) other pretax and after-tax deductions payable pursuant to certain of the Employee benefit plans discussed herein (such as an Employee's share of health care benefits, insurance premiums, 401(k) contributions, medical "flex plan" contributions, legally ordered deductions and other miscellaneous deductions) (collectively, the "**Deductions**") and forward those amounts to the administrators of the self-insured programs and other various third-party recipients. Further, the Debtors are required by law to withhold amounts related to federal, state and local income taxes, social security, Medicare taxes and other amounts from their Employees' wages for remittance to the proper taxing authority (collectively, the "**Withheld Amounts**"). The Debtors must then make matching contributions for social security and Medicare taxes based on a percentage of gross payroll and make additional payments for state and federal unemployment insurance (the "**Employee Payroll Taxes**" and along with the Withheld Amounts, the "**Payroll Taxes**").

137. On average, the Deductions total approximately $65,000 for each pay period. However, due to the commencement of the Chapter 11 Cases, some funds which were deducted from Employees' earnings may not have been forwarded to the appropriate third-party recipients prior to the Petition Date. Accordingly, the Debtors seek authority, in their discretion, to continue to forward these prepetition Deductions (which the Debtors hold in trust and do not believe constitute property of the Debtors' estates) to the applicable third-party recipients on a postpetition basis, as routinely done prior to the Petition Date in the ordinary course of business.

138. On average, the Payroll Taxes total approximately $1.5 million in the aggregate for each pay period, with approximately $0.40 million attributable to Employee Payroll Taxes and approximately $1.1 million attributable to Withheld Amounts. Before the Petition Date, the Debtors withheld amounts from Employees' earnings for the Employee Payroll

Taxes, but such funds may not have been forwarded to the appropriate taxing authorities prior to the Petition Date. The Debtors seek authority, in their discretion, to continue to honor and process the prepetition obligations with respect to the Payroll Taxes on a postpetition basis, in the ordinary course of business, as routinely done prior to the Petition Date.

C. Reimbursable Expenses

139. Prior to the Petition Date and in the ordinary course of business, the Debtors reimbursed Employees and directors for certain expenses incurred in the scope of their employ. Expenses incurred by the Debtors' Employees and board of directors ("**Directors**") may include, inter alia, business-related travel expenses, business meals, telephone costs, seminars and other job-related training expenses, car mileage reimbursement and other miscellaneous business expenses (collectively, the "**Reimbursable Employee and Director Expenses**"). Employees and Directors are required to submit Reimbursable Employee and Director Expenses through the Debtors' reimbursable expense program. After the approval of Reimbursable Employee and Director Expenses, such expense is paid to the Employee or Director in the next regularly scheduled paycheck or through automated clearing house payments ("**ACH payments**"). The Debtors estimate that approximately $100,000 exists in accrued and unpaid Employee and Director Expenses.

140. I believe that the foregoing Reimbursable Expenses were all incurred on the Debtors' behalf and with the understanding that they would be reimbursed. Accordingly, to avoid harming individuals who incurred the Reimbursable Employee and Director Expenses, the Debtors request authority, in their discretion, to (a) continue reimbursing the Reimbursable Expenses in accordance with prepetition practices, (b) modify their prepetition policies relating thereto as they deem appropriate, and (c) pay all Reimbursable Employee and Director Expenses that accrued prepetition.

D. Incentive Plans

141. The Debtors also maintain in the ordinary course of business various incentive policies and programs tied to periodic levels of performance and productivity for non-executive and executive Employees. These include the Store Team Monthly Incentive Plan, the Area Manager and District Director Monthly Incentive Plan and the TeamShare Plans for the distribution center employees (collectively, the "**Incentive Plans**").

a. ***Store Team Monthly Incentive Plan.*** Certain retail sales associates and store managers are eligible to participate and receive base salary increases or incremental incentive payouts when their retail store achieves and / or exceeds its monthly financial and productivity targets (the "**Store Team Monthly Incentive Plan**"). Hourly Employees eligible to participate in the Store Team Incentive Plan can receive a base level hourly bonus for achieving their monthly targets and incremental hourly wage increases for exceeding their monthly targets, multiplied by the number of hours they work during the designated month. Salaried store directors, store managers, co-managers, and assistant store managers who are eligible to participate in the plan can receive a lump-sum base level payout for meeting their monthly targets and an incremental payout for exceeding their monthly targets, calculated as a percentage of the sales exceeding their monthly store target. All store management may also be eligible to receive an additional incentive for meeting targets for inventory control and shrinkage.[8]

b. ***Area Manager and District Director Monthly Incentive Plan.*** Certain area managers of retail and outlet stores and district directors who oversee such managers are eligible to participate in a retail sales management incentive plan that provides both a base level incentive and an incremental incentive when the district or area achieves and exceeds its planned financial and performance targets for the month (the "**District Director Monthly Incentive Plan**"). In fiscal 2008, the District Director Incentive Plan paid out $2.56 million in base level and incremental incentives to the Debtors' district directors and area managers.

c. ***TeamShare Plans.*** Certain U.S. based distribution center Employees are eligible to participate in an individual and team-based incentive program (the "**TeamShare Plus Plan**"). The

[8] "Shrinkage" represents the amount of inventory damaged, lost or stolen in the ordinary course of business.

> TeamShare Plus Program pays out performance incentives based upon performance measured against certain standards and accuracy levels. The TeamShare Plans pay incentives as part of the normal biweekly payroll process. In fiscal 2008, the TeamShare Plan paid out approximately $0.70 million in base level and incremental incentives to 640 Employees.

142. Since the Incentive Plan distributions are calculated based on monthly, quarterly and fiscal year-end financial and performance results, the Debtors are unable to estimate their current liability for the Incentive Plans as of the Petition Date. However, in fiscal 2008, Debtors paid approximately $4.65 million to Employees pursuant to the Incentive Plans. I believe that the Incentive Plans represent an integral component of the Employees' compensation and that discontinuance of the Incentive Plans would detrimentally affect the Employee motivation and morale, impacting sales results and productivity levels, and thereby jeopardizing the Debtors' ability to conduct a successful reorganization. Further, the Stalking Horse Bidder has made it an express condition to the Sale that the Debtors maintain the going concern value of the business — which value the Debtors and Stalking Horse Bidder agree would significantly decrease if the Incentive Plans were not maintained.

143. Accordingly, the Debtors seek authority, in their discretion, to (a) continue the Incentive Plans in the ordinary course of business, including payment of third-party administrators' fees, on a postpetition basis until the consummation of a sale of the Debtors' assets. (b) modify their Incentive Plans as they deem appropriate or pursuant to further order of this Court in the ordinary course of business and (c) to make all distributions and payments, including premiums and claim amounts relating thereto that accrued prepetition.

E. Vacation and other Paid Time Off

144. The Debtors provide Employees with paid vacation time, holidays and floating holidays, overtime pay, personal days, sick days and parental leaves of absence

(collectively, "**Vacation and other Paid Time Off**"). These other forms of compensation and benefits are customary in the ordinary course of business in the retail industry and must be continued for the Debtors to retain qualified employees to operate their businesses. In addition, the Stalking Horse Bidder has represented to the Debtors that it may to honor all Vacation and other Paid Time Off upon a potential purchase of the Debtors' businesses. The Stalking Horse Bidder believes such protections such as these are essential to preserve the going concern value of the Debtors' business by preserving employee morale.

145. The Debtors provide vacation time to all Employees, which varies based on the Employee's location, position and years of service.

a. ***Vacation Days for full-time Employees***. Generally, full-time Employees accrue between ten (10) and twenty (20) vacation days (the "**Vacation Days**") per year based on length of service and job category and can accumulate up to two (2) years of accrued and unpaid Vacation Days.

b. ***Vacation Benefits for part-time Employees***. Part-time Employees accrue vacation benefits (the "**Vacation Benefits**") on a pro-rata basis predicated upon the number of hours worked and can accumulate up to two (2) years of accrued and unpaid Vacation Days.

146. Accrued but unused Vacation Days and Vacation Benefits are paid out upon termination of employment even if termination occurs before the end of the fiscal year. The Debtors estimate that as of the Petition Date the contingent liability for accrued and unpaid Vacation Days and Vacation Benefits for Employees is approximately $6.3 million.[9] The Debtors seek authorization to (a) allow all Employees who are not terminated to use their accrued and unpaid Vacation Days and Vacation Benefits in the ordinary course, (b) pay current Employees with aggregate Section 507(a)(4) priority claims less than $10,950 (taking into

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[9] As of the Petition Date, the Debtors estimate that Employees hold Section 507(a)(4) priority claims (net of any Unpaid Compensation payable to each Employee) for accrued and unpaid Vacation Days and Vacation Benefits in the amount of approximately $5.4 million.

account Unpaid Compensation plus accrued Vacation Days and Vacation Benefits) up to the full payment amount of their accrued but unused Vacation Days and Vacation Benefits upon termination of such Employees, and (c) pay current Employees with aggregate Section 507(a)(4) priority claims in excess of $10,950 (taking into account salary plus accrued vacation) accrued but unused Vacation Days and Vacation Benefits in an amount equal to the difference between $10,950 and the amount of Unpaid Compensation paid to such Employees hereunder, upon termination, and allow such Employees to file a proof of claim for the remainder of accrued but unused Vacation Days and Vacation Benefits.

147. Due to the nature of the Debtors' business, Employees are often required to work on federal or state holidays. When a store management Employee is required to work on a state or federal holiday, such Employee is awarded an additional paid day off (a "**Floating Holiday**"), which must be taken within a 60-day period. Employees generally cannot take pay in lieu of a Floating Holiday. Hourly store employees are paid holiday pay based on the average number of hours worked per day in the previous two (2) pay periods, and are paid that amount regardless of whether they are required to work on the holiday or not.

148. In the ordinary course of business, full-time Employees are also entitled to take personal days, sick days and paid leaves of absence.

a. ***Personal Days***. Employees are assigned up to four (4) personal days ("**Personal Days**") annually. Newly-eligible, newly hired, and part-time employees are assigned Personal Days on a pro-rata basis. Employees cannot carry over their unused personal days into the succeeding fiscal year.

b. ***Sick Days***. Employees can also accrue up to ten (10) sick days ("**Sick Days**") annually. Part-time employees accrue Sick Days on a pro-rata basis. Sick days carry over into succeeding fiscal years, however Employees are not permitted to accumulate more than twenty (20) sick days at any given time.

149. If used, the Employees are paid for days that they take off as personal and sick days. However, the Employees are not paid for their unused personal or sick days. Accordingly, the Debtors estimate that there will be no additional cost to honor Debtors' personal and sick leave program.

c. ***Leave of Absence***. The Debtors also provide leaves of absence (the "**LOA**") to Employees for long-term illness or injury, maternity or paternity leave, military leave, personal leave or dependent care leave. The LOA may be required by law or may be medically necessary. Personal leave is neither required by law nor medically necessary but does require approval by Human Resources and the Employee's direct manager. Employees on LOA may be eligible for certain types of pay based on the type of LOA, the benefit status of the Employee, and the amount of paid time off available. The different types of paid time off available, based on the circumstances, include personal holiday pay, vacation pay, sick pay, short-term disability pay and parental leave pay.

150. The only additional cost to the Debtors for LOA benefits are those costs associated with parental leave benefits. The Debtors estimate that their average two-week pay period cost for LOA is approximately $10,000. The Debtors seek authority, in their discretion, to continue to honor their Personal Days, Sick Days and LOA benefits in the ordinary course of business on a postpetition basis until the consummation of a sale of the Debtors' assets.

151. I believe that Vacation and other Paid Time Off represents an integral component of the Employees' salaries and that any drastic curtailment of Vacation and other Paid Time Off would detrimentally affect the Employee motivation and morale, impacting sales results and productivity levels, and thereby jeopardizing the Debtors' ability to conduct a successful reorganization. Accordingly, the Debtors request authority to continue offering Vacation and other Paid Time Off in the ordinary course of business in the retail industry.

F. Severance Obligations

152. During the ordinary course of business, the Debtors maintain a severance policy for eligible Employees (the "**Severance Plan**") pursuant to which Employees who are terminated without cause due to a store closure, reduction in job force or job elimination receive benefits based, in part, on years of service and base compensation. Benefits received under the Severance Plan may include lump sum or periodic severance pay, continuance of medical and dental benefits under COBRA for a period of time, outplacement services and a continuation of services under the Debtors' Employee assistance program (the "**Severance Benefits**"). Such terminated Employees receive Severance Benefits in exchange for providing the Debtors with a release of claims and/or settlement agreement.

153. The Debtors' monthly COBRA payments total approximately $82,500, however such costs are expected to be fully recouped through the employee's monthly COBRA premiums. There are no additional Severance Benefits paid by the Debtors.

154. Payment of these COBRA Severance Benefits is legally required. The Debtors therefore request authority, in their discretion, to (a) continue the COBRA Severance Benefits on a postpetition basis, and (b) make all COBRA Severance Benefit payments that accrued prepetition.

EMPLOYEE BENEFITS

155. The Debtors maintain various plans and policies to provide Employees with health and dental plans, savings and retirement plans, employee insurance benefits, workers compensation and executive insurance benefits (collectively the "**Employee Benefits**"). These Employee Benefits are described generally below.

A. Health Benefits

156. The Debtors provide their full-time Employees with various health benefit plans, including medical coverage, dental coverage, vision coverage and other assistance programs (collectively, the "**Health Benefits**"). The Debtors' approximate that their monthly cost for maintaining the Health Benefits is $1.4 million in the aggregate.

157. The Debtors provide medical, vision, dental and prescription benefits to salaried and hourly Employees who meet certain eligibility requirements through self-insured plans (the "**Self-Insured Plans**") administered by Connecticut General Life Insurance Company ("**CIGNA**"), United Healthcare Medical, Delta Dental and Vision Service Plan (collectively, the "**Self-Insured Plan TPAs**"). Under the Self-Insured Plans, the majority of healthcare costs are funded through contributions by the Debtors and the participating Employees. The cost is borne primarily by the Debtors, but Employees also make contributions to the Self-Insured Plans which the Debtors deduct from participating Employee paychecks (the "**Trust Fund Payments**") on a bi-weekly basis. I believe that the $1.4 million monthly cost to the Debtors for the Self-Insured Plans is comprised of approximately $1.3 million for medical and prescription drug benefits, $100,000 in dental claims and $29,000 in vision benefits. There exists a lag time of up to six (6) months for the processing of medical, vision, dental and prescription drug claims and often a delay between the time the Employee incurs a reimbursable expense and the time the Employee or the Employee's medical service provider submits a claim. Thus, as of the Petition Date, the Debtors will be liable for claims under the Self-Insured Plans that have been submitted but not paid or that have been accrued but not submitted.

158. The Debtors have accrued and unpaid medical, dental, vision and prescription drug costs in respect of the Self-Insured Plans (the "Self-Insured Plan Medical

Claims") as of the Petition Date in an amount that cannot be determined at this time due to the variable nature of the claims process and medical, dental, vision and prescription drug needs.

159. The Debtors seek authority, in their discretion, to (a) continue the Health Benefits for their Employees in the ordinary course of business on a postpetition basis, (b) modify their prepetition policies relating thereto as they deem appropriate, (c) continue making the above-described contributions to such Health Benefits programs, (d) continue to pay fees of third-party administrators as necessary, and (e) pay any amounts related thereto, including any premiums and claim amounts that accrued prepetition.

B. Savings and Retirement Plans

160. Eligible Employees may elect to contribute up to 75% of their before-tax base salary and up to five percent (5%) of their after-tax base salary to a 401(k) savings plan, subject to IRS annual dollar limits. Eligible associates age fifty (50) or older may also make "catch up" contributions in accordance with IRS guidelines. Prior to February 28, 2009, the Debtors matched the employee contribution amount dollar for dollar on the first three percent (3%) of before-tax base salary and fifty cents ($0.50) on the dollar for the next three percent (3%) of before-tax salary for salaried Employees.

161. Effective March 1, 2009, the Debtors suspended their matching contribution. Employees are one hundred percent (100%) vested in their salary deferral contributions and after-tax contributions. Since January 1, 2006, employees have been 100% vested in any of the Debtors' matching contributions. Employer matching contributions prior to January 1, 2006 are subject to vesting requirements as defined in the Debtors' 401(k) Plan. The Debtors' cost of matching Employees' contributions to the plan was $2,409,000, $2,480,000 and $1,554,000 for fiscal 2008, fiscal 2007 and fiscal 2006, respectively. On average, the Debtors withhold approximately $175,000 every other week in the aggregate for all Employees

participating in the 401(k) Plan. The Debtors seek authority to remit all amounts that are related to the 401(k) Plan and that arose prior to the Petition Date in the ordinary course of the Debtors' business.

C. Employee Insurance Benefits

162. The Debtors provide their Employees with Life Insurance and Short and Long-Term Disability Benefits and access to Group Legal Insurance (each as defined herein, and collectively, the "**Employee Insurance Benefits**").

a. *Life Insurance and Accidental Death and Dismemberment Insurance.* The Debtors offer life insurance and accidental death and dismemberment insurance administered by the Minnesota Life Insurance Company ("**MLIC**") to certain current Employees that are eligible for medical benefits (the "**Life Insurance Plan**"). Upon meeting the eligibility requirements, an Employee is automatically covered by the Life Insurance Plan. The Life Insurance Plan provides these Employees with coverage equal to one time their annual base salary. The cost of the Life Insurance Plan is completely borne by the Debtors.

163. The Life Insurance Plan costs the Debtors approximately $30,000 per month in premiums. Since these premiums are generally paid by the 15th of the month in the current month, the Debtors believe that there are no accrued and unpaid obligations under the Life Insurance Plan.

a. *Short-Term and Long-Term Disability Insurance.* In addition, the Debtors provide certain eligible Employees with short-term and long-term disability benefits administered by Standard Insurance Company ("**SIC**") and The Hartford Financial Services Group, Inc. ("**HFSG**"). Employees are self-insured for short-term disability under SIC, fully-insured for short-term disability under HFSG and fully insured for long-term disability ("**Long Term Disability Plan**") under SIC.

164. The Short-Term and Long-Term Disability Insurance costs the Debtors approximately $90,000 per month in premiums.[10] Because the Debtors generally pay Short-Term and Long-Term Disability Insurance premiums by the 15th of the month in the current month, and Short-Term Disability claims on a weekly basis, the Debtors believe that there are no accrued and unpaid premiums in respect of the Long Term Disability Plan (the "**LTD Premiums**"). However, there is a small possibility that there could be a delay in claims processing for Short-Term Disability and that accrued and unpaid claims may exist.

165. I believe that the Debtors are not liable for any Employee Insurance Benefits as of the Petition Date in the aggregate. The Debtors seek authority, in their discretion, to (a) continue to provide the Employee Insurance Benefits, including payment of third-party administrators' fees, (b) modify their prepetition policies relating thereto as they deem appropriate, and (c) to pay any amounts relating thereto that may have accrued prepetition.

D. Workers' Compensation

166. The Debtors provide workers' compensation benefits to all Employees. These benefits are covered primarily under the Debtors' fully-insured plans for both primary and excess coverage (the "**Fully-Insured Workers' Compensation Plan**"), but are also assessed through self-insured plans and several state funds (the "**State Funds**"). Any failure to maintain this insurance in the various states in which the Debtors do business could result in the institution of administrative or legal proceedings against the Debtors and their officers and directors. Under the Self-Insured Plans, the Debtors routinely pay claims within a prescribed period of time pursuant to applicable law (the "**U.S. Workers' Compensation Claims**"). In addition, where the Debtors are self-insured or may still have outstanding claims under old Self-Insured Plans,

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[10] The Debtors' monthly costs for maintaining Short-Term and Long-Term Disability Insurance for its Employees exclude costs associated with Short-Term and Long-Term Disability benefits for executive Employees. For these figures please refer to Section II.F. Executive Insurance and D&O Coverage.

the Debtors are also required to post a self-insurer's bond for existing liabilities. The payments paid to the State Funds are paid on monthly, quarterly and yearly bases.

167. As of the Petition Date, the Debtors estimate that a total of $639,000 in U.S. Workers' Compensation Claims were pending against the Debtors in the U.S. for which the Debtors had reserved $739,000 in potential liability. However, these claims have not been reconciled and are not currently due and owing. The Debtors hold surety bonds and letters of credit with respect to this liability of roughly $2,610,000. Further, as of the Petition Date, the Debtors estimate that approximately $46,000 in payments is owed to the State Funds (the "**State Fund Payments**"). However, it is difficult to estimate with precision the amount due to the State Funds because they are assessed on a monthly, quarterly or yearly basis and vary from period to period. Therefore, to the extent that it is subsequently determined that additional State Fund Payments are owed, the Debtors request authority to pay such amounts.

168. The Debtors seek authority, in their discretion, to (a) continue to maintain their Workers' Compensation Programs in the ordinary course of business, including payment of third-party administrators' fees, (b) modify their prepetition policies relating thereto as they deem appropriate, and (c) pay any amounts related thereto that accrued prepetition.

E. Miscellaneous Employee Programs

169. The Debtors also offer various miscellaneous benefits and reimbursements to their Employees, including, but not limited to, small reimbursements for the purchase of sporting goods, relocation assistance, car allowance and cellular telephones for business use, Group Legal Services Insurance and an Employee assistance program (collectively, the "**Miscellaneous Employee Programs**.") The Debtors offer an Associate Discount of thirty percent (30%) on merchandise and gift cards for all eligible associates in the United States,

including spouses and qualified dependents, which Associate Discount is increased to forty percent (40%) for a period of time for certain employees winning awards based on overall performance as rated by their peers. In addition, certain qualified sales associates are entitled to receive and Associate Discount of fifty percent (50%) on the Debtors' merchandise.

170. I believe that the Miscellaneous Employee Programs provide key benefits to both the Debtors and their Employees, the interruption of which could result in a decline in morale and a diminished ability of the Debtors to conduct business in the ordinary course during these Chapter 11 Cases. The average monthly cost of the Miscellaneous Programs to the Debtors is approximately $660,000 in discounts on products sales.

171. Accordingly, the Debtors seek authority, in their discretion, to (a) continue to provide the Miscellaneous Employee Benefits, including payment of third-party administrators' fees, (b) modify their prepetition policies relating thereto as they deem appropriate, and (c) pay any amounts relating thereto that accrued prepetition.

INDEPENDENT CONTRACTOR OBLIGATIONS

172. The Debtors also employ approximately forty-six (46) Independent Contractors (the "**Independent Contractors**"). Twenty-nine (29) of these Independent Contractors perform critical, specialized functions related to creative and design work, merchandising, tax consulting, information technology consulting and legal services (collectively, the "**Ordinary Course Contractors**").

173. The remaining seventeen (17) Independent Contractors make up a design team of world-class mountain climbers and creative and production personnel (the "**First Ascent / Design Contractors**"). The First Ascent / Design Contractors serve as an elite group of Independent Contractors working hand-in-hand with Debtors' internal merchandising and design personnel to create, test, launch and prepare campaigns to promote several new lines of

merchandise deemed key to the revitalization of Debtors' brand as an active outdoor lifestyle company. New lines of merchandise currently under development include Debtors' First Ascent™ line of world-class mountaineering outerwear and a line of "heritage" field and stream inspired clothing to be released for the 2009 holiday season and beyond. One of the Debtors' unique competitive advantages is that all merchandise is designed in-house, unlike many competitors who outsource the design process. The Debtors then work closely with manufacturing vendors who create Debtors' products according to Debtors' design specifications. As part of this design process, the First Ascent / Design Contractors have just completed the testing of First Ascent mountaineering outerwear, tents and packs on a much publicized climb of Mount Everest (the First Ascent Return to Everest). Related to the First Ascent Return to Everest, a number of First Ascent / Design Contractors provide ongoing promotional and public relations services, reinforcing Debtors' image as the leading provider of outdoor apparel and accessories and thereby helping Debtors increase sales, brand loyalty and market share.

A. Unpaid Compensation to Independent Contractors

174. The Debtors' average aggregate monthly compensation for all Independent Contractors is approximately $132,000. These amounts are paid through a combination of direct deposit by electronic transfer of funds directly to Independent Contractors and checks.

175. The Debtors pay the Ordinary Course Contractors upon receipt of invoices for their services (the "**Ordinary Course Contractor Fees**").

176. In addition, the Debtors compensate the First Ascent / Design Contractors according to the terms of certain agreed Independent Contractor agreements signed with each individual that relate to product development and the First Ascent Return to Everest expedition.

In addition, certain of the First Ascent / Design Contractors are paid royalties based on the sale of First Ascent goods (together with payments pursuant to the contractor agreements, the "**First Ascent / Design Contractor Fees**").

177. As of the Petition Date, some of the Debtors' Independent Contractors have not been paid all of their prepetition compensation earned in arrears. Additionally, compensation may be due and owing as of the Petition Date because of:

a. ***Invoice Discrepancies***. Some discrepancies may exist between the amounts paid and amounts Independent Contractors believe should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Independent Contractors and

b. ***Check Clearing Delays***. Some payroll checks issued to Independent Contractors prior to the Petition Date may not have been presented for payment or cleared the banking system and, accordingly, have not been honored and paid as of the Petition Date.

178. The Debtors also estimate that approximately $77,000 is outstanding in accrued and unpaid Ordinary Course Contractor Fees. The Debtors estimate that approximately $55,000 is outstanding in accrued and unpaid First Ascent / Design Contractor Fees. The Debtors seek authority, in their discretion, to (a) continue to pay the Ordinary Course Contractor Fees and First Ascent/Design Contractor Fees and (b) pay any amounts relating thereto that accrued prepetition.

B. Reimbursable Expenses to Independent Contractors

179. Prior to the Petition Date and in the ordinary course of business, the Debtors reimbursed Independent Contractors for certain expenses incurred in the scope of their employ (the "**Reimbursable Contractor Expenses**").

a. ***Independent Contractor Business Expenses***. The Debtors reimburse in the ordinary course the Ordinary Course Contractors for certain expenses such as buying samples, travel, lodging, ground transportation, meals and other miscellaneous business

expenses (collectively, "**Independent Contractor Business Expenses**"). It is difficult to estimate what the Independent Contractor Business Expenses will be given the expense submission process and variable nature of expenses, however I anticipate that any such prepetition expenses will be nominal.

b. ***First Ascent / Design Contractor Business Expenses.*** The Debtors reimburse the First Ascent / Design Contractors in the ordinary course for certain expenses associated with the development of First Ascent products and the First Ascent Return to Everest expedition. Such expenses include research and materials, travel, lodging, film equipment rental, transportation, insurance and other pre- and post-expedition miscellaneous business expenses (collectively, "**First Ascent / Design Contractor Business Expenses**"). It is difficult for the Debtors to estimate what the First Ascent / Design Contractor Business Expenses will be given the expense submission process and variable nature of expenses, however the Debtors anticipate that any unpaid First Ascent / Design Contractor Business Expenses for the prepetition period will be minimal, especially, in the case of the First Ascent team, because the costs of the First Ascent Return to Everest were largely prepaid.

180. I believe that the foregoing Reimbursable Contractor Expenses were all incurred on the Debtors' behalf and with the understanding that they would be reimbursed. Accordingly, to avoid harming individuals who incurred the Reimbursable Contractor Expenses, the Debtors seek authority, in their discretion, to (a) continue reimbursing the Reimbursable Contractor Expenses in accordance with prepetition practices, (b) modify their prepetition policies relating thereto as they deem appropriate and (c) pay all Reimbursable Contractor Expenses that accrued prepetition.

THE NEED FOR RELIEF

181. I believe that if the Debtors are unable to honor the Employee Obligations and Employees Benefits even for a short time, Employee morale and loyalty will be jeopardized at a time when Employee support is most critical. Poor Employee morale may also impair vendor relations and jeopardize the manufacturing and distribution process that is crucial to

Debtors' ongoing business. In these times of extraordinary economic turmoil, regardless of the length of these Chapter 11 Cases, the Employees will be exposed to significant financial and health-related hardships if the Debtors are not permitted to pay the unpaid Employee Obligations and Employee Benefits in the ordinary course of business.

182. Moreover, many Employees live from paycheck to paycheck and rely exclusively on receiving their full compensation or reimbursement of their expenses in order to continue to pay their daily living expenses. These Employees will be exposed to significant financial and health-related hardships if the Debtors are not permitted to pay the Employee Obligations and Employee Benefits. Indeed, if the Debtors are not authorized to pay for the Employee Benefits, such as medical and dental benefits, then many of the Employees may not be reimbursed or otherwise have their health benefit claims paid. In addition, certain Employees may become primarily obligated for the payment of these claims in cases where health care providers have not been reimbursed, and may face having their health care services terminated. I believe that such uncertainty will cause significant anxiety at precisely the time the Debtors need their Employees to perform their jobs at peak efficiency.

183. In addition, I believe that maintaining access to the services supplied by the Independent Contractors is absolutely critical and in the best interests of the Debtors' estates. Unless the Debtors' prepetition obligations to the Independent Contractors are satisfied, I believe it is highly unlikely that the Independent Contractors will be willing to continue to provide services to the Debtors. Moreover, it would be extremely difficult, expensive and inefficient to replace the Independent Contractors. Particularly, the First Ascent / Design Contractors, whose extraordinary skills and accomplishments make their services entirely unique, are irreplaceable. And, even if the Independent Contractors were replaceable, I believe that the damage to and

disruption of their businesses would be substantial and far exceed the cost of paying any prepetition amounts due and owing to such Independent Contractors.

184. Indeed, I believe that the retention of the Independent Contractors is essential to the Debtors' ability to preserve their going concern value. This is particularly important here given that the Debtors are seeking to sell their assets at the highest and best value for the Debtors' estates. Such value can only be received if the morale and integrity of Debtors' work force is maintained during these Chapter 11 Cases. Due to the competitive nature of the fast-moving retail industry, Debtors require ongoing and cost-effective access to specialized services in order to develop and manufacture new products and to launch and manage marketing initiatives. The Ordinary Course Contractors, with their specialized knowledge, design and production skills are as essential to the Debtors' efficient and effective functioning as the Employees. The First Ascent / Design Contractors are critical to the Debtors' marketing and branding of their new product lines and are therefore essential to the Debtors' strategy for renewed and increased market share in the elite outdoor apparel industry. The entire First Ascent line—including its name—hinges on the continued involvement and employ of the First Ascent / Design Contractors.

185. I believe that the possibility that any material portion of the Independent Contractors refusing to perform services for the Debtors would jeopardize the Debtors' business operations. Without their involvement, all of the money and efforts that the Debtors have expended for the development and marketing of the First Ascent™ products and field and stream lines are lost, and the Debtors' brand image and competitive advantage will be at risk.

186. By reason of the foregoing, I believe that the interests of the Debtors, their estates and their stakeholders would be best served by an order granting the Wages and Benefits

Motion.

F. MOTION FOR AN ORDER (I) PROHIBITING UTILITY PROVIDERS FROM DISCONTINUING, ALTERING OR REFUSING UTILITY SERVICES, (II) DEEMING UTILITY PROVIDERS ADEQUATELY ASSURED OF FUTURE PERFORMANCE AND (III) ESTABLISHING PROCEDURES TO DETERMINE ADEQUATE ASSURANCE OF PAYMENT TO ESTABLISH ADEQUATE ASSURANCES OF PAYMENT TO UTILITIES ("Utilities Motion")

187. In the operation of their facilities, the Debtors incur utility expenses for, among other things, water, sewer service, electricity, natural gas, propane, telephone and internet service (collectively, the "**Utility Services**") in the ordinary course of business. These Utility Services are provided by approximately 400 providers (collectively, the "**Utility Providers**"). Due to the burdensome task of paying many different providers on more than 1,000 accounts, the Debtors outsource the servicing and payment of a large majority of their accounts with the Utility Providers through a Solutions Agreement with Prenova, Inc. (the "**Prenova**") which provides cost savings arrangements to the Debtors. The Debtors also make certain other payments to Utility Providers outside the Prenova Agreement. On average, the Debtors spend approximately $482,000 each month on Utility Services that they pay through Prenova, and approximately $742,000 on other utilities, including telecom, paid directly by the Debtors. The Debtors have historically paid the Utility Providers promptly and in full. As of the Petition Date, the Debtors estimate they owe $654,000[11] in past due amounts to certain Utility Providers.

188. Uninterrupted Utility Services are essential to the Debtors' ongoing business operations and, therefore, to the success of the Sale. Should the Utility Providers refuse or discontinue service, even for a brief period, the Debtors' business operations would be severely disrupted. In particular, such discontinuation would irreparably disrupt the Debtors' ability to operate their facilities, which would negatively affect customers, cash flow and,

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[11] This amount is based on half an average month's utility bill for the Debtors.

ultimately, value and creditor recoveries. Simply put, without Utility Services, the Debtors' operations will shut down. It is, therefore, critical that Utility Services continue uninterrupted.

189. To provide adequate assurance of payment to the Utility Providers, the Debtors propose to deposit a sum equal to the cost of two weeks of the Debtors' Utility Services, calculated as a historical average (the "**Adequate Assurance Deposit**"), into an interest-bearing, newly created segregated account within twenty (20) days of the Petition Date.

190. I believe that the Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for future Utility Services in the ordinary course of business (collectively, the "**Proposed Adequate Assurance**"), constitutes sufficient and adequate assurance to the Utility Providers. If any Utility Provider believes additional assurance is required, they may request such assurance pursuant to the procedures described in the Utilities Motion.

191. By reason of the foregoing, I believe that the interests of the Debtors, their estates and their stake holders would be best served by an order granting the Utilities Motion.

G. MOTION FOR AN ORDER AUTHORIZING (I) PAYMENT OF CERTAIN TAXES AND FEES AND (II) AUTHORIZING AND DIRECTING BANKS AND FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS ("Taxes Motions")

192. The Debtors seek authority, in their sole discretion, to pay all sales, use, franchise taxes, real and personal property taxes, business license fees and annual report taxes in the approximate aggregate amount of $7,375,000[12] (collectively, the "**Taxes**"), owed to certain taxing authorities (collectively, the "**Taxing Authorities**"), including all Taxes subsequently determined upon audit to be owed for periods prior to the Petition Date,[13] by whatever means the Debtors may deem appropriate, including, without limitation, the issuance of postpetition

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12 This amount represents an estimate of Taxes owed based on calculations as set forth in the Motion below.

13 Any taxes subsequently determined upon audit to be owed for the prepetition period are not included in the approximate aggregate amount stated herein as such amounts owing are not currently determined.

checks and electronic transfers. The Debtors' specific tax liabilities are set forth in further detail below.

193. In addition, the Debtors seek an order authorizing and directing the Debtors' various banks and financial institutions to receive, process, honor and pay the Debtors' checks or electronic transfers sent to the applicable Taxing Authorities with respect to the Taxes, whether such checks or transfers were issued before or after the Petition Date.

A. Sales Taxes and Use Taxes

194. In the ordinary course of business, the Debtors collect from their customers and remit to the Taxing Authorities an assortment of sales and local gross receipts taxes (collectively, the "**Sales Taxes**"). The Sales Taxes are paid to the Taxing Authorities on a periodic basis, typically monthly, for Sales Taxes collected during the previous period. However, some Taxing Authorities require the Debtors to prepay the Sales Taxes.

195. The Debtors may also be responsible for the payment of use taxes (the "**Use Taxes**" and, with the Sales Taxes, the "**Sales and Use Taxes**") when they purchase any tangible personal property from vendors. Use Taxes arise when the Debtors purchase equipment from a vendor for use in a state in which the vendor has no business operations. Without such a nexus, the vendor is not obligated to charge or remit sales taxes for sales parties within the state. Nevertheless, the purchasers, in this case the Debtors, may be obligated to self assess and pay the Use Taxes to the states in which the personal property is used. The Debtors generally remit the Use Taxes to the Taxing Authorities on a monthly basis. The Debtors estimate that they owe

approximately $6,750,000 in Sales and Use Taxes to certain of the Taxing Authorities for periods prior to and including the Petition Date.[14]

B. Franchise Taxes

196. The Debtors pay franchise taxes (the "**Franchise Taxes**") to certain of the Taxing Authorities to operate their businesses in the applicable taxing jurisdiction. Some states assess a flat Franchise Tax on all businesses, and other states assess a Franchise Tax based upon net operating income or other measurement. In addition, certain states impose personal liability on the directors and officers of a corporation if that corporation fails to pay Franchise Taxes. The Debtors estimate they owe an aggregate amount of approximately $107,500[15] in Franchise Taxes to certain of the Taxing Authorities for periods prior to and including the Petition Date.[16]

C. Real and Personal Property Taxes

197. In addition, under applicable law, state and local governments in jurisdictions where the Debtors' operations are located are granted the authority to levy property taxes against the Debtors' real and personal property (the "**Property Taxes**"). The Debtors typically pay the Property Taxes in the ordinary course of business as such taxes are invoiced, which typically covers Property Taxes for the prior year or quarter, depending on how the applicable tax is assessed. The Debtors estimate that, as of the Petition Date, approximately $560,000[17] in real and personal Property Taxes have accrued.

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14 Because Sales and Use Taxes are paid in arrears on the 20th day of the following month, the tax liability is for a month and a half of operating sales. Sales and Use Taxes are calculated by multiplying the operating sales forecast for May 1 through June 15, 2009 by the average sales tax rate (2008 Sales and Use Taxes paid divided by 2008 operating sales).

15 This amount also includes Washington state business and occupancy taxes.

16 Franchise Tax estimates based on 2008 and 2009 year-to-date payments.

17 Estimated Property Taxes are calculated based on 2008 taxes owed less 2009 payments.

D. Business License Fees and Annual Report Taxes

198. Many municipal and county governments require the Debtors to obtain a business license or permit and to pay corresponding business license fees (the "**Business License Fees**"). The criteria requiring a company to obtain a business license or permit and the manner in which the Business License Fees are computed vary greatly according to the local tax laws. Some jurisdictions assess Business License Fees based on a flat rate and others upon the number of employees working in the jurisdiction. Certain state governments also require the Debtors to pay annual report taxes (the "**Annual Report Taxes**") in order to be in good standing for purposes of conducting business within that state. The Debtors estimate they owe approximately $17,500 in prepetition Business License Fees and Annual Report Taxes.[18]

E. Method of Payment

199. The Debtors pay the Taxes described herein to the Taxing Authorities on a periodic basis with funds drawn by checks or by means of electronic fund transfers.

200. The Debtors seek authority to pay all Taxes due and owing to the Taxing Authorities, including all Taxes subsequently determined upon audit to be owed for periods prior to the Petition Date. To the extent any check or electronic transfer has not cleared the banks and financial institutions as of the Petition Date, the Debtors request this Court to authorize and direct the banks and financial institutions, when requested by the Debtors in their sole discretion, to receive, process, honor and pay such checks or electronic transfers. To the extent the Taxing Authorities have otherwise not received payment for all Taxes owed, the Debtors seek authorization to issue replacement checks, or to provide for another means of payment to the Taxing Authorities, to the extent necessary to pay all outstanding Taxes.

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[18] Estimated Business License Fees and Annual Report Taxes are calculated based on 2008 and 2009 year-to-date payments.

201. By reason of the foregoing, I believe that the interests of the Debtors, their estates and their stake holders would be best served by an order granting the Taxes Motion.

H. MOTION FOR AN ORDER AUTHORIZING DEBTORS TO RETAIN, EMPLOY AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS ("Ordinary Course Professionals Motion")

202. The Debtors customarily retain the services of various attorneys, accountants, consultants and other professionals in the ordinary course of their business operations (each, an "**Ordinary Course Professional**" or "**OCP**" and, collectively, the "**OCPs**"). The OCPs currently utilized by the Debtors are identified in Exhibit A to the Ordinary Course Professionals Motion.

203. Due to the number and geographic diversity of the OCPs regularly retained by the Debtors, I believe that it would be unwieldy and burdensome both to the Debtors and to this Court to request that each OCP apply separately for approval of its employment and compensation.

204. I believe that the continued employment and compensation of the OCPs is in the best interests of the Debtors' estates, creditors and other parties-in-interest. While some OCPs may wish to continue to represent the Debtors on an ongoing basis, others may be unwilling to do so if the Debtors cannot pay them on a regular basis, or, given the relatively small fees that may be involved, if they are required to comply with the requirements for retention under Section 327(a) of the Bankruptcy Code. If the background knowledge, expertise and familiarity that the OCPs have with the Debtors and their operations are lost, the Debtors will undoubtedly incur additional and unnecessary expenses in getting replacement professionals "up to speed." The Debtors rely on the assistance of OCPs for essential business functions and would be unable to operate without the OCPs' services.

205. Most of the OCPs listed on Exhibit A of the Ordinary Course Professional Motion have monthly fees that will not exceed $50,000 during the pendency of these Chapter 11 Cases. And, only two OCPs have monthly fees that may exceed that amount and their fees will not, to my understanding, exceed $75,000 per month during the pendency of these Chapter 11 Cases.

206. Although some of the OCPs may have an unsecured claim against the Debtors in respect of prepetition services rendered, I do not believe that any of the OCPs have an interest materially adverse to the Debtors, their creditors or other parties in interest.

207. By reason of the foregoing, I believe that the interests of the Debtors, their estates and their stake holders would be best served by an order granting the Ordinary Course Professionals Motion.

I. MOTION FOR AN ORDER AUTHORIZING DEBTORS TO CONTINUE CUSTOMER POLICIES, PROGRAMS AND PRACTICES ("Customer Programs Motion")

208. Prior to the Petition Date, in the ordinary course of their retail business, the Debtors provided their customers with certain satisfaction, loyalty and incentive programs in the form of the Customer Programs and, as a result thereof, received from customers, without limitation; (a) payments for gift, award or similar certificates that customers have not yet redeemed for goods or services; (b) overpayments (including, but not limited to, overpayments in respect of miscalculations of shipping and handling charges); and (c) prepayments related to sales of goods and services that the Debtors have not yet delivered, provided (in full or in part) or obtained from third parties.

209. There also exist contingent prepetition claims held by customers against the Debtors for returns, refunds, warranties, exchanges, substitutions, sales price adjustments, merchandise certificates, promotional offers or discount codes, complimentary certificates,

promotional points programs, registered card programs, stored value cards and other credit balances relating to goods sold or services rendered to customers in the ordinary course of business prior to the Petition Date.

210. The majority of the Debtors' sales are paid with credit or debit cards. To facilitate such transactions, the Debtors are parties to certain agreements with credit card companies and processors which enable the Debtors to accept credit and debit card purchases in their retail stores, through catalog mail orders and online retail sites, subject to certain refunds, returns, exchanges, substitutions, price adjustments (including sale price adjustments to billing in certain circumstances) and other credit balances (collectively, the "**Credit Card Agreements**"). The Debtors are also parties to agreements with World Financial Network National Bank ("**WFNNB**"), the issuer of private label credit cards provided to the Debtors' customers, and with e-commerce companies that process purchases made at Debtors' online retail sites.

211. I believe that the Debtors' continued ability to honor and process credit and debit card transactions is essential to the Debtors' Sale and reorganization efforts and continued customer loyalty. Without this ability, the Debtors would lose their main avenue for conducting sales transactions in the ordinary course of their retail store, catalog and online retail sites. Under the terms of their Credit Card Agreements, the Debtors are required to pay the credit card companies and processor fees for their services, certain of which have accrued but remain unpaid as of the Petition Date. The Debtors request authority to continue to pay these fees in the ordinary course of their business in order to avoid interruption of these vital credit card processing services. For the fiscal year ended January 3, 2009, 88% of Debtors' sales were paid using credit and debit cards, resulting in approximately $16.5 million in credit card processing and related fees paid by the Debtors. As of the Petition Date, the Debtors estimate that

approximately $201,000 in prepetition fees are owed to credit card companies and processors.

212. I believe that the success and viability of the Debtors' business, and ultimately the ability to effectuate the Sale, is entirely dependent upon maintaining the patronage and loyalty of their customers. In this regard, the Debtors' Customer Programs are critical and any delay in honoring the Debtors' obligations thereunder will severely and irreparably impair customer relations, thereby impacting the ongoing Sale efforts that are vital for the Debtor's emergence from these Chapter 11 Cases.

213. Accordingly, the Debtors seek Court authority to continue the Customer Programs, including authority to honor prepetition claims arising therefrom, as set forth in greater detail below.

214. ***Returns, Refunds and Exchanges***. Certain customers hold contingent claims against the Debtors for refunds, returns, exchanges, substitutions, price adjustments (including sales price adjustments to billing) and other credit balances (collectively, the "**Refunds**" and individually each a "**Refund**") relating to goods sold or services rendered to customers in the ordinary course of business prior to the Petition Date. The Debtors also distinguish themselves from their competitors through their 89-year-old "unconditional lifetime guarantee" of customer satisfaction on every item, including licensed products returned to the Debtors' retail stores and catalogs (the "**Guarantee**"). The Guarantee provides that if a customer is dissatisfied with a product for any reason, the customer may return the product for a full Refund, with certain limited exceptions. Customers rely on the existence of the Guarantee and Refunds when they shop in the Debtors' retail stores, catalog and online retail sites. In addition, the Debtors typically issue Refunds in the ordinary course of business for damaged or faulty goods. As of the Petition Date, the current monthly returns reserve is approximately $4.0 million.

215. ***Gift Cards***. Prior to the Petition Date, the Debtors sold in the ordinary course of

business, gift cards, e-gift cards and gift certificates to retail customers for the purchase of merchandise in the Debtors' retail stores, catalog and online retail businesses (collectively, the "**Gift Cards**"). In addition, and as part of marketing promotions with Ford for the sale of Eddie Bauer co-branded SUVs, the Debtors issued gift cards and certificates to certain purchasers of Eddie Bauer branded Ford SUVs (the "**Ford Gift Cards**"). Customers can use their Ford Gift Cards in the same manner as the Debtors' ordinary course gift cards.

216. Gift Cards do not have expiration dates, and as of the Petition Date, certain customers had not yet redeemed certain of these prepetition Gift Cards or Ford Gift Cards for merchandise. At the time that these Gift Cards were purchased by customers, or provided to customers as part of the Ford sales promotions, the Debtors had every expectation that they would be redeemable.

217. ***Award Certificates***. Prior to the Petition Date, the Debtors sold in the ordinary course of business, award certificates and award cards to businesses for rewarding or incentivizing their employees. Such awards certificates and cards could be used in the Debtors' retail stores, catalog and online retail businesses, (collectively, "**Award Certificates**"). There are two categories of Award Certificates. The majority of Award Certificates are purchased by businesses in advance, and these businesses then provide the Award Certificates to their employees for redemption of the Debtors' merchandise at any time. The second category, incentive award resales (the "**Award Certificate Resales**"), are purchased by businesses from various vendors (the "**Award Resale Vendors**") in various amounts. The holders redeem these Award Certificate Resales for the Debtors' merchandise, and the Debtors then submit monthly invoices to the Award Resale Vendors for the amounts due. Notwithstanding the type of Award Certificate, at the time that the businesses purchased these Award Certificates for their

employees, they had every expectation that they would be redeemable, since one of the selling points of the Award Certificates is that they do not expire. Yet as of the Petition Date, certain recipients of Award Certificates had not redeemed their prepetition Award Certificates.

218. ***Merchandise Certificates and Coupons***. Prior to the Petition Date, the Debtors have issued in the ordinary course of business (a) merchandise certificates in respect of certain returned items and (b) merchandise certificates as promotional items to existing customers and as incentives to other individuals to build the Debtors' customer base, ((a) and (b) collectively, the "**Merchandise Certificates**"). As of the Petition Date, certain of these Merchandise Certificates had not yet been redeemed for goods.

219. ***Promotional Codes***. In the ordinary course of their business, the Debtors issue promotion, offer and discount codes (collectively, the "**Promotional Codes**") to be presented by customers at the time of purchase of goods from the Debtors' catalogs and online retail businesses. I believe that continuing to honor the Promotional Codes is an essential component to maintaining their relationships with their customers.

220. ***Complimentary Certificates***. In the ordinary course of business, the Debtors issue complimentary certificates to customers who have experienced a significant customer service inconvenience, to qualified companies as donations and to internal employees as corporate incentives (collectively, the "**Complimentary Certificates**"). Each of these certificates may be presented by customers at the time of purchasing goods from the Debtors. The Complimentary Certificates have no expiration date. I believe that continuing to honor the Complimentary Certificates in accordance with their terms is an important component to establishing customer and employee satisfaction and maintaining these relationships.

221. The Debtors estimate that as at the end of May, 2009, their aggregate outstanding

obligations on Gift Cards, Ford Gift Cards, Award Certificates, Merchandise Certificates, Promotional Codes and Complimentary Certificates was $25.9 million, net of breakage.[19]

222. ***Eddie Bauer Friends and Canadian Rewards Programs***. In the ordinary course of business, the Debtors offer promotional points (the "**Points**") in a loyalty program called "Eddie Bauer Friends" in the United States and "Canadian Rewards" in Canada (collectively the "**Rewards Program**"). As of January 3, 2009, there were approximately 4.7 million customers enrolled as Rewards program members (the "**Members**"). Members earn 10 points for every dollar spent at the Debtors' stores, from the Debtors' catalogues or at the Debtors' online sites. Alternatively, members can accumulate 12 points for every dollar spent on the Debtors' merchandise if they use their Eddie Bauer Credit Card, a private label credit card issued by WFNNB. Members of the Rewards Program who hold between 2,000 and 7,000 points are able to convert points into Eddie Bauer merchandise at any time by visiting www.eddiebauerfriends.com. Also, at the end of three separate rewards periods (the last day of February, June and October, each period, individually a "**Reward Period**"), if the Member accumulates sufficient points to reach a designated reward threshold, the points are automatically converted into a reward certificate ("**Reward Certificate**") which is provided to the recipient Member. For instance, each Member of Eddie Bauer Friends who accumulates 1,750 Points over the course of a Reward Period will receive a $10 Reward Certificate, and an additional $10 certificate for every subsequent 1,750 Points, to a maximum of $80. The Reward Certificates are redeemable for purchases of Eddie Bauer merchandise and are valid for at least 30 days. The Debtors estimate that as of the Petition Date, they are liable for obligations of approximately $2.8 million for fully and partially earned Reward Certificates. This represents customers who

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[19] Breakage represents the estimated amount of gift cards that will go unredeemed, estimated by applying historical redemption rates.

will have accumulated 1,750 points by the last day of June, which marks the end of the current Reward Period and will be entitled to receipt of a Reward Certificate under the Rewards Program as well as for customer accounts where the points earned have not yet met the threshold for a certificate but are expected to do so at a later date. I believe that continuing to honor the Points and to generate Reward Certificates is essential for maintaining customer relationships and driving additional sales. Accordingly, the Debtors request that they be authorized to (1) award Reward Certificates to each of the Members who have accumulated points under the Rewards Program, (2) continue the Loyalty Program for existing and new members and (3) honor such points in connection with any new customers who enroll in the program prior to or after the Petition Date.

223. ***Third Party Credit Card Registration Programs.*** The Debtors also hold relationships with certain companies (the "**Registered Card Companies**") and participate as a registered merchant in the Registered Card Companies' credit and debit card reward programs (the "**Registered Card Programs**"). When customers of these Registered Card Programs use their debit or credit cards to shop for the Debtors' merchandise they accumulate points which can be redeemed for gift cards, cash or educational savings plans. The Debtors then pay a commission to these companies as payment for inclusion in the Registered Card Program. The commission ranges from 4 to 6% of the value of the merchandise, inclusive of a 1% administrative fee. The Debtors estimate that as of the Petition Date, the Debtors owe commissions valued at $120,000 to these Registered Card Companies. I believe that continuing to participate in the Registered Card Programs provides valuable incremental sales opportunities and helps maintain relationships with existing customers. Accordingly, the Debtors request that the Debtors be authorized to honor the terms of the Registered Card Programs and continue to

pay commissions to the Registered Card Companies regardless of whether these commissions were accrued by the Debtors prior to or after the Petition Date.

224. ***Stored Value Cards.*** The Debtors also participate in reward programs involving certain stored value cards (the "**Stored Value Cards**") that third parties develop for businesses to use as employee rewards. These third party developers create Stored Value Cards that may be branded and used at certain designated merchants. When businesses purchase Stored Value Cards from the third party developers, those businesses may select the Debtors as the designated merchant. The Debtors then keep track of all merchandise purchased using the Stored Value Cards and provide a commission to the third party developers. As of the Petition Date, the Debtors owe commissions valued at $6,000 to the Stored Value Card developers. I believe that participation in the Stored Value Card program generates additional sales opportunities and also helps to maintain existing customer relationships.

225. I believe that an order continuing the Debtors' Customer Programs postpetition is necessary as the Customer Programs have proven: (a) successful and cost-effective business strategies in the past and (b) responsible for generating valuable goodwill, repeat business and net sales increases. Moreover, I believe that the total operational and administrative costs to the Debtors to honor prepetition obligations with respect to the Customer Programs and to continue the Customer Programs is relatively insignificant when compared to the revenue that such Customer Programs generate.

226. In addition, because the retail clothing industry is highly competitive, I believe that many of Debtors' customers may seek to shop elsewhere if the Debtors fail to timely perform their obligations under the Customer Programs. For this reason, and the other reasons discussed herein, I believe that maintaining the Customer Programs throughout the Chapter 11

Cases, and through such time as the Sale is consummated, is in the best interests of the Debtors and their estates and is necessary for the Debtors to stay competitive, maintain their customer base and thereby maintain their going concern value as they attempt to sell their businesses.

227. I believe that the continued loyalty of the Debtors' existing customers and the Debtors' ability to attract new customers is critical to their continued operations, preservation of their going concern value and ultimate ability to consummate the Sale. If the Debtors are prohibited from honoring and maintaining the Customer Programs consistent with their past business practices, then customers' lost confidence in the Debtors will damage the Debtors' business to an extent that far exceeds the costs associated with honoring and continuing such practices. At this critical time, the Debtors cannot afford to lose the loyalty of their customers or to be placed at a competitive disadvantage with respect to prospective customers.

228. By reason of the foregoing, I believe that the interests of the Debtors, their estates and their stake holders would be best served by an order granting the Customer Programs Motion.

J. MOTION TO ESTABLISH BIDDING PROCEDURES RELATED TO THE SALE OF ALL OF THE DEBTORS' ASSETS AND FOR APPROVAL OF SALE ("Bid Procedures / Sales Motion")

229. In furtherance of the Debtors' duty to maximize the value of their estates and in accordance with their obligations under the DIP Facility, the Debtors have filed a Motion seek approval of a Sale process, including the Bidding Procedures.

230. In the two (2) months prior to the commencement of these Chapter 11 cases, the Debtors marketed and solicited offers for the Sale of substantially all of the Assets. The Debtors have received a binding offer from the Stalking Horse Bidder for substantially all of the Assets and I believe that the Sale process will maximize the value of the Assets. The Stalking Horse Asset Purchase Agreement was negotiated at arm's-length, with both parties

represented by their own counsel. Although the Debtors engaged in discussions with other parties interested in acquiring certain of their Assets, the Debtors submit that the Stalking Horse Bidder's proposal as contained in the Stalking Horse Asset Purchase Agreement represents the Stalking Horse Bidder's highest and best offer for the Assets. Additionally, the Debtors will adduce facts at the Sale Hearing on any objection demonstrating that any bidder who is deemed a Successful Bidder for all of the Assets negotiated at arm's-length, with all parties represented by their own counsel.

231. As described above in Part I(IV)(D), prior to the Petition Date, the Debtors and the Investment Bankers identified and contacted approximately fifty-five (55) potential financial and strategic counterparties. Approximately twenty (20) of these parties entered into confidentiality agreements with the Debtors and were provided extensive due diligence materials on an electronic Data Site as well as the opportunity to speak with the Debtors and their advisors and to conduct site visits with respect to the Assets.

232. After an extensive review and in consultation with the Investment Bankers, Eddie Bauer, with the approval of Eddie Bauer's board of directors, selected Rainier Holdings LLC as the Stalking Horse Bidder for the Sale. The Debtors and their advisors actively negotiated with the Stalking Horse Bidder regarding the terms and conditions of the Stalking Horse Asset Purchase Agreement and facilitated various diligence requests made by the Stalking Horse Bidder's representatives and advisors. On or about June 17, 2009, Eddie Bauer and the Stalking Horse Bidder executed the Stalking Horse Asset Purchase Agreement.

233. The Stalking Horse Bidder indicated to Eddie Bauer that a relatively expedited sale process with respect to the Assets was critical to their decision to provide a

stalking horse bid. In addition, the DIP facility is conditioned on Eddie Bauer's pursuit of a Sale process within a specified time frame.

234. In order to maximize the value of the Assets for the benefit of the Debtors' estates and their respective creditors, the Debtors seek to implement a competitive bidding process that is designed to generate maximum recovery. As described more fully in the Bidding Procedures, attached as Exhibit 1 to the Bidding Procedures Order, which is attached to the Motion as Exhibit A, the Debtors may sell all of the Assets to any bidder that makes the highest or otherwise best offer for the Assets.

235. In order to provide an incentive and to compensate the Stalking Horse Bidder for entering into the Stalking Horse Asset Purchase Agreement, the Debtors have agreed to a break-up fee in the amount of $5,057,500 (the "**Break-Up Fee**") and an expense reimbursement in the amount of $250,000 (the "**Expense Reimbursement**") to reimburse the Stalking Horse Bidder for costs and expenses incurred in connection with the Stalking Horse Bidder's attempted purchase of the Assets. The Debtors will take into account the Break-Up Fee and Expense Reimbursement in each round of bidding.

236. I believe that offering the Break-Up Fee to the Stalking Horse Bidder will benefit the Debtors' estates by establishing a floor and promoting more competitive bidding. The availability of the Break-Up Fee and Expense Reimbursement is necessary in order to provide the Stalking Horse Bidder with some assurance that it will be compensated for the time and expense it has spent in putting together its offer for the Assets and the risk that arises from participating in the bidding and subsequent Auction process.

237. I believe that the Debtors have proposed a fair and open process for achieving the objective of obtaining the highest or best offer and sale of their businesses for the

benefit of the Debtors' estates and their creditors. The Sale of the Interests will be subject to competing bids, enhancing the Debtors' ability to receive the highest or otherwise best value for the Interests. Consequently, the fairness and reasonableness of the consideration to be received by the Debtors will ultimately be demonstrated by a "market check" through the auction process, which is the best means for establishing whether a fair and reasonable price is being paid.

238. In addition, all creditors and parties in interest will receive adequate notice of the Bidding Procedures and Sale Hearing as set forth in the Bidding Procedures. Such notice is reasonably calculated to provide timely and adequate notice to the Debtors' major credit constituencies, those parties most interested in these Chapter 11 Cases, those parties potentially interested in bidding on the Assets and others whose interests are potentially implicated by a proposed Sale. Accordingly, consummating the Sale as soon as possible is in the best interests of the Debtors and their creditors and parties in interest.

239. The Debtors respectfully submit that the proposed Assumption and Assignment Procedures set forth in the Bid Procedures / Sales Motion are appropriate and reasonably tailored to provide Contract Notice Parties with adequate notice in the form of the Assumption Notice or Cure Notice, as applicable, of the proposed assumption and/or assignment of their applicable contract, as well as proposed Cure Amounts, if applicable. Such Contract Notice Parties will then be given an opportunity to object to such notice. If an objection is filed, such objection will be heard at the Sale Hearing or at a later hearing, as determined by the Debtors.

240. Furthermore, to the extent that any defaults exist under any executory contract or unexpired lease that is to be assumed and assigned in connection with the Sale of the Assets, the Debtors will cure any such default prior to such assumption and assignment.

Moreover, the Debtors will adduce facts at the Sale Hearing demonstrating the financial wherewithal of the Successful Bidder, its experience in the industry, and its willingness and ability to perform under the contracts to be assumed and assigned to it.

241. I believe that the Sale is necessary because the Debtors face severe liquidity constraints and have exhausted their options for addressing this issue, including an attempt to raise cash through a refinancing of their prepetition credit facility and other strategic transactions. To date, none of these options has been successful. Given current economic market conditions, the Debtors' liquidity situation has not improved and I believe the Debtors presently face the possibility of continued financial deterioration.

242. By reason of the foregoing, I believe that the interests of the Debtors, their estates and their stake holders would be best served by an order granting the Bid Procedures / Sales Motion.

K. MOTION FOR AN ORDER AUTHORIZING DEBTORS TO EMPLOY AND RETAIN KURTZMAN CARSON CONSULTANTS LLC AS NOTICE, CLAIMS AND SOLICITATION AGENT *NUNC PRO TUNC* TO THE PETITION DATE ("KCC Motion")

243. The Debtors have over nine hundred potential creditors. In addition to these creditors, there are thousands of other parties in interest in the Debtors' Chapter 11 cases. Although the office of the Clerk of the United States Bankruptcy Court for the District of Delaware (the "**Clerk's Office**") ordinarily would serve notices on the Debtors' creditors and other parties in interest and administer claims against the Debtors, the Clerk's Office may not have the resources to undertake such tasks, especially in light of the sheer magnitude of the Debtors' creditor body and the tight timelines that frequently arise in Chapter 11 cases.

244. Accordingly, the Debtors propose to engage Kurtzman Carson Consultants ("**KCC**") to act as the Debtors' notice, claims and solicitation agent. I believe that this retention

will be the most effective and efficient manner of noticing the thousands of creditors and parties in interest of the filing of the Chapter 11 Cases and other developments in the Chapter 11 Cases. In that capacity, KCC will transmit, receive, docket and maintain proofs of claim filed in connection with the Chapter 11 Cases.

245. Based on KCC's considerable experience and expertise, I believe that KCC is well-qualified to provide such services. KCC is a bankruptcy administrator that specializes in providing comprehensive Chapter 11 administrative services including noticing, claims processing, balloting and other related services critical to the effective administration of chapter 11 Cases. I believe that KCC has developed efficient and cost-effective methods to handle properly the voluminous mailings associated with the noticing, claims processing and balloting portions of Chapter 11 Cases to ensure the orderly and fair treatment of creditors, equity security holders and all parties in interest. Further, KCC will be able to work with the Clerk's Office to ensure that such methodology conforms with all of the Court's procedures, the Local Rules and the provisions of any orders entered by this Court.

246. In addition to the foregoing, KCC will assist with, among other things: (a) maintaining and updating the master mailing lists of creditors; (b) to the extent necessary, gathering data in conjunction with the preparation of the Debtors' schedules of assets and liabilities and statements of financial affairs; (c) tracking and administration of claims and (d) performing other administrative tasks pertaining to the administration of the Chapter 11 Cases, as may be requested by the Debtors or the Clerk's Office. KCC will follow the notice and claim procedures that conform to the guidelines promulgated by the Clerk of the Court and the Judicial Conference of the United States and as may be entered by the Court's order. KCC also has agreed to provide noticing services in these cases to the U.S. Trustee.

247. KCC has assured the Debtors that it will take care not to duplicate the efforts of any similar professional of the Debtors retained in these cases. KCC is the primary noticing, claims and balloting agent in these Chapter 11 Cases. The Debtors are not currently retaining any other similar professionals in these Chapter 11 Cases.

248. By reason of the foregoing, I believe that the interests of the Debtors, their estates and their stake holders would be best served by an order granting the KCC Motion.

L. EMERGENCY MOTION FOR AN ORDER (I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING; (II) AUTHORIZING USE OF CASH COLLATERAL; (III) GRANTING LIENS AND SUPERPRIORITY CLAIMS; AND (IV) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; AND (V) SCHEDULING FINAL HEARING ON THE DEBTORS' MOTION TO INCUR SUCH FINANCING ON A PERMANENT BASIS PURSUANT ("DIP Motion")

249. The Debtors seek entry of an interim and, subject to final approval, a final order in substantially the form attached to Debtors' Dip Motion as Exhibit A (the "**Interim Order**" and, subject to final approval, the "**Final Order**"):

a. Authorizing the Debtors to obtain credit and incur debt pursuant to Sections 105, 363 and 364 of the Bankruptcy Code in accordance with that certain Senior Secured, Super-Priority Debtor-in-Possession Loan and Security Agreement, substantially in the form attached as Exhibit B to the DIP Motion, among the Debtors, Bank of America, N.A., as agent for the Lenders, Banc of America Securities LLC, as sole lead arranger and book manager, Bank of America, N.A. and The CIT Group/Business Credit, Inc., as co-syndication agents, General Electric Capital Corporation and The CIT Group/Business Credit, Inc., as co-collateral agents and General Electric Capital Corporation as documentation agent, subject to the terms and conditions set forth herein;

b. To the extent set forth in the Interim Order, granting first priority, valid, priming, perfected and enforceable liens (as defined in Section 101(37) of the Bankruptcy Code) and superpriority claims to the DIP Agent, for the benefit of itself and the other DIP Lenders, against all property of the Debtors' estates pursuant to Sections 364(c)(2) and 364(d)(1) of the Bankruptcy Code, and with priority, as to administrative expenses, as provided in Section 364(c)(1) of the Bankruptcy Code;

c. Authorizing the Debtors to use "cash collateral" as the term is defined Section 363(a) of the Bankruptcy Code and, pursuant to Sections 361 and 363 of the Bankruptcy Code, grant security interests, mortgages and other liens and superpriority claims in order to provide adequate protection to the Pre-Petition Agents (as defined below) for the benefit of the Pre-Petition Lenders;

d. Modifying the automatic stay under Section 362 of the Bankruptcy Code to the extent necessary to implement and enforce the terms and provisions of the DIP Credit Agreement and this Interim Order; and

e. Scheduling a final hearing for entry of the Final Order granting the relief requested in the Motion on a final basis and approving the form of notice with respect to the Final Hearing (as defined in the DIP Motion).

250. As set forth in paragraph 4 of the Interim Order attached to Debtors' DIP Motion, the Debtors propose providing the following adequate protection to the Pre-Petition Secured Parties (as identified and defined in Debtors' DIP Motion) for the Debtors' usage of their cash collateral. As adequate protection, the Pre-Petition Revolving Agent will receive, subject in each case to the Intercreditor Agreement: (1) Revolving Lien Adequate Protection Payments, (2) the Pre-Petition Replacement Revolving Liens, (3) the Pre-Petition Revolving Lien Superpriority Claim, and (4) the Pre-Petition Revolving Indemnity Account. As adequate protection, the Pre-Petition Term Agent will receive, subject in each case to the Intercreditor Agreement: (1) Term Lien Adequate Protection Payments, (2) the Pre-Petition Replacement Term Liens, (3) the Pre-Petition Term Lien Superpriority Claim; and (4) the Pre-Petition Term Lien Indemnity Account.

251. As of the Petition Date, the aggregate amount of approximately $324,140,362 was due and owing in respect to loans and other financial accommodations made by the Pre-Petition Revolving Lenders and Pre-Petition Term Lenders (as defined and identified

in Debtors' DIP Motion). The major components of the Debtors' consolidated funded debt obligations are described in greater detail in Part I(III) above and in Debtors' DIP Motion.

252. The Debtors' obligations to the Pre-Petition Secured Parties are secured by perfected first priority liens and security interests in substantially all of the personal property of the Debtors, including cash collateral (but subject to the intercreditor arrangements entered into by and among the Pre-Petition Secured Parties). At this time, the Debtors have an immediate need for additional liquidity, without which they would be unable to operate their businesses. Although the use of cash collateral is necessary to the operation of the Debtors' businesses, the use of cash collateral alone is insufficient to operate the Debtors' businesses successfully. Therefore, the Debtors also have an immediate need for additional liquidity, which could only be obtained through entry into a secured debtor in possession financing facility.

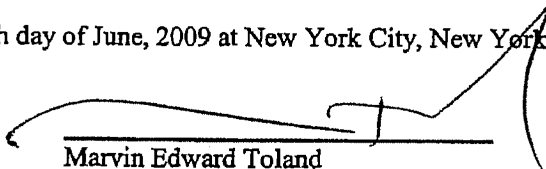
253. By reason of the foregoing, I believe that the interests of the Debtors, their estates and their stake holders would be best served by an order granting the DIP Motion.

CONCLUSION

I believe the commencement of the Chapter 11 Cases is in the best interests of Eddie Bauer's estates, its creditors and other parties-in-interest. Eddie Bauer's goal in the pending cases is to preserve and maximize the value of its business to facilitate a going-concern sale. If the Court grants the relief requested in each First Day Motion, I believe the prospect of achieving this objective will be greatly enhanced to the benefit of Eddie Bauer's estates, its creditors and other parties in interest.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

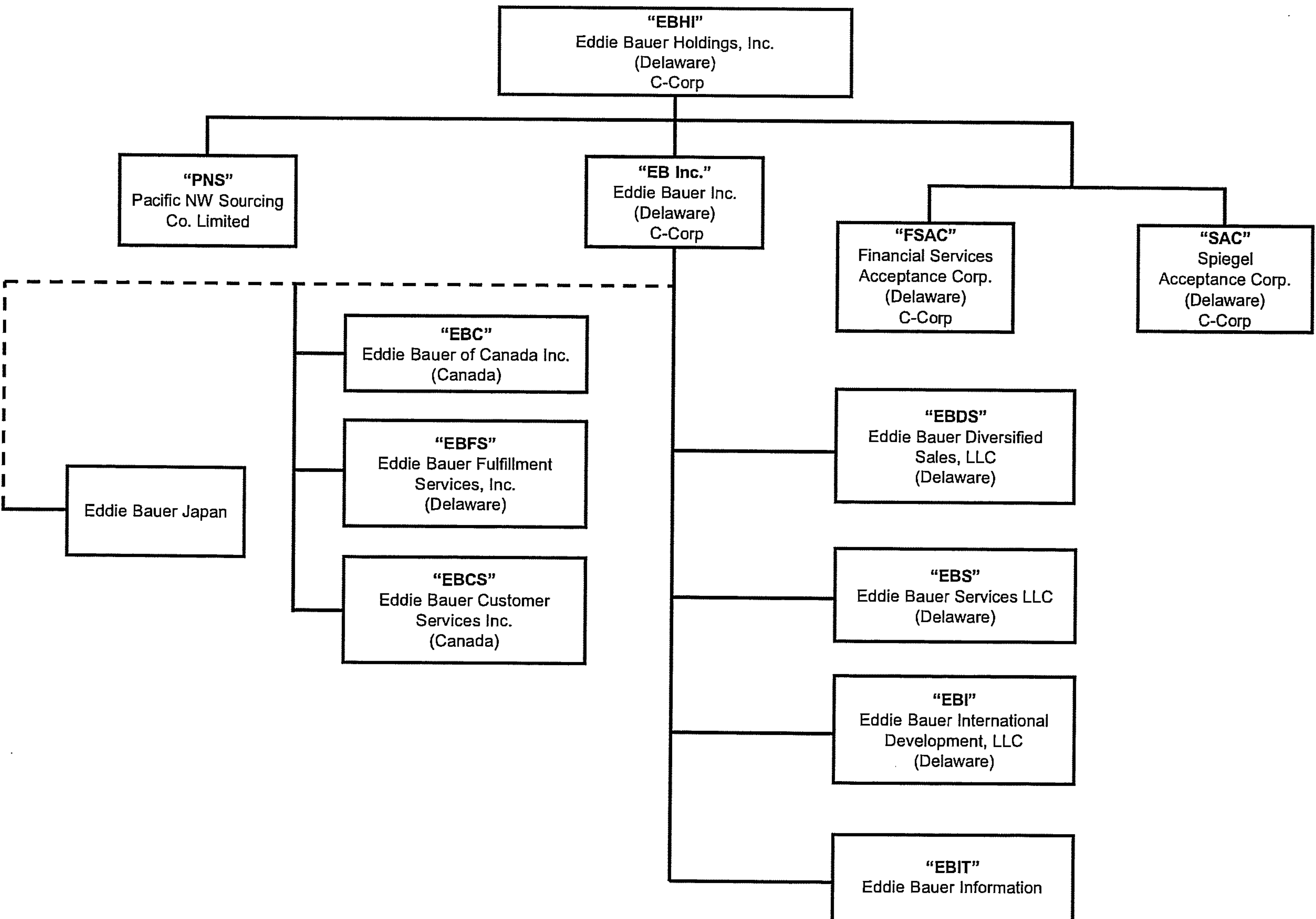
Executed this 15th day of June, 2009 at New York City, New York.



Marvin Edward Toland
Chief Financial Officer and Senior Vice President
Eddie Bauer Holdings, Inc. and its Debtor subsidiaries

EXHIBIT A

EDDIE BAUER HOLDINGS, INC. CORPORATE CHART



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