

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

ULTIMATE ACQUISITION
PARTNERS, LP, *et al.*¹

Chapter 11
Case No. 11-____ ()

Debtors

(Joint Administration Requested)

**DECLARATION OF F. BRUCE GIESBRECHT
IN SUPPORT OF CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

F. Bruce Giesbrecht, being duly sworn, deposes as follows:

1. I am the Chief Executive Officer and Secretary of Ultimate Acquisition Partners, LP (“UAP”), a Delaware limited partnership and the President of CC Retail, LLC (“CC Retail”), a Delaware limited liability company (UA and CC Retail are hereinafter collectively referred to as the “Debtors”). I am authorized to submit this Declaration in support of the Debtors’ petitions and first day pleadings (the “First Day Motions”) described herein.

2. I am familiar with the Debtors’ day to day business operations and affairs, books and records.

3. I have reviewed the First Day Motions and am familiar with the factual support contained therein. To the best of my knowledge, the factual information set forth therein is correct, either based on my personal knowledge and/or based on knowledge gained from employees and/or advisors to the Debtors.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Ultimate Acquisition Partners, LP (2837) and CC Retail, LLC (7780).

I. GENERAL BACKGROUND

4. Each of the Debtors commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on January 26, 2011.

5. The Debtors are leading specialty retailers of high-end home entertainment and consumer electronics with 46 stores in over a dozen states, primarily in the mid-west and western United States. Of the 46 stores, 35 are operated by UAP and 11 are operated by CC Retail. All are operated under the name “Ultimate Electronics.” To manage its business and its properties, the Debtors employ over 1,500 full and part-time employees who perform a variety of functions including customer service, inventory control, management, accounting, marketing, purchasing and sales, shipping, tax, technical and other services. The Debtors’ principal offices are located at 321 W. 84th Ave., Suite A, Thornton, Colorado, 80260.

6. The Debtors are each wholly owned by Ultimate Acquisitions, LLC, a Delaware limited liability company. Wattles Capital Management, LLC holds 71.25% of the common units of Ultimate Acquisitions, LLC, Hewlett-Packard Company holds 25% of the common units and Bruce Giesbrecht holds 3.75% of the common units.

7. The Debtors operate each of their retail stores under leases with third party landlords. The Debtors also lease their warehouse and office in Thornton, Colorado from a third party landlord.

8. The Debtors filed their Chapter 11 petition, based on a significant downturn in business at certain of the Debtors’ locations, coupled with the refusal by certain of the Debtors’ vendors to ship goods to the Debtors on open credit. The Debtors intend to utilize the Chapter 11 to streamline their operations, close underperforming locations, negotiate more favorable leases and to otherwise improve the profitability of their operations.

II FIRST DAY MOTIONS

9. Concurrent with the filing of their Chapter 11 cases, the Debtors have or will be filing a series of motions, including those designated as “first day motions.” The Debtors will be seeking an expedited hearing on the first day motions.

10. The purpose of the first day motions is to permit the Debtors to obtain approval to undertake those actions which the Bankruptcy Code requires be subject to approval by the Bankruptcy Court. The motions are intended to permit the Debtors to continue their operations with as little interruption as possible, while maintaining the confidence of their customers and suppliers. What follows is a summary of the motions to be or which have been filed contemporaneous with the filing of the bankruptcy petitions.

A. Motion of Debtors for Order Directing Joint Administration Pursuant to Bankruptcy Code Section 302 and Bankruptcy Rule 1015(b) and Waiving Requirement of Bankruptcy Code Section 302 and Bankruptcy Rule 1015(b) and Waiving Requirements of Bankruptcy Code Sections 105 and 342(c)(1) and Rules 1005 and 2002(n)

11. This Chapter 11 involves two affiliated Debtors, UAP and CC Retail. Each operates certain of the retail stores of the Debtors and each are owned, as stated above, by a common parent company. The Debtors are seeking joint administration of the cases, to significantly reduce the volume of paper and pleadings to be filed with the Court, reduce the overall cost of the Chapter 11 case and avoid duplication of pleadings seeking similar relief from the two Debtor entities. The Debtors believe that joint administration is in their best interest.

B. Motion to Engage a Claims, Noticing and Solicitation Agent

12. Under the Bankruptcy Code, creditors and various parties in interest are entitled to receive various notices during the course of these bankruptcy cases. To facilitate the mailing and timely receipt of pleadings and other notifications provided by the Debtors and other parties

in interest in these cases, the Debtors are seeking to engage a noticing agent. The Debtors are also seeking the assistance of a noticing agent to assist the Debtors with respect to the proofs of claim which will be filed in these cases, which should number in excess of 1,000. Finally, the Debtors are seeking to utilize the services of a noticing agent to handling the mailing of the Debtors' disclosure statement and plan, as well as to receive and tabulate votes with respect to the plan to be filed by the Debtors in these cases.

13. The Debtors are seeking to engage Kurtzman, Carson Consultants ("KCC") as their notice, claims and solicitation agent. KCC has extensive experience in performing these functions, and the proposal received by the Debtors from KCC was, in the Debtors' view, competitive with other proposals received. Therefore, it is the Debtors' position that KCC should be engaged in these cases.

C. Motion of Debtors for Entry of Interim and Final Orders Determining Adequate Assurance of Payment for Future Utility Services.

14. Under the Bankruptcy Code, a debtor is required to provide to its various utility providers adequate assurance of payment, for services to be rendered by such utilities, including water, sewer, electricity, natural gas telephone, cable, internet, and other utility services.

15. The Debtors have approximately 163 utility providers, who provide utilities to the Debtors in each of the states in which they operate. On average, the Debtors spend \$260,000 on utility services each month. The Debtors, prior to the petition date, paid their utilities on a timely basis.

16. In order to meet the adequate assurance requirements of the Bankruptcy Code, as I understand them, the Debtors are proposing to pay to the utility providers a deposit equal to one half of their average month's usage (\$130,000) and to remain current on a post-petition basis

with their utilities. The Debtors believe this adequate assurance will ensure the uninterrupted provision of utility services to the Debtors.

D. Motion of the Debtors for Entry of an Order (A) Authorizing the Debtors to Pay Prepetition Wages, Salaries and Employee Benefits; (B) Authorizing the Debtors to Continue the Maintenance of Employee Benefit Programs in the Ordinary Course; and (C) Directing all Banks to Honor Prepetition Employee Obligations.

17. Generally, when a Chapter 11 is filed, I have been advised that creditors, including employees, who are owed wages and other benefits as of the filing date are prohibited from receiving payment of their wages and benefits absent approval of the Court. Therefore, the Debtors are filing a motion, seeking authority to pay those wages and benefits which were earned by employees as of the petition date, but which, due to payroll cycles, were not due and payable until after the Chapter 11 petition was filed.

18. The Debtors, as of the petition date, employed over 1,00 employees. All employees of the Debtors are paid every two weeks, with the most recent payroll being due on Friday, January 28th. Because the Chapter 11 cases were filed before that date, the Debtors are seeking authority to pay to all of its employees the payroll due on January 28, including those wages and benefits earned prior to the petition date.

19. Payment of the payroll will avoid any interruption in the Debtors' workforce and will provide confidence to the Debtors' employees that they will be paid for continued employment. The continuing employment of the Debtors' employees is critical to the ongoing operations of the Debtors.

20. The Debtors are seeking to immediately pay pre-petition wages and other benefits to their employees in the approximate amount of \$2,157,000, plus applicable related payroll taxes. In addition, the Debtors will pay over time vacation, personal days and other amounts, a

portion of which may have been earned pre-petition. Subject to two exceptions, the amount paid to each employee will be subject to the limitations that I am told are set forth under the Bankruptcy Code and more specifically discussed in the wage motion.

21. In the motion, the Debtors will also be seeking permission to pay payroll taxes and other amounts deducted from employee paychecks, sick pay, health, vision, life, dental, disability, bonuses, vacation pay, personal day pay, any saving and retirement contributions, and any reimbursable business expenses. Because payment of such amounts is critical to the Debtors' operations, the Debtors support approval of the motion.

E. Motion to Debtors' Pursuant to Bankruptcy Code Sections 105, 361, 362, 363 and 507 for Entry of Interim and Final Orders (I) Authorizing the Use of Cash Collateral, (II) Granting Adequate Protection, and (III) Scheduling a final Hearing.

22. In order to continue the operations of the Debtors, the Debtors will need to be able to spend cash from its accounts, collect and utilize its accounts receivable and to sell and replenish inventory.

23. In September 2005, UAP, among others, entered into a certain Loan and Security Agreement with General Electric Capital Corporation ("GECC"), as amended, modified and supplemented on January 5, 2006, April 18, 2006, November 4, 2007 and May 23, 2008. The Loan and Security Agreement was amended again in July 2010 at which time CC Retail, among others, became a party to the Loan and Security Agreement. Pursuant to the Loan and Security Agreement, the Debtors have a \$150,000,000 commitment for a revolving line of credit. The Debtors also have the availability to request the issuance of letters of credit in an amount up to \$10,000,000. The Loan and Security Agreement has a loan maturity date of June 23, 2011. As of the petition date, the Debtors have borrowed approximately \$64,800,000 either on the revolver or through the issuance of outstanding letters of credit.

24. The Debtors are seeking to use cash collateral, in order to continue their operations, including the payment of payroll and utilities, the purchasing of merchandise, payment of lease obligations and the payment of other obligations which are attendant to the Debtors' operations. As of the petition date, the Debtors' had accounts receivable of approximately \$2,000,000 and inventory having a value of approximately \$98,000,000. The loan was further secured by certain real estate, having an approximate value of \$12,800,000. Therefore, it appears GECC is oversecured.

25. Without the immediate use of cash collateral, the Debtors' operations would immediately have to be closed, the over 1500 employees would have to be laid off and there would be complete loss of the Debtors' goodwill. Further, the ability of the Debtors to maximize the value of their inventory would be lost.

26. Therefore, the Debtors believe the immediate use of cash collateral is absolutely essential to permit the Debtors to continue their operations.

F. Debtors' Motion for Order Pursuant to Bankruptcy Code Sections 105(a), 363, 506, 507(a), 553, 1107(a), 1108 and 1129(b) and Bankruptcy Rule 6003 Authorizing Continuation of Certain Customer Practices.

27. In the course of the Debtors' business, the Debtors provide various enticements to their customers, to enhance loyalty and service. Such incentives are customary in the retail industry, including among the Debtors' competitors. To the end, the Debtors have implemented various customer programs and policies, such as the honoring of gift cards and the implementation of a return policy.

28. The Debtors' believe that the continuation of these customer programs, in the discretion of the Debtors, will be in the Debtors' best interest. They will become especially important to maintain customer loyalty and enhance sales during the turbulent period following

the filings. The Debtors may seek to limit the time periods associated with their incentive programs (such as newly issued gift card expiration dates and limitations on returns) as the Debtors move forward in their Chapter 11 process.

G. Motion for Debtors for Entry of An Order Authorizing the Debtors to Pay Prepetition Sales, Use, Trust Fund, and Other Taxes and Related Obligations.

29. The Debtors are seeking authority to pay certain prepetition sales and use taxes and related obligations owed to various state and local taxing authorities, including approximately \$5,100,000 of sales tax that was collected but not remitted prior to the petition date. In the ordinary course of business, the Debtors are required by law to collect such taxes in conjunction with each of their retail sales and remit the same to the appropriate taxing authority. The process by which the Debtors then remit the sales, use and other taxes to the taxing authorities differs by municipality.

30. Some taxing authorities required that the taxes be remitted monthly, whereas other requires payment quarterly or even annually. Because the Debtors will have collected various taxes from customers prepetition but will not have had the ability to remit those taxes until after the petitions were filed, the Debtors, in the motion, are seeking the authority to pay the taxes to the respective taxing authorities.

31. Payment of the taxes is a requirement of the law and critical to the Debtors' continued operations. Non-payment of these taxes could cause the taxing authorities to seek to revoke the Debtors' sales and use tax licenses or to otherwise interfere with the Debtors' business operations. Therefore, the Debtors believe that payment of the sales and use taxes collected by the Debtors' prepetition and due and payable post-petition should be permitted, per the motion.

H. Motion of Debtors for Order Under Bankruptcy Code Sections 105(a), 503(b), 507(a), 546(h) (I) Granting Administrative Expense Status to Obligations from Postpetition Delivery of Goods; (II) Authorizing Payment of Expenses in the Ordinary Course of Business; (III) Authorizing Debtors to Return Goods; and (IV) Establishing Procedures for Reclamation Demands

32. In the course of the Debtors' operations, the Debtors rely heavily on their vendors. As of the petition date, the Debtors had millions of dollars of goods on order with their vendors. The Debtors are fearful that certain of the vendors will be unwilling to ship, on the basis that the goods were ordered pre-petition, although shipped post-petition, and therefore would not be deemed subject to administrative claim treatment.

33. Therefore, the Debtors have filed a motion confirming that the vendors will have administrative expense priority claims under Bankruptcy Code sections 503(b) and 507(a)(2) for those undisputed obligations arising from the Debtors' numerous prepetition purchase orders outstanding on the petition date relating to the shipments of goods received and accepted by the Debtors on or after the petition date and authorizing, but not directing, the Debtors to pay for such goods in the ordinary course of business. The motion also seeks, but does not direct the Debtors, under Bankruptcy Code section 546(h), to return goods purchased from vendors by the Debtors prior to the petition date, for credit against such vendors' prepetition claims.

34. The motion also seeks to establish procedures for reconciliation of claims made by vendors who make written reclamation demands for goods delivered prior to the petition date in accordance with Bankruptcy Code section 546(c) and seeks to prohibit vendors and other third parties from reclaiming or preventing delivery of goods or products to the Debtors and confirming that, pursuant to Bankruptcy Code sections 105 and 362, third parties are stayed and prohibited from interfering with the delivery of goods and products to the Debtors.

35. The Debtors believe that approval of this motion will maximize cooperation between the Debtors and their vendors relating to goods ordered on a prepetition basis.

I. Motion of Debtors for Order pursuant to 11 U.S.C. §§105 and 363 Authorizing (A) Continued Maintenance of Existing Bank Accounts, (B) Continued Use of Existing Business Forms, and (C) Continued Use of Existing Cash Management Systems.

36. The Debtors utilize an integrated cash management system to collect funds, consolidate them into centralized accounts and make disbursements for their various operations. In addition, the Debtors, under their relationship with General Electric Capital Corporation, utilize certain accounts which are swept by General Electric Capital Corporation and then re-advanced to the Debtors under their lending facility.

37. The Debtors have filed a motion seeking to keep in place their existing cash management systems, bank accounts and forms. The systems, account types and forms employed by the Debtors are similar to those utilized by other corporate entities of similar size and operation. Such systems, account types and forms, in addition to facilitating the Debtors' cash management relationship with their lender, aid the Debtors with their internal cash forecasting, payables payment and liquidity functions.

38. The Debtors believe that if they are required to adopt different cash management systems as a result of the Chapter 11 filings, the Debtors will have a significant interruption in their cash flow, will have significant delays in obtaining funding from their lender and will lose certain of the liquidity and cash forecasting that they now enjoy. Therefore, the Debtors are requesting that the motion be granted, allowing them to maintain their cash management systems.

J. Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a), 363(b), and 503(b) Requesting Authority to Honor Certain Undisputed Prepetition Obligations of Certain Essential Vendors, Suppliers, and Service Providers.

39. Prior to the petition date, at least two of the Debtors' major vendors refused to supply goods on open credit to the Debtors, causing, in part, the need for the Chapter 11 filings. Those vendors refused to ship, without adequate assurance of payment.

40. The Debtors, in order to successfully reorganize, are in need of the continued support of their vendors. Many of the Debtors' vendors have agreed to reopen credit lines with the Debtors, provided that the pre-petition payables of such vendors are paid by the Debtors.

41. As a result, the Debtors have filed a motion, seeking the authority to designate, in the Debtors' discretion, certain vendors as critical vendors, subject to very strict post-petition obligations to be imposed on such vendors, including their willingness to ship on open credit terms and to forfeit monies received on their past-due shipments if they were to violate the provisions set forth in the motion.

42. The Debtors believe the obtaining the authority to designate certain vendors as critical vendors is an essential component of their business plan. Therefore, the Debtors are requesting that the Court approve the terms set forth in the motion to establish critical vendor status and criteria for certain of the Debtors critical vendors.

K. Motion of the Debtors for Interim and Final Waivers of Investment and Deposit Requirements Pursuant to Bankruptcy Code Sections 105 and 345

43. Section 345 of the Bankruptcy Code requires that the Debtor not maintain with a financial institution cash in an amount above certain specified limits that is not otherwise backed by the full faith and credit of the federal government. Based on the volume of the Debtors' business (approximately \$400,000,000 per year) it would be a substantial burden on the Debtors to either separate their cash among sufficient bank accounts to meet the requirements of Section

345 or the Debtors would be required to provide bonds or other securities to support the cash on deposit.

44. The Debtors maintain throughout the country forty two (42) bank accounts out of which they manage cash receipts and disbursements. The Debtors believe that all of the bank accounts are in financially stable banking institutions with FDIC insurance (up to an applicable limit per Debtor per financial institution). The vast majority of the Debtors' bank accounts are "zero balance accounts." The Debtors believe that their use of the bank accounts, including those accounts that are not "zero balance accounts" substantially conforms with the approved investment and deposit practices identified in Bankruptcy Code section 345, and that all money deposits are safe and prudent and yield, under the circumstances, the maximum reasonable net return on such money.

45. Nonetheless, out of an abundance of caution, to the extent that such deposits do not conform to the approved practices identified in Bankruptcy Code section 345, the Debtors seek to have such requirements waived so as to allow the applicable banking institutions to accept and hold the Debtors' funds consistent with prepetition practices. Separating the Debtors' funds into numerous bank accounts would also be unmanageable. Therefore, the Debtors are requesting, in the motion, that the Debtors be excused from the requirements of Section 345.

L. Application for Order Authorizing Employment of Jaffe, Raitt, Heuer & Weiss, PC, as counsel for Debtors Nunc Pro Tunc to Petition Date and Application and Application for Order Authorizing Employment of Campbell & Levine, LLC, as counsel for Debtors Nunc Pro Tunc to Petition Date

46. The Debtors have filed motions, seeking to employ counsel to represent them in these Chapter 11 cases and to provide financial advisory services to the Debtors. The firms set forth in the motions are Jaffe, Raitt, Heuer & Weiss, P.C. and Campbell & Levine, LLC.

47. The Debtors believe that these professionals are needed to assist the Debtors in their Chapter 11 cases. All of the professionals are fully capable of providing excellent service to the Debtors, as substantiated more fully in their employment applications and supporting documentation submitted therewith.

48. Without the services of these professionals, the Debtors would not be able to carry out their duties as Chapter 11 Debtors, effectuate their reorganization or otherwise maximize the return to their creditors. Therefore, the Debtors are seeking approval of the employment applications.

M. Motion of Debtors for Order Under Bankruptcy Code Sections 105(a) and 331 Establishing Interim Compensation Procedures

49. The Debtors' professionals have requested that their fees and expenses be paid on a monthly basis, subject to the submission of applications for fees, as required under the applicable terms of the Bankruptcy Code and Rules. Per the motion, eighty percent (80%) of the fees of the Debtors' professionals would be paid on a monthly basis, subject to disgorgement or final approval, after the hearing on the applications for fees. The remaining twenty percent (20%) would be paid after approval of their fees by the Bankruptcy Court.

50. The Debtors support the interim pay motion, to permit their professionals to be paid on a current basis during the bankruptcy cases. This will ensure their continued service and will place them on equal parity with other administrative creditors of the estate.

N. Motion Of Debtors Pursuant To 11 U.S.C. §§ 105(A), 327, And 330 For Authorization To Employ Professionals Utilized In The Ordinary Course Of Business *Nunc Pro Tunc* To The Petition Date

51. The Debtors have filed a motion, permitting the Debtors to continue to retain various professionals in the ordinary course of business. As the Debtors operate in over twelve states, the Debtors, pre-petition, have engaged counsel and other professionals (CPA's) to provide legal

and accounting services in the ordinary course of business. Such services have included defense or prosecution of lawsuits, litigation support, intellectual property prosecution, corporate requirements, tax, real estate, and employment law issues, preparation of accounting statements and tax returns and other required legal matters.

52. Per the terms of the motion, such ordinary course professionals would be excused from the obligation to file applications for fees with the Bankruptcy Court, provided their fees were below certain thresholds. Approval of the motion would reduce the administrative expenses of the Debtors and would facilitate the continued services of these necessary professionals with respect to the Debtors' business operations.

O. Motion of the Debtors Pursuant to 11 U.S.C. §§ 105(a), 342(a) and 521, Fed.R.Bankr.P.1007-2, for Authority to (A) File a Consolidated Creditor Matrix; and (B) File a Consolidated List of the Debtors' Thirty (30) Largest Unsecured Creditors.

53. Finally, the Debtors have filed a motion to file one, consolidated, list of their 30 largest, combined unsecured creditors, in lieu of two lists of each of their 20 largest unsecured creditors and to file a consolidated creditor matrix. Because many creditors are shared amongst certain of the Debtors and the Debtors operate as a single business enterprise, the Debtors have requested authority to file a single, consolidated list of their thirty (30) largest general unsecured creditors.

54. Compiling separate top 20 creditor lists for each individual Debtor would consume an excessive amount of the Debtors' scarce time and resources. Moreover, as the Debtors will request the Office of the United States Trustee for the District of Delaware to appoint a single official committee of unsecured creditors, a consolidated list of the largest creditors is a more appropriate list of the Debtors' most significant unsecured creditors.

55. As such, the Debtors believe relief to file a single consolidated list of the thirty (30) largest unsecured creditors in these chapter 11 cases is appropriate.

56. In the motion, the Debtors are also seeking approval to prepare a consolidated creditor matrix, as the Debtors will be utilizing a noticing agent in these proceedings.

57. The Debtors therefore believe that the administration of the Debtors cases will be enhanced by the submission of a single 30 largest unsecured creditor list and a consolidated list of creditors.

P. Motion of the Debtors for Entry of Interim and Final Orders Authorizing, but not Directing the Debtors to Continue Prepetition Insurance Coverage

58. The Debtors have filed a motion seeking authority, but not directing, the Debtors to continue prepetition insurance policies covering errors and omissions, crime, fiduciary liability, commercial automobile, business travel, workers compensation, property, general liability and commercial umbrella liability and authorizing financial institutions to receive, process, honor and pay all related checks and electronic payment requests for payment of the insurance policies.

59. Additionally, the Debtors are seeking interim authority to pay an aggregate amount of approximately \$207,779 in connection with the insurance policies that will become due and owing during the first 21 days of these chapter 11 cases. The Debtors are requesting authority to continue their prepetition insurance policies thereafter as well.


60. The coverage sought to be continued is the same coverage the Debtors obtained prepetition. Based on the timing of the filing of the Debtors' cases, the \$207,779 in premium payments due may relate, in part to the prepetition period. Therefore, the Debtors are seeking and requesting permission to pay such premiums.

61. Continuation of the coverage is in the best interest of the estate, as it provides protection to members of the public who may visit the Debtors' premises, it protects the value of the Debtors' assets, it enables the Debtors to meet covenant requirements of GECC and allows the Debtors to operate their businesses in a prudent manner. Therefore, the Debtors are requesting that the insurance motion be approved.

CONCLUSION

For the reasons described herein and in the first day motions, I believe that the prospects for reorganization of the Debtors will be enhanced significantly if the foregoing described motions are granted by the Court, for the reasons set forth herein and in the motions themselves.

Dated: January 26, 2011



F. BRUCE GIESBRECHT
CEO and Secretary of UAP and
President of CC Retail