

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS LLC,  
HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II  
HOLDINGS, LLC, HOLLANDER HOME FASHIONS HOLDINGS, LLC,  
PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS  
KENTUCKY, LLC, AND PACIFIC COAST FEATHER CUSHION, LLC

APPLICATION OF HOLLANDER SLEEP PRODUCTS LLC UNDER  
SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

APPLICANT

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**MOTION RECORD**

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July 3, 2019

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SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

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**INDEX**

<b>Tab</b>	<b>Document</b>	<b>Page No.</b>
1	Notice of Motion	1
A	Draft Recognition Order (without Schedules)	10
2	Affidavit of Marc Pfefferle, sworn July 3, 2019	35
A	Affidavit of Marc Pfefferle, sworn May 23, 2019 (without Exhibits)	63
B	Initial Recognition Order dated May 23, 2019	102
C	Endorsement of the Honourable Justice Hainey, dated May 30, 2019	108
D	Supplemental Order, dated May 23, 2019 (without Schedules)	122
3	Affidavit of Evan Barz, sworn July 3, 2019	137
A	Motion filed in support of the Bar Date Order, filed May 30, 2019	144
B	Bar Date Order, entered June 21, 2019	197

<b>Tab</b>	<b>Document</b>	<b>Page No.</b>
C	Motion filed in support of the Insurance Order, filed May 19, 2019	225
D	Insurance Order, entered July 2, 2019	250
E	Motion filed in support of the Surety Bond Order, filed May 19, 2019	255
F	Surety Bond Order, entered July 2, 2019	274
G	Motion filed in support of the Bid Procedures Order, filed May 19, 2019	279
H	Bid Procedures Order, entered July 3, 2019	324
I	Final Critical Vendors Order, entered July 2, 2019	351
J	Final Wages Order, entered July 2, 2019	358
K	Motion filed in support of the Carl Marks Order, filed May 30, 2019	364
L	Carl Marks Order, entered July 3, 2019	418
M	Final Cash Management Order, entered July 2, 2019	425
N	Final Customer Programs Order, entered July 2, 2019	440
O	Final DIP ABL Order, entered July 3, 2019	445
P	Motion filed in support of the Final Tax Order, filed May 19, 2019	532
Q	Final Tax Order, entered July 2, 2019	560
R	Motion filed in support of the Utilities Order, filed May 19, 2019	565
S	Utilities Order, entered July 3, 2019	602
T	Motion filed in support of the Professionals Order, filed May 30, 2019	610
U	Professionals Order, entered July 2, 2019	641
V	Motion filed in support of the OMNI Order, filed May 19, 2019	656
W	OMNI Order, entered July 2, 2019	688
X	Motion filed in support of the Case Management Order, filed May 19, 2019	693
Y	Case Management Order, entered July 3, 2019	726

Tab	Document	Page No.
Z	Second Interim DIP Term Order, entered July 3, 2019	747



TAB 1

Court File No. CV-19-620484-00CL

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APPLICATION OF HOLLANDER SLEEP PRODUCTS LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

APPLICANT

**NOTICE OF MOTION  
(Motion for Recognition of Certain Second Day Orders)  
(Returnable July 5, 2019)**

Hollander Sleep Products, LLC (the “**Foreign Representative**”), in its capacity as a foreign representative of itself as well as Dream II Holdings, LLC, Hollander Sleep Products Canada Limited (“**Hollander Canada**”), Hollander Home Fashions Holdings, LLC, Pacific Coast Feather, LLC, Hollander Sleep Products Kentucky, LLC and Pacific Coast Feather Cushion, LLC (collectively, the “**Chapter 11 Debtors**”), will make a motion to the Ontario Superior Court of Justice (Commercial List) on July 5, 2019 at 10:00 AM, or as soon thereafter as the motion can be heard at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order substantially in the form attached hereto as Schedule “A”:
  - (a) recognizing and enforcing the terms of certain Second Day Orders (as defined below) pursuant to section 49 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c C-36, as amended (the “**CCAA**”);
  - (b) amending the Supplemental Order (defined below) to reflect the Final DIP ABL Order (defined below); and
  - (c) such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:***The Chapter 11 Proceedings and the Canadian Proceedings*

2. On May 19, 2019, each of the Chapter 11 Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code (the “**Chapter 11 Cases**”) with the United States Bankruptcy Court for the Southern District of New York (the “**U.S. Court**”).
3. Concurrent with or shortly after the filing of the Petitions, the Chapter 11 Debtors also filed several “first day” motions (the “**First Day Motions**”) with the U.S. Court and, on May 21, 2019 and June 3, 2019, the U.S. Court heard the First Day Motions, with certain “second day” motions (the “**Second Day Motions**”) to be heard at a later date.
4. On May 22 and 23, 2019, the U.S. Court entered interim and/or final orders (the “**First Day Orders**”) in respect of the First Day Motions.

5. On May 23, 2019, this Court granted an initial order (the “**Initial Recognition Order**”) which, among other things, recognized the Chapter 11 Cases as “foreign main proceedings”, recognized the appointment of the Foreign Representative, and granted related stays of proceedings in favour of the Chapter 11 Debtors, pursuant to Part IV of the CCAA.

6. Also on May 23, 2019, this Court granted a supplemental Order (the “**Supplemental Order**”) which, among other things, recognized the Foreign Representative Order and certain other First Day Orders made by the U.S. Court in the “foreign main proceedings”, appointed KSV Kofman Inc. as Information Officer, granted a charge in favour of the DIP ABL Agent and the DIP ABL Lenders in respect of the DIP ABL Facility, and an administration charge in the amount of \$200,000 in favour of the Information Officer and its counsel.

7. On June 21, 2019, the U.S. Court entered a further Order (a) setting bar dates for submitting proofs of claim, (b) approving procedures for submitting proofs of claim, (c) approving notice thereof, and (d) granting related relief (the “**Bar Date Order**”), which is discussed in further detail below. The Foreign Representative is seeking to have the Bar Date Order recognized through this Motion.

8. On July 1, 2019, the U.S. Court heard certain Second Day Motions that were filed by the Chapter 11 Debtors.

9. On July 2 & 3, 2019, the U.S. court entered the following additional orders (together, such orders and the Bar Date Order, the “**Second Day Orders**”) in respect of fifteen (15) Second Day Motions, which the Foreign Representative is seeking to have recognized through this Motion:

- (a) Order (I) Authorizing the Debtors to (A) Continue Insurance Coverage Entered into Prepetition and Satisfy Prepetition Obligations Related Thereto (B) Renew,

Supplement, Modify, or Purchase Insurance Coverage, and (C) Continue to Pay Brokerage Fees, and (II) Granting Related Relief;

- (b) Order (I) Authorizing the Debtors to Continue and Renew the Surety Bond Program, and (II) Granting Related Relief;
- (c) Order (I) Approving the Bidding Procedures, (II) Scheduling the Bid Deadlines and the Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling Hearings and Objection Deadlines with Respect to the Sale, and (V) Granting Related Relief (the “**Bid Procedures Order**”). The Bid Procedures Order is discussed in further detail below;
- (d) Final Order (I) Authorizing the Debtors to Pay Prepetition Claims of (A) Lien Claimants, (b) Import Claimant, (C) 503(B)(9) Claimants, (D) Foreign Vendors, and (E) Critical Vendors, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief;
- (e) Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief;
- (f) Order Authorizing the Debtors to (A) Retain Carl Marks Advisory Group LLC to Provide the Debtors a Chief Executive Officer, a Chief Financial Officer, and Additional Personnel and (B) Appoint the Chief Executive Officer and Chief Financial Officer *Nunc Pro Tunc* to the Petition Date;
- (g) Final Order (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto,

- (C) Maintain Existing Business Forms, and (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief;
- (h) Final Order (A) Authorizing the Debtors to Maintain and Administer their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (B) Granting Related Relief;
- (i) Final Order With Respect to Prepetition ABL Secured Parties and DIP ABL Secured Parties (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition ABL Secured Parties, (E) Modifying the Automatic Stay, and (F) Granting Related Relief (the “**Final DIP ABL Order**”). The Final DIP ABL Order is discussed in further detail below;
- (j) Final Order (A) Authorizing the Payment of Certain Prepetition Taxes and Fees and (B) Granting Related Relief;
- (k) Order (A) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (B) Determining Adequate Assurance of Payment for Future Utility Services, (C) Establishing Procedures for Determining Adequate Assurance of Payment, and (D) Granting Related Relief;
- (l) Order (A) Authorizing the Retention and Compensation of Professionals Utilized in the Ordinary Course of Business and (B) Granting Related Relief;

- (m) Order Authorizing and Approving the Employment and Retention of OMNI Management Group as Administrative Advisor for the Debtors and Debtors in Possession *Nunc Pro Tunc* to the Petition Date;
- (n) Order (A) Establishing Certain Notice, Case Management, and Administrative Procedures and (B) Granting Related Relief;
- (o) Second Interim Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Term Loan Lenders, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief.

10. Recognition of the Second Day Orders by this Court is necessary for the protection of the Chapter 11 Debtors' property and the interests of their creditors.

*Recognition of the Bar Date Order is Appropriate*

11. As noted above, the U.S. Court granted the Bar Date Order on June 21, 2019, which, among other things, sets bar dates for submitting proofs of claim and approves procedures for submitting proofs of claim.

12. Recognition of the Bar Date Order by this Court is necessary for the protection of the Chapter 11 Debtors property and is in the interest of their creditors

*Recognition of the Bid Procedures Order is Appropriate*

13. A sales toggle is featured in the RSA and the Plan (as both terms are defined in the affidavit of Marc Pfefferle, sworn May 23, 2019 (the "**Initial Affidavit**") to ensure the Chapter 11 Debtors

obtain the highest or otherwise best offer, or combination of offers, for the Chapter 11 Debtors' assets. In this regard, the RSA and the Plan authorize the Chapter 11 Debtors to emerge from the Chapter 11 Proceedings through either a debt-for-equity transaction with certain of the Term Loan Lenders or through a sale, or combination of sales, for some or all of the Chapter 11 Debtors' assets (the "**Assets**").

14. The Chapter 11 Debtors have developed a bidding process to encourage all interested parties to expeditiously put their best bids forward and to maximize value through a competitive auction process (the "**Auction**") of the Assets (the "**Bidding Procedures**").

15. The Bid Procedures Order, among other things, authorizes and approves the Bidding Procedures, approves the manner of notice of the Auction, establishes certain dates and deadlines in connection therewith, and grants related relief.

16. The Bidding Procedures are fair and reasonable under the circumstances and are designed to maximize the recovery on, and realizable value of, the Assets. Recognition of the Bid Procedures Order is in the best interests of the Chapter 11 Debtors and their stakeholders as it will allow the Chapter 11 Debtors to move expeditiously through the Chapter 11 Proceedings to an efficient and value-maximizing conclusion.

*Recognition of the Final ABL DIP Order is Appropriate*

17. To fund the administration of the Chapter 11 Proceedings, the Chapter 11 Debtors negotiated (i) a \$90 million debtor-in-possession ("**DIP**") asset-based loan facility (the "**DIP ABL Facility**") with Wells Fargo Bank, National Association as agent and the lenders who from time to time are a party thereto; and (ii) an additional \$28 million term loan facility (the "**DIP Term Loan Facility**") with Barings Finance LLC, as administrative agent, and the financial institutions



who from time to time are a party thereto. An Interim DIP Order was granted by the U.S. Court on May 23, 2019 and was recognized by this Court on May 23, 2019.

18. The Final DIP ABL Order was entered by the U.S. Court on July 3, 2019.

19. No substantive changes were made to the quasi-marshalling construct and superpriority intercompany loans charge contained in the Interim DIP Order and these provisions remain substantially unchanged in the Final DIP ABL Order.

20. Recognition of the Final DIP ABL Order will permit continued operations and consistency in the Chapter 11 Proceedings and is necessary for the protection of the Chapter 11 Debtors' property and the interests of their creditors.

21. The Interim DIP Order has been extended with respect to the DIP Term Loan Facility by way of a Second Interim DIP Term Order which was issued by the U.S. Court on July 3, 2019. It is anticipated that final approval of the DIP Term Loan Facility will be sought from the U.S. Court on or before July 19, 2019.

### **General**

22. The CCAA, including Part IV and section 49 thereof; and

23. Such further and other grounds as counsel may advise and this Honourable Court may permit.

1. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

(a) the Affidavit of Marc Pfefferle sworn July 3, 2019;

- (b) the Affidavit of Evan Barz sworn July 3, 2019;
- (c) the Pre-filing report of the Information Officer;
- (d) the First Report of the Information Officer, to be filed; and
- (e) Such further and other evidence as counsel may advise and this Honourable Court may permit.

July 3, 2019

**OSLER, HOSKIN & HARCOURT LLP**

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Lawyers for the Applicant

**SCHEDULE “A”**  
**(Draft Recognition Order)**

Court File No. CV-19-620484-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE	)	FRIDAY, THE 5 <sup>TH</sup>
	)	
JUSTICE	)	DAY OF JULY, 2019

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS, LLC, HOLLANDER  
SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC, HOLLANDER  
HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC,  
HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC AND PACIFIC COAST  
FEATHER CUSHION, LLC**

**APPLICATION OF HOLLANDER SLEEP PRODUCTS, LLC UNDER SECTION 46 OF  
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

**RECOGNITION ORDER**

**THIS MOTION**, made by Hollander Sleep Products, LLC ("**HSP**") in its capacity as the foreign representative (the "**Foreign Representative**") of HSP, Hollander Sleep Products Canada Limited ("**Hollander Canada**"), Dream II Holdings, LLC, Hollander Home Fashions Holdings, LLC, Pacific Coast Feather, LLC, Hollander Sleep Products Kentucky, LLC and Pacific Coast Feather Cushion, LLC (collectively, the "**Chapter 11 Debtors**" and each, a "**Chapter 11 Debtor**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order, among other things, recognizing certain orders granted by the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Bankruptcy Court**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion, the affidavit of Marc Pfefferle sworn July 3, 2019 (the "**Second Pfefferle Affidavit**"), the report of KSV Kofman Inc., in its capacity as Information Officer, dated July ●, 2019 (the "**First Report**"), each filed.

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for the Information Officer, and those other parties present, no one else appearing although duly served as appears from the affidavit of service of ● sworn July ●, 2019:

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined have the meaning given to them in the Second Pfefferle Affidavit.

## **RECOGNITION OF FOREIGN ORDERS**

3. **THIS COURT ORDERS** that the following orders (collectively, the “**Foreign Orders**”) of the U.S. Bankruptcy Court made in the cases commenced by the Chapter 11 Debtors pursuant to Chapter 11 of the United States Bankruptcy Code are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

- (a) *Order (I) Authorizing the Debtors to (A) Continue Insurance Coverage Entered into Prepetition and Satisfy Prepetition Obligations Related Thereto and (B) Renew, Supplement, Modify, or Purchase Insurance Coverage, (C) Continue to Pay Brokerage Fees, and (II) Granting Related Relief* (the “**Insurance Order**”);
- (b) *Order (I) Authorizing the Debtors to Continue and Renew the Surety Bond Program, and (II) Granting Related Relief* (the “**Surety Bond Order**”);
- (c) *Order (I) Approving the Bidding Procedures, (II) Scheduling the Bid Deadlines and the Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling Hearings and Objection Deadlines with Respect to the Sale, and (V) Granting Related Relief* (the “**Bid Procedures Order**”);
- (d) *Final Order (I) Authorizing the Debtors to Pay Prepetition Claims of (A) Lien Claimants, (b) Import Claims, (C) 503(B)(9) Claimants, (D) Foreign Vendors, and*

- (E) *Critical Vendors, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief* (the “**Final Critical Vendors Order**”);
- (e) *Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief* (the “**Final Wages Order**”);
- (f) *Order Authorizing the Debtors to (A) Retain Carl Marks Advisory Group LLC to Provide the Debtors a Chief Executive Officer, a Chief Financial Officer, and Additional Personnel and (B) Appoint the Chief Executive Officer and Chief Financial Officer Nunc Pro Tunc to the Petition Date* (the “**Carl Marks Order**”);
- (g) *Final Order (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief* (the “**Final Cash Management Order**”);
- (h) *Final Order (A) Authorizing the Debtors to Maintain and Administer their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (B) Granting Related Relief* (the “**Final Customer Programs Order**”);
- (i) *Final Order With Respect to Prepetition ABL Secured Parties and DIP ABL Secured Parties (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition ABL Secured Parties, (E) Modifying the Automatic Stay, and (F) Granting Related Relief* (the “**Final DIP ABL Order**”);
- (j) *Final Order (A) Authorizing the Payment of Certain Prepetition Taxes and Fees and (B) Granting Related Relief* (the “**Final Tax Order**”);

- (k) *Order (A) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (B) Determining Adequate Assurance of Payment for Future Utility Services, (C) Establishing Procedures for Determining Adequate Assurance of Payment, and (D) Granting Related Relief* (the “**Utilities Order**”);
- (l) *Order (A) Authorizing the Retention and Compensation of Professionals Utilized in the Ordinary Course of Business and (B) Granting Related Relief* (the “**Professionals Order**”);
- (m) *Order Authorizing and Approving the Employment and Retention of OMNI Management Group as Administrative Advisor for the Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date* (the “**OMNI Order**”);
- (n) *Order (A) Establishing Certain Notice, Case Management, and Administrative Procedures and (B) Granting Related Relief* (the “**Case Management Order**”);
- (o) *Second Interim Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Term Loan Lenders, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* (the “**Second Interim DIP Term Order**”); and
- (p) *Order (A) Setting Bar Dates for Submitting Proofs of Claim, (B) Approving Procedures for Submitting Proofs of Claim, (C) Approving Notice Thereof, and (D) Granting Related Relief* (the “**Bar Date Order**”).

(copies of each such Foreign Orders are attached hereto as Schedules “A” to “P”, respectively);

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to the Property (as defined in the Supplemental Order).

## **AMENDMENT TO SUPPLEMENTAL ORDER**

4. **THIS COURT ORDERS** that paragraph 20 of the Supplemental Order is hereby amended as follows:

20. **THIS COURT ORDERS** that the DIP ABL Agent, for and on behalf of itself and the DIP ABL Lenders, shall be entitled to the benefit of and is hereby granted a charge (the “**DIP ABL Charge**”) on the Property in Canada, which DIP ABL Charge shall be consistent with the liens and charges created by the Interim DIP Order and the Final ABL DIP Order (as defined in the Recognition Order made on July 5, 2019 in these proceedings) with respect to the Property in Canada, shall have the priority set out in paragraphs 21 through 26 hereof, and further provided that the DIP ABL Charge shall not be enforced except with leave of this Court on notice to the Information Officer and those parties on the service list established for these proceedings.

## **INFORMATION OFFICER’S REPORTS**

5. **THIS COURT ORDERS** that the pre-filing report of KSV Kofman Inc. (“**KSV**”), in its capacity as proposed Information Officer, dated May 23, 2019 (the “**Pre-Filing Report**”) and the First Report of the Information Officer and the actions, conduct, and activities of KSV as described in the Pre-Filing Report and the Information Officer as described in the First Report be and are hereby approved.

## **GENERAL**

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Chapter 11 Debtors, the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Foreign Representative and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Chapter 11



Debtors, the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that each of the Chapter 11 Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

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**SCHEDULE A – INSURANCE ORDER**

**SCHEDULE B – SURETY BOND ORDER**

**SCHEDULE C – BID PROCEDURES ORDER**

**SCHEDULE D – FINAL CRITICAL VENDORS ORDER**

**SCHEDULE E – FINAL WAGES ORDER**

**SCHEDULE F – CARL MARKS ORDER**

**SCHEDULE G – FINAL CASH MANAGEMENT ORDER**



**SCHEDULE H – FINAL CUSTOMER PROGRAMS ORDER**

**SCHEDULE I – FINAL DIP ABL ORDER**

**SCHEDULE J – FINAL TAX ORDER**

**SCHEDULE K – UTILITIES ORDER**

**SCHEDULE L – PROFESSIONALS ORDER**

**SCHEDULE M – OMNI ORDER**

**SCHEDULE N – CASE MANAGEMENT ORDER**

**SCHEDULE O – SECOND INTERIM DIP TERM ORDER**



**SCHEDULE P – BAR DATE ORDER**

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS, LLC, HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC,  
HOLLANDER HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC AND PACIFIC  
COAST FEATHER CUSHION, LLC

APPLICATION OF HOLLANDER SLEEP PRODUCTS, LLC UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-  
36, AS AMENDED

Applicant

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

**RECOGNITION ORDER**

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AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS LLC, HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC, HOLLANDER HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC, AND PACIFIC COAST FEATHER CUSHION, LLC

APPLICATION OF HOLLANDER SLEEP PRODUCTS LLC UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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Lawyers for the Applicant

Matter No: 1200852

TAB 2

Court File No. CV-19-620484-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS LLC, HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC, HOLLANDER HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC, AND PACIFIC COAST FEATHER CUSHION, LLC

APPLICATION OF HOLLANDER SLEEP PRODUCTS LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

APPLICANT

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**AFFIDAVIT OF MARC PFEFFERLE**

**(Sworn July 3, 2019)**

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I, Marc Pfefferle, of the Town of Westport, Connecticut, United States of America, **MAKE OATH AND SAY:**

1. I am the Chief Executive Officer (“**CEO**”) of Hollander Sleep Products, LLC (“**Hollander Sleep Products**” or the “**Foreign Representative**”) and the six (6)<sup>1</sup> other debtors in possession that recently filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy

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<sup>1</sup> In addition to Hollander Sleep Products, the other six (6) Chapter 11 Debtors are: Dream II Holdings, LLC; Hollander Home Fashions Holdings, LLC; Pacific Coast Feather, LLC; Hollander Sleep Products Kentucky, LLC; Pacific Coast Feather Cushion, LLC; and Hollander Sleep Products Canada Limited.

Code (the “**Chapter 11 Debtors**”). I am also a Partner at Carl Marks Advisors (“**Carl Marks**”), an investment bank that provides financial and operational services, where I have worked since 1992. I have served as CEO of Hollander Sleep Products since March 28, 2019 when I was retained by the Chapter 11 Debtors and their non-debtor affiliates. Before joining Carl Marks, I was a Partner with Marigold Associates, a strategic management consulting firm serving Fortune 100 companies, and before that I worked for Price Waterhouse LLP. I have over thirty years of experience providing restructuring and reorganization services for companies, creditors, and other stakeholders across a variety of industries, including consumer products, retail, manufacturing, and distribution related businesses.

2. As such, I have personal knowledge of the matters to which I depose in this Affidavit, save and except where I refer to matters based on information and belief, in which case I have stated the source of my information and, in all such cases, I believe that information to be true. In preparing this Affidavit, I consulted with the Chapter 11 Debtors’ management team and advisors (including the Carl Marks team working under my supervision) and reviewed relevant documents and information concerning the Chapter 11 Debtors’ operations, financial affairs and restructuring initiatives.

3. I swear this Affidavit in support of a motion by Hollander Sleep Products in its capacity as foreign representative of the Chapter 11 Debtors for:

- (a) an Order recognizing and enforcing certain Second Day Orders (defined below) entered by the United States Bankruptcy Court for the Southern District of New York (the “**U.S. Court**”), including the Final DIP ABL Order, the Claims Bar Date Order and the Bid Procedures Order (all as defined below); and

- (b) an Order amending the Supplemental Order (defined below) to reflect the Final DIP ABL Order.

4. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in my initial affidavit sworn May 23, 2019 in these proceedings (the “**Initial Affidavit**”), a copy of which is attached hereto without exhibits as Exhibit “A”. All dollar references in this Affidavit are in U.S. dollars unless otherwise specified.

#### **A. Background**

5. On May 19, 2019 (the “**Petition Date**”), each of the Chapter 11 Debtors filed voluntary petitions for relief (the “**Petitions**”) pursuant to Chapter 11 of the U.S. Bankruptcy Code with the U.S. Court (the “**Chapter 11 Proceedings**”).

6. Concurrent with or shortly after the filing of the Petitions, the Chapter 11 Debtors also filed several “first day” motions (the “**First Day Motions**”) with the U.S. Court and, on May 21, 2019 and June 3, 2019, the U.S. Court heard nine (9) and two (2) First Day Motions, respectively, with certain “second day” motions (the “**Second Day Motions**”) to be heard at a later date. On May 22 and 23, 2019, the U.S. Court entered the following nine (9) interim and/or final orders (the “**First Day Orders**”) in respect of the First Day Motions heard on May 21, 2019:

- (a) Joint Administration Order;
- (b) Foreign Representative Order;
- (c) Interim Employee Wages Order;
- (d) Interim Cash Management Order;
- (e) Interim DIP Order;

- (f) Interim Critical Vendors and Shippers Order;
- (g) Interim Customer Programs Order;
- (h) Schedules and Statements Extension Order; and
- (i) Claims Agent Order.

7. By Order dated May 23, 2019, the Honourable Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (the “**Ontario Court**”) recognized the Chapter 11 Proceedings as “foreign main proceedings” (the “**CCAA Recognition Proceedings**”), recognized the appointment of the Foreign Representative, and granted related stays of proceedings in favour of the Chapter 11 Debtors (the “**Initial Recognition Order**”). Attached as Exhibit “B” hereto is a copy of the Initial Recognition Order (without exhibits) and attached as Exhibit “C” hereto is a copy of Justice Hailey’s May 30, 2019 Endorsement.

8. Also by Order dated May 23, 2019, Justice Hailey recognized seven (7) out of the nine (9) First Day Orders that were entered by the U.S. Court on May 22 and 23, 2019 (the “**Supplemental Order**”).<sup>2</sup> The Supplemental Order also appointed KSV Kofman Inc. as Information Officer in respect of the CCAA Recognition Proceedings, granted a charge in favour of the DIP ABL Agent and the DIP ABL Lenders in respect of the DIP ABL Facility, and an administration charge in the amount of \$200,000 in favour of the Information Officer and its counsel. Attached as Exhibit “D” hereto is a copy of the Supplemental Order (without exhibits).

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<sup>2</sup> The Supplemental Order recognized the following seven (7) First Day Orders: (a) Joint Administration Order; (ii) Foreign Representative Order; (iii) Interim Employee Wages Order; (iv) Interim Cash Management Order; (v) Interim DIP Order; (vi) Interim Critical Vendors and Shippers Order; and (vii) Interim Customer Programs Order. The remaining two First Day Orders entered by the U.S. Court on May 22 and 23, 2019 did not need to be recognized by the Ontario Court.



**B. Update on the Chapter 11 Proceedings**

9. Since the Initial Affidavit was sworn, the Chapter 11 Debtors continue to advance their restructuring objectives and continue to operate in the ordinary course as contemplated in the Chapter 11 Proceedings. Among other things:

- (a) On May 30, 2019, the U.S. Trustee filed a Notice of Appointment of Official Committee of Unsecured Creditors, notifying parties in interest that the U.S. Trustee had appointed an Official Committee of Unsecured Creditors (the “UCC”). The UCC is currently composed of the following members: (a) Roind Hometex Co. Ltd (“**Roind**”), (b) Hangzhou Chuangyuan Feather Co Ltd. (“**HC Feather**”), (c) Hollander NC IA LLC; (d) Nap Industries, Inc. (“**NAP**”), and (e) Packaging Corporation of America. The UCC has retained Pachulski Stang Ziehl & Jones as its legal counsel and Alvarez & Marsal as its financial advisor. Roind, HC Feather and NAP are also unsecured creditors of Hollander Canada.
- (b) As described in my Initial Affidavit, prior to the Petition Date, the Chapter 11 Debtors and their advisors commenced a marketing process to market test the restructuring transaction contemplated by the Restructuring Support Agreement (“**RSA**”) and the Plan. Since the Petition Date, the Chapter 11 Debtors have continued to pursue the marketing process and have been keeping the Information Officer and advisors to their major stakeholders (including the UCC, the ABL Lenders, the Term Loan Lenders, and Sentinel) apprised of material developments in the process, including any indications of interest received. As described in more detail below, on May 19, 2019, the Chapter 11 Debtors filed a motion seeking approval of Bidding Procedures (as defined below) and a proposed confirmation

schedule (the “**Bid Procedures Motion**”). The Bid Procedures Motion was heard on July 1, 2019.

- (c) On June 3, 2019, the U.S. Court heard two additional First Day Motions which were not heard on May 21, 2019, and, on June 4, 2019, entered the following two Orders in connection therewith: (a) an order authorizing the Chapter 11 Debtors to prepare and file a consolidated list of creditors and mailing initial notices through their claims and noticing agent, among other related relief (the “**Creditor Matrix Order**”); and (b) an interim order authorizing the payment of certain prepetition taxes and fees to taxing authorities (the “**Interim Tax Order**”). As described below, on July 2, 2019, the Final Tax Order (as defined below) was entered by the U.S. Court as part of the hearing of the Second Day Motions. The Foreign Representative is only seeking recognition of the Final Tax Order.
- (d) On June 19, 2019, the Chapter 11 Debtors filed a Disclosure Statement (the “**Disclosure Statement**”) with the U.S. Court. The Disclosure Statement provides information regarding the affairs of the Chapter 11 Debtors to enable holders of claims against or interests in the Chapter 11 Debtors to make an informed judgment about the proposed Plan. A motion seeking approval of the Disclosure Statement pursuant to section 1125 of the Bankruptcy Code is currently scheduled to be heard by the U.S. Court on July 24, 2019.
- (e) On June 21, 2019, the U.S. Court entered a further Order (a) setting bar dates for submitting proofs of claim, (b) approving procedures for submitting proofs of claim, (c) approving notice thereof, and (d) granting related relief (the “**Bar Date**”).

**Order**”). The Bar Date Order is described in greater detail below. The Foreign Representative is seeking to recognize the Bar Date Order through this Motion.

- (f) Other than as described in further detail below, the U.S. Court has granted certain other relief which is not germane to these proceedings.

**C. The Second Day Motions**

10. On July 1, 2019, the U.S. Court heard certain Second Day Motions that had been filed by the Chapter 11 Debtors and, on July 2 and 3, 2019, the U.S. Court entered orders in respect of these Second Day Motions, including the following orders which the Foreign Representative is seeking to have recognized by the Ontario Court (together, such orders and the Bar Date Order, the “**Second Day Orders**”):

- (a) *Order (I) Authorizing the Debtors to (A) Continue Insurance Coverage Entered into Prepetition and Satisfy Prepetition Obligations Related Thereto (B) Renew, Supplement, Modify, or Purchase Insurance Coverage, and (C) Continue to Pay Brokerage Fees, and (II) Granting Related Relief* (the “**Insurance Order**”): The Insurance Order authorizes the Chapter 11 Debtors to continue insurance coverage that had been entered into prepetition, including a number of insurance policies which cover Hollander Canada, and to satisfy prepetition obligations related thereto in the ordinary course of business. The Insurance Order further authorizes the Chapter 11 Debtors to renew, amend, supplement, extend, or purchase insurance coverage, if necessary.
- (b) *Order (I) Authorizing the Debtors to Continue and Renew their Surety Bond Program, and (II) Granting Related Relief* (the “**Surety Bond Order**”): In the

ordinary course of business, certain third parties require the Chapter 11 Debtors to post surety bonds to secure their payment or performance of obligations, including customs and tax obligations. The Surety Bond Order authorizes the Chapter 11 Debtors to maintain their existing surety bond program consistent with historical practices, including paying premiums and brokerage fees (including any such obligations that arose prior to the Petition Date), maintain existing collateral, post new or additional collateral or issue letters of credit, renew or enter into new surety bonds, and execute other agreements in connection with the Chapter 11 Debtors' existing surety bond program.

- (c) *Order (I) Approving the Bidding Procedures, (II) Scheduling the Bid Deadlines and the Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling Hearings and Objection Deadlines with Respect to the Sale, and (V) Granting Related Relief* (the “**Bid Procedures Order**”): The Bid Procedures Order is described in greater detail below.
- (d) *Final Order (I) Authorizing the Debtors to Pay Prepetition Claims of (A) Lien Claimants, (b) Import Claimant, (C) 503(B)(9) Claimants, (D) Foreign Vendors, and (E) Critical Vendors, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief* (the “**Final Critical Vendors Order**”): The Final Critical Vendors Order authorizes the Chapter 11 Debtors to pay certain prepetition amounts owed to, among others, (i) lien claimants; (ii) import claimant; (iii) 503(b)(9) claimants; (iv) foreign vendors; and (v) critical vendors, in an amount not to exceed \$6 million on a final basis, to help preserve the Chapter 11 Debtors' relationships with their key vendors and their

ability to serve their customers going forward. There are no material amendments to the Final Critical Vendors Order from the Interim Critical Vendors Order.

- (e) *Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief* (the “**Final Wages Order**”): The Final Wages Order authorizes the continuation of the Chapter 11 Debtors’ prepetition employee obligations in the ordinary course of business, and permits them to pay and honour certain prepetition claims relating to, among other things, wages, salaries and other compensation. With respect to Hollander Canada, the Chapter 11 Debtors are authorized, among other things, to (i) pay all outstanding prepetition amounts on account of unpaid wage and salary obligations for the employees of Hollander Canada, and to continue paying such wage and salary obligations in the ordinary course of business, (ii) pay all outstanding prepetition amounts incurred by Hollander Canada employees on account of reimbursable expenses, and (iii) continue employee benefits programs in the ordinary course, including payment of certain prepetition obligations related thereto. There are no material amendments to the Final Wages Order from the Interim Wages Order.
- (f) *Order Authorizing the Debtors to (A) Retain Carl Marks Advisory Group LLC to Provide the Debtors a Chief Executive Officer, a Chief Financial Officer, and Additional Personnel and (B) Appoint the Chief Executive Officer and Chief Financial Officer Nunc Pro Tunc to the Petition Date* (the “**Carl Marks Order**”): The Carl Marks Order authorizes, among other things, the Chapter 11 Debtors to

employ and retain myself as CEO of the Chapter 11 Debtors (including Hollander Canada), and Scott Pasquith as the Chief Financial Officer of the Chapter 11 Debtors (including Hollander Canada) along with such other personnel of Carl Marks as are necessary to assist myself and Mr. Pasquith in the performance of our duties.

- (g) *Final Order (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief* (the “**Final Cash Management Order**”): The Final Cash Management Order, among other things, authorizes the Chapter 11 Debtors to (i) continue using the Cash Management System and honour any prepetition obligations related to the use thereof, including any bank fees; (ii) designate, maintain, close, and continue to use on a final basis their existing bank accounts; (iii) deposit funds in, and withdraw funds from, the bank accounts by all usual means, including checks, wire transfers, ACH transfers, and other debits; (iv) treat their prepetition bank accounts for all purposes as debtor-in-possession accounts; and (v) open new debtor-in-possession bank accounts. With respect to the Chapter 11 Debtors bank accounts held at the Royal Bank of Canada, the Final Cash Management Order provides that the Chapter 11 Debtors shall not maintain funds in excess of \$100,000 in the aggregate with respect to all such bank accounts, and amounts in excess of \$100,000 at the end of the business day shall be deposited or transferred to any of the Chapter 11 Debtors’ bank accounts that are held at Wells Fargo. With respect to intercompany transactions, the Final Cash Management Order provides, *inter alia*, that the Chapter 11 Debtors shall provide the UCC and

the Information Officer with reports, on a weekly basis (no later than the second business day of the week following the previous week's end) of transfers of cash or other funds made that week from Hollander Canada to the Chapter 11 Debtors other than Hollander Canada.

- (h) *Final Order (A) Authorizing the Debtors to Maintain and Administer their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (B) Granting Related Relief* (the “**Final Customer Programs Order**”): The Final Customer Programs Order authorizes the Chapter 11 Debtors to continue to maintain and administer various customer programs that Hollander offers which are essential to maintain customer loyalty and goodwill. There are no material amendments to the Final Customer Programs Order from the Interim Customer Programs Order.
- (i) *Final Order With Respect to Prepetition ABL Secured Parties and DIP ABL Secured Parties (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition ABL Secured Parties, (E) Modifying the Automatic Stay, and (F) Granting Related Relief* (the “**Final DIP ABL Order**”): The Final DIP ABL Order is described below.
- (j) *Final Order (A) Authorizing the Payment of Certain Prepetition Taxes and Fees and (B) Granting Related Relief* (the “**Final Tax Order**”): The Final Tax Order, among other things, authorizes the Chapter 11 Debtors to (i) pay or remit taxes and fees in the ordinary course of business accrued prior to the Petition Date that will

become payable during the pendency of the Chapter 11 Cases, including taxes paid to taxing authorities in Canada, and (ii) pay taxes and fees that arise in the ordinary course on a postpetition basis.

- (k) *Order (A) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (B) Determining Adequate Assurance of Payment for Future Utility Services, (C) Establishing Procedures for Determining Adequate Assurance of Payment, and (D) Granting Related Relief* (the “**Utilities Order**”): Preserving utility services, including electricity, telecommunications, internet, water and waste management, is essential to the Chapter 11 Debtors’ operations. Should any utility provider refuse or discontinue service, even for a brief period, the Chapter 11 Debtors business operations (including Hollander Canada’s business operations) would be disrupted, and such disruption could jeopardize the Chapter 11 Debtors’ ability to continue to operate. Accordingly, the Utilities Order, among other things, (i) prohibits utility providers (including certain specified providers to Hollander Canada) from altering, refusing, or discontinuing services to the Chapter 11 Debtors; and (ii) establishes procedures for determining adequate assurances of payment for future utility services.
- (l) *Order (A) Authorizing the Retention and Compensation of Professionals Utilized in the Ordinary Course of Business and (B) Granting Related Relief* (the “**Professionals Order**”): The Professionals Order authorizes the Chapter 11 Debtors to retain and compensate certain named professionals utilized by the Chapter 11 Debtors in the ordinary course of business.



- (m) *Order Authorizing and Approving the Employment and Retention of OMNI Management Group as Administrative Advisor for the Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date* (the “**OMNI Order**”): The OMNI Order authorizes the Chapter 11 Debtors to retain OMNI Management Group (“**OMNI**”) as administrative advisor effective *nunc pro tunc* to the Petition Date and authorizes OMNI to perform certain bankruptcy administration services. OMNI is also the Chapter 11 Debtors’ noticing agent with respect to the proof of claim process contemplated by the Bar Date Order.
- (n) *Order (A) Establishing Certain Notice, Case Management, and Administrative Procedures and (B) Granting Related Relief* (the “**Case Management Order**”): The Case Management Order approves and implements certain notice, case management, and administrative procedures, which are attached as Exhibit 1 to the Case Management Order.
- (o) *Second Interim Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Term Loan Lenders, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* (the “**Second Interim DIP Term Order**”): The Second Interim DIP Term Order is described below.

11. I am aware that copies of the above-noted Second Day Orders will be attached to the Affidavit of Evan Barz (the “**Second Barz Affidavit**”), an associate lawyer with the law firm

Osler, Hoskin & Harcourt LLP, Canadian counsel to the Chapter 11 Debtors, and will be filed with the Ontario Court at or before the hearing of this motion.

**C. The Bar Date Order**

12. On May 30, 2019, the Chapter 11 Debtors filed a motion seeking the Bar Date Order (the “**Bar Date Motion**”). The Bar Date Motion sought to establish deadlines for filing proofs of claim (the “**Bar Dates**”) and certain related relief, including procedures for notice of Bar Dates (the “**Bar Date Notice**”). A copy of Bar Date Motion is attached to Second Barz Affidavit as Exhibit “A”.

13. As noted above, the U.S. Court granted the Bar Date Order on June 21, 2019, a copy of which is attached to the Second Barz Affidavit as Exhibit “B”.

14. Key elements of the Bar Date Order are as follows:

- (a) Claims of creditors of Hollander Canada are to be addressed on the same basis as those of the U.S. Chapter 11 Debtors;
- (b) The general Bar Date to file proofs of claim for prepetition claims is July 29, 2019 at 5:00 p.m., prevailing Eastern Time;
- (c) The Bar Date for governmental units, including Canadian governmental agencies, to file proofs of claim for prepetition claims is November 15, 2019, at 5:00 p.m. prevailing Eastern Time;
- (d) Those with claims arising from the rejection of an executory contract or unexpired lease must file proof of claim by the later of (a) the general Bar Date, and (ii) any date the U.S. Court may fix in the applicable order authorizing such rejection and, if no such date is provided, the date that is 35 days after the entry of the order;

- (e) If, subsequent to the mailing of the Bar Date Notice, the Chapter 11 Debtors amend or supplement the June 21, 2019 schedules and statements of financial affairs (the “**Schedules**”) any affected claimant that disputes such changes must file a proof of claim on or by the later of (i) the applicable general Bar Date or the Bar Date for governmental units, and (ii) 35 days after the date that notice of applicable amendment to the Schedules is served on the claimant;
- (f) If a holder of a claim is required to file a proof of claim under the Bar Date Order and fails to do so, such holder is forever barred, estopped and enjoined from asserting such claim against the Chapter 11 Debtors; and
- (g) The Bar Date Notice, substantially in the form attached as Exhibit 3 to the Bar Date Order, was published on June 27, 2019 in *The Globe and Mail* (national edition), *The New York Times* (national edition), and *USA TODAY* (national edition).

15. The Chapter 11 Debtors are requesting that the Ontario Court recognize the Bar Date Order and give it full effect in Canada pursuant to Section 49 of the CCAA. The Chapter 11 Debtors are of the view that recognition of the Bar Date Order by the Ontario Court is necessary for the protection of the Chapter 11 Debtors property and is in the interest of their creditors for the following reasons:

- (a) the Chapter 11 Cases apply to all creditors of the Chapter 11 Debtors, wherever they may be located, and accordingly one comprehensive claims process is streamlined, efficient and appropriate;
- (b) known Canadian creditors of the Chapter 11 Debtors have or will receive a claims package from the Chapter 11 Debtors’ noticing agent, OMNI;

- (c) the Bar Dates and procedures are consistent with typical claims process orders issued by the Ontario Court in the context of formal insolvency proceedings and, accordingly, are reasonable and appropriate in the circumstances. They provide claimants with notice and opportunity to prepare and file proofs of claim, as well as allowing the Chapter 11 Cases to move forward on a cost-efficient basis;
- (d) recognition of the Bar Date Order by the Ontario Court will ensure that the deadline for filing proofs of claim is enforceable against all creditors in Canada and/or creditors of Hollander Canada so that the Chapter 11 Debtors can have an accurate understanding of the claims against their estates; and
- (e) As above, notice of the Bar Date was provided to Canadian creditors of the Chapter 11 Debtors on June 27, 2019 in *The Globe and Mail* (national edition).

**D. Bidding Procedures**

16. As explained in the Initial Affidavit, the Chapter 11 Debtors included a sales toggle feature in the RSA and the Plan to ensure the Chapter 11 Debtors obtain the highest or otherwise best offer, or combination of offers, for the Chapter 11 Debtors' assets. In this regard, the RSA and the Plan authorize the Chapter 11 Debtors to emerge from the Chapter 11 Proceedings through either a debt-for-equity transaction with certain of the Term Loan Lenders or through a sale, or combination of sales, for some or all of the Chapter 11 Debtors' assets (the "**Assets**"). The process does not preclude a bidder from submitting a bid for the Canadian assets on a stand-alone basis. The goal of this dual-pronged approach is to test the market to evaluate whether there is a more

optimal third-party sale transaction or transactions than the proposed restructuring transaction with the Term Loan Lenders which is embodied in the RSA and the Plan.

17. To implement the market test sale transaction, the Chapter 11 Debtors have developed a bidding process designed to encourage all interested parties to expeditiously put their best bids forward and to maximize value of the Chapter 11 Debtors' estates through a competitive auction process of the Assets (the "**Bidding Procedures**"). As described in further detail below, to maximize the competitiveness of the bidding process, the Bidding Procedures provide the Chapter 11 Debtors with the authority to select one or more bidders to act as a stalking horse bidder (each, a "**Stalking Horse Bidder**") and, in connection with each Stalking Horse Bidder, provide customary bid protections (the "**Bid Protections**").

18. On May 19, 2019, the Chapter 11 Debtors filed the Bid Procedures Motion seeking approval of the Bid Procedures Order, a copy of which is attached to the Second Barz Affidavit as Exhibit "G".

19. On July 3, 2019 the U.S. Court entered the Bid Procedures Order, a copy of which is attached to the Second Barz Affidavit as Exhibit "H".

20. The Bid Procedures Order (i) authorizes and approves the Bidding Procedures (a copy of which is attached as Exhibit 1 to the Bid Procedures Order); (ii) approves the Bid Protections; (iii) establishes certain dates and deadlines in connection with the Bidding Procedures; (iv) approves the manner of notice of the Auction; (v) schedules dates and deadlines in connection with approval of the sale; and (vi) grants related relief.

21. Key elements of the Bidding Procedures are as follows:

- (a) The deadline by which any party interested in participating in the bidding process (each, a “**Potential Bidder**”) must deliver the Preliminary Bid Documents (as defined in the Bidding Procedures) is July 15, 2019, at 4:00 p.m., prevailing Eastern Time;
- (b) The Chapter 11 Debtors will determine, in their reasonable discretion and in consultation with the counsel to the DIP ABL Agent and the ABL Agent, counsel to DIP Term Loan Agent and the Term Loan Agent, counsel to the Sponsor, and counsel to any statutory committees appointed in the Chapter 11 Cases (the “**Consultation Parties**”), whether a Potential Bidder has submitted acceptable Preliminary Bid Documents such that the Potential Bidder may conduct due diligence with respect to the Assets (each, an “**Acceptable Bidder**”). Each of the following will also be deemed to be Acceptable Bidders: (i) the DIP ABL Agent (on behalf of the DIP ABL Lenders), (ii) the DIP Term Loan Agent (on behalf of the DIP Term Loan Lenders), (iii) the ABL Agent (on behalf of the ABL Lenders), and (iv) the Term Loan Agent (on behalf of the Term Loan Lenders) (collectively, the “**Agents**”);
- (c) The Chapter 11 Debtors will provide each Acceptable Bidder with reasonable due diligence information concerning those Assets that are the subject of each such Acceptable Bidder’s Bid (as defined in the Bidding Procedures), as requested by each Acceptable Bidder in writing;
- (d) The Chapter 11 Debtors are authorized, but not obligated, in the exercise of their business judgment and with the unanimous consent of the Consultation Parties, not to be unreasonably withheld, conditioned, or delayed, to: (a) select one or more

Acceptable Bidders to act as Stalking Horse Bidders in connection with the Auction; and (b) in connection with any stalking horse agreement with a Stalking Horse Bidder (i) provide a breakup fee (the “**Breakup Fee**”), (ii) agree to reimburse reasonable and documented out-of-pocket fees and expenses (the “**Expense Reimbursement**”), and/or (iii) agree to pay a “work fee” or other similar cash fee (the “**Work Fee**” and together with the Breakup Fee and the Expense Reimbursement, the “**Bid Protections**”), *provided* that the aggregate amount that may be paid to any or all Stalking Horse Bidders on account of the Bid Protections shall not exceed three percent (3%) of the proposed Purchase Price (as defined in the Bidding Procedures); *provided, further*, that in the event the Consultation Parties shall not unanimously agree as to the Chapter 11 Debtors’ proposed selection of a Stalking Horse Bidder and/or the provision of Bid Protections, the Chapter 11 Debtors may file an emergency motion with the U.S. Court seeking approval of such Stalking Horse Bidder and/or such Bid Protections, as applicable. I understand that the Information Officer will be filing a Report in connection with the present Motion which comments on the reasonableness of the three percent (3%) Bid Protection;

- (e) To be eligible to participate in the Auction, an Acceptable Bidder must deliver to the Chapter 11 Debtors a Qualified Bid (as defined in the Bidding Procedures). A Qualified Bid must meet certain Bid Requirements (as defined in the Bidding Procedures), including that it must be:
  - (i) in writing;

- (ii) received by no later than August 8, 2019 at 4:00 p.m., prevailing Eastern Time (the “**Bid Deadline**”);
  - (iii) a firm, unconditional bid (not subject to due diligence, shareholder/director/other approval, or financing contingencies);
  - (iv) accompanied by clean and duly executed transaction documents, including, at a minimum, a draft asset purchase agreement, the form of which will be provided to any Acceptable Bidder prior to the Bid Deadline; and
  - (v) accompanied by sufficient and adequate financial and other information to demonstrate, to the satisfaction of the Chapter 11 Debtors, in consultation with the Consultation Parties, that such Acceptable Bidder (a) has the financial wherewithal and ability to consummate the acquisition of the Assets and (b) can provide adequate assurance of future performance in connection with the proposed transaction.
- (f) Within two (2) business days after the Bid Deadline, the Chapter 11 Debtors and their advisors, in consultation with the Consultation Parties, will determine which Acceptable Bidders (if any) are deemed to be “Qualified Bidders”, so as to enable such Qualified Bidders to bid at the Auction;
- (g) If no Qualified Bids are received by the Bid Deadline, then the Auction will not occur, the Term Loan Lenders will be deemed the Winning Bidder (as defined below), and the Chapter 11 Debtors will pursue entry of an order by the U.S. Court confirming the Plan at the Sale Hearing (as defined below);



- (h) Prior to the Auction, the Chapter 11 Debtors and their advisors will evaluate Qualified Bids and identify the Qualified Bid that is, in the Chapter 11 Debtors reasonable business judgment, in consultation with the Consultation Parties, the highest or otherwise best bid (the “**Initial Minimum Overbid**”). The Chapter 11 Debtors may select more than one Qualified Bid to collectively serve as the Initial Minimum Overbid if each such Qualified Bid contemplates the purchase of different Assets;
- (i) If one or more Qualified Bids is received by the Bid Deadline, the Chapter 11 Debtors will conduct the Auction with respect to the Chapter 11 Debtors Assets. The Auction will commence on August 12, 2019 at 10:00 a.m., prevailing Eastern Time, at the offices of Kirkland & Ellis LLP, Lexington Avenue, New York, New York 10022, or such later time or other place as the Chapter 11 Debtors will notify the Stalking Horse Bidders and all other Qualified Bidders, in consultation with the Consultation Parties. The Auction will be conducted in accordance with, among others, the following procedures:
  - (i) The Auction will be conducted openly;
  - (ii) Only the Qualified Bidders, including any Stalking Horse Bidders and the Agents will be entitled to bid at the Auction;
  - (iii) Bidding at the Auction will begin at the Initial Minimum Overbid;
  - (iv) Subsequent bids at the Auction, including any Bids by any Stalking Horse Bidder, must be made in minimum increments of \$1 million (or such other amount as the Chapter 11 Debtors may determine in consultation with the

Consultation Parties) of additional value after payment of the Bid Protections to any Stalking Horse Bidders, if applicable; and

- (v) The Auction will not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an overbid at the Auction to the then prevailing highest Bid, subject to the Chapter 11 Debtors' right to require, and in consultation with the Consultation Parties, last and final Bids to be submitted on a "blind" basis;
  - (j) Upon the conclusion of the Auction (if such Auction is conducted), the Chapter 11 Debtors, in the exercise of their reasonable, good-faith business judgment, and in consultation with the Consultation Parties, will identify the highest or otherwise best Qualified Bid or Qualified Bids for the Assets (each, a **"Successful Bid"**) and the Qualified Bidder or Qualified Bidders will be deemed the **"Winning Bidder"** or **"Winning Bidders"**, as applicable; and
  - (k) On September 4, 2019, at 11:00 a.m., prevailing Eastern Time, a hearing before the U.S. Court will be held to consider approval of the Successful Bid or Successful Bids (the **"Sale Hearing"**).
22. In granting the Bid Procedures Order, the U.S. Court found, among other things, that
- (a) the Chapter 11 Debtors articulated good and sufficient reasons for authorizing and approving the Bid Procedures, which are fair, reasonable, and appropriate under the circumstances and are designed to maximize the recovery on, and realizable value of, the Assets, including with respect to the proposed procedures for providing Bid

Protections as determined by the Chapter 11 Debtors in the exercise of their business judgment; and

- (b) the best interests of the Chapter 11 Debtors' estates, their creditors, and other parties in interest would be served by granting the Bid Procedures Order.

23. The DIP ABL Credit Agreement requires that the Chapter 11 Debtors apply to the Ontario Court to obtain approval of the Bid Procedures Order within three (3) business days of the entering of the Bid Procedures Order by the U.S. Court. The Foreign Representative intends to return to the Ontario Court at a later date to recognize any Order confirming the Plan.

*ii. Recognition of the Bid Procedures Order is in the Best Interest of All Stakeholders*

24. The Chapter 11 Debtors require a path forward if they are going to successfully emerge from their restructuring proceedings. The Plan that has been proposed, including the Bidding Procedures described above, is in the best interests of the Chapter 11 Debtors particularly in light of the fact that if no Qualified Bids are received and the Auction does not occur, the Term Loan Lenders will be deemed the Winning Bidder, and the Chapter 11 Debtors will pursue entry of an Order by the U.S. Court confirming the Plan.<sup>3</sup> As such, in all circumstances a going concern outcome will likely result.

25. The Chapter 11 Debtors are hopeful that the Bid Procedures Order will assist to canvass the market to determine whether there is a transaction that will generate a greater recovery for the Chapter 11 Debtors' estates than the restructuring transaction with the Term Loan Lenders.

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<sup>3</sup> As above, the Foreign Representative intends to return to the Ontario Court at a later date to recognize any Order confirming the Plan.

Recognition of the Bid Procedures Order will allow the Chapter 11 Debtors to move expeditiously through the Chapter 11 Proceedings to an efficient and value-maximizing conclusion.

**E. Final DIP ABL Order**

26. As described above, on May 23, 2019, the U.S. Court entered the Interim DIP Order pursuant to which the Chapter 11 Debtors obtained authority, on an interim basis, to enter into (i) a \$90 million debtor-in-possession (“**DIP**”) asset-based loan facility (the “**DIP ABL Facility**”) with Wells Fargo Bank, National Association as agent (in such capacity, the “**DIP ABL Agent**”) and the lenders who from time to time are a party thereto (the “**DIP ABL Lenders**”); and (ii) an additional \$28 million term loan facility (the “**DIP Term Loan Facility**”, and together with the DIP ABL Facility, the “**DIP Facilities**”) with Barings Finance LLC, as administrative agent (in such capacity, the “**DIP Term Loan Agent**”), and the financial institutions who from time to time are a party thereto (collectively, the “**DIP Term Loan Lenders**” and together with the DIP ABL Lenders, the “**DIP Lenders**”) to fund the administration of the Chapter 11 Proceedings.

27. To protect the interests of Hollander Canada and its creditors, the DIP ABL Facility and the Interim DIP Order included certain protections to mitigate any prejudice to creditors of Hollander Canada. Specifically, as described in the Initial Affidavit, the Interim DIP Order included a quasi-marshalling construct whereby the DIP ABL agent is obligated to first look to proceeds of the Chapter 11 Debtors’ U.S. collateral to satisfy any outstanding obligations of the U.S. Chapter 11 Debtors under the DIP ABL Facility, and to the proceeds of the Chapter 11 Debtors’ Canadian collateral to satisfy any outstanding obligations of Hollander Canada under the DIP ABL Facility. Only once collateral in the U.S. has been exhausted can the DIP ABL Lenders look to the Canadian assets to satisfy any outstanding U.S. obligation (the “**Quasi-Marshalling Construct**”).

28. In addition, the DIP ABL Facility and the Interim DIP Order were structured such that if the Chapter 11 Debtors (other than Hollander Canada) require access to the Canadian collateral for additional borrowings, Hollander Canada is permitted to borrow such amounts under the DIP ABL Facility (up to the Canadian Maximum Revolver Amount) and then lend such borrowed amounts to the applicable Chapter 11 Debtor on a superpriority basis (the “**Superpriority Intercompany Loans Charge**”).

29. In the weeks following the issuance of the Interim DIP Order, the Chapter 11 Debtors engaged in discussions and negotiations with the UCC and other stakeholders with regards to the terms of a proposed final DIP Order.

30. One of the issues discussed with the UCC and the DIP Term Loan Lenders, among others, was the terms of an exit fee commitment that the Chapter 11 Debtors have agreed to pay to cover the reasonable and documented out-of-pocket expenses incurred by the participating Term Loan Lenders in connection with their commitment to provide an additional \$30 million in liquidity to fund go forward operations outside the Chapter 11 Proceedings (the “**Exit Fee Commitment**”). The Chapter 11 Debtors have recently made disclosure of the Exit Fee Commitment and are providing their stakeholders with an opportunity to review the proposed fee structure. However, the time provided to stakeholders to review the Exit Fee Commitment extended beyond the July 1, 2019 “second day” hearing date scheduled with the U.S. Court.

31. Accordingly, in an effort to move the Chapter 11 Proceedings forward in an efficient manner and ensure that the Chapter 11 Debtors have access to the DIP financing provided for under the DIP ABL Facility, while at the same time providing stakeholders with sufficient time to review and consider the Exit Fee Commitment, the Chapter 11 Debtors agreed to bifurcate the final approval of the DIP Facilities: (i) the DIP ABL Facility would be brought before the U.S.

Court for approval on a final basis at the July 1, 2019 hearing; and (ii) the DIP Term Facility would be brought before the U.S. Court for approved on a final basis at a later date. In the interim, the Chapter 11 Debtors requested that the U.S. Court approve the Second Interim DIP Term Order at the July 1 hearing. The Second Interim DIP Term Order provides the Chapter 11 Debtors with access up to \$5 million of incremental financing under the DIP Term Loan Facility, to be funded at the discretion of the DIP Term Loan Agent at the direction of the required DIP Term Loan Lenders, during the interim period until a final order approving the DIP Term Loan Facility is entered by the U.S. Court, which is required to occur on or before July 19, 2019 (or such later date as the DIP ABL Agent may agree in its sole discretion) pursuant to the terms of the Final DIP ABL Order.

32. The Second Interim DIP Term Order and the Final DIP ABL Order were entered by the U.S. Court on July 3, 2019, copies of which are attached to the Second Barz Affidavit as Exhibit “O” and Exhibit “Z”, respectively.

33. The Final DIP ABL Order contains several amendments from the Interim DIP Order to address comments received from the UCC and other stakeholders, including with respect to reporting obligations, which were resolved consensually. Other notable amendments of relevance to these proceedings include:

- (a) Approval of the DIP ABL Facility on a final basis and authorization to borrow up to \$90 million under the facility;
- (b) A provision providing no Chapter 11 Debtor may object to a credit bid made by the DIP ABL Lenders or ABL Lenders of the amount outstanding under the DIP ABL Facility and ABL Facility (as applicable), including any sale of assets of the Canadian Loan Parties (as defined in the DIP ABL Credit Agreement) with

approval of the Ontario Court, subject to, in the case of the conveyance of any assets of the Canadian Loan Parties, such conveyance being acceptable to the Information Officer;

- (c) Notwithstanding the inclusion of a provision providing that the equitable doctrine of marshalling shall not apply, such provision provides for the distribution of proceeds of any realizations in accordance with the Quasi-Marshalling Construct; and
- (d) A provision expressly providing that the Superpriority Intercompany Loans Charge is (i) subject to the Carve Out (as defined in the Final DIP ABL Order), which principally includes professional fees, (ii) junior to the DIP ABL Lenders and the ABL Lenders but senior to the Term DIP Loan Lenders and the Term Loan Lenders on the ABL Priority Collateral (as defined in the Final DIP ABL Order), and (iii) junior to the Term DIP Loan Lenders, the Term Loan Lenders, the DIP ABL Lenders and the ABL Lenders on the Term Priority Collateral (as defined in the Final DIP ABL Order).

34. Notably, no substantive changes were made to the the Quasi-Marshalling Construct and Superpriority Intercompany Loans Charge contained in the Interim DIP Order and these provisions remain substantially unchanged in the Final DIP ABL Order.

35. As of July 2, 2019, the U.S. Chapter 11 Debtors and Hollander Canada owe approximately \$39.5 million and \$3.5 million, respectively, under the DIP ABL Facility. The Chapter 11 Debtors' post-filing cash receipts were used to pay down, in full, the pre-filing obligations under the ABL Facility as of July 1, 2019.

- 28 -

36. The Foreign Representative is now seeking recognition of the Final DIP ABL Order in Canada. The Foreign Representative is also seeking amendments to the Supplemental Order to reflect the terms of the Final DIP ABL Order. Recognition of the Final DIP ABL Order will permit continued operations and consistency in the Chapter 11 Proceedings and is necessary for the protection of the Chapter 11 Debtors' property and the interests of their creditors. I understand that the Information Officer will be filing a Report in connection with the present Motion which comments on the reasonableness of the Final DIP ABL Order.

37. As explained in my Initial Affidavit, the DIP ABL Credit Agreement requires the Chapter 11 Debtors to obtain an order from the Ontario Court recognizing and giving effect to the Final DIP ABL Order within three (3) business days of the day that the Final DIP ABL Order is entered by the U.S. Court. Therefore, it is critical that the Foreign Representative obtain recognition of the above-noted Second Day Orders, including the Final DIP ABL Order and the Bid Procedures Order, as soon as possible to permit the Chapter 11 Debtors to continue as a going concern and to implement the restructuring contemplated by the RSA and the Plan.

SWORN BEFORE ME at the Town of  
Westport in the State of Connecticut on July  
3, 2019.

  
\_\_\_\_\_  
MARC PFEFFERLE



THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF MARC PFEFFERLE SWORN  
ON JULY<sup>3</sup>, 2019

*Kristen Lashar*



Court File No. CV-19-620484-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS LLC, HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC, HOLLANDER HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC, AND PACIFIC COAST FEATHER CUSHION, LLC

APPLICATION OF HOLLANDER SLEEP PRODUCTS LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

APPLICANT

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**AFFIDAVIT OF MARC PFEFFERLE**

**(Sworn May 23, 2019)**

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I, Marc Pfefferle, of the Town of Westport, Connecticut, United States of America, **MAKE OATH AND SAY:**

1. I am the Chief Executive Officer (“**CEO**”) of Hollander Sleep Products, LLC (“**Hollander Sleep Products**”) and the six (6)<sup>1</sup> other debtors in possession that recently filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code (the “**Chapter 11 Debtors**”). I am

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<sup>1</sup> In addition to Hollander Sleep Products, the other six (6) Chapter 11 Debtors are: Dream II Holdings, LLC; Hollander Home Fashions Holdings, LLC; Pacific Coast Feather, LLC; Hollander Sleep Products Kentucky, LLC; Pacific Coast Feather Cushion, LLC; and Hollander Sleep Products Canada Limited.

a Partner at Carl Marks Advisors (“**Carl Marks**”), an investment bank that provides financial and operational services, and have served as CEO of Hollander Sleep Products since March 28, 2019 when I was retained by the Chapter 11 Debtors and the their Non-Debtor Affiliates (defined below). I have been with Carl Marks since 1992. Before joining Carl Marks, I was a Partner with Marigold Associates, a strategic management consulting firm serving Fortune 100 companies, and before that I worked for Price Waterhouse LLP. I have over thirty years of experience providing restructuring and reorganization services for companies, creditors, and other stakeholders across a variety of industries, including consumer products, retail, manufacturing, and distribution related businesses.

2. As such, I have personal knowledge of the matters to which I depose in this Affidavit, save and except where I refer to matters based on information and belief, in which case I have stated the source of my information and, in all such cases, I believe that information to be true. In preparing this Affidavit, I consulted with the Chapter 11 Debtors’ management team and advisors (including the Carl Marks team working under my supervision) and reviewed relevant documents and information concerning the Chapter 11 Debtors’ operations, financial affairs and restructuring initiatives.

3. I swear this Affidavit in support of an application by Hollander Sleep Products in its capacity as foreign representative of the Chapter 11 Debtors for, *inter alia*:

- (a) recognition of the Chapter 11 Cases (defined below) as foreign main proceedings pursuant to Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”);
- (b) recognition of certain First Day Orders (defined below);

- (c) the appointment of KSV Kofman Inc. (“**KSV**”) as Information Officer;
  - (d) the granting of the DIP ABL Charge (defined below); and
  - (e) the granting of the Administration Charge (defined below).
4. All monetary references in this Affidavit are in U.S. dollars unless otherwise stated.

## **I. Background**

5. On May 19, 2019 (the “**Petition Date**”), each of the Chapter 11 Debtors filed voluntary petitions for relief (the “**Petitions**”) pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the “**U.S. Court**”).

6. I am aware that certified copies of the Petitions will be attached to the affidavit of Evan Barz (the “**Barz Affidavit**”), an associate lawyer with the law firm Osler, Hoskin & Harcourt LLP (“**Osler**”), Canadian counsel to the Chapter 11 Debtors, and will be provided to the Court at or before the hearing of this Application.

7. The cases commenced by the Chapter 11 Debtors in the U.S. Court are referred to in this Affidavit as the “**Chapter 11 Cases**”.

8. The Chapter 11 Debtors filed several first day motions (the “**First Day Motions**”) with the U.S. Court on May 19, 2019. On May 21, 2019, the U.S. Court heard the following seven (7) First Day Motions (all defined below), with the remaining First Day Motions to be heard on June 3, 2019 and/or June 13, 2019:

- (a) Foreign Representative Motion;
- (b) Joint Administration Motion;

- (c) Employee Wages Motion;
- (d) Cash Management Motion;
- (e) DIP Motion;
- (f) Critical Vendors and Shippers Motion; and
- (g) Customer Programs Motion.

9. The U.S. Court entered interim and/or final First Day Orders (as defined below) in respect of these seven (7) First Day Motions on May 22 and 23, 2019.

10. Capitalized terms in this Affidavit that are not otherwise defined have the meanings given to them in my declaration filed in support of the First Day Motions attached hereto without exhibits as Exhibit “A” (the “**First Day Declaration**”).

11. I am aware that copies of the First Day Orders will be attached to the Barz Affidavit.

12. In support of the First Day Motions, I submitted my First Day Declaration to the U.S. Court. It provides a comprehensive overview of the Chapter 11 Debtors and their Non-Debtor Affiliates<sup>2</sup> (collectively, “**Hollander**”) and the events leading to the commencement of the Chapter 11 Cases. As such, this Affidavit provides a more general overview and focuses on giving this Court information to support the finding of the centre of main interest (“**COMI**”) of each of the Chapter 11 Debtors and to support the request for recognition of the Chapter 11 Cases as a “foreign main proceeding”, the recognition of the First Day Orders, the granting of the Administration

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<sup>2</sup> As described in more detail below, the Non-Debtor Affiliates are Hollander Sleep Products Trading (Shanghai) Co., Ltd. and PCF (Shanghai) Quality Management Co., Ltd.

Charge, and the granting of the DIP ABL Charge. I am not aware of any other foreign recognition insolvency proceedings involving the Chapter 11 Debtors.

## **II. The Business**

### **A. Overview**

13. Hollander – an industry leader in the bedding products market – manufactures, among other bedding products, pillows, comforters, and mattress pads. Hollander produces these items for well-known licensed brands, including Ralph Lauren®, Simmons®, Beautyrest®, Nautica®, and Calvin Klein®. Hollander also owns and manufactures bedding products under its own proprietary brands, including Great Sleep®, I AM®, LC®, PCF®, and Restful Nights®. Hollander, in turn, partners with major retailers and hotel chains, including long standing relationships with, among others, Costco, Kohl's, Walmart, Target, and Marriott.

14. The corporate headquarters of Hollander are in Boca Raton, Florida. Hollander has 13 manufacturing facilities throughout the United States and Canada and operates a primary show room in New York City. Hollander employs over 2,300 people across North America and had approximately \$526.9 million in net revenue in its most recent fiscal year ended December 31, 2018. As of the Petition Date, Hollander has approximately \$233 million in funded debt.

15. Core to Hollander's business model is its ability to innovate and provide improved products. Recent innovations include asthma-sensitive natural-fill bedding products, memory foam substitutes with increased flexibility and comfort, and cooling and air-flow technology to help with the heat trapping in certain bedding materials. Investments in product development attract new customers and provide for increased profit margins over time. To support innovation and product development, Hollander utilizes a development team with diverse backgrounds in

industries such as home products, apparel and packaging, who in turn work with graphic designers, sales and marketing professionals and senior management to ensure they are capturing customer needs, product specifications and appropriate costs in developing new products.

16. Hollander also has a competitive advantage because of its well-established global production and shipping processes. Hollander works with a network of suppliers and purchases materials including polyester fibers, fabrics, pillow and comforter shells and certain retail-ready products. A significant portion of these products are purchased from China, Pakistan and India, as well as Indonesia, South Korea, Vietnam, Malaysia and the United Arab Emirates. Hollander consistently monitors and works to develop new sourcing opportunities to maximize quality and minimize inventory procurement costs.

17. Hollander has the industry's largest manufacturing and distribution footprint in North America. Filling, final sewing, packaging, and shipping of finished goods is primarily performed at Hollander's thirteen (13) North American manufacturing facilities, which are strategically located across North America, with locations in Pennsylvania, Kentucky (2), North Carolina (2), Iowa, Georgia, Texas, California (3), Ontario and Québec. This manufacturing and distribution network provides Hollander with significant flexibility in processing and shipping orders, such that shipments can reach almost anywhere in the United States and eastern Canada within a 24-hour period, which is critical for high-volume retailers that rely on Hollander's prompt shipping.

18. Approximately 95% of the Chapter 11 Debtors' sales come from wholesale distribution, including to department stores, mass merchant and clubs, off-price retailers, specialty retailers and hospitality customers. The remaining 5% of the Chapter 11 Debtors' sales are from online sales. Recently, the Chapter 11 Debtors have been working to increase direct-to-customer sales through e-commerce connections, with their own websites, established retailers and online marketers.

**B. The Chapter 11 Debtors**

19. All of the Chapter 11 Debtors operate on an integrated basis and are incorporated or established under the laws of the United States, with the exception of Hollander Sleep Products Canada Limited (“**Hollander Canada**”), which is amalgamated under the laws of British Columbia and which maintains a registered office located at Suite 1700, Park Place, 666 Burrard Street, Vancouver, B.C. Each of the Chapter 11 Debtors, including Hollander Canada, is a direct or indirect wholly-owned subsidiary of Dream II Holdings, LLC. A copy of the Hollander Organization Chart is attached hereto as Exhibit “B”.

20. For the most recent fiscal year ended December 31, 2018, Hollander generated approximately \$526.9 million in net revenue on a consolidated basis. Canadian sales accounted for approximately 10.7% of Hollander’s net revenue; U.S. sales amounted to approximately 89%.

21. For the most recent fiscal year ended December 31, 2018, the book value of Hollander’s assets and liabilities reflected on its balance sheet was approximately \$350.6 million and \$340.8 million, respectively, on a consolidated basis.

**C. The Chapter 11 Debtors’ Non-Debtor Affiliates**

22. The Chapter 11 Debtors have two affiliates in China that are not part of the Chapter 11 Cases: Hollander Sleep Products Trading (Shanghai) Co., Ltd. and PCF (Shanghai) Quality Management Co., Ltd. (the “**Non-Debtor Affiliates**”). The Non-Debtor Affiliates provide manufacturing product support services and quality control operations for the Chapter 11 Debtors.



The Non-Debtor Affiliates are not liable for any of the Chapter 11 Debtors' outstanding funded debt obligations.

**D. The Financial Position of Hollander Canada**

23. There are no stand-alone audited financial statements for Hollander Canada. Hollander Canada's unaudited financial statements have historically been consolidated with Hollander's financial statements, and an audit is performed on a consolidated basis only.

24. On a standalone basis, Hollander Canada is not profitable. Hollander Canada's 2018 financial statement reflects a net loss of approximately \$2.6 million and losses have continued for the four month period ended April 30, 2019. A copy of Hollander Canada's unaudited balance sheet as at April 30, 2019 is attached hereto as Exhibit "C".

25. A review of the information contained in the balance sheet is as follows:

**i. Assets**

26. As of April 30, 2019, the book value of Hollander Canada's current assets totaled \$16,837,829, which consisted of:

- (a) Cash and Cash Equivalents: \$140,744;
- (b) Third Party Accounts Receivable: \$3,641,985;
- (c) Inventory: \$12,955,335; and
- (d) Prepaid Expenses: \$99,765.

27. As of April 30, 2019, the book value of Hollander Canada's non-current assets was \$8,300,236, which consisted of inter-company receivables owed to Hollander Canada by Hollander Sleep Products. These monies were advanced to Hollander Sleep Products by Hollander Canada principally to help fund the Chapter 11 Debtors' U.S. operations.

28. In addition, as of April 30, 2019, the book value of Hollander Canada's property and equipment was \$1,160,896. This largely represents Hollander Canada's machinery and equipment at its two Canadian production facilities.

## **ii. Liabilities**

29. As of April 30, 2019, Hollander Canada's total liabilities were \$15,873,547, which consisted of:

- (a) Loan payable (under the ABL Facility, defined below): \$5,945,429;
- (b) Accounts payable, Trade: \$8,710,152; and
- (c) Other Accrued Expenses: \$1,217,967.

## **iii. Employees**

30. A detailed description of Hollander's employees, including information on wages and benefits of Hollander Canada, is set out in the Employee Wages Motion (defined below). Hollander employs approximately 2,370 employees in the United States and Canada.

31. As of April 2019, Hollander Canada employed approximately 240 employees, all of whom are located in Canada. Approximately 136 employees work at Hollander Canada's manufacturing facility and sales office in Toronto, of which 81 are full-time employees, 1 is a part-time employee,

40 are presently laid off and 14 are on leave. The remainder of Hollander Canada's 104 employees work at or out of its Montreal manufacturing facility, of which 95 are full time employees, 1 is a part time employee, 1 is presently laid off and 14 are on leave.

32. Employees are typically paid wages or salary. Each of Hollander Canada's manufacturing facilities and sales office process their own payroll, with the assistance of a third-party payroll service provider, ADP Canada Co. Hollander Canada's employees are paid on a weekly basis.

33. Hollander Canada also provides benefits coverage to its full-time employees through a group benefits plan provided by Manulife Financial and administered by The Lesly Group Ltd. (the "**Hollander Group Benefits Plan**"). The Hollander Group Benefits Plan is designed to assist and protect eligible employees and their dependents in the event of a serious illness, accident or death and to help cover the cost of some routine items such as prescription drugs, dental care and vision care.

34. Hollander Canada sponsors a Group Registered Retirement Savings Plan ("**Group RRSP**") administered by the Royal Bank of Canada. Through the Group RRSP, Hollander Canada (i) matches 50 percent for contributions representing up to six (6) percent of the employee's weekly compensation, and (ii) matches three (3) percent for contributions representing more than six (6) percent of the employee's weekly compensation.

35. There is no union representation for any of the Canadian employees. There is no registered defined benefit or defined contribution pension in place for the Canadian employees.

36. As described in more detail in the Employee Wages Motion, the Chapter 11 Debtors are, for the time being, seeking relief to continue to pay and/or perform, as applicable, employee related obligations, including those of Hollander Canada. Hollander Canada pays its priority payables in

the ordinary course, including employee wages, vacation pay, employee source deductions and federal and provincial sales tax. Hollander Canada currently has an accrued vacation pay liability of approximately \$570,000. Hollander Canada currently has approximately \$12,050 in accrued but unpaid Canadian payroll taxes and related amounts. The Chapter 11 Debtors intend to honour vacation entitlements and remit payroll taxes and related deductions to the appropriate authorities in the ordinary course.

**iv. Operations in Canada**

37. Hollander currently operates two (2) manufacturing facilities in Canada:

- (a) 5415/5435/5445/5455 Cote de Liesse, Montreal, Québec (the “**Montreal Facility**”) which is leased from 2298174 Ontario Inc. The Montreal Facility’s lease is scheduled to expire on May 31, 2023; and
- (b) 724 Caledonia Rd, Toronto, Ontario (the “**Toronto Facility**”), which is leased from Crestpoint Acq. The Toronto Facility’s lease is scheduled to expire on July 21, 2019, however a notice of lease extension has been provided.

38. In addition, Hollander Canada maintains a sales office at 420 Britannia Road, Toronto, Ontario, which is leased from 420-450 Britannia Road East Ltd. (the “**Britannia Lease**”). The Britannia Lease is set to expire on March 31, 2021. The sales office facilitates sales of Hollander’s products to Canadian customers.

39. The primary stakeholders of Hollander Canada include employees, customers, landlords and trade-suppliers. Hollander Canada’s vendor base is largely comprised of offshore inventory suppliers, substantially all of whom supply to all of the Chapter 11 Debtors. Key customers of Hollander Canada include Walmart Canada, Costco Canada and Hudson’s Bay Company.

Together, these three (3) customers account for approximately 87% of Hollander Canada's annual sales.

**v. Merchandise and Supplies in Canada Primarily Sourced Through U.S.**

40. Hollander Canada's assets principally consist of inventory (merchandise and supplies) used for the manufacturing of its bedding products, the overwhelming majority of which is manufactured in the U.S. and Canada.

41. All inventory procurement and logistics functions for Hollander Canada are run out of the U.S. headquarters in Boca Raton, Florida. Hollander Canada does not independently design its own merchandise or source its own supplies, nor does it generally enter into licensing partnerships that allow the Chapter 11 Debtors to offer their products under their partners' names.<sup>3</sup> This integrated approach allows Hollander to generate significant benefits for all of its operating subsidiaries by maximizing efficiencies through an integrated supply chain managed out of Hollander's head office.

42. Hollander's business model depends heavily on the Chapter 11 Debtors' well-established global supply chain, which in turn depends on the Chapter 11 Debtors' longstanding relationships with key suppliers. The suppliers provide fabrics and other materials made to Hollander's specifications (the "**Supply Arrangements**"). Hollander's ability to deliver products in a timely manner is critically important to its financial performance and depends on a seamless interaction with various third-party service and logistics providers who ship products to Hollander.

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<sup>3</sup> It should be noted that Hollander Canada is a party to a licensing agreement with each of Ralph Lauren® and Simmons®. However, these licensing agreements were negotiated in the U.S. and were approved by head of U.S. sales, for the benefit of Hollander Canada.

**vi. Hollander Canada's Integrated Operations with U.S.**

43. Hollander Canada's operations are fully integrated with Hollander's U.S. operations. In particular:

- (a) Canadian sales make up approximately 10.7% of Hollander's net revenue.
- (b) All of Hollander Canada's directors reside in the U.S.
- (c) Hollander Canada's books and records are maintained at Hollander's head office in Boca Raton, Florida.
- (d) Hollander Canada is almost wholly reliant on U.S. managerial functions at Hollander's U.S. head office for overhead services, including accounting, finance, buying, logistics, marketing, strategic decisions, IT and other functions. These services are provided for Hollander Canada's benefit by Hollander Sleep Products in the U.S. To compensate Hollander Sleep Products for these services, the Chapter 11 Debtors allocate approximately the total cost of shared services at year end to Hollander Canada. For the most recent fiscal year ended December 31, 2018, pursuant to this arrangement, Hollander Canada paid approximately \$7.36 million to Hollander Sleep Products for shared services.
- (e) Hollander Canada, on its own, does not have sufficient purchasing power or operational infrastructure to replicate the Supply Arrangements; it primarily relies on the purchasing power and supplier relationships of the U.S. Chapter 11 Debtors.
- (f) Hollander Canada is entirely dependent on the U.S. Chapter 11 Debtors for the overwhelming majority of licensing agreements, design partnerships and company-

owned brands. All or substantially all of the trademarks and IP are owned by the U.S. Chapter 11 Debtors.

- (g) Most of the data for the Canadian operations is housed within the same IT systems (located and operated out of the U.S.) that support both the Canadian and U.S. operations.
- (h) The Chapter 11 Debtors and their non-debtor affiliates operate an integrated, centralized cash management system (the “**Cash Management System**”) to collect, transfer and disburse funds generated by their operations, all of which is described in more detail in the Cash Management Motion (defined below). The Cash Management System facilitates cash monitoring, forecasting and reporting and enables the Chapter 11 Debtors to maintain control over the administration of approximately 18 bank accounts, including eight (8) Canadian and U.S. bank accounts (together, the “**Canadian Operations Accounts**”) maintained with Wells Fargo Bank, National Association and the Royal Bank of Canada. The Canadian Operations Accounts were primarily established to facilitate the Chapter 11 Debtors sales and manufacturing operations in Canada. The Cash Management System reflects Hollander’s integrated business, is vital to the Chapter 11 Debtors’ ability to conduct business around the globe and is tailored to meet their operating needs.
- (i) The Chapter 11 Debtors, including Hollander Canada, offer and engage in certain customer promotional programs, including with Hollander Canada’s key customers. Hollander Canada is dependent on the U.S. Chapter 11 Debtors for the establishment, maintenance and administration of these customer promotional programs.

### III. The Chapter 11 Debtors' Prepetition Capital Structure and Indebtedness

44. The Chapter 11 Debtors' prepetition capital structure consists of outstanding funded-debt obligations in the aggregate principal amount of approximately \$233 million, including:

- (a) a \$125 million senior secured revolving credit facility (the "**ABL Facility**") by and between Dream II Holdings, LLC, as parent, and Hollander Home Fashions Holdings, LLC, Hollander Sleep Products, Hollander Sleep Products Kentucky, LLC, Hollander Canada, Pacific Coast Feather Company, and Pacific Coast Feather Cushion Co., as borrowers, the lender parties thereto (the "**ABL Lenders**"), and Wells Fargo Bank, National Association, as agent (in such capacity, the "**ABL Agent**"); and
- (b) a \$190 million secured term loan facility (the "**Term Loan Facility**") by and between Dream II Holdings, LLC and Hollander Home Fashions Holdings, LLC, as parent guarantors, Hollander Sleep Products, as borrower, the lenders from time to time party thereto (the "**Term Loan Lenders**") and Barings Finance LLC, as administrative agent (in such capacity, the "**Term Loan Agent**").

45. Each Chapter 11 Debtor is an obligor (either as a borrower or guarantor) under the ABL Facility. Hollander Canada is limited in the amount it can borrow under the ABL Facility to \$40 million and is not jointly or severally liable for the obligations of the U.S. Chapter 11 Debtors under the ABL Facility (however, the U.S. Chapter 11 Debtors are liable for Hollander Canada's obligations under the ABL Facility). With regard to the Term Loan Facility, each Chapter 11 Debtor, except for Hollander Canada, is an obligor (either as a borrower or a guarantor).



### A. Prepetition ABL Facility

46. The ABL Facility provides for cash dominion when the excess availability under the ABL Facility is less than either (a) 12.5% of the maximum credit available under the ABL Facility or (b) \$12.5 million for three consecutive business days, at which point the ABL Agent can exercise certain controls over the Chapter 11 Debtors' bank accounts. The Chapter 11 Debtors have triggered cash dominion and the ABL Agent currently sweeps the Chapter 11 Debtors' accounts that are subject to control agreements daily. Substantially all of the Chapter 11 Debtors' cash is subject to control agreements in favour of the ABL Agent. The amount outstanding under the ABL Facility is subject to fluctuations based on daily cash sweeps. The Chapter 11 Debtors estimate that approximately \$61 million in principal was outstanding as of the Petition Date, not including approximately \$5 million in letters of credit (the "**Prepetition ABL Obligations**"). There are presently no issued Canadian letters of credit. The Prepetition ABL Obligations include approximately \$6 million of borrowings by Hollander Canada

47. The Prepetition ABL Obligations are secured by a first lien on certain ABL-priority collateral of the Chapter 11 Debtors, including certain accounts and inventory, Canadian assets, and a second lien in certain collateral on which the prepetition term loan lenders (the "**Term Loan Lenders**") have a first lien. The relative rights and priorities among the ABL Lenders and Term Loan Lenders are governed by an intercreditor agreement.

48. Finally, with regard to the Last Out Loans, the Purchasers (both as defined below) share priority with the ABL Lenders with regard to the Chapter 11 Debtors' collateral but have agreed to subordinate their right to payment to the ABL Lenders until the Prepetition ABL Obligations are paid in full.

## **B. Prepetition Put Agreement**

49. In November 2018, the Chapter 11 Debtors entered into forbearances and an amendment to each of their ABL Credit Agreement and Term Loan Credit Agreement. In connection with these amendments, Sentinel Capital Partners V, L.P., Sentinel Dream Blocker, Inc., and Sentinel Capital Investors V, L.P. (collectively, together with their permitted successors and assigns, the “**Purchasers**”) entered into a Put Agreement, dated as of November 27, 2018 (the “**Put Agreement**”), in favor of the ABL Agent and SunTrust Bank, an ABL Lender.

50. Subject to the terms and conditions set forth in the Put Agreement, upon the occurrence of certain events of default under the ABL Facility, the ABL Agent may cause the Purchasers to execute an agreement to purchase a participation interest in a subordinated last-out loan (the “**Last-Out Loans**”). If the Purchasers fail to purchase their participation interest in the Last-Out Loan in accordance with the Put Agreement, the ABL Agent is permitted to draw from certain standby letters of credit that were posted by the Purchasers.

## **C. Prepetition Term Loan Facility**

51. As of the date hereof, approximately \$166.5 million in aggregate principal amount remains outstanding under the Term Loan Facility. The Term Loan Facility is secured by a first lien on certain collateral of the Chapter 11 Debtors, except for Hollander Canada, and a second lien on certain collateral on which the ABL Lenders have a first lien. Hollander Canada’s assets are not encumbered by the Term Loan Facility; however, the Term Loan Facility is secured by a pledge of 65% of Dream II Holdings, LLC’s equity interest in Hollander Canada.

#### **D. Equity Interests**

52. Dream II Holdings, LLC owns directly or indirectly 100% of the residual interests in each of the Chapter 11 Debtors (other than Dream II Holdings, LLC). Investment funds managed by Sentinel Capital Partners, LLC (the “**Sponsor**” or “**Sentinel**”) directly or indirectly hold the majority of the outstanding membership interests in Dream II Holdings, LLC.

#### **E. Hollander Canada Trade Debt**

53. Hollander Canada estimates that, as of May 10, 2019, arm’s-length trade creditors are owed approximately \$8.95 million in unsecured trade debt. Of that amount, approximately \$7.2 million is past due.

#### **F. Hollander Canada Intercompany Debt**

54. As of April 30, 2019, Hollander Canada is owed approximately \$8.3 million, inclusive of accrued interest, from Hollander Sleep Products, a Chapter 11 Debtor.

### **IV. Hollander Canada PPSA Searches**

55. I am advised by Mr. Martino Calvaruso, a lawyer at Osler, and believe that lien searches were conducted on or about May 16, 2019 against each of the Chapter 11 Debtors under the *Personal Property Security Act* (or equivalent legislation) in Ontario, Québec and British Columbia (the “**PPSA Searches**”). I have been further advised by Mr. Calvaruso and believe that the PPSA Searches indicate, among other things, that Wells Fargo Bank, National Association, has registered a security interest against assets of Hollander Canada in B.C., Ontario and Québec. Barings Finance LLC has registered a security interest against the Chapter 11 Debtors (other than

Hollander Canada) in Ontario. The searches indicate no other registrations against the Chapter 11 Debtors except for a registration in Québec in respect of a photocopier lease.

## **V. Recent Events**

56. In June of 2017, Hollander acquired one of its major competitors, Pacific Coast Feather Company (“PCF”). While this acquisition has been a net positive for operations, the impact of continued integration overhang following the acquisition, and the need to expend additional capital to facilitate the integration, strained Hollander’s cash flows.

57. Shortly after the acquisition of PCF, Hollander was faced with dramatic increases in the price of materials, including fiber, down and feathers. The financial impact of these unanticipated price increases was in excess of \$20 million over the course of approximately one year. At the same time, employee wages increased (as a result of natural wage inflation and the tight job market), as did the cost of freight, duty, and tariff charges. Recently, material prices, particularly fiber, have showed some downward trends, and Hollander is focused on right-sizing production and operational costs and reducing material costs moving forward to re-establish cost parity with its key competitors.

58. Fortunately, the sleep industry as a whole is both healthy and growing. Market trends favor healthy lifestyle sectors, and the basic bedding segment is generally recession resilient. Moreover, management has evaluated Hollander’s position and identified steps that Hollander can take to get back on track, including selective price increases and material efficiencies, continued diligence in cost-effective sourcing, investing in capital and technological advancements, streamlining Hollander’s manufacturing footprint and building Hollander’s e-commerce business.

59. The Chapter 11 Cases provide Hollander with the opportunity to right-size operations and invest in equipment, infrastructure and processes that will allow it to utilize raw material more efficiently, lower its production costs in the long term and re-establish parity with its competitors. Additionally, the infusion of capital proposed as part of the Chapter 11 Cases will facilitate the completion of the PCF integration process and best position Hollander to realize returns on the PCF acquisition.

60. In order to assist with the restructuring process, in April and May 2019, respectively, Matthew R. Kahn was appointed as a disinterested director to the Board of Directors of Dream II Holdings, LLC, as well as the Board of Directors of Hollander Canada, and subsequently granted exclusive authority over conflicts matters. Mr. Kahn has extensive experience serving on boards of managers and boards of directors in distressed situations. Mr. Kahn subsequently directed Hollander to retain Proskauer Rose LLP as independent counsel acting at his direction to assist in the discharge of his duties.

## **VI. Restructuring Negotiations and Path Forward**

61. Beginning in November 2018, the Chapter 11 Debtors engaged with the ABL Lenders and the Term Loan Lenders, resulting in forbearances, amendments to the Chapter 11 Debtors' credit agreements and the Put Agreement. Over the following months, the Chapter 11 Debtors recognized that a more comprehensive solution was required.

62. In February 2019, the Chapter 11 Debtors initiated discussions with the ABL Lenders and the Term Loan Lenders regarding potential balance sheet solutions to their liquidity problems. These discussions preceded the deadline for a March 2019 interest payment under the Term Loan Facility. After exploring out-of-court possibilities, it became apparent that a significant deleveraging would be necessary. In February 2019, the Chapter 11 Debtors retained Kirkland &

Ellis LLP to advise on their restructuring alternatives; in late March the Chapter 11 Debtors retained Carl Marks to provide management services; and in May 2019, the Chapter 11 Debtors retained Houlihan Lokey Capital, Inc. (“**Houlihan**”) as their investment banker.

63. Following further discussions, the Chapter 11 Debtors entered into a restructuring support agreement, dated as of May 19, 2019 (the “**RSA**”), with holders of 100% in principal amount of loans under the Term Loan Facility and Sentinel. The RSA contemplates, and the Chapter 11 Debtors have filed, a comprehensive Chapter 11 plan (the “**Plan**”). The RSA ensures that the Plan will be confirmed in all circumstances and, most importantly, a viable business will continue to operate uninterrupted. A copy of the RSA is attached hereto as Exhibit “D” and a copy of the Plan is attached hereto as Exhibit “E”.

64. The RSA provides a commitment from the Chapter 11 Debtors’ largest creditor constituency to support a substantial deleveraging of the Chapter 11 Debtors’ approximately \$233 million funded debt capital structure. More specifically, and as described in greater detail below under the heading “DIP Motion”, the ABL Lenders and certain Term Loan Lenders have agreed to provide a \$90 million debtor-in-possession (“**DIP**”) asset-based loan facility (the “**DIP ABL Facility**”), and certain term loan lenders have agreed to provide an additional \$28 million term loan facility (the “**DIP Term Loan Facility**”, and together with the DIP ABL Facility, the “**DIP Facilities**”) to fund the administration of the Chapter 11 Cases.

65. Hollander has also secured an agreement to have the DIP Term Loan Facility converted into a \$58 million exit term loan facility upon emergence from the Chapter 11 proceedings, which provides an additional \$30 million in incremental liquidity to fund go-forward operations. With respect to the DIP ABL Facility, it includes a creeping (or gradual) roll-up wherein the Chapter 11 Debtors will use receipts from the Chapter 11 Debtors’ operations to pay down pre-filing

obligations under the ABL Facility pending the final DIP Order, whereupon (and if granted) there will be a deemed draw on the DIP ABL Facility to satisfy the then remaining outstanding prepetition debt under the ABL Facility, if any. Furthermore, Sentinel has agreed to convert its loans, in a last-out position, in any proposed exit asset-based financing facility. The new money term loan exit financing is committed, thus ensuring that Hollander is able to finance its emergence from the Chapter 11 proceedings without the need to raise additional financing.

66. The Plan also includes a sale “toggle” feature, allowing for a potential sale to a third party supported by the secured lenders and accomplished through the Plan. In this regard, Houlihan commenced a marketing process relating to the Chapter 11 Debtors’ assets, including the assets of Hollander Canada, and will continue to actively solicit the market for potential financial and strategic buyers now that the Chapter 11 Cases have formally commenced. Houlihan’s process will not preclude a prospective buyer from submitting bids for the business and assets of Hollander Canada on its own. The Chapter 11 Debtors will be willing to enter into a sale or a combination of sales if the Chapter 11 Debtors believe, in their business judgment, that such transactions will result in higher or otherwise better value to stakeholders than the proposed transaction embodied in the RSA and the Plan. Importantly, the parties to the RSA are active supporters of this market test process.

67. To ensure the least disruption to operations and to minimize the cost of the Chapter 11 Cases, Hollander and its stakeholders have agreed upon an expedited timeline to effectuate its comprehensive restructuring. The proposed timeline is as follows, subject to U.S. Court availability and approval at the final DIP Motion:

<b>Deadline</b>	<b>Proposed Date</b>
<b>Deadline to file Disclosure Statement</b>	June 12, 2019
<b>Preliminary Bid Deadline</b>	July 1, 2019
<b>Disclosure Statement Hearing</b>	July 17, 2019, or as soon thereafter as the Debtors may be heard.
<b>Bid Deadline</b>	July 26, 2019
<b>Auction</b>	August 1, 2019
<b>Plan and Sale Objection and Plan Voting Deadlines</b>	August 19, 2019
<b>Confirmation Hearing</b>	August 26, 2019, or as soon thereafter as the Debtors may be heard.

68. Given that Hollander Canada is not a borrower or guarantor under the Term Loan Facility, the Chapter 11 Debtors have negotiated and incorporated certain protections into the Plan to mitigate against any material prejudice to current creditors of Hollander Canada. More specifically, the Plan provides that, except to the extent that a holder of an allowed unsecured claim in respect of Hollander Canada agrees to less favourable treatment, on the effective date of the Plan, each holder of such a claim will receive its pro rata share of the “Hollander Canada Cash Allocation” up to the full amount of such holder’s claim, in full and final satisfaction, compromise, settlement, release and discharge of and in exchange for such claim. The “Hollander Canada Cash Allocation” is defined to mean (i) in the event that the winning bidder is an entity other than the Term Loan Lenders, any cash proceeds of a winning bidder’s sale transaction, after payment in full of the DIP ABL Claims (as defined therein) and other priority secured claims, allocated to the assets, undertakings and property of Hollander Canada by such winning bidder, in consultation with the Information Officer, or (ii) in the event that the winning bidder is the Term Loan Lenders, the cash proceeds, if any, of any Canadian Acquisition Transaction, if so elected by the Term Loan Lenders, made available to apply against Hollander Canada’s general unsecured claims. A



Canadian Acquisition Transaction is defined to mean one or more transactions to be implemented on or before the Effective Date pursuant to which the Term Loan Lenders may acquire the assets, undertakings and properties of Hollander Canada, which transaction shall be acceptable to the Chapter 11 Debtors, the required Term Loan Lenders and the Information Officer and subject to the approval of the Canadian Court.

69. The provision of consultation rights to the Information Officer in (i) above is designed to ensure that creditors of Hollander Canada are afforded necessary protection with regard to any asset allocation following a sale to a third party. The requirement to obtain Court approval for any Canadian Acquisition Transaction in (ii) above is designed to ensure that interested parties have an opportunity to voice concerns, if any, with respect to such transaction and to provide an opportunity for the Information Officer to make a recommendation to the Canadian Court in respect of any proposed Canadian Acquisition Transaction.

## **VI. Urgent Need for Relief in Canada**

70. Hollander Canada and the other Chapter 11 Debtors are in urgent need of a stay of proceedings and the recognition of the First Day Orders.

71. The Chapter 11 Debtors' cash balance as of the Petition Date was insufficient to operate their enterprise and continue paying their debts as they come due. While the Chapter 11 Debtors have thus far largely been able to maintain the shipment and distribution of products (and thus the continued trust of their customers) notwithstanding their liquidity challenges, the Chapter 11 Debtors, including Hollander Canada on a standalone basis, cannot sustain normal course operations without an immediate infusion of post-petition financing and access to cash collateral. Presently, approximately \$7.2 million of Hollander Canada's \$9 million of accounts payable is past due. Without immediate post-petition financing and access to cash collateral, the Chapter 11

Debtors, including Hollander Canada on a standalone basis, will be unable to pay wages for their employees or the invoices of vendors critical to business operations, preserve and maximize the value of their estates, and administer the Chapter 11 cases, causing irreparable harm to the value of the Chapter 11 Debtors' estates to the detriment of all stakeholders.

72. Furthermore, the DIP ABL Credit Agreement (defined below) requires the Chapter 11 Debtors to obtain an order from this Court recognizing and giving effect to the DIP Order (among other First Day Orders) within three (3) business days of the day that the DIP Order is issued by the U.S. Court. Further, the DIP ABL Facility provides that the DIP Order must be recognized by this Court before any borrowing by Hollander Canada will be permitted. As the Chapter 11 Debtors, including Hollander Canada on a standalone basis, need access to all of the funds available under the DIP Facilities forthwith, it is critical that the Applicant obtain recognition of the First Day Orders as soon as possible to permit the Chapter 11 Debtors to access the liquidity necessary for them to continue as a going concern and to implement the restructuring contemplated by the RSA and the Plan.

73. If the restructuring is implemented, it is anticipated that Hollander Canada will continue as a going concern, resulting in, among other things, the continuing employment of approximately 240 Canadian employees. In addition, it is anticipated that trade creditors, customers, landlords and other third party stakeholders will benefit from the continued operation of Hollander Canada's business.

74. If, however, the restructuring is not implemented, a liquidation of the business and assets of the Chapter 11 Debtors, including Hollander Canada, will be the likely result. In a liquidation scenario, Hollander Canada's unsecured creditors are likely to suffer a substantial or complete shortfall in the recoveries on their claims. The book value of Hollander Canada's current assets is

not reflective of the realizable value of its assets in a liquidation scenario. In addition, Hollander Canada currently has liabilities of approximately \$15.8 million and a large number of additional “off balance sheet” liabilities would arise if Hollander Canada were to cease operations and liquidate, including claims in respect of lease terminations, breach of contract and termination and severance pay for Hollander Canada’s approximately 240 employees.

75. The proposed Information Officer has prepared a liquidation analysis evaluating the impact of a liquidation scenario on creditors of Hollander Canada (the “**Liquidation Analysis**”) and has determined that such a liquidation would result in Hollander Canada’s unsecured creditors receiving nominal recoveries, if any. I understand from the proposed Information Officer that the Liquidation Analysis will be included in a Confidential Appendix to the proposed Information Officer’s Pre-filing Report (the “**Confidential Appendix**”). The Applicant is requesting that a sealing order be granted with respect to the Confidential Appendix, as it contains confidential and commercially sensitive information which would result in material prejudice to the Chapter 11 Debtors, including to the Houlihan sale process, should it be disclosed.

76. In light of the foregoing, a going concern outcome is in the best interests of Hollander Canada and all of its stakeholders. A going concern outcome is only available if the relief sought is granted. The proposed DIP Facilities and Plan are supported by all creditors and key stakeholders with an economic interest in Hollander Canada.

## **VII. Relief Sought**

### **A. Recognition of Foreign Proceedings**

77. The Applicant seeks recognition of the Chapter 11 Cases as “foreign main proceedings” pursuant to Part IV of the CCAA. Other than Hollander Canada, all of the remaining Chapter 11

Debtors are incorporated under U.S. law, have their registered head office and corporate headquarters in the U.S., carry out their business in the U.S. and have all or substantially all of their assets located in the U.S. While Hollander Canada maintains a sales office in Ontario and one manufacturing facility in each of Ontario and Québec, only minimal administrative functions are carried out in Canada – Hollander Canada is, for all intents and purposes, administered and managed out of the United States.

78. As described above, Hollander is managed on a consolidated basis and its Canadian operations are dependent on and integrated with the U.S. operations. Hollander Canada would not be able to function as an independent entity without the corporate functions performed by the Chapter 11 Debtors in the U.S.

#### **B. Recognition of the First Day Orders**

79. By operation of the U.S. Bankruptcy Code, the Chapter 11 Debtors obtained the benefit of a stay upon filing the voluntary petitions with the U.S. Court. A stay of proceedings in Canada is essential to protect the efforts of Hollander to proceed with the Chapter 11 Cases and to pursue the Plan.

80. On May 19, 2019, the Chapter 11 Debtors filed certain First Day Motions. On May 21, 2019, the U.S. Court heard several (but not all) of the First Day Motions and entered seven (7) interim or final orders on May 22 and 23, 2019 (the “**First Day Orders**”). Two further court dates have been scheduled with the U.S. Court to hear the remaining First Day Motions and certain anticipated “day two” motions.

81. At this time, the Applicant is seeking recognition of the seven (7) First Day Orders issued by the U.S. Court on May 22 and 23, 2019.

82. The First Day Motions heard by the U.S. Court on May 21, 2019 can be summarized as follows:

- (a) *Debtors' Motion for Entry of an Order (I) Authorizing Hollander Sleep Products to Act as Foreign Representative and (II) Granting Related Relief* (the “**Foreign Representative Motion**”): Pursuant to this motion, Hollander Sleep Products sought an order authorizing Hollander Sleep Products to act as the “foreign representative” in order to seek the relief sought in this Application.
- (b) *Debtors' Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases; and (II) Granting Related Relief* (the “**Joint Administration Motion**”): This motion sought an order authorizing the joint administration of the various Chapter 11 Cases filed by the Chapter 11 Debtors and related procedural relief.
- (c) *Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* (the “**Employee Wages Motion**”): This motion described and sought an order approving the continuation of the Chapter 11 Debtors' prepetition employee obligations in the ordinary course of business, and authority to pay and honour certain prepetition claims relating to, among other things, wages, salaries and other compensation. With respect to Canada in particular, the Chapter 11 Debtors sought authorization, among other things, to: (i) pay all outstanding prepetition amounts on account of unpaid wage and salary obligations for Hollander Canada employees consistent with past practice, and to continue paying such wages

and salary obligations in the ordinary course of business; (ii) pay in a manner consistent with historical practice any unpaid withholding obligations and to continue to honour withholding obligations in the ordinary course of business during the administration of the Chapter 11 Cases; and (iii) to pay all outstanding prepetition amounts incurred by Hollander Canada employees on account of reimbursable expenses, and continue to pay such reimbursable expenses on a post-petition basis.

- (d) *Debtors Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System and (B) Honour Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief* (the “**Cash Management Motion**”): The Cash Management Motion contained a detailed description of the Chapter 11 Debtors’ cash management system, including the Canadian Operations Accounts, and sought an order authorizing the ongoing use of that system, including access to the Canadian Operations Accounts. It also sought relief to permit intercompany advances.
- (e) *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Chapter 11 Debtors to Obtain Postpetition Financing, (II) Authorizing the Chapter 11 Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final*

*Hearing, and (VII) Granting Related Relief* (the “**DIP Motion**”). The DIP Motion is described below.

- (f) *Debtors’ Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) Lien Claimants, (B) Import Claimant (C) Section 503(B)(9) Claimants (D) Foreign Vendors, (E) Critical Vendors, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief* (the “**Critical Vendors and Shippers Motion**”): This motion described lien claimants, critical vendors, customs brokers and warehousemen, among others, that provide specific services to the Chapter 11 Debtors. Through this motion, the Chapter 11 Debtors sought, among other things, an order authorizing them to pay certain pre-petition amounts to such critical third parties, including third parties who provide services to Hollander Canada, to maintain stability during the opening days of the Chapter 11 Cases and to avoid jeopardizing the Chapter 11 Debtors’ ability to serve their customers going forward.
- (g) *Debtors’ Motion for Entry of Interim and Final Order (A) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honour Certain Prepetition Obligations Related Thereto and (B) Granting Related Relief* (the “**Customer Programs Motion**”): This motion described and sought the continuation, in the discretion of the Chapter 11 Debtors, of various customer programs that Hollander offers, including markdown allowances, discounts, returns, and cooperative marketing programs. It is essential that Hollander maintain customer loyalty and goodwill by maintaining and honouring the programs.

### C. DIP Motion

83. As described in more detail in the DIP Motion, the Chapter 11 Debtors (including Hollander Canada) sought the authority from the U.S. Court to enter into:

- (a) a debtor-in-possession senior secured ABL credit agreement (the “**DIP ABL Credit Agreement**”) with Wells Fargo Bank, National Association as agent (in such capacity, the “**DIP ABL Agent**”) and the lenders who from time to time are a party thereto (the “**DIP ABL Lenders**”) with respect to a senior secured credit facility in an aggregate amount not to exceed \$90 million (as above, the DIP ABL Facility); and
- (b) a DIP senior secured term loan agreement (the “**DIP Term Loan Credit Agreement**” and together with the DIP ABL Credit Agreement, the “**DIP Agreements**”) with Barings Finance LLC, as administrative agent (in such capacity, the “**DIP Term Loan Agent**”), and the financial institutions who from time to time are a party thereto (collectively, the “**DIP Term Loan Lenders**” and together with the DIP ABL Lenders, the “**DIP Lenders**”) in the aggregate amount not to exceed \$28 million (as above, the DIP Term Loan Facility).

84. Full details regarding the Chapter 11 Debtors request for the DIP Facilities are set out in the DIP Motion and are not repeated herein. In addition, matters related to the granting of adequate protection in respect of the DIP ABL Credit Agreement and the DIP Term Loan Credit Agreement are addressed therein.

85. Briefly, some of the significant features of the DIP ABL Facility—the critical facility from the perspective of Hollander Canada—include:



- (a) *Borrowers:* Hollander Home Fashions Holdings, LLC; Hollander Sleep Products; Hollander Sleep Products Kentucky, LLC; Hollander Canada; Pacific Coast Feather, LLC; and Pacific Coast Feather Cushion, LLC.
  - (b) *Guarantors:* Dream II Holdings, LLC.
  - (c) *Amount:* Up to \$90 million. However, Hollander Canada is only entitled to borrow \$20 million under the DIP ABL Facility, less the amount of Hollander Canada's prepetition obligations under the ABL Credit Agreement that are rolled-up into the DIP ABL Facility.
  - (d) *Rate:* Loans will bear interest, at the option of the Borrowers, at one of the following rates: (i) if a US Revolving Loan or Canadian obligation is a Base Rate Loan, the Base Rate + 2.00% and (ii) if a US Revolving Loan or Canadian obligation is a Non-Base Rate Loan, LIBOR + 4.00%.
  - (e) *Security:* all present and after acquired real and personal property of the Chapter 11 Debtors.
  - (f) *Events of Default:* Various events of default as set out therein.
  - (g) *Remedies upon Default:* Upon default, the DIP ABL Lenders, among other things, may terminate their obligations under the DIP ABL Facility and demand immediate repayment of all or part of the borrowers' obligations without further notice.
86. Some of the significant features of the DIP Term Loan Facility include:
- (a) *Borrower:* Hollander Sleep Products.

- (b) *Guarantors:* All Chapter 11 Debtors, excluding Hollander Sleep Products and Hollander Canada.
- (c) *Amount:* Up to \$28 million.
- (d) *Rate:* Loans will bear interest, at the option of the Borrower, at one of the following rates: (i) LIBOR Rate Loans: LIBOR + 7.00% and (ii) Base Rate Loans: Base Rate + 6.00%.
- (e) *Security:* all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible of the Chapter 11 Debtors, except for Hollander Canada.
- (f) *Events of Default:* Various events of default as set out therein.
- (g) *Remedies upon Default:* Upon default, the DIP Term Loan Lenders, among other things, may terminate their obligations under the DIP Term Loan Facility and demand immediate repayment of all or part of the borrowers' obligations without further notice.

87. Immediate access to incremental liquidity pursuant to the DIP Facilities is critical to preserving the value of the Chapter 11 Debtors' estates (including Hollander Canada's estate) and maximizing the likelihood of a going-concern reorganization. Ample post-petition financing is necessary to send a strong market signal that the Chapter 11 Cases are well-funded.

88. The ability of the Chapter 11 Debtors, including Hollander Canada, to maintain business relationships with their vendors, suppliers and customers, to pay their employees and otherwise finance their operations requires the availability of working capital from the DIP Facilities. This

is particularly critical at this stage given the upcoming “back to school” season, being the peak selling season for Hollander Canada. The Chapter 11 Debtors, including Hollander Canada on a standalone basis, do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business without immediate access to the DIP Facilities.

89. In addition, the DIP ABL Lenders have indicated that they are unwilling to make the DIP ABL Facility available to the Chapter 11 Debtors unless Hollander Canada is jointly and severally liable for all of the outstanding obligations under the DIP ABL Facility (including those incurred by the U.S. borrowers). In recognition of, and in response to, the demands for security from Hollander Canada, the Chapter 11 Debtors negotiated several forms of protections in the DIP ABL Facility which are designed to mitigate against any material prejudice to creditors of Hollander Canada. I understand that all of these efforts (and the results therefrom) were supported by the proposed Information Officer and its independent counsel.

90. First, the DIP ABL Lenders have agreed to a provision in the DIP Order pursuant to which the DIP ABL Agent is obligated to first look to proceeds of the Chapter 11 Debtors’ U.S. collateral to satisfy any outstanding obligations of the U.S. Chapter 11 Debtors under the DIP ABL Facility and to the proceeds of the Chapter 11 Debtors’ Canadian collateral to satisfy any outstanding obligations of Hollander Canada under the DIP ABL Facility. Only once the collateral in the U.S. has been exhausted can the DIP ABL Lenders look to the proceeds of Canadian assets to satisfy any outstanding U.S. obligations.

91. Second, the DIP ABL Facility, the Term DIP Facility and the DIP Order have been structured such that if the Chapter 11 Debtors (other than Hollander Canada) require access to the Canadian collateral for additional borrowings, Hollander Canada will borrow such amounts under

the DIP ABL Facility (up to the Canadian Maximum Revolver Amount) and then lend such borrowed amounts to the applicable Chapter 11 Debtor on a superpriority administrative expense basis. The superpriority “intercompany” charge would rank junior to the DIP ABL Lenders and ABL Lenders but senior to the Term DIP Loan Lenders and Term Loan Lenders on the ABL Priority Collateral and junior to the Term DIP Loan Lenders, the Term Loan Lenders, the DIP ABL Lenders and the ABL Lenders on the Term Priority Collateral. Amounts for shared services provided to Hollander Canada by the U.S. Chapter 11 Debtors will be offset against any such intercompany loans.

92. As described further in the DIP Motion, the Chapter 11 Debtors have determined, in the exercise of their business judgment, that the terms of the DIP ABL Facility are reasonable and appropriate in the circumstances. Without immediate access to the DIP Facilities, the Chapter 11 Debtors, including Hollander Canada on a standalone basis, would be unable to operate their business and maintain business relationships with their vendors, suppliers and customers, pay their employees or otherwise finance their operations, and their ability to preserve and maximize the value of their assets would be irreparably harmed.

93. Should the above occur, it would have a disastrous effect on Hollander Canada and Hollander more generally. To survive as a going concern, Hollander Canada requires the Chapter 11 Debtors in the U.S. to remain as a going concern. Hollander Canada depends on its U.S. counterparts to source and obtain high quality, low cost supplies from Hollander’s partners, and to access Hollander’s licensing agreements, design partnerships and company-owned brands, and other trademarks and IP (substantially all of which are owned or controlled by the U.S. Chapter 11 Debtors).

94. The amount actually borrowed by the Chapter 11 Debtors under the DIP ABL Credit Facility is proposed to be secured by, among other things, a Court-ordered charge on Hollander Canada's property and the property of the other Chapter 11 Debtors in Canada, if any, that ranks in priority to all unsecured claims, but is subordinate to the proposed Administration Charge (defined below) and to secured creditors with existing perfected security interests (the "**DIP ABL Charge**").

### **VIII. U.S. Court Hearing**

95. On May 23, 2019, the U.S Court entered the interim DIP Order, in addition to other interim and final First Day Orders entered on May 22<sup>nd</sup> and 23<sup>rd</sup>. A copy of each of the First Day Orders are attached to the Barz Affidavit as Exhibit "O".

### **IX. Appointment of Information Officer**

96. As part of its application, the Applicant is seeking to appoint KSV as the information officer (the "**Information Officer**") in this proceeding. KSV is a licensed trustee in bankruptcy in Canada and its principals have acted as an information officer in several previous ancillary proceedings (both under Part IV of the CCAA as well as the former section 18.6 of the CCAA).

97. KSV has consented to acting as Information Officer in this proceeding. A copy of KSV's consent to act as Information Officer is attached hereto as Exhibit "F".

98. The Chapter 11 Debtors propose to grant the proposed Information Officer and its legal counsel an administration charge with respect to their fees and disbursements in the maximum amount of US\$200,000 (the "**Administration Charge**") on Hollander Canada's property in Canada. The U.S. Chapter 11 Debtors do not have any assets in Canada. I believe the amount of the charge to be reasonable in the circumstances, having regard to the size and complexity of these

proceedings and the roles that will be required of the proposed Information Officer and its legal counsel.

## **X. Proposed Next Hearing**

99. As set out above, Hollander Sleep Products, as the Foreign Representative, is seeking recognition of the above-noted “interim orders” including the DIP Order.

100. Hollander Sleep Products intends to seek a further hearing for recognition of any corresponding “final orders” if and when issued by the U.S. Court and would expect to address any other matters at that time. As noted above, Hollander Sleep Products also intends to seek a further hearing for recognition of the Final DIP Order (as defined in the First Day Declaration) if and when issued by the U.S. Court.

## **XI. Notice**

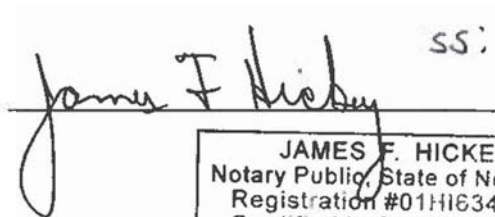

101. This application has been brought on notice to the DIP Lenders and the proposed Information Officer. The major stakeholders of the Chapter 11 Debtors are located in the U.S. and notice will be given to them within the Chapter 11 Cases.

102. The information regarding these proceedings will be provided to Hollander Canada’s stakeholders by and through the Information Officer. If the Orders sought are granted, Hollander Canada proposes that a notice of the recognition orders be published for two consecutive weeks in

- 38 -

*The Globe and Mail* (National Edition) pursuant to the CCAA and all Canadian Court materials in these proceedings will be available on the Information Officer's website.

**SWORN BEFORE ME** at the City of New York in the State of New York on May 23, 2019.

  
ss: N.Y.  


  
\_\_\_\_\_  
**MARC PFEFFERLE**

THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF MARC PFEFFERLE SWORN  
ON JULY 3, 2019

*Kristen Lashar*





Court File No. CV-19-620484-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR.

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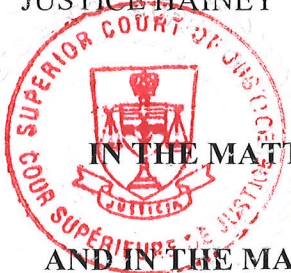
THURSDAY, THE 23<sup>RD</sup>

JUSTICE HAINES

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DAY OF MAY, 2019

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS, LLC, HOLLANDER  
SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC, HOLLANDER  
HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC,  
HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC AND PACIFIC COAST  
FEATHER CUSHION, LLC**

**APPLICATION OF HOLLANDER SLEEP PRODUCTS, LLC UNDER SECTION 46 OF  
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

**INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)**

**THIS APPLICATION**, made by Hollander Sleep Products, LLC (“HSP”) in its capacity as the foreign representative (the “**Foreign Representative**”) of HSP, Hollander Sleep Products Canada Limited, Dream II Holdings, LLC, Hollander Home Fashions Holdings, LLC, Pacific Coast Feather, LLC, Hollander Sleep Products Kentucky, LLC and Pacific Coast Feather Cushion, LLC (collectively, the “**Chapter 11 Debtors**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Application, the affidavit of Marc Pfefferle sworn May 23, 2019 (the “**Pfefferle Affidavit**”), filed, the pre-filing report of KSV Kofman Inc., in its capacity

as proposed information officer (the “**Information Officer**”) dated May 23, 2019, and upon being provided with copies of the documents required by section 46 of the CCAA,

**AND UPON BEING ADVISED** by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) (the “**Supplemental Order**”) is being sought,

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for the proposed Information Officer, counsel for the ABL Agent and the DIP ABL Agent (each as defined in the Pfefferle Affidavit) and counsel for the Term Loan Agent and the DIP Term Loan Agent (each as defined in the Pfefferle Affidavit), and those other parties present, no one else appearing although duly served as appears from the affidavit of service of Evan Barz sworn May 23, 2019:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

#### **FOREIGN REPRESENTATIVE**

2. **THIS COURT ORDERS AND DECLARES** that the Foreign Representative is the “foreign representative” as defined in section 45 of the CCAA of the Chapter 11 Debtors in respect of the cases commenced in the United States Bankruptcy Court for the Southern District of New York by the Chapter 11 Debtors pursuant to Chapter 11 of the United States Bankruptcy Code (collectively, the “**Foreign Proceeding**”).

#### **CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING**

3. **THIS COURT DECLARES** that the centre of its main interests for each of the Chapter 11 Debtors is the United States of America and that the Foreign Proceeding is hereby recognized as a “foreign main proceeding” as defined in section 45 of the CCAA.

## STAY OF PROCEEDINGS

4. **THIS COURT ORDERS** that until otherwise ordered by this Court:

- (a) all proceedings taken or that might be taken against the Chapter 11 Debtors under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;
- (b) further proceedings in any action, suit or proceeding against the Chapter 11 Debtors are restrained; and
- (c) the commencement of any action, suit or proceeding against the Chapter 11 Debtors is prohibited.

## NO SALE OF PROPERTY

5. **THIS COURT ORDERS** that, except with leave of this Court, each of the Chapter 11 Debtors is prohibited from selling or otherwise disposing of:

- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
- (b) any of its other property in Canada.

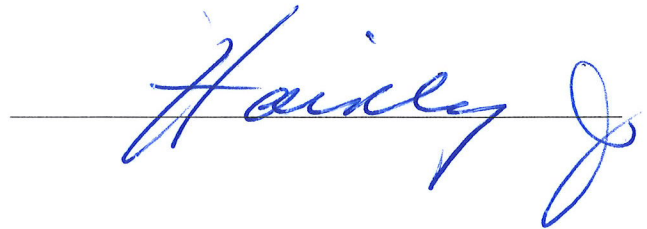
## GENERAL

6. **THIS COURT ORDERS** that within five (5) business days from the date of this Order, or as soon as practicable thereafter, the Information Officer shall cause to be published a notice once a week for two consecutive weeks, in the *Globe and Mail* (National Edition) regarding the issuance of this Order and the Supplemental Order.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada and the United States of America, to give effect to this Order and to assist the Chapter 11 Debtors and the Foreign Representative and their respective counsel and agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS AND DECLARES** that this Order shall be effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

9. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Chapter 11 Debtors and the Foreign Representative and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAY 23 2019

PER / PAR:





IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED      Court File No: CV-19-620484-00CL

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS, LLC, HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC,  
HOLLANDER HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC AND PACIFIC  
COAST FEATHER CUSHION, LLC

APPLICATION OF HOLLANDER SLEEP PRODUCTS, LLC UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
Proceeding commenced at Toronto

**INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)**

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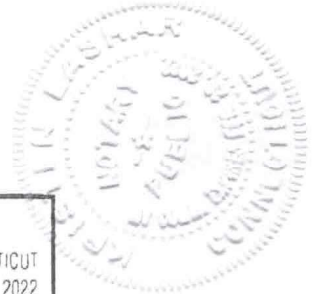
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Lawyers for the Applicant

THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF MARC PFEFFERLE SWORN  
ON JULY 3 , 2019

Kristen Lashar



**CITATION:** Hollander Sleep Products, LLC et al., Re, 2019 ONSC 3238

**COURT FILE NO.:** CV-19-620484-00CL

**DATE:** 2019/05/30

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**- COMMERCIAL LIST**

**RE:** IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

**AND:**

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS, LLC,  
HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II  
HOLDINGS, LLC, HOLLANDER HOME FASHIONS HOLDINGS, LLC,  
PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS  
KENTUCKY, LLC, AND PACIFIC COAST FEATHER CUSHION, LLC

APPLICATION OF HOLLANDER SLEEP PRODUCTS, LLC UNDER  
SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

**BEFORE:** HAINEY J.

**COUNSEL:** *Shawn Irving and Marc Wasserman*, for the Applicant

*Virginie Gauthier*, for KSV Kofman Inc.

*L. Joseph Latham*, for Wells Fargo

*Milly Chow and Kelly Bourassa*, for Barings Finance LLC

**HEARD:** May 23, 2019

**ENDORSEMENT**

**BACKGROUND**

[1] On May 23, 2019 I granted the application brought by Hollander Sleep Products, LLC ("Hollander Sleep Products"), for orders pursuant to Section 46 through 49 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended ("CCAA"). I made the following orders:

- a) Recognition of the Chapter 11 Cases as foreign main proceedings pursuant to *Part IV of the CCAA*;

- c) Appointment of KSV Kofman Inc. (“KSV”) as Information Officer;
- d) Granting of the DIP ABL Charge; and
- e) Granting of the Administration Charge.

[2] I indicated in my endorsement that written reasons would follow. These are my written reasons.

[3] Hollander Sleep Products brings this application in its capacity as the foreign representative (the “Foreign Representative”) of itself and Hollander Sleep Products Canada Limited (“Hollander Canada”), Dream II Holdings, LLC, Hollander Home Fashions Holdings, LLC, Pacific Coast Feather, LLC, Hollander Sleep Products Kentucky, LLC, and Pacific Coast Feather Cushion, LLC (collectively, the “Chapter 11 Debtors”, and with their other non-debtor affiliates, “Hollander”).

## **FACTS**

[4] Hollander is an industry leader in the bedding products market. Hollander manufactures bedding products including pillows, comforters and mattress pads for well-known licensed brands. Hollander also owns and manufactures bedding products under several of its own proprietary brands and also partners with major retailers and hotel chains.

[5] Hollander’s corporate headquarters is in Boca Raton, Florida. Hollander has 13 manufacturing facilities located across North America – 11 in the United States and 2 in Canada - and a primary show room in New York City. Most of Hollander’s sales come from wholesale distribution.

### *Chapter 11 Cases*

[6] On May 19, 2019 (the “Petition Date”) each of the Chapter 11 Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the *U.S. Bankruptcy Code* (the “Chapter 11 Cases”) with the United States Bankruptcy Court for the Southern District of New York (the “U.S. Court”). Certain first day motions (the “First Day Motions”) were also filed on May 19, 2019. On May 21, 2019, the U.S. Court heard several of the First Day Motions, and on May 22 and 23, 2019 the court entered various interim or final orders in respect of these motions (the “First Day Orders”).

### *Chapter 11 Debtors*

[7] The Chapter 11 Debtors operate on an integrated basis and are incorporated or established under the laws of the United States except for Hollander Canada, which is incorporated under the laws of British Columbia. Each of the Chapter 11 Debtors, including Hollander Canada, is a direct or indirect wholly-owned subsidiary of Dream II Holdings, LLC.

### *Hollander Canada*

[8] Hollander Canada is a fully integrated subsidiary of Hollander. Hollander Canada operates one manufacturing facility in Toronto, one manufacturing facility in Montreal, and maintains a sales office in Toronto.



[9] Hollander Canada employs approximately 240 employees, all of whom are located in Canada. Hollander Canada's workforce is not unionized and it does not maintain any registered pension plans. Its primary stakeholders include employees, lenders, customers, landlords, creditors, and trade-suppliers.

[10] On a standalone basis, Hollander Canada is not profitable. Its 2018 financial statement reflects a net loss of approximately \$2.6 million after allocation of selling, general and administrative expenses, including royalties and procurement fees, incurred by the U.S. Chapter 11 Debtors and allocated across the manufacturing facilities for which it provides these and other shared services (the "U.S. Shared Services"). Losses have continued for the four-month period ended April 30, 2019. Currently, approximately \$7.2 million of Hollander Canada's \$9 million of accounts payable is past due. If the amount owing to Hollander Canada from the U.S. Chapter 11 Debtors was written down to its realizable value and Hollander Canada's allocation of U.S. Shared Services was recorded for the four months ended April 30, 2019, Hollander Canada's shareholder equity would be entirely eroded.

[11] Hollander Canada is entirely dependent on Hollander's U.S. head office for managerial, administrative, IT, strategic services and decisions, and it uses intellectual property almost wholly owned by U.S. Hollander entities. Hollander Canada is also entirely reliant on supply arrangements and relationships of the Hollander enterprise.

#### *Principal Indebtedness*

[12] The Chapter 11 Debtors' principal pre-petition indebtedness consists of the following:

- a) **Prepetition ABL Facility** – a \$125 million senior revolving asset-based credit facility (the "ABL Facility") under which all the Chapter 11 Debtors, including Hollander Canada, are obligors. Hollander Canada may borrow a maximum of \$40 million from this facility. Hollander Canada is not jointly or severally liable for the obligations of the U.S. Chapter 11 Debtors under the ABL Facility; however, the U.S. Chapter 11 Debtors are liable for Hollander Canada's borrowings under the ABL Facility. As of the Petition Date, approximately \$61 million remains outstanding against the ABL Facility, not including approximately \$5 million in letters of credit (the "Prepetition ABL Obligations"). The Prepetition ABL Obligations include approximately \$6 million of borrowings by Hollander Canada.
- b) **Prepetition Term Loan** – a \$190 million senior secured term loan facility (the "Term Loan Facility"). Each Chapter 11 Debtor except Hollander Canada is an obligor under this facility. Hollander Canada is not a borrower or a guarantor of the Term Loan Facility. As of the Petition Date, approximately \$166.5 million remains outstanding against the Term Loan Facility.

#### *Recent Events and Proposed Restructuring*

[13] Recent substantial price increases on materials have significantly reduced Hollander's already low profit margins for many products. In addition, Hollander acquired one of its major competitors in June 2017. This necessitated the expenditure of additional capital. With

approximately \$233 million of outstanding indebtedness and limited access to credit, Hollander is facing severe liquidity constraints.

[14] These circumstances necessitated comprehensive restructuring negotiations with the Chapter 11 Debtors' primary constituency groups. The Chapter 11 Debtors recently agreed with their secured lenders and their majority equity-holder, Sentinel, on a comprehensive restructuring process to ensure the viability of the business. The Chapter 11 Debtors, 100% of the Term Loan Lenders, and Sentinel entered into a restructuring support agreement dated May 19, 2019 (the "RSA"). The RSA contemplates, and the Chapter 11 Debtors have filed, a comprehensive Chapter 11 restructuring plan (the "Plan").

[15] In connection with the RSA, Hollander's asset-based secured lenders have agreed to provide a \$90 million debtor-in-possession asset-based loan facility (the "DIP ABL Facility") and certain Term Loan Lenders have agreed to provide an additional \$28 million term loan facility (the "DIP Term Loan Facility" and together with the DIP ABL Facility, the "DIP Facilities") to fund the administration of the Chapter 11 Cases.

[16] I am not, at this time, being asked to approve or grant any relief in connection with the Plan. However, the Chapter 11 Debtors have negotiated and incorporated certain protections into the Plan to mitigate against any prejudice to current creditors of Hollander Canada that might result incidentally from a global restructuring. I am satisfied that the Plan represents the Chapter 11 Debtors' best prospect of reorganizing their business operations and emerging as a healthy going-concern enterprise, maximizing recoveries for all stakeholders.

[17] If the Chapter 11 Debtors do not obtain the relief requested on this application, including post-petition financing, they will be unable to restructure pursuant to the Plan. In such a case, a liquidation of the business and assets of the Chapter 11 Debtors, including Hollander Canada, will be the likely result. In a liquidation scenario, there will be a nominal recovery, if any, available for Hollander Canada's unsecured creditors.

#### *Proposed Postpetition Financing*

[18] On May 21, 2019, the U.S. Court heard certain of the First Day Motions, including the DIP Motion. At the hearing, the U.S. Court requested certain changes to the DIP Order, which were subsequently made by the Chapter 11 Debtors in consultation with the DIP Lenders. Access to the DIP Facilities is vital to the preservation and maintenance of the going-concern value of Hollander and the Chapter 11 Debtors' successful reorganization.

[19] The \$90 million DIP ABL Facility is the critical facility from the perspective of Hollander Canada. Hollander Canada is neither a borrower nor a guarantor of the DIP Term Loan Facility. The DIP ABL Facility is a senior secured credit facility for which all the Chapter 11 Debtors, including Hollander Canada, are borrowers. The DIP ABL Facility provides for an initial "creeping (or gradual) roll-up" whereby the Chapter 11 Debtors will use receipts from the Chapter 11 Debtors' operations to pay down pre-filing obligations pending the issuance of the Final DIP Order, whereupon there will be a deemed draw on the DIP ABL Facility to satisfy the then outstanding prepetition debt, if any, under the ABL Facility. Hollander Canada is entitled to

borrow up to \$20 million under the DIP ABL Facility, less the amount of Hollander Canada's prepetition obligations under the ABL Facility that are to be rolled-up into the DIP ABL Facility.

[20] With respect to prepetition debt under the ABL Facility, Hollander Canada is not jointly or severally liable for amounts drawn down by the U.S. Chapter 11 Debtors. However, Hollander Canada will be jointly and severally liable with the other Chapter 11 Debtors in respect of borrowings under the DIP ABL Facility, including borrowings to repay amounts drawn down under the prepetition ABL Facility by the U.S. Chapter 11 Debtors. The DIP ABL Lenders have indicated they are unwilling to enter into the DIP ABL Facility unless Hollander Canada is jointly and severally liable for all obligations under the DIP ABL Facility, including those incurred by the U.S. borrowers.

[21] It is a condition of the DIP Facilities that the Chapter 11 Debtors obtain an order from this Court recognizing the DIP Order within three business days of when the DIP Order was issued by the U.S. Court. The DIP ABL Facility requires that the DIP Order be recognized by this Court before any borrowing by Hollander Canada will be permitted under the DIP ABL Facility.

[22] I have concluded that the ability of the Chapter 11 Debtors, including Hollander Canada, to maintain business relationships with their vendors, suppliers and customers, to pay their employees and otherwise finance their operations requires the availability of working capital from the DIP Facilities. The Chapter 11 Debtors, including Hollander Canada on a standalone basis, do not have sufficient available sources of working capital and financing to operate their businesses without immediate access to the DIP Facilities.

## ISSUES

[23] I must decide the following issues:

- a) Are the Chapter 11 Cases "foreign main proceedings" pursuant to Part IV of the CCAA?
- b) If so, are the Chapter 11 Debtors entitled to the relief sought in the Initial Recognition Order and Supplemental Order, including,
  - (i) Granting the Stay of Proceedings;
  - (ii) Recognition of the First Day Orders;
  - (iii) Granting the DIP ABL Charge;
  - (iv) Appointing KSV as Information Officer; and
  - (v) Granting the Administration Charge?

## ANALYSIS

### **Are the Chapter 11 Cases Foreign Main Proceedings?**

#### *Are the Chapter 11 Cases Foreign Proceedings?*

[24] I must first determine if the Chapter 11 Cases are foreign proceedings. It is important to note that the purpose of Part IV of the CCAA is to facilitate the administration of cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada. Section 44 of the CCAA provides as follows:

44. The purpose of this Part is to provide mechanisms for dealing with cases of cross- border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
- (d) the protection and the maximization of the value of debtor company's property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

[25] Pursuant to S. 46(1) of the CCAA, a person who is a foreign representative may apply to the court for recognition of a foreign proceeding in respect of which that person is a foreign representative. Pursuant to S. 47 of the CCAA, the two following requirements must be met for an order recognizing a foreign proceeding:

- a) the proceeding is a "foreign proceeding"; and
- b) the applicant is a "foreign representative" in respect of that foreign proceeding.

[26] In the Chapter 11 Cases, an order was made appointing Hollander Sleep Products as foreign representative by the U.S. Court on May 23, 2019. (the "Foreign Representative Order").

[27] Section 45(1) of the CCAA defines a "foreign proceeding" as any judicial proceeding in a jurisdiction outside of Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization. Courts have consistently recognized proceedings under Chapter 11 of the United States Bankruptcy Code to be foreign proceedings for the purposes of the CCAA.

[28] Because Hollander Sleep Products has been appointed a "foreign representative" by the U.S. Court in the Chapter 11 Cases, I am satisfied that the Chapter 11 cases should be recognized as a "foreign proceeding" pursuant to S. 47(1) of the CCAA.

*Are the Chapter 11 Cases Foreign Main Proceedings?*

[29] Once I have determined that a proceeding is a “foreign proceeding”, I am required, pursuant to Section 47(2) of the CCAA, to specify in my order whether the foreign proceeding is a “foreign main proceeding” or a “foreign non-main proceeding.” A “foreign main proceeding” is defined as a “foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests” (“COMI”).

[30] The CCAA does not provide a definition of COMI. Section 45(2) of the CCAA establishes a rebuttable presumption that, in the absence of proof to the contrary, the location of a debtor company’s registered office is deemed to be its COMI. Evidence regarding the debtor company’s operations can rebut this presumption. Part IV of the CCAA does not specifically consider the circumstances facing corporate groups. It is therefore necessary to conduct the COMI analysis on an entity-by-entity basis.

[31] In this case the registered offices of all of the Chapter 11 Debtors except for Hollander Canada, are situated in the United States. Therefore, the presumption in s. 45(2) of the CCAA deems the COMI of each of those entities to be in the United States.

[32] Hollander Canada’s registered head office is in Vancouver. Where a Canadian entity is operating as part of a larger corporate group, several Canadian authorities have considered how COMI should be determined. In *Angiotech*<sup>1</sup>, the Court considered the following factors:

- a) the location where corporate decisions are made;
- b) the location of employee administrations, including human resource functions;
- c) the location of the company's marketing and communication functions;
- d) whether the enterprise is managed on a consolidated basis;
- e) the extent of integration of an enterprise's international operations;
- f) the centre of an enterprise's corporate, banking, strategic and management functions;
- g) the existence of shared management within entities and in an organization;
- h) the location where cash management and accounting functions are overseen;
- i) the location where pricing decisions and new business development initiatives are created; and
- j) the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.

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<sup>1</sup> *Angiotech Pharmaceuticals Inc. (Re)*, 2011 BCSC 115 at para 7.

[33] In *Elephant & Castle*<sup>2</sup>, Morawetz J. (as he then was) recognized the *Angiotech* factors listed above and identified what he considered to be the most significant factors as follows:

However, it seems to me, in interpreting COMI, the following factors are usually significant:

- (a) the location of the debtor's headquarters or head office functions or nerve centre;
- (b) the location of the debtor's management; and
- (c) the location which significant creditors recognize as being the centre of the company's operations.

[34] The jurisprudence is clear that where a Canadian debtor company is the only Canadian entity among a number of other Chapter 11 debtors that are all incorporated in the United States, the COMI for the Canadian debtor company is the United States.

[35] I have concluded for the following reasons that Hollander Canada's COMI is in the United States:

- a) Hollander Canada's business is closely integrated into Hollander's business in the U.S. and its registered office is listed in Canada only for corporate purposes;
- b) Managerial functions for Hollander Canada, including finance, buying, logistics, marketing, and strategic decisions, are provided from Hollander's U.S. head office by Hollander Sleep Products;
- c) Hollander Canada is almost wholly dependent on Hollander's U.S. office for administrative functions such as overhead services, accounting, and IT, which are provided by Hollander Sleep Products in the U.S.;
- d) Data for Hollander Canada's operations is housed within IT systems, located and operated out of the U.S.;
- e) Hollander Canada is reliant on the purchasing power and supplier relationships of the Hollander enterprise, and on its own could not replicate the supply arrangements necessary for its continued functioning;
- f) Hollander Canada's books and records are maintained at Hollander's head office in Boca Raton, Florida;
- g) All of Hollander Canada's directors reside in the United States;
- h) Canadian revenues make up only 10.7% of Hollander's revenues;

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<sup>2</sup> *Massachusetts Elephant & Castle Group Inc., (Re)*, 2011 ONSC 4201 (S.C.J. [Commercial List]).

- i) Hollander Canada is entirely dependent on the U.S. Chapter 11 Debtors for the majority of licensing agreements, design partnerships, and company-owned brands;
- j) Substantially all of the trademarks and intellectual property relied on by Hollander Canada are owned by the U.S. Chapter 11 Debtors;
- k) The Chapter 11 Debtors, including Hollander Canada, operate an integrated, centralized cash management system; and
- l) Hollander Canada is dependent on the U.S. Chapter 11 Debtors for the establishment, maintenance, and administration of certain customer promotional programs involving Hollander Canada's key customers.

[36] Since all the Chapter 11 Debtors except Hollander Canada have registered offices in the United States, and since a review of Hollander Canada's business indicates that its COMI is in the United States, The COMI of all the Chapter 11 Debtors is in the United States and therefore the Chapter 11 Cases should be recognized as "foreign main proceedings".

### **SHOULD THE INITIAL RECOGNITION ORDER AND SUPPLEMENTAL ORDER BE GRANTED?**

#### *Is a Stay of Proceedings Required and Appropriate?*

[37] Section 48(1) of the CCAA provides that once the Court has found that a foreign proceeding is a "foreign main proceeding", it is required to grant certain mandatory relief, including a stay of proceedings:

[38] In addition to the automatic relief provided for in s. 48, s.49 of the CCAA grants me the broad discretion to make any appropriate order if I am satisfied that it is necessary for the protection of the debtor company's property or the interests of creditors.

[39] Section 52(1) of the CCAA requires that if an order recognizing a foreign proceeding is made, the Court "shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding."

[40] Because of the circumstances facing Hollander, Hollander Canada and the other Chapter 11 Debtors, I am satisfied that a stay of proceedings is necessary in order to implement the proposed restructuring.

#### *Should the First Day Orders be Recognized?*

[41] The central principle governing Part IV of the CCAA is comity, which mandates that Canadian courts should recognize and enforce the judicial acts of other jurisdictions, provided that those other jurisdictions have assumed jurisdiction on a basis consistent with principles of order, predictability and fairness.

[42] Canadian courts have emphasized the importance of comity and cooperation in cross-border insolvency proceedings to avoid multiple proceedings, inconsistent judgments and general

uncertainty. Coordination of international insolvency proceedings is particularly critical in ensuring the equal and fair treatment of creditors regardless of their location.

[43] I am satisfied that the First Day Orders should be recognized for the following reasons:

- a) The U.S. Court has appropriately taken jurisdiction over the Chapter 11 Cases, so comity will be furthered by this Court's recognition of and support for the Chapter 11 Cases already under way in the United States;
- b) Coordination of proceedings in the two jurisdictions will ensure equal and fair treatment of all stakeholders, whether they are in the United States or Canada;
- c) Given the close connection between Hollander and the United States, it is reasonable and sensible for the U.S. Court to have principal control over the insolvency process. This will produce the most efficient restructuring for the benefit of all stakeholders;
- d) The Chapter 11 Debtors must act quickly because of the expeditious timetable established under the Plan for their restructuring. It is imperative that there be a centralized and co-ordinated process for these insolvency proceedings to maximize the prospect of a successful restructuring and preserve value for stakeholders; and
- e) The Canadian and U.S. operations of Hollander are highly integrated.

*Should the DIP ABL Charge be Granted?*

[44] The Chapter 11 Debtors are facing a liquidity crisis and require DIP financing to fund their operations while they pursue a restructuring pursuant to the Plan or a sale in accordance with the marketing process to be conducted as part of the Chapter 11 proceeding. The ability of the Chapter 11 Debtors, including Hollander Canada, to maintain and finance their operations requires working capital from the DIP Facilities. If interim financing through the DIP Facilities is not obtained, neither the Chapter 11 Debtors as a whole, nor Hollander Canada on a standalone basis, have the funds to finance going-concern operations.

[45] The DIP ABL Facility includes an initial creeping roll-up provision pursuant to which the Chapter 11 Debtors will use receipts from their operations to pay down pre-filing obligations pending the issuance of the Final DIP Order. The amount borrowed under the DIP ABL Facility is proposed to be secured by, among other things, a court-ordered charge on Hollander Canada's property and the property of the other Chapter 11 Debtors in Canada (the "DIP ABL Charge").

[46] This court has concluded in previous proceedings that there is no impediment to granting approval of interim DIP financing including a full roll-up provision in foreign recognition proceedings under Part IV of the CCAA<sup>3</sup>.

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<sup>3</sup> *Hartford Computer Hardware Inc., (Re)*, 2012 ONSC 964 at paras. 18-19.



[47] In *Hartford*, an application under Part IV of the CCAA, this court recognized a DIP facility authorized by the U.S. Court that included a full roll-up, and emphasized the importance of comity in foreign recognition proceeding as follows:

The Information Officer and Chapter 11 Debtors recognize that in CCAA proceedings, a partial "roll up" provision would not be permissible as a result of s.11.2 of the CCAA, which expressly provides that a DIP charge may not secure an obligation that exists before the Initial Order is made.

Section 49 of the CCAA provides that, in recognizing an order of a foreign court, the court may make any order that it considers appropriate, provided the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of the creditor or creditors.

It is necessary, in my view, to emphasize that this is a motion to recognize an order made in the "foreign main proceeding"....

A significant factor to take into account is that the Final DIP Facility Order was granted by the U.S. Court. In these circumstances, I see no basis for this court to second guess the decision of the U.S. Court.

[48] For the same reasons I am satisfied that the DIP Order should be approved. The U.S. Court granted the DIP Order because it is necessary for the protection of Hollander's property and for the interests of creditors in Canada and the U.S.

[49] The DIP ABL Facility provides that Hollander Canada is jointly and severally liable for the borrowings of other Chapter 11 Debtors under the DIP ABL Facility.

[50] I have concluded that the following factors support recognizing Hollander Canada's joint and several liability under the DIP Order and the DIP ABL Charge:

- a) The DIP ABL Charge furthers the objectives of the CCAA and is commercially reasonable as it allows the Chapter 11 Debtors to continue operations and pursue a restructuring or going-concern sale as outlined in the proposed Plan;
- b) An estimated cash flow forecast extracted from the DIP budget reveals that Hollander Canada is projected to generate negative cash flow until at least July 1, 2019;
- c) The Chapter 11 Debtors, including Hollander Canada, need immediate access to the DIP ABL Facility to ensure their continued operations during these proceedings;
- d) The DIP ABL Lenders are unwilling to provide funding to the Chapter 11 Debtors without Hollander Canada's joint and several liability under the DIP ABL Facility;
- e) The proposed DIP Facilities and Plan are supported by all secured creditors with an economic interest in Hollander Canada; and

- f) If the DIP ABL Charge is not granted, the restructuring contemplated by the Plan will not be implemented, likely resulting in liquidation. In a liquidation scenario, Hollander Canada's creditors will likely obtain only nominal recoveries, if any.

[51] To protect the interests of Hollander Canada and its creditors, the Chapter 11 Debtors negotiated certain protections to mitigate any prejudice to Hollander Canada's creditors. Specifically, the DIP Order includes a quasi-marshalling construct whereby the DIP ABL Agent is obligated to first look to proceeds of the Chapter 11 Debtors' U.S. collateral to satisfy any outstanding obligations of the U.S. Chapter 11 Debtors under the DIP ABL Facility, and to the proceeds of the Chapter 11 Debtors' Canadian collateral to satisfy any outstanding obligations of Hollander Canada under the DIP ABL Facility. Only once collateral in the U.S. has been exhausted can the DIP ABL Lenders look to the Canadian assets to satisfy any outstanding U.S. obligation.

[52] The absence of prejudice to creditors of Hollander Canada, and the DIP ABL Lenders' consent to the quasi-marshalling construct, are key factors distinguishing this case from *Payless Holdings Inc. LLC, (Re)*. In *Payless*, also a proceeding under Part IV of the CCAA, this court declined to approve a DIP order and lenders' charge that would have required the solvent Canadian applicants to guarantee borrowings from the DIP facility even though they would not receive advances from it. The DIP facility was opposed by the Canadian landlords who were uniquely prejudiced by its terms. The DIP facility in that case specifically precluded marshalling.

[53] I have concluded that the Court's decision in *Payless* is distinguishable from this case for the following reasons as set out in the applicant's factum:

- a) In *Payless*, the Canadian Applicants were not insolvent, were not prepetition borrowers, had never granted security and were not borrowers under the DIP facility. In this case, Hollander Canada is insolvent, its assets are encumbered, and it is incapable of maintaining going concern operations without urgent funding support from the DIP ABL Facility. For instance, \$7.2 million of Hollander Canada's accounts payable are currently past due; without support from the DIP ABL Facility, Hollander does not have sufficient liquidity to satisfy these obligations.
- b) In *Payless*, there was evidence of material prejudice to Canadian creditors and certain Canadian creditor groups opposed the DIP order because they were disadvantaged. In this case, no such material prejudice or unequal treatment exists with respect to the creditors of Hollander Canada or the other Chapter 11 Debtors.
- c) In *Payless*, the Court intimated that if marshalling had been permitted, the inequitable treatment of Canadian creditors would have been resolved. In this case, the DIP ABL Lenders have specifically agreed to a quasi marshalling concept to ensure that Canadian assets are used first to satisfy Canadian DIP ABL indebtedness, and not applied to satisfy U.S. DIP ABL indebtedness until all U.S. assets are first exhausted.

[54] I have concluded that the DIP ABL Charge should be granted for these reasons.

**SHOULD KSV BE APPOINTED INFORMATION OFFICER?**

[55] I am satisfied that an information officer should be appointed to assist with the cooperation between the Canadian foreign recognition proceeding and the foreign representative and the U.S. Court. Further, KSV, a licensed insolvency trustee, is appropriate to act in this capacity.

**SHOULD AN ADMINISTRATIVE CHARGE BE APPROVED?**

[56] Finally, I am satisfied that an administration charge in the maximum amount of \$200,000 is reasonable and appropriate.

**CONCLUSION**

[57] For these reasons I have granted the Initial Recognition Order and the Supplemental Order.

[58] I am grateful to the applicant's counsel for their helpful submission.

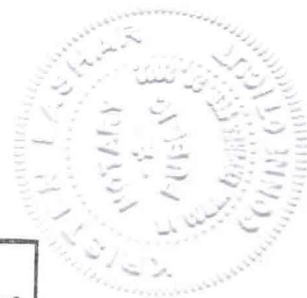


HAILEY J. HAILEY

**Date:** May 30, 2019

THIS IS EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF MARC PFEFFERLE SWORN  
ON JULY 3, 2019

Kristen Lashar



Court File No. CV-19-620484-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR.

)

THURSDAY, THE 23<sup>RD</sup>

JUSTICE HAINEY

)

DAY OF MAY, 2019



**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC, HOLLANDER  
HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC,  
HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC AND PACIFIC COAST  
FEATHER CUSHION, LLC**

**APPLICATION OF HOLLANDER SLEEP PRODUCTS, LLC UNDER SECTION 46 OF  
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

**SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)**

**THIS APPLICATION**, made by Hollander Sleep Products, LLC ("**HSP**") in its capacity as the foreign representative (the "**Foreign Representative**") of HSP, Hollander Sleep Products Canada Limited ("**Hollander Canada**"), Dream II Holdings, LLC, Hollander Home Fashions Holdings, LLC, Pacific Coast Feather, LLC, Hollander Sleep Products Kentucky, LLC and Pacific Coast Feather Cushion, LLC (collectively, the "**Chapter 11 Debtors**" and each, a "**Chapter 11 Debtor**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Application, the affidavit of Marc Pfefferle sworn May 23, 2019 (the "**Pfefferle Affidavit**"), filed, the pre-filing report of KSV Kofman Inc., in its capacity as proposed Information Officer (as defined herein) dated May 23, 2019 (the "**Pre-Filing**

**Report**”), and upon being provided with copies of the documents required by section 46 of the CCAA,

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for the proposed Information Officer, counsel for the ABL Agent and the DIP ABL Agent (each as defined in the Pfefferle Affidavit) and counsel for the Term Loan Agent and the DIP Term Loan Agent (each as defined in the Pfefferle Affidavit), and those other parties present, no one else appearing although duly served as appears from the affidavit of service of Evan Barz sworn May 23, 2019:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined have the meaning given to them in the Pfefferle Affidavit.

### **INITIAL RECOGNITION ORDER**

3. **THIS COURT ORDERS** that the provisions of this Order shall be interpreted in a manner complementary and supplementary to the provisions of the Initial Recognition Order (Foreign Main Proceeding) dated as of May 23, 2019 (the “**Recognition Order**”), provided that in the event of a conflict between the provisions of this Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

### **RECOGNITION OF FOREIGN ORDERS**

4. **THIS COURT ORDERS** that the following orders (collectively, the “**Foreign Orders**”) of the United States Bankruptcy Court for the Southern District of New York (the “**U.S. Bankruptcy Court**”) made in the Foreign Proceeding (as defined in the Recognition Order) are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

- (a) *Order (A) Authorizing Hollander Sleep Products, LLC to Act as Foreign Representative and (B) Granting Related Relief* (the “**Foreign Representative Order**”);
- (b) *Order (A) Directing Joint Administration of Chapter 11 Cases and (B) Granting Related Relief* (the “**Joint Administration Order**”);
- (c) *Interim Order (I) Authorizing the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief* (the “**Interim Employee Wages Order**”);
- (d) *Interim Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief* (the “**Interim Cash Management Order**”);
- (e) *Interim Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Lenders, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* (the “**Interim DIP Order**”);
- (f) *Interim Order (I) Authorizing the Debtors to Pay Prepetition Claims of (A) Lien Claimants, (B) Import Claimant, (C) 503(B)(9) Claimants, (D) Foreign Vendors, and (E) Critical Vendors, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief* (the “**Interim Critical Vendors and Shippers Order**”); and

- (g) *Interim Order (A) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (B) Granting Related Relief* (the “**Interim Customer Programs Order**”)

(copies of each such Foreign Orders are attached as Schedules “A” to “G” hereto);

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

#### **APPOINTMENT OF INFORMATION OFFICER**

5. **THIS COURT ORDERS** that KSV Kofman Inc. (the “**Information Officer**”) is hereby appointed as an officer of this Court, with the powers and duties set out herein.

#### **NO PROCEEDINGS AGAINST THE CHAPTER 11 DEBTORS OR THE PROPERTY**

6. **THIS COURT ORDERS** that from the date of the Recognition Order until such date as this Court may order (the “**Stay Period**”) no proceeding or enforcement process in any court or tribunal in Canada (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Chapter 11 Debtors or affecting their business (the “**Business**”) or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), except with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Chapter 11 Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

7. **THIS COURT ORDERS** that, without limiting the stay of proceedings provided for in the Recognition Order, during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Chapter 11 Debtors, or



affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (a) prevent the assertion of or the exercise of rights and remedies outside of Canada, (b) empower any of the Chapter 11 Debtors to carry on any business in Canada which that Chapter 11 Debtor is not lawfully entitled to carry on, (c) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (d) prevent the filing of any registration to preserve or perfect a security interest, or (e) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

8. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Chapter 11 Debtors and affecting the Business in Canada, except with leave of this Court.

### **ADDITIONAL PROTECTIONS**

9. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Chapter 11 Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Chapter 11 Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Chapter 11 Debtors, and that the Chapter 11 Debtors shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names.

10. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Chapter 11 Debtors with respect to any claim against the directors or officers that arose before the date of the Recognition Order and that relates to any obligations of the Chapter 11 Debtors whereby the directors or officers are alleged

under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

11. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

#### **OTHER PROVISIONS RELATING TO INFORMATION OFFICER**

12. **THIS COURT ORDERS** that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court periodically with respect to the status of these proceedings and the status of the Foreign Proceeding, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- (c) in addition to the periodic reports referred to in paragraph 12(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 12(b) above;
- (d) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Chapter 11 Debtors, to the extent that is necessary to perform its duties arising under this Order; and

- (e) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. **THIS COURT ORDERS** that the Chapter 11 Debtors and the Foreign Representative shall (a) advise the Information Officer of all material steps taken by the Chapter 11 Debtors or the Foreign Representative in these proceedings or in the Foreign Proceeding, (b) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (c) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. **THIS COURT ORDERS** that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. **THIS COURT ORDERS** that the Information Officer (a) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (b) may post on its website any other materials that the Information Officer deems appropriate.

16. **THIS COURT ORDERS** that the Information Officer may provide any creditor of a Chapter 11 Debtor with information provided by the Chapter 11 Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Chapter 11 Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the relevant Chapter 11 Debtors may agree.

17. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be paid by the Chapter 11 Debtors their reasonable fees and disbursements incurred

in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Chapter 11 Debtors are hereby authorized and directed to pay the accounts of the Information Officer and counsel for the Information Officer.

18. **THIS COURT ORDERS** that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property in Canada, which charge shall not exceed an aggregate amount of US\$200,000 as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 21 through 26 hereof.

#### **INTERIM FINANCING**

20. **THIS COURT ORDERS** that the DIP ABL Agent, for and on behalf of itself and the DIP ABL Lenders, shall be entitled to the benefit of and is hereby granted a charge (the “**DIP ABL Charge**”) on the Property in Canada, which DIP ABL Charge shall be consistent with the liens and charges created by the Interim DIP Order with respect to the Property in Canada, shall have the priority set out in paragraphs 21 through 26 hereof, and further provided that the DIP ABL Charge shall not be enforced except with leave of this Court on notice to the Information Officer and those parties on the service list established for these proceedings.

## **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

21. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP ABL Charge, as among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of US\$200,000); and
- (b) Second – DIP ABL Charge.

22. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the DIP ABL Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

23. **THIS COURT ORDERS** that the Charges (as constituted and defined herein) shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

24. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Chapter 11 Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Charges, unless the Chapter 11 Debtors also obtain the prior written consent of the Information Officer, the DIP ABL Agent and the DIP Term Loan Agent.

25. **THIS COURT ORDERS** that the Administration Charge and the DIP ABL Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative

covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any Chapter 11 Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (i) the creation of the Charges shall not create or be deemed to constitute a breach by a Chapter 11 Debtor of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (iii) the payments made by the Chapter 11 Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

26. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Chapter 11 Debtors’ interest in such real property leases.

#### **ASSET SALES**

27. **THIS COURT ORDERS** that, notwithstanding paragraph 5 of the Recognition Order, Hollander Canada shall be permitted, with the prior consent of the Information Officer, to sell or otherwise dispose of its fixed assets located in Toronto, Ontario, solely to the extent permitted by the DIP ABL Credit Agreement in an amount not to exceed US\$250,000 in the aggregate, without seeking leave of this Court.

#### **SERVICE AND NOTICE**

28. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute

an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/insolvency-cases/case/hollander-sleep-products-canada-limited>.

29. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Chapter 11 Debtors, the Foreign Representative and the Information Officer are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Chapter 11 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the applicable Chapter 11 Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **SEALING**

30. **THIS COURT ORDERS** that Confidential Appendix "1" to the Pre-Filing Report shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

#### **GENERAL**

31. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Chapter 11 Debtor, the Business or the Property.

33. **THIS COURT ORDERS** that within five (5) business days from the date of this Order, or as soon as practicable thereafter, the Information Officer shall cause to be published a notice once a week for two consecutive weeks, in the Globe and Mail (National Edition) regarding the issuance of this Order and the Recognition Order.

34. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Chapter 11 Debtors, the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Foreign Representative and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Chapter 11 Debtors, the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order.

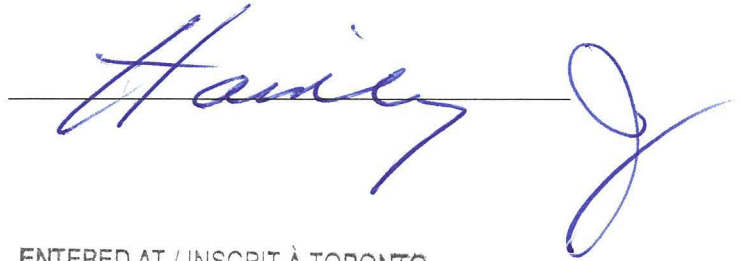
35. **THIS COURT ORDERS** that each of the Chapter 11 Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

36. **THIS COURT ORDERS** that the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network and adopted by this Court and the U.S. Bankruptcy Court and attached as Schedule “H” hereto (the “**JIN Guidelines**”), are hereby adopted by this Court for the purposes of these recognition proceedings.

37. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days’ notice to the Chapter 11 Debtors, the Foreign Representative, the Information Officer, the DIP ABL Agent, the DIP Term Loan Agent and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.



38. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.



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LE / DANS LE REGISTRE NO:

MAY 24 2019

PER / PAR: 

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS, LLC, HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC,  
HOLLANDER HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC AND PACIFIC  
COAST FEATHER CUSHION, LLC

APPLICATION OF HOLLANDER SLEEP PRODUCTS, LLC UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-  
36, AS AMENDED

Applicant

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
Proceeding commenced at Toronto

**SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)**

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Lawyers for the Applicant

TAB 3

Court File No. CV-19-620484-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS LLC, HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II HOLDINGS, LLC, HOLLANDER HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS KENTUCKY, LLC, AND PACIFIC COAST FEATHER CUSHION, LLC

APPLICATION OF HOLLANDER SLEEP PRODUCTS LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED.

APPLICANT

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**AFFIDAVIT OF EVAN BARZ**

**(Sworn July 3, 2019)**

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I, Evan Barz, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am an associate lawyer with the law firm of Osler, Hoskin & Harcourt LLP, counsel to Hollander Sleep Products, LLC (the “**Foreign Representative**”) in its capacity as foreign representative of Hollander Sleep Products Canada Limited (“**Hollander Canada**”), Dream II Holdings, LLC, Hollander Home Fashions Holdings, LLC, Pacific Coast Feather, LLC, Hollander Sleep Products Kentucky, LLC and Pacific Coast Feather Cushion, LLC. (collectively with the

Foreign Representative, the “**Chapter 11 Debtors**” and each, a “**Chapter 11 Debtor**”), that have filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the “**U.S. Court**”). As such I have personal knowledge of the matters deposed to in this affidavit, except where indicated otherwise.

2. I swear this Affidavit in support of a motion by the Foreign Representative for an Order recognizing and enforcing the terms of the Second Day Orders (as defined below) entered by the U.S. Court.

**A. The U.S. Orders**

*Bar Date Order*

3. On June 21, 2019, the U.S. Court granted the *Order (A) Setting Bar Dates for Submitting Proofs of Claim, (B) Approving Procedures for Submitting Proofs of Claim, (C) Approving Notice Thereof, and (D) Granting Related Relief* (the “**Bar Date Order**”). A description of the Bar Date Order is contained in the Affidavit of Marc Pfefferle, sworn July 3, 2019. A copy of the Motion filed in support of the Bar Date Order is attached hereto as Exhibit “A” and a copy of the Bar Date Order is attached hereto as Exhibit “B”.

*The Second Day Orders*

4. On July 1, 2019, the U.S. Court heard certain “second day” motions (the “**Second Day Motions**”) that had been filed by the Chapter 11 Debtors and, on July 2 & 3, 2019, the U.S. Court entered orders in respect of these Second Day Motions, including the below orders (each a “**Second Day Order**”, and collectively with the Bar Date Order, the “**Second Day Orders**”), which the Foreign Representative is seeking to have recognized by the Ontario Superior Court of Justice

(Commercial List) (the “**Ontario Court**”). In the case of several of the Second Day Orders, the Ontario Court previously recognized and enforced interim versions of the Second Day Orders. Where an interim version of a Second Day Order was *not* previously recognized by the Ontario Court, I have included a reference to the underlying Motion and have attached a copy of the Motion to this Affidavit.

- (a) *Order (I) Authorizing the Debtors to (A) Continue Insurance Coverage Entered into Prepetition and Satisfy Prepetition Obligations Related Thereto (B) Renew, Supplement, Modify, or Purchase Insurance Coverage, and (C) Continue to Pay Brokerage Fees, and (II) Granting Related Relief* (the “**Insurance Order**”). A copy of the Motion filed in support of the Insurance Order is attached hereto as Exhibit “C” and copy of the Insurance Order is attached hereto as Exhibit “D”.
- (b) *Order (I) Authorizing the Debtors to Continue and Renew the Surety Bond Program, and (II) Granting Related Relief* (the “**Surety Bond Order**”). A copy of the Motion filed in support of the Surety Bond Order is attached hereto as Exhibit “E” and a copy of the Surety Bond Order is attached hereto as Exhibit “F”.
- (c) *Order (I) Approving the Bidding Procedures, (II) Scheduling the Bid Deadlines and the Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling Hearings and Objection Deadlines with Respect to the Sale, and (V) Granting Related Relief* (the “**Bid Procedures Order**”). A copy of the Motion filed in support of the Bid Procedures Order is attached hereto as Exhibit “G” and a copy of the Bid Procedures Order is attached hereto as Exhibit “H”.
- (d) *Final Order (I) Authorizing the Debtors to Pay Prepetition Claims of (A) Lien Claimants, (b) Import Claimant, (C) 503(B)(9) Claimants, (D) Foreign Vendors,*

and (E) Critical Vendors, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief (the “**Final Critical Vendors Order**”). A copy the Final Critical Vendors Order is attached hereto as Exhibit “I”.

- (e) *Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief* (the “**Final Wages Order**”). A copy of the Final Wages Order is attached hereto as Exhibit “J”.
- (f) *Order Authorizing the Debtors to (A) Retain Carl Marks Advisory Group LLC to Provide the Debtors a Chief Executive Officer, a Chief Financial Officer, and Additional Personnel and (B) Appoint the Chief Executive Officer and Chief Financial Officer Nunc Pro Tunc to the Petition Date* (the “**Carl Marks Order**”). A copy of the Motion filed in support of the Carl Marks Order is attached hereto as Exhibit “K” and a copy of the Carl Marks Order is attached hereto as Exhibit “L”.
- (g) *Final Order (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief* (the “**Final Cash Management Order**”). A copy of the Final Cash Management Order is attached hereto as Exhibit “M”.
- (h) *Final Order (A) Authorizing the Debtors to Maintain and Administer their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto*

and (B) Granting Related Relief (the “**Final Customer Programs Order**”). A copy of the Final Customer Programs Order is attached hereto as Exhibit “N”.

- (i) *Final Order With Respect to Prepetition ABL Secured Parties and DIP ABL Secured Parties (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition ABL Secured Parties, (E) Modifying the Automatic Stay, and (F) Granting Related Relief (the “**Final DIP ABL Order**”). A copy of the Final DIP ABL Order is attached hereto as Exhibit “O”.*
- (j) *Final Order (A) Authorizing the Payment of Certain Prepetition Taxes and Fees and (B) Granting Related Relief (the “**Final Tax Order**”). A copy of the Motion filed in support of the Final Tax Order is attached hereto as Exhibit “P” and a copy of the Final Tax Order is attached hereto as Exhibit “Q”.*
- (k) *Order (A) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (B) Determining Adequate Assurance of Payment for Future Utility Services, (C) Establishing Procedures for Determining Adequate Assurance of Payment, and (D) Granting Related Relief (the “**Utilities Order**”). A copy of the Motion filed in support of the Utilities Order is attached hereto as Exhibit “R” and a copy of the Utilities Order is attached hereto as Exhibit “S”.*
- (l) *Order (A) Authorizing the Retention and Compensation of Professionals Utilized in the Ordinary Course of Business and (B) Granting Related Relief (the “**Professionals Order**”). A copy of the Motion filed in support of the Professionals*



Order is attached hereto as Exhibit “T” and a copy of the Professionals Order is attached as Exhibit “U”.

- (m) *Order Authorizing and Approving the Employment and Retention of OMNI Management Group as Administrative Advisor for the Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date* (the “**OMNI Order**”). A copy of the Motion filed in support of the OMNI Order is attached hereto as Exhibit “V” and a copy of the OMNI Order is attached hereto as Exhibit “W”.
- (n) *Order (A) Establishing Certain Notice, Case Management, and Administrative Procedures and (B) Granting Related Relief* (the “**Case Management Order**”). A Copy of the Motion filed in support of the Case Management Order is attached hereto as Exhibit “X” and a copy of the Case Management Order is attached hereto as Exhibit “Y”.
- (o) *Second Interim Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Term Loan Lenders, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* (the “**Second Interim DIP Term Order**”). A copy of the Second Interim DIP Term Order is attached hereto as Exhibit “Z”.

5. I make this affidavit in support of the within Motion and for no other improper purpose.

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario on July  
3, 2019.



Commissioner for Taking Affidavits

*Lauren E. Harper*

  
**EVAN BARZ**

THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.

A handwritten signature in blue ink, appearing to be 'LH' followed by a long horizontal stroke.

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Commissioner for Taking Affidavits

Hearing Date and Time: June 13, 2019, at 11:00 a.m. (prevailing Eastern Time)

Objection Deadline: June 6, 2019, at 4:00 p.m. (prevailing Eastern Time)

Joshua A. Sussberg, P.C.  
 Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
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Joseph M. Graham (admitted *pro hac vice*)  
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 300 North LaSalle  
 Chicago, Illinois 60654  
 Telephone: (312) 862-2000  
 Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

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In re:

HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup>

Debtors.

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)  
 ) Chapter 11  
 )  
 ) Case No. 19-11608 (MEW)  
 )  
 ) (Jointly Administered)  
 )

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER  
 (A) SETTING BAR DATES FOR SUBMITTING PROOFS OF CLAIM,  
 (B) APPROVING PROCEDURES FOR SUBMITTING PROOFS OF CLAIM,  
 (C) APPROVING NOTICE THEREOF, AND (D) GRANTING RELATED RELIEF**

---

**PLEASE TAKE NOTICE** that a hearing on the *Debtors' Motion for Entry of an Order (A) Setting Bar Dates for Submitting Proofs of Claim, (B) Approving Procedures for Submitting Proofs of Claim, (C) Approving Notice Thereof, and (D) Granting Related Relief* (the "Motion") will be held before the Honorable Michael E. Wiles, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York (the "Court"), One Bowling Green,

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

Courtroom No. 617, New York, New York 10004-1408, on **June 13, 2019, at 11:00 a.m., prevailing Eastern Time.**

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the relief requested in the Motion shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York; (c) be filed electronically with the Court on the docket of *In re Hollander Sleep Products, LLC*, Case 19-11608 (MEW) by registered users of the Court's electronic filing system and in accordance with the General Order M-399 (which is available on the Court's website at <http://www.nysb.uscourts.gov>); and (d) be served so as to be actually received by **June 6, 2019, at 4:00 p.m., prevailing Eastern Time**, by (i) the entities on the Master Service List (available on the Debtors' case website at <https://www.omnimgt.com/hollander>) and (ii) any person or entity with a particularized interest in the subject matter of the Motion:.

**PLEASE TAKE FURTHER NOTICE** that only those responses that are timely filed, served, and received will be considered at the hearing. Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the Debtors.

New York, New York  
Dated: May 30, 2019

/s/ Joshua A. Sussberg, P.C.

Joshua A. Sussberg, P.C.

Christopher T. Greco, P.C.

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

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- and -

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*Proposed Counsel to the Debtors and Debtors in  
Possession*

Hearing Date and Time: June 13, 2019, at 11:00 a.m. (prevailing Eastern Time)

Objection Deadline: June 6, 2019, at 4:00 p.m. (prevailing Eastern Time)

Joshua A. Sussberg, P.C.  
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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

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In re:

HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup>

Debtors.

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Chapter 11

Case No. 19-11608 (MEW)

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER  
 (A) SETTING BAR DATES FOR SUBMITTING PROOFS OF CLAIM,  
 (B) APPROVING PROCEDURES FOR SUBMITTING PROOFS OF CLAIM,  
 (C) APPROVING NOTICE THEREOF, AND (D) GRANTING RELATED RELIEF**

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The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

### **Relief Requested**

1. By this motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) setting Bar Dates (as defined herein) for parties to submit Proofs of Claim (as defined herein) in these chapter 11 cases, (b) approving the procedures described herein for submitting Proofs of Claim in these chapter 11 cases and the form of the Proof of Claim attached as **Exhibit 1** to **Exhibit A**, (c) approving the form and manner of service of the bar date notice attached as **Exhibit 2** to **Exhibit A** (the “Bar Date Notice”), including the publication version of the Bar Date Notice, attached as **Exhibit 3** to **Exhibit A**, and allowing for publication on one occasion in *The New York Times* (national edition), *USA TODAY* (national edition), and *The Globe and Mail* (national edition in Canada), and (d) granting related relief.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a), 501, 502(b)(9), and 503(b)(9) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rules 2002 and 3003, Rules 2002-1 and 3003-1 of the Local Bankruptcy Rules for the



Southern District of New York (the “Local Rules”), and the Court’s *Procedural Guidelines for Filing Requests for Orders to Set the Last Date for Filing Proofs of Claim* (the “Guidelines”).

### **Background**

5. Hollander Sleep Products is the largest pillow and mattress pad manufacturer in North America. The Debtors also manufacture comforters and other basic bedding products. The Debtors have their own brands, including Great Sleep®, I AM®, LC®, PCF®, and Restful Nights®, and also manufacture and sell licensed brands, including Simmons®, Ralph Lauren®, CHAPS®, Calvin Klein®, Therapedic®, Nautica®, 37.5®, and Dr. Maas®. The Debtors are headquartered in Boca Raton, Florida, operate a main showroom in New York City, and have thirteen manufacturing facilities throughout the United States and Canada. The Debtors generated approximately \$527 million in net revenue in fiscal year 2018 and currently employ more than 2,300 people across the United States and Canada. As of May 19, 2019 (the “Petition Date”), the Debtors had approximately \$233 million in funded debt.

6. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are being jointly administered. As of the date hereof, no party has requested the appointment of a trustee or an examiner in these chapter 11 cases. On March 30, 2019, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code.

### **Proposed Bar Dates**

7. Except as otherwise set forth herein, the Debtors seek to establish **5:00 p.m., prevailing Eastern Time, on July 26, 2019** (the “General Claims Bar Date”), as the deadline by

which all persons and entities must submit proofs of claim (each, a “Proof of Claim”) asserting claims<sup>2</sup> that arose on or before the Petition Date (each, a “Claim”) against the Debtors in these chapter 11 cases. The proposed General Claims Bar Date includes Claims asserted under section 503(b)(9) of the Bankruptcy Code.<sup>3</sup> If approved, the proposed General Claims Bar Date would occur at least 35 days after the proposed date of service of the Bar Date Notice as set forth herein and is therefore in compliance with the Guidelines.

8. In addition to the General Claims Bar Date, pursuant to section 502(b)(9), the deadline by which all governmental units must submit Proofs of Claim asserting Claims that arose on or before the Petition Date against any of the Debtors in these chapter 11 cases (the “Governmental Bar Date”) is **5:00 p.m., prevailing Eastern Time, on November 15, 2019.**

9. The Debtors seek to establish supplemental bar dates in the event the Debtors amend or supplement their schedules of assets and liabilities (collectively, the “Schedules”) that is the later of (a) the applicable General Claims Bar Date or the Governmental Bar Date, and (b) 5:00 p.m., prevailing Eastern Time, on the date that is 35 days after the date on which the Debtors provide notice of the amendment to the Schedules as the deadline by which each claimant holding a Claim affected by the amendment must file a Proof of Claim (any such date, a “Supplemental Bar Date”). In such instances, the Debtors will provide such parties with notice,

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<sup>2</sup> Except as otherwise defined herein, all terms shall have the meanings ascribed to them by the Bankruptcy Code. In particular, as used herein: (a) the term “claim” has the meaning given to it in section 101(5) of the Bankruptcy Code; (b) the term “entity” has the meaning given to it in section 101(15) of the Bankruptcy Code; (c) the term “governmental unit” has the meaning given to it in section 101(27) of the Bankruptcy Code; and (d) the term “person” has the meaning given to it in section 101(41) of the Bankruptcy Code.

<sup>3</sup> “503(b)(9) Claims” are Claims on account of goods received by a Debtor within 20 days before the Petition Date, where such goods were sold to the Debtor in the ordinary course of such Debtor’s business. See 11 U.S.C. § 503(b)(9).

in a form substantially similar to the Bar Date Notice, that will clearly set forth the Supplemental Bar Date by which such parties must submit a Proof of Claim.

10. Lastly, the Debtors seek to require any person or entity that holds a Claim arising from the rejection of an executory contract or unexpired lease to submit a Proof of Claim based on such rejection on or before the later of (a) the General Claims Bar Date and (b) any date this Court may fix in the applicable order authorizing such rejection and, if no such date is provided, 35 days after the date of entry of such order (the “Rejection Bar Date,” and together with the General Claims Bar Date, the Supplemental Bar Date, and the Governmental Bar Date, the “Bar Dates”). The Debtors will provide notice of the Rejection Bar Date to the contract or lease counterparty whose contract or lease is being rejected at the time the Debtors reject any executory contract or unexpired lease.

### **Proposed Procedures for Submitting Proofs of Claim**

#### **I. Parties Required to Submit a Proof of Claim.**

11. In accordance with the Guidelines and Bankruptcy Rule 3003(c)(2), the Debtors propose that any person or entity *other than* those listed below that holds a Claim against any Debtor in these chapter 11 cases be required to submit a Proof of Claim to assert such Claim against the applicable Debtor by the applicable Bar Date. Subject to Court approval of the Bar Dates, the Debtors propose that the following persons or entities do *not* need to submit a Proof of Claim in these chapter 11 cases:

- a) any person or entity that has already submitted a Proof of Claim against the Debtors with the Clerk of this Court or the Debtors’ Notice and Claims Agent (as defined herein) in a form substantially similar to Official Bankruptcy Form No. 410;
- b) any person or entity whose Claim is listed on the Schedules filed by the Debtors, *provided* that (i) the Claim is *not* scheduled as “disputed,” “contingent,” or “unliquidated,” (ii) the claimant agrees with the amount, nature, and priority of the Claim as set forth in the Schedules, and (iii) the

claimant does not dispute that the Claim is an obligation of the specific Debtor against which the Claim is listed on the Schedules;

- c) the Prepetition ABL Secured Parties, the Prepetition Term Loan Secured Parties, and/or the DIP Lenders, provided that any requirement that such parties file a Proof of Claim shall be governed by the *Interim Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Lenders, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* [Docket No. 53] (the “Interim DIP Order”) and/or any final order regarding the use of cash collateral or the approval of postpetition financing;<sup>4</sup>
- d) any holder of a Claim previously allowed by order of this Court;
- e) any holder of a Claim that has already been paid in full;
- f) any holder of a Claim for which a specific deadline has previously been fixed by this Court or otherwise is fixed pursuant to the order entered approving the Bar Dates;
- g) any Debtor having a Claim against another Debtor or any of the non-debtor subsidiaries (whether direct or indirect) having a Claim against any of the Debtors;
- h) any holder of an equity interest in the Debtors with respect to the ownership of such equity interest, *provided, however*, that any holder of an equity interest who wishes to assert a Claim against the Debtors, including a Claim relating to such equity interest or the purchase or sale of such interest, must file a Proof of Claim asserting such Claim on or prior to the General Claims Bar Date pursuant to procedures set forth herein;
- i) any holder of a Claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an administrative expense incurred in the ordinary course, *provided, however*, that any person or entity asserting a Claim entitled to priority under section 503(b)(9) of the Bankruptcy Code must assert such Claims by filing a request for payment or a Proof of Claim on or prior to the General Claims Bar Date;
- j) any current employee of the Debtors on account of any Claim the Court has authorized the Debtors to honor in the ordinary course of business as a

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<sup>4</sup> Capitalized terms used in this paragraph 11(c) shall have the meanings set forth in the Interim DIP Order.

wage, commission, or benefit, *provided, however*, that a current employee must submit a Proof of Claim by the General Claims Bar Date for all other Claims arising before the Petition Date, including Claims, if any, for wrongful termination, discrimination, harassment, hostile work environment, and retaliation and Claims covered by the Debtors' workers' compensation insurance;

- k) any current or former officer or director for indemnification, contribution, or reimbursement;
- l) any present or former employees of a Debtor whose employment is or was, as applicable, subject to the terms of a collective bargaining agreement (and, with respect to benefit claims, spouses and beneficiaries of such employees) or any labor union representing such employees (collectively, "CBA Parties") with respect to prepetition claims based solely on the payment of wages, salaries, employee medical benefits, insurance benefits, or other benefits the Court has authorized the Debtors to honor in the ordinary course of business. CBA Parties need not submit Claims for such amounts unless the Debtors have provided written notice to certain CBA Parties and their unions, where applicable, that the Debtors do not intend to pay such Claims with respect to those certain CBA Parties, in which case those CBA Parties will have until the later of (i) the General Claims Bar Date and (ii) 35 days after the date of written notice to submit Proofs of Claim. Notwithstanding the foregoing, employees (present or former) or the labor unions must submit claims relating to grievances prior to the General Claims Bar Date to the extent the grounds for such grievances arose on or before the Petition Date, *provided* that labor unions may submit a claim itemizing such grievances on behalf of their respective members; and
- m) any person or entity holding a Claim solely against the Debtors' non-debtor affiliates.

## **II. The Proof of Claim Form.**

12. The Debtors seek approval of the form of the Proof of Claim attached as **Exhibit 1** to **Exhibit A**, which, although based upon Official Form 410, has been modified to allow creditors to assert 503(b)(9) Claims. In accordance with the Guidelines, and with the assistance of their notice and claims agent, Omni Management Group (the "Notice and Claims Agent"), the Debtors propose to provide each of the creditors listed on the Schedules with a "personalized" Proof of Claim that will include: (a) the identity of the Debtor against which the person or entity's Claim is scheduled; (b) the amount of the scheduled Claim, if any; (c) whether the Claim is listed as

contingent, unliquidated, or disputed; and (d) whether the Claim is listed as secured, unsecured priority, or unsecured non-priority.

13. If a creditor disagrees with the information set forth on the personalized Proof of Claim form, such creditor must submit a Proof of Claim identifying the Debtor against which the creditor asserts a Claim and the amount and type of that Claim. Additionally, creditors may choose not to use the personalized Proof of Claim form provided by the Debtors and instead submit Proofs of Claim on Official Form 410.

### **III. Requirements for Preparing and Submitting Proofs of Claim.**

14. In accordance with the Guidelines, the Debtors request that this Court require all Proofs of Claim submitted in these chapter 11 cases be consistent with the following:

- a) Each Proof of Claim must: (i) be written in English; (ii) be legible; (iii) include a Claim amount denominated in United States dollars; (iv) conform substantially with the Proof of Claim form provided by the Debtors or Official Form 410; (v) be signed by the claimant or by an authorized agent or legal representative of the claimant; and (vi) include supporting documentation unless voluminous, in which case a summary must be attached or an explanation provided as to why documentation is not available.
- b) In addition to the requirements set forth in (a) above, any Proof of Claim asserting a 503(b)(9) Claim must also: (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which the 503(b)(9) Claim is being asserted; (iii) attach documentation of any reclamation demand made to any Debtor under section 546(c) of the Bankruptcy Code (if applicable); and (iv) set forth whether any portion of the 503(b)(9) Claim was satisfied by payments made by the Debtors pursuant to any order of the Court authorizing the Debtors to pay prepetition Claims.
- c) Parties who wish to receive proof of receipt of their Proofs of Claim from the Notice and Claims Agent must also include with their Proof of Claim (i) a copy of their Proof of Claim and (ii) a self-addressed, stamped envelope.
- d) Each Proof of Claim must specify by name and case number the Debtor against which the Claim is submitted. A Proof of Claim submitted under

Case No. 19-11608 or that does not identify a Debtor will be deemed as submitted only against Hollander Sleep Products, LLC. A Proof of Claim that names a subsidiary Debtor but is submitted under the Case No. 19-11608 will be treated as having been submitted against the subsidiary Debtor with a notation that a discrepancy in the submission exists.

- e) If the holder asserts a Claim against more than one Debtor or has Claims against different Debtors, a separate Proof of Claim form must be submitted with respect to each Debtor (unless otherwise set forth in the order approving the Bar Dates, including with respect to the Debtors' funded debt obligations). To the extent more than one Debtor is listed on the Proof of Claim, such Claim will be treated as if submitted only against the first-listed Debtor.
- f) Each Proof of Claim, including supporting documentation, must be submitted so that the Notice and Claims Agent ***actually receives*** the Proof of Claim on or before the applicable Bar Date by either: (i) electronically using the interface available on the Notice and Claims Agent's website at <https://www.omnimgt.com/hollander> or (ii) first-class U.S. Mail, overnight mail, or other hand-delivery system, which Proof of Claim must include an original signature, at the following address: Hollander Claims Processing Center, c/o Omni Management Group, 5955 De Soto Avenue, Suite 100, Woodland Hills, California 91367.

**PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL NOT BE ACCEPTED AND WILL NOT BE DEEMED TIMELY SUBMITTED.**

**IV. Consequences of Failing to Timely Submit a Proof of Claim.**

15. In accordance with Bankruptcy Rule 3003(c)(2) and the Guidelines, the Debtors propose that any entity that is required, but fails, to submit a Proof of Claim in accordance with the order entered approving the Bar Dates on or before the applicable Bar Date will be forever barred, estopped, and enjoined from asserting such Claim—including any such Claim asserting priority under section 503(b)(9) of the Bankruptcy Code—against the Debtors (or submitting a Proof of Claim with respect to that Claim), and the Debtors and their property will be forever discharged from any and all indebtedness or liability with respect to or arising from that Claim. Moreover, such creditor will be prohibited from (a) voting on any chapter 11 plan filed in these

chapter 11 cases on account of such Claim, and (b) participating in any distribution in these chapter 11 cases on account of such Claim.

### **The Bar Date Notice**

#### **I. Form of the Bar Date Notice.**

16. The Bar Date Notice is substantially similar to the form notice attached to the Guidelines, as required thereby. Among other things, the proposed Bar Date Notice (a) identifies the Bar Dates, (b) includes detailed procedures for submitting a timely and accurate Proof of Claim, (c) lists the parties who are not required to submit a Proof of Claim, (d) describes the consequences of failing to submit a Proof of Claim in accordance with the Bar Date Order and Guidelines, and (e) provides creditors with the name and telephone number of the Notice and Claims Agent, where questions may be addressed and from whom additional information may be obtained.

#### **II. Manner of Service of the Bar Date Notice.**

17. With the assistance of the Notice and Claims Agent, (a) after the filing of the Debtors' Schedules (which will be filed on or before June 19, 2019) and (b) no later than June 21, 2019 (35 days in advance of the General Claims Bar Date), the Debtors will cause the Notice and Claims Agent to serve the Bar Date Notice and a Proof of Claim form (personalized where applicable) by first-class mail upon:<sup>5</sup>

- a. the U.S. Trustee;
- b. counsel to the official committee any official committee formed in these chapter 11 cases;
- c. any persons or entities that have requested notice of the proceedings in these chapter 11 cases pursuant to Bankruptcy Rule 2002;

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<sup>5</sup> Capitalized terms used but not defined in this list shall have the meanings ascribed to such terms in the *Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 21].



- d. all persons or entities that have submitted Proofs of Claim against the Debtors;
- e. all known creditors and other known holders of potential Claims against the Debtors, including all persons or entities listed in the Schedules for which the Debtors have addresses;
- f. all parties to executory contracts and unexpired leases of the Debtors;
- g. all parties to litigation with the Debtors and their counsel (if known);
- h. the ABL Agent and counsel thereto;
- i. the Term Loan Agent and counsel thereto
- j. the DIP ABL Agent and counsel thereto;
- k. the DIP Term Loan Agent and counsel thereto;
- l. the United States Attorney's Office for the Southern District of New York;
- m. the Internal Revenue Service;
- n. any other governmental units applicable to the Debtors' businesses; and
- o. state attorneys general and state departments of revenue for states in which the Debtors conduct business.

18. The Debtors also intend to provide notice of the Bar Dates by publication to help ensure that all potential claimants receive adequate notice of the Bar Dates. Specifically, the Debtors propose to publish the Bar Date Notice, modified for publication substantially in the form attached as **Exhibit 3** to **Exhibit A**, on one occasion in *The New York Times* (national edition), *USA TODAY* (national edition), and *The Globe and Mail* (national edition in Canada) (a) after the filing of the Debtors' Schedules (which will be filed on or before June 19, 2019) and (b) at least 28 days before the Bar Dates in accordance with Bankruptcy Rule 2002 and the Guidelines.

### **Basis for Relief**

#### **I. The Proposed Bar Dates Comply With the Guidelines and Should be Approved.**

19. Generally, claimants must submit a proof of claim to assert a claim in a bankruptcy proceeding. *See* 11 U.S.C. § 501(a). Bankruptcy Rule 3003(c)(3) typically governs the submission of proofs of claim in a chapter 11 case and provides, in relevant part, that “[t]he court shall fix and for cause shown may extend the time within which Proofs of Claim or interest may be filed.” General claims bar dates are integral to the twin goals of chapter 11—preserving going-concerns and maximizing creditor recovery value. *See In re Waterman S.S. Corp.*, 59 B.R. 724, 726 (Bankr. S.D.N.Y. 1986). Indeed, prolonged uncertainty regarding the aggregate liabilities of the bankruptcy estate could delay or derail the development of a sound restructuring plan process to the detriment of creditors and parties in interest. *Id.* (“Absent the setting of a bar date, a Chapter 11 case could not be administered to a conclusion.”).

20. Recognizing the importance of setting deadlines for submitting claims against a debtor, courts in this jurisdiction routinely approve relief similar to that requested in this motion. *See, e.g., In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. May 13, 2019) (setting general and governmental bar dates); *In re Aegean Marine Petroleum Network Inc.*, No. 18-13374 (MEW) (Bankr. S.D.N.Y. Dec. 12, 2018) (same); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. Apr. 18, 2018) (same); *In re Cenveo, Inc.*, No. 18-22178 (RDD) (Bankr. S.D.N.Y. Mar. 8, 2018) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, No. 17-10466 (SCC) (Bankr. S.D.N.Y. Apr. 26, 2017) (same).<sup>6</sup>

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<sup>6</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors’ counsel.

21. To ensure that the Debtors are able to confirm and consummate a chapter 11 plan, the Debtors will require accurate information regarding the nature, validity, amount, and status of all Claims that will be asserted against their estates in these chapter 11 cases. Given the sheer number of potential claimants in these chapter 11 cases and the potential for a time-consuming claims reconciliation process, it is important that the Debtors begin the claims analysis and reconciliation process as soon as possible pursuant to clear procedures designed to both limit confusion on the part of creditors and facilitate an efficient process that conserves estate resources. Fixing the Bar Dates as proposed herein will help the Debtors accomplish the foregoing objectives. Moreover, although the proposed case milestones required by the Debtors' debtor-in-possession agreements have not been approved as of the date hereof, those agreements require an order approving the Debtors' disclosure statement be entered within 75 days from the Petition Date. *See* DIP Motion, ¶ 12 [Docket No. 13]. Related to this timing and recognizing the importance of the claims process, the Debtors' postpetition financing further requires the Debtors to establish a General Claims Bar Date that occurs on or before 75 days after the Petition Date. *See id.* And even if those milestones are not approved or are modified, the Debtors' financing facilities mature 150 days after the entry into those facilities (i.e., October 20, 2019), and such maturity timing requires the Debtors to expeditiously move these cases forward. Setting the General Claims Bar Date will enable the Debtors to promptly and efficiently administer their chapter 11 cases for the benefit of all of their stakeholders.

22. In addition, requiring holders of 503(b)(9) Claims to assert such Claims using the Form of Proof of Claim attached hereto on or prior to the General Claims Bar Date will ensure that the Debtors have accurate information regarding the nature, validity, and amount of such 503(b)(9) Claims while affording parties asserting 503(b)(9) Claims appropriate and adequate notice.

Moreover, this approach facilitates a cost-effective, efficient claims process for such creditors and helps conserve estate resources to the benefit of the Debtors' unsecured creditors.<sup>7</sup>

23. Although the Guidelines include holders of claims allowable under section 503 of the Bankruptcy Code in the list of parties not required to submit a proof of claim, the Guidelines also provide that "there will of course be variations in specific situations and the list is not intended to be exhaustive." *See* Guidelines, at ¶ 9. The Debtors submit that requiring parties to assert 503(b)(9) Claims by Proof of Claim on or before the General Claims Bar Date is justified and warranted under the circumstances present here. Indeed, other courts in this jurisdiction regularly deviate from the Guidelines with respect to fixing bar dates for submitting claims under section 503(b)(9) of the Bankruptcy Code. *See, e.g., In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. May 13, 2019) (establishing a bar date for claims arising under section 503(b)(9)); *In re Aegean Marine Petroleum Network Inc.*, No. 18-13374 (MEW) (Bankr. S.D.N.Y. Dec. 12, 2018) (same); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. Apr. 18, 2018) (same); *In re Cenveo, Inc.*, No. 18-22178 (RDD) (Bankr. S.D.N.Y. Mar. 8, 2018) (same); *In re 21st Century Oncology Holdings, Inc.*, No. 17-22770 (RDD) (Bankr. S.D.N.Y. July 24, 2017) (same).

24. Finally, the Bar Dates proposed herein comply with the Guidelines and the applicable provisions of the Bankruptcy Code, are appropriate, and thus should be approved. First, the General Claims Bar Date will be at least 35 days after the Debtors provide notice to claimants of such bar date. Second, the Governmental Bar Date is 180 days after the Petition Date in accordance with section 502(b)(9) of the Bankruptcy Code. Third, the Rejection Bar Date and Supplemental Bar Dates are necessary to provide the Debtors with flexibility to handle situations

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<sup>7</sup> Parties asserting administrative claims under all other sub-parts of section 503(b) of the Bankruptcy Code must make separate requests for payment in accordance with section 503(a) of the Bankruptcy Code.

in which a creditor's claim status may change during these chapter 11 cases (such as in the event of contract or lease rejections) or to ensure that creditors receive proper notice and an opportunity to assert claims. Accordingly, the Debtors request this Court establish the Bar Dates set forth herein.

## **II. The Proposed Procedures for Submitting Proofs of Claim Should be Approved.**

25. The Debtors have worked to design procedures that (a) provide creditors with ample notice and opportunity to submit Proofs of Claim, (b) provide a clear process for effecting the same, and (c) achieve administrative and judicial efficiency. Indeed, the procedures described above are calibrated to achieve the twin goals of providing comprehensive notice and clear instructions to creditors, on the one hand, and allowing these chapter 11 cases to move forward quickly with a minimum of administrative expense and delay, on the other hand.

26. Among other things, the proposed procedures provide clear instructions for submitting Proofs of Claim that are calculated to avoid confusion or uncertainty among creditors that might lead them to submit unnecessary protective Proofs of Claim or multiple Proofs of Claim, which, in either event, would result in unnecessary expense and delay in the claims reconciliation process for all parties. For example, the proposed use of a personalized Proof of Claim form for all known creditors is designed to streamline the claims analysis and reconciliation process and provide useful information to creditors as to whether and how their claims are reflected in the Schedules. Indeed, the Debtors believe that the use of the personalized Proof of Claim form will help mitigate creditors' confusion and result in a claims reconciliation process that is less burdensome, costly, and time-consuming for the Debtors' estates.

27. Lastly, the Debtors propose that claimants be permitted to submit Proofs of Claim in person, by hand delivery, or via mail. Although proofs of claim submitted by facsimile or electronic mail will not be accepted, the Debtors propose that Proofs of Claim be permitted to be

submitted electronically using the interface available on the Notice and Claims Agent's website at <https://omnimgt.com/hollander>. A similar electronic interface has been utilized in other large bankruptcy cases. *See, e.g., In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. May 13, 2019) (authorizing proof of claim submission via electronic interface); *In re Aegean Marine Petroleum Network Inc.*, No. 18-13374 (MEW) (Bankr. S.D.N.Y. Dec. 12, 2018) (same); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. Apr. 18, 2018) (same); *In re Cenveo, Inc.*, No. 18-22178 (RDD) (Bankr. S.D.N.Y. Mar. 8, 2018) (same); *In re Westinghouse Electric Company LLC*, No. 17-10751 (MEW) (Bankr. S.D.N.Y. June 27, 2017) (same). The Debtors believe that these procedures will facilitate the claims process by establishing guidelines for noticing and publishing the Bar Dates and providing claimants with clear instructions regarding the procedures and other requirements for submitting a Proof of Claim. Accordingly, the Debtors submit that these procedures should be approved.

### **III. The Proposed Form and Manner of the Bar Date Notice Should be Approved.**

#### **A. The Form of Bar Date Notice Satisfies the Requirements of the Guidelines.**

28. The Bar Date Notice substantially conforms to the form notice attached to the Guidelines, varying only to the extent appropriate and necessary given the size, complexity, and circumstances of these chapter 11 cases. Moreover, the publication version of the Bar Date Notice will be substantially similar to the attached Bar Date Notice and will only omit provisions that are not applicable or are not absolutely necessary (such as the official definition of "claim") to reduce publication costs. *See* Guidelines, at ¶ 5.

29. The Debtors believe that the Bar Date Notice and all exhibits and attachments to the Debtors' proposed order substantially comply with the applicable rules and the Guidelines establishing the procedural guidelines relating to the establishment of bar dates and providing notice thereof. The Bar Date Notice and the proposed order were modeled on the forms attached

to the Guidelines. The Debtors submit that any alterations to these forms are appropriate, minimal, and generally have been limited to those instances where such deviations (a) are necessary or appropriate to tailor the Bar Date Notice and proposed order for use in these chapter 11 cases, (b) adopt changes that are expressly contemplated by the Guidelines, or (c) provide additional information for the benefit of potentially interested parties.

**B. The Proposed Notice and Service Satisfies Due Process Requirements.**

30. Bankruptcy Rule 2002(a)(7) requires that the Debtors provide claimants at least 21 days' notice by mail of the time fixed for submitting proofs of claim pursuant to Bankruptcy Rule 3003(c). In addition, Bankruptcy Rule 2002(l) provides that this Court may order notice by publication if it finds that notice by mail is impractical or that it is desirable to supplement other notice. Bankruptcy Rule 9008 also provides that this Court shall determine the form and manner of publication notice, the newspapers used, and the frequency of publication.

31. To determine the adequacy of notice to a creditor, the case law distinguishes between "known" and "unknown" creditors. Generally, a "known" creditor is a creditor whose identity is either known or is reasonably ascertainable by the debtor, while an "unknown" creditor is a creditor whose interests are conjectural or future or, although potentially discoverable upon investigation, do not come to the knowledge of the debtor in the ordinary course of business. *See Tulsa Prof'l Collection Serv., Inc. v. Pope*, 485 U.S. 478, 490 (1988); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 317 (1950) (publication is acceptable where it is not "reasonably possible or practicable to give more adequate warning," whereas when names and addresses are available, notice must be mailed).

32. Where a creditor is known to the debtor, due process requires that the debtor take reasonable steps, such as direct mailing, to provide actual notice of the deadline for submitting proofs of claim. *See, e.g., In re Enron Corp.*, No. 01-16034, 2006 WL 898031, at \*4 (Bankr.

S.D.N.Y. Mar. 29, 2006) (“[D]ebtor must send actual notice of the bar date to any known creditor, while constructive notice is generally sufficient with an unknown creditor.”); *Daewoo Int’l (Am.) Corp. Creditor Trust v. SSTs Am. Corp.*, No. 02-9629, 2003 WL 21355214, at \*3 (S.D.N.Y. June 11, 2003) (same); *Pope*, 485 U.S. at 491 (where creditor was known or “reasonably ascertainable,” then due process only requires “notice by mail or other means as certain to ensure actual notice”).

33. Where a creditor is unknown to the debtor, due process requires only that the debtor take reasonable steps, such as notice by publication, to provide constructive notice of the deadline for submitting proofs of claim. *See, e.g., In re XO Commc’ns*, 301 B.R. 782, 793 (Bankr. S.D.N.Y. 2003) (finding that if a creditor is unknown constructive notice is generally sufficient); *DePippo v. Kmart Corp.*, 335 B.R. 290, 296 (S.D.N.Y. 2005) (“It is well-settled that when a creditor is ‘unknown’ to the debtor, publication notice of the claims bar date is adequate constructive notice sufficient to satisfy due process requirements . . . .”). Furthermore, debtors are not required to publish notice in an excessive number of publications. *See In re Best Prods. Co., Inc.*, 140 B.R. 353 (Bankr. S.D.N.Y. 1992) (finding it impracticable to expect a debtor to publish notice in every newspaper that an unknown creditor possibly may read).

34. To provide creditors reasonably known to the Debtors with actual notice of the Bar Dates proposed herein, the Debtors propose to serve the Bar Date Notice (a) after the filing of the Debtors’ Schedules (which will be filed on or before June 19, 2019) and (b) by no later than June 21, 2019 (35 days in advance of the General Claims Bar Date) upon all creditors identified during a thorough review of the Debtors’ books and records. As such, the Debtors will be providing actual notice to creditors reasonably known to them with no less than 35 days’ notice of the General Claims Bar Date in satisfaction of Bankruptcy Rule 2002(a)(7).



35. To provide creditors unknown to the Debtors with constructive notice of the Bar Dates proposed herein, the Debtors propose to publish the Bar Date Notice, modified as necessary (but consistent with the requirements of the Guidelines), in *The New York Times* (national edition), *USA TODAY* (national edition), and *The Globe and Mail* (national edition in Canada) on one occasion (a) after the filing of the Debtors' Schedules (which will be filed on or before June 19, 2019) and (b) no later than 28 days prior to the General Claims Bar Date. As such, the Debtors will be providing unknown creditors with at least 28 days' constructive notice of the General Claims Bar Date in satisfaction of the Guidelines and Bankruptcy Rule 2002(a)(7).

36. In light of the foregoing, service and publication of the Bar Date Notice as proposed herein is reasonably designed to reach all interested parties in a cost-effective manner and satisfies the requirements of the relevant provisions of the Bankruptcy Code, Bankruptcy Rules, Local Rules, and the Guidelines. Accordingly, the Debtors respectfully request that this Court deem the proposed form of Bar Date Notice and mailing and publication thereof good, adequate, and sufficient notice of the Bar Dates set forth herein.

### **Motion Practice**

37. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this motion. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1(a).

### **Notice**

38. The Debtors will provide notice of this motion to: (a) the U.S. Trustee; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent for the Debtors' term loan facility and counsel thereto; (d) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (e) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel

thereto; (f) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; (g) the United States Attorney's Office for the Southern District of New York; (h) the Internal Revenue Service; (i) the attorneys general for the states in which the Debtors operate; (j) counsel to the official committee of unsecured creditors appointed in these chapter 11 cases; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

39. No prior request for the relief sought in this motion has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

New York, New York  
Dated: May 30, 2019

/s/ Joshua A. Sussberg, P.C.  
Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
601 Lexington Avenue  
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Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

- and -

Joseph M. Graham (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

HOLLANDER SLEEP PRODUCTS, LLC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 19-11608 (MEW)  
)  
) (Jointly Administered)  
)  
) **Re: Docket No. \_\_\_\_**

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**ORDER (A) SETTING BAR DATES FOR SUBMITTING PROOFS OF CLAIM,  
(B) APPROVING PROCEDURES FOR SUBMITTING PROOFS OF CLAIM,  
(C) APPROVING NOTICE THEREOF, AND (D) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Bar Date Order”) (a) setting bar dates for creditors to submit Proofs of Claim in these chapter 11 cases, (b) approving procedures for submitting Proofs of Claim, (c) approving the form of notice of the bar dates and manner of service thereof, and (d) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Except as otherwise provided herein, all persons and entities including, without limitation, individuals, partnerships, corporations, joint ventures, and trusts, that assert a Claim (as defined in section 101(5) of the Bankruptcy Code) against the Debtors which arose before May 19, 2019 (the “Petition Date”), including claims pursuant to section 503(b)(9) of the Bankruptcy Code (each, a “503(b)(9) Claim”), shall submit a written proof of such Claim so that it is *actually received* by Omni Management Group (the “Notice and Claims Agent”) on or before **5:00 p.m., prevailing Eastern Time, on July 26, 2019** (the “General Claims Bar Date”), which submission shall be in accordance with this Bar Date Order.
3. Notwithstanding any other provision of this Bar Date Order, Proofs of Claim submitted by governmental units must be submitted so as to be *actually received* by the Notice and Claims Agent on or before **5:00 p.m., prevailing Eastern Time, on November 15, 2019** (the “Governmental Bar Date”), the date that is 180 days from the Petition Date.
4. Any person or entity that holds a Claim arising from the rejection of an executory contract or unexpired lease must submit a Proof of Claim based on such rejection on or before the later of (a) the General Claims Bar Date and (b) any date this Court may fix in the applicable order

authorizing such rejection and, if no such date is provided, 35 days after the date of entry of such order. The Debtors will provide notice of the Rejection Bar Date to the contract or lease counterparty whose contract or lease is being rejected at the time the Debtors reject any executory contract or unexpired lease.

5. If the Debtors amend or supplement their Schedules, the Debtors shall provide notice of any amendment or supplement to the holders of Claims affected thereby. Any claimant holding a Claim affected by the amendment or supplement to the Schedules that does not agree with such amendment's or supplement's treatment of such claimant's Claim must submit a Proof of Claim on or before the later of (a) the applicable General Claims Bar Date or the Governmental Bar Date, and (b) 5:00 p.m., prevailing Eastern Time, on the date that is 35 days after the date on which the Debtors provide notice of the amendment to the Schedules (any such date, a "Supplemental Bar Date"). In such instances, the Debtors shall provide such parties with notice, in a form substantially similar to the Bar Date Notice, that clearly sets forth the Supplemental Bar Date by which such parties must submit a Proof of Claim.

6. In accordance with Bankruptcy Rule 3003(c)(2) and the Guidelines, any holder of a Claim that is not excepted from the requirements of the Bar Date Order and fails to timely submit a Proof of Claim in the appropriate form shall be forever barred, estopped, and enjoined from (a) asserting such Claim against the Debtors and their chapter 11 estates, (b) voting on any chapter 11 plan filed in this case on account of such Claim, and (c) participating in any distribution in these chapter 11 cases on account of such Claim.

7. As appropriate, the Debtors shall mail one or more proof of claim forms substantially similar to the Form of Proof of Claim attached hereto as Exhibit 1, which is hereby approved, indicating on the form how the Debtors have listed such creditor's Claim in the

Schedules (including the identity of the Debtor, the amount of the Claim and whether the Claim has been scheduled as “contingent,” “unliquidated,” or “disputed”).

8. The following procedures for the submission of Proofs of Claim asserting Claims against the Debtors in these chapter 11 cases shall apply:

- a) Each Proof of Claim must: (i) be written in English; (ii) be legible; (iii) include a Claim amount denominated in United States dollars; (iv) conform substantially with the Proof of Claim form provided by the Debtors or Official Form 410; (v) be signed by the claimant or by an authorized agent or legal representative of the claimant; and (vi) include supporting documentation unless voluminous, in which case a summary must be attached or an explanation provided as to why documentation is not available.
- b) In addition to the requirements set forth in (a) above, any Proof of Claim asserting a 503(b)(9) Claim must also: (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which the 503(b)(9) Claim is being asserted; (iii) attach documentation of any reclamation demand made to any Debtor under section 546(c) of the Bankruptcy Code (if applicable); and (iv) set forth whether any portion of the 503(b)(9) Claim was satisfied by payments made by the Debtors pursuant to any order of the Court authorizing the Debtors to pay prepetition Claims.
- c) Parties who wish to receive proof of receipt of their Proofs of Claim from the Notice and Claims Agent must also include with their Proof of Claim (i) a copy of their Proof of Claim and (ii) a self-addressed, stamped envelope.
- d) Each Proof of Claim must specify by name and case number the Debtor against which the Claim is submitted. A Proof of Claim submitted under Case No. 19-11608 or that does not identify a Debtor will be deemed as submitted only against Hollander Sleep Products, LLC. A Proof of Claim that names a subsidiary Debtor but is submitted under the Case No. 19-11608 will be treated as having been submitted against the subsidiary Debtor with a notation that a discrepancy in the submission exists.
- e) If the holder asserts a Claim against more than one Debtor or has Claims against different Debtors, a separate Proof of Claim form must be submitted with respect to each Debtor (unless otherwise set forth in the Bar Date Order). To the extent more than one Debtor is listed on the Proof of Claim, such Claim will be treated as if submitted only against the first-listed Debtor.



- f) Each Proof of Claim, including supporting documentation, must be submitted so that the Notice and Claims Agent ***actually receives*** the Proof of Claim on or before the applicable Bar Date by either: (i) electronically using the interface available on the Notice and Claims Agent's website at <https://www.omnimgt.com/hollander> or (ii) first-class U.S. Mail, overnight mail, or other hand-delivery system, which Proof of Claim must include an original signature, at the following address: Hollander Claims Processing Center, c/o Omni Management Group, 5955 De Soto Avenue, Suite 100, Woodland Hills, California 91367.

**PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL  
NOT BE ACCEPTED AND WILL NOT BE DEEMED TIMELY SUBMITTED.**

9. The following persons or entities need ***not*** submit a Proof of Claim in these chapter 11 cases on or prior to the General Claims Bar Date:

- a) any person or entity that has already submitted a Proof of Claim against the Debtors with the Clerk of this Court or the Debtors' Notice and Claims Agent in a form substantially similar to Official Bankruptcy Form No. 410;
- b) any person or entity whose Claim is listed on the Schedules filed by the Debtors, provided that (i) the Claim is not scheduled as "disputed," "contingent," or "unliquidated," (ii) the claimant agrees with the amount, nature, and priority of the Claim as set forth in the Schedules, and (iii) the claimant does not dispute that the Claim is an obligation of the specific Debtor against which the Claim is listed on the Schedules;
- c) the Prepetition ABL Secured Parties, the Prepetition Term Loan Secured Parties, and/or the DIP Lenders, provided that any requirement that such parties file a Proof of Claim shall be governed by the Interim DIP Order and/or any final order regarding the use of cash collateral or the approval of postpetition financing, and nothing herein shall modify, amend, or supersede the Interim DIP Order and/or any final order regarding the use of cash collateral or the approval of postpetition financing;
- d) any holder of a Claim previously allowed by order of this Court;
- e) any holder of a Claim that has already been paid in full;
- f) any holder of a Claim for which a specific deadline has previously been fixed by this Court or otherwise is fixed pursuant to this Bar Date Order;
- g) any Debtor having a Claim against another Debtor or any of the non-debtor subsidiaries (whether direct or indirect) having a Claim against any of the Debtors;

- h) any holder of an equity interest in the Debtors with respect to the ownership of such equity interest, provided, however, that any holder of an equity interest who wishes to assert a Claim against the Debtors, including a Claim relating to such equity interest or the purchase or sale of such interest, must file a Proof of Claim asserting such Claim on or prior to the General Claims Bar Date pursuant to procedures set forth herein;
- i) any holder of a Claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an administrative expense incurred in the ordinary course, provided, however, that any person or entity asserting a Claim entitled to priority under section 503(b)(9) of the Bankruptcy Code must assert such Claims by filing a request for payment or a Proof of Claim on or prior to the General Claims Bar Date;
- j) any current employee of the Debtors on account of any Claim the Court has authorized the Debtors to honor in the ordinary course of business as a wage, commission, or benefit, provided, however, that a current employee must submit a Proof of Claim by the General Claims Bar Date for all other Claims arising before the Petition Date, including Claims, if any, for wrongful termination, discrimination, harassment, hostile work environment, and retaliation and Claims covered by the Debtors' workers' compensation insurance;
- k) any current or former officer or director for indemnification, contribution, or reimbursement;
- l) any present or former employees of a Debtor whose employment is or was, as applicable, subject to the terms of a collective bargaining agreement (and, with respect to benefit claims, spouses and beneficiaries of such employees) or any labor union representing such employees (collectively, "CBA Parties") with respect to prepetition claims based solely on the payment of wages, salaries, employee medical benefits, insurance benefits, or other benefits the Court has authorized the Debtors to honor in the ordinary course of business. CBA Parties need not submit Claims for such amounts unless the Debtors have provided written notice to certain CBA Parties and their unions, where applicable, that the Debtors do not intend to pay such Claims with respect to those certain CBA Parties, in which case those CBA Parties will have until the later of (i) the General Claims Bar Date and (ii) 35 days after the date of written notice to submit Proofs of Claim. Notwithstanding the foregoing, employees (present or former) or the labor unions must submit claims relating to grievances prior to the General Claims Bar Date to the extent the grounds for such grievances arose on or before the Petition Date, *provided* that labor unions may submit a claim itemizing such grievances on behalf of their respective members; and

- m) any person or entity holding a Claim solely against the Debtors' non-debtor affiliates.

10. Nothing in this Bar Date Order shall prejudice the right of the Debtors or any other party in interest to dispute or assert offsets or defenses to any Claim reflected in the Schedules.

11. The notice substantially in the form attached hereto as **Exhibit 2** is approved and shall be deemed adequate and sufficient if served (a) after the filing of the Debtors' schedules and statements of financial affairs (which must be filed on or before June 19, 2019) and (b) by first-class mail at least 35 days prior to the General Claims Bar Date on:

- a. the U.S. Trustee;
- b. counsel to any official committee formed in these chapter 11 cases;
- c. any persons or entities that have requested notice of the proceedings in these chapter 11 cases pursuant to Bankruptcy Rule 2002;
- d. all persons or entities that have submitted Proofs of Claim against the Debtors;
- e. all known creditors and other known holders of potential Claims against the Debtors, including all persons or entities listed in the Schedules for which the Debtors have addresses;
- f. all parties to executory contracts and unexpired leases of the Debtors;
- g. all parties to litigation with the Debtors and their counsel (if known);
- h. the ABL Agent and counsel thereto;
- i. the Term Loan Agent and counsel thereto;
- j. the DIP ABL Agent and counsel thereto;
- k. the DIP Term Loan Agent and counsel thereto;
- l. the United States Attorney's Office for the Southern District of New York;
- m. the Internal Revenue Service;
- n. any other governmental units applicable to the Debtors' businesses; and

- o. state attorneys general and state departments of revenue for states in which the Debtors conduct business.

12. Pursuant to Bankruptcy Rules 2002(f) and 2002(l), the Debtors shall publish a form of the Bar Date Notice (modified as necessary but consistent with the requirements of the Guidelines), substantially in the form attached hereto as **Exhibit 3**, on one occasion in *The New York Times* (national edition), *USA TODAY* (national edition), and *The Globe and Mail* (national edition in Canada) (a) after the filing of the Debtors' schedules and statements of financial affairs (which must be filed on or before June 19, 2019) and (b) at least 28 days prior to the General Claims Bar Date, which publication is hereby approved and shall be deemed good, adequate, and sufficient publication notice of the General Claims Bar Date.

13. Any person or entity who desires to rely on the Schedules will have the responsibility for determining that such person's or entity's Claim is accurately listed in the Schedules.

14. The Debtors and their Notice and Claims Agent are authorized to take all actions and make any payments necessary to effectuate the relief granted pursuant to this Bar Date Order in accordance with the Motion.

15. Entry of this Bar Date Order is without prejudice to the right of the Debtors to seek a further order of this Court fixing a date by which holders of Claims or interests not subject to the General Claims Bar Date established herein must submit such Proofs of Claim or interest or be barred from doing so.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

17. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York

Dated: \_\_\_\_\_, 2019

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Proposed Form of Proof of Claim**

Debtor and Case Number:

- ☐ 19-11608 Hollander Sleep Products, LLC ☐ 19-11610 Hollander Sleep Products Kentucky, LLC  
☐ 19-11607 Dream II Holdings, LLC ☐ 19-11611 Pacific Coast Feather, LLC  
☐ 19-11609 Hollander Home Fashions Holdings, LLC ☐ 19-11612 Pacific Coast Feather Cushion, LLC  
☐ 19-11613 Hollander Sleep Products Canada Limited

## Official Form 410

## Proof of Claim

04/19

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

Carefully read instructions included with this Proof of Claim before completing. In order to have your claim considered for payment and/or voting purposes, complete ALL applicable questions.

### Part 1: Identify the Claim

<b>1. Who is the current creditor?</b> Name of the current creditor (the person or entity to be paid for this claim) _____ Other names the creditor used with the debtor _____		
<b>2. Has this claim been acquired from someone else?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes From whom? _____		
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b> Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Contact Phone _____ Contact email _____ Uniform claim identifier for electronic payments in chapter 13 (if you use one) _____	<b>Where should payments to the creditor be sent? (if different)</b> Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Contact Phone _____ Contact email _____
<b>4. Does this claim amend one already filed?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes Claim Number on court claims registry (if known) _____ Filed On _____ MM / DD / YYYY		
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes Who made the earlier filing? _____		

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

<b>6. Do you have any number you use to identify the debtor?</b>	<input type="checkbox"/> No <input type="checkbox"/> Yes    Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
<b>7. How much is the claim?</b>	\$ _____ <div style="float: right; text-align: right;"> <b>Does this amount include interest or other charges?</b>  <input type="checkbox"/> No  <input type="checkbox"/> Yes    Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).         </div>
<b>8. What is the basis of the claim?</b>	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information _____
<b>9. Is all or part of the claim secured?</b>	<input type="checkbox"/> No <input type="checkbox"/> Yes    The claim is secured by a lien on property  <b>Nature of property:</b> <input type="checkbox"/> Real Estate    If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other    Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded).  <b>Value of Property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7).  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate:</b> (when case was filed) _____% <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
<b>10. Is this claim based on a lease?</b>	<input type="checkbox"/> No <input type="checkbox"/> Yes <b>Amount necessary to cure any default as of the date of the petition.</b> \$ _____
<b>11. Is this claim subject to a right of setoff?</b>	<input type="checkbox"/> No <input type="checkbox"/> Yes    Identify the property: _____
<b>12. Is this claim for the value of goods received by the debtor within 20 days before the commencement date of this case (11 U.S.C. §503(b)(9)).?</b>	<input type="checkbox"/> No <input type="checkbox"/> Yes    Amount of 503(b)(9) Claim: \$ _____



**13. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**☐ No☐ Yes *Check all that apply*

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ \_\_\_\_\_

☐ Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

☐ Contributions to an employee benefit plan 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)(\_\_\_\_) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3:****Sign Below**

**The person completing this proof of claim must sign and date it.**

**FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

*Check the appropriate box:*

☐ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am the guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date \_\_\_\_\_

MM / DD / YYYY

\_\_\_\_\_  
Signature

**Print the name of the person who is completing and signing this claim:**

Name

\_\_\_\_\_  
First Name

\_\_\_\_\_  
Middle Name

\_\_\_\_\_  
Last Name

Title

\_\_\_\_\_

Company

\_\_\_\_\_  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

\_\_\_\_\_  
Number

\_\_\_\_\_  
Street

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
ZIP Code

Contact Phone

\_\_\_\_\_

Email

\_\_\_\_\_

**Exhibit 2**

**Proposed Bar Date Notice**

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Christopher T. Greco, P.C.  
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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup>

Debtors.

---

)  
) Chapter 11  
)  
) Case No. 19-11608 (MEW)  
)  
) (Jointly Administered)  
)

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**NOTICE OF DEADLINE REQUIRING  
SUBMISSION OF PROOFS OF CLAIM ON OR BEFORE  
JULY 26, 2019, AND RELATED PROCEDURES FOR SUBMITTING  
PROOFS OF CLAIM IN THE ABOVE-CAPTIONED CHAPTER 11 CASES**

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**TO: ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST ANY DEBTOR LISTED ON PAGE 2 OF THIS NOTICE IN THE ABOVE-CAPTIONED CHAPTER 11 CASES.**

The United States Bankruptcy Court for the Southern District of New York (the “Court”) has entered an order (the “Bar Date Order”) establishing **5:00 p.m., prevailing Eastern Time, on July 26, 2019** (the “General Claims Bar Date”), as the last date for each person or entity<sup>2</sup> (including individuals, partnerships, corporations, joint ventures, and trusts) to submit a Proof of Claim against any of the Debtors listed on page 2 of this notice (collectively, the “Debtors”).

Except for those holders of the Claims listed below that are specifically excluded from the General Claims Bar Date submission requirement, the Bar Dates<sup>3</sup> and the procedures set forth below for submitting proofs of claim (each, a “Proof of Claim”) apply to all Claims (defined below) against the Debtors that arose prior to **May 19, 2019** (the “Petition Date”), the date on which the Debtors commenced cases under chapter 11 of the United States Bankruptcy Code, **including parties asserting Claims pursuant to section 503(b)(9) of the Bankruptcy Code (each, a “503(b)(9) Claim”).**<sup>4</sup> In addition, governmental units have until **5:00 p.m., prevailing Eastern Time, on November 15, 2019** (the date that is 180 days after the order for relief) to submit Proofs of Claim.

**A holder of a possible Claim against the Debtors should consult an attorney regarding any matters not covered by this notice, such as whether the holder should submit a Proof of Claim.**

### **Debtors in the Chapter 11 Cases**

Debtor Name	Tax Identification Number	Case Number
Hollander Sleep Products, LLC	27-0542143	19-11608
Dream II Holdings, LLC	47-1927915	19-11607
Hollander Home Fashions Holdings, LLC	27-0542063	19-11609
Hollander Sleep Products Kentucky, LLC	90-1014119	19-11610
Pacific Coast Feather, LLC	91-0891445	19-11611
Pacific Coast Feather Cushion, LLC	93-1063119	19-11612
Hollander Sleep Products Canada Limited	13902-3477	19-11613

### **Who Must Submit a Proof of Claim**

You **MUST** submit a Proof of Claim to vote on a chapter 11 plan filed by the Debtors or to share in distributions from the Debtors' bankruptcy estates if you have a Claim that arose before the Petition Date and it is ***not*** one of the types of Claims described under the heading "Who Need Not Submit a Proof of Claim" below. Claims based on acts or omissions of the Debtors that occurred before the Petition Date must be submitted on or prior to the applicable Bar Date, even if such Claims are not now fixed, liquidated, or certain or did not mature or become fixed, liquidated, or certain before the Petition Date.

Under section 101(5) of the Bankruptcy Code and as used in this notice, the word "**Claim**" means: (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> As used herein, the term "entity" has the meaning given to it in section 101(15) of title 11 of the United States Code (the "**Bankruptcy Code**"), and includes all persons, estates, trusts and the United States trustee. Further, the terms "person" and "governmental unit" have the meanings given to them in sections 101(41) and 101(27) of the Bankruptcy Code, respectively.

<sup>3</sup> Defined collectively as the Rejection Bar Date (further defined herein), the General Claims Bar Date, the Supplemental Bar Date (further defined herein), and the Governmental Bar Date.

<sup>4</sup> "503(b)(9) Claims" are Claims on account of goods received by a Debtor within 20 days before the Petition Date, where such goods were sold to the Debtor in the ordinary course of such Debtor's business. See 11 U.S.C. § 503(b)(9).

### **What To Submit**

The Debtors are enclosing a Proof of Claim form for use in the cases; if your Claim is scheduled by the Debtors, the form also sets forth the amount of your Claim as scheduled by the Debtors, the specific Debtor against which the Claim is scheduled, and whether the Claim is scheduled as disputed, contingent, or unliquidated. You will receive a different Proof of Claim form for each Claim scheduled in your name by the Debtors. You may utilize the Proof of Claim form(s) provided by the Debtors to submit your Claim.

Your Proof of Claim form must not contain complete social security numbers or taxpayer identification numbers (only the last four digits), a complete birth date (only the year), the name of a minor (only the minor's initials), or a financial account number (only the last four digits of such financial account).

Additional Proof of Claim forms may be obtained by contacting the Debtors' notice and claims agent, Omni Management Group (the "Notice and Claims Agent"), by calling (844) 212-9942 for callers in the United States or by calling (818) 906-8300 for callers outside the United States and/or visiting the Debtors' restructuring website at: <https://www.omnimgt.com/hollander>.

The following procedures for the submission of Proofs of Claim against the Debtors in the chapter 11 cases shall apply:

- a) Each Proof of Claim must: (i) be written in English; (ii) be legible; (iii) include a Claim amount denominated in United States dollars; (iv) conform substantially with the Proof of Claim form provided by the Debtors or Official Form 410; (v) be signed by the claimant or by an authorized agent or legal representative of the claimant; and (vi) include supporting documentation unless voluminous, in which case a summary must be attached or an explanation provided as to why documentation is not available.
- a) In addition to the requirements set forth in (a) above, any Proof of Claim asserting a 503(b)(9) Claim must also: (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which the 503(b)(9) Claim is being asserted; (iii) attach documentation of any reclamation demand made to any Debtor under section 546(c) of the Bankruptcy Code (if applicable); and (iv) set forth whether any portion of the 503(b)(9) Claim was satisfied by payments made by the Debtors pursuant to any order of the Court authorizing the Debtors to pay prepetition Claims.
- b) Parties who wish to receive proof of receipt of their Proofs of Claim from the Notice and Claims Agent must also include with their Proof of Claim (i) a copy of their Proof of Claim and (ii) a self-addressed, stamped envelope.

- c) Each Proof of Claim must specify by name and case number the Debtor against which the Claim is submitted. A Proof of Claim submitted under Case No. 19-11608 or that does not identify a Debtor will be deemed as submitted only against Hollander Sleep Products, LLC. A Proof of Claim that names a subsidiary Debtor but is submitted under the Case No. 19-11608 will be treated as having been submitted against the subsidiary Debtor with a notation that a discrepancy in the submission exists.
- d) If the holder asserts a Claim against more than one Debtor or has Claims against different Debtors, a separate Proof of Claim form must be submitted with respect to each Debtor (unless otherwise set forth in the Bar Date Order). To the extent more than one Debtor is listed on the Proof of Claim, such Claim will be treated as if submitted only against the first-listed Debtor.

### **When and Where To Submit**

Each Proof of Claim, including supporting documentation, must be submitted so that the Notice and Claims Agent ***actually receives*** the Proof of Claim on or before the applicable Bar Date by either: (i) electronically using the interface available on the Notice and Claims Agent's website at <https://www.omnimgt.com/hollander> or (ii) first-class U.S. Mail, overnight mail, or other hand-delivery system, which Proof of Claim must include an ***original*** signature, at the following address: Hollander Claims Processing Center, c/o Omni Management Group, 5955 De Soto Avenue, Suite 100, Woodland Hills, California 91367.

### **PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL NOT BE ACCEPTED AND WILL NOT BE DEEMED TIMELY SUBMITTED.**

### **Who Need Not Submit a Proof of Claim**

You do not need to submit a Proof of Claim on or prior to the Bar Date if you are:

- a) any person or entity that has already submitted a Proof of Claim against the Debtors with the Clerk of this Court or the Debtors' Notice and Claims Agent in a form substantially similar to Official Bankruptcy Form No. 410;
- b) any person or entity whose Claim is listed on the Schedules filed by the Debtors, *provided* that (i) the Claim is ***not*** scheduled as "disputed," "contingent," or "unliquidated," (ii) the claimant agrees with the amount, nature, and priority of the Claim as set forth in the Schedules, and (iii) the claimant does not dispute that the Claim is an obligation of the specific Debtor against which the Claim is listed on the Schedules;
- c) the Prepetition ABL Secured Parties, the Prepetition Term Loan Secured Parties, and/or the DIP Lenders, provided that any requirement that such parties file a Proof of Claim shall be governed by the *Interim Order (A) Authorizing the Debtors to Obtain Postpetition Financing*,

(B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Lenders, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief [Docket No. 53] (the “Interim DIP Order”) and/or any final order regarding the use of cash collateral or the approval of postpetition financing, and nothing in the Bar Date Order will modify, amend, or supersede the Interim DIP Order and/or any final order regarding the use of cash collateral or the approval of postpetition financing;<sup>5</sup>

- d) any holder of a Claim previously allowed by order of this Court;
- e) any holder of a Claim that has already been paid in full;
- f) any holder of a Claim for which a specific deadline has previously been fixed by this Court or otherwise is fixed pursuant to the Bar Date Order;
- g) any Debtor having a Claim against another Debtor or any of the non-debtor subsidiaries (whether direct or indirect) having a Claim against any of the Debtors;
- h) any holder of an equity interest in the Debtors with respect to the ownership of such equity interest, *provided, however*, that any holder of an equity interest who wishes to assert a Claim against the Debtors, including a Claim relating to such equity interest or the purchase or sale of such interest, must file a Proof of Claim asserting such Claim on or prior to the General Claims Bar Date pursuant to procedures set forth herein;
- i) any holder of a Claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an administrative expense incurred in the ordinary course, *provided, however*, that any person or entity asserting a Claim entitled to priority under section 503(b)(9) of the Bankruptcy Code must assert such Claims by filing a request for payment or a Proof of Claim on or prior to the General Claims Bar Date;
- j) any current employee of the Debtors on account of any Claim the Court has authorized the Debtors to honor in the ordinary course of business as a wage, commission, or benefit, *provided, however*, that a current employee must submit a Proof of Claim by the General Claims Bar Date for all other Claims arising before the Petition Date, including Claims, if any, for wrongful termination, discrimination, harassment, hostile

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<sup>5</sup> Capitalized terms used in this paragraph 11(c) shall have the meanings set forth in the Interim DIP Order.

work environment, and retaliation and Claims covered by the Debtors' workers' compensation insurance;

- k) any current or former officer or director for indemnification, contribution, or reimbursement;
- l) any present or former employees of a Debtor whose employment is or was, as applicable, subject to the terms of a collective bargaining agreement (and, with respect to benefit claims, spouses and beneficiaries of such employees) or any labor union representing such employees (collectively, "CBA Parties") with respect to prepetition claims based solely on the payment of wages, salaries, employee medical benefits, insurance benefits, or other benefits the Court has authorized the Debtors to honor in the ordinary course of business. CBA Parties need not submit Claims for such amounts unless the Debtors have provided written notice to certain CBA Parties and their unions, where applicable, that the Debtors do not intend to pay such Claims with respect to those certain CBA Parties, in which case those CBA Parties will have until the later of (i) the General Claims Bar Date and (ii) 35 days after the date of written notice to submit Proofs of Claim. Notwithstanding the foregoing, employees (present or former) or the labor unions must submit claims relating to grievances prior to the General Claims Bar Date to the extent the grounds for such grievances arose on or before the Petition Date, *provided* that labor unions may submit a claim itemizing such grievances on behalf of their respective members; and
- m) any person or entity holding a Claim solely against the Debtors' non-debtor affiliates.

THIS NOTICE IS BEING SENT TO MANY PERSONS AND ENTITIES THAT HAVE HAD SOME RELATIONSHIP WITH OR HAVE DONE BUSINESS WITH THE DEBTORS BUT MAY NOT HAVE AN UNPAID CLAIM AGAINST THE DEBTORS. THE FACT THAT YOU HAVE RECEIVED THIS NOTICE DOES NOT MEAN THAT YOU HAVE A CLAIM OR THAT THE DEBTORS OR THIS COURT BELIEVE THAT YOU HAVE ANY CLAIM.

### **Executory Contracts and Unexpired Leases**

If you have a Claim arising from the rejection of an executory contract or unexpired lease, you must submit your Proof of Claim based on such rejection on or before the later of (a) the General Claims Bar Date and (b) any date this Court may fix in the applicable order authorizing such rejection and, if no such date is provided, 35 days after the date of entry of such order, (the "Rejection Bar Date"). The Debtors will provide notice of the Rejection Bar Date to the contract or lease counterparty whose contract or lease is being rejected at the time the Debtors reject any executory contract or unexpired lease.



### **Supplemental Bar Date**

In the event the Debtors amend or supplement their Schedules, the Debtors shall give notice of any such amendment to the holders of any Claim affected thereby, and such holders shall be afforded until the later of (a) the applicable General Claims Bar Date or the Governmental Bar Date, and (b) 35 days after the date on which such notice is given of such amendment or supplement to the Schedules, to submit a Proof of Claim or be forever barred from doing so.

### **The Debtors' Schedules and Access Thereto**

You may be listed as the holder of a Claim against one or more of the Debtors in the Debtors' Schedules of Assets and Liabilities and/or Schedules of Executory Contracts and Unexpired Leases (collectively, the "Schedules").

Copies of the Debtors' Schedules are available: (a) from the Notice and Claims Agent by calling (844) 212-9942 for callers in the United States or by calling (818) 906-8300 for callers outside the United States and/or visiting the Debtors' restructuring website at: <https://www.omnimgt.com/hollander> or (b) for inspection on this Court's website at <http://ecf.nysb.uscourts.gov>. A login and password to this Court's Public Access to Electronic Court Records are required to access this information and can be obtained at <http://www.pacer.psc.uscourts.gov>. Copies of the Schedules may also be examined between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, One Bowling Green, New York, New York 10004-1408.

To determine if and how you are listed on the Schedules, please refer to the descriptions set forth on the enclosed Proof of Claim forms regarding the nature, amount, and classification of your Claim(s). If the Debtors believe that you hold Claims against more than one Debtor, you will receive multiple Proof of Claim forms, each of which will reflect the nature and amount of your Claim listed in the Schedules.

If you rely on the Debtors' Schedules, it is your responsibility to determine that the Claim is accurately listed in the Schedules; however, you may rely on the enclosed Proof of Claim form, which lists your Claim as scheduled, identifies the Debtor against which it is scheduled, and specifies whether the Claim is disputed, contingent, or unliquidated.

As set forth above, if you agree with the nature, amount, and classification of your Claim as listed in the Debtors' Schedules, and if you do not dispute that your Claim is only against the Debtor specified by the Debtors, and if your Claim is **not** described as "disputed," "contingent," or "unliquidated," **you need not submit a Proof of Claim**. Otherwise, or if you decide to submit a Proof of Claim, you must do so before the applicable Bar Date in accordance with the procedures set forth in this notice.

### **Reservation of Rights**

Nothing contained in this Bar Date Notice is intended, or should be construed, as a waiver of the Debtors' right to: (a) dispute, or assert offsets or defenses against, any submitted Proof of Claim or any Claim listed or reflected in the Schedules as to the nature, amount, liability, or

classification of such Claims; (b) subsequently designate any scheduled Claim as disputed, contingent, or unliquidated; and (c) otherwise amend or supplement the Schedules.

**Consequences of Failure To Submit a Proof of Claim by the Applicable Bar Date**

ANY HOLDER OF A CLAIM THAT IS NOT LISTED IN THIS NOTICE AS A PARTY EXCEPTED FROM THE REQUIREMENTS OF THE BAR DATE ORDER AND THAT FAILS TO TIMELY SUBMIT A PROOF OF CLAIM IN THE APPROPRIATE FORM WILL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM (1) ASSERTING SUCH CLAIM AGAINST THE DEBTORS AND THEIR CHAPTER 11 ESTATES, (2) VOTING ON ANY CHAPTER 11 PLAN OF REORGANIZATION FILED IN THESE CASES ON ACCOUNT OF SUCH CLAIM, AND (3) PARTICIPATING IN ANY DISTRIBUTION IN THE DEBTORS' CHAPTER 11 CASES ON ACCOUNT OF SUCH CLAIM.

**BY ORDER OF THE COURT**

New York, New York  
Dated: \_\_\_\_\_, 2019

/s/

---

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Christopher T. Greco, P.C.  
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- and -

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*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit 3**

**Proposed Publication Notice**

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Christopher T. Greco, P.C.  
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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup>

Debtors.

---

)  
) Chapter 11  
)  
) Case No. 19-11608 (MEW)  
)  
) (Jointly Administered)  
)

**NOTICE OF BAR DATES FOR  
SUBMITTING PROOFS OF CLAIM AND CLAIMS UNDER  
SECTION 503(B)(9) OF THE BANKRUPTCY CODE AGAINST THE DEBTORS**

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**PLEASE TAKE NOTICE THAT** the United States Bankruptcy Court for the Southern District of New York (the “Court”) has entered an order (the “Bar Date Order”) establishing **5:00 p.m., prevailing Eastern Time, on July 26, 2019** (the “General Claims Bar Date”), as the last date for each person or entity (including individuals, partnerships, corporations, joint ventures and trusts) to submit a Proof of Claim against any of the Debtors listed below (collectively, the “Debtors”). A copy of the Bar Date Order, and any exhibits thereto are available (i) at the Debtors’ expense upon request to Omni Management Group (the noticing and claims agent retained in the chapter 11 cases), by calling (844) 212-9942 for callers in the United States or by calling (818) 906-8300 for callers outside the United States and/or visiting the Debtors’ restructuring website at: [omnimgmt.com/cases/hollander](http://omnimgmt.com/cases/hollander) or (iii) for a fee via PACER by visiting <http://ecf.nysb.uscourts.gov>.

The Bar Date Order requires that all entities (the “Claimants”) holding or wishing to assert a claim that arose or is deemed to have arisen prior to May 19, 2019 (the “Petition Date”) against the Debtors (“Claims”) to submit a Proof of Claim so as to be actually received by Omni Management Group (the “Notice and Claims Agent”) on or before the applicable bar date (collectively, the “Bar Dates”) as set forth below. None of the Bar Dates described herein apply to any governmental unit. Pursuant to section 502(b)(9) of the Bankruptcy Code, all governmental units shall have 180 days from the Petition Date to submit Claims against the Debtors (the “Governmental Bar Date”).

Debtor Name	Tax Identification Number	Case Number
Hollander Sleep Products, LLC	27-0542143	19-11608
Dream II Holdings, LLC	47-1927915	19-11607
Hollander Home Fashions Holdings, LLC	27-0542063	19-11609
Hollander Sleep Products Kentucky, LLC	90-1014119	19-11610
Pacific Coast Feather, LLC	91-0891445	19-11611
Pacific Coast Feather Cushion, LLC	93-1063119	19-11612
Hollander Sleep Products Canada Limited	13902-3477	19-11613

<b><u>General Claims Bar Date</u></b>  (Applicable to 503(b)(9) Claims)	All Claimants holding or wishing to assert a Claim must submit a Proof of Claim with respect to such Claim so as to be <b>actually received</b> by the Notice and Claims Agent by <b>July 26, 2019, at 5:00 p.m., prevailing Eastern Time</b> (the “ <u>General Claims Bar Date</u> ”), including parties asserting Claims pursuant to section 503(b)(9) of the Bankruptcy Code.
<b><u>Supplemental Bar Date</u></b>	In the event the Debtors amend or supplement their schedules of assets and liabilities (the “ <u>Schedules</u> ”), the Debtors shall give notice of any such amendment to the holders of any Claim affected thereby, and such holders shall be afforded 35 days after the date on which such notice is given to submit a Proof of Claim with respect to such amended Claim or be forever barred from doing so.
<b><u>Rejection Bar Date</u></b>	If you have a Claim arising from the rejection of an executory contract or unexpired lease, you must submit a Proof of Claim based on such rejection on or before the later of (a) the General Claims Bar Date and (b) any date this Court may fix in the applicable order authorizing such rejection and, if no such date is provided, 35 after the date of entry of such order (the “ <u>Rejection Bar Date</u> ”). The Debtors will provide notice of the Rejection Bar Date to the contract or lease counterparty whose contract or lease is being rejected at the time the Debtors reject any executory contract or unexpired lease.

### **When and Where To Submit**

Each Proof of Claim, including supporting documentation, must be submitted so that the Notice and Claims Agent **actually receives** the Proof of Claim on or before the applicable Bar Date by either: (i) electronically using the interface available on the Notice and Claims Agent’s website at <https://www.omnimgt.com/hollander>, or (ii) first-class U.S. Mail, overnight mail, or other hand-delivery system, which Proof of Claim must include an **original** signature, at the following

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

address: Hollander Claims Processing Center, c/o Omni Management Group, 5955 De Soto Avenue, Suite 100, Woodland Hills, California 91367.

**PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL NOT BE ACCEPTED AND WILL NOT BE DEEMED TIMELY SUBMITTED.**

**Contents of Proofs of Claim.** Each Proof of Claim must: (i) be written in English; (ii) be legible, (iii) include a Claim amount denominated in United States dollars; (iv) conform substantially with the Proof of Claim Form provided by the Debtors or Official Form 410; (v) be signed by the claimant or by an authorized agent or legal representative of the claimant; and (vi) include supporting documentation unless voluminous, in which case a summary must be attached or an explanation provided as to why documentation is not available. **Please note** that each Proof of Claim must state a Claim against only one Debtor. To the extent the Proof of Claim lists more than one Debtor, the applicable Claim may be treated as if submitted only against the first-listed Debtor. If a Proof of Claim does not identify a specific Debtor, the Proof of Claim will be considered as submitted only against Hollander Sleep Products, LLC.

**Section 503(b)(9) Claims.** Vendors and suppliers of goods may be entitled to request an administrative priority Claim under section 503(b)(9) of the Bankruptcy Code to the extent they delivered, and the Debtor received, goods within the twenty day period prior to the Petition Date. The Court has deemed the submission of a Proof of Claim as satisfying the procedural requirements for asserting such a Claim under section 503(b)(9) of the Bankruptcy Code. In addition to the other requirements listed above, any Proof of Claim asserting a 503(b)(9) Claim must (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which the 503(b)(9) Claim is being asserted; (iii) attach documentation of any reclamation demand made against the Debtors under section 546(c) of the Bankruptcy Code (if applicable); and (iv) set forth whether any portion of the Section 503(b)(9) Claim was satisfied by payments made by the Debtors.

**Consequences of Failing to Timely Submit Your Proof of Claim.** Any Claimant who is required, but fails, to submit a Proof of Claim in accordance with the Bar Date Order on or before the applicable Bar Date shall be forever barred, estopped, and enjoined from asserting such Claim against the Debtors (or submitting a Proof of Claim with respect thereto). In such event, the Debtors' property shall be forever discharged from any and all indebtedness or liability with respect to such Claim, and such holder shall not be permitted to vote to accept or reject any plan of reorganization filed in the chapter 11 cases or participate in any distribution on account of such Claim or receive further notices regarding such Claim.

**Reservation of Rights.** Nothing contained in this notice is intended to or should be construed as a waiver of the Debtor's right to: (a) dispute, or assert offsets or defenses against, any submitted Claim or any Claim listed or reflected in the Debtors' Schedules of Assets and Liabilities and/or Schedules of Executory Contracts and Unexpired Leases as to the nature, amount, liability, or classification thereof; (b) subsequently designate any scheduled Claim as disputed, contingent, or unliquidated; and (c) otherwise amend the Schedules.

**Additional Information.** If you have any questions regarding the claims process and/or if you wish to obtain a copy of the Bar Date Order (which contains a more detailed description of the requirements for submitting Proofs of Claim), a Proof of Claim form or related documents, you may do so by visiting the Debtors' restructuring website at <https://www.omnimgt.com/hollander> or contacting the Notice and Claims Agent by calling (844) 212-9942 for callers in the United States or by calling (818) 906-8300 for callers outside the United States. Please note that the Notice and Claims Agent cannot advise you how to submit, or whether you should submit, a Proof of Claim.

**THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3 , 2019.**

A handwritten signature in blue ink, appearing to be "JH", is written above a horizontal line.

**Commissioner for Taking Affidavits**



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. 68</b>

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**ORDER (A) SETTING BAR DATES FOR SUBMITTING PROOFS OF CLAIM,  
(B) APPROVING PROCEDURES FOR SUBMITTING PROOFS OF CLAIM,  
(C) APPROVING NOTICE THEREOF, AND (D) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Bar Date Order”) (a) setting bar dates for creditors to submit Proofs of Claim in these chapter 11 cases, (b) approving procedures for submitting Proofs of Claim, (c) approving the form of notice of the bar dates and manner of service thereof, and (d) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. Except as otherwise provided herein, all persons and entities including, without limitation, individuals, partnerships, corporations, joint ventures, and trusts, that assert a Claim (as defined in section 101(5) of the Bankruptcy Code) against the Debtors which arose before May 19, 2019 (the “Petition Date”), including claims pursuant to section 503(b)(9) of the Bankruptcy Code (each, a “503(b)(9) Claim”), shall submit a written proof of such Claim so that it is *actually received* by Omni Management Group (the “Notice and Claims Agent”) on or before **5:00 p.m., prevailing Eastern Time, on July 29, 2019** (the “General Claims Bar Date”), which submission shall be in accordance with this Bar Date Order.
3. Notwithstanding any other provision of this Bar Date Order, Proofs of Claim submitted by governmental units must be submitted so as to be *actually received* by the Notice and Claims Agent on or before **5:00 p.m., prevailing Eastern Time, on November 15, 2019** (the “Governmental Bar Date”), the date that is 180 days from the Petition Date.
4. Any person or entity that holds a Claim arising from the rejection of an executory contract or unexpired lease must submit a Proof of Claim based on such rejection on or before the later of (a) the General Claims Bar Date and (b) any date this Court may fix in the applicable order

authorizing such rejection and, if no such date is provided, 35 days after the date of entry of such order. The Debtors will provide notice of the Rejection Bar Date to the contract or lease counterparty whose contract or lease is being rejected at the time the Debtors reject any executory contract or unexpired lease.

5. If the Debtors amend or supplement their Schedules, the Debtors shall provide notice of any amendment or supplement to the holders of Claims affected thereby. Any claimant holding a Claim affected by the amendment or supplement to the Schedules that does not agree with such amendment's or supplement's treatment of such claimant's Claim must submit a Proof of Claim on or before the later of (a) the applicable General Claims Bar Date or the Governmental Bar Date, and (b) 5:00 p.m., prevailing Eastern Time, on the date that is 35 days after the date on which the Debtors provide notice of the amendment to the Schedules (any such date, a "Supplemental Bar Date"). In such instances, the Debtors shall provide such parties with notice, in a form substantially similar to the Bar Date Notice, that clearly sets forth the Supplemental Bar Date by which such parties must submit a Proof of Claim.

6. In accordance with Bankruptcy Rule 3003(c)(2) and the Guidelines, any holder of a Claim that is not excepted from the requirements of the Bar Date Order and fails to timely submit a Proof of Claim in the appropriate form shall not be entitled to (a) vote on any chapter 11 plan filed in this case on account of such Claim, or (b) participate in any distribution in these chapter 11 cases on account of such Claim.

7. As appropriate, the Debtors shall mail one or more proof of claim forms substantially similar to the Form of Proof of Claim attached hereto as **Exhibit 1**, which is hereby approved, indicating on the form how the Debtors have listed such creditor's Claim in the

Schedules (including the identity of the Debtor, the amount of the Claim and whether the Claim has been scheduled as “contingent,” “unliquidated,” or “disputed”).

8. The following procedures for the submission of Proofs of Claim asserting Claims against the Debtors in these chapter 11 cases shall apply:

- a) Each Proof of Claim must: (i) be written in English; (ii) be legible; (iii) include a Claim amount denominated in United States dollars; (iv) conform substantially with the Proof of Claim form provided by the Debtors or Official Form 410; (v) be signed by the claimant or by an authorized agent or legal representative of the claimant; and (vi) include supporting documentation unless voluminous, in which case a summary must be attached or an explanation provided as to why documentation is not available.
- b) In addition to the requirements set forth in (a) above, any Proof of Claim asserting a 503(b)(9) Claim must also: (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which the 503(b)(9) Claim is being asserted; (iii) attach documentation of any reclamation demand made to any Debtor under section 546(c) of the Bankruptcy Code (if applicable); and (iv) set forth whether any portion of the 503(b)(9) Claim was satisfied by payments made by the Debtors pursuant to any order of the Court authorizing the Debtors to pay prepetition Claims.
- c) Parties who wish to receive proof of receipt of their Proofs of Claim from the Notice and Claims Agent must also include with their Proof of Claim (i) a copy of their Proof of Claim and (ii) a self-addressed, stamped envelope.
- d) Each Proof of Claim must specify by name and case number the Debtor against which the Claim is submitted. A Proof of Claim submitted under Case No. 19-11608 or that does not identify a Debtor will be deemed as submitted only against Hollander Sleep Products, LLC. A Proof of Claim that names a subsidiary Debtor but is submitted under the Case No. 19-11608 will be treated as having been submitted against the subsidiary Debtor with a notation that a discrepancy in the submission exists.
- e) If the holder asserts a Claim against more than one Debtor or has Claims against different Debtors, a separate Proof of Claim form must be submitted with respect to each Debtor (unless otherwise set forth in the Bar Date Order). To the extent more than one Debtor is listed on the Proof of Claim, such Claim will be treated as if submitted only against the first-listed Debtor.

- f) Each Proof of Claim, including supporting documentation, must be submitted so that the Notice and Claims Agent ***actually receives*** the Proof of Claim on or before the applicable Bar Date by either: (i) electronically using the interface available on the Notice and Claims Agent's website at <https://www.omnimgt.com/hollander> or (ii) first-class U.S. Mail, overnight mail, or other hand-delivery system, which Proof of Claim must include an original signature, at the following address: Hollander Claims Processing Center, c/o Omni Management Group, 5955 De Soto Avenue, Suite 100, Woodland Hills, California 91367.

**PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL  
NOT BE ACCEPTED AND WILL NOT BE DEEMED TIMELY SUBMITTED.**

9. A Proof of Claim need ***not*** be submitted in these chapter 11 cases on or prior to the General Claims Bar Date for a Claim that falls in the following categories:

- a) any Claim for which a Proof of Claim against the Debtors with the Clerk of this Court or the Debtors' Notice and Claims Agent in a form substantially similar to Official Bankruptcy Form No. 410;
- b) any Claim listed on the Schedules filed by the Debtors, provided that (i) the Claim is not scheduled as "disputed," "contingent," or "unliquidated," (ii) the claimant agrees with the amount, nature, and priority of the Claim as set forth in the Schedules, and (iii) the claimant does not dispute that the Claim is an obligation of the specific Debtor against which the Claim is listed on the Schedules;
- c) any Claim by the Prepetition ABL Secured Parties, the Prepetition Term Loan Secured Parties, and/or the DIP Lenders, arising from their obligations under the Interim DIP Order; *provided that* any requirement that such parties file a Proof of Claim shall be governed by the Interim DIP Order and/or any final order regarding the use of cash collateral or the approval of postpetition financing, and nothing herein shall modify, amend, or supersede the Interim DIP Order and/or any final order regarding the use of cash collateral or the approval of postpetition financing;
- d) any Claim previously allowed by order of this Court;
- e) any Claim that has already been paid in full;
- f) any Claim for which a specific deadline has previously been fixed by this Court or otherwise is fixed pursuant to this Bar Date Order;
- g) any Claim by a Debtor against another Debtor or any of the non-debtor subsidiaries (whether direct or indirect) having a Claim against any of the Debtors;

- h) any Claim arising exclusively out of an equity interest in the Debtors with respect to the ownership of such equity interest; *provided, however*, that any holder of an equity interest who wishes to assert a Claim against the Debtors, including a Claim relating to such equity interest or the purchase or sale of such interest, must file a Proof of Claim asserting such Claim on or prior to the General Claims Bar Date pursuant to procedures set forth herein;
- i) any Claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an administrative expense incurred in the ordinary course, *provided, however*, that any person or entity asserting a Claim entitled to priority under section 503(b)(9) of the Bankruptcy Code must assert such Claims by filing a request for payment or a Proof of Claim on or prior to the General Claims Bar Date;
- j) any Claim by a current employee of the Debtors on account of any Claim the Court has authorized the Debtors to honor in the ordinary course of business as a wage, commission, or benefit, provided, however, that a current employee must submit a Proof of Claim by the General Claims Bar Date for all other Claims arising before the Petition Date, including Claims, if any, for wrongful termination, discrimination, harassment, hostile work environment, and retaliation and Claims covered by the Debtors' workers' compensation insurance;
- k) any Claim by a present or former employees of a Debtor whose employment is or was, as applicable, subject to the terms of a collective bargaining agreement (and, with respect to benefit claims, spouses and beneficiaries of such employees) or any labor union representing such employees (collectively, "CBA Parties") with respect to prepetition claims based solely on the payment of wages, salaries, employee medical benefits, insurance benefits, or other benefits the Court has authorized the Debtors to honor in the ordinary course of business. CBA Parties need not submit Claims for such amounts unless the Debtors have provided written notice to certain CBA Parties and their unions, where applicable, that the Debtors do not intend to pay such Claims with respect to those certain CBA Parties, in which case those CBA Parties will have until the later of (i) the General Claims Bar Date and (ii) 35 days after the date of written notice to submit Proofs of Claim. Notwithstanding the foregoing, employees (present or former) or the labor unions must submit claims relating to grievances prior to the General Claims Bar Date to the extent the grounds for such grievances arose on or before the Petition Date, *provided* that labor unions may submit a claim itemizing such grievances on behalf of their respective members; and
- l) any Claim that is solely against the Debtors' non-debtor affiliates.

10. Nothing in this Bar Date Order shall prejudice the right of the Debtors or any other party in interest to dispute or assert offsets or defenses to any Claim reflected in the Schedules.

11. The notice substantially in the form attached hereto as **Exhibit 2** is approved and shall be deemed adequate and sufficient if served (a) after the filing of the Debtors' schedules and statements of financial affairs (which must be filed on or before June 21, 2019) and (b) by first-class mail at least 35 days prior to the General Claims Bar Date on:

- a. the U.S. Trustee;
- b. proposed counsel to the Official Committee of Unsecured Creditors formed in these chapter 11 cases;
- c. any persons or entities that have requested notice of the proceedings in these chapter 11 cases pursuant to Bankruptcy Rule 2002;
- d. all persons or entities that have submitted Proofs of Claim against the Debtors;
- e. all known creditors and other known holders of potential Claims against the Debtors, including all persons or entities listed in the Schedules for which the Debtors have addresses;
- f. all parties to executory contracts and unexpired leases of the Debtors;
- g. all parties to litigation with the Debtors and their counsel (if known);
- h. the ABL Agent and counsel thereto;
- i. the Term Loan Agent and counsel thereto;
- j. the DIP ABL Agent and counsel thereto;
- k. the DIP Term Loan Agent and counsel thereto;
- l. the United States Attorney's Office for the Southern District of New York;
- m. the Internal Revenue Service;
- n. any other governmental units applicable to the Debtors' businesses;
- o. state attorneys general and state departments of revenue for states in which the Debtors conduct business; and

- p. parties on the master creditor matrix in these cases to the extent that such parties are not included in the categories listed in 11(a) through 11(o).

12. Pursuant to Bankruptcy Rules 2002(f) and 2002(l), the Debtors shall publish a form of the Bar Date Notice (modified as necessary but consistent with the requirements of the Guidelines), substantially in the form attached hereto as **Exhibit 3**, on one occasion in *The New York Times* (national edition), *USA TODAY* (national edition), and *The Globe and Mail* (national edition in Canada) (a) after the filing of the Debtors' schedules and statements of financial affairs (which must be filed on or before June 21, 2019) and (b) at least 28 days prior to the General Claims Bar Date, which publication is hereby approved and shall be deemed good, adequate, and sufficient publication notice of the General Claims Bar Date.

13. Any person or entity who desires to rely on the Schedules will have the responsibility for determining that such person's or entity's Claim is accurately listed in the Schedules.

14. The Debtors and their Notice and Claims Agent are authorized to take all actions and make any payments necessary to effectuate the relief granted pursuant to this Bar Date Order in accordance with the Motion.

15. Entry of this Bar Date Order is without prejudice to the right of the Debtors to seek a further order of this Court fixing a date by which holders of Claims or interests not subject to the General Claims Bar Date established herein must submit such Proofs of Claim or interest or be barred from doing so.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.



17. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York  
Dated: June 21, 2019

/s/ Michael E. Wiles

THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Proposed Form of Proof of Claim**

Debtor and Case Number:

- ☐ 19-11608 Hollander Sleep Products, LLC ☐ 19-11610 Hollander Sleep Products Kentucky, LLC  
☐ 19-11607 Dream II Holdings, LLC ☐ 19-11611 Pacific Coast Feather, LLC  
☐ 19-11609 Hollander Home Fashions Holdings, LLC ☐ 19-11612 Pacific Coast Feather Cushion, LLC  
☐ 19-11613 Hollander Sleep Products Canada Limited

## Official Form 410

## Proof of Claim

04/19

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

Carefully read instructions included with this Proof of Claim before completing. In order to have your claim considered for payment and/or voting purposes, complete ALL applicable questions.

### Part 1: Identify the Claim

<b>1. Who is the current creditor?</b>		
Name of the current creditor (the person or entity to be paid for this claim) _____		
Other names the creditor used with the debtor _____		
<b>2. Has this claim been acquired from someone else?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes From whom? _____		
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>  Name _____  Number _____ Street _____  City _____ State _____ ZIP Code _____  Contact Phone _____ Contact email _____  Uniform claim identifier for electronic payments in chapter 13 (if you use one) _____	<b>Where should payments to the creditor be sent? (if different)</b>  Name _____  Number _____ Street _____  City _____ State _____ ZIP Code _____  Contact Phone _____ Contact email _____
<b>4. Does this claim amend one already filed?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes Claim Number on court claims registry (if known) _____ Filed On _____ MM / DD / YYYY		
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes Who made the earlier filing? _____		

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

<b>6. Do you have any number you use to identify the debtor?</b>	<input type="checkbox"/> No <input type="checkbox"/> Yes    Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
<b>7. How much is the claim?</b>	\$ _____ <b>Does this amount include interest or other charges?</b> <input type="checkbox"/> No <input type="checkbox"/> Yes    Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
<b>8. What is the basis of the claim?</b>	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information _____
<b>9. Is all or part of the claim secured?</b>	<input type="checkbox"/> No <input type="checkbox"/> Yes    The claim is secured by a lien on property  <b>Nature of property:</b> <input type="checkbox"/> Real Estate    If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other    Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded).  <b>Value of Property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7).  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate:</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
<b>10. Is this claim based on a lease?</b>	<input type="checkbox"/> No <input type="checkbox"/> Yes <b>Amount necessary to cure any default as of the date of the petition.</b> \$ _____
<b>11. Is this claim subject to a right of setoff?</b>	<input type="checkbox"/> No <input type="checkbox"/> Yes    Identify the property: _____
<b>12. Is this claim for the value of goods received by the debtor within 20 days before the commencement date of this case (11 U.S.C. §503(b)(9)).?</b>	<input type="checkbox"/> No <input type="checkbox"/> Yes    Amount of 503(b)(9) Claim: \$ _____

**13. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**☐ No☐ Yes *Check all that apply*

Pg 13 of 27

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ \_\_\_\_\_

☐ Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

☐ Contributions to an employee benefit plan 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)(\_\_\_\_) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3:****Sign Below**

**The person completing this proof of claim must sign and date it.**

**FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

*Check the appropriate box:*

☐ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am the guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date \_\_\_\_\_

MM / DD / YYYY

\_\_\_\_\_  
Signature

**Print the name of the person who is completing and signing this claim:**

Name

First Name

Middle Name

Last Name

Title

Company

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Number

Street

City

State

ZIP Code

Contact Phone

Email

**Exhibit 2**

**Proposed Bar Date Notice**

Joshua A. Sussberg, P.C.  
 Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
 601 Lexington Avenue  
 New York, New York 10022  
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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
Debtors.	)	(Jointly Administered)

**NOTICE OF DEADLINE REQUIRING  
 SUBMISSION OF PROOFS OF CLAIM ON OR BEFORE  
 JULY 29, 2019, AND RELATED PROCEDURES FOR SUBMITTING  
 PROOFS OF CLAIM IN THE ABOVE-CAPTIONED CHAPTER 11 CASES**

**TO: ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST ANY DEBTOR LISTED ON PAGE 2 OF THIS NOTICE IN THE ABOVE-CAPTIONED CHAPTER 11 CASES.**

The United States Bankruptcy Court for the Southern District of New York (the “Court”) has entered an order (the “Bar Date Order”) establishing **5:00 p.m., prevailing Eastern Time, on July 29, 2019** (the “General Claims Bar Date”), as the last date for each person or entity<sup>2</sup> (including individuals, partnerships, corporations, joint ventures, and trusts) to submit a Proof of Claim against any of the Debtors listed on page 2 of this notice (collectively, the “Debtors”).

Except for those holders of the Claims listed below that are specifically excluded from the General Claims Bar Date submission requirement, the Bar Dates<sup>3</sup> and the procedures set forth below for submitting proofs of claim (each, a “Proof of Claim”) apply to all Claims (defined below) against the Debtors that arose prior to **May 19, 2019** (the “Petition Date”), the date on which the Debtors commenced cases under chapter 11 of the United States Bankruptcy Code, **including parties asserting Claims pursuant to section 503(b)(9) of the Bankruptcy Code (each, a “503(b)(9) Claim”).**<sup>4</sup> In addition, governmental units have until **5:00 p.m., prevailing Eastern Time, on November 15, 2019** to submit Proofs of Claim.

**A holder of a possible Claim against the Debtors should consult an attorney regarding any matters not covered by this notice, such as whether the holder should submit a Proof of Claim.**

### **Debtors in the Chapter 11 Cases**

Debtor Name	Tax Identification Number	Case Number
Hollander Sleep Products, LLC	27-0542143	19-11608
Dream II Holdings, LLC	47-1927915	19-11607
Hollander Home Fashions Holdings, LLC	27-0542063	19-11609
Hollander Sleep Products Kentucky, LLC	90-1014119	19-11610
Pacific Coast Feather, LLC	91-0891445	19-11611
Pacific Coast Feather Cushion, LLC	93-1063119	19-11612
Hollander Sleep Products Canada Limited	13902-3477	19-11613

### **Who Must Submit a Proof of Claim**

You **MUST** submit a Proof of Claim to vote on a chapter 11 plan filed by the Debtors or to share in distributions from the Debtors' bankruptcy estates if you have a Claim that arose before the Petition Date and it is ***not*** one of the types of Claims described under the heading "Claims for Which No Proof of Claim Must be Submitted" below. Claims based on acts or omissions of the Debtors that occurred before the Petition Date must be submitted on or prior to the applicable Bar Date, even if such Claims are not now fixed, liquidated, or certain or did not mature or become fixed, liquidated, or certain before the Petition Date.

Under section 101(5) of the Bankruptcy Code and as used in this notice, the word "**Claim**" means: (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

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- <sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.
  - <sup>2</sup> As used herein, the term "entity" has the meaning given to it in section 101(15) of title 11 of the United States Code (the "**Bankruptcy Code**"), and includes all persons, estates, trusts and the United States trustee. Further, the terms "person" and "governmental unit" have the meanings given to them in sections 101(41) and 101(27) of the Bankruptcy Code, respectively.
  - <sup>3</sup> Defined collectively as the Rejection Bar Date (further defined herein), the General Claims Bar Date, the Supplemental Bar Date (further defined herein), and the Governmental Bar Date.
  - <sup>4</sup> "503(b)(9) Claims" are Claims on account of goods received by a Debtor within 20 days before the Petition Date, where such goods were sold to the Debtor in the ordinary course of such Debtor's business. See 11 U.S.C. § 503(b)(9).



### **What To Submit**

The Debtors are enclosing a Proof of Claim form for use in the cases; if your Claim is scheduled by the Debtors, the form also sets forth the amount of your Claim as scheduled by the Debtors, the specific Debtor against which the Claim is scheduled, and whether the Claim is scheduled as disputed, contingent, or unliquidated. You will receive a different Proof of Claim form for each Claim scheduled in your name by the Debtors. You may utilize the Proof of Claim form(s) provided by the Debtors to submit your Claim.

Your Proof of Claim form must not contain complete social security numbers or taxpayer identification numbers (only the last four digits), a complete birth date (only the year), the name of a minor (only the minor's initials), or a financial account number (only the last four digits of such financial account).

Additional Proof of Claim forms may be obtained by contacting the Debtors' notice and claims agent, Omni Management Group (the "Notice and Claims Agent"), by calling (844) 212-9942 for callers in the United States or by calling (818) 906-8300 for callers outside the United States and/or visiting the Debtors' restructuring website at: <https://www.omnimgt.com/hollander>.

The following procedures for the submission of Proofs of Claim against the Debtors in the chapter 11 cases shall apply:

- a) Each Proof of Claim must: (i) be written in English; (ii) be legible; (iii) include a Claim amount denominated in United States dollars; (iv) conform substantially with the Proof of Claim form provided by the Debtors or Official Form 410; (v) be signed by the claimant or by an authorized agent or legal representative of the claimant; and (vi) include supporting documentation unless voluminous, in which case a summary must be attached or an explanation provided as to why documentation is not available.
- a) Parties who wish to receive proof of receipt of their Proofs of Claim from the Notice and Claims Agent must also include with their Proof of Claim (i) a copy of their Proof of Claim and (ii) a self-addressed, stamped envelope.
- b) Each Proof of Claim must specify by name and case number the Debtor against which the Claim is submitted. A Proof of Claim submitted under Case No. 19-11608 or that does not identify a Debtor will be deemed as submitted only against Hollander Sleep Products, LLC. A Proof of Claim that names a subsidiary Debtor but is submitted under the Case No. 19-11608 will be treated as having been submitted against the subsidiary Debtor with a notation that a discrepancy in the submission exists. Neither scenario shall prejudice the rights of the Claimant who has filed a timely Claim to reassert that Claim against the proper Debtor.
- c) If the holder asserts a Claim against more than one Debtor or has Claims against different Debtors, a separate Proof of Claim form must be submitted

with respect to each Debtor (unless otherwise set forth in the Bar Date Order). To the extent more than one Debtor is listed on the Proof of Claim, such Claim will be treated as if submitted only against the first-listed Debtor.

### **When and Where To Submit**

Each Proof of Claim, including supporting documentation, must be submitted so that the Notice and Claims Agent **actually receives** the Proof of Claim on or before the applicable Bar Date by either: (i) electronically using the interface available on the Notice and Claims Agent's website at <https://www.omnimgt.com/hollander> or (ii) first-class U.S. Mail, overnight mail, or other hand-delivery system, which Proof of Claim must include an **original** signature, at the following address: Hollander Claims Processing Center, c/o Omni Management Group, 5955 De Soto Avenue, Suite 100, Woodland Hills, California 91367.

### **PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL NOT BE ACCEPTED AND WILL NOT BE DEEMED TIMELY SUBMITTED.**

### **Who Need Not Submit a Proof of Claim**

You do not need to submit a Proof of Claim on or prior to the Bar Date for a Claim that falls into one of the following categories:

- a) any Claim that has already been submitted against the Debtors with the Clerk of this Court or the Debtors' Notice and Claims Agent in a form substantially similar to Official Bankruptcy Form No. 410;
- b) any Claim that is listed on the Schedules filed by the Debtors, *provided* that (i) the Claim is **not** scheduled as "disputed," "contingent," or "unliquidated," (ii) the claimant agrees with the amount, nature, and priority of the Claim as set forth in the Schedules, and (iii) the claimant does not dispute that the Claim is an obligation of the specific Debtor against which the Claim is listed on the Schedules;
- c) any Claim by the Prepetition ABL Secured Parties, the Prepetition Term Loan Secured Parties, and/or the DIP Lenders in connection with their obligations under the Interim DIP Order (as defined below), provided that any requirement that such parties file a Proof of Claim shall be governed by the *Interim Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Lenders, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* [Docket No. 53] (the "Interim DIP Order") and/or any final order regarding the use of cash collateral or the approval of postpetition financing, and nothing in the Bar Date Order will modify, amend, or supersede the Interim DIP Order

and/or any final order regarding the use of cash collateral or the approval of postpetition financing;<sup>5</sup>

- d) any Claim previously allowed by order of this Court;
- e) any Claim that has already been paid in full;
- f) any Claim for which a specific deadline has previously been fixed by this Court or otherwise is fixed pursuant to the Bar Date Order;
- g) any Claim by one Debtor against another Debtor or any of the non-debtor subsidiaries (whether direct or indirect) having a Claim against any of the Debtors;
- h) any Claim arising exclusively out of an equity interest in the Debtors with respect to the ownership of such equity interest, *provided, however*, that any holder of an equity interest who wishes to assert a Claim against the Debtors, including a Claim relating to such equity interest or the purchase or sale of such interest, must file a Proof of Claim asserting such Claim on or prior to the General Claims Bar Date pursuant to procedures set forth herein;
- i) any Claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an administrative expense incurred in the ordinary course, *provided, however*, that any person or entity asserting a Claim entitled to priority under section 503(b)(9) of the Bankruptcy Code must assert such Claims by filing a request for payment or a Proof of Claim on or prior to the General Claims Bar Date;
- j) any Claim by a current employee of the Debtors on account of any Claim the Court has authorized the Debtors to honor in the ordinary course of business as a wage, commission, or benefit, *provided, however*, that a current employee must submit a Proof of Claim by the General Claims Bar Date for all other Claims arising before the Petition Date, including Claims, if any, for wrongful termination, discrimination, harassment, hostile work environment, and retaliation and Claims covered by the Debtors' workers' compensation insurance;
- k) any Claim by a present or former employees of a Debtor whose employment is or was, as applicable, subject to the terms of a collective bargaining agreement (and, with respect to benefit claims, spouses and beneficiaries of such employees) or any labor union representing such employees (collectively, "CBA Parties") with respect to prepetition claims based solely on the payment of wages, salaries, employee medical benefits, insurance benefits, or other benefits the Court has

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<sup>5</sup> Capitalized terms used in this paragraph 11(c) shall have the meanings set forth in the Interim DIP Order.

authorized the Debtors to honor in the ordinary course of business. CBA Parties need not submit Claims for such amounts unless the Debtors have provided written notice to certain CBA Parties and their unions, where applicable, that the Debtors do not intend to pay such Claims with respect to those certain CBA Parties, in which case those CBA Parties will have until the later of (i) the General Claims Bar Date and (ii) 35 days after the date of written notice to submit Proofs of Claim. Notwithstanding the foregoing, employees (present or former) or the labor unions must submit claims relating to grievances prior to the General Claims Bar Date to the extent the grounds for such grievances arose on or before the Petition Date, *provided* that labor unions may submit a claim itemizing such grievances on behalf of their respective members; and

- l) any Claim that is solely against the Debtors' non-debtor affiliates.

THIS NOTICE IS BEING SENT TO MANY PERSONS AND ENTITIES THAT HAVE HAD SOME RELATIONSHIP WITH OR HAVE DONE BUSINESS WITH THE DEBTORS BUT MAY NOT HAVE AN UNPAID CLAIM AGAINST THE DEBTORS. THE FACT THAT YOU HAVE RECEIVED THIS NOTICE DOES NOT MEAN THAT YOU HAVE A CLAIM OR THAT THE DEBTORS OR THIS COURT BELIEVE THAT YOU HAVE ANY CLAIM.

#### **Executory Contracts and Unexpired Leases**

If you have a Claim arising from the rejection of an executory contract or unexpired lease, you must submit your Proof of Claim based on such rejection on or before the later of (a) the General Claims Bar Date and (b) any date this Court may fix in the applicable order authorizing such rejection and, if no such date is provided, 35 days after the date of entry of such order, (the "Rejection Bar Date"). The Debtors will provide notice of the Rejection Bar Date to the contract or lease counterparty whose contract or lease is being rejected at the time the Debtors reject any executory contract or unexpired lease.

#### **Supplemental Bar Date**

In the event the Debtors amend or supplement their Schedules, the Debtors shall give notice of any such amendment to the holders of any Claim affected thereby, and such holders shall be afforded until the later of (a) the applicable General Claims Bar Date or the Governmental Bar Date, and (b) 35 days after the date on which such notice is given of such amendment or supplement to the Schedules, to submit a Proof of Claim or be forever barred from doing so.

#### **The Debtors' Schedules and Access Thereto**

You may be listed as the holder of a Claim against one or more of the Debtors in the Debtors' Schedules of Assets and Liabilities and/or Schedules of Executory Contracts and Unexpired Leases (collectively, the "Schedules").

Copies of the Debtors' Schedules are available: (a) from the Notice and Claims Agent by calling (844) 212-9942 for callers in the United States or by calling (818) 906-8300 for callers outside the United States and/or visiting the Debtors' restructuring website at: <https://www.omnimgt.com/hollander> or (b) for inspection on this Court's website at <http://ecf.nysb.uscourts.gov>. A login and password to this Court's Public Access to Electronic Court Records are required to access this information and can be obtained at <http://www.pacer.psc.uscourts.gov>. Copies of the Schedules may also be examined between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, One Bowling Green, New York, New York 10004-1408.

To determine if and how you are listed on the Schedules, please refer to the descriptions set forth on the enclosed Proof of Claim forms regarding the nature, amount, and classification of your Claim(s). If the Debtors believe that you hold Claims against more than one Debtor, you will receive multiple Proof of Claim forms, each of which will reflect the nature and amount of your Claim listed in the Schedules.

If you rely on the Debtors' Schedules, it is your responsibility to determine that the Claim is accurately listed in the Schedules; however, you may rely on the enclosed Proof of Claim form, which lists your Claim as scheduled, identifies the Debtor against which it is scheduled, and specifies whether the Claim is disputed, contingent, or unliquidated.

As set forth above, if you agree with the nature, amount, and classification of your Claim as listed in the Debtors' Schedules, and if you do not dispute that your Claim is only against the Debtor specified by the Debtors, and if your Claim is **not** described as "disputed," "contingent," or "unliquidated," **you need not submit a Proof of Claim on account of the listed Claim.** Otherwise, or if you decide to submit a Proof of Claim, you must do so before the applicable Bar Date in accordance with the procedures set forth in this notice.

#### **Reservation of Rights**

Nothing contained in this Bar Date Notice is intended, or should be construed, as a waiver of the Debtors' right to: (a) dispute, or assert offsets or defenses against, any submitted Proof of Claim or any Claim listed or reflected in the Schedules as to the nature, amount, liability, or classification of such Claims; (b) subsequently designate any scheduled Claim as disputed, contingent, or unliquidated; and (c) otherwise amend or supplement the Schedules.

#### **Consequences of Failure To Submit a Proof of Claim by the Applicable Bar Date**

ANY HOLDER OF A CLAIM THAT IS **NOT** LISTED IN THIS NOTICE AS A PARTY EXCEPTED FROM THE REQUIREMENTS OF THE BAR DATE ORDER AND THAT FAILS TO TIMELY SUBMIT A PROOF OF CLAIM IN THE APPROPRIATE FORM SHALL NOT BE ENTITLED TO VOTE ON ANY CHAPTER 11 PLAN OF REORGANIZATION FILED IN THESE CASES ON ACCOUNT OF SUCH CLAIM OR TO PARTICIPATE IN ANY DISTRIBUTION IN THE DEBTORS' CHAPTER 11 CASES ON ACCOUNT OF SUCH CLAIM.

**BY ORDER OF THE COURT**

New York, New York

Dated: \_\_\_\_\_, 2019

/s/

\_\_\_\_\_  
Joshua A. Sussberg, P.C.

Christopher T. Greco, P.C.

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- and -

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*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit 3**

**Proposed Publication Notice**

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 Christopher T. Greco, P.C.  
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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
Debtors.	)	(Jointly Administered)

**NOTICE OF BAR DATES FOR  
 SUBMITTING PROOFS OF CLAIM AND CLAIMS UNDER  
 SECTION 503(B)(9) OF THE BANKRUPTCY CODE AGAINST THE DEBTORS**

**PLEASE TAKE NOTICE THAT** the United States Bankruptcy Court for the Southern District of New York (the “Court”) has entered an order (the “Bar Date Order”) establishing **5:00 p.m., prevailing Eastern Time, on July 29, 2019** (the “General Claims Bar Date”), as the last date for each person or entity (including individuals, partnerships, corporations, joint ventures and trusts) to submit a Proof of Claim against any of the Debtors listed below (collectively, the “Debtors”). A copy of the Bar Date Order, and any exhibits thereto are available (i) at the Debtors’ expense upon request to Omni Management Group (the noticing and claims agent retained in the chapter 11 cases), by calling (844) 212-9942 for callers in the United States or by calling (818) 906-8300 for callers outside the United States and/or visiting the Debtors’ restructuring website at: [omnimgmt.com/cases/hollander](http://omnimgmt.com/cases/hollander) or (iii) for a fee via PACER by visiting <http://ecf.nysb.uscourts.gov>.

The Bar Date Order requires that all entities (the “Claimants”) holding or wishing to assert a claim that arose or is deemed to have arisen prior to May 19, 2019 (the “Petition Date”) against the Debtors (“Claims”) to submit a Proof of Claim so as to be actually received by Omni Management Group (the “Notice and Claims Agent”) on or before the applicable bar date (collectively, the “Bar Dates”) as set forth below. None of the Bar Dates described herein apply to any governmental unit. Pursuant to section 502(b)(9) of the Bankruptcy Code, all governmental units shall have 180 days from the Petition Date to submit Claims against the Debtors (the “Governmental Bar Date”).



Debtor Name	Tax Identification Number	Case Number
Hollander Sleep Products, LLC	27-0542143	19-11608
Dream II Holdings, LLC	47-1927915	19-11607
Hollander Home Fashions Holdings, LLC	27-0542063	19-11609
Hollander Sleep Products Kentucky, LLC	90-1014119	19-11610
Pacific Coast Feather, LLC	91-0891445	19-11611
Pacific Coast Feather Cushion, LLC	93-1063119	19-11612
Hollander Sleep Products Canada Limited	13902-3477	19-11613

<b><u>General Claims Bar Date</u></b>  (Applicable to 503(b)(9) Claims)	All Claimants holding or wishing to assert a Claim must submit a Proof of Claim with respect to such Claim so as to be <b>actually received</b> by the Notice and Claims Agent by <b>July 29, 2019, at 5:00 p.m., prevailing Eastern Time</b> (the “ <u>General Claims Bar Date</u> ”), including parties asserting Claims pursuant to section 503(b)(9) of the Bankruptcy Code.
<b><u>Supplemental Bar Date</u></b>	In the event the Debtors amend or supplement their schedules of assets and liabilities (the “ <u>Schedules</u> ”), the Debtors shall give notice of any such amendment to the holders of any Claim affected thereby, and such holders shall be afforded 35 days after the date on which such notice is given to submit a Proof of Claim with respect to such amended Claim or be forever barred from doing so.
<b><u>Rejection Bar Date</u></b>	If you have a Claim arising from the rejection of an executory contract or unexpired lease, you must submit a Proof of Claim based on such rejection on or before the later of (a) the General Claims Bar Date and (b) any date this Court may fix in the applicable order authorizing such rejection and, if no such date is provided, 35 after the date of entry of such order (the “ <u>Rejection Bar Date</u> ”). The Debtors will provide notice of the Rejection Bar Date to the contract or lease counterparty whose contract or lease is being rejected at the time the Debtors reject any executory contract or unexpired lease.

### **When and Where To Submit**

Each Proof of Claim, including supporting documentation, must be submitted so that the Notice and Claims Agent **actually receives** the Proof of Claim on or before the applicable Bar Date by either: (i) electronically using the interface available on the Notice and Claims Agent’s website at <https://www.omnimgt.com/hollander>, or (ii) first-class U.S. Mail, overnight mail, or other hand-delivery system, which Proof of Claim must include an **original** signature, at the following

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

address: Hollander Claims Processing Center, c/o Omni Management Group, 5955 De Soto Avenue, Suite 100, Woodland Hills, California 91367.

**PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL NOT BE ACCEPTED AND WILL NOT BE DEEMED TIMELY SUBMITTED.**

**Contents of Proofs of Claim.** Each Proof of Claim must: (i) be written in English; (ii) be legible, (iii) include a Claim amount denominated in United States dollars; (iv) conform substantially with the Proof of Claim Form provided by the Debtors or Official Form 410; (v) be signed by the claimant or by an authorized agent or legal representative of the claimant; and (vi) include supporting documentation unless voluminous, in which case a summary must be attached or an explanation provided as to why documentation is not available. **Please note** that each Proof of Claim must state a Claim against only one Debtor. To the extent the Proof of Claim lists more than one Debtor, the applicable Claim may be treated as if submitted only against the first-listed Debtor. If a Proof of Claim does not identify a specific Debtor, the Proof of Claim will be considered as submitted only against Hollander Sleep Products, LLC.

**Section 503(b)(9) Claims.** Vendors and suppliers of goods may be entitled to request an administrative priority Claim under section 503(b)(9) of the Bankruptcy Code to the extent they delivered, and the Debtor received, goods within the twenty-day period prior to the Petition Date. The Court has deemed the submission of a Proof of Claim as satisfying the procedural requirements for asserting such a Claim under section 503(b)(9) of the Bankruptcy Code. In addition to the other requirements listed above, any Proof of Claim asserting a 503(b)(9) Claim must (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which the 503(b)(9) Claim is being asserted; (iii) attach documentation of any reclamation demand made against the Debtors under section 546(c) of the Bankruptcy Code (if applicable); and (iv) set forth whether any portion of the Section 503(b)(9) Claim was satisfied by payments made by the Debtors.

**Consequences of Failing to Timely Submit Your Proof of Claim.** Any Claimant who is required, but fails, to submit a Proof of Claim in accordance with the Bar Date Order on or before the applicable Bar Date shall not be permitted to vote to accept or reject any plan of reorganization filed in the chapter 11 cases or participate in any distribution on account of such Claim or receive further notices regarding such Claim.

**Reservation of Rights.** Nothing contained in this notice is intended to or should be construed as a waiver of the Debtor's right to: (a) dispute, or assert offsets or defenses against, any submitted Claim or any Claim listed or reflected in the Debtors' Schedules of Assets and Liabilities and/or Schedules of Executory Contracts and Unexpired Leases as to the nature, amount, liability, or classification thereof; (b) subsequently designate any scheduled Claim as disputed, contingent, or unliquidated; and (c) otherwise amend the Schedules.

**Additional Information.** If you have any questions regarding the claims process and/or if you wish to obtain a copy of the Bar Date Order (which contains a more detailed description of the requirements for submitting Proofs of Claim), a Proof of Claim form or related documents, you may do so by visiting the Debtors' restructuring website at <https://www.omningt.com/hollander>

or contacting the Notice and Claims Agent by calling (844) 212-9942 for callers in the United States or by calling (818) 906-8300 for callers outside the United States. Please note that the Notice and Claims Agent cannot advise you how to submit, or whether you should submit, a Proof of Claim.

**THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3 , 2019.**

A handwritten signature in blue ink, appearing to be 'JH' followed by a long horizontal stroke.

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**Commissioner for Taking Affidavits**

Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	Chapter 11
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 19-11608 (____)
Debtors.	)	(Joint Administration Requested)
	)	

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**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE  
DEBTORS TO (A) CONTINUE INSURANCE COVERAGE ENTERED INTO  
PREPETITION AND SATISFY PREPETITION OBLIGATIONS RELATED THERETO,  
(B) RENEW, SUPPLEMENT, MODIFY, OR PURCHASE INSURANCE COVERAGE,  
AND (C) CONTINUE TO PAY BROKERAGE FEES, AND (II) GRANTING RELATED  
RELIEF**

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The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion:

**Relief Requested**

1. By this motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Debtors to (i) continue insurance coverage entered into prepetition and satisfy prepetition obligations related thereto in the ordinary course of

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

business, (ii) renew, amend, supplement, extend, or purchase insurance coverage in the ordinary course of business, and (iii) continue to pay Brokerage Fees (as defined herein), and (b) granting related relief.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

### **Background**<sup>2</sup>

5. Hollander Sleep Products is the largest pillow and mattress pad manufacturer in North America. The Debtors also manufacture comforters and other basic bedding products. The Debtors have their own brands, including Great Sleep®, I AM®, LC®, PCF®, and Restful

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<sup>2</sup> The facts and circumstances supporting this motion are set forth in the *Declaration of Marc Pfefferle, Chief Executive Officer of Hollander Sleep Products, LLC, in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein.

Nights®, and also manufacture and sell licensed brands, including Simmons®, Ralph Lauren®, CHAPS®, Calvin Klein®, Therapedic®, Nautica®, 37.5®, and Dr. Maas®. The Debtors are headquartered in Boca Raton, Florida, operate a main showroom in New York City, and have thirteen manufacturing facilities throughout the United States and Canada. The Debtors generated approximately \$527 million in net revenue in fiscal year 2018 and currently employ more than 2,300 people across the United States and Canada. As of the date hereof, the Debtors have approximately \$233 million in funded debt.

6. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have concurrently filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

#### **The Debtors' Insurance Policies**

7. In the ordinary course of business, the Debtors maintain an insurance program consisting of approximately 22 insurance policies (collectively, the “Insurance Policies”) administered by multiple third-party insurance carriers (collectively, the “Insurance Carriers”). The Insurance Policies provide coverage for, among other things, the Debtors’ directors’ and officers’ liability, property, commercial crime, ocean cargo, automobile, network/privacy, and foreign commercial liability. A schedule of the Insurance Policies is attached hereto as **Exhibit B**.<sup>3</sup> In addition to the Insurance Policies, the Debtors maintain a workers’ compensation policy that is

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<sup>3</sup> Although **Exhibit B** is intended to be comprehensive, the Debtors may have inadvertently omitted one or more Insurance Policies. By this motion, the Debtors request relief applicable to all Insurance Policies, regardless of whether such Insurance Policy is specifically identified on **Exhibit B**.

reflected in **Exhibit B**, but for which relief is not sought in this motion.<sup>4</sup> To the extent that certain states require the Debtors to purchase workers compensation coverage directly from state operated plans, the Debtors will seek relief to maintain this coverage as may be required under the Bankruptcy Code.

**I. Premiums.**

8. The Insurance Policies are generally one year in length and renew at various times throughout the year. The Debtors either prepay the entire premium for the Insurance Policies (including applicable taxes and surcharges, the “Premiums”) on or around the start date of each policy period, or pay it in monthly installments, depending on the policy. The Debtors owe a total of approximately \$11,000 in monthly payments for those Premiums that are paid in installments.

9. As of the Petition Date, the Debtors believe that they do not owe any prepetition amounts on account of the Premiums. Out of an abundance of caution, however, the Debtors seek the authority to honor any amounts owed on account of the Premiums and to continue honoring any amounts that become due and owing on account of their insurance program, including the Premiums, in the ordinary course of business to ensure uninterrupted coverage under the Insurance Policies.

10. None of the Insurance Policies are subject to regular audits (the “Insurance Policy Audits”) that may result in an adjustment of the premiums owed on account thereof. Out of an abundance of caution, however, the Debtors seek the authority to honor any amounts owed on

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<sup>4</sup> The Debtors’ policies and other coverage with respect to, among other things, workers’ compensation and employee health, dental, disability, and life insurance benefits, and relief requested with respect to such policies, are described in the *Debtors’ Motion For Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief*, filed contemporaneously herewith.



account of any Insurance Policy Audits, including prepetition amounts, in the ordinary course of business.

11. Certain of the Insurance Policies require the Debtors to post collateral or letters of credit (the “Collateral Requirements”). Under the terms of the Insurance Policies the Collateral Requirements may be modified from time to time. Although the Debtors do not believe that the Collateral Requirements will be modified under the term of the current Insurance Policies, out of an abundance of caution, the Debtors seek the authority to comply with Insurance Carrier modifications to the Collateral Requirements in the ordinary course of business.

12. Continuation of the Insurance Policies and entry into new insurance policies are essential to the preservation of the value of the Debtors’ properties and assets. Moreover, in many cases, coverage provided by the Insurance Policies is required by the regulations, laws, and contracts governing the Debtors’ commercial activities, including the requirement of the United States Trustee for Region 2 (the “U.S. Trustee”) as provided in the *Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees* (the “U.S. Trustee Guidelines”) that a debtor maintain adequate coverage given the circumstances of its chapter 11 case. Accordingly, the Debtors request authority to maintain their insurance program, pay prepetition obligations related thereto (if any), and enter into new insurance policies in the ordinary course of business without further Court approval.

## **II. Deductibles.**

13. Some of the Insurance Policies require the Debtors to pay a per incident deductible (each, a “Deductible”). For instance, one of the Debtors’ property damage policies carries a \$100,000 Deductible per claim. Depending on the type of claim and the applicable Insurance Policy, the Debtors must ultimately pay up to the applicable Deductible threshold for each successful or settled claim against these particular Insurance Policies. Generally, any claim

amounts due in excess of the Deductible threshold for any given claim are the Insurance Carrier's responsibility.

14. As of the Petition Date, the Debtors believe that they do not owe any Deductibles on account of prepetition claims under the Insurance Policies that will become due and owing within 25 days after the Petition Date. Going forward, however, the Debtors will need to continue paying the Deductibles in the ordinary course of business (should they arise) to preserve the coverage provided under certain Insurance Policies. Because the amount of Deductibles varies from month to month, the monthly (or aggregate) liability on account of Deductibles during the pendency of these chapter 11 cases cannot be ascertained with any degree of certainty as of the Petition Date. Accordingly, the Debtors seek authority out of an abundance of caution to honor any amounts owed on account of Deductibles and to continue paying any amounts that become due and owing on account of the Deductibles in the ordinary course of business on a postpetition basis to ensure uninterrupted coverage under the Insurance Policies.

### **III. The Debtors' Brokers and Associated Fees.**

15. In connection with the Insurance Policies, the Debtors obtain insurance brokerage services from Marsh, LLC and Lockton Companies (the "Brokers"). The Brokers assist the Debtors in obtaining comprehensive insurance coverage for their operations in the most cost-effective manner, negotiating policy terms, provisions, and premiums, assisting the Debtors with claims, and providing ongoing support throughout the applicable policy periods.

16. The Debtors pay the Brokers fees for brokerage services (the "Brokerage Fees") in the ordinary course of business. The fees and commissions due to the Brokers are included in the Premiums paid on account of the Insurance Policies. As of the Petition Date, the Debtors do not anticipate remitting any Brokerage Fees separate from the Premium payments. Out of an abundance of caution, however, the Debtors seek authority to honor any prepetition Brokerage

Fees that may arise to ensure uninterrupted coverage under their Insurance Policies and to continue to pay the Brokerage Fees in the ordinary course of business on a postpetition basis.

17. The Debtors believe that continuation of the Broker's services is necessary to ensure the Debtors' ability to secure Insurance Policies on advantageous terms at competitive rates, facilitate the proper maintenance of the Debtors' Insurance Policies postpetition, and ensure adequate protection of the Debtors' property postpetition.

### **Basis for Relief**

#### **I. The Bankruptcy Code and U.S. Trustee Guidelines Require the Debtors To Maintain Insurance Coverage and Satisfy Their Insurance Obligations.**

18. As discussed above, the Debtors' existing Insurance Policies provide a comprehensive range of protection for the Debtors' businesses, properties, and assets. As such, it is essential that the Debtors' insurance coverage continue in full force and effect during the course of these chapter 11 cases. Under section 1112(b)(4)(C) of the Bankruptcy Code, "failure [of a debtor] to maintain appropriate insurance [where such failure] poses a risk to the estate or to the public" is "cause" for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). Similarly, certain of the Insurance Policies are required by various state and federal regulations. In addition, the U.S. Trustee Guidelines require that a debtor "shall maintain" certain types of insurance coverage following the Petition Date. *See* U.S. Trustee Guidelines, § 6. To ensure that the Debtors comply with section 1112(b)(4)(C) of the Bankruptcy Code, applicable state and federal regulations, and the U.S. Trustee Guidelines, the Debtors respectfully request the authority to (a) pay the prepetition amounts currently due and owing under the Insurance Policies in the ordinary course of business, including any prepetition amounts due or that may come due in connection with Premiums, Deductibles, and Brokerage Fees, (b) continue

to honor obligations arising under the Insurance Policies, and (c) if necessary, renew, supplement, or purchase insurance coverage on a postpetition basis in the ordinary course of business.

**II. Renewing, Supplementing, Entering into New Insurance Policies, and Paying Obligations Related to the Insurance Program in the Ordinary Course of Business Are Each Warranted.**

19. The Debtors' insurance program is maintained in the ordinary course of the Debtors' business. Section 363(c)(1) of the Bankruptcy Code provides that a chapter 11 debtor in possession "may enter into transactions . . . [or] may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The Bankruptcy Code does not define the "ordinary course of business." *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3rd Cir. 1992). In determining whether a transaction is in the ordinary course of business, this court and others have adopted the two-part "horizontal dimension" and "vertical dimension" test. *In re Crystal Apparel, Inc.*, 207 B.R. 406, 409 (Bankr. S.D.N.Y. 1997). Under the horizontal dimension test, the court must analyze whether, from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry. *Id.* Under the vertical dimension test, the court must analyze the transaction from the perspective of a hypothetical creditor and determine "whether the transaction subjects a creditor to economic risk of a nature different from those he accepted when he decided to extend credit." *Id.* In other words, under this two-part test, "the touchstone of ordinariness is thus the interested parties' reasonable expectations of what transactions the debtor in possession is likely to enter in the course of its business." *In re Drexel Burnham Lambert Grp., Inc.*, 157 B.R. 532, 537 (S.D.N.Y. 1993).

20. Here, the Debtors seek to continue their existing Insurance Program and to continue to honor their obligations thereunder in the ordinary course of their businesses on a postpetition basis. The Debtors' insurance program has been a part of their business operations (and their creditors either should or do know this fact) and all competitors in the Debtors' line of business

would be expected to maintain similar insurance programs to allow those competitors to engage in manufacturing and wholesale operations. Moreover, as noted above, certain Insurance Policies are required by statute or regulation. The Debtors' failure to maintain, renew, or timely replace the existing Insurance Policies may jeopardize the Debtors' ability to conduct their operations.

21. Although the Debtors believe continuing their insurance program is within their authority to continue in the ordinary course of business, out of an abundance of caution, and to ensure authority to pay any prepetition obligations related to their insurance programs, the Debtors are seeking Court approval to maintain, continue, renew, revise, and supplement their insurance program under sections 105(a) and 363(b) of the Bankruptcy Code. The use of estate property should be authorized under section 363(b) so long as a sound business purpose exists for the transaction. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). Once the debtor articulates a reasonable basis for its business decisions, "courts will generally not entertain objections to the debtor's conduct." *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is a presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

22. Indeed, when applying the "business judgment" standard, courts show great deference to a debtor's business decisions. *See Integrated Res.*, 147 B.R. at 656 ("Courts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence."); *In re First Wellington Canyon Assocs.*, No. 89-593, 1989 WL 106838, at \*3 (N.D. Ill. Sept. 8, 1989) (stating that "the debtor's business judgment . . . must be accorded deference

unless shown that the bankrupt's decision was taken in bad faith or in gross abuse of the bankrupt's retained discretion."). In addition, section 105(a) of the Bankruptcy Code codifies the Court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

23. Similarly, to the extent applicable, courts in this district generally acknowledge that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate. *See Ionosphere Clubs*, 98 B.R. at 175 (authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (authority to pay prepetition claims of suppliers); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as requested herein.

24. Pursuant to section 363(b) of the Bankruptcy Code, courts may authorize payment of prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides "broad flexibility" to authorize a debtor to honor prepetition claims where supported by an appropriate business justification); *see also James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants). Indeed, courts have recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the preplan satisfaction of a prepetition claim." *CoServ*, 273 B.R. at 497.

25. In addition, under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's businesses. *See In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *see also In re Fin. News*

*Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991) (holding that the “doctrine of necessity” stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor’s reorganization); *Ionosphere Clubs*, 98 B.R. at 176 (holding that a court may authorize payments of prepetition obligations under section 105(a) of the Bankruptcy Code pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”)).

26. Here, the Debtors submit that there is sufficient business justification to grant the relief requested herein. As an initial matter, maintaining their insurance program is critical to the Debtors’ operations, as noted above. Thus, there are clear business reasons for the Debtors to maintain their insurance program and allow the Debtors to renew or replace Insurance Policies in the ordinary course of business. Indeed, the Debtors’ Insurance Policies are essential to the preservation of the value of the Debtors’ businesses, properties, and assets and their ability to successfully prosecute these chapter 11 cases. Accordingly, in the event any of the Insurance Policies lapse or new coverage is required or necessary, it is imperative that the Debtors be able to renew, supplement, or purchase insurance coverage on a postpetition basis in the ordinary course of business. The Insurance Policies protect the Debtors and other parties in interest from losses caused by casualty, natural disaster, fraud, or other unforeseen events. In these circumstances, the Debtors submit that the relief sought herein is in the best interests of their estates.

27. There is also sufficient basis to permit the Debtors to pay any prepetition obligations related to their insurance program. The failure to pay Premiums and related insurance expenses when due may harm the Debtors’ estates in a number of ways. Specifically, the Insurance Carriers may refuse to renew the Debtors’ Insurance Policies, which will require the Debtors to obtain replacement policies and possibly reconfigure their risk management program. That

scenario would require the commitment of significant resources and could result in less favorable coverage or terms from the Debtors' insurers. Additionally, the Insurance Carriers could attempt to terminate the Debtors' existing policies, which could threaten the Debtors' ability to continue operating their businesses given the Debtors' business reasons as well as regulatory and contractual obligations to maintain specific amounts and types of insurance coverage.

28. Indeed, courts in this district have routinely granted relief similar to that requested herein. *See, e.g., In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Apr. 22, 2019) (authorizing debtors to pay prepetition premiums and enter into new insurance policies pursuant to sections 105(a) and 363(b) of the Bankruptcy Code); *In re Aegean Marine Petrol. Network Inc.*, No. 18-13374 (MEW) (Bankr. S.D.N.Y. Dec. 8, 2018); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. May 7, 2018) (same); *In re Cenveo Inc.*, No. 18-22178 (RDD) (Bankr. S.D.N.Y. Mar. 8, 2018) (same); *In re 21st Century Oncology Holdings, Inc.*, No. 17-22770 (RRD) (Bankr. S.D.N.Y. June 20, 2017).<sup>5</sup>

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

29. The Debtors have sufficient funds to pay any amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral and postpetition financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court

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<sup>5</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.



authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion; provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

30. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

31. Nothing contained herein or any actions taken pursuant to such relief requested is intended to or should be construed as (a) an admission as to the validity of any prepetition claim against a Debtor entity, (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law, or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

**Motion Practice**

32. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this motion. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1(a).

**Notice**

33. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent for the Debtors' term loan facility and counsel thereto; (d) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (e) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel thereto; (f) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; (g) the United States Attorney's Office for the Southern District of New York; (h) the Internal Revenue Service; (i) the attorneys general for the states in which the Debtors operate; (j) the Brokers; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

34. No prior request for the relief sought in this motion has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

New York, New York  
Dated: May 19, 2019

/s/ Joshua A. Sussberg  
Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
601 Lexington Avenue  
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- and -

Joseph M. Graham (*pro hac vice* pending)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

HOLLANDER SLEEP PRODUCTS, LLC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 19-11608 (\_\_\_\_)  
)  
) (Joint Administration Requested)  
)  
) **Re: Docket No. \_\_\_\_**

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**ORDER (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE INSURANCE  
COVERAGE ENTERED INTO PREPETITION AND SATISFY PREPETITION  
OBLIGATIONS RELATED THERETO, (B) RENEW, SUPPLEMENT, MODIFY,  
OR PURCHASE INSURANCE COVERAGE, AND (C) CONTINUE TO  
PAY BROKERAGE FEES, AND (II) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing the Debtors to (i) continue insurance coverage entered into prepetition and satisfy prepetition obligations related thereto in the ordinary course of business, (ii) renew, amend, supplement, extend, or purchase insurance coverage in the ordinary course of business, and (iii) continue to pay Brokerage Fees, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized, but not directed, to continue the Insurance Policies, including the Insurance Policies identified on Exhibit B to the Motion, and pay any prepetition or postpetition obligations related to the Insurance Policies, Deductibles, and any amounts owed to the Brokers on account of the Brokerage Fees.
3. The Debtors are authorized, but not directed, to renew, amend, supplement, extend, or purchase insurance policies or to modify any Collateral Requirements in the ordinary course of business to the extent that the Debtors determine that such action is in the best interest of their estates.
4. The Debtors are authorized, but not directed, to honor any amounts owed on account of any Insurance Policy Audits in the ordinary course of business.
5. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in

interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to Section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor in possession

financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

10. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

12. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York

Dated: \_\_\_\_\_, 2019

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UNITED STATES BANKRUPTCY JUDGE



**Exhibit B**

**Insurance Policies**

Type of Coverage	Insurance Carrier	Policy Numbers	Term	Approximate Annualized Gross Premium
Property - includes Earth Movement, Flood	Westport Insurance Corporation (Swiss Re)	NAP 2003249-01	2/1/2019 - 2/1/2020	\$239,270.12
50% 1st Excess Property - includes Earth Movement, Flood	Ironshore Specialty Insurance Company	003965000	2/1/2019 - 2/1/2020	\$59,409.62
50% 1st Excess Property - includes Earth Movement, Flood	Evanston Insurance Company (Markel)	MKLV11XP007156	2/1/2019 - 2/1/2020	\$54,243.90
2nd Excess Property - <u>excludes</u> Earth Movement, Flood	James River Insurance Company	00081252-1	2/1/2019 - 2/1/2020	\$63,241.17
3rd Excess Property - <u>excludes</u> Earth Movement, Flood	Landmark American Insurance Company (RSUI)	LHD906954	2/1/2019 - 2/1/2020	\$49,595.35
Terrorism	Lloyds of London (Hiscox)	UTS2555987.19	1/1/2019 - 2/1/2020	\$8,437.55
Cargo & Stock Throughput (incl TRIA)	Lloyds of London	B0509MARCW1900022	1/1/2019 - 1/1/2020	\$344,994.65
Workers Compensation / Employers Liability	Safety First Insurance Co.	FCL 4059909	1/1/2019 - 1/1/2020	\$3,336,791.00
Commercial General Liability (incl TRIA)	Safety National Casualty Corp.	GLF 4059904	1/1/2019 - 1/1/2020	\$94,491.00
Business Auto Liability & Physical Damage	Safety National Casualty Corp.	CAF 4059905	1/1/2019 - 1/1/2020	\$26,670.00

Type of Coverage	Insurance Carrier	Policy Numbers	Term	Approximate Annualized Gross Premium
Umbrella Liability (incl TRIA)	Continental Insurance Co (CNA)	6050424429	1/1/2019 - 1/1/2020	\$63,306.00
Excess Liability (incl TRIA)	The Ohio Casualty Insurance Co (Liberty Mutual)	ECO (20) 58458016	1/1/2019 - 1/1/2020	\$18,938.00
International Package:  Foreign Commercial General Liability Foreign Business Auto & Physical Damage Foreign Voluntary Compensation & Employers Liab Foreign Travel Accident and Sickness Foreign Commercial Property - Scheduled location	Insurance Company of the State of Pennsylvania (AIG)	WS11001075	1/1/2019 - 1/1/2020	\$3,000.00
Commercial Crime	Travelers	106205672	1/1/2019 - 1/1/2020	\$40,168.00
Cyber (Privacy & Network Liability)	ACE American Insurance Co	G25666707004	1/1/2019 - 1/1/2020	\$57,895.00
Special Crime	National Union Fire Ins Co (AIG)	82867529	1/1/2018 - 11/1/2019	\$7,703.00
Employment Practices Liability	Travelers Casualty and Surety Company of America	106876796	1/1/2019 - 1/1/2020	\$78,630.00
D&O & Fiduciary	Chubb	G27974582 003	4/14/2019 - 7/14/2019	\$20,451.00
Excess Executive D&O - Side A	RLI Insurance company	EPG0027268	4/14/2019 - 4/14/2020	\$22,206.00

<b>Type of Coverage</b>	<b>Insurance Carrier</b>	<b>Policy Numbers</b>	<b>Term</b>	<b>Approximate Annualized Gross Premium</b>
Canada: Property (local underlyer p/o Global Master property policy with Swiss Re)	Westport Insurance Corporation (Swiss Re)	Policy to be issued	2/1/2019 - 2/1/2020	\$14,556.00
Canada: Commercial General Liability (local underlyer p/o Global Master Safety National GL policy)	Tokio Marine & Nichido Fire Insurance Co., Ltd. (Canadian Branch)	CBC0671648	1/1/2019 - 1/1/2019	\$23,000.00
Canada: Employment Practices Liability	AIG Insurance Company of Canada	01-144-48-19	2/28/2019 - 2/28/2020	CDN \$4,500.00

THIS IS EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.

A handwritten signature in blue ink, appearing to be "J. A.", written above a horizontal line.

Commissioner for Taking Affidavits

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. 15</b>

**ORDER (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE INSURANCE  
COVERAGE ENTERED INTO PREPETITION AND SATISFY PREPETITION  
OBLIGATIONS RELATED THERETO, (B) RENEW, SUPPLEMENT, MODIFY,  
OR PURCHASE INSURANCE COVERAGE, AND (C) CONTINUE TO  
PAY BROKERAGE FEES, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing the Debtors to (i) continue insurance coverage entered into prepetition and satisfy prepetition obligations related thereto in the ordinary course of business, (ii) renew, amend, supplement, extend, or purchase insurance coverage in the ordinary course of business, and (iii) continue to pay Brokerage Fees, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized, but not directed, to continue the Insurance Policies, including the Insurance Policies identified on Exhibit B to the Motion, and pay any prepetition or postpetition obligations related to the Insurance Policies, Deductibles, and any amounts owed to the Brokers on account of the Brokerage Fees.
3. The Debtors are authorized, but not directed, to renew, amend, supplement, extend, or purchase insurance policies or to modify any Collateral Requirements in the ordinary course of business to the extent that the Debtors determine that such action is in the best interest of their estates, *provided, however*, that (i) no Collateral Requirements shall be increased on account of any current policies or future Insurance Policies absent prior consent of the Committee (not to be unreasonably withheld, conditioned, or delayed); and (ii) the Debtors shall consult with the Committee prior to renewing existing Insurance Policies or purchasing new insurance policies.
4. The Debtors are authorized, but not directed, to honor any amounts owed on account of any Insurance Policy Audits in the ordinary course of business.

5. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to Section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.



7. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor in possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

10. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

12. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York  
Dated: July 2, 2019

s/Michael E. Wiles  
THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

THIS IS EXHIBIT "E" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.

A handwritten signature in blue ink, consisting of stylized initials followed by a horizontal line.

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Commissioner for Taking Affidavits

Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

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**DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) AUTHORIZING THE  
DEBTORS TO CONTINUE AND RENEW THEIR SURETY BOND PROGRAM  
AND (B) GRANTING RELATED RELIEF**

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The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion:

**Relief Requested**

1. By this motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Debtors to continue and renew their Surety Bond Program (as defined herein) in the ordinary course of business consistent with historical practice, and (b) granting related relief.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

### **Background**<sup>2</sup>

5. Hollander Sleep Products is the largest pillow and mattress pad manufacturer in North America. The Debtors also manufacture comforters and other basic bedding products. The Debtors have their own brands, including Great Sleep®, I AM®, LC®, PCF®, and Restful Nights®, and also manufacture and sell licensed brands, including Simmons®, Ralph Lauren®, CHAPS®, Calvin Klein®, Therapedic®, Nautica®, 37.5®, and Dr. Maas®. The Debtors are headquartered in Boca Raton, Florida, operate a main showroom in New York City, and have

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<sup>2</sup> The facts and circumstances supporting this motion are set forth in the *Declaration of Marc Pfefferle, Chief Executive Officer of Hollander Sleep Products, LLC, in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein.

thirteen manufacturing facilities throughout the United States and Canada. In addition to the North American operations, the Debtors also have a sourcing, product development, and quality control office in China. The Debtors generated approximately \$527 million in net revenue in fiscal year 2018 and currently employ more than 2,300 people across the United States. As of the date hereof, the Debtors have approximately \$233 million in funded debt.

6. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have concurrently filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

#### **The Debtors’ Surety Bond Program**

7. In the ordinary course of business, certain statutes, rules, and regulations require that the Debtors provide surety bonds to certain third parties, often to governmental units or other public agencies, to secure the Debtors’ payment or performance of certain obligations (the “Surety Bond Program”). These obligations include, among other things, customs liabilities. For example, the Debtors are required to post a customs bond with the U.S. Customs and Border Protection Bureau to ensure the Debtors’ compliance with import duties, taxes, and fees. See 19 C.F.R. § 113.62. Without the Surety Bond Program, the Debtors would not be able to continue importing products across U.S. borders. As is evident with their customs bonds, the Surety Bond Program secures essential obligations necessary for the Debtors’ global operations. As such, failing to provide, maintain, or timely replace their surety bonds will prevent the Debtors from undertaking essential functions related to their operations.

8. The Debtors have outstanding surety bonds issued by Berkley Insurance Company, Southwest Marine and General Insurance Company, and Travelers Casualty and Surety Company of America (collectively, the “Sureties”). The following table summarizes the surety bonds currently maintained by the Debtors:<sup>3</sup>

<b>Debtor</b>	<b>Obligee</b>	<b>Surety</b>	<b>Policy Number</b>	<b>Nature of Bond</b>	<b>Approximate Aggregate Bond Amount</b>
Hollander Sleep Products, LLC	Bureau of Customs and Border Protection	Berkley Insurance Co.	180530003	Customs Bond	\$800,000
Hollander Sleep Products, LLC	Bureau of Customs and Border Protection	Berkley Insurance Co.	180605012	Customs Drawback Bond	\$50,000
Pacific Coast Feather, LLC	State of Washington	Travelers Casualty and Surety Company of America	106504503	Notary Bond	\$10,000
Pacific Coast Feather, LLC	State of Washington	Travelers Casualty and Surety Company of America	106766410	Notary Bond	\$10,000
Pacific Coast Feather, LLC	Bureau of Customs and Border Protection	Southwest Marine and General Insurance Company	17C001VOG	Customs Bond	\$400,000
				<b>Total</b>	<b>\$1,270,000</b>

9. The premiums for the surety bonds generally are determined on an annual basis and are paid by the Debtors when the bonds are issued and annually upon each renewal (the “Premiums”). The Debtors believe they are current on all Premium payments and will pay any outstanding amounts as they come due in the ordinary course. As such, the Debtors request

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<sup>3</sup> For the avoidance of doubt, the Debtors request authority to, among other things, pay any premiums due in connection with the surety bonds, renew and/or supplement all surety bonds, as applicable, and execute any agreements ancillary to all surety bonds, as applicable, notwithstanding any failure of the Debtors to include a particular surety bond on this table.

authority to continue paying the Premiums in the ordinary course of business on a postpetition basis, including any prepetition obligations related thereto, to ensure uninterrupted coverage under the Surety Bond Program.

10. The Debtors obtain their surety bonds through their surety brokers Marsh, LLC (“Marsh”) and Avalon Insurance Company (“Avalon”) and its affiliates (together with Marsh, the “Surety Brokers”). The Surety Brokers assist the Debtors in, among other things, obtaining the surety bonds and evaluating bond offerings. They also help the Debtors with the procurement and negotiation of the surety bonds, enabling the Debtors to obtain the bonds on advantageous terms and at competitive rates. The Debtors pay the Surety Brokers a commission for all brokerage services (the “Brokerage Fees”), which are generally paid as part of the premium payments for each surety bond. As of the Petition Date, the Debtors do not believe there are any unpaid prepetition obligations due and owing in connection with the Brokerage Fees. Out of an abundance of caution, however, the Debtors seek authority to honor any prepetition amounts owed in connection with the Brokerage Fees and to pay any Brokerage Fees that may arise on a postpetition basis in the ordinary course of business to ensure uninterrupted coverage under the Surety Bond Program.

11. Finally, the Debtors must be able to provide financial assurance to state governments, regulatory agencies, and other third parties to continue their business operations during the chapter 11 process. This in turn requires the Debtors to maintain the existing Surety Bond Program, including, without limitation: (a) paying surety bond premiums as they come due; (b) renewing or potentially acquiring additional bonding capacity as needed in the ordinary course of their businesses; (c) requesting releases from duplicate bonding obligations; (d) canceling, revising, and/or supplementing surety bonds; (e) maintaining existing collateral; (f)

posting new or additional collateral or issuing letters of credit; (g) replacing the Surety Brokers as may be necessary; and (h) executing other agreements in connection with the Surety Bond Program. Accordingly, the Debtors request that the Court grant the relief requested herein.

### **Basis for Relief**

#### **I. The Surety Bond Program Is Maintained in the Ordinary Course of the Debtors' Business.**

12. Section 363(c)(1) of the Bankruptcy Code provides that a chapter 11 debtor in possession “may enter into transactions . . . [or] may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The Bankruptcy Code does not define the “ordinary course of business.” *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3rd Cir. 1992). In determining whether a transaction is in the ordinary course of business, this Court and others have adopted the two-part “horizontal dimension” and “vertical dimension” test. *In re Crystal Apparel, Inc.*, 207 B.R. 406, 409 (Bankr. S.D.N.Y. 1997). Under the horizontal dimension test, the court must analyze whether, from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry. *Id.* Under the vertical dimension test, the court must analyze the transaction from the perspective of a hypothetical creditor and determine “whether the transaction subjects a creditor to economic risk of a nature different from those he accepted when he decided to extend credit.” *Id.* In other words, under this two-part test, “the touchstone of ordinariness is thus the interested parties’ reasonable expectations of what transactions the debtor in possession is likely to enter in the course of its business.” *In re Drexel Burnham Lambert Grp., Inc.*, 157 B.R. 532, 537 (S.D.N.Y. 1993).

13. Here, the Debtors seek to continue their existing Surety Bond Program in the ordinary course of their prepetition businesses on a postpetition basis. Such obligations include,



among other things, maintaining existing surety bonds, renewing bonds as they expire, revising, supplementing, and/or changing the surety bonds as necessary, purchasing new surety bonds as necessary, replacing the Surety Brokers as necessary, and paying applicable premiums and Brokerage Fees to the extent they arise, maintaining existing collateral, posting new or additional collateral or issuing letters of credit, and renewing and/or supplementing those agreements as is necessary.

14. The Surety Bond Program has been a part of the Debtors' business operations (and their creditors either should or do know this fact) and all competitors in the Debtors' line of business would be expected to have similar surety bond programs in order to engage in international wholesale operations. Further, maintenance of the Debtors' Surety Bond Program is, in many instances, required by statute or regulation for the Debtors to perform work or obtain the necessary licenses to operate their businesses. *See, e.g.*, 19 C.F.R. § 113.62 (U.S. Customs and Border Protection Bureau requirement that parties post bonds in the import business). Accordingly, the Debtors respectfully submit that participation in the Surety Bond Program on a postpetition basis is in the ordinary course of business and under section 363(c)(1) of the Bankruptcy Code does not require notice and a hearing.

**II. The Debtors Should Be Authorized to Continue the Surety Bond Program in Accordance with Prepetition Practice Under Sections 105(a) and 363(b) of the Bankruptcy Code.**

15. The Debtors believe continuing the Surety Bond Program in the ordinary course of business is within their authority under the Bankruptcy Code. Nonetheless, out of an abundance of caution, the Debtors are seeking Court authority to continue, renew, revise, and supplement the Surety Bond Program under sections 105(a) and 363(b) of the Bankruptcy Code. The use of estate property should be authorized under section 363(b) of the Bankruptcy Code so

long as a sound business purpose exists for the transaction. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). “In evaluating whether a sound business purpose justifies the use, sale or lease of property under section 363(b) [of the Bankruptcy Code], courts consider a variety of factors, which essentially represent a ‘business judgment test.’” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999). Once the debtor articulates a reasonable basis for its business decisions, “courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is a presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

16. If a debtor’s actions satisfy the business judgment rule, the transaction in question should be approved under section 363(b) of the Bankruptcy Code. Indeed, when applying the “business judgment” standard, courts show great deference to a debtor’s business decisions. *See Integrated Res.*, 147 B.R. at 656 (“Courts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence.”); *In re First Wellington Canyon Assocs.*, No. 89-593, 1989 WL 106838, at \*3 (N.D. Ill. Sept. 8, 1989) (stating that “the debtor’s business judgment . . . must be accorded deference unless shown that the bankrupt’s decision was taken in bad faith or in gross abuse of the bankrupt’s retained discretion.”). In addition, section 105(a) of the Bankruptcy Code codifies the Court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

17. To the extent that the Debtors' participation in the Surety Bond Program is deemed to fall outside the ordinary course of business, the Court should authorize the Debtors to continue the Surety Bond Program pursuant to sections 105(a) and 363(b) of the Bankruptcy Code. This includes, among other things, maintaining existing surety bonds, renewing bonds as they expire, revising, supplementing, and/or changing the surety bonds as necessary, purchasing new surety bonds as necessary, maintaining existing collateral, posting new or additional collateral or issuing letters of credit, replacing the Surety Brokers as may be necessary, and paying applicable accrued prepetition amounts for premiums and Brokerage Fees and also paying these as they arise on a postpetition basis. As noted above, certain surety bonds are required by regulation, and in other instances, may be required by contract. Accordingly, the Debtors' failure to provide, maintain, or timely replace the existing surety bonds, or their failure to purchase new surety bonds as may become necessary may jeopardize the Debtors' ability to conduct their operations.

18. Continuing the Surety Bond Program is necessary in order to maintain the Debtors' current terms and existing relationships with the Sureties. Based on the Debtors' current circumstances, it is not likely that the Debtors will be able to renew, or obtain replacement of, existing bonds on terms more favorable than those offered by the Sureties. The process of establishing a new Surety Bond Program, moreover, would be burdensome to the Debtors, and it is doubtful that the Debtors could replace all of their surety bonds in time to avoid defaults or other consequences of the applicable obligations.

19. Based on the foregoing, the Debtors respectfully submit that their participation in the Surety Bond Program, including maintaining existing surety bonds, renewing bonds as they expire, revising, supplementing, and/or changing the surety bonds as necessary, purchasing new

surety bonds as necessary, maintaining existing collateral, posting new or additional collateral or issuing letters of credit, replacing any Surety Broker as necessary, and paying applicable accrued prepetition amounts for premiums and Brokerage Fees and also paying these as they arise on a postpetition basis, is in the best interest of the Debtors and should be authorized under sections 105(a) and 363(b) of the Bankruptcy Code to the extent such participation is deemed outside the ordinary course of the Debtors' business. Courts in this district have routinely granted similar relief. *See, e.g., Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Apr. 22, 2019) (authorizing continuation of surety bond program and honoring obligations related thereto); *In re Aegean Marine Petroleum Network Inc.*, No. 18-13374 (MEW) (Bankr. S.D.N.Y. Dec. 6, 2018) (same); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. May 7, 2018) (same); *In re Avaya Inc.*, No. 17-10089 (SMB) (Bankr. S.D.N.Y. Feb. 10, 2017) (same); *In re Republic Airways Holdings Inc.*, No. 16-10429 (SHL) (Bankr. S.D.N.Y. July 22, 2016) (same).<sup>4</sup>

#### **Processing of Checks and Electronic Fund Transfers Should Be Authorized**

20. The Debtors have sufficient funds to pay any amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral and postpetition financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully

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<sup>4</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion; provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

21. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

22. Nothing contained herein or any actions taken pursuant to such relief requested is intended to or should be construed as (a) an admission as to the validity of any prepetition claim against a Debtor entity, (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law, or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

**Motion Practice**

23. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this motion. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1(a).

**Notice**

24. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent for the Debtors' term loan facility and counsel thereto; (d) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (e) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel thereto; (f) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; (g) the United States Attorney's Office for the Southern District of New York; (h) the Internal Revenue Service; (i) the attorneys general for the states in which the Debtors operate; (j) the Sureties; (k) the Surety Brokers; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

25. No prior request for the relief sought in this motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the forms attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

New York, New York  
Dated: May 19, 2019

/s/ Joshua A. Sussberg  
Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
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601 Lexington Avenue  
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Telephone: (212) 446-4800  
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- and -

Joseph M. Graham (*pro hac vice* pending)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

In re:

HOLLANDER SLEEP PRODUCTS, LLC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 19-11608 (\_\_\_\_)  
)  
) (Joint Administration Requested)  
)  
) **Re: Docket No. \_\_\_\_**

---

**ORDER (A) AUTHORIZING THE DEBTORS TO CONTINUE AND RENEW THEIR  
SURETY BOND PROGRAM AND (B) GRANTING RELATED RELIEF**

---

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an Order (this “Order”), (a) authorizing the Debtors to continue and renew the Surety Bond Program in the ordinary course of business consistent with historical practice, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized, but not directed, to maintain the Surety Bond Program in the ordinary course of business on a postpetition basis consistent with historical practice, including the payment of the Premiums and Brokerage Fees (including any such obligations that arose prior to the Petition Date), maintaining existing collateral, posting new or additional collateral or issuing letters of credit, renewal of or entry into new surety bonds, and execution of other agreements in connection with the Surety Bond Program.
3. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in

interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

5. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

10. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York

Dated: \_\_\_\_\_, 2019

---

UNITED STATES BANKRUPTCY JUDGE

THIS IS EXHIBIT "F" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3 , 2019.

A handwritten signature in blue ink, appearing to be 'LH' followed by a horizontal line.

---

Commissioner for Taking Affidavits

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

HOLLANDER SLEEP PRODUCTS, LLC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 19-11608 (MEW)  
)  
) (Jointly Administered)  
)  
) **Re: Docket No. 16**

**ORDER (A) AUTHORIZING THE DEBTORS TO CONTINUE AND RENEW THEIR  
SURETY BOND PROGRAM AND (B) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an Order (this “Order”), (a) authorizing the Debtors to continue and renew the Surety Bond Program in the ordinary course of business consistent with historical practice, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized, but not directed, to maintain the Surety Bond Program in the ordinary course of business on a postpetition basis consistent with historical practice, including the payment of the Premiums and Brokerage Fees (including any such obligations that arose prior to the Petition Date), maintaining existing collateral, posting new or additional collateral or issuing letters of credit, renewal of or entry into new surety bonds, and execution of other agreements in connection with the Surety Bond Program.
3. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in

interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

5. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.



8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

10. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York  
Dated: July 2, 2019

s/Michael E. Wiles

THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**THIS IS EXHIBIT "G" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.**

A handwritten signature in blue ink, appearing to be "LH" followed by a horizontal line.

---

**Commissioner for Taking Affidavits**

Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

In re:

HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 19-11608 (\_\_\_\_)  
)  
) (Joint Administration Requested)  
)

---

**DEBTORS' MOTION SEEKING ENTRY OF AN ORDER (I) APPROVING  
THE BIDDING PROCEDURES AND RELATED DATES AND DEADLINES,  
(II) SCHEDULING HEARINGS AND OBJECTION DEADLINES  
WITH RESPECT TO THE DEBTORS' DISCLOSURE STATEMENT  
AND PLAN CONFIRMATION, AND (III) GRANTING RELATED RELIEF**

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The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion:<sup>2</sup>

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> The facts and circumstances supporting this motion are set forth in the *Declaration of Marc Pfefferle, Chief Executive Officer of Hollander Sleep Products, LLC, in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not otherwise defined in this motion shall have the meanings given to them in the First Day Declaration or the Bidding Procedures, as applicable.

### **Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”), (a) authorizing and approving the proposed bidding procedures attached as **Exhibit 1** to the Bidding Procedures Order (the “Bidding Procedures”), (b) establishing certain dates and deadlines relating to the potential sale of all or substantially all of the Debtors’ assets and scheduling an auction (the “Auction”), if any, (c) approving the manner of notice of the Auction, if any, (d) scheduling dates and deadlines in connection with the approval of a disclosure statement (the “Disclosure Statement”) and confirmation of a chapter 11 plan of reorganization, a copy of which was filed contemporaneously herewith (the “Plan”), and (e) granting related relief.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105, 363, 1123, 1125, 1126, and 1128 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rules 2002, 3016, 3017, 3018, 3020, 6004, 9006, and 9007, and Rules 2002-1,

3017-1, 3018-1, 3020-1, 6004-1, and 9006-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

### **Introduction**

5. The Debtors have commenced these chapter 11 cases to maximize the value of their assets, permit their business operations to continue as a going concern, and expeditiously distribute value to their stakeholders. Prior to the commencement of these chapter 11 cases, the Debtors negotiated a comprehensive restructuring transaction with certain of their term loan lenders pursuant to which such lenders have agreed to (a) provide the Debtors with a \$28 million debtor-in-possession financing facility (the “DIP Term Loan Facility”) and continued access to cash collateral, (b) roll the DIP Term Loan Facility into a larger exit facility on the effective date of the Plan, and (c) convert their prepetition claims into equity of the reorganized company, as set forth in that certain Restructuring Support Agreement, dated as of May 19, 2019 (the “RSA”), and the Plan. The Debtors now seek authority to market test the transaction contemplated by the RSA and the Plan to ensure the Debtors obtain the highest or otherwise best offer, or combination of offers, for the Debtors’ assets. The Plan expressly contemplates this market test and includes a sale toggle feature, which allows the Debtors to run a comprehensive marketing process to determine whether any third-party sale, or combination of sales, will provide a more optimal restructuring for the Debtors’ estates than the proposed term lender transaction.

6. At the same time, the Debtors seek to minimize the time and expense in chapter 11. The Plan, whether confirmed and consummated through the debt-for-equity transaction or a sale transaction, will resolve these chapter 11 cases, will cut off the expense of bankruptcy, and will permit the Debtors to distribute value to their stakeholders in a timely manner. To that end, by this motion, the Debtors are seeking to establish procedures that will allow the Debtors to run a proposed plan and marketing process in parallel. These dates and deadlines are critical to driving

the Debtors' restructuring to an efficient and value-maximizing conclusion, particularly in view of the milestones under the Debtors' proposed debtor-in-possession financing facilities, which require the Debtors to emerge from bankruptcy within 120 days and establish various dates by which the Debtors must achieve certain goals. Approval of the Bidding Procedures at the second day hearing in these chapter 11 cases, along with the proposed plan confirmation schedule, will allow the Debtors to move expeditiously through chapter 11, which in turn will ensure compliance with those milestones.

7. The Debtors have already started their marketing efforts in advance of commencing these cases. The Debtors retained Houlihan Lokey Capital, Inc. ("Houlihan") as their financial advisors and investment banker in early May 2019, and Houlihan has already commenced a marketing process relating to the Debtors' assets. The Debtors and Houlihan will continue these efforts and actively solicit the market for potential financial and strategic buyers now that these cases have formally commenced.

8. The Debtors will be willing to enter into a sale or a combination of sales, if the Debtors believe, in their business judgment, that such transactions are higher or otherwise better than the proposed transaction embodied in the RSA and Plan. To maximize the competitiveness of any bidding process, the Debtors also seek authority to (a) select one or more bidders to act as a stalking horse bidder (each, a "Stalking Horse Bidder"), and (b) in connection with any Stalking Horse Bidder and related agreement, provide customary bid protections.

### **The Bidding Procedures Order**

#### **I. The Bidding Procedures.**

9. The Debtors have developed and proposed the Bidding Procedures, to govern the auction process. The Debtors designed the Bidding Procedures to encourage all entities to expeditiously put their best bids forward and to maximize the value of the Debtors' estates through

a competitive auction process. Because the Bidding Procedures are attached as **Exhibit 1** to the Bidding Procedures Order, they are not restated in their entirety herein. Generally speaking, however, the Bidding Procedures establish the following, among other things:<sup>3</sup>

- a. the requirements that potential bidders must satisfy to participate in the bidding process and become “Acceptable Bidders” (*see* Bid. Proc., at ¶ A);
- b. the availability of, access to, and conduct during due diligence by Acceptable Bidders (*see* Bid. Proc., at ¶ B);
- c. the deadline and criteria by which the Debtors may select one or more Acceptable Bidders to act as a Stalking Horse Bidder and may provide customary bid protections to such Stalking Horse Bidder (*see* Bid. Proc., at ¶ C);
- d. the deadlines and requirements for submitting competing bids and the method and criteria by which such competing bids are deemed to be “Qualified Bids” sufficient to trigger an Auction, including the minimum consideration that must be provided, the terms and conditions that must be satisfied, and the deadline that must be met by any Acceptable Bidder to be considered a “Qualified Bidder” (*see* Bid. Proc., at ¶¶ D, E);
- e. the manner in which Qualified Bids will be evaluated by the Debtors to determine the initial minimum overbid for the Auction (*see* Bid. Proc., at ¶ F);
- f. the conditions for having an Auction and procedures for conducting the Auction, if any (*see* Bid. Proc., at ¶¶ G, H);
- g. the criteria by which the winning bidder or bidders will be selected by the Debtors (*see* Bid. Proc., at ¶ I); and
- h. various other matters relating to the sale process generally, including the designation of the back-up bid, the return of any good faith deposits to Qualified Bidders that submit Qualified Bids, and certain reservations of rights (*see* Bid. Proc., at ¶¶ J–P).

10. Importantly, the Bidding Procedures recognize the Debtors’ fiduciary obligations to maximize value, and, as such, do not impair the Debtors’ ability to consider all qualified bid

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<sup>3</sup> This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Bidding Procedures, the latter governs in all respects. Capitalized terms used but not otherwise defined in this summary shall have the meanings set forth in the Bidding Procedures.

proposals, and preserve the Debtors' right to modify the Bidding Procedures as necessary or appropriate to maximize value for their estates. Moreover, through the Bidding Procedures, the Debtors have agreed to provide substantial information about the ongoing sale process to their stakeholders to ensure that they are apprised of the status and determinations related to the sale.

## **II. The Confirmation Schedule.**

11. The Debtors are seeking approval of the Bidding Procedures and the following proposed timeline for the sale and related plan process (the dates set forth below, collectively, the "Confirmation Schedule") in parallel to establish a clear and open process for the solicitation, receipt, and evaluation of third-party bids on a timeline that allows the Debtors to consummate a sale pursuant to the Plan. A defined path toward confirmation will drive the sale process in an expeditious and efficient manner and is designed to encourage all prospective bidders to put their best bids forward at the outset of these chapter 11 cases to provide the highest or otherwise best available recoveries to the Debtors' stakeholders. Accordingly, the Debtors respectfully request that the Court approve the Confirmation Schedule.

<b>Action</b>	<b>Description</b>	<b>Deadline</b>
Deadline to file Disclosure Statement	The deadline for the Debtors to file the Disclosure Statement.	June 12, 2019.
Preliminary Bid Deadline	The last date by which potential bidders may deliver the bid documents required to participate in the Auction pursuant to the Bidding Procedures.	July 1, 2019.
Disclosure Statement Objection Deadline	The deadline by which objections to the Disclosure Statement must be filed with the Court and served so as to be actually received by the appropriate notice parties (the " <u>Disclosure Statement Objection Deadline</u> ").	7 calendar days before the Disclosure Statement Hearing.
Disclosure Statement Hearing	The date for the hearing for the Court's approval of the Disclosure Statement pursuant to section 1125 of the Bankruptcy Code (the " <u>Disclosure Statement Hearing</u> ").	July 17, 2019, or as soon thereafter as the Debtors may be heard.



Action	Description	Deadline
Solicitation Deadline	The deadline for distributing solicitation packages, including ballots, to holders of claims entitled to vote to accept or reject the Plan (the “ <u>Solicitation Deadline</u> ”).	3 business days after the entry of the order approving the Disclosure Statement.
Bid Deadline	The deadline by which all binding bids must be actually received pursuant to the Bidding Procedures.	July 26, 2019.
Auction	The date and time of the Auction, if one is needed, which will be held at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022. For the avoidance of doubt, the Debtors may also conduct more than one Auction with respect to non-overlapping material portions of the Debtors’ assets.	August 1, 2019.
Plan and Sale Objection and Plan Voting Deadlines	The deadline by which (a) objections to the Plan and/or the entry of an order by the Court approving the sale must be filed with the Court and served so as to be actually received by the appropriate notice parties (the “ <u>Plan and Sale Objection Deadline</u> ”), and (b) all ballots must be properly executed, completed, and delivered so that they are actually received by the Debtors’ notice, claims, and solicitation agent (the “ <u>Plan Voting Deadline</u> ”).	7 calendar days before the Confirmation Hearing.
Confirmation Hearing	The hearing before the Court to consider approval of the successful bid or bids and confirmation of the Plan, pursuant to which the Debtors and the winning bidder or bidders will consummate the sale.	August 26, 2019, or a soon thereafter as the Debtors may be heard.

12. The foregoing Confirmation Timeline is essential for the Debtors’ swift emergence from chapter 11 and preserving the value of the Debtors’ estates. Accordingly, the Debtors believe the relief requested by this motion is in best interest of the Debtors’ estates, will provide interested parties with sufficient opportunity to participate, and, therefore, should be approved.

### **Basis for Relief**

#### **I. The Relief Sought in the Bidding Procedures Order Is in the Best Interests of the Debtors’ Estates and Should Be Approved.**

13. “When conducting an asset sale, the ultimate responsibility of the debtor, and the primary focus of the bankruptcy court, is the maximization of the value of the assets sold.” John

J. Jerome & Robert D. Drain, Bankruptcy Court Is Newest Arena for M&A Action, N.Y.L.J., June 3, 1991. In furtherance of that goal, bidding procedures and bid protections, such as those proposed here, may be used in court-supervised asset sales because they streamline the acquisition process, “help to provide an adequate basis by which to compare offers,” and maximize value. *Id.*; see also *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures and bid protections “are important tools to encourage bidding and to maximize the value of the debtor’s assets”); see also *In re Metaldyne Corp.*, 409 B.R. 661, 670 (Bankr. S.D.N.Y. 2009) (“[b]idder protections are granted when a bidder provides a floor for bidding by expending resources to conduct due diligence and allowing its bid to be shopped around for a higher offer.”). In overseeing an asset sale subject to an auction process, the bankruptcy court must weigh:

on the one hand, providing for an orderly bidding process, recognizing the danger that absent such a fixed and fair process bidders may decline to participate in the auction; and, on the other hand, retaining the liberty to respond to differing circumstances so as to obtain the greatest return for the bankrupt estate.

*In re Fin. News Network, Inc.*, 980 F.2d 165, 166 (2d Cir. 1992). Because the bankruptcy court must perform this balancing act, “a bankruptcy judge’s broad discretionary power in conducting the sale of a debtor’s assets should not be narrowed by technical rules mindlessly followed” that “reduce the broad discretion and flexibility a bankruptcy court must necessarily have to enhance the value of the estates before it.” *Id.* at 169–70.

14. Here, the Debtors submit that the Bidding Procedures are a valid exercise of their business judgment, fair and appropriate under the circumstances, consistent with procedures routinely approved by courts in this district, and in the best interest of their estates. Courts have consistently held that a debtor’s business judgment is entitled to substantial deference with respect to the procedures to be used in selling an estate’s assets. See, e.g., *In re Integrated Res.*,

147 B.R. at 656 (applying business judgment rule to bidding procedures and incentives and noting that “[c]ourts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence”); *In re Culp*, 550 B.R. 683, 697 (D. Del. 2015) (“‘In determining whether to authorize use, sale or lease of property of the estate under Section 363, courts require the [debtor] to show that a sound business purpose justifies such actions.’ If the [debtor’s] decision evidences a sound business purpose, then the Bankruptcy Court should approve the sale.” (quoting *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999))); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (“Under Section 363, the debtor in possession can sell property of the estate . . . if he has an ‘articulated business justification’ . . . .” (internal citations omitted)).

15. The Debtors believe that the proposed Bidding Procedures will promote active bidding from seriously interested parties and will maximize the value of their assets for the benefit of the Debtors’ estates. The proposed Bidding Procedures will allow the Debtors to conduct the Auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who can demonstrate the ability to close a sale. In particular, the Bidding Procedures contemplate an open and public sale process with minimum barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

16. The Debtors respectfully submit that the proposed Bidding Procedures will encourage competitive bidding, are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings, and are consistent with the controlling legal standard in the Second Circuit. Accordingly, the Debtors request that the Court approve the Bidding Procedures as a valid exercise of the Debtors’ business judgment.

## **II. The Bid Protections Have a Sound Business Purpose and Should Be Approved.**

17. The Debtors also seek authority pursuant to the Bidding Procedures to pay customary bid protections in the form of a breakup fee, expense reimbursement, and/or work fee in an aggregate amount not to exceed three percent of any proposed purchase price (the “Bid Protections”). The Debtors seek to utilize such authority only in their discretion if the Debtors determine in their business judgment that any such Bid Protection will likely facilitate a competitive bidding and auction process. Bidding incentives and protections like those proposed here have become commonplace for sales of significant assets under the Bankruptcy Code because they enable debtors to solicit and receive contractually committed offers that would otherwise not be possible absent such incentives and protections, while nevertheless maintaining the possibility of enhanced recoveries through a competitive marketing and sale process. In particular, the Debtors believe that the ability to offer the Bid Protections provide the Debtors with the tools to negotiate for the best possible offers and provide the Debtors with the ability to establish a floor for further bidding that may increase the consideration given in exchange for their assets.

18. Bankruptcy courts in the Second Circuit analyze the appropriateness of bidding incentives such as those proposed here using the “business judgment rule” standard, and courts in this district have considered three questions in particular when considering such incentives: “(1) is the relationship of the parties who negotiated the break-up fee tainted by self-dealing or manipulation; (2) does the fee hamper, rather than encourage, bidding; (3) is the amount of the fee unreasonable relative to the proposed purchase price?” *In re Integrated Res.*, 147 B.R. at 657; *see also In re Genco Shipping & Trading Ltd.*, 509 B.R. 455, 465 (Bankr. S.D.N.Y. 2014); *In re Metaldyne Corp.*, 409 B.R. 661, 670 (Bankr. S.D.N.Y. 2009). The answer to each of these questions in this instance is emphatically “no.”

19. **First**, the Debtors propose to pay the Bid Protections only in the event they determine, after good faith, arm's-length negotiations, that it would be beneficial for their estates to pay such Bid Protections. For example, the Debtors seek authority to agree to pay a breakup fee in the event that the Debtors elect to enter into a stalking horse arrangement with a Stalking Horse Bidder. Courts in this district have held that this is an appropriate, if not **mandatory** basis for the provision of a breakup fee. *See, e.g., In re Integrated Res.*, 147 B.R. at 659–60 (“Break-up fees are important tools to encourage bidding and to maximize the value of the debtor’s assets . . . . In fact, because the . . . corporation has a duty to encourage bidding, break-up fees can be **necessary** to discharge [such] duties to maximize value.” (emphasis added)); *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (breakup fee “may be legitimately necessary to convince a ‘white knight’ bidder to enter the bidding by providing some form of compensation for the risks it is undertaking” (quotations omitted)).

20. **Second**, the Bid Protections would encourage, rather than hamper, bidding. This is particularly true given that bidders will expend time and resources negotiating, drafting, and performing due diligence activities necessitated by the proposed sale process, despite the fact that their bids will be subject not only to Court approval, but to overbidding by third parties. Without the Bid Protections, a potential bidder may elect not to participate in the process at all to the detriment of the Debtors’ estates. Further, the Bidding Procedures do not **require** the payment of the Bid Protections, the Debtors simply have the **option** of paying or otherwise incurring such obligations in the event that they determine, in their business judgment, that offering such Bid Protections will result in a competitive bidding process that will maximize value of the Debtors’ estates. In that instance, the value created for the Debtors’ estates will likely greatly outweigh the cost of any Bid Protections. In any case, granting the Debtors authority to offer the Bid Protections

sends a strong signal to the market that the Debtors are serious about running a competitive sale process to maximize value.

21. **Third**, the aggregate amount of the Bid Protections, if any are offered at all, will not exceed three percent of any proposed purchase price. This is an amount that is well within market for transactions of this type, and which has been routinely approved by courts in this district. *See, e.g., In re Metaldyne*, 409 B.R. at 670 (“The total amount of the proposed break-up fee and expense reimbursement is less than 3% of the total purchase price. This falls within the range of what courts in this jurisdiction have found to be [an] acceptable break-up fees.”); *In re Hooper Holmes, Inc.*, No. 18-23302 (RDD) (Bankr. S.D.N.Y. Sept. 20, 2018) (approving a breakup fee of three percent); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. May 7, 2018) (same); *ARO Liquidation, Inc.*, No. 16-11275 (SHL) (Bankr. S.D.N.Y. May 4, 2016) (same); *In re The Great Atl. & Pac. Tea Co.*, No. 15-23007 (RDD) (Bankr. S.D.N.Y. Aug. 11, 2015) (same).

22. Accordingly, for the reasons set forth above, the Debtors respectfully submit that the Court grant the Debtors the authority to incur and pay the Bid Protections in their discretion as a valid exercise of the Debtors’ business judgment.

### **III. The Form and Manner of Notice Should Be Approved.**

23. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide creditors with 21 days’ notice of the Auction. Pursuant to Bankruptcy Rule 2002(c), such notice must include the time and place of the Auction and the deadline for filing any objections to such a sale.

24. As soon as reasonably practicable following entry of the Bidding Procedures Order, the Debtors will cause a notice of the Auction, the Bidding Procedures Order, and the Bidding Procedures, substantially in the form attached as **Exhibit 2** to the Bidding Procedures Order (the “**Sale Notice**”), to be served upon (a) the Consultation Parties, (b) the United States Attorney’s

Office for the Southern District of New York, (c) the Internal Revenue Service, (d) the attorneys general for the states in which the Debtors operate, (e) any parties known or reasonably believed to have expressed an interest in the Debtors' assets, (f) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in any of the Debtors' assets, and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002.

25. The Debtors submit that the Sale Notice constitutes good and adequate notice of the Auction and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002 and Local Rule 2002-1. Accordingly, no further notice is necessary and the Debtors request that this Court approve the form and manner of the notice of the Sale Notice.

**IV. The Court Should Approve the Disclosure Statement Objection Deadline and the Disclosure Statement Hearing.**

26. Bankruptcy Rule 3017(a) requires that notice of the hearing to consider the proposed disclosure statement be provided to creditors and other parties in interest. *See* Fed. R. Bankr. P. 3017(a) (providing that after a disclosure statement is filed, it must be mailed with the notice of the hearing to consider the disclosure statement and any objections or modifications thereto on no less than 28 days' notice thereof); *see also* Fed. R. Bankr. P. 2002(b) (requiring not less than 28 days' notice by mail of the time for filing objections and the hearing to consider the approval of a disclosure statement). The Debtors intend to file the Disclosure Statement on or before June 12, 2019. Additionally, at least 28 days prior to the Disclosure Statement Objection Deadline, the Debtors will serve all known creditors with a copy of a notice for the hearing on the Disclosure Statement.

27. Accordingly, the proposed Disclosure Statement Objection Deadline and Disclosure Statement Hearing date will provide parties in interest with sufficient notice of the Disclosure Statement Hearing and time to object to the Disclosure Statement.

**V. The Court Should Approve the Voting Deadline, the Plan and Sale Objection Deadline, and the Confirmation Hearing Date.**

28. Section 1128 of the Bankruptcy Code provides that a court shall hold a hearing on confirmation of a plan and provides that parties in interest can object to confirmation. 11 U.S.C. § 1128. Additionally, Bankruptcy Rule 3017(c) provides that, “[o]n or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.” Fed. R. Bankr. P. 3017(c); *see also* Fed. R. Bankr. P. 3017(d) (after approval of a disclosure statement, the debtor must transmit the plan, the approved disclosure statement, a notice of the time within which acceptances and rejections of such plan may be filed, and any other information that the court may direct to certain holders of claims).

29. In accordance with Bankruptcy Rule 3017(c) and section 1128 of the Bankruptcy Code, the Debtors request that the Court (a) establish the Solicitation Deadline, (b) require all objections to the Plan and/or to the entry of an order by the Court approving the sale be filed with the Court and served upon the applicable notice parties so as to be actually received on or before the Plan and Sale Objection Deadline, (c) require all ballots to accept or reject the Plan be properly executed, completed, and delivered so that they are actually received by the notice, claims, and solicitation agent on or before the Plan Voting Deadline, and (d) establish the date for the Confirmation Hearing. The Debtors further request that the Confirmation Hearing may be continued from time to time by the Court or the Debtors without further notice to parties in interest



other than such adjournment announced in open court and/or a notice of adjournment filed with the Court and served on the parties that have requested notice pursuant to Bankruptcy Rule 2002.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

30. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Notice**

31. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent for the Debtors' term loan facility and counsel thereto; (d) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (e) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel thereto; (f) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; (g) the United States Attorney's Office for the Southern District of New York; (h) the Internal Revenue Service; (i) the attorneys general for the states in which the Debtors operate; (j) any parties known or reasonably believed to have expressed an interest in the Debtors' assets; (k) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in any of the Debtors' assets; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

32. No prior request for the relief sought in this motion has been made to this or any other court.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WHEREFORE, the Debtors respectfully request entry of the Bidding Procedures Order, substantially in the form attached hereto as **Exhibit A** (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

New York, New York  
Dated: May 19, 2019

/s/ Joshua A. Sussberg, P.C.  
Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

- and -

Joseph M. Graham (*pro hac vice* pending)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Bidding Procedures Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	
	)	<b>Re: Docket No. __</b>

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**ORDER (I) APPROVING THE BIDDING PROCEDURES, (II) SCHEDULING THE  
BID DEADLINES AND THE AUCTION, (III) APPROVING THE FORM AND  
MANNER OF NOTICE THEREOF, (IV) SCHEDULING HEARINGS AND OBJECTION  
DEADLINES WITH RESPECT TO THE DEBTORS' DISCLOSURE STATEMENT  
AND PLAN CONFIRMATION, AND (V) GRANTING RELATED RELIEF**

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Upon the motion (the "Motion") of the above captioned debtors and debtors in possession (the "Debtors") for the entry of an order (this "Order"), (a) authorizing and approving the bidding procedures attached hereto as **Exhibit 1** (the "Bidding Procedures")<sup>2</sup> in connection with the sale of the Assets, (b) approving the Bid Protections, (c) establishing certain dates and deadlines, including the Preliminary Bid Deadline, the Bid Deadline, and the date of the Auction, if any, (d) approving the manner of notice of the Auction, if any, (e) scheduling dates and deadlines in connection with approval of the Disclosure Statement and confirmation of the Plan, and (f) granting related relief, as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having the power to enter a final order consistent with Article III of the United States

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to them in the Bidding Procedures.

Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

**THE COURT HEREBY FINDS THAT:**

A. The Debtors have articulated good and sufficient reasons for authorizing and approving the Bidding Procedures, which are fair, reasonable, and appropriate under the circumstances and designed to maximize the recovery on, and realizable value of, the Assets, including with respect to the proposed procedures for providing Bid Protections as determined by the Debtors in an exercise of their business judgment.

B. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the preceding findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the preceding conclusions of law constitute findings of fact, they are adopted as such.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.

2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled prior to or at the Hearing are overruled.

**I. Important Dates and Deadlines.**

3. **Disclosure Statement Filing Deadline.** June 12, 2019, is the deadline for the Debtors to file the Disclosure Statement.

4. **Preliminary Bid Deadline.** July 1, 2019,<sup>3</sup> at 4:00 p.m., prevailing Eastern Time, is the deadline by which any party interested in participating in the bidding process must deliver the Preliminary Bid Documents.

5. **Disclosure Statement Objection Deadline.** July 10, 2019, at 4:00 p.m., prevailing Eastern Time, is the deadline by which objections to the Disclosure Statement must be filed with the Court and served so as to be actually received by the appropriate notice parties.

6. **Disclosure Statement Hearing.** July 17, 2019, at 9:00 a.m., prevailing Eastern Time, is the date and time for the hearing for the Court to consider approval of the Disclosure Statement pursuant to section 1125 of the Bankruptcy Code.

7. **Solicitation Deadline.** July 22, 2019, is the deadline for distributing solicitation packages, including ballots, to holders of claims entitled to vote to accept or reject the Plan.

8. **Bid Deadline.** July 26, 2019,<sup>4</sup> at 4:00 p.m., prevailing Eastern Time, is the deadline by which all Qualified Bids must be **actually received** by the parties specified in the Bidding Procedures.

9. **Stalking Horse Bidders and Bid Protections.** The Debtors, upon entry of this Order and at any time up until two calendar days prior to the Auction, shall be authorized, but are

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<sup>3</sup> Date that is fifteen (15) calendar days after the hearing to consider approval of the Bidding Procedures.

<sup>4</sup> Date that is twenty-five (25) calendar days after the Preliminary Bid Deadline.

not obligated or directed, in an exercise of their business judgment and in consultation with the Consultation Parties, to select one or more Stalking Horse Bidders with respect to some or all of the Debtors' Assets and to provide such Stalking Horse Bidders with Bid Protections without further action or order by this Court.

10. **Auction**. August 1, 2019,<sup>5</sup> at 9:00 a.m., prevailing Eastern Time, is the date and time the Auction, if one is needed, will be held at the offices of proposed counsel to the Debtors: Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York, 10022. For the avoidance of doubt, the Debtors may also conduct more than one Auction with respect to non-overlapping material portions of the Debtors' Assets. The Debtors shall send written notice of the date, time, and place of the Auction to the Qualified Bidders no later than two business days before such Auction, and will post notice of the date, time, and place of the Auction no later than two business days before such Auction on the website of the Debtors' notice, claims, and solicitation agent, Omni Management Group, at [www.omnimgt.com/hollander](http://www.omnimgt.com/hollander).

11. **Plan and Sale Objection Deadline**. August 19, 2019, at 4:00 p.m., prevailing Eastern Time, is the deadline by which objections to the Plan and/or the entry of an order by the Court approving the Sale must be filed with the Court and served so as to be actually received by the appropriate notice parties.

12. **Voting Deadline**. August 19, 2019, at 4:00 p.m., prevailing Eastern Time, is the deadline by which all ballots must be properly executed, completed, and delivered so that they are actually received by the Debtors' notice, claims, and solicitation agent, Omni Management Group.

13. **Confirmation Hearing**. August 26, 2019, at 9:00 a.m., prevailing Eastern Time, is the date and time for the hearing for the Court to consider the Successful Bid or Successful Bids

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<sup>5</sup> Date that is four (4) business days after the Bid Deadline.



and confirmation of the Plan, pursuant to which the Debtors and the Winning Bidder or Winning Bidders will consummate the Sale.

**II. Auction, Bidding Procedures, Sale Notice, and Related Relief.**

14. The Bidding Procedures, substantially in the form attached hereto as **Exhibit 1**, are incorporated herein and are hereby approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to any proposed Sale. Any party desiring to submit a Bid shall comply with the Bidding Procedures and this Order. The Debtors are authorized to take any and all actions necessary to implement the Bidding Procedures.

15. The Bid Protections are approved on the terms set forth in the Bidding Procedures and the Debtors are authorized, but not directed, to incur and pay such Bid Protections to any or no Stalking Horse Bidder, in an exercise of their business judgment without further action or order by the Court; *provided* that, for the avoidance of doubt, the aggregate amount of the Bid Protections (consisting of any Breakup Fee, Expense Reimbursements, and Work Fees) shall not exceed three percent of any Stalking Horse Bidder's proposed Purchase Price.

16. No person or entity, other than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, break-up fees, "topping," termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

17. Any deposit provided by a Stalking Horse Bidder or other Qualified Bidder shall be held in escrow by the Debtors or their agent, and shall not become property of the Debtors' bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of the applicable escrow agreement or order of this Court.

18. The Sale Notice, substantially in the form attached hereto as **Exhibit 2**, is hereby approved. As soon as reasonably practicable following the entry of this Order, the Debtors will cause the Sale Notice to be served upon (a) the Consultation Parties, (b) the United States Attorney's Office for the Southern District of New York, (c) the Internal Revenue Service, (d) the attorneys general for the states in which the Debtors operate, (e) any parties known or reasonably believed to have expressed an interest in the Debtors' assets, (f) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in any of the Debtors' assets, and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002.

### **III. Miscellaneous.**

19. The failure to include or reference a particular provision of the Bidding Procedures specifically in this Order shall not diminish or impair the effectiveness or enforceability of such a provision.

20. In the event of any inconsistencies between this Order and the Motion and/or the Bidding Procedures, this Order shall govern in all respects.

21. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

22. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

23. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

24. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

25. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York

Dated: \_\_\_\_\_, 2019

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Bidding Procedures**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (____)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

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**BIDDING PROCEDURES FOR THE SUBMISSION, RECEIPT,  
AND ANALYSIS OF BIDS IN CONNECTION WITH THE  
SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS**

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On May 19, 2019, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

On [●], 2019, the Bankruptcy Court entered an order [Docket No. [●]] (the “Bidding Procedures Order”) approving, among other things, these bidding procedures (the “Bidding Procedures”). These Bidding Procedures set forth the process by which the Debtors are authorized to solicit the highest or otherwise best bids (each, a “Bid”) and conduct an auction (the “Auction”) for the sale (the “Sale”) of some or all of their assets (the “Assets”).

The Sale will be implemented pursuant to the terms and conditions of the Debtors’ proposed chapter 11 plan [Docket No. 21] (as modified, amended, or supplemented from time to time, the “Plan”).<sup>2</sup> The Plan contemplates that the Debtors and the Winning Bidder or Winning Bidders will consummate the sale of the Assets through the Plan, or, if there is no third party Winning Bidder or Winning Bidders, the Term Loan Lenders will be designated the Winning Bidder and will take control of the Assets in accordance with the Plan.

Copies of the Bidding Procedures Order, the Plan, or any other documents in the Debtors’ chapter 11 cases are available upon request to Omni Management Group, by calling (844) 212-9942 (Domestic) or (818) 906-8300 (International), or by visiting <a href="http://www.omningt.com/hollander">www.omningt.com/hollander</a> .
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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not defined herein have the meaning given to such terms in the Plan.

**A. Participation Requirements.**

To participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in submitting a Bid (a “Potential Bidder”) must, on or before July 1, 2019,<sup>3</sup> at 4:00 p.m., prevailing Eastern Time (the “Preliminary Bid Deadline”), deliver such Bid (unless previously delivered) to each of (i) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Christopher T. Greco, P.C. (cgreco@kirkland.com) and Derek I. Hunter (derek.hunter@kirkland.com), and 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joseph M. Graham (joe.graham@kirkland.com) and Laura E. Krucks (laura.krucks@kirkland.com), and (ii) proposed financial advisor and investment banker to the Debtors, Houlihan Lokey Capital, Inc., 245 Park Avenue, 32nd Floor, New York, New York 10167, Attn: David Salemi (DSalemi@HL.com) and Tom Hedus (THedus@HL.com), the following documents (the “Preliminary Bid Documents”); *provided* that the Debtors may consider Bids submitted by Potential Bidders after the Preliminary Bid Deadline, but such Potential Bidders will not receive any extension of time to conduct a due diligence review or to submit a Qualified Bid (as defined herein):

- (i) a written disclosure of the identity of each entity that will be bidding for the Assets or otherwise participating in connection with such Bid;
- (ii) an executed confidentiality agreement on terms acceptable to the Debtors (the “Confidentiality Agreement”), to the extent not already executed;
- (iii) a description of the Assets in which such Potential Bidder may be interested in placing a Bid and a preliminary estimate of the purchase price to be paid, with reasonable specificity; and
- (iv) preliminary proof by the Potential Bidder of its financial capacity to close a proposed transaction, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors and their advisors in their reasonable discretion, in consultation with the Consultation Parties (as defined herein).

The Debtors shall provide copies of any Preliminary Bid Documents received from Potential Bidders as soon as reasonably practicable, but no later than two calendar days after receipt thereof, to each of the following parties (each, a “Consultation Party,” and collectively, the “Consultation Parties”): (i) counsel to the proposed DIP ABL Agent and the ABL Agent, Goldberg Kohn Ltd., 55 East Monroe, Suite 3300, Chicago, Illinois 60603, Attn: Randall Klein (Randall.Klein@goldbergkohn.com); (ii) counsel to the proposed DIP Term Loan Agent and the Term Loan Agent, King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, Georgia 30309, Attn: W. Austin Jowers (ajowers@kslaw.com) and Stephen M. Blank (sblank@kslaw.com); (iii) counsel to the Sponsor, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Adam Rogoff (arogoff@kramerlevin.com); and (iv) counsel

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<sup>3</sup> Date that is fifteen calendar days after the hearing to consider approval of these Bidding Procedures.

to any statutory committees appointed in the Debtors' chapter 11 cases (a "Committee"); *provided* that during any period in which a Consultation Party has submitted a Qualified Bid (as defined herein) and has become a Qualified Bidder (as defined herein), such Consultation Party shall not be considered a Consultation Party for purposes of these Bidding Procedures.

Within four business days after a Potential Bidder delivers the Preliminary Bid Documents, the Debtors will determine, in their reasonable discretion and in consultation with the Consultation Parties, and notify that Potential Bidder, whether such Potential Bidder has submitted acceptable Preliminary Bid Documents so that the Potential Bidder may conduct due diligence with respect to the Assets. Only those Potential Bidders that have submitted acceptable Preliminary Bid Documents, as determined in the Debtors' reasonable discretion, in consultation with the Consultation Parties (each, an "Acceptable Bidder"), may submit Qualified Bids. The following parties shall be deemed Acceptable Bidders without the need to satisfy the requirements of this Section A: (i) the proposed DIP ABL Agent (on behalf of the DIP ABL Lenders), (ii) the proposed DIP Term Loan Agent (on behalf of the DIP Term Loan Lenders), (iii) the ABL Agent (on behalf of the ABL Lenders), and (iv) the Term Loan Agent (on behalf of the Term Loan Lenders) (collectively, the "Agents").

## **B. Due Diligence.**

### **(i) Access to Due Diligence.**

Only Acceptable Bidders will be eligible to receive due diligence and access to additional non-public information regarding the Assets and the Debtors. The Debtors will provide to each Acceptable Bidder reasonable due diligence information concerning those Assets that are the subject of such Acceptable Bidder's Bid, as requested by such Acceptable Bidder in writing, as soon as reasonably practicable after such request, but shall only extend to those Assets that are the subject of such Acceptable Bidder's Bid. The Debtors will post substantially all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room. The due diligence period will end on the Bid Deadline (as defined herein), after which the Debtors will have no obligation to furnish any due diligence information.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors will not furnish any confidential information relating to the Debtors, the Debtors' Assets or liabilities, or the Sale to any person except an Acceptable Bidder or such Acceptable Bidder's duly-authorized representatives, in each case, to the extent provided in the applicable Confidentiality Agreement and only to the extent of the Assets that are the subject of such Acceptable Bidder's Bid.

The Debtors and their financial advisors will coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided* that the Debtors may decline to provide such information to Acceptable Bidders who, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, have not established that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate their Bid. If the Debtors deny access or information to an Acceptable Bidder, they shall inform the Consultation Parties. No conditions relating to the completion of due diligence will be permitted to exist after the Bid Deadline (as defined herein).

The Debtors also reserve the right to withhold any diligence materials that the Debtors determine are sensitive, proprietary, or otherwise not appropriate for disclosure to an Acceptable Bidder who the Debtors determine, in consultation with the Consultation Parties, is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives will be obligated to furnish information of any kind whatsoever to any person that is not determined to be an Acceptable Bidder.

Each Acceptable Bidder will be deemed to acknowledge and represent that it: (a) has had an opportunity to conduct any and all due diligence regarding the Debtors' Assets and liabilities that are the subject of the Auction to the extent of the Assets and liabilities that are the subject of their Bid prior to making any such Bids; (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid; and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise regarding the Debtors' Assets or liabilities, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures. Neither the Debtors nor any of their employees, officers, directors, affiliates, subsidiaries, representatives, agents, advisors, or professionals are responsible for, and will bear no liability with respect to, any information obtained by Acceptable Bidders in connection with the Sale.

The Debtors have designated Houlihan Lokey Capital, Inc., 245 Park Avenue, 32nd Floor, New York, New York 10167, Attn: David Salemi (DSalemi@HL.com) and Tom Hedus (THedus@HL.com), to coordinate all reasonable requests for additional information and due diligence access.

(ii) **Communications with Acceptable Bidders.**

There must be no communications between and amongst Acceptable Bidders (other than between the Agents, *provided* that if an Agent submits a Qualified Bid, such Agent must not communicate with the other Agents with respect to such Qualified Bid), or between Acceptable Bidders and the Consultation Parties, unless the Debtors have previously authorized such communication in writing. Should any Acceptable Bidder attempt to communicate directly with a Consultation Party, such Consultation Party shall immediately direct the Acceptable Bidder to the Debtors' counsel and investment banker. The Debtors reserve the right, in their reasonable business judgment, in consultation with the Consultation Parties, to disqualify any Acceptable Bidders that have communications between and amongst themselves. The Debtors further reserve their right, in their reasonable business judgment, to disqualify any Acceptable Bidders that have communications with a Consultation Party, and to strip any Consultation Party that violates this provision (except as otherwise provided in this paragraph) of its consultation rights hereunder; *provided* that the Debtors shall provide such Consultation Party with notice that the Debtors are exercising their rights to strip the Consultation Party of their consultation rights.

**C. Stalking Horse Bidders and Bid Protections.**

Upon entry of the Bidding Procedures Order and up until two calendar days prior to the Auction, the Debtors shall be authorized, but not obligated, in an exercise of their business judgment and in consultation with the Consultation Parties, to: (a) select one or more Acceptable



Bidders to act as stalking horse bidders in connection with the Auction (each, a “Stalking Horse Bidder”); and (b) in connection with any stalking horse agreement with a Stalking Horse Bidder (i) provide a breakup fee (the “Breakup Fee”), (ii) agree to reimburse reasonable and documented out-of-pocket fees and expenses (the “Expense Reimbursement”), and/or (iii) agree to pay a “work fee” or other similar cash fee (the “Work Fee,” and together with the Breakup Fee and the Expense Reimbursement, the “Bid Protections”); *provided* that the aggregate amount that may be paid to any or all Stalking Horse Bidders on account of foregoing subclauses (i)–(iii) shall not exceed three percent of the proposed Purchase Price (as defined herein).

#### **D. Bid Requirements.**

To be eligible to participate in the Auction, an Acceptable Bidder must deliver to the Debtors and their advisors, a written, irrevocable offer that must be determined by the Debtors, in their business judgment and in consultation with the Consultation Parties, to satisfy each of the following conditions (collectively, the “Bid Requirements”):

- (i) **Purpose.** Each Acceptable Bidder must state that the Bid includes an offer by the Acceptable Bidder to purchase some or all of the Assets, and which Assets with reasonable specificity.
- (ii) **Purchase Price.** Each Bid must clearly set forth the purchase price to be paid for the Assets (the “Purchase Price”) and must (a) indicate the source of cash consideration, including funding commitments, and confirm that such consideration is not subject to any contingencies, and (b) identify separately the cash and non-cash components of the Purchase Price. The Bid should include a detailed sources and uses schedule. All Bids for the ABL Priority Collateral (as defined in the DIP Intercreditor Agreement) must be in cash unless otherwise agreed by the proposed DIP ABL Agent (with respect to the ABL Priority Collateral). Any Bids placed by an Agent must be made in accordance with the DIP Intercreditor Agreement.
- (iii) **Bid Deposit.** Each Bid must be accompanied by a cash deposit equal to ten percent of the aggregate value of the cash and non-cash consideration of the Bid (the “Good Faith Deposit”), which will be held in an escrow account to be identified and established pursuant to the authority granted by the order authorizing the Debtors to maintain and operate their bank accounts, by wire transfer or certified or cashier’s check.
- (iv) **Committed Financing.** To the extent that a Bid is not accompanied by evidence of the Acceptable Bidder’s capacity to consummate the Sale transaction set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtors’ satisfaction, in consultation with the Consultation Parties, that demonstrates that the Acceptable Bidder has received sufficient debt and/or equity funding commitments to satisfy the Acceptable Bidder’s Purchase Price and other obligations under its Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants

and conditions acceptable to the Debtors in their sole discretion. The Debtors may in their reasonable business judgment, and in consultation with the Consultation Parties, waive this condition.

- (v) **Good Faith Offer.** Each Bid must constitute a good faith, bona fide offer to purchase the Assets.
- (vi) **Marked Agreement.** Each Bid must be accompanied by clean and duly executed transaction documents including, at a minimum, a draft asset purchase agreement, the form of which will be provided to any Acceptable Bidder prior to the Bid Deadline (as defined herein), including the exhibits and schedules related thereto and any related material documents integral to such Bid pursuant to which the Acceptable Bidder proposes to effectuate the Sale, along with copies that are marked to reflect any amendments and modifications from the form asset purchase agreement provided, which amendments and modifications may not be materially more burdensome or otherwise inconsistent with these Bidding Procedures. The Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, will determine whether any such amendments and modifications are materially more burdensome.
- (vii) **No Contingencies.** A Bid must not be conditioned on any contingency, including, among others, on obtaining any of the following (a) financing, (b) shareholder, board of directors, or other approval, and/or (c) the outcome or completion of a due diligence review by the Acceptable Bidder.
- (viii) **Binding and Irrevocable.** An Acceptable Bidder's Bid must be irrevocable unless and until the Debtors accept a higher Bid and such Acceptable Bidder is not selected as the Back-Up Bidder (as defined herein).
- (ix) **Joint Bids.** The Debtors will be authorized to approve joint Bids in their reasonable discretion, in consultation with the Consultation Parties, on a case-by-case basis.
- (x) **Adequate Assurance Information.** Each Bid must be accompanied by sufficient and adequate financial and other information (the "Adequate Assurance Information") to demonstrate, to the reasonable satisfaction of the Debtors, in consultation with the Consultation Parties, that such Acceptable Bidder (a) has the financial wherewithal and ability to consummate the acquisition of the Assets (the "Closing"), and (b) can provide adequate assurance of future performance in connection with the proposed transaction. The Bid must also identify a contact person that parties may contact to obtain additional Adequate Assurance Information.
- (xi) **Identity & Corporate Authority.** Each Bid must fully disclose the identity of each entity that will be participating in connection with such Bid (including any equity owners or sponsors, if the purchaser is an entity formed for the purpose of consummating the acquisition of the Assets), and the complete terms of any such participation, along with sufficient evidence that the Acceptable Bidder is legally

empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties. A Bid must also fully disclose any connections or agreements with the Debtors, any known, potential, prospective bidder or Qualified Bidder (as defined herein), or any officer, director, or equity security holder of the Debtors.

- (xii) **Authorization**. Each Bid must contain evidence that the Acceptable Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- (xiii) **No Fees**. Each Acceptable Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code; *provided* that the Debtors are authorized in their discretion, in consultation with the Consultation Parties, to provide the Bid Protections to one or more Stalking Horse Bidders in accordance with these Bidding Procedures.
- (xiv) **Adherence to Bidding Procedures**. By submitting its Bid, each Acceptable Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.
- (xv) **Regulatory Approvals and Covenants**. A Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the applicable Sale, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than thirty days following execution and delivery of the asset purchase agreement, those actions the Acceptable Bidder will take to ensure receipt of such approvals as promptly as possible).
- (xvi) **As-Is, Where-Is**. Each Bid must include a written acknowledgement and representation that the Acceptable Bidder (a) has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Acceptable Bidder's proposed purchase and sale agreement for the Assets.
- (xvii) **Time Frame for Closing**. A Bid by an Acceptable Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined

herein), within a time frame acceptable to the Debtors in consultation with the Consultation Parties.

- (xviii) **Consent to Jurisdiction**. The Acceptable Bidder must submit to the jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bidding Procedures, the Plan, the Sale documents, and the Closing, as applicable.
- (xix) **DIP Order**. All Bids must be in accordance with the terms and conditions of the DIP Order and the DIP Credit Agreements.

Bids fulfilling all of the preceding requirements, as determined by the Debtors and their advisors, in consultation with the Consultation Parties, will be deemed to be "Qualified Bids," and those parties submitting Qualified Bids will be deemed to be "Qualified Bidders." All information disclosed by any bidder in connection with all of the preceding requirements will be made available by the Debtors to the Consultation Parties promptly upon the Debtors' receipt thereof but in any event no later than one business day following the Debtors' receipt of such information; *provided* that any confidential financing and/or equity commitment documents received from a bidder shall only be shared with the Consultation Parties on a professional-eyes'-only basis. The Debtors reserve the right, in consultation with the Consultation Parties, to work with any Acceptable Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple Bids for non-overlapping material portions of the Debtors' Assets such that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders will be treated as a single Qualified Bidder for purposes of the Auction; *provided* that the Debtors also reserve the right, in consultation with the Consultation Parties, to conduct more than one Auction with respect to non-overlapping material portions of the Debtors' Assets).

Within two business days after the Bid Deadline (as defined herein), the Debtors and their advisors, in consultation with the Consultation Parties, will determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted constitute, alone or together with other Bids, Qualified Bids so as to enable such Qualified Bidders to bid at the Auction. Any Bid that is not deemed a Qualified Bid will not be considered by the Debtors. For the avoidance of doubt, any Acceptable Bidders designated as Stalking Horse Bidders by the Debtors in consultation with the Consultation Parties and in accordance with these Bidding Procedures will be deemed to be Qualified Bidders, and any stalking horse asset purchase agreements submitted by such Stalking Horse Bidders will be deemed Qualified Bids, which qualify such Stalking Horse Bidders to participate in the Auction as Qualified Bidders. The Agents shall be deemed Qualified Bidders without the need to satisfy the requirements of this Section D.

**Qualified Bids must be received by each of the Debtors and their advisors so as to be actually received no later than July 26, 2019,<sup>4</sup> at 4:00 p.m., prevailing Eastern Time (the "Bid Deadline").**

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<sup>4</sup> Date that is twenty-five calendar days after the Preliminary Bid Deadline.

**E. Evaluation of Qualified Bids.**

Prior to the Auction, the Debtors and their advisors will evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, the highest or otherwise best Bid (the "Initial Minimum Overbid"). For the avoidance of doubt, the Debtors may select more than one Qualified Bid to collectively serve as the Initial Minimum Overbid if each such Qualified Bid contemplates the purchase of different Assets. In making such determination, the Debtors will take into account, among other things, the execution risk attendant to any submitted Bids. Within 24 hours of such determination, but in no event later than the start of the Auction, the Debtors will (1) notify the Consultation Parties and any Stalking Horse Bidders as to which Qualified Bid is the Initial Minimum Overbid and (2) distribute copies of the Initial Minimum Overbid to each Qualified Bidder who has submitted a Qualified Bid and the Consultation Parties.

If any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors will refund such Acceptable Bidder's Good Faith Deposit and all accumulated interest thereon on or within ten business days after the Bid Deadline.

**F. No Qualified Bids.**

If no Qualified Bids are received by the Bid Deadline, then the Auction will not occur, the Term Loan Lenders will be deemed the Winning Bidder, and the Debtors will pursue entry of an order by the Bankruptcy Court confirming the Plan at the Confirmation Hearing (as defined herein).

**G. Auction.**

If one or more Qualified Bids is received by the Bid Deadline, the Debtors will conduct the Auction with respect to the Debtors' Assets. For the avoidance of doubt, the Debtors may also conduct more than one Auction with respect to non-overlapping material portions of the Debtors' Assets. The Auction will commence on August 1, 2019,<sup>5</sup> at 9:00 a.m., prevailing Eastern Time, at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, or such later time or other place as the Debtors will timely notify any Stalking Horse Bidders and all other Qualified Bidders, in consultation with the Consultation Parties.

The Auction will be conducted in accordance with the following procedures (the "Auction Procedures"):

- (i) the Auction will be conducted openly;
- (ii) only the Qualified Bidders, including any Stalking Horse Bidders and the Agents, will be entitled to bid at the Auction;

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<sup>5</sup> Date that is four business days after the Bid Deadline.

- (iii) the Qualified Bidders, including any Stalking Horse Bidders and the Agents, must appear in person or through duly-authorized representatives at the Auction;
- (iv) only such authorized representatives of each of the Qualified Bidders (including any Stalking Horse Bidders), the Debtors, their respective advisors, and the advisors to the Consultation Parties will be permitted to attend the Auction;
- (v) bidding at the Auction will begin at the Initial Minimum Overbid;
- (vi) subsequent Bids at the Auction, including any Bids by any Stalking Horse Bidder, must be made in minimum increments of \$1 million (or such other amount as the Debtors may determine in consultation with the Consultation Parties) of additional value after payment of the Bid Protections to any Stalking Horse Bidders, if applicable;
- (vii) each Qualified Bidder will be informed of the terms of the previous Bids;
- (viii) the bidding will be transcribed to ensure an accurate recording of the bidding at the Auction;
- (ix) each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Sale;
- (x) the Auction will not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an overbid at the Auction to the then prevailing highest Bid, subject to the Debtors' right to require, and in consultation with the Consultation Parties, last and final Bids to be submitted on a "blind" basis;
- (xi) the Debtors reserve the right, in their reasonable business judgment and in consultation with the Consultation Parties, to adjourn the Auction one or more times to, among other things, (a) facilitate discussions between the Debtors and Qualified Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, may require that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing amount; and
- (xii) the Auction will be governed by such other Auction Procedures as may be announced by the Debtors and their advisors, after consultation with the Consultation Parties, from time to time on the record at the Auction; *provided that* such other Auction Procedures are (a) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, or any other order of the Bankruptcy Court, (b) disclosed orally or in writing to all Qualified Bidders, and (c) determined by the Debtors, in consultation with the Consultation Parties and in good faith, to further the goal of attaining the highest or otherwise best offer for the Assets.

For the avoidance of doubt, nothing in the Auction Procedures will prevent the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors).

#### **H. Acceptance of the Successful Bid or Successful Bids.**

Upon the conclusion of the Auction (if such Auction is conducted), the Debtors, in the exercise of their reasonable, good-faith business judgment, and in consultation with the Consultation Parties, will identify the highest or otherwise best Qualified Bid or Qualified Bids for the Assets (each, a “Successful Bid”), which will be determined by considering, among other things, (a) the type and amount of Assets sought to be purchased in the Bid or Bids, (b) the total expected consideration to be received by the Debtors, (c) the likelihood of the Qualified Bidder or Qualified Bidders’ ability to close a transaction and the timing thereof (including any anticipated delays to Closing and the cost to the Debtors of such delays), (d) the expected net benefit to the estates, and (e) any other criteria as may be considered by the Debtors in their reasonable, good-faith business judgment and in consultation with the Consultation Parties. For the avoidance of doubt, the Debtors may select more than one Qualified Bid to collectively serve as a Successful Bid if each such Qualified Bid contemplates the purchase of different Assets. The Qualified Bidder or Qualified Bidders having submitted the Successful Bid or Successful Bids will be deemed the “Winning Bidder” or “Winning Bidders,” as applicable. For the avoidance of doubt, if there is no third party Winning Bidder or Winning Bidders, the Term Loan Lenders will be considered to have submitted the Successful Bid and shall be designated the Winning Bidder in accordance with the Plan. The Winning Bidder or Winning Bidders and the Debtors must, as soon as commercially reasonably practicable, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which such Successful Bid or Successful Bids were made.

The Debtors will present the results of the Auction to the Bankruptcy Court at the Confirmation Hearing (as defined herein), at which certain findings will be sought from the Bankruptcy Court regarding the Auction, including, among other things, that (a) the Auction was conducted, and the Winning Bidder or Winning Bidders were selected, in accordance with these Bidding Procedures, (b) the Auction was fair in substance and procedure, and (c) consummation of the Successful Bid or Successful Bids will provide the highest or otherwise best value for the Debtors’ Assets and is in the best interests of the Debtors’ estates.

If an Auction is held, the Debtors will be deemed to have accepted a Qualified Bid only when (a) such Qualified Bid is declared a Successful Bid at the Auction, and (b) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Bankruptcy Court of the Successful Bid or Successful Bids and entry of an order approving such Successful Bid or Successful Bids and confirming the Plan (the “Confirmation Order”).

#### **I. Confirmation Hearing.**

A hearing before the Bankruptcy Court to consider approval of the Successful Bid or Successful Bids and confirmation of the Plan (the “Confirmation Hearing”), pursuant to which the Debtors and the Winning Bidder or Winning Bidders will consummate the Sale, will be held on

August 26, 2019, at 9:00 a.m., prevailing Eastern Time, before the Honorable \_\_\_\_\_, United States Bankruptcy Judge for the Bankruptcy Court for the Southern District of New York at One Bowling Green, New York, New York 10004, and otherwise in accordance with any scheduling orders entered by the Bankruptcy Court relating to confirmation of the Plan or approval of any disclosure statement related thereto.

**The Confirmation Hearing may be continued to a later date by the Debtors by sending notice prior to, or making an announcement at, the Confirmation Hearing. No further notice of any such continuance will be required to be provided to any party.**

At the Confirmation Hearing, the Debtors will present the Plan, which will incorporate the terms of the Successful Bid or Successful Bids, to the Bankruptcy Court for confirmation.

**J. Designation of Back-Up Bidder or Back-Up Bidders.**

If for any reason the Winning Bidder or Winning Bidders fail to consummate the Qualified Bid or Qualified Bids within the time permitted after the entry of the Confirmation Order approving the Sale to the Winning Bidder or Winning Bidders, then the Qualified Bidder or Qualified Bidders with the next-highest or otherwise second-best Bid or Bids (each, a “Back-Up Bidder”), as determined by the Debtors after consultation with their advisors and the Consultation Parties, at the conclusion of the Auction and announced at that time to all the Qualified Bidders participating therein, will automatically be deemed to have submitted the highest or otherwise best Bid or Bids (each, a “Back-Up Bid”), and the Debtors will be authorized, but not required, to consummate the transaction pursuant to the Back-Up Bid or Back-Up Bids as soon as is commercially reasonable without further order of the Bankruptcy Court upon at least 24 hours advance notice, which notice will be filed with the Bankruptcy Court. Upon designation of the Back-Up Bidder or Back-Up Bidders at the Auction, the Back-Up Bid or Back-Up Bids must remain open until the Closing of the Successful Bid or Successful Bids, as applicable, notwithstanding any outside date set forth in such Back-Up Bidder or Back-Up Bidders’ proposed purchase agreement.

**K. Return of Good Faith Deposit to Qualified Bidders that Submit Qualified Bids.**

The Good Faith Deposit of the Winning Bidder or Winning Bidders will, upon consummation of the Successful Bid or Successful Bids, become property of the Debtors’ estates and be credited to the portion of the Purchase Price. If the Winning Bidder or Winning Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) fails to consummate the Successful Bid or Successful Bids (or Back-Up Bid or Back-Up Bids, if applicable), then the Good Faith Deposit of such Winning Bidder or Winning Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) will be irrevocably forfeited to the Debtors and may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors.

The Good Faith Deposit of any unsuccessful Qualified Bidders (except for the Back-Up Bidder or Back-Up Bidders and any Stalking Horse Bidders) will be returned within five business days after consummation of the Sale or upon the permanent withdrawal of the proposed Sale of the Debtors’ Assets. The Good Faith Deposit of the Back-Up Bidder or Back-Up Bidders, if any,



will be returned to such Back-Up Bidder or Back-Up Bidders no later than five business days after the Closing with the Winning Bidder or Winning Bidders for the Assets bid upon by such Back-Up Bidder or Back-Up Bidders. The return of any Good Faith Deposit of any Stalking Horse Bidders will be subject to the terms of such Stalking Horse Bidders' applicable asset purchase agreements.

All deposits shall be held in escrow and at no time shall be deemed property of the Debtors' estates absent further order of the Bankruptcy Court.

**L. Reservation of Rights.**

The Debtors reserve their rights, in consultation with the Consultation Parties, to modify these Bidding Procedures in good faith, to further the goal of attaining the highest or otherwise best offer for the Assets, or impose, at or prior to the Auction, additional customary terms and conditions on the Sale of the Assets. The Debtors shall provide notice of any such modification to any Qualified Bidder, including any Stalking Horse Bidders.

**M. Consent to Jurisdiction.**

All Qualified Bidders at the Auction will be deemed to have consented to the jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Sale, the Auction, the construction and enforcement of these Bidding Procedures, and/or the Preliminary Bid Documents, as applicable.

Any parties raising a dispute relating to these Bidding Procedures must request that such dispute be heard by the Bankruptcy Court on an expedited basis.

**N. Fiduciary Out.**

Nothing in these Bidding Procedures will require the board of directors, board of managers, or such similar governing body of a Debtor or non-debtor affiliate to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body reasonably determines in good faith, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law.

**O. Sale Is As Is/Where Is.**

The Assets sold pursuant to these Bidding Procedures will be conveyed at the Closing in their then-present condition, **“as is, with all faults, and without any warranty whatsoever, express or implied.”**

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**Exhibit 2**

**Sale Notice**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

)  
) Chapter 11  
)

HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup>

) Case No. 19-11608 (\_\_\_\_)  
)

Debtors.

) (Joint Administration Requested)  
)

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**NOTICE OF BIDDING PROCEDURES,  
POTENTIAL AUCTION, AND CONFIRMATION HEARING**

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**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the “Debtors”)<sup>2</sup> each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) on May 19, 2019 (the “Petition Date”).

**PLEASE TAKE FURTHER NOTICE** that on the Petition Date, the Debtors filed a motion [Docket No. [●]] (the “Motion”) and a chapter 11 plan of reorganization (including all exhibits thereto, and as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms, the “Plan”) seeking, among other things, the entry of an order approving (a) bidding procedures (the “Bidding Procedures”) in connection with the proposed auction (the “Auction”) and sale (the “Sale”) of some or all of the assets of the Debtors’ (the “Assets”) to one or more successful bidders under the Plan, (b) the selection of a Stalking Horse Bidder and the payment of Bid Protections, in certain instances defined in the Bidding Procedures, and (c) scheduling dates and deadlines in connection with confirmation of the Plan and approval of the Sale (the “Confirmation Schedule”).

**PLEASE TAKE FURTHER NOTICE** that on \_\_\_\_\_, 2019, the Bankruptcy Court entered an order [Docket No. [●]] (the “Bidding Procedures Order”) granting certain of the relief sought in the Motion, including, among other things, approving the Bidding Procedures and the Confirmation Schedule.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used in this notice and not immediately defined have the meanings given to such terms in the Bidding Procedures (as defined herein).

### **Contact Persons for Parties Interested in Submitting a Bid**

The Bidding Procedures set forth in detail the requirements for submitting Preliminary Bid Documents and Qualified Bids, and any person interested in making an offer to purchase the Assets **must** comply strictly with the Bidding Procedures. **Only Preliminary Bid Documents and Qualified Bids that are submitted in accordance with the Bidding Procedures will be considered by the Debtors.** Any persons interested in making an offer to purchase the Assets should contact:

Proposed Financial Advisor and Investment Banker to the Debtors	Proposed Counsel to the Debtors
<p>Houlihan Lokey Capital, Inc. 245 Park Avenue, 32nd Floor New York, New York 10167 Attn: David Salemi (DSalemi@HL.com) and Tom Hedus (THedus@HL.com)</p>	<p>Kirkland &amp; Ellis LLP 601 Lexington Avenue New York, New York 10022 Attn: Christopher T. Greco, P.C. (cgreco@kirkland.com) and Derek I. Hunter (derek.hunter@kirkland.com)</p> <p>-and-</p> <p>300 North LaSalle Chicago, Illinois 60654 Attn: Joseph M. Graham (joe.graham@kirkland.com) and Laura E. Krucks (laura.krucks@kirkland.com)</p>

### **Obtaining Information**

Copies of the Bidding Procedures Order, the Bidding Procedures, the Plan, and any other related documents are available upon request to Omni Management Group, the Debtors' notice and claims agent, by calling (844) 212-9942 (Domestic) or (818) 906-8300 (International), or by visiting the case website at [www.omningt.com/cases/hollander](http://www.omningt.com/cases/hollander).

### **The Confirmation Schedule**

1. The deadline for the Debtors to file the disclosure statement relating to the Plan (the "Disclosure Statement") is **June 12, 2019**.
2. The deadline to submit the Preliminary Bid Documents (the "Preliminary Bid Deadline") is **July 1, 2019,<sup>3</sup> at 4:00 p.m., prevailing Eastern Time**.
3. The deadline to file an objection with the Bankruptcy Court to approval of the Disclosure Statement is **July 10, 2019, at 4:00 p.m., prevailing Eastern Time** (the "Disclosure Statement Objection Deadline").
4. A hearing to consider approval of the Disclosure Statement pursuant to section 1125 of the Bankruptcy Code will be held before the Honorable \_\_\_\_\_ of the Bankruptcy Court on **July 17, 2019, at 9:00 a.m., prevailing Eastern Time**.

<sup>3</sup> Date that is fifteen calendar days after the hearing to consider approval of the Bidding Procedures.

or such other date as determined by the Bankruptcy Court, at One Bowling Green, New York, New York 10004-1408.

5. The deadline for the Debtors to distribute solicitation packages, including ballots, to holders of claims entitled to vote to accept or reject the Plan is **July 22, 2019**.
6. The deadline to submit a Qualified Bid (the “Bid Deadline”) is **July 26, 2019,<sup>4</sup> at 4:00 p.m., prevailing Eastern Time**.
7. The Auction for the Assets, if one is necessary, will commence on **August 1, 2019, at 9:00 a.m.,<sup>5</sup> prevailing Eastern Time**, at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, or at such later time or other place as the Debtors will timely notify any Stalking Horse Bidders and all other Qualified Bidders.
8. The deadline to file an objection with the Bankruptcy Court to confirmation of the Plan and/or the entry of an order approving the Sale is **August 19, 2019, at 4:00 p.m., prevailing Eastern Time** (the “Plan and Sale Objection Deadline”).
9. The deadline by which all ballots must be properly executed, completed, and delivered so that they are actually received by the Debtors’ notice, claims, and solicitation agent, Omni Management Group, is **August 19, 2019, at 4:00 p.m., prevailing Eastern Time**.
10. A hearing to consider confirmation of the Plan and approval of the proposed Sale will be held before the Honorable \_\_\_\_\_ of the Bankruptcy Court on **August 26, 2019, at 9:00 a.m., prevailing Eastern Time**, or such other date as determined by the Bankruptcy Court, at One Bowling Green, New York, New York 10004-1408.

#### **Filing Objections to the Disclosure Statement, the Plan, or the Sale**

Any objection to the Disclosure Statement, the Plan, or the Sale must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the applicable provisions of the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and any case management order entered by the Bankruptcy Court, and (d) be filed with the Bankruptcy Court and served upon, so as to be **actually received** on or prior to the Disclosure Statement Objection Deadline or the Plan and Sale Objection Deadline, as applicable, by the following parties (i) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Christopher T. Greco, P.C. (cgreco@kirkland.com) and Derek I. Hunter (derek.hunter@kirkland.com), and 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joseph M. Graham (joe.graham@kirkland.com) and Laura E. Krucks (laura.krucks@kirkland.com), (ii) counsel to the proposed DIP ABL Agent and the ABL Agent,

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<sup>4</sup> Date that is twenty-five calendar days after the Preliminary Bid Deadline.

<sup>5</sup> Date that is four business days after the Bid Deadline.

Goldberg Kohn Ltd., 55 East Monroe, Suite 3300, Chicago, Illinois 60603, Attn: Randall Klein (Randall.Klein@goldbergkohn.com), (iii) counsel to the proposed DIP Term Loan Agent and the Term Loan Agent, King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, Georgia 30309, Attn: W. Austin Jowers (ajowers@kslaw.com) and Stephen M. Blank (sblank@kslaw.com), (iv) counsel to the Sponsor, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Adam Rogoff (arogoff@kramerlevin.com), (v) counsel to any statutory committees appointed in the Debtors' chapter 11 cases, and (vi) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014, Attn: Shannon Scott and Paul Schwartzberg.

**Consequences of Failing to Timely File an Objection**

**Any party or entity who fails to timely file an objection to the Disclosure Statement, the Plan, or the Sale on or before the Disclosure Statement Objection Deadline or the Plan and Sale Objection Deadline, as applicable, in accordance with the Bidding Procedures Order, shall be forever barred from asserting any objection to the Disclosure Statement, the Plan, or the Sale of the Assets, as applicable.**

\* \* \* \* \*

THIS IS EXHIBIT "H" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.

A handwritten signature in blue ink, appearing to be "JH", is written above a horizontal line.

Commissioner for Taking Affidavits

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

HOLLANDER SLEEP PRODUCTS, LLC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 19-11608 (MEW)  
)  
) (Jointly Administered)  
)  
) **Re: Docket No. 22**

**ORDER (I) APPROVING THE BIDDING PROCEDURES, (II) SCHEDULING THE BID DEADLINES AND THE AUCTION, (III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (IV) SCHEDULING HEARINGS AND OBJECTION DEADLINES WITH RESPECT TO THE SALE, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of the above captioned debtors and debtors in possession (the “Debtors”) for the entry of an order (this “Order”), (a) authorizing and approving the bidding procedures attached hereto as **Exhibit 1** (the “Bidding Procedures”)<sup>2</sup> in connection with the sale of the Assets, (b) approving the Bid Protections, (c) establishing certain dates and deadlines, including the Preliminary Bid Deadline, the Bid Deadline, and the date of the Auction, if any, (d) approving the manner of notice of the Auction, if any, (e) scheduling dates and deadlines in connection with approval of the Sale, and (f) granting related relief, as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409;

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to them in the Bidding Procedures.



and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

**THE COURT HEREBY FINDS THAT:**

A. The Debtors have articulated good and sufficient reasons for authorizing and approving the Bidding Procedures, which are fair, reasonable, and appropriate under the circumstances and designed to maximize the recovery on, and realizable value of, the Assets, including with respect to the proposed procedures for providing Bid Protections as determined by the Debtors in an exercise of their business judgment.

B. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the preceding findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the preceding conclusions of law constitute findings of fact, they are adopted as such.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled prior to or at the Hearing are overruled.

**I. Important Dates and Deadlines.**

3. **Preliminary Bid Deadline.** July 15, 2019, at 4:00 p.m., prevailing Eastern Time, is the deadline by which any party interested in participating in the bidding process must deliver the Preliminary Bid Documents.

4. **Final Bid Deadline.** August 8, 2019, at 4:00 p.m., prevailing Eastern Time, is the deadline by which all Qualified Bids must be **actually received** by the parties specified in the Bidding Procedures.

5. **Stalking Horse Bidders and Bid Protections.** The Debtors, upon entry of this Order and at any time up until two calendar days prior to the Auction, shall be authorized, but are not obligated or directed, in an exercise of their business judgment and with the unanimous consent of the Consultation Parties, not to be unreasonably withheld, conditioned, or delayed, to select one or more Stalking Horse Bidders with respect to some or all of the Debtors' Assets and to provide such Stalking Horse Bidders with Bid Protections without further action or order by this Court; *provided* that in the event the Consultation Parties shall not unanimously agree as to the Debtors' proposed selection of a Stalking Horse Bidder and/or the provision of Bid Protections, the Debtors may file an emergency motion with the Bankruptcy Court seeking approval of such Stalking Horse Bidder and/or such Bid Protections, as applicable.

6. **Auction.** August 12, 2019, at 10:00 a.m., prevailing Eastern Time, is the date and time the Auction, if one is needed, will be held at the offices of proposed counsel to the Debtors: Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York, 10022. For the avoidance of doubt, the Debtors may also conduct more than one Auction with respect to non-overlapping material portions of the Debtors' Assets. The Debtors shall send written notice of the date, time, and place of the Auction to the Qualified Bidders no later than two business days before such Auction, and will post notice of the date, time, and place of the Auction no later than two business

days before such Auction on the website of the Debtors' notice, claims, and solicitation agent, Omni Management Group, at [www.omnimgt.com/hollander](http://www.omnimgt.com/hollander).

7. **Sale Objection Deadline.** August 28, 2019, at 4:00 p.m., prevailing Eastern Time, is the deadline by which objections to the entry of an order by the Court approving the Sale must be filed with the Court and served so as to be actually received by the appropriate notice parties.

8. **Sale Hearing.** September 4, 2019, at 11:00 a.m., prevailing Eastern Time, is the date and time for the hearing for the Court to consider the Successful Bid or Successful Bids, pursuant to which the Debtors and the Winning Bidder or Winning Bidders will consummate the Sale.

## **II. Auction, Bidding Procedures, Sale Notice, and Related Relief.**

9. The Bidding Procedures, substantially in the form attached hereto as **Exhibit 1**, are incorporated herein and are hereby approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to any proposed Sale. Any party desiring to submit a Bid shall comply with the Bidding Procedures and this Order. The Debtors are authorized to take any and all actions necessary to implement the Bidding Procedures.

10. The Bid Protections are approved on the terms set forth in the Bidding Procedures and the Debtors are authorized, but not directed, to incur and pay such Bid Protections to any or no Stalking Horse Bidder, in an exercise of their business judgment without further action or order by the Court; *provided* that, for the avoidance of doubt, the aggregate amount of the Bid Protections (consisting of any Breakup Fee, Expense Reimbursements, and Work Fees) shall not exceed three percent of any Stalking Horse Bidder's proposed Purchase Price.

11. No person or entity, other than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, break-up fees, "topping," termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or

to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

12. Any deposit provided by a Stalking Horse Bidder or other Qualified Bidder shall be held in escrow by the Debtors or their agent, and shall not become property of the Debtors' bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of the applicable escrow agreement or order of this Court.

13. The Sale Notice, substantially in the form attached hereto as **Exhibit 2**, is hereby approved. As soon as reasonably practicable following the entry of this Order, the Debtors will cause the Sale Notice to be served upon (a) the Consultation Parties, (b) the United States Attorney's Office for the Southern District of New York, (c) the Internal Revenue Service, (d) the attorneys general for the states in which the Debtors operate, (e) any parties known or reasonably believed to have expressed an interest in the Debtors' assets, (f) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in any of the Debtors' assets, and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002.

### **III. Miscellaneous.**

14. The failure to include or reference a particular provision of the Bidding Procedures specifically in this Order shall not diminish or impair the effectiveness or enforceability of such a provision.

15. In the event of any inconsistencies between this Order and the Motion and/or the Bidding Procedures, this Order shall govern in all respects.

16. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession

financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

17. The failure of the Committee to object to a credit bid put forth by any of the Agents or a designation of the Term Loan Lenders as the Winning Bidders, or the Court's approval of any such credit bid shall not (a) prejudice or impair the rights, if any, of the Committee (or other estate representative) set forth in the DIP Order to challenge the nature, extent, validity, priority, perfection, or amount of any lenders' alleged liens, security interests, and claims or (b) release the lenders from any claims and/or causes of action which can be brought against them by or on behalf of the Debtors' estates; *provided, further*, that in the event of any bid put forth by any of the Agents or a designation of the Term Loan Lenders as the Winning Bidders that includes any unencumbered Assets, the Winning Bid or Winning Bids must provide for a cash payment for those Assets.

18. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

19. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

21. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York  
Dated: July 3, 2019

**s/Michael E. Wiles**

THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Bidding Procedures**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
Debtors.	)	(Jointly Administered)

**BIDDING PROCEDURES FOR THE SUBMISSION, RECEIPT,  
AND ANALYSIS OF BIDS IN CONNECTION WITH THE  
SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS**

On May 19, 2019, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

On [●], 2019, the Bankruptcy Court entered an order [Docket No. [●]] (the “Bidding Procedures Order”) approving, among other things, these bidding procedures (the “Bidding Procedures”). These Bidding Procedures set forth the process by which the Debtors are authorized to solicit the highest or otherwise best bids (each, a “Bid”) and conduct an auction (the “Auction”) for the sale (the “Sale”) of some or all of their assets (the “Assets”).

The Sale will be implemented pursuant to the terms and conditions of the Debtors’ proposed chapter 11 plan [Docket No. 21] (as modified, amended, or supplemented from time to time, the “Plan”).<sup>2</sup> The Plan contemplates that the Debtors and the Winning Bidder or Winning Bidders will consummate the sale of the Assets through the Plan, or, if there is no third party Winning Bidder or Winning Bidders, the Term Loan Lenders will be designated the Winning Bidder and will take control of the Assets in accordance with the Plan.

Copies of the Bidding Procedures Order, the Plan, or any other documents in the Debtors’ chapter 11 cases are available upon request to Omni Management Group, by calling (844) 212-9942 (Domestic) or (818) 906-8300 (International), or by visiting [www.omningt.com/hollander](http://www.omningt.com/hollander).

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not defined herein have the meaning given to such terms in the Plan.



#### A. Participation Requirements.

To participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in submitting a Bid (a “Potential Bidder”) must, on or before July 15, 2019, at 4:00 p.m., prevailing Eastern Time (the “Preliminary Bid Deadline”), deliver such Bid (unless previously delivered) to each of (i) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Christopher T. Greco, P.C. (cgreco@kirkland.com) and Derek I. Hunter (derek.hunter@kirkland.com), and 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joseph M. Graham (joe.graham@kirkland.com) and Laura E. Krucks (laura.krucks@kirkland.com), and (ii) proposed financial advisor and investment banker to the Debtors, Houlihan Lokey Capital, Inc., 245 Park Avenue, 32nd Floor, New York, New York 10167, Attn: David Salemi (DSalemi@HL.com) and Tom Hedus (THedus@HL.com), the following documents (the “Preliminary Bid Documents”); *provided, however*, that the Debtors must consider Bids submitted by Potential Bidders after the Preliminary Bid Deadline, but such Potential Bidders will not receive any extension of time to conduct a due diligence review or to submit a Qualified Bid (as defined herein) beyond the Final Bid Deadline:

- (i) a written disclosure of the identity of each entity that will be bidding for the Assets or otherwise participating in connection with such Bid;
- (ii) an executed confidentiality agreement on terms reasonably acceptable to the Debtors (the “Confidentiality Agreement”), to the extent not already executed;
- (iii) a non-binding description of the Assets in which such Potential Bidder may be interested in placing a Bid and a non-binding preliminary estimate of the purchase price to be paid, with reasonable specificity; and
- (iv) preliminary proof by the Potential Bidder of its financial capacity to close a proposed transaction, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors and their advisors in their reasonable discretion, in consultation with the Consultation Parties (as defined herein).

The Debtors shall provide copies of any Preliminary Bid Documents received from Potential Bidders as soon as reasonably practicable, but no later than one business day after receipt thereof, to each of the following parties (each, a “Consultation Party,” and collectively, the “Consultation Parties”): (i) counsel to the proposed DIP ABL Agent and the ABL Agent, Goldberg Kohn Ltd., 55 East Monroe, Suite 3300, Chicago, Illinois 60603, Attn: Randall Klein (Randall.Klein@goldbergkohn.com); (ii) counsel to the proposed DIP Term Loan Agent and the Term Loan Agent, King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, Georgia 30309, Attn: W. Austin Jowers (ajowers@kslaw.com) and Stephen M. Blank (sblank@kslaw.com); (iii) counsel to the Sponsor, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Adam Rogoff (arogoff@kramerlevin.com); and (iv) counsel to the Official Committee of Unsecured Creditors, Pachulski Stang Ziehl & Jones, LLP, 780 Third Avenue, Suite 3400, New York, New York 10027, Attn: Bradford J. Sandler, Robert J. Feinstein

and Jeffrey Pomerantz (bsandler@pszjlaw.com, rfeinstein@pszjlaw.com, jpomerantz@pszjlaw.com) (the “Committee”); *provided* that during any period in which a Consultation Party has submitted a Qualified Bid (as defined herein) and has become a Qualified Bidder (as defined herein), such Consultation Party shall not be considered a Consultation Party for purposes of these Bidding Procedures.

Within four business days after a Potential Bidder delivers the Preliminary Bid Documents, the Debtors will determine, in their reasonable discretion and in consultation with the Consultation Parties, and notify that Potential Bidder, whether such Potential Bidder has submitted acceptable Preliminary Bid Documents (any such Potential Bidder being referred to as an “Acceptable Bidder”). The following parties shall be deemed Acceptable Bidders without the need to satisfy the requirements of this Section A: (i) the proposed DIP ABL Agent (on behalf of the DIP ABL Lenders), (ii) the proposed DIP Term Loan Agent (on behalf of the DIP Term Loan Lenders), (iii) the ABL Agent (on behalf of the ABL Lenders), and (iv) the Term Loan Agent (on behalf of the Term Loan Lenders) (collectively, the “Agents”).

## **B. Due Diligence.**

### **(i) Access to Due Diligence.**

Only Acceptable Bidders will be eligible to receive due diligence and access to additional non-public information regarding the Assets and the Debtors. The Debtors will provide to each Acceptable Bidder reasonable due diligence information concerning those Assets that are the subject of such Acceptable Bidder’s Bid (or such other Assets if the list provided in accordance with A.iii above is amended or modified), as requested by such Acceptable Bidder in writing, as soon as reasonably practicable after such request, but shall only extend to those Assets (or such other Assets if the list provided in accordance with A.iii above is amended or modified) that are the subject of such Acceptable Bidder’s Bid. The Debtors will post substantially all written due diligence provided to any Acceptable Bidder to the Debtors’ electronic data room. The due diligence period will end on the Bid Deadline (as defined herein), after which the Debtors will have no obligation to furnish any due diligence information.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors will not furnish any confidential information relating to the Debtors, the Debtors’ Assets or liabilities, or the Sale to any person except an Acceptable Bidder or such Acceptable Bidder’s duly-authorized representatives, in each case, to the extent provided in the applicable Confidentiality Agreement and only to the extent of the Assets that are the subject of such Acceptable Bidder’s Bid.

The Debtors and their financial advisors will coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided* that the Debtors may decline to provide such information to Acceptable Bidders who, in the Debtors’ reasonable business judgment, in consultation with the Consultation Parties, have not established that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate their Bid. Prior to denying access or information to an Acceptable Bidder, the Debtors shall inform the Consultation Parties. Any Acceptable Bidder that believes it has been wrongfully denied access to due diligence materials may file an emergency motion with the Bankruptcy Court seeking an

order directing such access. No conditions relating to the completion of due diligence will be permitted to exist after the Bid Deadline (as defined herein).

The Debtors also reserve the right to withhold any diligence materials that the Debtors reasonably determine are sensitive, proprietary, or otherwise not appropriate for disclosure to an Acceptable Bidder who the Debtors reasonably determine, in consultation with the Consultation Parties, is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives will be obligated to furnish information of any kind whatsoever to any person that is not determined to be an Acceptable Bidder.

Each Acceptable Bidder will be deemed to acknowledge and represent that it: (a) has had an opportunity to conduct any and all due diligence regarding the Debtors' Assets and liabilities that are the subject of the Auction to the extent of the Assets and liabilities that are the subject of their Bid prior to making any such Bids; (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid; and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise regarding the Debtors' Assets or liabilities, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures. Neither the Debtors nor any of their employees, officers, directors, affiliates, subsidiaries, representatives, agents, advisors, or professionals are responsible for, and will bear no liability with respect to, any information obtained by Acceptable Bidders in connection with the Sale.

The Debtors have designated Houlihan Lokey Capital, Inc., 245 Park Avenue, 32nd Floor, New York, New York 10167, Attn: David Salemi (DSalemi@HL.com) and Tom Hedus (THedus@HL.com), to coordinate all reasonable requests for additional information and due diligence access.

(ii) **No Communications Among Acceptable Bidders.**

There must be no communications between and amongst Acceptable Bidders (other than between the Agents, *provided* that if an Agent submits a Qualified Bid, such Agent must not communicate with the other Agents with respect to such Qualified Bid), or between Acceptable Bidders and the Consultation Parties, unless the Debtors have previously authorized such communication in writing. Should any Acceptable Bidder attempt to communicate directly with a Consultation Party, such Consultation Party shall immediately direct the Acceptable Bidder to the Debtors' counsel and investment banker. The Debtors reserve the right, in their reasonable business judgment, in consultation with the Consultation Parties, to disqualify any Acceptable Bidders that have communications between and amongst themselves; *provided* that any Acceptable Bidder that believes it has been wrongfully disqualified hereunder may file an emergency motion with the Bankruptcy Court seeking the reversal of such disqualification. The Debtors further reserve their right, in their reasonable business judgment, to disqualify any Acceptable Bidders that have communications with a Consultation Party (other than the financial and legal advisors to the Committee), and to strip any Consultation Party that violates this provision (except as otherwise provided in this paragraph) of its consultation rights hereunder; *provided* that the Debtors shall provide such Consultation Party with notice that the Debtors are exercising their rights to strip the Consultation Party of their consultation rights; *provided, further,*

that any Consultation Party that believes it has been wrongfully stripped of its consultation rights hereunder may file an emergency motion with the Bankruptcy Court seeking the reinstatement of such consultation rights. Notwithstanding anything to the contrary in these Bidding Procedures, nothing shall prevent any Agent from communicating with any other Agent or any Consultation Party about a subject other than competing Bids to the extent that such Agent submits a Qualified Bid.

### **C. Stalking Horse Bidders and Bid Protections.**

Upon entry of the Bidding Procedures Order and up until two calendar days prior to the Auction, the Debtors shall be authorized, but not obligated, in an exercise of their business judgment and with the unanimous consent of the Consultation Parties, not to be unreasonably withheld, conditioned, or delayed, to: (a) select one or more Acceptable Bidders to act as stalking horse bidders in connection with the Auction (each, a “Stalking Horse Bidder”); and (b) in connection with any stalking horse agreement with a Stalking Horse Bidder (i) provide a breakup fee (the “Breakup Fee”), (ii) agree to reimburse reasonable and documented out-of-pocket fees and expenses (the “Expense Reimbursement”), and/or (iii) agree to pay a “work fee” or other similar cash fee (the “Work Fee,” and together with the Breakup Fee and the Expense Reimbursement, the “Bid Protections”); *provided* that the aggregate amount of Bid Protections that may be paid to any or all Stalking Horse Bidders on account of foregoing subclauses (i)–(iii) shall not exceed three percent of the proposed Purchase Price (as defined herein); *provided, further*, that in the event the Consultation Parties shall not unanimously agree as to the Debtors’ proposed selection of a Stalking Horse Bidder and/or the provision of Bid Protections, the Debtors may file an emergency motion with the Bankruptcy Court seeking approval of such Stalking Horse Bidder and/or such Bid Protections, as applicable.

### **D. Bid Requirements.**

To be eligible to participate in the Auction, an Acceptable Bidder must deliver to the Debtors and their advisors, a written, irrevocable offer that must be determined by the Debtors, in their business judgment and in consultation with the Consultation Parties, to satisfy each of the following conditions (collectively, the “Bid Requirements”):

- (i) **Purpose.** Each Acceptable Bidder must state that the Bid includes an offer by the Acceptable Bidder to purchase some or all of the Assets, and identify the Assets with reasonable specificity.
- (ii) **Purchase Price.** Each Bid must clearly set forth the purchase price to be paid for the Assets (the “Purchase Price”) and must (a) indicate the source of cash consideration, including funding commitments, and confirm that such consideration is not subject to any contingencies, and (b) identify separately the cash and non-cash components of the Purchase Price. The Bid should include a detailed sources and uses schedule. All Bids for the ABL Priority Collateral (as defined in the DIP Intercreditor Agreement) must be in cash unless otherwise agreed by the proposed DIP ABL Agent (with respect to the ABL Priority Collateral). Any Bids placed by an Agent must be made in accordance with the DIP Intercreditor Agreement.

- (iii) **Bid Deposit.** Each Bid must be accompanied by a cash deposit equal to ten percent of the aggregate value of the cash and non-cash consideration of the Bid (the “Good Faith Deposit”), which will be held in an escrow account to be identified and established pursuant to the authority granted by the order authorizing the Debtors to maintain and operate their bank accounts, by wire transfer or certified or cashier’s check.
- (iv) **Committed Financing.** To the extent that a Bid is not accompanied by evidence of the Acceptable Bidder’s capacity to consummate the Sale transaction set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtors’ satisfaction, in consultation with the Consultation Parties, that demonstrates that the Acceptable Bidder has received sufficient debt and/or equity funding commitments to satisfy the Acceptable Bidder’s Purchase Price and other obligations under its Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions reasonably acceptable to the Debtors in their sole discretion. The Debtors may in their reasonable business judgment, and in consultation with the Consultation Parties, waive this condition.
- (v) **Good Faith Offer.** Each Bid must constitute a good faith, bona fide offer to purchase the Assets.
- (vi) **Marked Agreement.** Each Bid must be accompanied by clean and duly executed transaction documents including, at a minimum, a draft asset purchase agreement, the form of which will be provided to any Acceptable Bidder prior to the Bid Deadline (as defined herein), including the exhibits and schedules related thereto and any related material documents integral to such Bid pursuant to which the Acceptable Bidder proposes to effectuate the Sale, along with copies that are marked to reflect any amendments and modifications from the form asset purchase agreement provided, which amendments and modifications may not be materially more burdensome or otherwise inconsistent with these Bidding Procedures. The Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, will determine whether any such amendments and modifications are materially more burdensome.
- (vii) **No Contingencies.** A Bid must not be conditioned on any contingency, including, among others, on obtaining any of the following (a) financing, (b) shareholder, board of directors, or other approval, and/or (c) the outcome or completion of a due diligence review by the Acceptable Bidder.
- (viii) **Binding and Irrevocable.** An Acceptable Bidder’s Bid must be irrevocable unless and until the Debtors accept a higher Bid and such Acceptable Bidder is not selected as the Back-Up Bidder (as defined herein).
- (ix) **Joint Bids.** The Debtors will be authorized to approve joint Bids in their reasonable discretion, in consultation with the Consultation Parties, on a case-by-case basis.

- (x) **Adequate Assurance Information.** Each Bid must be accompanied by sufficient and adequate financial and other information (the “Adequate Assurance Information”) to demonstrate, to the reasonable satisfaction of the Debtors, in consultation with the Consultation Parties, that such Acceptable Bidder (a) has the financial wherewithal and ability to consummate the acquisition of the Assets (the “Closing”), and (b) can provide adequate assurance of future performance in connection with the proposed transaction. The Bid must also identify a contact person that parties may contact to obtain additional Adequate Assurance Information.
- (xi) **Identity & Corporate Authority.** Each Bid must fully disclose the identity of each entity that will be participating in connection with such Bid (including any equity owners or sponsors, if the purchaser is an entity formed for the purpose of consummating the acquisition of the Assets), and the complete terms of any such participation, along with sufficient evidence that the Acceptable Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties. A Bid must also fully disclose any connections or agreements with the Debtors, any known, potential, prospective bidder or Qualified Bidder (as defined herein), or any officer, director, or equity security holder of the Debtors.
- (xii) **Authorization.** Each Bid must contain evidence that the Acceptable Bidder has obtained authorization or approval from its board of directors (or a comparable governing body reasonably acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- (xiii) **No Fees.** Each Acceptable Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code; *provided* that the Debtors are authorized in their discretion, in consultation with the Consultation Parties, to provide the Bid Protections to one or more Stalking Horse Bidders in accordance with these Bidding Procedures.
- (xiv) **Adherence to Bidding Procedures.** By submitting its Bid, each Acceptable Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.
- (xv) **Regulatory Approvals and Covenants.** A Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the applicable Sale, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than thirty days following execution and delivery of the asset purchase agreement, those

actions the Acceptable Bidder will take to ensure receipt of such approvals as promptly as possible).

- (xvi) **Collective Bargaining Agreements.** Each Bid must set forth the Acceptable Bidder's position with respect to the assumption of any collective bargaining agreements that may be applicable to such Bid.
- (xvii) **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder (a) has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Acceptable Bidder's proposed purchase and sale agreement for the Assets.
- (xviii) **Time Frame for Closing.** A Bid by an Acceptable Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame reasonably acceptable to the Debtors in consultation with the Consultation Parties.
- (xix) **Consent to Jurisdiction.** The Acceptable Bidder must submit to the jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bidding Procedures, the Plan, the Sale documents, and the Closing, as applicable.
- (xx) **DIP Order.** All Bids must be in accordance with the terms and conditions of the DIP Order and the DIP Credit Agreements.

Bids fulfilling all of the preceding requirements, as determined by the Debtors and their advisors, in consultation with the Consultation Parties, will be deemed to be "Qualified Bids," and those parties submitting Qualified Bids will be deemed to be "Qualified Bidders." All information disclosed by any bidder in connection with all of the preceding requirements will be made available by the Debtors to the Consultation Parties promptly upon the Debtors' receipt thereof but in any event no later than one business day following the Debtors' receipt of such information; *provided* that any confidential financing and/or equity commitment documents received from a bidder shall only be shared with the Consultation Parties on a professional-eyes'-only basis. The Debtors reserve the right, in consultation with the Consultation Parties, to work with any Acceptable Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple Bids for non-overlapping material portions of the Debtors' Assets such that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders will be treated as a single Qualified Bidder for purposes of the Auction; *provided*

that the Debtors also reserve the right, in consultation with the Consultation Parties, to conduct more than one Auction with respect to non-overlapping material portions of the Debtors' Assets).

Within two business days after the Bid Deadline (as defined herein), the Debtors and their advisors, in consultation with the Consultation Parties, will determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted constitute, alone or together with other Bids, Qualified Bids so as to enable such Qualified Bidders to bid at the Auction. Any Bid that is not deemed a Qualified Bid will not be considered by the Debtors. For the avoidance of doubt, any Acceptable Bidders designated as Stalking Horse Bidders by the Debtors in consultation with the Consultation Parties and in accordance with these Bidding Procedures will be deemed to be Qualified Bidders, and any stalking horse asset purchase agreements submitted by such Stalking Horse Bidders will be deemed Qualified Bids, which qualify such Stalking Horse Bidders to participate in the Auction as Qualified Bidders. The Agents shall be deemed Qualified Bidders without the need to satisfy the requirements of this Section D.

**Qualified Bids must be received by each of the Debtors and their advisors so as to be actually received no later than August 8, 2019, at 4:00 p.m., prevailing Eastern Time (the "Bid Deadline").**

**E. Evaluation of Qualified Bids.**

Prior to the Auction, the Debtors and their advisors will evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, the highest or otherwise best Bid (the "Initial Minimum Overbid"). For the avoidance of doubt, the Debtors may select more than one Qualified Bid to collectively serve as the Initial Minimum Overbid if each such Qualified Bid contemplates the purchase of different Assets. In making such determination, the Debtors will take into account, among other things, (i) the amount of the Qualified Bid, (ii) the impact on landlords, vendors, and employees, (iii) the certainty of a Qualified Bid leading to a confirmed plan, and (iv) the execution risk attendant to any submitted Bids. Within 24 hours of such determination, but in no event later than the start of the Auction, the Debtors will (1) notify the Consultation Parties and any Stalking Horse Bidders as to which Qualified Bid is the Initial Minimum Overbid and (2) distribute copies of the Initial Minimum Overbid to each Qualified Bidder who has submitted a Qualified Bid and the Consultation Parties.

If any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors will refund such Acceptable Bidder's Good Faith Deposit and all accumulated interest thereon on or within five business days after the Bid Deadline.

**F. No Qualified Bids.**

If no Qualified Bids are received by the Bid Deadline, then the Auction will not occur, the Term Loan Lenders will be deemed the Winning Bidder, and the Debtors will pursue entry of an order by the Bankruptcy Court confirming the Plan at the Sale Hearing (as defined herein).



**G. Auction.**

If one or more Qualified Bids is received by the Bid Deadline, the Debtors will conduct the Auction with respect to the Debtors' Assets. For the avoidance of doubt, the Debtors may also conduct more than one Auction with respect to non-overlapping material portions of the Debtors' Assets. The Auction will commence on August 12, 2019, at 10:00 a.m., prevailing Eastern Time, at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, or such later time or other place as the Debtors will timely notify any Stalking Horse Bidders and all other Qualified Bidders, in consultation with the Consultation Parties.

The Auction will be conducted in accordance with the following procedures (the "Auction Procedures"):

- (i) the Auction will be conducted openly;
- (ii) only the Qualified Bidders, including any Stalking Horse Bidders and the Agents, will be entitled to bid at the Auction;
- (iii) the Qualified Bidders, including any Stalking Horse Bidders and the Agents, must appear in person or through duly-authorized representatives at the Auction;
- (iv) only such authorized representatives of each of the Qualified Bidders (including any Stalking Horse Bidders), the Debtors, their respective advisors, the Committee members, and the advisors to the Consultation Parties will be permitted to attend the Auction;
- (v) bidding at the Auction will begin at the Initial Minimum Overbid;
- (vi) subsequent Bids at the Auction, including any Bids by any Stalking Horse Bidder, must be made in minimum increments of \$1 million (or such other amount as the Debtors may determine in consultation with the Consultation Parties, which amount may be higher or lower than \$1 million) of additional value after payment of the Bid Protections to any Stalking Horse Bidders, if applicable;
- (vii) each Qualified Bidder will be informed of the terms of the previous Bids;
- (viii) the bidding will be transcribed to ensure an accurate recording of the bidding at the Auction;
- (ix) each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Sale;
- (x) the Auction will not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an overbid at the Auction to the then prevailing highest Bid, subject to the Debtors' right to require, and in consultation with the Consultation Parties, last and final Bids to be submitted on a "blind" basis;

- (xi) the Debtors reserve the right, in their reasonable business judgment and in consultation with the Consultation Parties, to adjourn the Auction one or more times to, among other things, (a) facilitate discussions between the Debtors and Qualified Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, may require that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing amount; and
- (xii) the Auction will be governed by such other Auction Procedures as may be announced by the Debtors and their advisors, after consultation with the Consultation Parties, from time to time on the record at the Auction; *provided that* such other Auction Procedures are (a) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, or any other order of the Bankruptcy Court, (b) disclosed orally or in writing to all Qualified Bidders, and (c) determined by the Debtors, in consultation with the Consultation Parties and in good faith, to further the goal of attaining the highest or otherwise best offer for the Assets.

For the avoidance of doubt, nothing in the Auction Procedures will prevent the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors).

#### **H. Acceptance of the Successful Bid or Successful Bids.**

Upon the conclusion of the Auction (if such Auction is conducted), the Debtors, in the exercise of their reasonable, good-faith business judgment, and in consultation with the Consultation Parties, will identify the highest or otherwise best Qualified Bid or Qualified Bids for the Assets (each, a “Successful Bid”), which will be determined by considering, among other things, (a) the type and amount of Assets sought to be purchased in the Bid or Bids, (b) the total expected consideration to be received by the Debtors, (c) the likelihood of the Qualified Bidder or Qualified Bidders’ ability to close a transaction and the timing thereof (including any anticipated delays to Closing and the cost to the Debtors of such delays), (d) the expected net benefit to the estates, (e) the impact on vendors, landlords, and employees, including, but not limited to, any union, (f) the certainty of the Debtors being able to confirm a plan (whether the Plan or some other plan), and (g) any other criteria as may be considered by the Debtors in their reasonable, good-faith business judgment and in consultation with the Consultation Parties. For the avoidance of doubt, the Debtors may select more than one Qualified Bid to collectively serve as a Successful Bid if each such Qualified Bid contemplates the purchase of different Assets. The Qualified Bidder or Qualified Bidders having submitted the Successful Bid or Successful Bids will be deemed the “Winning Bidder” or “Winning Bidders,” as applicable. For the avoidance of doubt, if there is no third party Winning Bidder or Winning Bidders, the Term Loan Lenders will be considered to have submitted the Successful Bid and shall be designated the Winning Bidder in accordance with the Plan. The Winning Bidder or Winning Bidders and the Debtors must, as soon as commercially reasonably practicable, complete and sign all agreements, contracts, instruments, or other

documents evidencing and containing the terms upon which such Successful Bid or Successful Bids were made.

The Debtors will present the results of the Auction to the Bankruptcy Court at the Sale Hearing (as defined herein), at which certain findings will be sought from the Bankruptcy Court regarding the Auction, including, among other things, that (a) the Auction was conducted, and the Winning Bidder or Winning Bidders were selected, in accordance with these Bidding Procedures, (b) the Auction was fair in substance and procedure, and (c) consummation of the Successful Bid or Successful Bids will provide the highest or otherwise best value for the Debtors' Assets and is in the best interests of the Debtors' estates.

If an Auction is held, the Debtors will be deemed to have accepted a Qualified Bid only when (a) such Qualified Bid is declared a Successful Bid at the Auction, and (b) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Bankruptcy Court of the Successful Bid or Successful Bids and entry of an order approving such Successful Bid or Successful Bids and confirming the Plan (the "Confirmation Order").

#### **I. Sale Hearing.**

A hearing before the Bankruptcy Court to consider approval of the Successful Bid or Successful Bids (the "Sale Hearing"), pursuant to which the Debtors and the Winning Bidder or Winning Bidders will consummate the Sale, will be held on September 4, 2019, at 11:00 a.m., prevailing Eastern Time, before the Honorable Michael E. Wiles, United States Bankruptcy Judge for the Bankruptcy Court for the Southern District of New York at One Bowling Green, New York, New York 10004.

**The Sale Hearing may be continued to a later date by the Debtors by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.**

At the Sale Hearing, the Debtors will present the Successful Bid or Successful Bids to the Bankruptcy Court for approval.

#### **J. Designation of Back-Up Bidder or Back-Up Bidders.**

If for any reason the Winning Bidder or Winning Bidders fail to consummate the Qualified Bid or Qualified Bids within the time permitted after the entry of the Confirmation Order approving the Sale to the Winning Bidder or Winning Bidders, then the Qualified Bidder or Qualified Bidders with the next-highest or otherwise second-best Bid or Bids (each, a "Back-Up Bidder"), as determined by the Debtors after consultation with their advisors and the Consultation Parties, at the conclusion of the Auction and announced at that time to all the Qualified Bidders participating therein, will automatically be deemed to have submitted the highest or otherwise best Bid or Bids (each, a "Back-Up Bid"), and the Debtors will be authorized, but not required, to consummate the transaction pursuant to the Back-Up Bid or Back-Up Bids as soon as is commercially reasonable without further order of the Bankruptcy Court upon at least 24 hours advance notice, which notice will be filed with the Bankruptcy Court. Upon designation of the Back-Up Bidder or Back-Up Bidders at the Auction, the Back-Up Bid or Back-Up Bids must

remain open until the Closing of the Successful Bid or Successful Bids, as applicable, notwithstanding any outside date set forth in such Back-Up Bidder or Back-Up Bidders' proposed purchase agreement.

**K. Return of Good Faith Deposit to Qualified Bidders that Submit Qualified Bids.**

The Good Faith Deposit of the Winning Bidder or Winning Bidders will, upon consummation of the Successful Bid or Successful Bids, become property of the Debtors' estates and be credited to the portion of the Purchase Price. If the Winning Bidder or Winning Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) fails to consummate the Successful Bid or Successful Bids (or Back-Up Bid or Back-Up Bids, if applicable), then the Good Faith Deposit of such Winning Bidder or Winning Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) will be irrevocably forfeited to the Debtors and may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors.

The Good Faith Deposit of any unsuccessful Qualified Bidders (except for the Back-Up Bidder or Back-Up Bidders and any Stalking Horse Bidders) will be returned within five business days after consummation of the Sale or upon the permanent withdrawal of the proposed Sale of the Debtors' Assets. The Good Faith Deposit of the Back-Up Bidder or Back-Up Bidders, if any, will be returned to such Back-Up Bidder or Back-Up Bidders no later than five business days after the Closing with the Winning Bidder or Winning Bidders for the Assets bid upon by such Back-Up Bidder or Back-Up Bidders. The return of any Good Faith Deposit of any Stalking Horse Bidders will be subject to the terms of such Stalking Horse Bidders' applicable asset purchase agreements.

All deposits shall be held in escrow and at no time shall be deemed property of the Debtors' estates absent further order of the Bankruptcy Court.

**L. Reservation of Rights.**

The Debtors reserve their rights, in consultation with the Consultation Parties, to modify these Bidding Procedures in good faith, to further the goal of attaining the highest or otherwise best offer for the Assets, or impose, at or prior to the Auction, additional terms and conditions on the Sale of the Assets. The Debtors shall provide notice of any such modification to any Qualified Bidder, including any Stalking Horse Bidders. Notwithstanding anything to the contrary herein, the Debtors, in consultation with the Consultation Parties, may elect to consummate the Sale under section 363(f) of the Bankruptcy Code as opposed to pursuant to the Plan with the Winning Bidder or Winning Bidders, but, for the avoidance of doubt, the Debtors prefer that the Sale be accomplished through the Plan.

**M. Consent to Jurisdiction.**

All Qualified Bidders at the Auction will be deemed to have consented to the jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Sale, the Auction, the construction and enforcement of these Bidding Procedures, and/or the Preliminary Bid Documents, as applicable.

Any parties raising a dispute relating to these Bidding Procedures must request that such dispute be heard by the Bankruptcy Court on an expedited basis.

**N. Fiduciary Out.**

Nothing in these Bidding Procedures will require the board of directors, board of managers, or such similar governing body of a Debtor or non-debtor affiliate to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body reasonably determines in good faith, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law.

**O. Sale Is As Is/Where Is.**

The Assets sold pursuant to these Bidding Procedures will be conveyed at the Closing in their then-present condition, **“as is, with all faults, and without any warranty whatsoever, express or implied.”**

\* \* \* \* \*

**Exhibit 2**

**Sale Notice**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF BIDDING PROCEDURES,  
POTENTIAL AUCTION, AND SALE HEARING**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the “Debtors”)<sup>2</sup> each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) on May 19, 2019 (the “Petition Date”).

**PLEASE TAKE FURTHER NOTICE** that on the Petition Date, the Debtors filed a motion [Docket No. 22] (the “Motion”) and a chapter 11 plan of reorganization (including all exhibits thereto, and as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms, the “Plan”) seeking, among other things, the entry of an order approving (a) bidding procedures (the “Bidding Procedures”) in connection with the proposed auction (the “Auction”) and sale (the “Sale”) of some or all of the assets of the Debtors’ (the “Assets”) to one or more successful bidders under the Plan, (b) the selection of a Stalking Horse Bidder and the payment of Bid Protections, in certain instances defined in the Bidding Procedures, and (c) scheduling dates and deadlines in connection with approval of the Sale (the “Sale Schedule”).

**PLEASE TAKE FURTHER NOTICE** that on \_\_\_\_\_, 2019, the Bankruptcy Court entered an order [Docket No. [•]] (the “Bidding Procedures Order”) granting certain of the relief sought in the Motion, including, among other things, approving the Bidding Procedures and the Sale Schedule.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used in this notice and not immediately defined have the meanings given to such terms in the Bidding Procedures (as defined herein).

### **Contact Persons for Parties Interested in Submitting a Bid**

The Bidding Procedures set forth in detail the requirements for submitting Preliminary Bid Documents and Qualified Bids, and any person interested in making an offer to purchase the Assets **must** comply strictly with the Bidding Procedures. **Only Preliminary Bid Documents and Qualified Bids that are submitted in accordance with the Bidding Procedures will be considered by the Debtors.** Any persons interested in making an offer to purchase the Assets should contact:

Proposed Financial Advisor and Investment Banker to the Debtors	Proposed Counsel to the Debtors
<p>Houlihan Lokey Capital, Inc. 245 Park Avenue, 32nd Floor New York, New York 10167 Attn: David Salemi (DSalemi@HL.com) and Tom Hedus (THedus@HL.com)</p>	<p>Kirkland &amp; Ellis LLP 601 Lexington Avenue New York, New York 10022 Attn: Christopher T. Greco, P.C. (cgreco@kirkland.com) and Derek I. Hunter (derek.hunter@kirkland.com)</p> <p>-and-</p> <p>300 North LaSalle Chicago, Illinois 60654 Attn: Joseph M. Graham (joe.graham@kirkland.com) and Laura E. Krucks (laura.krucks@kirkland.com)</p>

### **Obtaining Information**

Copies of the Bidding Procedures Order, the Bidding Procedures, the Plan, and any other related documents are available upon request to Omni Management Group, the Debtors' notice and claims agent, by calling (844) 212-9942 (Domestic) or (818) 906-8300 (International), or by visiting the case website at [www.omningt.com/cases/hollander](http://www.omningt.com/cases/hollander).

### **The Sale Schedule**

1. The deadline to submit the Preliminary Bid Documents (the "**Preliminary Bid Deadline**") is **July 15, 2019, at 4:00 p.m., prevailing Eastern Time.**
2. The deadline to submit a Qualified Bid (the "**Bid Deadline**") is **August 8, 2019, at 4:00 p.m., prevailing Eastern Time.**
3. The Auction for the Assets, if one is necessary, will commence on **August 12, 2019, at 10:00 a.m., prevailing Eastern Time,** at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, or at such later time or other place as the Debtors will timely notify any Stalking Horse Bidders and all other Qualified Bidders.
4. The deadline to file an objection with the Bankruptcy Court to the entry of an order approving the Sale is **August 28, 2019, at 4:00 p.m., prevailing Eastern Time** (the "**Sale Objection Deadline**").



5. A hearing to consider approval of the proposed Sale will be held before the Honorable Michael E. Wiles of the Bankruptcy Court on **September 4, 2019, at 11:00 a.m., prevailing Eastern Time**, or such other date as determined by the Bankruptcy Court, at One Bowling Green, New York, New York 10004-1408.

**Filing Objections to the Disclosure Statement, the Plan, or the Sale**

Any objection to the Sale must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the applicable provisions of the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and any case management order entered by the Bankruptcy Court, and (d) be filed with the Bankruptcy Court and served upon, so as to be **actually received** on or prior to the Sale Objection Deadline by the following parties (i) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Christopher T. Greco, P.C. (cgreco@kirkland.com) and Derek I. Hunter (derek.hunter@kirkland.com), and 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joseph M. Graham (joe.graham@kirkland.com) and Laura E. Krucks (laura.krucks@kirkland.com), (ii) counsel to the proposed DIP ABL Agent and the ABL Agent, Goldberg Kohn Ltd., 55 East Monroe, Suite 3300, Chicago, Illinois 60603, Attn: Randall Klein (Randall.Klein@goldbergkohn.com), (iii) counsel to the proposed DIP Term Loan Agent and the Term Loan Agent, King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, Georgia 30309, Attn: W. Austin Jowers (ajowers@kslaw.com) and Stephen M. Blank (sblank@kslaw.com), (iv) counsel to the Sponsor, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Adam Rogoff (arogoff@kramerlevin.com), (v) counsel to the Official Committee of Unsecured Creditors, Pachulski Stang Ziehl & Jones, LLP, 780 Third Avenue, Suite 3400, New York, New York 10027, Attn: Bradford J. Sandler, Robert J. Feinstein and Jeffrey Pomerantz (bsandler@pszjlaw.com, rfeinstein@pszjlaw.com, jpomerantz@pszjlaw.com), and (vi) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014, Attn: Shannon Scott and Paul Schwartzberg.

**Consequences of Failing to Timely File an Objection**

**Any party or entity who fails to timely file an objection to the Sale on or before the Sale Objection Deadline in accordance with the Bidding Procedures Order, shall be forever barred from asserting any objection to the Sale of the Assets.**

\* \* \* \* \*

THIS IS EXHIBIT "I" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3 , 2019.

A handwritten signature in blue ink, appearing to be "JH" followed by a long horizontal stroke.

---

Commissioner for Taking Affidavits

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 19-11608 (MEW)  
)  
) (Jointly Administered)  
)  
) **Re: Docket No. 6**

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY  
PREPETITION CLAIMS OF (A) LIEN CLAIMANTS, (B) IMPORT CLAIMANT,  
(C) 503(B)(9) CLAIMANTS, (D) FOREIGN VENDORS, AND (E) CRITICAL VENDORS,  
(II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING  
ORDERS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of this final order (this “Final Order”), (a) authorizing the Debtors to pay in the ordinary course of business prepetition claims held by certain (i) Lien Claimants, (ii) Import Claimant, (iii) 503(b)(9) Claimants, (iv) Foreign Vendors, and (v) Critical Vendors, collectively, in an amount not to exceed \$4.0 million on an interim basis and \$6.0 million on a final basis, (b) confirming the administrative expense priority of outstanding orders, and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay the Vendor Obligations in an aggregate amount not to exceed \$6.0 million on a final basis; *provided, however,* that the Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay Critical Vendor Claims and Foreign Vendor Claims upon such terms and in the manner provided in this Final Order and the Motion if (i) such claims are afforded priority under section 503(b)(9) of the Bankruptcy Code, (ii) the Debtors determine that the failure to make such payment creates an immediate risk of (a) causing an environmental hazard or posing significant risk to the environment or (b) posing a threat to health and public safety, or (iii) the Debtors determine that in the absence of making such payment, the Debtors would suffer a loss of value in excess of such payment amount and the Debtors determine that there is a risk of immediate loss of value if they do not make such payment.

3. The Debtors are authorized, but not directed, in their sole discretion, to require that, as a condition to receiving any payment under this Final Order, a payee maintain or apply, as applicable, Customary Terms subject to the following:

- a. The Debtors shall provide the Official Committee of Unsecured Creditors' (the "UCC") professionals with a list, which may be provided by electronic mail, of any Critical Vendors sought to be paid (the "Critical Vendor List"), which shall identify the following information to the extent that such information is reasonably available to the Debtors: (i) the Debtor(s) against which the Critical Vendor is asserting a claim; (ii) the amount of the Critical Vendor Claim; (iii) the Critical Vendor; (iv) the basis for the Critical Vendor Claim, including the amount of such claim that is entitled to priority under section 503(b)(9) of the Bankruptcy Code and the amount that is a general unsecured claim; and (v) any other information reasonably requested by the UCC; *provided* that the UCC's professionals shall keep the Critical Vendor List confidential and not disclose any of the information in the matrix to anyone including but not limited to any member of the UCC without the prior written consent of the Debtors.
- b. The UCC shall have through 5:00 p.m. prevailing Eastern Time on the second day after receipt of the Critical Vendor List to review the Critical Vendor List (the "List Review Period") and notify the Debtors in writing, which may be by electronic mail, of any issues with respect to the payment of any Critical Vendor above \$500,000.
- c. If the UCC does not notify the Debtors of any issues by the expiration of the List Review Period, or if the UCC consents to the proposed Critical Vendor payments before expiration of the List Review Period, the Debtors shall be permitted to pay the respective Critical Vendors, subject to the terms of this Final Order.
- d. If the UCC timely notifies the Debtors of any issue with respect to any Critical Vendor payment prior to the expiration of the List Review Period (a "Questioned Payment"), then the Debtors and the UCC shall attempt to resolve the issues surrounding such payment consensually. If no consensual resolution is reached by the date that is five days following delivery of notice of the proposed payment (the "Resolution Date"), the UCC may file a formal objection on the docket and any such objection shall be resolved by the Court at a hearing to be scheduled at the Court's earliest convenience. If the UCC fails to object within two business days of the Resolution Date, the Debtors shall be authorized to make the proposed payment without further Court order; *provided* that the Debtors may pay any other Critical Vendor Claim on the Critical Vendor List other than any Questioned Payment.

- e. The Debtors shall provide to the UCC a weekly reporting of all prior Critical Vendor amounts paid from the Petition Date through the date of the Critical Vendor report; *provided* that the Debtors shall only be required to provide such reporting in weeks following additional Critical Vendor payments.

4. The Debtors' reserve the right to require more favorable trade terms with any holder of a Vendor Obligation as a condition to payment of any prepetition claim. If a payee, after receiving a payment under this Final Order, ceases to provide Customary Terms, then the Debtors may, in their sole judgment, deem such payment to apply instead to any postpetition amount that may be owing to such payee or treat such payment as an avoidable postpetition transfer of property. Any party that accepts payment from the Debtors on account of a Vendor Obligation shall be deemed to have agreed to the terms and provisions of this Final Order.

5. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

8. Notwithstanding the relief granted in this Final Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

10. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

12. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

New York, New York  
Dated: July 2, 2019

s/Michael E. Wiles  
THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE



THIS IS EXHIBIT "J" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.

A handwritten signature in blue ink, appearing to be "JH" followed by a long horizontal stroke.

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Commissioner for Taking Affidavits

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 19-11608 (MEW)  
)  
) (Jointly Administered)  
)  
) **Re: Docket No. 5**

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION  
EMPLOYEE WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE  
EMPLOYEE EXPENSES AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS  
AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) authorizing the Debtors to (i) pay certain prepetition employee wages, salaries, other compensation, and reimbursable employee expenses, and (ii) continue employee benefits programs in the ordinary course, including payment of certain prepetition obligations related thereto, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue and/or modify, change, or discontinue the Employee Compensation and Benefits Programs all in accordance with historical practice and to honor and pay, in the ordinary course and in accordance with the Debtors' prepetition policies and prepetition practices, any obligations on account of the Employee Compensation and Benefits Programs, irrespective of whether such obligations arose prepetition or postpetition.
3. Nothing herein shall be deemed to authorize the payment of any prepetition amounts above the statutory cap imposed by section 507(a)(4) of the Bankruptcy Code with respect to prepetition amounts owed on account of the Employee Compensation and Benefits Programs, except upon further order of this Court.
4. Nothing herein shall be deemed to authorize the payment of any amounts which violates or implicates section 503(c) of the Bankruptcy Code, *provided* that nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.
5. Pursuant to section 362(d) of the Bankruptcy Code, (a) Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative

forum under the Workers' Compensation Program, and the Debtors are authorized to pay all prepetition amounts relating thereto in the ordinary course of business and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived, *provided, however*, that no collateral or letters of credit shall be increased on account of any current policies or future policies absent prior consent of the Official Committee of Unsecured Creditors appointed in these chapter 11 cases (not to be unreasonably withheld, conditioned, or delayed) or further Court order. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program and any such claims must be pursued in accordance with the applicable Workers' Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

6. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in

interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, *provided* that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

9. Notwithstanding the relief granted in this Final Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

13. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

New York, New York  
Dated: July 2, 2019

**s/Michael E. Wiles**

THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**THIS IS EXHIBIT "K" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3 , 2019.**

A handwritten signature in blue ink, appearing to be "LH" followed by a long horizontal stroke.

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**Commissioner for Taking Affidavits**

Hearing Date and Time: June 13, 2019, at 11:00 a.m. (prevailing Eastern Time)

Objection Deadline: June 6, 2019, at 4:00 p.m. (prevailing Eastern Time)

Joshua A. Sussberg, P.C.  
 Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
 601 Lexington Avenue  
 New York, New York 10022  
 Telephone: (212) 446-4800  
 Facsimile: (212) 446-4900

Joseph M. Graham (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
 300 North LaSalle  
 Chicago, Illinois 60654  
 Telephone: (312) 862-2000  
 Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO (A) RETAIN CARL MARKS ADVISORY GROUP LLC TO PROVIDE THE DEBTORS A CHIEF EXECUTIVE OFFICER, A CHIEF FINANCIAL OFFICER, AND ADDITIONAL PERSONNEL AND (B) APPOINT THE CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER *NUNC PRO TUNC* TO THE PETITION DATE**

**PLEASE TAKE NOTICE** that a hearing on the *Debtors' Motion for Entry of an Order Authorizing the Debtors to (A) Retain Carl Marks Advisory Group LLC to Provide the Debtors a Chief Executive Officer, a Chief Financial Officer, and Additional Personnel and (B) Appoint the Chief Executive Officer and Chief Financial Officer Nunc Pro Tunc to the Petition Date* (the "Motion") will be held before the Honorable Michael E. Wiles, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York (the "Court"), One

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.



Bowling Green, Courtroom No. 617, New York, New York 10004-1408, on **June 13, 2019, at 11:00 a.m., prevailing Eastern Time.**

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the relief requested in the Motion shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York; (c) be filed electronically with the Court on the docket of *In re Hollander Sleep Products, LLC*, Case 19-11608 (MEW) by registered users of the Court's electronic filing system and in accordance with the General Order M-399 (which is available on the Court's website at <http://www.nysb.uscourts.gov>); and (d) be served so as to be actually received by **June 6, 2019, at 4:00 p.m., prevailing Eastern Time**, by (i) the entities on the master service list (available on the Debtors' case website at [www.omnimgt.com/hollander](http://www.omnimgt.com/hollander)) and (ii) any person or entity with a particularized interest in the subject matter of the Motion.

**PLEASE TAKE FURTHER NOTICE** that only those responses that are timely filed, served, and received will be considered at the hearing. Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the Debtors.

New York, New York  
Dated: May 30, 2019

/s/ Joshua A. Sussberg, P.C.

Joshua A. Sussberg, P.C.

Christopher T. Greco, P.C.

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

601 Lexington Avenue

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Telephone: (212) 446-4800

Facsimile: (212) 446-4900

- and -

Joseph M. Graham (admitted *pro hac vice*)

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

300 North LaSalle Street

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in  
Possession*

Hearing Date and Time: June 13, 2019, at 11:00 a.m. (prevailing Eastern Time)

Objection Deadline: June 6, 2019, at 4:00 p.m. (prevailing Eastern Time)

Joshua A. Sussberg, P.C.  
 Christopher T. Greco, P.C.  
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 Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO (A) RETAIN CARL MARKS ADVISORY GROUP LLC TO PROVIDE THE DEBTORS A CHIEF EXECUTIVE OFFICER, A CHIEF FINANCIAL OFFICER, AND ADDITIONAL PERSONNEL AND (B) APPOINT THE CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER *NUNC PRO TUNC* TO THE PETITION DATE**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion:

**Relief Requested**

1. Pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), the Debtors request entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing the engagement of Carl Marks Advisory Group LLC ("CMAG"), effective as of May 19, 2019 (the "Petition")

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

Date”), in accordance with the fee structure described below and pursuant to the terms and conditions of that certain agreement (as amended, the “Engagement Letter”)<sup>2</sup> between CMAG and the Debtors, dated May 17, 2019, and attached hereto as Exhibit C.

2. The Engagement Letter provides that Marc Pfefferle will serve as Chief Executive Officer (the “CEO”) and Scott Pasquith will serve as Chief Financial Officer (the “CFO”) to assist the Debtors with all phases of these chapter 11 cases. The Engagement Letter also provides for the services of additional staff (the “Additional Personnel,” and together with the CEO and CFO, the “CMAG Professionals”) to assist the Debtors with their restructuring process. In accordance with the Engagement Letter, the CEO and CFO will serve as executive officers of the Debtors.

### **Jurisdiction and Venue**

3. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

---

<sup>2</sup> In the event of any inconsistencies between the description of the CMAG engagement described in this motion and the terms of the Engagement Letter, the Engagement Letter shall control. While the Engagement Letter was entered into as of May 17, 2019, CMAG has been retained by the Debtors since March 28, 2019, pursuant to a prior engagement letter, which was amended by the Engagement Letter entered into as of May 17, 2019, and again by Amendment No. 1 to Amended Advisory Agreement, dated May 28, 2019.

5. The statutory bases for the relief requested herein are sections 105(a) and 363(b) of the Bankruptcy Code, Bankruptcy Rule 2016, and Rule 2016-1 of the Local Bankruptcy Rules for the Southern District of New York.

### **Background**

6. Hollander Sleep Products is the largest pillow and mattress pad manufacturer in North America. The Debtors also manufacture comforters and other basic bedding products. The Debtors have their own brands, including Great Sleep®, I AM®, LC®, PCF®, and Restful Nights®, and also manufacture and sell licensed brands, including Simmons®, Ralph Lauren®, CHAPS®, Calvin Klein®, Therapedic®, Nautica®, 37.5®, and Dr. Maas®. The Debtors are headquartered in Boca Raton, Florida, operate a main showroom in New York City, and have thirteen manufacturing facilities throughout the United States and Canada. The Debtors generated approximately \$527 million in net revenue in fiscal year 2018 and currently employ more than 2,300 people across the United States and Canada. As of the Petition Date, the Debtors had approximately \$233 million in funded debt.

7. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are being jointly administered. As of the date hereof, no party has requested the appointment of a trustee or an examiner in these chapter 11 cases. On May 30, 2019, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code.

### **The Retention of CMAG**

8. In consideration of the size and complexity of their business, the Debtors have determined that the services of experienced restructuring managers will substantially enhance their attempts to successfully reorganize and maximize the value of their estates. The CMAG Professionals are well qualified to act on the Debtors' behalf given their extensive knowledge and expertise regarding chapter 11 proceedings.

9. The CMAG Professionals specialize in business performance improvement, crisis management, turnaround consulting, reorganization services, operating due diligence, creditor advising, and financial/operational restructuring. CMAG's debtor advisory services have included a range of activities targeted at stabilizing and improving a company's financial position, including developing or validating forecasts and business plans and related assessments of a business's strategic position, monitoring and managing cash, cash flow, and supplier relationships, assessing and recommending cost reduction strategies, and designing and negotiating financial restructuring packages.

10. CMAG is also familiar with the Debtors' business operations, financial affairs, and capital structure. Since the firm's initial retention in March, Marc Pfefferle has served as the Debtors' CEO, and CMAG Professionals have worked closely with the Debtors' management and other professionals in assisting with the Debtors' reorganization and restructuring efforts. Consequently, the Debtors believe that CMAG has developed the necessary experience and expertise regarding the Debtors and is thus both well qualified and uniquely suited to deal effectively and efficiently with matters that may arise in the context of these chapter 11 cases. Accordingly, the Debtors submit that the retention of CMAG on the terms and conditions set forth herein is necessary and appropriate, is in the best interests of their estates, creditors, and all other parties in interest, and should be granted in all respects.

**Scope of Services**

11. Among other things, the CMAG Professionals will provide assistance to the Debtors with respect to (a) overseeing overall management of the Debtors through the CEO, (b) providing the Debtors with a CFO, (c) reviewing and assessing the Debtors' financial information, including without limitation their short and long-term projected cash flows, (d) assisting in the identification of cost reduction and operational improvement opportunities, (e) developing restructuring plans or strategic alternatives for maximizing the enterprise value of the Debtors' business, (f) serving as the principal contact with the Debtors' creditors and other parties in interest with respect to financial and operational matters, and (g) performing such other services in connection with the restructuring process as reasonably requested or directed by the Debtors' board of directors and other authorized company personnel. These services are necessary to enable the Debtors to maximize the value of their estates and successfully complete their restructuring.

**CMAG's Disinterestedness**

12. To the best of the Debtors' knowledge, information, and belief, neither CMAG nor any professional employee or independent contractor of CMAG has any connection with or any interest adverse to the Debtors, their creditors, or any other party in interest, or their respective attorneys and accountants, except as may be set forth in the Declaration of Marc L. Pfefferle (the "Pfefferle Declaration"), attached hereto as **Exhibit B**.

13. Although the Debtors submit that the retention of CMAG is not governed by section 327 of the Bankruptcy Code, the Debtors attach the Pfefferle Declaration which discloses, among other things, any relationship that either Mr. Pfefferle, Mr. Pasquith, or any individual member of the Additional Personnel has with the Debtors, their creditors, or other

parties in interest. Based upon the Pfefferle Declaration, the Debtors submit that CMAG is a “disinterested person,” as that term is defined in section 101(14) of the Bankruptcy Code.

14. In addition, as set forth in the Pfefferle Declaration, CMAG will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new material facts or relationships are discovered or arise, CMAG will provide the Court with a supplemental declaration.

#### **Terms of Retention**

15. Subject to approval by the Court, the Debtors propose to pay a fixed monthly fee of \$555,000 per month on account of all services provided by CMAG Professionals. The monthly fee is to be paid in advance in two equal monthly installments on the first and fifteenth day of each month in which CMAG is to provide advisory services to the Debtors.

16. In addition to compensation for professional services rendered by CMAG Professionals, CMAG will seek reimbursement for reasonable and necessary expenses incurred in connection with the Debtors’ chapter 11 cases, including but not limited to travel, lodging, computer research, and other charges. The Debtors shall also reimburse CMAG for the reasonable fees and expenses of its outside counsel incurred in connection with the preparation, negotiation, enforcement, and approval of the Engagement Letter. All expenses will be reimbursed by the Debtors upon receipt of the related invoices, which shall be promptly submitted after the end of each week in which CMAG renders services.

17. Absent the agreement embodied in the Engagement Letter, the CMAG Professionals would bill for their time at the following standard rates:

<b>Position</b>	<b>Standard Billing Rate</b>
Partners/Senior Managing Directors	\$850 – \$950 per person, per hour



Position	Standard Billing Rate
Managing Directors	\$750 – \$850 per person, per hour
Directors/Vice Presidents	\$650 – \$750 per person, per hour
Associates/Analysts	\$400 – \$650 per person, per hour

18. Prior to the Petition Date, the Debtors provided CMAG a retainer in the amount of \$200,000. CMAG seeks to hold the retainer during these chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Letter.

19. If the Court approves the relief requested herein, CMAG will be retained to provide the Debtors with CMAG Professionals with Marc L. Pfefferle to be designated as CEO and Scott Pasquith to be designated as CFO pursuant to section 363 of the Bankruptcy Code. Because CMAG is not being employed as a professional under section 327 of the Bankruptcy Code, CMAG will not be required to submit fee applications pursuant to sections 330 and 331 of the Bankruptcy Code. Instead, CMAG will file with the Court, with notice to the U.S. Trustee and counsel to any statutory committee appointed in these chapter 11 cases (together with the U.S. Trustee, the “Notice Parties”), reports of compensation earned and expenses incurred on at least a quarterly basis. Such compensation and expenses shall be subject to Court review in the event that an objection is filed. In addition, CMAG will file with the Court and provide the Notice Parties a report on staffing (the “Staffing Report”) by the 20th day of each month for the previous month, which report will include the names and tasks filled by all CMAG Professionals involved in this matter. The Staffing Report (and CMAG’s staffing for this matter) will be subject to review by the Court in the event such oversight is requested by any of the Notice Parties.

20. Given the numerous issues which the CMAG Professionals have already been required to address in the performance of their services, and will likely be required to address in the future, and given CMAG's commitment to the extensive and variable level of time and effort necessary to address all such issues as they arise, and the market prices for such services for engagements of this nature in an out-of-court context, as well as in chapter 11,<sup>3</sup> the Debtors submit that the fee arrangements in the Engagement Letter are reasonable under the standards set forth in section 328(a) of the Bankruptcy Code.

### **Indemnification**

21. As a material part of the consideration for which the CMAG Professionals have agreed to provide the services described herein, and subject to the approval of the Court and as more fully described in the Engagement Letter, the Debtors have agreed to indemnify (a) the CMAG Professionals to the same extent that they indemnify their officers or directors and (b) CMAG pursuant to the terms of the Engagement Letter. In addition, the Debtors shall cause the CEO and CFO to be covered under the Debtors' existing director and officer liability insurance policies.

22. The Debtors believe the indemnity provisions are a reasonable term and condition of CMAG's engagement and were, along with all of the terms of the Engagement Letter, negotiated by the Debtors and CMAG at arm's-length and in good faith. CMAG and the Debtors believe that the indemnity provisions are comparable to those indemnification provisions generally obtained by crisis management firms of similar stature to CMAG and for comparable engagements, both in- and out-of-court. The Debtors respectfully submit that the indemnification provisions contained in the Indemnification Agreement, viewed in conjunction

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<sup>3</sup> Calculated based on time expended as of the date of this motion, the effective blended fixed-fee rate represents a significant discount from the fees the CMAG Professionals would charge in a comparable engagement billed hourly.

with the other terms of CMAG's proposed retention, are reasonable and in the best interests of the Debtors, their estates, and creditors in light of the fact that the Debtors require CMAG's services to successfully reorganize.

**Basis for Relief**

23. The Debtors seek approval of the employment of CMAG pursuant to section 363 of the Bankruptcy Code, *nunc pro tunc* to the Petition Date. Section 363(b)(1) of the Bankruptcy Code provides in relevant part that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . ." 11 U.S.C. § 363(b)(1). Further, pursuant to section 105(a) of the Bankruptcy Code, the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

24. Under applicable case law in this and other circuits, if a debtor's proposed use of its assets pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business judgment on the part of the debtor, such use should be approved. *See, e.g., In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a §363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application."); *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.").

25. Therefore, the retention of interim corporate officers and other temporary employees is proper under section 363 of the Bankruptcy Code. This Court has authorized retention of officers utilizing this provision of the Bankruptcy Code on numerous occasions. *In re Westinghouse Elec. Co., LLC*, No. 17-10751 (MEW) (Bankr. S.D.N.Y. June 6, 2017);

*In re BCBG Max Azria Glob. Holdings*, No. 17-10466 (SCC) (Bankr. S.D.N.Y. Mar. 29, 2017);  
*In re Primorsk Int'l Shipping Ltd.*, No. 16-10073 (MG) (Bankr. S.D.N.Y. Feb. 18, 2016);  
*In re Nautilus Holdings Ltd.*, No. 14-22884 (RDD) (Bankr. S.D.N.Y. July 14, 2014);  
*In re Alexander Gallo Holdings, LLC*, No. 11-14220 (ALG) (Bankr. S.D.N.Y. Oct. 13, 2011)  
(retaining CMAG).

26. The Debtors believe that the retention of CMAG as set forth herein is a sound exercise of the Debtors' business judgment. CMAG is well qualified and able to represent the Debtors in a cost effective, efficient, and timely manner. In addition, through its services provided prior to the Petition Date, CMAG has become uniquely familiar with the Debtors' business operations, financial affairs, and capital structure.

27. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate, and in the best interests of the Debtors' estates and creditors, and therefore, should be granted in these chapter 11 cases.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

28. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Notice**

29. The Debtors will provide notice of this motion to: (a) the U.S. Trustee; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent for the Debtors' term loan facility and counsel thereto; (d) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (e) the administrative agent for the Debtors' proposed debtor in possession term loan financing

facility and counsel thereto; (f) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; (g) the United States Attorney's Office for the Southern District of New York; (h) the Internal Revenue Service; (i) the attorneys general for the states in which the Debtors operate; (j) counsel to the official committee of unsecured creditors appointed in these chapter 11 cases; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

30. No prior request for the relief sought in this motion has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

New York, New York  
Dated: May 30, 2019

/s/ Joshua A. Sussberg, P.C.

Joshua A. Sussberg, P.C.

Christopher T. Greco, P.C.

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

- and -

Joseph M. Graham (admitted *pro hac vice*)

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

300 North LaSalle Street

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. __</b>

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**ORDER AUTHORIZING THE DEBTORS TO (A) RETAIN  
CARL MARKS ADVISORY GROUP LLC TO PROVIDE THE DEBTORS A CHIEF  
EXECUTIVE OFFICER, A CHIEF FINANCIAL OFFICER, AND ADDITIONAL  
PERSONNEL AND (B) APPOINT THE CHIEF EXECUTIVE OFFICER  
AND CHIEF FINANCIAL OFFICER *NUNC PRO TUNC* TO THE PETITION DATE**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), for authorization to employ and retain Marc L. Pfefferle as the Chief Executive Officer (the “CEO”) and Scott Pasquith as the Chief Financial Officer (the “CFO”) along with such personnel of Carl Marks Advisory Group LLC (“CMAG”) as are necessary to assist the CEO and CFO in the performance of their duties (the “Additional Personnel”), pursuant to that agreement dated May 17, 2019, among the Debtors and CMAG (as amended, the “Engagement Letter”), all as more fully described in the Motion; and upon the declaration of Marc L. Pfefferle in support of the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.



1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.
2. The terms of the Engagement Letter, including, without limitation, the compensation provisions and the indemnification provisions, as modified by the Motion and this Order, are reasonable terms and conditions of employment and are hereby approved.
3. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors are hereby authorized to retain CMAG to provide Debtors with a CEO, a CFO, and certain Additional Personnel and to designate Marc L. Pfefferle as the Debtors' CEO and Scott Pasquith as the Debtors' CFO *nunc pro tunc* to the Petition Date on the terms set forth in the Engagement Letter subject to the following terms, which apply notwithstanding anything in the Engagement Letter or the Motion or any exhibits related thereto to the contrary:

- (a) CMAG and its affiliates shall not act in any other capacity (for example, and without limitation, as a financial advisor, claims agent/claims administrator, or investor/acquirer) in connection with the above-captioned cases.

- (b) In the event the Debtors seek to have CMAG personnel assume executive officer positions that are different than the positions disclosed in the Motion, or to materially change the terms of the engagement by either (i) modifying the functions of personnel, (ii) adding new executive officers, or (iii) altering or expanding the scope of the engagement, a motion to modify the retention shall be filed.
- (c) CMAG shall file with the Court, with copies to the United States Trustee (“U.S. Trustee”) and all official committees, a report of staffing on the engagement for the previous month. Such report shall include the names and functions filled of the individuals assigned. All staffing shall be subject to review by the Court in the event an objection is filed.
- (d) No principal, employee, or independent contractor of CMAG and its affiliates shall serve as a director of any of the above-captioned Debtors during the pendency of the above-captioned cases.
- (e) CMAG shall file with the Court, and provide notice to the U.S. Trustee and all official committees, reports of compensation earned and expenses incurred on a quarterly basis. Such reports shall contain summary charts which describe the services provided, identify the compensation earned by each executive officer and staff employee provided, and itemize the expenses incurred. All compensation shall be subject to review by the Court in the event an objection is filed.
- (f) Notwithstanding the requirements of paragraph (e) above, the Debtors are authorized, but not directed, to pay, in the ordinary course of business, all amounts invoiced by CMAG for fees and expenses incurred in connection with CMAG’s retention.
- (g) Success fees, transaction fees, or other back-end fees shall be approved by the Court at the conclusion of the case on a reasonableness standard and are not being pre-approved by entry of this Order. No success fee, transaction fee, or back-end fee shall be sought upon conversion of the case, dismissal of the case for cause, or appointment of a trustee.
- (h) For a period of three years after the conclusion of the engagement, neither CMAG nor any of its affiliates shall make any investments in the Debtors or the Reorganized Debtors.
- (i) CMAG shall disclose any and all facts that may have a bearing on whether CMAG, its affiliates, and/or any individuals working on the engagement have any interest materially adverse to the interest of the Debtors’ estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors, or for any other reason. The obligation to disclose identified in this subparagraph is a continuing obligation.

4. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004 are waived.

5. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

6. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

7. To the extent there is an inconsistency between the terms of the Engagement Letter, the Motion, and this Order, the terms of this Order shall govern.

8. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

New York, New York

Dated: \_\_\_\_\_, 2019

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THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Declaration of Marc L. Pfefferle**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

)  
) Chapter 11  
)

HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup>

) Case No. 19-11608 (MEW)  
)

Debtors.

) (Jointly Administered)  
)

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**DECLARATION OF MARC L. PFEFFERLE IN SUPPORT OF DEBTORS' MOTION  
FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO (A) RETAIN CARL  
MARKS ADVISORY GROUP LLC TO PROVIDE THE DEBTORS A CHIEF  
EXECUTIVE OFFICER, A CHIEF FINANCIAL OFFICER, AND ADDITIONAL  
PERSONNEL AND (B) APPOINT THE CHIEF EXECUTIVE OFFICER AND CHIEF  
FINANCIAL OFFICER *NUNC PRO TUNC* TO THE PETITION DATE**

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I, Marc L. Pfefferle, declare that the following is true to the best of my knowledge, information, and belief:

1. I am a Partner of Carl Marks Advisory Group LLC ("CMAG"), a business and restructuring advisory services firm. I submit this declaration (the "Declaration") on behalf of CMAG in support of the *Debtors' Motion for Entry of an Order Authorizing the Debtors to (a) Retain Carl Marks Advisory Group LLC to Provide the Debtors a Chief Executive Officer, a Chief Financial Officer, and Additional Personnel and (b) Appoint the Chief Executive Officer and Chief Financial Officer Nunc Pro Tunc to the Petition Date* (the "Motion"). Except as otherwise noted, I have personal knowledge of the matters set forth herein.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

**Disinterestedness and Eligibility**

2. In connection with the preparation of this Declaration, CMAG conducted an analysis to determine whether it holds or represents any interests adverse to the Debtors. Such analysis consisted of a review of CMAG's contacts with the Debtors, their non-debtor affiliates, and certain entities holding large claims against or interests in the Debtors that were reasonably made known to CMAG by the Debtors. A listing of the parties reviewed is reflected on **Schedule A** to this Declaration. A summary of relationships with the **Schedule A** parties that CMAG identified during this process is set forth in **Schedule B** hereto. Based on the results of its review, CMAG does not have an active relationship with any of the parties listed in **Schedule A** in matters related to these proceedings.

3. CMAG has provided and could reasonably be expected to continue to provide services or maintain professional relationships unrelated to the Debtors' cases for the various entities shown on **Schedule B**. CMAG's assistance to these parties has been related to providing various financial restructuring, business consulting, and/or other related services. To the best of my knowledge, CMAG's involvement in these cases does not compromise its ability to continue such consulting services.

4. Further, as part of its diverse practice, CMAG appears in numerous cases and proceedings, and participates in transactions that involve many different professionals, including attorneys, accountants, and financial consultants, who may represent claimants and parties in interest in the Debtors' chapter 11 cases. Further, CMAG has performed in the past, and may perform in the future, advisory consulting services for various attorneys and law firms, and has been represented by several attorneys and law firms, some of whom may be involved in these proceedings. Based on our current knowledge of the professionals involved, and to

the best of my knowledge, none of these relationships create interests materially adverse to the Debtors in matters upon which CMAG is to be employed, and none are in connection with these cases.

5. CMAG does not believe it is a “creditor” of any of the Debtors within the meaning of section 101(10) of the Bankruptcy Code. Further, neither I nor any member of the CMAG engagement team serving the Debtors, to the best of my knowledge, is a holder of any of the Debtors’ debt or equity securities.

6. To the best of my knowledge, no employee of CMAG is a relative of, or has been connected with, any judge of the bankruptcy court for this district or the United States Trustee in this district.

7. To the best of my knowledge, CMAG is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code, in that CMAG (i) is not a creditor, equity security holder, or insider of the Debtors, (ii) was not, within two years before the date of filing of the Debtors’ chapter 11 petitions, a director, officer, or employee of the Debtors, and (iii) does not have an interest materially adverse to the interest of the Debtors’ estates or of any class of creditors or equity security holders. In addition, to the best of my knowledge and based upon the results of the relationship search described above and disclosed herein, other than as described herein, CMAG neither holds nor represents an interest adverse to the Debtors.

8. If any new material relevant facts or relationships are discovered or arise, CMAG will promptly file a supplemental declaration.

#### **Professional Compensation**

9. Subject to Court approval and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, applicable United States Trustee guidelines, and the

local rules of this Court, CMAG will seek from the Debtor payment for compensation on a flat-rate basis and reimbursement of actual and necessary expenses incurred by CMAG. CMAG's customary hourly rates as charged in bankruptcy and non-bankruptcy matters of this type by the professionals assigned to this engagement are outlined in the Motion. These hourly rates are adjusted annually.

10. To the best of my knowledge, (a) no commitments have been made or received by CMAG with respect to compensation or payment in connection with these cases other than in accordance with applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, and (b) CMAG has no agreement with any other entity to share with such entity any compensation received by CMAG in connection with these chapter 11 cases.

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

Dated: May 30, 2019  
New York, New York

*/s/ Marc Pfefferle*

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Marc Pfefferle  
Chief Executive Officer  
Carl Marks Advisory Group LLC



**Schedule A**

**List of Schedules**

<b><u>Schedule</u></b>	<b><u>Category</u></b>
A(1)	Company Entities
A(2)	Directors & Officers
A(3)	Counterparties to Significant Executory Contracts
A(4)	Customers
A(5)	Landlords
A(6)	Lenders and Sponsor
A(7)	Professionals
A(8)	Shareholders
A(9)	Taxing Authorities
A(10)	U.S. Trustee, Judges, and Court Contacts for the Southern District of New York
A(11)	Top 50 General Unsecured Creditors

## **SCHEDULE A(1)**

### **Company Entities**

Dream II Holdings LLC  
Hollander Home Fashions Holdings LLC  
Hollander Sleep Products Canada Ltd.  
Hollander Sleep Products Kentucky LLC  
Hollander Sleep Products LLC  
Pacific Coast Feather Cushion LLC  
Pacific Coast Feather LLC

## **SCHEDULE A(2)**

### **Directors & Officers**

Baker, Chris  
Bommer, Eric D.  
Cumbow, Steve  
Fabian, Michael J.  
Kahn, Matthew  
Pfefferle, Marc

## **SCHEDULE A(3)**

### **Counterparties to Significant Executory Contracts**

Avendra LLC  
Calvin Klein Inc.  
Crown Crafts Designer Inc.  
Dreamwell Ltd.  
Maas, Dr. James B.  
Nautica Apparel Inc.  
Polo/Lauren Co. LP, The  
Ralph Lauren Home Collection Inc.  
Simmons Canada Inc.  
Therapedic International

## **SCHEDULE A(4)**

### **Customers**

American Hotel Register Co. Inc.  
Army & Air Force Exchange Service, The  
BBB Canada  
Bed Bath & Beyond Inc.  
Belk Inc.  
Big Lots Inc.  
Bloomingdale's Inc.  
Burlington Stores Inc.  
Costco Canada Inc.  
Costco de Mexico SA de CV  
Costco International  
Costco Wholesale Corp.  
HD Supply Inc.  
Homegoods Inc.  
HomeSense Inc.  
Hudson's Bay Co.  
JC Penney Co. Inc.  
Macy's Inc.  
Mattress Firm Inc.  
Meijer Inc.  
Navy Exchange Service Command  
PCF Website  
Pottery Barn Inc.  
PriceSmart Inc.  
Restoration Hardware Inc.  
Ross Stores Inc.  
Sysco Corp.  
Target Corp.  
TJ Maxx Inc.  
T-Y Group LLC  
Walmart Canada Corp.  
Walmart Inc.  
West Elm Inc.  
Winners Merchants International LP

## **SCHEDULE A(5)**

### **Landlords**

10401 Bunsen Way LLC  
2298174 Ontario Inc.  
420-450 Britannia Road East Ltd.  
440 Realty Inc.  
660 National Turnpike LLC  
Access Service Office  
Adam & Co.  
EFP Partners  
Hager LLC  
HIP III LLC  
Imperial Realty Co.  
Kipling Apparel Corp.  
Lex Thomson L.P.  
MacArthur Crossing  
Mainstreet CV North 40 LLC  
Majestic/AMB Pico Rivera Associates LLC  
Millineum Maintenance Management Inc.  
PND Engineers Inc.  
Prologis Inc.  
Royal Oak  
Samuel Heath & Sons PLC  
Shaikh, Hussain  
Shanghaimart Corp.  
SoCal LLC  
Spiegel Family Realty Co. Iowa LLC  
VARS Co. Ltd.  
Woodcreek Holdings

## **SCHEDULE A(6)**

### **Lenders and Sponsor**

Allstate Insurance Co.  
Allstate Life Insurance Co.  
Barings Global Private Loans 1 Sarl  
Barings Global Private Loans 2 Sarl  
BCF Senior Funding I LLC  
CM Life Insurance Co. Inc.  
Diamond CLO 2018-1 Ltd.  
Fifth Street Senior Loan Fund I LLC  
First Eagle Dartmouth Holding LLC  
GSO Diamond Portfolio Borrower LLC  
ING Capital LLC  
Massachusetts Mutual Life Insurance Co.  
NAPLF (Cayman) A Senior Funding I LLC  
NAPLF (Cayman) Senior Funding I LLC  
NAPLF Senior Funding I LLC  
NewStar Arlington Senior Loan Program LLC  
NewStar Berkeley Fund CLO LLC  
NewStar Clarendon Fund CLO LLC  
NewStar Commercial Loan Funding 2016-1 LLC  
NewStar Commercial Loan Funding 2017-1 LLC  
NewStar Fairfield Fund CLO Ltd.  
PennantPark Credit Opportunities Fund II LP  
PennantPark Floating Rate Funding I LLC  
PennantPark SBIC II LP  
Sentinel Capital Partners LLC  
SunTrust Bank  
Wells Fargo Bank NA

## **SCHEDULE A(7)**

### **Professionals**

Carl Marks Capital Advisors LLC  
Goldberg Kohn Ltd.  
Houlihan Lokey Capital Inc.  
King & Spalding LLP  
Kramer Levin Naftalis & Frankel LLP  
OMNI Management Group LLC  
Proskauer Rose LLP



## **SCHEDULE A(8)**

### **Shareholders**

1492 Capital Management LLC  
Baker, Chris  
Carroll, Mason  
Deliberti, Bill  
Eisner, Michelle  
Fitzpatrick Family Trust  
Huneidi, May  
Kayne Credit Opportunities Fund (QP) LP  
Kayne Credit Opportunities Fund LP  
Mack, Beth  
Marc C. Particelli 2006 Family Trust  
McNeil, Sandy  
Nationwide Mutual Insurance Co.  
Particelli, Marc C.  
Phoenix Life Insurance Co.  
Rodriguez, Rafael  
Schaefer, David  
Stellus Credit Master Fund I LLC  
Stellus Credit VCOC Fund I LLC

## **SCHEDULE A(9)**

### **Taxing Authorities**

California, State of, California Environmental Protection Agency, State Water Resources Control Board  
California, State of, Department of Tax & Fee Administration  
California, State of, Government Operations Agency, Franchise Tax Board  
Canada Revenue Agency  
Compton, City of (CA)  
Guilford, County of (NC), Tax Department  
HA Berkheimer, Business Privilege Tax  
Hart, County of (KY), Sheriff  
Hensley, Boston  
Illinois, State of, Department of Revenue  
Iowa, State of, Department of Revenue  
Jeffersontown, City of (KY)  
Kentucky, Commonwealth of, Treasurer  
Los Angeles, County of (CA), Agricultural Commissioner Weights & Measures  
Los Angeles, County of (CA), Tax Collector  
McDuffie, County of (GA), Planning Commission  
McDuffie, County of (GA), Tax Commissioner  
Miami-Dade, County of (FL), Tax Collector  
Munfordville, City of (KY)  
New York, State of, Department of Taxation & Finance  
North Carolina, State of, Department of Revenue  
Ohio, State of, Department of Taxation  
Palm Beach, County of (FL), Tax Collector  
Pennsylvania, Commonwealth of, Department of Revenue  
Pico Rivera, City of (CA)  
Revenue of Québec  
Seattle, City of (WA)  
Stewardship Ontario  
Texas, State of, Comptroller of Public Accounts  
Thomas, Stacey W.  
Vance, County of (NC), Tax Administration  
Washington, State of, Department of Revenue

## **SCHEDULE A(10)**

### **U.S. Trustee, Judges, and Court Contacts for the Southern District of New York**

Abriano, Victor  
Arbeit, Susan  
Bernstein, Stuart M.  
Cassara, Amanda  
Catapano, Maria  
Chapman, Shelley C.  
Choy, Danny A.  
Daniele, Salvatore  
DiSalvo, Rosemary  
Drain, Robert D.  
Garrity, James L., Jr.  
Glenn, Martin  
Grossman, Robert E.  
Harrington, William K.  
Higgins, Benjamin J.  
Lane, Sean H.  
Masumoto, Brian S.  
Mendoza, Ercilia A.  
Moroney, Mary  
Moroney, Mary V.  
Morris, Cecelia G.  
Morrisey, Richard C.  
Nadkarni, Joseph  
Nakano, Serene  
Ng, Cheuk M.  
Riffkin, Linda  
Rodriguez, Ilusion  
Schwartz, Andrea B.  
Schwartzberg, Paul  
Schwartzberg, Paul K.  
Scott, Shannon  
Sharp, Sylvester  
Song, Justin  
Velez-Rivera, Andy  
Vyskocil, Mary Kay  
Wiles, Michael E.  
Zipes, Greg M.

## **SCHEDULE A(11)**

### **Top 50 General Unsecured Creditors**

ADVANSA BmbH  
Anhui Rongdi Down Products Co. Ltd.  
Atlas Feather Processing Corp.  
AV Logistics LLC  
Be Be Jan Fibres (Pvt) Ltd.  
Be Be Jan Pakistan Ltd.  
CH Robinson Worldwide Inc.  
Chuzhou Jincheng Home Decoration Manufactory  
Cixi Jiangnan Chemical Fiber  
Domfoam Inc.  
Dusobox Corp.  
EA International Ltd.  
Elite Comfort Solutions LLC  
Emirates Fiber Industries FZ LLC  
Exeter 25 Keystone LLC  
Fine Textile Co. Ltd.  
Funing Jincheng Home Textile Co.  
Hangzhou Chuangyuan Feather Co. Ltd.  
Hangzhou Huaying Xintang Down Products Co.  
Hangzhou Huoju Down Products Co. Ltd.  
International Paper Co.  
INVISTA (Canada) Co.  
Invista BV  
Invista Inc.  
INVISTA SARL  
Jasztex Fibers Inc.  
Kamýk Daunen s.r.o.  
KapStone Container Corp.  
Kuehne & Nagel International AG  
LQ Mechatronik-Systeme GmbH  
Majestic/AMB Pico Rivera Associates LLC  
Nan Ya Plastics Corp.  
Nan Ya Plastics Corp. America  
NAP Industries Inc.  
Navarpluma SL  
Oracle America Inc.  
Packaging Corp. of America  
Polypack Inc.  
Printcraft Co. Inc.  
Progress Container & Display  
Qingdao Fuyuan Arts & Crafts Co. Ltd.  
Roind Hometex Co. Ltd.  
Sea Feather Ltd. Co. of Luan, The

SHI International Corp.  
Stein Fibers Ltd.  
Strands Textile Mills Pvt. Ltd  
Sun Fiber LLC  
Sun Fiber Sales LLC  
Topocean Consolidation Service Los Angeles Inc.  
United States, Government of the, Department of Homeland Security, Customs & Border  
Protection  
Vietnam New Century Polyester Fibre Co. Ltd.  
Vipac Packaging  
Weifang Jielong Textile Co. Ltd.  
Wuhu Fine Textile International Trading Co. Ltd.  
Wujiang City Xinyi Textile Co. Ltd.  
Wuxi Jielong Textile Co. Ltd.  
Wuxi Yinxin Printing Co. Ltd.  
Zhejiang Hengdi Bedding Co. Ltd.  
Zhejiang Liuqiao Home Textile Co. Ltd.  
Zhejiang Liuqiao Industrial Co. Ltd.  
Zhejiang Saifang Textile Technology Co. Ltd.  
Zhejiang Wanxiang Bedding Co. Ltd.  
Zhejiang Wanxiang Bedding Products Ltd. Co.

**Schedule B**

<b>Identified Party</b>	<b>Relationship</b>
Wells Fargo Bank NA	CMAG has previously provided services to Wells Fargo Bank NA or its affiliates in matters unrelated to these cases.
SunTrust Bank	CMAG is currently providing, and has previously provided, services to SunTrust or its affiliates in matters unrelated to these cases.
Sentinel Capital Partners LLC	CMAG has previously provided services to Sentinel Capital Partners LLC or its affiliates in matters unrelated to these cases.
Pennant Park	CMAG has previously provided services to Pennant Park or its affiliates in matters unrelated to these cases.
ING Capital LLC	CMAG has previously provided services to ING Capital LLC or its affiliates in matters unrelated to these cases.
Fifth Street Finance	CMAG has previously provided services to Fifth Street Finance or its affiliates in matters unrelated to these cases.
NewStar Financial	CMAG has previously provided services to NewStar Financial or its affiliates in matters unrelated to these cases.
Stellus Capital Management	CMAG has previously provided services to Stellus Capital Management or its affiliates in matters unrelated to these cases.
Mattress Firm Inc.	CMAG has previously provided services for Mattress Firm Inc. in matters unrelated to these cases.
Houlihan Lokey Capital, Inc.	CMAG has worked on cases involving Houlihan Lokey Capital, Inc. or its affiliates in matters unrelated to these cases.
OMNI Management Group LLC	CMAG has worked on cases involving OMNI Management Group LLC, Inc. or its affiliates in matters unrelated to these cases.
New York, State of, Department of Taxation & Finance	CMAG is a New York limited liability company.
Honorable Stuart M. Bernstein	CMAG is engaged by a lender on a separate case in the Southern District of New York involving the Honorable Stuart M. Bernstein in matters unrelated to this case.
William K. Harrington	CMAG is engaged by a lender on a separate case in the Southern District of New York involving William K. Harrington in matters unrelated to this case.

**Exhibit C**

**CMAG Engagement Letter and Amendment No. 1 to Amended Advisory Agreement**

## AMENDED ADVISORY AGREEMENT

ADVISORY AGREEMENT dated as of May 17, 2019 (this “Agreement”), by and between Hollander Sleep Products, with its principal place of business at 901 Yamato Road, Suite 250, Boca Raton, FL 33431 (“Hollander” or the “Company”) and Carl Marks Advisory Group LLC, a New York limited liability company with its principal place of business at 900 Third Avenue, New York, NY 10022 (“CMAG”).

WHEREAS, Hollander desires to engage the advisory services of CMAG, subject to and on the terms and conditions hereinafter set forth;

WHEREAS, CMAG has agreed to provide such advisory services subject to and on such terms and conditions; and

WHEREAS CMAG previously agreed to provide pre-petition advisory services to Hollander.

NOW, THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Engagement**: Hollander engages CMAG, and CMAG hereby agrees to serve Hollander, as an advisor and to provide the services described in Section 2 hereof (the “Engagement”). Hollander understands and acknowledges that CMAG has and will continue to have other engagements during the term of this Agreement.

2. **Scope**: CMAG will provide Marc L. Pfefferle to serve as Chief Executive Officer (“CEO”), assisted by other resources, as applicable, to work under the direction of the Company’s Board of Directors to help develop and drive business restructuring and improvement initiatives intended to maximize enterprise value for the benefit of all stakeholders, and, if authorized by the Board, through a Chapter 11 bankruptcy process. In that connection, responsibilities may include:

- Oversight/management of the business and direction of functional business team’s as well as overall business improvement and restructuring activities. Provide additional management of financial resources required to implement and further



develop business improvement/profit improvement programs intended to increase EBITDA and cash flow;

- Assist and advise the Company in formulating and implementing a restructuring plan, including actions intended to improve profitability through price increases, material efficiencies, facilities consolidations, SG&A savings, operational changes, and rejection of executory contracts that may be possible in Chapter 11 bankruptcy protection, if possible and appropriate;
- Assist Company counsel, Company personnel, and the retained notice/claim agent with pre-filing preparation, first day and subsequent motions, required in-court testimony, court reporting (e.g., SOFAs and Schedules, Initial Operating Report, etc.) and other court filings as necessary as well as internal and external communications, review of executory contracts/leases and reject, etc., as appropriate;
- Assist the Company in formulating, negotiating and confirming an acceptable Plan of Reorganization and the preparation of a Disclosure Statement;
- Provide post-petition administrative support that can include:
  - Claims Administration – priority, administrative, general unsecured claims by entity (reconciliations, confirmation of balances, initial dispute resolution)
  - Support US Trustee information requests and assist in the preparation of monthly operating reports (MOR's) as required
  - Assist in handling all requests from Creditor Committee professionals
  - Finalize contract assumption and/or rejection – further analysis and implementation
  - Continue DIP/Cash Collateral cash flow monitoring and reporting;
- Communicate progress and provide updates and requested analysis to Hollander's key stakeholders, including its pre-and post-petition ABL and Term debt lenders and Board of Directors.

In addition to Mr. Pfefferle, CMAG will provide the following team resources which specific staff may be adjusted over time as appropriate with CMAG's efforts to perform the representative work tasks as outlined above:

- CMAG Managing Director will oversee manufacturing operations of the Company including responsibilities of product and inventory management, plant operations effectiveness, and vendor and sourcing efficiency;

- CMAG Managing Director will oversee corporate planning function and develop and coordinate business process improvements;
- CMAG Managing Director will assist with and coordinate required pre-filing and post-filing administration tasks with regard to such Chapter 11 bankruptcy filing; and
- CMAG Analyst/Vice President to provide analytic support to the team in the above tasks.

3. **Term**: The term of this Agreement (the “Term”) shall commence as of the date of this Agreement and shall continue until the Engagement is completed unless canceled (a) with or without cause by either party on thirty (30) days prior written notice, or (b) by CMAG promptly upon notice for non-payment of Compensation or Expenses, in which event all compensation and expenses owing to CMAG pursuant to Sections 4 and 5 below shall be immediately due and payable.

4. **Compensation**: For providing the advisory services as outlined in Section 2 above, Hollander shall pay CMAG a fixed fee of \$460,000 per month (the “Monthly Fee”). Such Monthly Fee shall be paid in advance, in two (2) equal monthly installments of \$230,000 each, due on each of the first (1<sup>st</sup>) and fifteenth (15<sup>th</sup>) day of each month in which advisory services are to be provided. Such fixed fee is based upon the utilization of two (2) Managing Directors on a full time basis and one (1) Managing Director on a half time basis as well as analyst support as needed. The utilization of any additional personnel, if required, shall be billed to the Company at prevailing rates. CMAG shall also receive a retainer from Hollander of \$200,000 upon the execution of this Agreement to be applied against unpaid fees and expenses, if any. Any unused portion of the retainer shall be returned to Hollander at the completion of CMAG’s services under this Agreement. CMAG will submit advisory fee invoices for each payment due. It is agreed that all of those invoices will be paid upon receipt.

5. **Expenses**: CMAG shall be entitled to reimbursement for all reasonable expenses incurred by it in the performance of its duties hereunder (the “Expenses”) upon presentation of appropriate documentation therefore. The Expenses shall include, but not be limited to, transportation of any of CMAG personnel, employees or associates on business related to the Engagement, cost of hotels, meals, research, etc. Such Expenses shall also include, but not be limited to, all reasonable legal fees incurred by CMAG in connection with the performance of the Engagement, provided that Hollander first

consents to the retention of such counsel for such services (which consent shall not be unreasonably withheld or delayed). CMAG's rights to such legal fees shall be in addition to CMAG's rights to attorneys fees, expenses and costs as provided in Section 7 of this Agreement. All Expenses will be reimbursed by Hollander upon receipt of invoices therefore, which shall be submitted promptly after the end of each week in which CMAG renders services.

6. **Indemnification**: Hollander will indemnify CMAG and hold it harmless for all acts or omissions, and all decisions made, by CMAG (other than such acts or omissions that may be determined by final order of a court of competent jurisdiction to constitute gross negligence, willful misconduct, or actual fraud by CMAG) while performing services for Hollander (each, a "Claim") and agrees to pay directly, upon presentation thereof, all statements or invoices for all fees and expenses, including reasonable attorneys' fees incurred by CMAG in connection with the defense of any such Claims, including any suit or proceeding relating thereto and any appeal therefrom and the costs of any settlement thereof, provided that with respect to costs incurred in any appeal of a judgment, Hollander first consents to appealing such judgment (which consent shall not be unreasonably withheld or delayed) notwithstanding anything to the contrary in Section 5. CMAG shall have the sole right to select counsel of its choosing and control the defense of any such Claim, but Hollander shall have the right to accept or reject the settlement of any Claim for which indemnification is sought by CMAG hereunder (which acceptance or rejection shall not be unreasonably withheld or delayed). For purposes of this Section "CMAG" includes its members, officers, directors, employees and/or agents, and CMAG's affiliates and each of their respective shareholders, members, officers, directors, employees and/or agents. The provisions of this Section 6 shall survive the term of this Agreement. Marc Pfefferle, as CEO, shall be entitled to indemnification pursuant to Hollander's charter and by-laws, and to the benefits of officership under any "Directors & Officers" liability insurance policy of Hollander. CMAG's rights under this Section 6 shall be in addition to CMAG's rights to attorneys fees, expenses and costs as provided in Section 7 of this Agreement.

7. **Payment of CMAG Attorneys Fees**: In addition to and without prejudice to any of CMAG's rights under Sections 5 and 6 hereof, in the event of any actual or threatened judicial proceeding involving CMAG and the Company that arises out of, relates to or is based upon the terms of this Agreement or the services or transactions encompassed or contemplated by this Agreement, regardless of by whom such judicial proceeding is

threatened or initiated and regardless of who is the prevailing party (but excluding (a) where Hollander is the prevailing party against CMAG and (b) where the acts or omissions underlying such judicial proceeding may be determined by final order of a court of competent jurisdiction to constitute gross negligence, willful misconduct, or actual fraud by CMAG), CMAG shall be entitled to payment by the Company of all of CMAG's reasonable fees, expenses and costs, including its attorneys' fees, incurred in connection with such proceeding, including any proceeding initiated by CMAG to enforce its rights under the terms of this Agreement (or any related engagement or commitment agreement). The fees, expenses and costs payable by the Company hereunder shall include all fees, expenses and costs relating to CMAG's investigation of, preparation for, or pursuit or defense of, any such proceeding, and shall be reimbursed by the Company to CMAG as they are incurred by CMAG, promptly upon receipt by the Company of a reimbursement request from CMAG.

**8. Proprietary Work Product and Confidential Company Information:** Hollander acknowledges and agrees that any work product including, without limitation, any information, advice, recommendations or other content of any reports, presentations or other communications produced by CMAG is for the sole use of Hollander and is not intended for distribution to, or to be relied upon by, any third party.

In addition, CMAG acknowledges and agrees that as a result of the services to be provided hereunder, the persons performing such services may acquire knowledge and information of a secret and confidential nature. CMAG further acknowledges and agrees that this information constitutes valuable property of Hollander generally not being disseminated or made known to persons or organizations outside Hollander at all, or if made known, being done so only under specific and restrictive conditions approved in advance by Hollander such as to ensure that it does not become readily available to the public, and also that confidential information of others may be received by Hollander with restrictions on its use and disclosure. Accordingly, CMAG agrees that:

- (i) CMAG and any person performing any services for CMAG hereunder shall not, during the term of this Agreement or at any time thereafter, disclose to anyone outside Hollander or use (other than in Hollander's business) any secret or confidential information of Hollander or its subsidiaries, except as authorized by Hollander. Hollander information that is not readily available to the public shall be considered secret and confidential for the purpose of this Agreement and shall

include, but not be limited to, information relating to Hollander, its subsidiaries and affiliates, customers, processes, products, apparatus, data, compounds, business studies, business and contracting plans, business procedures and finances;

- (ii) CMAG and any person performing any services for CMAG hereunder shall not, during the term of this Agreement or at any time thereafter, disclose to any other person or use secret or confidential information of others, which, to the knowledge of CMAG, has been disclosed to Hollander with restriction on the use or disclosure thereof, in violation of those restrictions;
- (iii) CMAG and any person performing any services for CMAG hereunder shall not, during the term of this Agreement or at any time thereafter, disclose to Hollander or induce Hollander to use, without prior permission of the Hollander, any secret or confidential information or material of others of which CMAG is or may become possessed; and
- (iv) Notwithstanding the foregoing, CMAG and any person performing services for CMAG hereunder shall not be liable for the disclosure of information which may otherwise be deemed confidential hereunder:
  - (a) if the information is in, or becomes part of, the public domain, other than by CMAG's disclosure of the information;
  - (b) if the information is furnished to a third party by Hollander without restriction on the third party's right to disseminate the information;
  - (c) if the information is already of record in CMAG's files at the time of disclosure, or is disclosed to CMAG by a third party as a matter of right;
  - (d) if the information is disclosed with Hollander's written approval; or
  - (e) if CMAG is compelled to reveal such information by subpoena, civil investigative demand or other judicial or administrative process.

The provisions of this Section 8 shall survive the termination of this Agreement.

**9. Client Cooperation; Reliance on Client's Information:** Hollander acknowledges and agrees that the ability of CMAG to perform the Engagement requires the full cooperation and assistance of Hollander and its personnel. Accordingly, Hollander covenants and agrees to furnish to CMAG all information, documents and other materials requested by CMAG and to make available to CMAG for meetings, conference calls and

otherwise all personnel designated by CMAG to enable CMAG to receive on a timely basis, in writing and verbally, all information requested by CMAG related to the Engagement under this Agreement. Hollander acknowledges and agrees that CMAG, in performance of the Engagement, will be relying on the truth, completeness and accuracy of the written documentation delivered and the verbal communications made by Hollander and its representatives to CMAG in connection with all matters relating to the Engagement.

10. **Conflicts of Interest**: Nothing contained in this Agreement or otherwise, shall diminish or impair the right of CMAG to accept engagements, directly or indirectly, from Hollander's lender(s) or other professionals or other third parties provided such engagements do not involve the relationship of the lender(s), other professionals or other third parties to Hollander.

11. **Limitation on CMAG Liability**: If CMAG fails to perform its obligations under or is otherwise in breach of or default under this Agreement, the maximum liability of CMAG in respect thereof shall be limited to an amount equal to the aggregate of all fees actually paid to CMAG pursuant to this Agreement.

12. **Representations**: Each party represents and warrants to the other that: (a) it has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder, (b) this Agreement has been fully and duly authorized by all necessary action and has been duly executed and delivered by it, and (c) constitutes a valid and binding agreement enforceable against it in accordance with its terms.

13. **Notices**: All notices, requests, demands and other communications provided for by this Agreement shall be in writing addressed to the parties at the address for such party first set forth above, and shall be transmitted by either facsimile (fax), personal or overnight courier delivery or by certified mail. All notices, etc. shall be deemed given when received by the party to whom it is addressed.

14. **Successors and Assigns**: This Agreement shall inure to the benefit of, and be binding upon, each of Hollander and CMAG and their respective successors and assigns. Neither party may assign its rights and/or obligations under this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld or delayed.

15. **Applicable Law:** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without reference to principles of conflicts of law. Any action arising from or related in any way to the Agreement shall be brought only in the federal or state courts located in New York City.

16. **Amendments:** No amendment, modification, termination or waiver of any provision of this Agreement or consent to any departure by any party therefrom shall be effective unless in writing signed by the parties hereto, and, in any event, shall be effective only in the specific instance and for the specific purpose for which given.

17. **No Waiver; Cumulative Remedies:** No failure or delay on the part of either party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude the exercise of any other right, power or remedy. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

18. **Headings:** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

19. **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

20. **Waiver of Jury Trial:** Each of the parties to this Agreement hereby waives its right to a jury trial with respect to any claim, action, suit or proceeding made or brought by one of the parties against the others in connection with or arising under this Agreement.

21. **Publication:** CMAG may, at its expense, place an announcement in such newspapers, periodicals, electronic publications and other print as CMAG may choose stating that CMAG has acted as an advisor for the Company in connection therewith.

22. **Independent Contractor Relationship:** CMAG shall serve as an independent contractor to Hollander pursuant to the terms and conditions of this Agreement. This Agreement does not create and shall not be construed to create a relationship of principal and agent, joint venturer, co-partners, employer and employee, master and servant or any

similar relationship between CMAG and Hollander, and the parties hereto expressly deny the existence of any such relationship.

23. **Search Fees**: Should CMAG introduce any individual who is not an employee, agent or representative of CMAG with whom Hollander (or any of its Affiliates) has had contact, or who became known to Hollander (or any of its Affiliates), and Hollander subsequently hires that individual, Hollander will pay CMAG an additional fee equal to 25% of the total first year's compensation package of that individual.

24. **Non-Solicitation**: For a period of two-years from the date of this Agreement, or one-year following its termination, whichever is later; Hollander (or any of its controlled Affiliates) will not (A) solicit or cause to be solicited any employee, agent or representative of CMAG with whom Hollander, (or any of its controlled Affiliates) has had contact, or who became known to Hollander, (or any of its controlled Affiliates) during CMAG's provision of services; or (B) hire or cause to be hired any employee, agent or representative of CMAG, with whom Hollander, (or any of its controlled Affiliates) has had contact, or who became known to Hollander, (or any of its controlled Affiliates) during CMAG's provision of services and who was, within twelve (12) months of such proposed hiring, an employee, agent or representative of CMAG. As used herein, the term "Affiliates" shall mean and include any person, firm, corporation or other entity directly or indirectly controlled by or under common control with Hollander.

25. **Entire Agreement**. This Agreement incorporates the entire understanding of the parties, and amends and supersedes all prior agreements of the parties, with respect to the subject matter of this Agreement.

26. **Bankruptcy Court Approval**: In the event that the Company becomes a debtor under Chapter 11 of the Bankruptcy Code, whether voluntarily or involuntarily, the Company shall promptly seek an order authorizing the employment of CMAG pursuant to the terms of this Agreement, as a professional person pursuant to, and subject to the standard of review of, Section 363 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and applicable local rules and orders and any other order or orders of the Bankruptcy court regarding the payment of professional fees and expenses and not subject to any other standard of review under Section 330 of the Bankruptcy Code. Following entry of the order authorizing the employment of CMAG, the Company shall pay all fees and expenses due pursuant to this Agreement, as approved




by the court having jurisdiction of the bankruptcy case involving the Company (the “Bankruptcy Court”), as promptly as possible in accordance with the terms of this Agreement and the order of such Bankruptcy Court, the Bankruptcy Code, the Bankruptcy Rules and applicable local rules and orders, and will work with CMAG to promptly file any and all necessary applications regarding such fees and expenses with the Bankruptcy Court. CMAG shall have no obligation to provide services under this Agreement in the event that the Company becomes a debtor under the Bankruptcy Code unless CMAG's retention under this Agreement is approved under Section 363 of the Bankruptcy Code by final order of the Bankruptcy Court no longer subject to appeal, rehearing, reconsideration or petition for certiorari, and which order is acceptable to CMAG in all respects. If the order authorizing the employment of CMAG is not obtained, or is later reversed or set aside for any reason, CMAG may terminate this Agreement, and the Company shall reimburse CMAG for all fees and expenses reasonably incurred prior to the date of expiration or termination, subject to the requirements of the Bankruptcy Code, Bankruptcy Rules and applicable local rules and orders and any other applicable order or orders at the Bankruptcy court. Prior to commencing a Chapter 11 case, the Company shall pay all amounts then due and payable to CMAG in immediately available funds. The terms of this Section are solely for the benefit of CMAG, and may be waived, in whole or in part, only by CMAG.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

**HOLLANDER SLEEP PRODUCTS**

By:   
Name: Michael S Fash  
Title: \_\_\_\_\_

**CARL MARKS ADVISORY GROUP LLC**

By:   
Marc L. Pfefferle  
Partner

**AMENDMENT NO. 1  
TO  
AMENDED ADVISORY AGREEMENT**

This AMENDMENT No. 1 (“Amendment No.1”) is entered into as of May 28, 2019, by Hollander Sleep Products, with its principal place of business at 901 Yamato Road, Suite 250, Boca Raton, FL 33431 (“Hollander” or the “Company”) and Carl Marks Advisory Group LLC, with principal offices at 900 Third Avenue, 33<sup>rd</sup> Floor, New York, NY 10022 (“CMAG”).

WHEREAS, Hollander and CMAG entered into that certain Amended Advisory Agreement dated as of May 17, 2019 (the “Agreement”) and now wish to amend the Engagement as follows:

1. Scope

Section 2 of the Agreement (captioned “Scope”) shall be amended as follows by adding the following to the Section:

Effective immediately, CMAG Managing Director Scott Pasquith will assume the vacated position and serve as Hollander’s Chief Financial Officer. An additional CMAG Managing Director will be added to the team resources to oversee the corporate planning function and develop and coordinate business process improvements as previously performed by Scott Pasquith.

2. Compensation

Section 4 of the Agreement (captioned “Compensation”) shall be amended as follows by adding the following to the end of the Section:

For providing the addition CMAG Managing Director to oversee the corporate planning function and develop and coordinate business process improvements as previously performed by Scott Pasquith, Hollander will pay CMAG an additional fixed fee of \$95,000 per month which will also be paid in advance, in accordance with the Agreement.

CMAG’s Expenses will continue to be reimbursed by Hollander as provided for in Section 5 of the Agreement.


3. Continued Binding Effect of Agreement

Except as specifically modified in this Amendment No. 1, the Agreement shall continue in full force and effect and, as modified herein, shall be binding in all respects on the parties hereto.

IN WITNESS WHEREOF the parties have executed and delivered this Amendment No.

1 as of the date first above written.

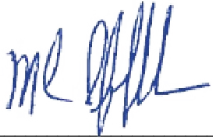
**HOLLANDER SLEEP PRODUCTS**

By: \_\_\_\_\_

Name: MICHAEL FABIAN

Title: BOARD MEMBER

**CARL MARKS ADVISORY GROUP LLC**

By: \_\_\_\_\_

Marc L. Pfefferle

Partner

THIS IS EXHIBIT "L" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.

A handwritten signature in blue ink, appearing to be "JH" followed by a long horizontal stroke.

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Commissioner for Taking Affidavits



1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.
2. The terms of the Engagement Letter, including, without limitation, the compensation provisions and the indemnification provisions, as modified by the Motion and this Order, are reasonable terms and conditions of employment and are hereby approved.
3. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors are hereby authorized to retain CMAG to provide Debtors with a CEO, a CFO, and certain Additional Personnel and to designate Marc L. Pfefferle as the Debtors' CEO and Scott Pasquith as the Debtors' CFO *nunc pro tunc* to the Petition Date on the terms set forth in the Engagement Letter subject to the following terms, which apply notwithstanding anything in the Engagement Letter or the Motion or any exhibits related thereto to the contrary:
  - (a) CMAG and its affiliates shall not act in any other capacity (for example, and without limitation, as a financial advisor, claims agent/claims administrator, or investor/acquirer) in connection with the above-captioned cases.

- (b) In the event the Debtors seek to have CMAG personnel assume executive officer positions that are different than the positions disclosed in the Motion, or to materially change the terms of the engagement by either (i) modifying the functions of personnel, (ii) adding new executive officers, or (iii) altering or expanding the scope of the engagement, a motion to modify the retention shall be filed.
- (c) CMAG shall file monthly with the Court, with copies to the United States Trustee (“U.S. Trustee”) and all official committees, a report of staffing on the engagement for the previous month. Such report shall include the names and functions filled of the individuals assigned. All staffing shall be subject to review by the Court in the event an objection is filed.
- (d) No principal, employee, or independent contractor of CMAG and its affiliates shall serve as a director of any of the above-captioned Debtors during the pendency of the above-captioned cases.
- (e) CMAG shall file with the Court, and provide notice to the U.S. Trustee and all official committees, monthly reports of compensation earned and expenses incurred. Such reports shall contain summary charts which describe the services provided, identify the compensation earned by each executive officer and staff employee provided, and itemize the expenses incurred. Time records shall: (i) be appended to the reports; (ii) contain detailed time entries describing the tasks performed; (iii) be organized by project category, and (iv) the time entries shall identify the time spent completing each task in 30 minute increments and the corresponding charge (time multiplied by hourly rate) for each task. All compensation shall be subject to review by the Court.
- (f) Notwithstanding the requirements of paragraph (e) above, the Debtors are authorized, but not directed, to pay, in the ordinary course of business and in accordance with the terms set forth in the Engagement Letter, all amounts invoiced by CMAG for fees and expenses incurred in connection with CMAG’s retention. However, such amounts shall remain subject to further Court approval, and shall be repaid if such Court approval is not obtained. More particularly, CMAG shall file with the Court, and provide notice to the United States Trustee and all official committees, on at least a quarterly basis, interim applications for approval of its compensation. CMAG shall also file a final application for approval of compensation at the conclusion of its engagement. CMAG’s interim and final applications shall be subject to review for reasonableness and approval by the Court using the same standards that otherwise would apply to applications made pursuant to sections 330 and 331 of the Bankruptcy Code.
- (g) Success fees, transaction fees, or other back-end fees shall be approved by the Court at the conclusion of the case on a reasonableness standard and are not being pre-approved by entry of this Order. No success fee,



transaction fee, or back-end fee shall be sought upon conversion of the case, dismissal of the case for cause, or appointment of a trustee.

- (h) For a period of three years after the conclusion of the engagement, neither CMAG nor any of its affiliates shall make any investments in the Debtors or the Reorganized Debtors.
- (i) CMAG shall disclose any and all facts that may have a bearing on whether CMAG, its affiliates, and/or any individuals working on the engagement have any interest materially adverse to the interest of the Debtors' estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors, or for any other reason. The obligation to disclose identified in this subparagraph is a continuing obligation.

4. The indemnification provisions in the Engagement Letter are subject to the following:

- (a) subject to the provisions of subparagraphs (b) and (c) below, the Debtors are authorized to indemnify, and shall indemnify, CMAG for any claims arising out of or related to CMAG's engagement under, or any matter referred to in, the Engagement Letter and/or the services to be provided by CMAG as specified in the Motion, but not for any claim arising from, related to, or in connection with CMAG's performance of any other services not in connection with the engagement, unless such services and indemnification therefor are approved by this Court;
- (b) the Debtors shall have no obligation to indemnify CMAG for any claim or expense that is either (i) judicially determined (the determination having become final) to have resulted primarily from CMAG's actual fraud, gross negligence, bad faith, breach of fiduciary duty (if any), self dealing, or willful misconduct, or (ii) settled prior to a judicial determination as to CMAG's actual fraud, gross negligence, bad faith, breach of fiduciary duty (if any), self dealing, or willful misconduct, but determined by this Court, after notice and a hearing pursuant to subparagraph (c) *infra*, to be a claim or expense for which CMAG is not entitled to receive indemnity under the terms of the Engagement Letter as modified by this Order; and
- (c) if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these chapter 11 cases, CMAG believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, reimbursement, and/or contribution obligations under the Engagement Letter (as modified by this Order), including, without limitation, the advancement of defense costs, CMAG must file an application therefor in this Court, and

the Debtors may not pay any such amounts to CMAG before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by CMAG for indemnification, contribution, or reimbursement, and not as a provision limiting the duration of the Debtors' obligation to indemnify or provide contribution or reimbursement to CMAG.

5. Notwithstanding anything contained in paragraph 5 or paragraph 7 of the Engagement Letter, the Debtors are not obligated or authorized to reimburse CMAG's expenses for legal counsel incurred (i) defending challenges to CMAG's fees or (ii) responding to or complying with discovery requests, including depositions, subpoenas, answering interrogatories, or similar court process to the extent such discovery requests are directed to CMAG, and not to the Debtors.

6. Paragraphs 11 ("Limitation on CMAG Liability") and 23 ("Search Fees") of the Engagement Letter are stricken.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004 are waived.

8. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

9. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

10. To the extent there is an inconsistency between the terms of the Engagement Letter, the Motion, and this Order, the terms of this Order shall govern.

11. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

New York, New York  
Dated: July 3, 2019

**s/Michael E. Wiles**

THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

THIS IS EXHIBIT "M" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.

A handwritten signature in blue ink, appearing to be "JH" followed by a long horizontal stroke.

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Commissioner for Taking Affidavits

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. 4</b>

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM,  
(B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO,  
(C) MAINTAIN EXISTING BUSINESS FORMS, AND (D) CONTINUE TO PERFORM  
INTERCOMPANY TRANSACTIONS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an final order (this “Final Order”), (a) authorizing the Debtors to (i) continue to operate their Cash Management System as illustrated on **Exhibit 1** hereto and maintain their existing Bank Accounts, (ii) honor certain prepetition obligations related thereto, (iii) maintain existing business forms, and (iv) continue to perform Intercompany Transactions with each other and with a non-debtor affiliate consistent with historical practice, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court may enter a final order

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis only as set forth herein and subject to the terms of this Final Order.

2. The Debtors are authorized, but not directed, to: (a) continue using the Cash Management System and honor any prepetition obligations related to the use thereof, including any Bank Fees; (b) designate, maintain, close, and continue to use on a final basis their existing Bank Accounts, including, but not limited to, the Bank Accounts identified on Exhibit 2 hereto, in the names and with the account numbers existing immediately before the Petition Date; (c) deposit funds in, and withdraw funds from, the Bank Accounts by all usual means, including checks, wire transfers, ACH transfers, and other debits; (d) treat their prepetition Bank Accounts for all purposes as debtor in possession accounts; and (e) open new debtor-in-possession Bank Accounts.

3. Notwithstanding anything contained herein, all of the Debtors' Bank Accounts held at Royal Bank of Canada shall not maintain funds in excess of \$100,000 in the aggregate with respect to all such accounts, and any amounts in excess of \$100,000 at the end of a business day

shall be deposited or transferred to any of the Debtors' Bank Accounts that are held at Wells Fargo. The two Bank Accounts that are maintained at Shanghai Pudong Development are for the Debtors' international non-Debtor affiliate, Hollander Sleep Products Trading (Shanghai) Co., LTD.

4. The Debtors are authorized, but not directed, to continue using the Purchase Cards and to pay any prepetition or postpetition amounts due in connection therewith. The Debtors are further authorized to continue to use the Purchase Card Program under the Card Agreement, subject to the terms and conditions thereof and further subject to the terms of any applicable debtor-in-possession financing orders and related loan documents pursuant to which the obligations arising under the Card Agreement are included as obligations thereunder. Wells Fargo may rely on the representations of the Debtors with respect to its use of the Purchase Card Program pursuant to the Card Agreement, and Wells Fargo shall not have any liability to any party for relying on such representations by a Debtor as provided for herein.

5. The Debtors are authorized, but not directed, to continue using, in their present form, the Business Forms, as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, *provided, however*, that once the Debtors have exhausted their existing stock of Business Forms and checks, they shall ensure that any new Business Forms and checks are clearly labeled "Debtor in Possession" and *provided, further*, that with respect to any Business Forms and checks that are generated electronically, the Debtors shall ensure that such electronic Business Forms and checks are clearly labeled "Debtor in Possession."

6. The Cash Management Banks at which the Bank Accounts are maintained are authorized to (a) continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay any and all checks, drafts, wire transfers, and ACH transfers issued, whether before

or after the Petition Date, and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be, and (b) debit the Debtors' accounts in the ordinary course of business without the need for further order of this Court for (i) all checks drawn on the Debtors' accounts which are cashed at such Cash Management Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date, (ii) all checks or other items deposited in one of the Debtors' accounts with such Cash Management Bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtor was responsible for such items prior to the Petition Date, and (iii) all applicable fees and expenses, including the Bank Fees, associated with the nature of the deposit and cash management services rendered to the Debtors, whether arising prepetition or postpetition, from the applicable Bank Accounts consistent with historical practice, and further, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, or other electronic transfers of any kind, regardless of whether such returned items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

7. The Debtors will instruct the Cash Management Banks as to which checks, drafts, wire transfers (excluding any wire transfers that the Banks are obligated to settle), or other items presented, issued, or drawn, shall not be honored. Except for those checks, drafts, wires, or other ACH transfers that are authorized or required to be honored under an order of the Court, no Debtor shall instruct or request any Cash Management Bank to pay or honor any check, draft, or other payment item issued on a Bank Account prior to the Petition Date but presented to such Cash Management Bank for payment after the Petition Date.



8. The Cash Management Banks may rely on the representations of the Debtors with respect to whether any check, draft, wire, transfer, or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order or any other order of the Court, and such Cash Management Banks shall not have any liability to any party for relying on such representations by the Debtors as provided for herein, and should a Cash Management Bank honor a prepetition check or other item drawn on any account that is the subject of this Final Order (a) at the direction of the Debtors to honor such prepetition check or item, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as the result of an innocent mistake made despite implementation of customary item handling procedures, the Cash Management Bank shall not be deemed to be nor shall be liable to the Debtors, their estates, or any other party on account of such prepetition check or other item being honored postpetition or otherwise be in violation of this Final Order.

9. Those certain existing deposit agreements between the Debtors and the Cash Management Banks shall continue to govern the postpetition cash management relationship between the Debtors and the Cash Management Banks, and all of the provisions of such agreements, including, without limitation, the termination, right of offset, analysis fees, overdrafts, and fee and expense provisions, shall remain in full force and effect. Either the Debtors or the Cash Management Banks may, without further order of the Court, implement changes to the cash management systems and procedures in the ordinary course of business pursuant to the terms of those existing deposit agreements and the DIP Orders, as applicable, including, without limitation, the opening and closing of bank accounts.

10. As soon as practicable after entry of this Final Order, the Debtors shall serve a copy of this Final Order on the Banks.

11. The requirement to establish separate accounts for tax payments is hereby waived.

12. The Debtors are authorized to (a) continue performing Intercompany Transactions in the ordinary course of business and (b) set off mutual postpetition obligations relating to intercompany receivables and payables through the Cash Management System arising from or related to the operation of their business in the ordinary course subject to the terms of this Final Order, *provided* that, for the avoidance of doubt, the Debtors shall not be authorized by this Final Order to undertake any other Intercompany Transaction that is not on the same terms as, or materially consistent with, the Debtors' operation of the businesses in the ordinary course during the prepetition period, *provided, further*, that, notwithstanding anything to the contrary contained herein, the Debtors shall not, without the prior written consent of the official committee of unsecured creditors appointed in these cases (the "Committee"), which shall not be unreasonably withheld, conditioned, or delayed, or upon Court approval of a motion which may be filed on seven days' notice, make (a) any transfer to non-Debtor affiliates of amounts in excess of \$250,000 in any calendar month and (b) any investments in or capital contributions to any other Debtor or non-Debtor affiliates. The Committee reserves all rights with respect to any and all prepetition transfers made by and between the U.S. Debtors and Hollander Sleep Products Canada Limited ("Hollander Canada"). The Debtors shall provide the Committee and the Information Officer in the Canadian Proceedings (as defined in the First Day Declaration) reports on a weekly basis (no later than the second business day of the week following the previous week's end) of transfers of cash or other funds made that week from Hollander Canada to the U.S. Debtor entities, if any.

13. Unless prohibited by applicable law, (a) transfers made by Debtors to non-Debtor affiliates and (b) payments to third parties made by Debtors on behalf of non-Debtor affiliates, each pursuant to postpetition Intercompany Transactions, shall be deemed claims against and loans

to such non-Debtor affiliates (and not investments or contributions of capital). Each Debtor making an Intercompany Transfer to any non-Debtor affiliate shall have claims for contribution, reimbursement, or otherwise for the full value of the transfer or advance (including cash) against such non-Debtor affiliate to which such intercompany transfers or advances are made.

14. The Debtors shall continue to maintain current records with respect to all transfers of cash so that all transactions, including the Intercompany Transactions, may be readily ascertained, traced, and recorded properly on applicable intercompany accounts and distinguished between prepetition and postpetition transfers. All Intercompany Claims arising after the Petition Date shall be accorded administrative expense status in accordance with sections 503(b) and 364(b) of the Bankruptcy Code. Notwithstanding the foregoing, the Canadian Intercompany Superiority Administrative Claims (as defined in the DIP Orders) shall be treated in accordance with the DIP Orders.

15. The Debtors shall provide to the Committee reports on a monthly basis (no later than the last day of the month following the previous month's end) that set forth (a) journal entries of all Intercompany Transactions between the Debtor entities and non-Debtor affiliates and between the Debtor entities and Hollander Canada and (b) a schedule of all intercompany cash settlements between the Debtor entities and non-Debtor affiliates and between the Debtor entities and Hollander Canada. The first such monthly report shall be for June 2019 and shall include activity retroactive to the Petition Date. In addition, on a monthly basis (no later than the last day of the month following the previous month's end), the Debtors shall provide the Committee with month-end postpetition intercompany balances between and among all Debtor entities and non-Debtor affiliates, and as soon as practicable after month's end, Debtors shall provide to the Committee month-end cash bank balances for all Debtor entities and non-Debtor affiliates. The

Debtors shall provide copies of all reports and other information described in this paragraph to the Information Officer in the Canadian Proceedings (as defined in the First Day Declaration) concurrently with providing such reports and information to the Committee.

16. No later than seven days following the Debtors' filing of Schedules of Assets and Liabilities, the Debtors shall provide to the Committee the cash bank balances for all Debtor entities and non-Debtor affiliates, as of the Petition Date, and information on all prepetition intercompany balances that have been set off against one another since the Petition Date, including: (a) the amount of each prepetition intercompany balance against which a setoff was effectuated; (b) the identity of each entity (i.e., the name of the Debtor entity and/or non-Debtor affiliate to the setoff); and (c) whether the set off was a cash setoff or non-cash setoff.

17. The Debtors are authorized to open new bank accounts or close any existing Bank Accounts as they may deem necessary and appropriate in their reasonable business judgment, *provided* that any new bank account shall be at a bank that is an authorized depository or at a bank that is willing to execute a Uniform Depository Agreement with the U.S. Trustee, and, to the extent the Debtors close a Bank Account or open a new bank account, they shall provide notice of such closing or opening within fifteen days thereafter to the U.S. Trustee and counsel to the Committee.

18. Except as otherwise provided herein, in the event that a Bank Account does not comply or ceases to comply with the requirements of section 345(b) of the Bankruptcy Code, the Debtors shall have forty-five days thereafter, without prejudice to seeking an additional extension, to come into compliance with section 345(b) of the Bankruptcy Code or sufficient time, in the Debtors' sole discretion, to close such Bank Account or to seek appropriate relief from the Court.

19. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the

validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

20. Nothing contained in this Final Order or any action taken by the Debtors in implementing this Final Order shall be deemed a waiver of the rights of any party-in-interest to dispute the amount of, basis for, validity, or treatment of any Intercompany Claim or the allocation of expenses or other costs between any Debtor entities.

21. Notwithstanding the relief granted in this Final Order, any payment made or to be made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any order entered by the Court approving the entry into any postpetition debtor-in-possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

22. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

23. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

24. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

25. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

New York, New York  
Dated: July 2, 2019

s/Michael E. Wiles

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THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Cash Management System Diagram**

ABL Revolver  
Wells FargoHollander Sleep Products, LLC  
Master Depository Account  
Acct # 4234Lockbox  
#2752Lockbox  
#847122Dream II Holdings, LLC  
Pacific Coast Feather Cushion LLC  
Depository Acct  
Acct # 2581Dream II Holdings, LLC  
Pacific Coast Feather LLC  
Depository Acct  
Acct # 2851Lockbox  
#847119Dream II Holdings, LLC  
Pacific Coast Feather  
LLC  
Depository Acct  
Acct # 7339Dream II Holdings, LLC  
Pacific Coast Feather LLC  
Depository Acct – E-  
Commerce  
Acct # 8066Hollander Sleep  
Products Canada  
Limited  
SCAD Depository  
Account  
Acct # 7433Hollander Sleep  
Products Canada  
Limited  
SCAD Depository  
Account  
Acct # 7463Lockbox  
#T56532Hollander Sleep  
Products Canada  
Limited  
SUSD Depository  
Account  
Acct # 2580Lockbox  
#T56532UHollander Sleep Products  
Canada Limited  
SUSD Operating Account  
Acct # 8373Hollander Sleep  
Products Canada  
Limited  
SUSD Operating  
Account  
Acct # 3216Hollander Sleep Products  
Canada Limited  
SCAD Operating Account  
Acct # 7425Hollander Sleep Products  
Canada Limited  
SCAD Operating Account  
Acct # 7471Hollander Sleep Products  
Canada Limited  
SCAD Payroll Account  
Acct # 7455Dream II Holdings, LLC  
Pacific Coast Feather  
Cushion LLC  
ZBA Subsidiary / Payroll  
Acct # 2005Hollander Sleep  
Products, LLC  
Payroll Account  
Acct # 6169Hollander  
Sleep Products, LLC  
Operating Account  
Master  
Acct # 4226Hollander  
Sleep  
Products, LLC  
Disbursement  
Account  
Acct # 1471Dream II  
Holdings, LLC  
Pacific Coast  
Feather LLC  
Disbursement –  
Health Claims  
Acct # 0451

Legend:

RBC Acct

Wells Fargo  
AcctCanadian Wells  
Fargo Acct

Disbursement of funds from ABL Revolver

Disbursement of funds from depository accounts



**Exhibit 2**

**Debtor and Non-Debtor Affiliate Bank Accounts**

	<b>Entity</b>	<b>Bank Name</b>	<b>Account Number</b>	<b>Account Type</b>
1	Hollander Sleep Products, LLC	Wells Fargo	x4226	Operating
2	Hollander Sleep Products, LLC	Wells Fargo	x4234	Depository
3	Hollander Sleep Products, LLC	Wells Fargo	x1471	Checking
4	Hollander Sleep Products, LLC	Wells Fargo	x6169	Checking
5	Dream II Holdings, LLC Pacific Coast Feather Cushion, LLC	Wells Fargo	x2581	Depository
6	Dream II Holdings, LLC Pacific Coast Feather, LLC	Wells Fargo	x2851	Depository
7	Dream II Holdings, LLC Pacific Coast Feather, LLC	Wells Fargo	x0451	Checking
8	Dream II Holdings, LLC Pacific Coast Feather, LLC	Wells Fargo	x8006	Depository
9	Dream II Holdings, LLC Pacific Coast Feather Cushion, LLC	Wells Fargo	x2005	Checking
10	Dream II Holdings, LLC Pacific Coast Feather Cushion, LLC	Wells Fargo	x7339	Depository
11	Hollander Sleep Products Canada Limited	Wells Fargo	x7425	Checking
12	Hollander Sleep Products Canada Limited	Royal Bank of Canada	x7471	Checking
13	Hollander Sleep Products Canada Limited	Royal Bank of Canada	x7455	Checking
14	Hollander Sleep Products Canada Limited	Wells Fargo	x7433	Depository
15	Hollander Sleep Products Canada Limited	Royal Bank of Canada	x7463	Depository
16	Hollander Sleep Products Canada Limited	Wells Fargo	x8373	Operating
17	Hollander Sleep Products Canada Limited	Royal Bank of Canada	x3216	Operating
18	Hollander Sleep Products Canada Limited	Royal Bank of Canada	x2580	Depository

	Entity	Bank Name	Account Number	Account Type
19	Hollander Sleep Products Trading (Shanghai) Co., LTD.	Shanghai Pudong Development	x0327	Operating
20	Hollander Sleep Products Trading (Shanghai) Co., LTD.	Shanghai Pudong Development	x0875	Operating

THIS IS EXHIBIT "N" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3 , 2019.

A handwritten signature in blue ink, appearing to be "LH" followed by a horizontal line.

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Commissioner for Taking Affidavits

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. 7</b>

**FINAL ORDER (A) AUTHORIZING THE DEBTORS  
TO MAINTAIN AND ADMINISTER THEIR EXISTING  
CUSTOMER PROGRAMS AND HONOR CERTAIN PREPETITION  
OBLIGATIONS RELATED THERETO AND (B) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”),

(a) authorizing the Debtors to maintain and administer the Customer Programs and honor certain prepetition obligations related thereto, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter this Final Order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue to administer the Customer Programs in the ordinary course and to honor any prepetition obligations related to the Customer Programs.
3. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

5. Notwithstanding the relief granted in this Final Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor in possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Customer Programs.

7. Nothing contained in the Motion or this Final Order is intended or should be construed to create an administrative priority claim on account of any of the Customer Programs.

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of the Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

11. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

New York, New York  
Dated: July 2, 2019

s/Michael E. Wiles

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THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

THIS IS EXHIBIT "O" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a series of loops and a long horizontal stroke.

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Commissioner for Taking Affidavits



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

	)	
In re:	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**FINAL ORDER WITH RESPECT TO PREPETITION ABL SECURED PARTIES AND  
DIP ABL SECURED PARTIES (A) AUTHORIZING THE DEBTORS TO OBTAIN  
POSTPETITION FINANCING, (B) AUTHORIZING THE DEBTORS TO USE CASH  
COLLATERAL, (C) GRANTING LIENS AND PROVIDING SUPERPRIORITY  
ADMINISTRATIVE EXPENSE STATUS, (D) GRANTING ADEQUATE PROTECTION  
TO THE PREPETITION ABL SECURED PARTIES, (E) MODIFYING THE  
AUTOMATIC STAY, AND (F) GRANTING RELATED RELIEF**

Upon the motion, dated May 19, 2019 (the “DIP Motion”) of Hollander Sleep Products, LLC (the “DIP Term Loan Borrower”) and Hollander Home Fashions Holdings, LLC, Hollander Sleep Products Kentucky, LLC, Hollander Sleep Products Canada Limited, Pacific Coast Feather, LLC and Pacific Coast Feather Cushion, LLC (collectively the “DIP ABL Borrowers” and together with the Term Loan Borrower, the “Borrowers”) on behalf of themselves and their affiliated debtors and debtors-in possession (together with Dream II Holdings, LLC (“Parent”), collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Cases”), seeking entry of an order (this “Final Order”) pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), 507 and 552 of chapter 11 of title 11 of the United States Code (the

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

“Bankruptcy Code”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Local Rule 4001-2, *inter alia*:

(i) authorizing on a final basis the Debtors to obtain \$90 million senior secured postpetition financing on a superpriority basis (the “DIP ABL Credit Facility” and the loans under the DIP ABL Credit Facility, the “DIP ABL Loans”) pursuant to the terms and conditions of that certain Debtor-in-Possession Credit Agreement (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “DIP ABL Credit Agreement”), by and among the DIP ABL Borrowers, Parent, as guarantor, and such other guarantors thereto from time to time (the “DIP ABL Guarantors”; together with the DIP ABL Borrowers, the “DIP ABL Loan Parties” or “DIP Parties”), Wells Fargo Bank, National Association, as agent (in such capacity, the “DIP ABL Agent”), for and on behalf of itself and the other lenders party thereto (the “DIP ABL Lenders”), the Issuing Lenders (as therein defined) and the Bank Product Providers (as therein defined) (collectively, the “DIP ABL Secured Parties”), substantially in the form of Exhibit B attached to the DIP Motion;

(ii) authorizing on a final basis the Debtors party thereto to execute and deliver the DIP ABL Credit Agreement and any other agreements and documents related thereto (collectively with the DIP ABL Credit Agreement, the “DIP ABL Documents”) and to perform such other acts as may be necessary or desirable in connection with the DIP ABL Documents;

(iii) granting on a final basis the DIP ABL Credit Facility and all obligations owing thereunder and under the DIP ABL Documents to the DIP ABL Agent and DIP ABL Secured Parties (collectively, and including all “Obligations” as described in the DIP ABL Credit

Agreement (including the Last Out DIP Obligations<sup>2</sup>), the “DIP ABL Obligations”) allowed superpriority administrative expense claim status in each of the Cases and any Successor Cases (as defined herein);

(iv) [reserved];

(v) [reserved];

(vi) [reserved];

(vii) granting on a final basis to the DIP ABL Agent, for the benefit of itself and the DIP ABL Secured Parties and the DIP ABL Obligations, automatically perfected security interests in and liens on all of the DIP ABL Collateral (as defined below), including, without limitation, all property constituting “Cash Collateral” as defined in section 363(a) of the Bankruptcy Code, which liens shall be subject to the Carve Out and the priorities set forth herein;

(viii) authorizing and directing the Debtors on a final basis to pay the principal, interest, fees, expenses and other amounts payable under the DIP ABL Documents as such become due, including, without limitation, letter of credit fees (including issuance and other related charges), continuing commitment fees, closing fees, audit fees, appraisal fees, liquidator fees, structuring fees, administrative agent’s fees, the reasonable fees and disbursements of the DIP ABL Agent’s and DIP ABL Secured Parties’ respective attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, the applicable DIP ABL Documents;

(ix) authorizing the Debtors on a final basis to use the Prepetition Collateral, including the Cash Collateral (each as defined below) of the Prepetition ABL Secured Parties and Prepetition ABL Obligations under the Prepetition ABL Documents, and providing adequate protection to the

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<sup>2</sup> “Last Out DIP Obligations” shall have the meaning ascribed to the term “Last Out Obligations” in the DIP ABL Credit Agreement.

Prepetition ABL Secured Parties and Prepetition ABL Obligations for any Diminution in Value (as defined below) of their interests in the Prepetition Collateral, including the Cash Collateral, as applicable, and subject to the Carve Out; and

(x) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP ABL Documents, the Interim Order, and this Final Order.

The Court having considered the DIP Motion, the exhibits attached thereto, the *Declaration of Saul Burian in Support of the Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Lenders, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* [Docket No. 19], the DIP ABL Documents, the *Declaration of Marc Pfefferle, Chief Executive Officer of Hollander Sleep Products, LLC, in Support of Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 3], and the evidence submitted and argument made at the interim hearing (the "Interim Hearing"); and the Court having entered after the Interim Hearing the *Interim Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Lenders, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* [Docket No. 53] (the "Interim Order")<sup>3</sup> and

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<sup>3</sup> To the extent used herein, the following terms will have the meanings ascribed thereto in the Interim Order: DIP Term Loan Credit Facility, DIP Term Loans, DIP Term Loan Credit Agreement, DIP Term Loan Guarantors, DIP Term Loan Parties, DIP Term Loan Lenders, Required DIP Term Loan Lenders, DIP Term Loan Agent, DIP Term Loan Documents, DIP Term Loan Obligations, DIP Term Collateral, Prepetition Term Loan Credit Agreement, Prepetition Term Loan Documents, Prepetition Term Loan Borrower, Prepetition Term Loan Parties,

notice of the Final Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the final hearing (the “Final Hearing”) with respect to the portion of the DIP Motion pertaining to the DIP ABL Credit Facility and the Prepetition ABL Credit Facility having been held on July 1, 2019, and concluded; and all objections, if any, to the relief requested in the DIP Motion pertaining to the DIP ABL Credit Facility and the Prepetition ABL Credit Facility having been withdrawn, resolved by modifications to the Final Order set forth herein, or overruled by the Court; and it appearing that approval of the relief requested in the DIP Motion pertaining to the DIP ABL Credit Facility and the Prepetition ABL Credit Facility is reasonable and in the best interests of the Debtors, their estates, and all parties-in-interest, and is essential for the continued operation of the Debtors’ businesses and the preservation of the value of the Debtors’ assets; and the Court having determined that the legal and factual bases set forth in the DIP Motion establish just cause for the relief granted herein; and it appearing that the Debtors’ entry into the DIP ABL Credit Agreement is a sound and prudent exercise of the Debtors’ business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING AND FINAL HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>4</sup>

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Prepetition Term Loan Administrative Agent, Prepetition Term Loan Lenders, Prepetition Term Loan Credit Facility, Prepetition Term Loan Permitted Prior Liens, Prepetition Term Loan Obligations, DIP Term Collateral, DIP Term Loan Liens, Prepetition Term Loan Liens, Prepetition Term Loan Adequate Protection Liens, Prepetition Term Loan Superpriority Claim, and Prepetition Term Loan Adequate Protection Payments.

<sup>4</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

**Deemed Modifications to DIP ABL Credit Agreement and DIP ABL Documents**

1. No restructuring support agreement or plan support agreement has been approved by the Court, and any provision of the DIP ABL Credit Agreement or DIP ABL Documents that purports to obligate the Debtors to the terms of such an agreement, or that purports to make it a default if the Debtors breach any such agreement, shall not be effective unless such agreements are authorized by further order of this Court.

2. The Court has not ruled on the parties' request for a waiver of the application of section 506(c) of the Bankruptcy Code, and the request for such a waiver has been deferred to a future hearing. Any provision of the DIP ABL Credit Agreement or DIP ABL Documents that is conditioned on such a waiver, or that purport to make it a default if such a waiver is not obtained, shall not be effective at this time.

3. No provision in this Order or in the DIP ABL Credit Agreement or DIP ABL Documents shall prevent the Debtors from seeking to refinance the obligations thereunder or from seeking the Court's approval of such a refinancing (including the issuance of liens that are superior to or equal in standing to the liens that secure the obligations under the DIP ABL Credit Agreement or DIP ABL Documents), and it shall not be a default if the Debtors seek or obtain approval of such a refinancing or of such liens, *provided* that the DIP ABL Obligations are repaid in full in accordance with the terms of the DIP ABL Documents upon the consummation of and with the proceeds of any such refinancing.

The DIP ABL Credit Agreement and DIP ABL Documents are deemed to have been amended by the foregoing.

**Findings of Fact**

A. Petition Date. On May 19, 2019 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the “Court”).

B. Debtors in Possession. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

C. Jurisdiction and Venue. This Court has jurisdiction over the Cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the DIP Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). This Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief sought in the DIP Motion and granted in the Interim Order and this Final Order are sections 105, 361, 362, 363, 364, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014, and the Local Rules.

D. Committee Formation. On May 30, 2019, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code (the “Creditors’ Committee”).

E. Notice. Proper, timely, adequate, and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Motion with respect to the relief requested at the Final Hearing or the entry of this Final Order shall be required. The relief granted herein is necessary for the

continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets.

F. Debtors' Stipulations. After consultation with their attorneys and financial advisors, and without prejudice to the rights of the Debtors and parties-in-interest as set forth in paragraph 42 herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (paragraphs F(i) through F(xv) below are referred to herein, collectively, as the "Debtors' Stipulations"), which Debtors' Stipulations shall not constitute a finding of this Court in accordance with Local Bankruptcy Rule 4001-2(g)(4) and further, which Debtors' Stipulations shall be deemed not effective solely with respect to any Challenge timely brought or filed prior to the Challenge Period Termination Date, unless and until such Challenge is overruled, settled, or denied by Final Order of the Court:

(i) *Prepetition ABL Facility.* Pursuant to that certain Third Amended and Restated Credit Agreement dated as of June 9, 2017 (as amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition ABL Credit Agreement," and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition ABL Documents")), among (a) the borrowers thereunder (the "Prepetition ABL Borrowers" and together with the "Guarantors" as defined in the Prepetition ABL Credit Agreement, the "Prepetition ABL Loan Parties"), (b) Dream II Holdings, LLC as parent, (c) Wells Fargo Bank, National Association, as agent (in such capacity, the "Prepetition ABL Agent"), sole lead arranger and sole book runner, and (d) the lenders party thereto (the "Prepetition ABL Lenders;" and collectively with the Prepetition ABL Agent, the "Issuing Lenders" (as defined under the Prepetition ABL Credit Agreement), and the "Bank Product Providers" (as defined under



the Prepetition ABL Credit Agreement) the “Prepetition ABL Secured Parties” or “Prepetition Secured Parties”), the Prepetition ABL Secured Parties provided credit and other financial accommodations to, and issued letters of credit for the account of, the Prepetition ABL Borrowers pursuant to the Prepetition ABL Documents (the “Prepetition ABL Credit Facility” or “Prepetition Secured Facility”).

(ii) *Prepetition Put Agreement and Existing Participation Agreement.* Pursuant to that certain (i) Put Agreement dated as of November 27, 2018 (the “Put Agreement”) among Sentinel Capital Partners V, L.P., Sentinel Dream Blocker, Inc., and Sentinel Capital Investors V, L.P. (the “Put Purchasers”), Wells Fargo Bank, National Association and SunTrust Bank, as lenders under the Prepetition ABL Credit Agreement, and the Prepetition ABL Agent, in consideration of providing the Prepetition ABL Borrowers with “Last Out Loans” (as defined in the Prepetition ABL Credit Agreement) (the “Last Out Loans”) (the Last Out Loans and any interest, fees, costs, charges, indemnities and other amounts accrued thereon, the “Last Out Obligations”), the Put Purchasers agreed to purchase a one hundred percent subordinated participation interest in the Last Out Loans provided to the Prepetition ABL Borrowers pursuant to the Prepetition ABL Credit Agreement and (ii) Existing Participation Agreement (as defined in the DIP ABL Credit Agreement) and the occurrence of the “Exercise Date” (as defined in the Existing Participation Agreement), upon the occurrence of the Petition Date and “Notice of Put Exercise” (as defined in the Put Agreement) provided by Prepetition ABL Agent, the Put Purchasers acquired the Participation Interest (as defined in the Existing Participation Agreement) in respect of the Last Out Loans and Last Out Obligations (as defined in the Prepetition ABL Credit Agreement).

(iii) *Prepetition ABL Obligations.* The Prepetition ABL Facility provided the Borrowers with, among other things, (x) \$125,000,000 in aggregate Commitments (as defined in

the Prepetition ABL Credit Agreement). As of May 17, 2019, the aggregate principal amount of loans outstanding under the Prepetition ABL Facility was not less than \$61,697,731 plus \$5,136,180 in respect of letters of credit (together with accrued and unpaid interest, and outstanding letters of credit, any reimbursement obligations (contingent or otherwise) in respect of letters of credit, any fees, expenses and disbursements (including, without limitation, attorneys' fees, accountants' fees, auditor fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts, and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition ABL Borrower's and certain of the Prepetition ABL Guarantors' obligations pursuant to the Prepetition ABL Documents, including all "Obligations" as defined in the Prepetition ABL Credit Agreement, including the Last Out Obligations, "Existing Secured Canadian Obligations" (as defined in the DIP ABL Credit Agreement), and "Existing Secured US Obligations" (as defined in the DIP ABL Credit Agreement) (collectively, the "Prepetition ABL Obligations" or "Prepetition Secured Obligations").

(iv) *Prepetition ABL Liens and Prepetition ABL Priority Collateral.* As more fully set forth in the Prepetition ABL Documents, prior to the Petition Date, the Prepetition ABL Borrowers and the Prepetition ABL Guarantors granted to the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Secured Parties and Prepetition ABL Obligations, a security interest in and continuing lien (the "Prepetition ABL Liens") on substantially all of their assets and property, including, without limitation, (a) a first priority security interest in and continuing lien on the ABL Priority Collateral (as defined in that certain DIP Intercreditor

Agreement referred to and as defined below) and all substitutions, replacements, accessions, products, and proceeds of any of the ABL Priority Collateral, in any form, including insurance proceeds and all claims against third parties for loss or damage to, or destruction of, or other voluntary conversion (including claims in respect of condemnation or expropriation) of any kind or nature of any or all of the foregoing (the “Prepetition ABL Priority Collateral”), and (b) a second priority security interest in and continuing lien on the Term Loan Priority Collateral (as defined in that certain DIP Intercreditor Agreement referred to and as defined below) and all substitutions, replacements, accessions, products, and proceeds of any of the Term Loan Priority Collateral, in any form, including insurance proceeds and all claims against third parties for loss or damage to, or destruction of, or other voluntary conversion (including claims in respect of condemnation or expropriation) of any kind or nature of any or all of the foregoing (collectively, the “Prepetition Term Loan Priority Collateral,” and together with the Prepetition ABL Priority Collateral, the “Prepetition Collateral”).<sup>5</sup>

(v) *Roll-Up of Obligations Under Prepetition ABL Credit Agreement.* All Existing Secured Obligations (as defined under the DIP ABL Credit Agreement as “Obligations” under the Prepetition ABL Credit Agreement (as defined below)), including all accrued and unpaid interest thereon and fees, costs, other charges, and expenses are hereby repaid, deemed repaid, deemed issued or deemed incurred, or otherwise replaced, as applicable, as “Obligations” under the DIP ABL Credit Agreement, subject to the terms herein. Notwithstanding the foregoing, nothing in the Interim Order or this Final Order shall impact the ability for the Court to unwind or partially unwind, after notice and a hearing, the pay down of Obligations under the Prepetition

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<sup>5</sup> Prepetition Term Loan Obligations are not secured by any ABL Canadian Collateral (as defined in the Intercreditor Agreement).

ABL Credit Agreement, in the event there is a timely and successful Challenge (as defined below) to the validity, enforceability, extent, perfection, or priority of the Prepetition ABL Lenders' liens or claims, or a determination that the Prepetition ABL Obligations were undersecured as of the Petition Date, and that the roll-up of Obligations under the Prepetition ABL Credit Agreement unduly advantaged the Prepetition ABL Lenders.

(vi) [Reserved]

(vii) [Reserved]

(viii) [Reserved]

(ix) *Priority of Prepetition ABL Liens; Prepetition Intercreditor Agreement; DIP Intercreditor Agreement.* The Prepetition ABL Agent and Prepetition Term Loan Administrative Agent entered into that certain Intercreditor Agreement dated as of June 9, 2017 (as amended, restated, supplemented, or otherwise modified in accordance with its terms prior to the Petition Date, the "Prepetition Intercreditor Agreement") to govern the respective rights, interests, obligations, priority, and positions of the Prepetition ABL Secured Parties and Prepetition Term Loan Parties with respect to the assets and properties of the Debtors and other obligors, including the Prepetition ABL Priority Collateral and Prepetition Term Loan Priority Collateral. Each of the Prepetition ABL Borrowers and Prepetition Term Loan Borrower acknowledged the Prepetition Intercreditor Agreement. The Prepetition Intercreditor Agreement is binding and enforceable against the Borrowers, the other "Grantors" thereunder, the Prepetition ABL Secured Parties, and the Prepetition Term Loan Parties in accordance with its terms and the Borrowers, such Grantors, the Prepetition ABL Secured Parties, and the Prepetition Term Loan Parties are not entitled to take any action that would be contrary to the provisions thereof. On May 23, 2019, the DIP ABL Agent and DIP Term Loan Agent entered into the Amended and Restated Intercreditor Agreement,

amending and restating the Prepetition Intercreditor Agreement in its entirety (the “DIP Intercreditor Agreement”). The DIP Intercreditor Agreement is binding and enforceable against the Borrowers, the other “Grantors” thereunder, the Prepetition ABL Secured Parties, the Prepetition Term Loan Parties, the DIP ABL Secured Parties and the DIP Term Loan Parties in accordance with its terms and the Borrowers, the Prepetition ABL Secured Parties, the Prepetition Term Loan parties, the DIP ABL Secured Parties and DIP Term Loan Parties are not entitled to take any action that would be contrary to the provisions thereof.

(x) *Validity, Extent, Perfection and Priority of Prepetition ABL Liens and Prepetition ABL Obligations.* Subject to paragraph 42 of this Order, the Debtors acknowledge and agree that as of the Petition Date: (a) the Prepetition ABL Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable and properly perfected and were granted to, or for the benefit of, the Prepetition ABL Secured Parties and Prepetition ABL Obligations, for fair consideration and reasonably equivalent value; (b) the Prepetition ABL Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to (1) the Prepetition Term Loan Liens on the Prepetition Term Loan Priority Collateral, (2) the Carve Out, and (3) certain liens otherwise permitted by the Prepetition ABL Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition ABL Liens as of the Petition Date, the “Permitted Prior Liens”); (c) the Prepetition ABL Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition ABL Loan Parties enforceable in accordance with the terms of the applicable Prepetition ABL Documents; (d) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition ABL Liens or Prepetition ABL Obligations exist, and no portion of the Prepetition ABL Liens or Prepetition ABL Obligations (including the Last Out Obligations)

is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including, without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition ABL Secured Parties or the Put Purchasers or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees arising out of, based upon or related to the Prepetition ABL Facility (including the Last Out Obligations) or entry into the Put Agreement and Existing Participation Agreement (as to the Put Purchasers, solely with respect to the Put Purchasers' interests in the Last Out Obligations and entry into the Put Agreement and Existing Participation Agreement, and subject to and only effective upon the Disinterested Director's Determination (as defined below) and the Challenge Period Termination Date (as defined below)) and subject to the rights of the Creditors' Committee set forth in paragraph 42; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition ABL Obligations (including the Last Out Obligations), the priority of the Prepetition ABL Loan Parties' obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition ABL Obligations; and (g) the Prepetition ABL Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code. Notwithstanding the foregoing or anything to the contrary herein, all of the Debtors' rights and remedies (whether at law or in equity) in connection with any potential claim or cause of action against the Put Purchasers which are, or may be, subject to investigation by the Debtors' disinterested director or the Creditors' Committee in accordance with paragraph 42 are preserved (and nothing shall impair any of the Debtors' rights

or remedies against the Put Purchasers) until (a) the completion of the investigation by the Debtors' disinterested director and the disinterested director's determination that there are no such claims or causes of action against the Put Purchasers or their respective affiliates or agents (the "Disinterested Director's Determination") and (b) the Challenge Period Termination Date (as defined herein). For the avoidance of doubt, any potential claim or cause of action against Sentinel Capital Partners, LLC and its affiliated investment funds or investment vehicles managed or advised by it, and its affiliates that directly or indirectly hold interests in the Debtors, in each case unrelated to the Put Purchasers' interests in the Last Out Obligations and entry into the Put Agreement and Existing Participation Agreement, are unaffected by this Final Order.

(xi) [Reserved]

(xii) *Default by the Debtors.* The Debtors acknowledge and stipulate that the Prepetition ABL Loan Parties are in default of their obligations under the Prepetition ABL Documents.

(xiii) *Releases.* Subject to Paragraph 42 of this Order, the Debtors hereby absolutely and unconditionally release and forever discharge and acquit the Prepetition ABL Secured Parties and the Put Purchasers (as to the Put Purchasers, solely with respect to the Put Purchasers' interests in the Last Out Obligations and entry into the Put Agreement and Existing Participation Agreement, and subject to and only effective upon the Disinterested Director's Determination and the Challenge Period Termination Date and subject to the rights of the Creditors' Committee set forth in paragraph 42) and their respective affiliates and each of their respective former, current or future officers, partners, directors, managers, members, principals, employees, agents, related funds, investors, financing sources, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the

respective successors and assigns thereof, in each case solely in their respective capacity as such (collectively, the “Released Parties”) from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, debts, accounts, contracts, liabilities, actions and causes of action arising prior to the Petition Date (collectively, the “Released Claims”) of any kind, nature or description, whether known or unknown, foreseen or unforeseen or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or otherwise, arising out of or related to (as applicable) the Prepetition ABL Documents or the Released Parties’ entry into the Put Agreement and Existing Participation Agreement, the obligations owing and the financial obligations made thereunder, the negotiation thereof and of the transactions reflected thereby and the obligations and financial obligations made thereunder, in each case that the Debtors at any time had, now have or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Final Order arising out of or related to (as applicable) the Prepetition ABL Documents or entry into the Put Agreement and Existing Participation Agreement, the obligations owing and the financial obligations made thereunder, the negotiation thereof and of the transactions reflected thereby and the obligations and financial obligations made thereunder, whether such Released Claims are matured, contingent, liquidated, unliquidated, unmatured, known, unknown, or otherwise.

(xiv) *Cash Collateral*. All cash, securities, or other properties of the DIP Parties (and the proceeds therefrom) to the extent subject to the valid, perfected, enforceable, and unavoidable liens as of the Petition Date of the Prepetition ABL Secured Parties, including, without limitation, all cash, securities, or other property (and the proceeds therefrom) and other amounts



on deposit or maintained by the DIP Parties in any account or accounts were subject to rights of set-off under the Prepetition ABL Documents and applicable law, for the benefit of the Prepetition ABL Secured Parties and Prepetition ABL Obligations, subject to the terms of the DIP Intercreditor Agreement. All proceeds of the Prepetition Collateral (including cash on deposit in any account or accounts as of the Petition Date, securities, or other property, whether subject to control agreements or otherwise, in each case that constitutes Prepetition Collateral) to the extent subject to the valid, perfected, enforceable, and unavoidable liens as of the Petition Date of the Prepetition ABL Secured Parties and/or Prepetition Term Loan Parties are “Cash Collateral” of the applicable Prepetition ABL Secured Parties, Prepetition Term Loan Parties, Prepetition Term Loan Obligations and Prepetition ABL Obligations within the meaning of section 363(a) of the Bankruptcy Code (the “Cash Collateral” and solely with respect to the Prepetition ABL Priority Collateral, the “ABL Cash Collateral”), subject to the Carve Out and the terms of the DIP Intercreditor Agreement.

(xv) *DIP Intercreditor Agreement.* Pursuant to section 510 of the Bankruptcy Code, except as expressly provided by the terms of the Interim Order, this Final Order, the DIP Intercreditor Agreement and any other intercreditor agreement or subordination agreement between and/or among any Prepetition ABL Loan Party, any Prepetition Term Loan Party, any Debtor or affiliate thereof, and any other applicable intercreditor or subordination provisions contained in any of the Prepetition ABL Documents or Prepetition Term Loan Documents (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights and remedies of the Prepetition ABL Secured Parties and the Prepetition Term Loan Parties (including the relative priorities, rights and remedies of such parties with respect to the replacement liens and administrative expense claims and superpriority administrative expense claims granted, or

amounts payable, by the Debtors under the Interim Order, this Final Order, or any other order entered in respect of the DIP Motion or otherwise and the modification of the automatic stay), and (iii) shall not be deemed to be amended, altered, or modified by the terms of the Interim Order, this Final Order, any other order entered in respect of the DIP Motion, the DIP ABL Documents, or the DIP Term Loan Documents, unless expressly set forth herein. The DIP ABL Credit Facility is an ABL Document as that term is used in the DIP Intercreditor Agreement, and any repayment of the Prepetition ABL Obligations pursuant to the Interim Order or this Final Order shall not be deemed to constitute a “Payment in Full of ABL Debt” as such term is defined in the DIP Intercreditor Agreement. The DIP Term Loan Credit Facility is a Term Loan Document as that term is used in the DIP Intercreditor Agreement.

G. Findings Regarding Postpetition Financing

(i) *Request for Postpetition Financing.* The Debtors seek authority on a final basis to (a) enter into the DIP ABL Credit Facility on the terms described herein and in the DIP ABL Documents, and (b) use ABL Cash Collateral on the terms described herein to administer their Cases and fund their operations.

(ii) *Priming of the Prepetition ABL Liens.* The priming of the Prepetition ABL Secured Parties and Prepetition Term Loan Parties on the Prepetition ABL Priority Collateral (and the priming of the Prepetition ABL Secured Parties on the Prepetition Term Loan Priority Collateral) under section 364(d) of the Bankruptcy Code, as contemplated by the DIP ABL Credit Facility, as authorized by the Interim Order and this Final Order, and as further described below, will enable the Debtors to continue borrowing under the DIP ABL Credit Facility and to continue to operate their businesses to the benefit of their estates and creditors. The Prepetition ABL Secured Parties and the Prepetition ABL Obligations are each entitled to receive adequate

protection as set forth in the Interim Order and this Final Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, solely to the extent of any diminution in value (“Diminution in Value”) of each of their respective interests in the Prepetition Collateral (including Cash Collateral), subject to the Carve Out.

(iii) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtors continue to have a critical need to obtain the financing pursuant to the DIP ABL Credit Facility and to continue to use the Prepetition ABL Priority Collateral (including ABL Cash Collateral) in order to, among other things, (i) permit the orderly continuation of the operation of their businesses, (ii) maintain business relationships with customers, vendors and suppliers, (iii) make payroll, and (iv) satisfy other working capital and operational needs. The access by the DIP Parties to sufficient working capital and liquidity through the use of ABL Cash Collateral and other Prepetition ABL Priority Collateral, incurrence of new indebtedness under the DIP ABL Documents and other financial accommodations provided under the DIP ABL Documents are necessary and vital to the preservation and maintenance of the going concern value of the DIP Parties and to a successful reorganization of the DIP Parties and DIP ABL Obligations. The terms of the proposed financing are fair and reasonable, reflect each DIP Parties’ exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration. The adequate protection provided in the Interim Order and this Final Order and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code.

(iv) *No Revolving Credit Available on More Favorable Terms.* The DIP ABL Credit Facility is the best source of asset-based, revolving debtor in possession financing available to the Debtors. Given their current financial condition, financing arrangements, and capital structure, the Debtors have been and continue to be unable to obtain asset-based financing from

sources other than the DIP ABL Secured Parties on terms more favorable than the DIP ABL Credit Facility. The Debtors are unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors have also been and are unable to obtain: (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Asset-based financing on a postpetition basis is not otherwise available without granting the DIP ABL Agent, for the benefit of itself and the DIP ABL Secured Parties and on account of the obligations under the DIP ABL Credit Facility (including the Last Out DIP Obligations): (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth in paragraph 6 hereof, (2) superpriority claims and liens, and (3) the other protections set forth in the Interim Order and this Final Order.

(v) *Use of proceeds of the DIP ABL Credit Facility.* As a condition to entry into the DIP ABL Documents, the extension of credit under the DIP ABL Credit Facility, and the authorization to use ABL Cash Collateral, the DIP ABL Agent, the DIP ABL Secured Parties, and the Prepetition ABL Secured Parties required, and the Debtors agreed, that proceeds of the DIP ABL Credit Facility shall be used, in each case in a manner consistent with the terms and conditions of the Interim Order, this Final Order and the DIP ABL Documents and in accordance with the budget attached hereto as Exhibit A, as the same may be modified from time to time consistent with the terms of the DIP ABL Documents and the DIP Term Loan Documents, and subject to such variances as permitted in the DIP ABL Credit Agreement (such budget, as so modified, the "Approved Budget"), solely for: (a) working capital and letters of credit; (b) other

general corporate purposes of the Debtors; (c) permitted payment of costs of administration of the Cases; (d) payment of such prepetition expenses of the Prepetition ABL Secured Parties as consented to by the DIP ABL Agent in its sole discretion, in each case under clauses (1) and (2) as approved by the Court; (e) payment of interest, fees, and expenses (including without limitation, legal and other professionals' fees and expenses of the DIP ABL Agent) owed under the DIP ABL Documents; (f) payment of certain adequate protection amounts to the Prepetition ABL Secured Parties and Prepetition ABL Obligations, as set forth in paragraph 16 hereof; (g) the reduction of the Prepetition ABL Obligations in accordance with the Final Order (or as otherwise required under any recognition orders by the Canadian Court (as defined in the DIP ABL Credit Agreement)) in respect of the Canadian Borrower (as defined in the DIP ABL Credit Agreement) and payment in full of the Prepetition ABL Obligations as described in paragraph F(v) above (or as otherwise required under such recognition orders of the Canadian Court in respect of the Canadian Borrower); (h) the Canadian Borrower to borrow under the DIP ABL Credit Agreement and lend such borrowed amounts to any Debtor other than the Canadian Borrower on a superpriority administrative expense basis pursuant to section 507(b) of the Bankruptcy Code (the "Canadian Intercompany Superpriority Administrative Claims"); (i) upon entry of this Final Order and delivery of the Participation Agreement (as defined in the DIP ABL Credit Agreement), deemed refinancing and replacement of the Last Out Obligations with the Last Out DIP Obligations (as defined by the DIP ABL Credit Agreement), subject to the rights preserved in paragraph 42 of this Final Order; and (j) payment of the Carve Out shall be in accordance with paragraph 39 of this Final Order. The reduction of the Prepetition ABL Obligations from the ABL Cash Collateral in accordance with the Interim Order and the Roll-Up of the Prepetition ABL Obligations described in paragraph F(v) was necessary as the Prepetition ABL Secured Parties have not otherwise

consented to the use of their ABL Cash Collateral or the subordination of their liens to the DIP ABL Liens (as defined below), and the DIP ABL Agent and the DIP ABL Secured Parties did not otherwise consent to providing the DIP ABL Credit Facility and extending credit to the Debtors thereunder. Further, the DIP ABL Agent and DIP ABL Secured Parties were not willing to provide the DIP ABL Credit Facility unless the Canadian Borrower is a joint and several obligor with respect to the DIP ABL Obligations.

(vi) *Application of Proceeds of Collateral.* As a condition to entry into the DIP ABL Credit Agreement, the extension of credit under the DIP ABL Credit Facility and authorization to use ABL Cash Collateral, the Debtors, the DIP ABL Agent, the DIP Term Loan Agent, the DIP ABL Secured Parties, DIP Term Loan Lenders, the Prepetition ABL Secured Parties, and the Prepetition Term Loan Parties have agreed that, as of and commencing on the date of the Interim Hearing, the Debtors shall continue to apply the proceeds of DIP ABL Priority Collateral in accordance with the Interim Order, this Final Order and the DIP Intercreditor Agreement.

H. Adequate Protection. Subject to the Carve Out and solely to the extent of any Diminution in Value, the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Secured Parties on account of the Prepetition ABL Obligations (including the Last Out Obligations) is entitled to receive adequate protection in the Prepetition Collateral. Pursuant to sections 361, 363, and 507(b) of the Bankruptcy Code, as adequate protection (but only to the extent of any Diminution in Value): the Prepetition ABL Secured Parties and Prepetition ABL Obligations will receive adequate protection liens and superpriority claims, as more fully set forth in paragraphs 11-14 herein and the Prepetition ABL Secured Parties (other than on account of the Last Out Loans and Last Out Obligations) shall receive current payment of interest at the default

rate (provided the Last Out Loans and Last Out Obligations shall accrue payment of interest at the default rate as part of the Last Out Loans and Last Out Obligations and any payment to the Put Purchasers on account of the Last Out DIP Obligations or Last Out Obligations is subject to the rights of the Creditors' Committee set forth in paragraph 42 and subject to the occurrence of the Disinterested Director's Determination and the Challenge Period Termination Date for claims and causes of action against the Put Purchasers solely as it relates to the Put Purchasers' interests in the Last Out Obligations and entry into the Put Agreement and Existing Participation Agreement as set forth in paragraph 42 of this Final Order or further Court Order), and reasonable and documented fees and expenses (including, without limitation, legal and other professionals' fees and expenses of the Prepetition ABL Agent, whether arising before or after the Petition Date) provided that the Put Purchasers' fees and expenses shall accrue and not be paid prior to substantial consummation of a plan or further Court Order.

I. Section 552(b). In light of (i) the DIP ABL Agent's and DIP ABL Secured Parties' agreement that their liens and superpriority claims shall be subject to the Carve Out (including the caps and limitations set forth therein) and (ii) the Prepetition ABL Secured Parties' agreement that, with respect to the Prepetition ABL Priority Collateral, their liens shall be subject to the Carve Out (and the caps and limitations set forth therein), subordinate to the DIP ABL Liens, and, in the case of the Prepetition Term Loan Priority Collateral, subordinate to the DIP Term Loan Liens and the Prepetition Term Loan Liens, the Prepetition ABL Secured Parties and Prepetition ABL

Obligations are each entitled to a waiver of any “equities of the case” exception under section 552(b) of the Bankruptcy Code.

J. Good Faith of the DIP ABL Agents and DIP ABL Secured Parties.

(i) *Willingness to Provide Financing.* The DIP ABL Secured Parties have indicated a willingness to provide and to continue to provide financing to the Debtors subject to: (a) entry of the Interim Order and this Final Order; (b) final approval of the terms and conditions of the DIP ABL Credit Facility and the DIP ABL Documents; (c) satisfaction of the closing conditions set forth in the DIP ABL Documents; (d) entry of the Canadian Recognition Orders (as defined by the DIP ABL Credit Agreement); and (e) findings by this Court that the DIP ABL Credit Facility is essential to the Debtors’ estates, that the DIP ABL Agent and DIP ABL Secured Parties are extending credit to the Debtors pursuant to the DIP ABL Documents in good faith, and that the DIP ABL Agent’s and DIP ABL Secured Parties’ claims, superpriority claims, security interests and liens, and other protections granted pursuant to the Interim Order and this Final Order and the DIP ABL Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

(ii) *Business Judgment.* Based on the DIP Motion, the declarations filed in support of the DIP Motion, and the record presented to the Court at the Interim Hearing and Final Hearing, (i) the terms of the financing provided by the DIP ABL Credit Facility, (ii) the adequate protection provided by the Interim Order, this Final Order, and DIP ABL Documents, and (iii) the terms on which the DIP Parties may continue to use the Prepetition Collateral (including Cash Collateral), in each case pursuant to the Interim Order, this Final Order, and the DIP ABL Documents, are in each case fair and reasonable, reflect the DIP Parties’ exercise of prudent business judgment consistent with their fiduciary duties, constitute reasonably equivalent value



and fair consideration, and represents the best asset-based financing (and terms) presently available.

(iii) *Good Faith Pursuant to Section 364(e)*. The terms and conditions of the DIP ABL Credit Facility were negotiated in good faith and at arms' length among the Debtors, DIP ABL Agent, and DIP ABL Secured Parties, with the assistance and counsel of their respective advisors. The credit to be extended under the DIP ABL Credit Facility shall be deemed to have been allowed, advanced, made, or extended in good faith by the DIP ABL Agent and DIP ABL Secured Parties within the meaning of section 364(e) of the Bankruptcy Code.

K. Immediate Entry. Sufficient cause existed for immediate entry of the Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

L. Final Hearing. Notice of the Final Hearing and the relief requested in the DIP Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier, or hand delivery, to certain parties-in-interest, including, among others: (i) the U.S. Trustee, (ii) those entities or individuals included on the Debtors' list of 50 largest unsecured creditors on a consolidated basis, (iii) counsel to the Prepetition ABL Agent, (iv) counsel to the Prepetition Term Loan Agent; (v) counsel to the Put Purchasers; (vi) the Creditors' Committee; and (vii) all other parties entitled to notice under the Local Rules. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances and no other notice is required in connection with the relief set forth in the Interim Order or this Final Order.

Based upon the foregoing findings and conclusions, the DIP Motion and the record before the Court with respect to the DIP Motion, and after due consideration and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. DIP ABL Credit Facility Approved. The DIP Motion is granted on a final basis solely to the extent set forth below, the DIP ABL Credit Facility was authorized in part on an interim basis pursuant to the Interim Order as modified therein, and hereby is authorized and approved on a final basis as set forth below (including any modifications in this Final Order as to the Interim Order), and the use of Cash Collateral was authorized pursuant to the terms of the Interim Order and the use of the ABL Cash Collateral is hereby authorized on a final basis, in each case, subject to the terms and conditions set forth in this Final Order. All objections to the Interim Order and this Final Order as they relate to the DIP ABL Credit Facility and use of ABL Cash Collateral, to the extent not withdrawn, waived, settled, or resolved, and all reservations of rights included therein, are hereby denied and overruled on the merits. This Final Order shall become effective immediately upon its entry. Nothing herein shall approve the DIP Term Loan Facility on a final basis.

ABL DIP Credit Facility Authorization

2. Authorization of the ABL DIP Financing. The DIP ABL Credit Facility was approved on an interim basis pursuant to the Interim Order (as described therein) and is hereby approved on a final basis on the terms set forth in this Final Order. The Debtors were expressly and immediately authorized and empowered pursuant to the Interim Order to execute and deliver the DIP ABL Documents and are hereby expressly and immediately authorized and empowered on a final basis to continue borrowing under the DIP ABL Documents, and to incur and to perform the DIP ABL Obligations in accordance with, and subject to, the terms of the Interim Order, this Final Order and the DIP ABL Documents, and to deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP ABL Credit Facility and the creation and perfection of the DIP ABL Liens (as defined below)

described in and provided for by the Interim Order and this Final Order and the DIP ABL Documents. The Debtors were authorized and directed pursuant to the Interim Order and are hereby authorized and directed on a final basis to pay, in accordance with the Interim Order and this Final Order, the principal, interest, fees, expenses and other amounts described in the DIP ABL Documents and all other documents comprising the DIP ABL Credit Facility as such become due and without need to obtain further Court approval, including, without limitation, closing fees, letter of credit fees (including issuance, fronting, and other related charges), unused facility fees, continuing commitment fees, servicing fees, audit fees, appraisal fees, liquidator fees, structuring fees, administrative agent's fees, the reasonable fees and disbursements of the DIP ABL Agent's attorneys, advisors, accountants, and other consultants, whether or not such fees arose before or after the Petition Date, and whether or not the transactions contemplated by the Interim Order or this Final Order are consummated, to implement all applicable reserves and to take any other actions that may be necessary or appropriate, all to the extent provided in the Interim Order, this Final Order or the DIP ABL Documents. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations or otherwise, will be deposited and applied as required by this Final Order and the DIP ABL Documents. As of the date of execution and delivery, the DIP ABL Documents continue to represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms. The Last Out DIP Obligations and Last Out Obligations (as applicable) shall include interest at the default rate and reasonable and documented fees and expenses of the Put Purchasers (such amounts not to be paid currently but to accrue as part of the Last Out DIP Obligations and Last Out Obligations (as applicable)). Any payment to the Put Purchasers on account of the Last Out Obligations or Last Out DIP Obligations is subject to

the rights of the Creditors' Committee set forth in paragraph 42 and subject to the occurrence of the Disinterested Director's Determination and the Challenge Period Termination Date for claims and causes of action against the Put Purchasers solely as it relates to the Put Purchasers' interest in the Last Out Obligations and entry into the Put Agreement and Existing Participation Agreement as set forth in paragraph 42 of this Final Order or further Court Order, provided that the fees and expenses of the Last Out Obligations or Last Out DIP Obligations shall not be paid prior to substantial consummation of a plan or further Court Order).

3. Authorization to Borrow. From the entry of this Final Order through and including the Termination Declaration (as defined below), and subject to the terms, conditions, limitations on availability and reserves set forth in the DIP ABL Documents, the Interim Order and this Final Order, the Debtors were authorized pursuant to the Interim Order and are hereby authorized to (i) borrow money pursuant to the DIP ABL Credit Agreement on a final basis and the DIP ABL Guarantors were authorized pursuant to the Interim Order and are hereby authorized to guaranty the DIP ABL Obligations on a final basis, in each case up to \$90 million under the DIP ABL Credit Facility, together with applicable interest, expenses, fees and other charges payable in connection with the DIP ABL Credit Facility, subject in each case to any limitations on borrowing under the DIP ABL Documents, which shall be used for all purposes permitted under the DIP ABL Documents, including, without limitation, to refinance the portions of the Prepetition ABL Credit Facility and Prepetition ABL Obligations as provided in this Final Order, to provide working capital for the DIP Parties and to pay interest, fees, costs, charges, and expenses in accordance with the Interim Order, this Final Order, the DIP ABL Documents and the Approved Budget (subject to the variances permitted by the DIP ABL Credit Agreement and the DIP Term Loan Credit Agreement). In connection with obtaining and using funds to enable the Debtors to pay the

expenses set forth in the Approved Budget (subject to the variances permitted by the DIP ABL Credit Agreement), the Debtors shall borrow and use (or in the case of amounts borrowed under the DIP Term Loan Credit Facility pursuant to the Interim DIP Order or any additional orders pertaining to the DIP Term Loan Credit Facility and acceptable to the DIP Term Loan Agent), on a weekly and cumulative basis, an approximately equal amount from the DIP ABL Credit Facility (subject to Availability) and the amounts borrowed under the DIP Term Loan Credit Facility.

4. DIP ABL Obligations. The DIP ABL Documents, the Interim Order and this Final Order shall constitute and evidence the validity and binding effect of the Debtors' DIP ABL Obligations, which DIP ABL Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including without limitation, any trustee appointed in the Cases, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). Upon entry of this Final Order, the DIP ABL Obligations will include all loans, letter of credit reimbursement obligations, and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP ABL Agent or any of the DIP ABL Secured Parties, under the DIP ABL Documents, the Interim Order or this Final Order, including, without limitation, all principal, accrued interest, costs, charges, fees, expenses, and other amounts under the DIP ABL Documents. Upon entry of this Final Order, all (i) Bank Products, (ii) Cash Management Services, and (iii) Letters of Credit (each as defined in the Prepetition ABL Credit Agreement) shall continue in place and all obligations under or in connection therewith shall be subject to the DIP ABL Credit Agreement and shall constitute DIP ABL Obligations. The DIP ABL Loan Parties shall continue to be jointly and severally liable for the DIP ABL Obligations. The DIP ABL Obligations, as applicable, shall

be due and payable, without notice or demand, and the use of ABL Cash Collateral shall automatically cease on each applicable Termination Date, as applicable, except as provided in paragraph 30 herein. No obligation, payment, transfer, or grant of collateral security hereunder, under the Interim Order or under the DIP ABL Documents (including any DIP ABL Obligation or DIP ABL Liens, and including in connection with any adequate protection provided to the Prepetition ABL Secured Parties and Prepetition ABL Obligations hereunder) stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity. Nothing in the Interim Order or this Final Order shall impact the ability of the Court to unwind or partially unwind, after notice and a hearing, the pay down of Prepetition ABL Obligations under the Prepetition ABL Credit Facility or any payments made pursuant to this Order or the Interim Order in the event there is a timely and successful Challenge to the validity, enforceability, extent, perfection or priority of the Prepetition ABL Secured Parties' liens or claims, or a determination that the Prepetition ABL Obligations were undersecured as of the Petition Date, and the roll-up unduly advantaged the Prepetition ABL Secured Parties.

5. ABL DIP Liens. In order to secure the DIP ABL Obligations, effective immediately upon entry of the Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP ABL Agent, for the benefit of itself and the DIP ABL

Secured Parties and/or DIP ABL Obligations, were granted pursuant to the Interim Order and are hereby granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the “DIP ABL Liens”) all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of, with respect to the DIP ABL Obligations, each of the DIP ABL Loan Parties (the “DIP ABL Collateral” or “DIP Collateral”),<sup>6</sup> including without limitation: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable), and investment property (including, without limitation, all of the issued and outstanding capital stock of each of its subsidiaries), furniture, fixtures, equipment, goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, intellectual property, general intangibles, rights to the payment of money (including, without limitation, tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, causes of action (excluding commercial tort claims and avoidance actions (but including avoidance actions brought pursuant to section 549 of the Bankruptcy Code to recover any post-petition transfer of DIP Collateral)) and all substitutions, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds and (b) all owned real property interests and all proceeds of leased real property, and including all DIP Collateral that was not otherwise subject to valid, perfected, enforceable and unavoidable liens on the Petition Date. DIP Collateral that is of a type that would be ABL Priority Collateral (as defined the DIP Intercreditor Agreement)

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<sup>6</sup> For the avoidance of doubt, the DIP Term Collateral does not include ABL Canadian Collateral (as defined by the DIP Intercreditor Agreement).

and the proceeds and products thereof shall in each case, constitute “DIP ABL Priority Collateral,” DIP Collateral that is of a type that would be Term Loan Priority Collateral (as defined in the DIP Intercreditor Agreement) and the proceeds and products thereof and shall, in each case, constitute “DIP Term Loan Priority Collateral.” For the avoidance of doubt, nothing in this Order shall be deemed to be a final determination of the scope of the collateral that secures the DIP Term Loan Obligations or otherwise grant relief in respect of the DIP Term Loan on a final basis.

6. DIP Lien Priority. The DIP ABL Liens are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien or claim to any of the DIP Collateral, except that the DIP ABL Liens shall be subject to the Carve Out, and shall otherwise be junior only to: (i) as to the DIP ABL Priority Collateral, Permitted Prior Liens; and (ii) as to the DIP Term Loan Priority Collateral, (A) Permitted Prior Liens; (B) the DIP Term Loan Liens; (C) the Prepetition Term Loan Liens; and (D) the Prepetition Term Loan Adequate Protection Liens. Other than as set forth herein or in the DIP ABL Documents, the DIP ABL Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in the Cases or any Successor Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Cases or Successor Cases. The DIP ABL Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP ABL Liens. Notwithstanding anything herein to the contrary, none of the Prepetition Term Loan Adequate Protection Liens or DIP Term Loan Liens shall exist with respect to any ABL Canadian Collateral (as defined by the DIP Intercreditor Agreement).



7. Superpriority Claims. The DIP ABL Agent and DIP ABL Secured Parties were pursuant to the Interim Order and hereby are granted on a final basis (as of the date of entry of the Interim Order), pursuant to Section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims in each of the Cases and any Successor Cases (collectively, the “DIP ABL Superpriority Claims”) for all DIP ABL Obligations (including Last Out DIP Obligations): (a) except as set forth herein, with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code Sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 506(c) (in regard to surcharge claims against secured creditors other than the Prepetition ABL Secured Parties), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114, and any other provision of the Bankruptcy Code, as provided under Section 364(c)(1) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law; provided that the DIP ABL Agent and DIP ABL Secured Parties shall first use reasonably commercial efforts to seek recourse against the DIP ABL Priority Collateral before exercising any remedies against proceeds of avoidance actions. Notwithstanding the foregoing, the DIP ABL Superpriority Claims and the “DIP Superpriority Claims” (as defined in the Interim Order) of the DIP Term Loan Parties shall be *pari passu* with each other, without otherwise impairing the lien priorities as set forth herein, and subject to the terms of the DIP Intercreditor Agreement and Carve Out (including the caps and limitations therein).

8. No Obligation to Extend Credit. Except as required to fund the Carve Out in accordance with the terms of this Final Order, the DIP ABL Agent and DIP ABL Secured Parties

shall have no obligation to make any loan or advance under the DIP ABL Documents unless all of the conditions precedent to the making of such extension of credit or the issuance, amendment, renewal, or extension of such letter of credit or bankers' acceptance under the DIP ABL Documents and this Final Order have been satisfied in full or waived by the DIP ABL Agent (in its sole discretion) in accordance with the terms of the DIP ABL Credit Agreement.

9. Use of Proceeds of DIP ABL Credit Facility. The Debtors shall continue to use advances of credit under the DIP ABL Credit Facility, in accordance with the Approved Budget (subject to such variances as permitted in the DIP ABL Credit Agreement), only for the purposes specifically set forth in the Interim Order, this Final Order and the DIP ABL Documents, and in compliance with the terms and conditions in the Interim Order, this Final Order and the DIP ABL Documents.

10. No Monitoring Obligation. No DIP Secured Party or DIP ABL Agent shall have any obligation nor responsibility to monitor any DIP Party's use of DIP ABL Credit Facility, and each DIP ABL Secured Party or DIP ABL Agent may rely upon each DIP Party's representation that the use of the DIP ABL Credit Facility at any time is in accordance with the requirements of the Interim Order, this Final Order, the DIP ABL Documents and Bankruptcy Rule 4001(c)(2).

Authorization to Use Cash Collateral

11. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Final Order, the DIP ABL Credit Facility and the DIP ABL Documents and in accordance with the Approved Budget (subject to variances as permitted in the DIP ABL Credit Agreement), the Debtors were authorized pursuant to the Interim Order and hereby are authorized to use ABL Cash Collateral until the Termination Date. Nothing in the Interim Order or this Final Order shall

authorize the disposition of any assets of the Debtors outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Final Order (including with respect to the Carve Out), the DIP ABL Credit Facility, the DIP ABL Documents, and in accordance with the Approved Budget (subject to such variances as permitted in the DIP Credit Agreement). All ABL Cash Collateral shall be applied to reduce the Prepetition ABL Obligations (if any) then to reduce the DIP ABL Obligations as set forth in the DIP ABL Credit Agreement (with a contemporaneous increase in availability under the DIP ABL Credit Facility, subject to the other terms, conditions, and provisions of the DIP ABL Credit Agreement).

12. Adequate Protection Liens. Subject to the terms of the DIP Intercreditor Agreement and the Carve Out and solely to the extent of any Diminution in Value:

(i) *Prepetition ABL Adequate Protection Liens*. Pursuant to Sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition ABL Secured Parties and the Prepetition ABL Obligations in the Prepetition Collateral solely against any Diminution in Value of such interests in the Prepetition Collateral, the DIP ABL Loan Parties granted pursuant to the Interim Order and hereby grant (as of the date of entry of the Interim Order) to the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Secured Parties and the Prepetition ABL Obligations, continuing valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP ABL Collateral (the "Prepetition ABL Adequate Protection Liens" or "Adequate Protection Liens").

(ii) [Reserved]

13. Priority of Adequate Protection Liens. Subject to the terms of the DIP Intercreditor Agreement:

(i) The Prepetition ABL Adequate Protection Liens shall be subject to the Carve Out (and the caps and limitations set forth therein). The Prepetition ABL Adequate Protection Liens shall otherwise be junior only to: (a) with respect to the DIP ABL Priority Collateral (1) Permitted Prior Liens; (2) the DIP ABL Liens; and (3) the Prepetition ABL Liens; and (b) with respect to the DIP Term Loan Priority Collateral (1) Prepetition Term Loan Permitted Prior Liens; (2) the DIP Term Loan Liens; (3) the Prepetition Term Loan Liens; (4) the Prepetition Term Loan Adequate Protection Liens; (5) the DIP ABL Liens; and (6) the Prepetition ABL Liens. The Prepetition ABL Adequate Protection Liens shall be senior to all other security interests in, liens on, or claims against any of the DIP ABL Loan Parties' assets.

(ii) Except as provided herein, the Prepetition ABL Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter in the Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Cases or any Successor Cases, or upon the dismissal of any of the Cases or Successor Cases. The Prepetition ABL Adequate Protection Liens shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Prepetition ABL Liens or the Prepetition ABL Adequate Protection Liens.

14. Adequate Protection Superpriority Claims. Subject to the terms of the DIP Intercreditor Agreement and the Carve Out and solely to the extent of any Diminution in Value:

(i) *Prepetition ABL Superpriority Claim.* As further adequate protection of the interests of the Prepetition ABL Secured Parties and Prepetition ABL Obligations in the Prepetition Collateral solely against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL

Secured Parties and Prepetition ABL Obligations, was granted pursuant to the Interim Order and is hereby granted as and to the extent provided by section 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim solely to the extent of any Diminution in Value in each of the Cases and any Successor Cases (the “Prepetition ABL Superpriority Claim” or “Adequate Protection Superpriority Claims”).

(ii) [Reserved]

15. Priority of the Adequate Protection Superpriority Claims. Except as set forth herein, including with respect to the Canadian Intercompany Superpriority Administrative Claims, the Prepetition ABL Superpriority Claims shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (solely with respect to surcharge claims against secured creditors other than the Prepetition ABL Secured Parties), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code; *provided, however*, that the Prepetition ABL Superpriority Claims and the Prepetition Term Loan Superpriority Claims shall be *pari passu* with each other (in each of the Cases other than the Recognition Proceedings, which shall be limited to Prepetition ABL Superpriority Claims in favor of the ABL Secured Parties), without otherwise impairing the lien priorities as set forth herein, and subject to the Carve Out and junior to the DIP ABL Superpriority Claims.

16. Adequate Protection Payments and Protections for Prepetition ABL Secured Parties. As further adequate protection and solely to the extent of any Diminution in Value and subject to the Carve Out (the “Prepetition ABL Adequate Protection Payments” or “Adequate Protection Payments”), the Debtors were pursuant to the Interim Order and hereby are authorized

and directed to provide adequate protection to the (A) Prepetition ABL Secured Parties and Prepetition ABL Obligations in the form of payment in cash (and as to fees and expenses, without the need for the filing of a formal fee application) of (i) interest payable monthly, at the default rate (other than on account of Last Out Loans and Last Out Obligations, provided that the Last Out Loans and Last Out Obligations shall accrue interest at the default rate as part of the Last Out Loans and Last Out Obligations), (ii) principal due under the Prepetition ABL Documents (other than on account of Last Out Loans and Last Out Obligations), subject to the rights preserved in paragraph 42 below, and (iii) payment of fees and expenses as provided in the DIP ABL Credit Agreement subject to the terms of this Final Order; *provided*, that Prepetition ABL Adequate Protection Payments with respect to clause (i) above shall be paid monthly, upon entry of this Final Order, and all accrued and unpaid Prepetition ABL Adequate Protection Payments for the period prior to the entry of this Final Order shall be paid, in cash, upon entry of this Final Order.

17. [Reserved].

18. Adequate Protection Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition ABL Secured Parties and Prepetition ABL Obligations under the Interim Order or hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Cases or any Successor Cases. The receipt by the Prepetition ABL Secured Parties and Prepetition ABL Obligations of the adequate protection provided in the Interim Order or herein shall not be deemed an admission that the respective interests of the Prepetition ABL Secured Parties and Prepetition ABL Obligations are adequately protected. Further, the Interim Order and this Final Order shall not prejudice or limit the rights of the Prepetition ABL Secured Parties and Prepetition ABL Obligations to seek

additional relief with respect to the use of Cash Collateral or for additional adequate protection or the rights of any party to oppose such requests for additional relief.

Additional Provisions to DIP Financing and Use of ABL Cash Collateral

19. Amendment of the DIP ABL Documents. The DIP ABL Documents may from time to time be amended, modified, or supplemented by the parties thereto without further order of the Court if: (a) the amendment, modification, or supplement is in accordance with the DIP ABL Documents, and (b) a copy (which may be provided through electronic mail or facsimile) of the amendment, modification, or supplement is provided to counsel to DIP Term Loan Agent, the Creditors' Committee and any other committee appointed under section 1102 or 1104 of the Bankruptcy Code, and the U.S. Trustee (collectively, the "Notice Parties") not less than three (3) business days in advance in writing; and (c) the amendment, modification, or supplement is filed with the Court; *provided, however*, that neither consent of the Notice Parties nor approval of the Court will be necessary to effectuate any such amendment, modification or supplement and provided further that such amendment, modification, or supplement shall be without prejudice to the right of any party in interest to be heard; provided, further, that no such amendment, modification, or supplement shall modify the DIP ABL Documents in a manner that is materially different from that approved by the Court.

20. Budget Maintenance. The use of borrowings and letters of credit under the DIP ABL Credit Facility shall be in accordance with the Approved Budget (subject to such variances as permitted in the DIP ABL Credit Agreement) and the terms and conditions set forth in the DIP ABL Document. The Approved Budget and any modification to, or amendment or update of, the Approved Budget shall be subject to the reasonable approval of, and in form and substance reasonably acceptable to the DIP ABL Agent in accordance with the DIP ABL

Documents and DIP Term Loan Agent in accordance with the DIP Term Loan Documents. The Debtors will promptly provide the Creditors' Committee with copies of the Approved Budget and any modifications, amendments, or updates thereto that have been approved by the DIP ABL Agent in accordance with the DIP ABL Documents and DIP Term Loan Agent in accordance with the DIP Term Loan Documents. No amendment or modifications as to the DIP ABL Documents shall be made unless the Creditors' Committee is provided with three (3) business days' prior notice. If an objection to the proposed modifications or amendments is expressed by the Creditors' Committee in writing within such time period, then the parties agree to seek an expedited hearing to resolve the objection if it cannot be resolved amongst themselves.

21. Budget Compliance. The use of borrowings and letters of credit under the DIP ABL Credit Facility shall be in accordance with the Approved Budget (subject to such variances as permitted in the DIP ABL Credit Agreement) and the DIP ABL Documents; *provided, however,* that, in the case of the fees, costs and expenses of the DIP ABL Agent, the Debtors shall pay such fees, costs and expenses in accordance with the DIP ABL Documents and this Final Order without being limited by the Approved Budget.

22. Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code was, pursuant to the Interim Order, and is hereby modified as necessary to effectuate all of the terms and provisions of the Interim Order and this Final Order, including, without limitation, to: (a) permit the Debtors to grant on a final basis the DIP ABL Liens (as of the date of entry of the Interim Order), Prepetition ABL Adequate Protection Liens (as of the date of entry of the Interim Order), DIP ABL Superpriority Claims, and Prepetition ABL Superpriority Claims; (b) permit the Debtors on a final basis to perform such acts as the DIP ABL Agent, DIP ABL Secured Parties, or the Prepetition ABL Agent each may reasonably request



to assure the perfection and priority of the liens granted herein; (c) permit the Debtors on a final basis to incur all liabilities and obligations to the DIP ABL Agent, DIP ABL Secured Parties, and the Prepetition ABL Secured Parties under the DIP ABL Documents, the DIP ABL Credit Facility, the Interim Order, and this Final Order; and (d) authorize the Debtors on a final basis to pay, and the DIP ABL Agent, the DIP ABL Secured Parties, and the Prepetition ABL Secured Parties to retain and apply, payments made in accordance with the terms of the Interim Order, this Final Order, and the DIP ABL Documents.

23. Perfection of ABL DIP Liens and Prepetition ABL Adequate Protection Liens. The Interim Order and this Final Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted therein and herein, including the DIP ABL Liens and the Prepetition ABL Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP ABL Liens, the Prepetition ABL Adequate Protection Liens, or to entitle the DIP ABL Agent, the DIP ABL Secured Parties, the DIP ABL Obligations, the Prepetition ABL Secured Parties, and the Prepetition ABL Obligations to the priorities granted herein (subject to the DIP Intercreditor Agreement, Existing Participation Agreement and Participation Agreement, as applicable). Notwithstanding the foregoing, the DIP ABL Agent and the Prepetition ABL Agent each are authorized to file, as in its reasonable discretion it deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP ABL Liens and the Prepetition

ABL Adequate Protection Liens, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however,* that no such filing or recordation shall be necessary or required in order to create or perfect the DIP ABL Liens, or the Prepetition ABL Adequate Protection Liens. The Debtors were, pursuant to the Interim Order, and hereby are authorized and directed to execute and deliver reasonably promptly to the DIP ABL Agent and Prepetition ABL Agent all such financing statements, mortgages, notices and other documents as the DIP ABL Agent and Prepetition ABL Agent may reasonably request; provided that nothing herein shall require the Debtors to obtain any required consent of third parties to any such financing statements, mortgages, notices, and other documents. The DIP ABL Agent and the Prepetition ABL Agent, each in its discretion, may file a photocopy of this Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instrument. To the extent that any Prepetition ABL Agent is the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements, or any other Prepetition ABL Documents or is listed as loss payee, lenders' loss payee, or additional insured under any of the Debtors' insurance policies, DIP ABL Agent shall also be deemed to be the secured party or mortgagee, as applicable, under such documents or to be the loss payee or additional insured, as applicable. The Prepetition ABL Agent shall serve as agent for the DIP ABL Agent for purposes of perfecting the DIP ABL Agent's liens on all DIP Collateral that, without giving effect to the Bankruptcy Code and this Final Order, is of a type such that perfection of a lien therein may be accomplished only by possession or control by a secured party.

24. Application of Proceeds of Collateral. Subject to the Carve Out, as a condition to the entry of the DIP ABL Documents, the extension of credit under the DIP ABL Credit Facility and the authorization to use Cash Collateral, the Debtors have agreed that as of and commencing on the date of the Interim Hearing, the Debtors shall apply all net proceeds of DIP ABL Priority Collateral that is sold in the ordinary course or liquidated as follows: (i) *first*, to costs and expenses of the DIP ABL Agent; (ii) *second*, to permanently reduce the Prepetition ABL Obligations (other than the Last Out Obligations); (iii) *third*, to reduce the DIP ABL Obligations (including the Last Out DIP Obligations or Last Out Obligations, as applicable, provided that any payment to the Put Purchasers on account of the Last Out DIP Obligations or Last Out Obligations is subject to the rights of the Creditors' Committee set forth in paragraph 42 and subject to occurrence of the Disinterested Director's Determination and the Challenge Period Termination Date for claims and causes of action against the Put Purchasers solely as it relates to the Put Purchaser's interests in the Last Out Obligations and entry into the Put Agreement and Existing Participation Agreement as set forth in paragraph 42 of this Final Order or further Court Order), (iv) *fourth*, to the repayment of the Canadian Intercompany Superpriority Administrative Claims, and (v) after indefeasible repayment in full in cash of the Prepetition ABL Obligations and the DIP ABL Obligations (including, in each case, provision for contingent obligations), the termination of the DIP ABL Credit Facility and all commitments thereunder, and "payment in full" of all other DIP ABL Obligations as provided under the DIP ABL Credit Agreement and repayment in full of the Canadian Intercompany Superpriority Administrative Claims, (x) to costs and expenses of the DIP Term Loan Agent, (y) to reduce the DIP Term Loan Obligations, and (z) then to reduce the Prepetition Term Loan Obligations. The reduction of the Prepetition ABL Obligations and Prepetition Term Loan Obligations is subject to the preservation of rights provided in paragraph 42

herein. Notwithstanding anything herein, or in the Prepetition ABL Documents or DIP ABL Documents, (a) all ABL Priority Collateral (other than ABL Canadian Collateral) of the Debtors (other than the Canadian Borrower) to be applied to the Prepetition ABL Obligations and DIP ABL Obligations as provided in this Paragraph 24 shall be applied first to reduce the Prepetition ABL Obligations and DIP ABL Obligations of the Debtors other than the Canadian Borrower; and thereafter to the remaining DIP ABL Obligations of the Canadian Borrower, if any; and (b) all ABL Canadian Collateral to be applied to the Prepetition ABL Obligations and DIP ABL Obligations as provided in this Paragraph 24 shall be applied first to reduce the Prepetition ABL Obligations of the Canadian Borrower, then to the direct DIP ABL Obligations of the Canadian Borrower, and then to remaining Prepetition ABL Obligations and DIP ABL Obligations of the Debtors, if any, but only to the extent not paid under clause (a) above and after all ABL Priority Collateral (other than ABL Canadian Collateral) of the Debtors (other than the Canadian Borrower) has been applied.

25. Protections of Rights of DIP ABL Agent, DIP ABL Secured Parties and Prepetition ABL Secured Parties.

(i) Unless the DIP ABL Agent and the Prepetition ABL Agent shall have provided their prior written consent or all DIP ABL Obligations and all Prepetition ABL Obligations have been indefeasibly paid in full in cash and all commitments thereunder are terminated, there shall not be entered in any of these Cases or any Successor Cases (including any order confirming any plan of reorganization or liquidation) that authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the DIP Collateral or Prepetition Collateral and/or that is entitled to administrative priority status, in each case that is superior to or

*pari passu* with the DIP ABL Liens, the DIP ABL Superpriority Claims, the Prepetition ABL Liens, the Prepetition ABL Adequate Protection Liens, and/or the Prepetition ABL Superpriority Claims, other than in connection with the Canadian Intercompany Superpriority Administrative Claims or the Administration Charge (as defined in the DIP ABL Credit Agreement); (ii) the use of Cash Collateral for any purpose other than as permitted in the DIP ABL Documents, the Interim Order and this Final Order and the Approved Budget (subject to such variances as permitted in the DIP ABL Credit Agreement), the return of goods pursuant to section 546(h) of the Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any creditor of any Debtor or any creditor's taking any setoff against any of its prepetition indebtedness based upon any such return of goods pursuant to section 553 of the Bankruptcy Code or otherwise, or (iii) any modification of any of the DIP ABL Agent's, DIP ABL Secured Parties', or the Prepetition ABL Secured Parties' rights under the Interim Order, this Final Order, the DIP ABL Documents or the Prepetition ABL Documents with respect any DIP ABL Obligations or Prepetition ABL Obligations.

(ii) The Debtors (and/or their legal and financial advisors in the case of clauses (ii) through (iv) below) will, whether or not the DIP ABL Obligations have been indefeasibly paid in full in cash, (i) maintain books, records, and accounts to the extent and as required by the DIP ABL Documents, (ii) reasonably cooperate with, consult with, and provide to the DIP ABL Agent and the DIP ABL Secured Parties all such information and documents that any or all of the Debtors are obligated (including upon reasonable request by any of the DIP ABL Agent or the DIP ABL Secured Parties) to provide under the DIP ABL Documents or the provisions of the Interim Order, this Final Order, or as reasonably requested by the DIP ABL Agent or DIP ABL Secured Parties, in each case as and to the extent required by the DIP ABL Documents, (iii) upon

reasonable advance notice, permit consultants, advisors, and other representatives (including third party representatives) of each of the DIP ABL Agent, the DIP ABL Secured Parties and the Prepetition ABL Agent to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, independent public accountants, and other professional advisors as and to the extent required by the DIP ABL Documents and/or the Prepetition ABL Documents, (iv) permit the DIP ABL Agent, the DIP ABL Secured Parties, and the Prepetition ABL Agent, and their respective consultants, advisors and other representatives to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations and assets, in each case as and to the extent required by the DIP ABL Documents, and (v) upon reasonable advance notice, permit the DIP ABL Agent, the DIP ABL Secured Parties and the Prepetition ABL Agent to conduct, at their discretion and at the Debtors' cost and expense, field audits, collateral examinations, liquidation valuations and inventory appraisals at reasonable times in respect of any or all of the DIP Collateral and Prepetition Collateral in each case as and to the extent required by the DIP ABL Documents. The Creditors' Committee shall receive any financial reporting required to be provided by the Debtors contemporaneously with the provision of such reports to the DIP ABL Secured Parties or Prepetition ABL Secured Parties.

(iii) No Debtor shall object to any DIP ABL Secured Parties' or any Prepetition ABL Secured Parties' credit bidding up to the full amount of the applicable outstanding DIP ABL Obligations and Prepetition ABL Obligations (as applicable), in each case, including any accrued interest and expenses, in any sale of any DIP Collateral or Prepetition Collateral, as

applicable, and whether such sale is effectuated through Section 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under Section 725 of the Bankruptcy Code, with the approval of the Canadian Court in respect of any sale of assets of the Canadian Loan Parties, or otherwise, subject, in each case, (w) to the rights and duties of the parties under the DIP Intercreditor Agreement, (x) to a Challenge (as defined herein), (y) to the provision of consideration sufficient to pay in full in cash any senior liens on the collateral that is subject to the credit bid, and (z) to the extent that any assets of the Canadian Loan Parties are to be conveyed, such conveyance is acceptable to the Information Officer (as defined in the DIP ABL Credit Agreement). For the avoidance of doubt, nothing in this paragraph 25 shall prejudice the rights of the Debtors to refinance the DIP ABL Obligations, *provided* that the DIP ABL Obligations are repaid in full in accordance with the terms of the DIP ABL Documents.

26. Proceeds of Subsequent Financing. Except with respect to the DIP Term Loan Obligations contemplated by the DIP Motion, if the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Cases or any Successor Cases, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c), or 364(d) or in violation of the DIP ABL Documents at any time prior to the indefeasible repayment in full of all DIP ABL Obligations and Prepetition ABL Obligations, and the termination of the DIP ABL Agent's and DIP ABL Secured Parties' obligation to extend credit under the DIP ABL Credit Facility, including subsequent to the confirmation of any plan with respect to any or all of the Debtors and the Debtors' estates, and such facilities are secured by any DIP Collateral, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP ABL Agent to be applied in accordance with this Final Order, the DIP ABL Documents and the DIP Intercreditor Agreement.

27. Cash Collection. From and after the date of the entry of the Interim Order, the Debtors shall continue to maintain cash management in accordance with the DIP ABL Documents, as modified by this Final Order. Unless otherwise agreed to in writing by the DIP ABL Agent and Prepetition ABL Agent, the Debtors shall maintain no accounts except those identified in any interim and/or final order granting the *Debtors' Motions for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief* (the "Cash Management Order"). The Debtors and the financial institutions where the Debtors' maintain deposit accounts (as identified in any Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such deposit accounts upon receipt of any direction to that effect from the DIP ABL Agent in accordance with the DIP ABL Documents.

28. Maintenance of DIP Collateral. Until the indefeasible payment in full of all DIP ABL Obligations (including "payment in full" of the DIP ABL Obligations as provided under the DIP ABL Credit Agreement), all Prepetition ABL Obligations, and the termination of the DIP ABL Agent's and the DIP ABL Secured Parties' obligation to extend credit under the DIP ABL Credit Facility, the Debtors shall: (a) insure the DIP Collateral as required under the DIP ABL Documents or the Prepetition ABL Documents, as applicable; and (b) maintain the cash management system in effect as of the Petition Date, as modified by any Cash Management Order which has first been agreed to by the DIP ABL Agent or as otherwise required by the DIP ABL Documents.



29. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP ABL Priority Collateral or Prepetition ABL Priority Collateral other than in the ordinary course of business without the prior written consent of the DIP ABL Agent and Prepetition ABL Agent, except as otherwise provided for in the DIP ABL Documents, and subject to the DIP Intercreditor Agreement.

30. Termination Date. On the Termination Date, (a) all DIP ABL Obligations shall be immediately due and payable, all commitments to extend credit under the DIP ABL Credit Facility will terminate, other than as required in paragraph 39 with respect to the Carve Out, and (b) all authority to use Cash Collateral shall cease. For the purposes of this Final Order, the “DIP ABL Termination Date” shall mean the date the commitments are terminated pursuant to the terms of the DIP ABL Credit Agreement, including with respect to any cross termination rights with respect to the termination of the DIP Term Loan Credit Agreement in accordance with its terms.

31. Events of Default. The occurrence of any of the following events, unless waived by the DIP ABL Agent in writing and in accordance with the terms of the applicable DIP ABL Documents, shall constitute an event of default (collectively, the “Events of Default”): (a) the failure of the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Final Order or any Canadian Recognition Order, including, without limitation, failure to make any payment under this Final Order when due, (b) the occurrence of an “Event of Default” under, and as defined in, the DIP ABL Credit Agreement, (c) any adverse modifications, amendments, or reversal of the Interim Order or this Final Order, and no such waiver shall be implied by any other action, inaction or acquiescence by any party, (d) an order converting or dismissing any of the Cases, (e) an order appoint a chapter 11 trustee in the Cases, (f) an order appointing an examiner with enlarged powers in the Cases (beyond those set

forth in sections 1106(a)(3) and (4) of the Bankruptcy Code, and (g) a plan proposed by the Debtors or confirmation thereof that does not propose to indefeasibly repay the DIP ABL Obligations (other than the Last Out DIP Obligations) in full in cash, unless otherwise consented to by the DIP ABL Agent.

32. Milestones. As a condition to the DIP ABL Credit Facility and the use of Cash Collateral, the Debtors shall comply with the case milestones set forth in the DIP Credit Agreement, as modified by the order approving the *Debtors' Motion Seeking Entry of an Order (I) Approving the Bidding Procedures and Related Dates and Deadline, (II) Scheduling Hearings and Objection Deadlines with Respect to the Debtors' Disclosure Statement and Plan Confirmation, and (III) Granting Related Relief* [Docket No 22], subject to waiver or extension on the terms set forth in the DIP ABL Credit Agreement. For the avoidance of doubt, the terms herein with respect to any milestones shall after the date of this Final Order supersede any such language in the Interim Order. As an additional milestone under the DIP ABL Credit Agreement, the Debtors shall obtain a final order in respect of the DIP Motion with respect to the DIP Term Credit Facility on or before July 19, 2019 (or such later date as DIP ABL Agent may agree in its sole discretion), on the terms and conditions contemplated by the DIP ABL Documents and otherwise in form and substance satisfactory to DIP ABL Agent.

33. Rights and Remedies Upon Event of Default. Upon the occurrence and during the continuation of an Event of Default under the DIP ABL Documents, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from the Court, but subject to the terms of this Final Order and the Canadian Recognition Orders (a) the DIP ABL Agent may declare (any such declaration shall be referred to herein as a "Termination Declaration") (1) all DIP ABL Obligations owing under the

DIP ABL Documents to be immediately due and payable, (2) the termination, reduction, or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP ABL Credit Facility, (3) termination of the DIP ABL Credit Facility and the DIP ABL Documents as to any future liability or obligation of the DIP ABL Agent and the DIP ABL Secured Parties, but without affecting any of the DIP ABL Liens or the DIP ABL Obligations, and (4) that the application of the Carve Out has occurred through the delivery of the Carve Out Trigger Notice to the Borrowers; (b) interest, including, where applicable, default interest, shall accrue and be paid as set forth in the DIP ABL Documents, and (c) the DIP ABL Agent may declare a termination, reduction, or restriction on the ability of the Debtors to use ABL Cash Collateral (the date which is the earliest to occur of (i) any such date a Termination Declaration is delivered by DIP ABL Agent or a “Termination Declaration” (as defined in the Interim Order) is delivered by DIP Term Loan Agent and (ii) the DIP ABL Termination Date or DIP Term Loan Termination Date (as applicable), shall be referred to herein as the “Termination Date”). The Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to the DIP Term Loan Agent, counsel to the Creditors’ Committee and any other committee appointed under section 1102 or 1104 of the Bankruptcy Code, and the U.S. Trustee. The automatic stay in the Cases otherwise applicable to the DIP ABL Agent, the DIP ABL Secured Parties, and the Prepetition ABL Secured Parties is hereby modified so that seven (7) business days after the date a Termination Declaration is delivered (the “Remedies Notice Period”): (A) the DIP ABL Agent and the DIP ABL Secured Parties shall be entitled to exercise their rights and remedies in accordance with the respective DIP ABL Documents, the Interim Order and this Final Order and shall be permitted to satisfy the relevant DIP ABL Obligations, DIP Superpriority Claim and DIP ABL Liens, subject to the Carve Out, (B) the

Prepetition ABL Secured Parties shall be entitled to exercise their rights and remedies to satisfy the relevant Prepetition ABL Secured Obligations, Prepetition ABL Superpriority Claims, and Prepetition ABL Adequate Protection Liens, subject to and consistent with (i) the Carve Out, (ii) this Final Order, and (iii) the DIP Intercreditor Agreement. During the Remedies Notice Period, unless otherwise ordered by the Court, the Debtors and/or the Creditors' Committee shall be entitled to seek an emergency hearing within the Remedies Notice Period on any basis and the DIP ABL Agent shall consent to such an emergency hearing. During the Remedies Notice Period, DIP ABL Agent or DIP ABL Secured Parties shall not be required to consent to the use of any Cash Collateral or provide any loans or other financial accommodations under the DIP ABL Credit Facility other than for the payment of accrued and unpaid employee wages and benefits otherwise payable in the ordinary course and in accordance with the Approved Budget and subject to paragraph 39 and availability under the DIP ABL Credit Agreement. Unless the Court orders otherwise, the automatic stay, as to all of the DIP ABL Agent, DIP ABL Secured Parties, and Prepetition ABL Secured Parties, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the DIP ABL Agent, DIP ABL Secured Parties, and the Prepetition ABL Secured Parties shall be permitted to exercise all remedies set forth herein, in the DIP ABL Documents, the Prepetition ABL Documents, and as otherwise available at law without further order of or application or motion to the Court consistent with the DIP Intercreditor Agreement, Existing Participation Agreement, and Participation Agreement, as applicable.

34. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order. The DIP ABL Agent and DIP ABL Secured Parties have acted in good faith in connection with the Interim Order and this Final Order and are entitled to rely upon the

protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Final Order and the record made during the Interim Hearing and the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of the Interim Order or this Final Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, the DIP ABL Agent, the DIP ABL Secured Parties, and the DIP ABL Obligations are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim or priority previously or hereby authorized or created. Notwithstanding the foregoing, any provisions or findings in this paragraph as applied to the Put Purchasers are solely with respect to the Put Purchasers' interests in the Last Out Obligations and entry into the Put Agreement and Existing Participation Agreement and subject to and only effective upon the Disinterested Director's Determination and the Challenge Period Termination Date and subject to the rights of the Creditors' Committee set forth in paragraph 42.

35. DIP and Other Expenses. The Debtors are authorized and directed to pay all reasonable and documented fees and expenses of (x) the DIP ABL Agent and DIP ABL Secured Parties in connection with the DIP ABL Credit Facility, as provided in the DIP ABL Documents (subject to applicable limitations on the DIP Parties' obligations to pay such amounts in the DIP ABL Documents), whether or not the transactions contemplated hereby are consummated, and (y) the Prepetition ABL Agent and Prepetition ABL Secured Parties (including the fees and expenses of counsel), as provided in the applicable Prepetition ABL Document, subject to the terms of this paragraph. Payment of all such fees and expenses shall not be subject to allowance by the Court. Professionals for the DIP ABL Agent, the DIP ABL Secured Parties, the Prepetition ABL

Agent, and the Prepetition ABL Secured Parties shall not be required to comply with the U.S. Trustee fee guidelines. No attorney or advisor to the DIP ABL Agent, DIP ABL Secured Parties, Prepetition ABL Agent, or Prepetition ABL Secured Parties shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. No fees or expenses of the DIP ABL Secured Parties, DIP ABL Agent, or Prepetition ABL Secured Parties shall be paid prior to the provision of a monthly statement or invoice (which may be presented in summary form and/or redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney-work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney-work product doctrine) to counsel for the Creditors' Committee and the Office of the United States Trustee (hereinafter "Lender Expense Notice Parties"). Any Lender Expense Notice Party shall have ten (10) days after submission of such invoice to assert an objection to payment of the amounts sought in the subject invoice. Provided no objection has been raised by any such Lender Expense Notice Party(ies) within the time period provided for herein, the Debtors (or DIP ABL Agent, as applicable) shall be authorized without further order of the Court to pay such invoice. In the event a Lender Expense Notice Party(ies) asserts an objection within the time period provided for herein, the Debtors (or DIP ABL Agent, as applicable) shall be authorized without further order of the Court to pay the undisputed portion of such invoice and any dispute with regard to amounts objected to shall be resolved by the Court.

36. Budget. The Approved Budget was approved pursuant to the Interim Order and the Budget attached hereto as Exhibit A hereby is approved and the proceeds of the DIP ABL Credit Facility and Cash Collateral under the Interim Order and Final Order shall be used by the

Debtors in accordance with the Approved Budget (subject to such variances as permitted in the DIP ABL Credit Agreement), the Interim Order, this Final Order, and the DIP ABL Documents and to fund the Carve Out, subject to the terms and limitations provided in paragraph 39 below. None of the DIP ABL Secured Parties' or DIP ABL Agent's consent (if any) to, or acknowledgement of, the Approved Budget shall be construed as consent to use the proceeds of the DIP ABL Credit Facility or Cash Collateral beyond the respective maturity dates set forth in the DIP ABL Documents, regardless of whether the aggregate funds shown on the Approved Budget have been expended.

37. Indemnification. The Debtors shall indemnify and hold harmless the DIP ABL Agent and the DIP ABL Secured Parties in accordance with the terms and conditions of the DIP ABL Credit Agreement. Notwithstanding the foregoing, any provisions in this paragraph as applied to the Put Purchasers are solely with respect to the Put Purchasers' interests in the Last Out Obligations and entry into the Put Agreement and Existing Participation Agreement and subject to and only effective upon the Disinterested Director's Determination and the Challenge Period Termination Date and subject to the rights of the Creditors' Committee set forth in paragraph 42.

38. Master Proofs of Claim. The DIP ABL Agent, the DIP ABL Secured Parties and the Prepetition ABL Secured Parties will not be required to file proofs of claim in any of the Cases or Successor Cases for any claim allowed herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or Successor Cases to the contrary, and in order to facilitate the processing of claims, to ease the burden upon the Court and to reduce an unnecessary expense to the Debtors' estates, Prepetition ABL Agent and/or each other Prepetition ABL Secured Party is authorized to file in the Debtors' lead chapter 11 Case, Case No. 19-11608, a single, master proof of claim on behalf of the relevant Prepetition ABL Secured Parties

on account of any and all of their respective claims arising under the applicable Prepetition ABL Documents and hereunder (each a “Master Proof of Claim”) against each of the Debtors. Upon the filing of a Master Proof of Claim against each of the Debtors, the Prepetition ABL Secured Parties, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Debtors of any type or nature whatsoever with respect to the applicable Prepetition ABL Documents, and the claim of each Prepetition ABL Secured Party (and each of its respective successors and assigns), named in a Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of these Cases. The Master Proofs of Claim shall not be required to identify whether any Prepetition ABL Secured Party acquired its claim from another party and the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. The provisions of this paragraph and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition ABL Secured Party (or its successors in interest) to vote separately on any plan proposed in these Cases. The Master Proofs of Claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition ABL Secured Parties, which instruments, agreements or other documents will be provided upon reasonable request to counsel to the Prepetition ABL Agent.

39. Carve Out.

- (a) Carve Out. As used in this Final Order, the “Carve Out” means the sum of
- (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States



Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (the “Chapter 7 Trustee Carve-Out”) and all approved expenses incurred by members of the Creditors’ Committee solely in their capacity as such (the “Committee Expenses”); (iii) to the extent allowed at any time, whether by interim order, final order, procedural order, or otherwise, all unpaid fees and expenses (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) and the Creditors’ Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”) at any time before or on the first business day following delivery by the DIP ABL Agent or DIP Term Loan Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (v) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$1,250,000 incurred after the first business day following delivery by the DIP ABL Agent or the DIP Term Loan Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”).<sup>7</sup> For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP ABL Agent or DIP Term Loan Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors’ Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP ABL

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<sup>7</sup> Notwithstanding the foregoing, up to \$250,000 of the Post-Carve Out Trigger Notice Cap may be used to pay Allowed Professional Fees of Professional Persons incurred prior to the delivery of a Carve Out Trigger Notice to the extent such Allowed Professional Fees exceed the Professional Fee Carve Out Cap (as defined below).

Obligations or an “Event of Default” under the DIP Term Loan Documents and acceleration of the DIP Term Loan Obligations, respectively, stating that the Post Carve Out Trigger Notice Cap has been invoked.

(b) Fee Estimates. Not later than 7:00 p.m. New York time on the third business day of each week starting with the first full calendar week following the Closing Date, each Professional Person shall deliver to the Debtors a statement setting forth a good-faith estimate of the amount of fees and expenses (collectively, “Estimated Fees and Expenses”) incurred during the preceding week by such Professional Person (through Saturday of such week, the “Calculation Date”), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a “Weekly Statement”); *provided, that* within one business day of the occurrence of the Termination Declaration Date (as defined below), each Professional Person shall deliver one additional statement (the “Final Statement”) setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Termination Declaration Date. For purposes of this paragraph 39(b) and paragraph 39(c), counsel to the Creditors’ Committee will be deemed to be the party that has incurred the Committee Expenses, all references to a “Professional Person” shall be deemed to include the counsel to the Creditors’ Committee in respect of the Committee Expenses and all references to “Allowed Professional Fees” will be deemed to include the Committee Expenses. If any Professional Person fails to deliver a Weekly Statement within three calendar days after such Weekly Statement is due, such Professional Person’s entitlement (if any) to any funds in the Carve Out Reserves (as defined

below) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Approved Budget for such period for such Professional Person; *provided, that* such Professional Person shall be entitled to be paid any unpaid amount of Allowed Professional Fees in excess of Allowed Professional Fees included in the Approved Budget for such period for such Professional Person from a reserve to be funded by the Debtors from all cash on hand as of such date and any available cash thereafter held by any Debtor pursuant to paragraph 39(c) below. Solely as it relates to the DIP ABL Agent and DIP ABL Secured Parties, any deemed draw and borrowing pursuant to paragraph 39(c)(i) for amounts under paragraph 39(a)(iii) above shall be limited to the greater of (x) the sum of (I) the aggregate unpaid amount of Estimated Fees and Expenses included in such Weekly Statements timely received by the Debtors prior to the Termination Declaration Date *plus*, without duplication, (II) the aggregate unpaid amount of Estimated Fees and Expenses included in the Final Statements timely received by the Debtors pertaining to the period through and including the Termination Declaration Date, and (y) the aggregate unpaid amount of Allowed Professional Fees included in the Approved Budget for the period prior to the Termination Declaration Date (such amount, the “Professional Fee Carve Out Cap”). For the avoidance of doubt, the DIP ABL Agent and DIP ABL Lenders shall be entitled to maintain at all times a reserve (the “Carve-Out Reserve”) in an amount (the “Carve-Out Reserve Amount”) equal to the sum of (i) the greater of (x) the aggregate unpaid amount of Estimated Fees and Expenses included in all Weekly Statements timely received by the Debtors, and (y) the aggregate amount of Allowed Professional Fees contemplated to be unpaid in the Approved Budget at the applicable time, *plus* (ii) the Post-Carve Out Trigger Notice Cap, *plus* (iii) an amount

equal to the amount of Allowed Professional Fees set forth in the Approved Budget for the following week occurring after the most recent Calculation Date, *plus* (iv) the amounts contemplated under paragraph 39(a)(i) and 39(a)(ii) above. Not later than 7:00 p.m. New York time on the fourth business day of each week starting with the first full calendar week following the Closing Date, the Debtors shall deliver to the DIP ABL Agent, the DIP Term Loan Agent, and the Creditors' Committee concurrently a report setting forth the Carve-Out Reserve Amount as of such time (the "Fee Report"), and, in setting the Carve-Out Reserve, the DIP ABL Agent and DIP ABL Lenders shall be entitled to rely upon such reports in accordance with the DIP ABL Credit Agreement or the DIP Term Loan Agreement. Prior to the delivery of the first report setting forth the Carve-Out Reserve Amount, the DIP ABL Agent or the DIP Term Loan Agent may calculate the Carve-Out Reserve Amount by reference to the Approved Budget for subsection (i) of the Carve-Out Reserve Amount. Notwithstanding anything herein to the contrary, DIP ABL Agent may increase the Carve-Out Reserve Amount to include additional amounts with respect to any monitoring charge or other charge arising from the Canadian insolvency proceeding of the Canadian Borrower and for the projected amount of any success, completion, commission-based, or other non-hourly fees billed by or due to any financial advisor, investment banker (including any "Sale Transaction Fee" or "Supplemental Sale Transaction Fee" (each as defined below)), monitor, or other Professional engaged by any Debtor, the Creditors' Committee, or any committee in the Cases.

(c) Carve Out Reserves. On the day on which a Carve Out Trigger Notice is given by either the DIP ABL Agent or the DIP Term Loan Agent to the Debtors with a copy to counsel to the Creditors' Committee (the "Termination Declaration Date"), the Carve Out Trigger Notice shall be deemed (i) a draw request and notice of borrowing by the Debtors for DIP ABL

Loans under the DIP ABL Credit Agreement in an amount equal to the sum of (x) the amounts set forth in paragraphs (a)(i) and (a)(ii), above, and (y) the then unpaid amounts of the Allowed Professional Fees up to the Professional Fee Carve Out Cap (any such amounts actually advanced shall constitute DIP ABL Loans) and (ii) a draw request and notice of borrowing by the Debtors for DIP Term Loans under the DIP Term Loan Facility in an amount equal to the unpaid amounts of the Allowed Professional Fees in excess of the Professional Fee Carve Out Cap (any such amounts actually advanced shall constitute DIP Term Loans), and shall also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees (which cash amounts shall reduce, on a dollar-for-dollar basis, the draw requests and applicable DIP ABL Loans and DIP Term Loans pursuant to the foregoing clauses (i) and (ii) of this sentence of this paragraph (c)). The Debtors shall deposit and hold such amounts in a segregated account at the DIP ABL Agent in trust exclusively to pay such unpaid Allowed Professional Fees (the “Pre-Carve Out Trigger Notice Reserve”). On the Termination Declaration Date, the Carve Out Trigger Notice shall also be deemed a request by the Debtors for (1) DIP ABL Loans under the DIP ABL Credit Agreement in an amount equal to the Post Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP ABL Loans) and, (2) to the extent not funded by the DIP ABL Lenders, for DIP Term Loans in an amount equal to any unfunded portion of the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP Term Loans), and shall also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (which cash amounts shall reduce, on a dollar-for-dollar basis, the draw requests and applicable DIP ABL Loans and DIP Term Loans

pursuant to the foregoing clauses (1) and (2) of this sentence of this paragraph (c)). The Debtors shall deposit and hold such amounts in a segregated account at the DIP ABL Agent in trust exclusively to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the “Post Carve Out Trigger Notice Reserve” and, together with the Pre-Carve Out Trigger Notice Reserve, the “Carve Out Reserves”). On the third business day following the Termination Declaration Date and the deemed requests for the making of DIP ABL Loans and DIP Term Loans as provided in this paragraph (c), notwithstanding anything in the DIP ABL Credit Agreement or the DIP Term Loan Agreement to the contrary, including with respect to (1) the existence of a Default (as defined in the DIP ABL Credit Agreement or the DIP Term Loan Agreement), Event of Default or an “Event of Default” (as defined in the DIP Term Loan Credit Agreement), (2) the failure of the Debtors to satisfy any or all of the conditions precedent for the making of any DIP ABL Loan under the DIP ABL Credit Agreement or DIP Term Loans under the DIP Term Loan Agreement, respectively, (3) any termination of the DIP ABL Loan Commitments or commitments under the DIP Term Loan Credit Facility following an Event of Default or “Event of Default” (as defined in the DIP Term Loan Credit Agreement), or (4) the occurrence of the Maturity Date (as defined in the ABL DIP Credit Agreement or DIP Term Loan Credit Agreement), each DIP ABL Lender and DIP Term Loan Lender with an outstanding Commitment shall make available to the DIP ABL Agent or DIP Term Loan Agent, as applicable, such DIP ABL Lender’s or such DIP Term Loan Lender’s pro rata share of such DIP ABL Loans or DIP Term Loans, as applicable. For the avoidance of doubt, the Carve Out Reserves shall constitute the primary source for payment of Allowed Professional Fees entitled to benefit from the Carve Out, and any lien priorities or superpriority claims granted pursuant to this Final Order to secure payment of the Carve Out shall be limited to any shortfall in funding as provided below.

(d) Application of Carve Out Reserves.

(i) All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in subparagraphs (a)(i) through (a)(iii) of the definition of Carve Out set forth above (the “Pre-Carve Out Amounts”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap (other than amounts up to \$250,000 to the extent the Pre-Carve Out Amounts exceed the Professional Fee Carve Out Cap), until paid in full. If the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii), below, all remaining funds shall be distributed *first* to the DIP ABL Agent on account of the applicable DIP ABL Obligations until indefeasibly paid in full, in cash, all Commitments have been terminated, and all Letters of Credit have been cancelled (or all such Letters of Credit have been fully cash collateralized or otherwise back-stopped, in each case to the satisfaction of the applicable Issuing Bank), and *thereafter* to the Prepetition ABL Secured Parties in accordance with their rights and priorities as of the Petition Date.

(ii) All funds in the Post-Carve Out Trigger Notice Reserve (other than up to \$250,000, which may be used to pay Pre-Carve Out Amounts to the extent they exceed the Professional Fee Carve Out Cap) shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the “Post-Carve Out Amounts”). If the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii), below, all remaining funds shall be distributed *first* to the DIP ABL Agent on account of the applicable DIP ABL Obligations until indefeasibly paid in full, in cash, all Commitments have been terminated, and all Letters of Credit have been cancelled (or all such Letters of Credit have been fully cash collateralized or otherwise back-stopped, in each case to the satisfaction of the applicable Issuing

Bank), and *thereafter* to the Prepetition ABL Secured Parties in accordance with their rights and priorities as of the Petition Date.

(iii) Notwithstanding anything to the contrary in the DIP ABL Credit Agreement, DIP Term Loan Credit Agreement or this Final Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this paragraph (c), then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve to the extent of any shortfall in funding prior to making any payments to the DIP ABL Agent or the Prepetition ABL Secured Parties, as applicable.

(iv) Notwithstanding anything to the contrary in the DIP ABL Credit Agreement, DIP Term Loan Credit Agreement, or this Final Order, following the third business day after delivery of a Carve Out Trigger Notice, the DIP ABL Agent, the Prepetition ABL Agent, the DIP Term Loan Agent, and the Prepetition Term Loan Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid as provided in paragraphs (ii) and (iii) above.

(v) Notwithstanding anything to the contrary in this Final Order, (i) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out with respect to any shortfall (as described below), and (ii) subject to the limitations with respect to the DIP ABL Agent, DIP ABL Secured Parties, Prepetition ABL Agent and Prepetition ABL Secured Parties set forth in paragraph (b), above, in no way shall any Approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap or Carve Out Reserves be



construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary herein or in the DIP ABL Credit Agreement or the DIP Term Loan Agreement, the Carve Out subject to the Professional Fee Carve Out Cap shall be senior to all liens and claims securing the DIP ABL Credit Agreement or the DIP Term Loan Agreement, the Prepetition ABL Adequate Protection Liens, the Prepetition Term Loan Adequate Protection Liens, and the Diminution in Value claims, and any and all other forms of adequate protection, liens, or claims securing the DIP ABL Obligations, DIP Term Loan Obligations, the Prepetition ABL Obligations, or the Prepetition Term Loan Obligations and shall be deemed a true carve out from the Prepetition Term Loan Priority Collateral and not from any property of the Debtors' estates not subject to the Prepetition Term Loan Liens.

(vi) Notwithstanding anything herein to the contrary, the Carve Out in respect of any "Transaction Fees" for Houlihan Lokey will be junior to the Prepetition ABL Obligations and DIP ABL Obligations to the extent secured by the DIP ABL Priority Collateral other than (x) the pro rata share (determined in proportion to the allocation of the "Transaction" proceeds as between the DIP ABL Priority Collateral and the DIP Term Priority Collateral) of any "Sale Transaction Fee" or "Supplemental Sale Transaction Fee" (as each term is defined in the Debtors' engagement letter with Houlihan Lokey) authorized by the Court in respect of a "Sale Transaction" (as defined in such engagement letter) that is a going concern sale (and not a liquidation sale) of the DIP ABL Priority Collateral consented to by DIP ABL Agent or (y) to the extent otherwise agreed in writing by the DIP ABL Agent in its sole discretion.

(e) No Direct Obligation To Pay Allowed Professional Fees. The DIP ABL Agent, DIP Term Loan Agent, DIP ABL Secured Parties and DIP Term Loan Parties shall not be

responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the DIP ABL Agent, DIP Term Loan Agent, DIP ABL Secured Parties and DIP Term Loan Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(f) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(g) Payment of Carve Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the DIP ABL Obligations or DIP Term Loan Obligations, as applicable, secured by the DIP Collateral and shall be otherwise entitled to the protections granted under the Interim Order, this Final Order, the DIP ABL Documents, the DIP Term Loan Documents, the Bankruptcy Code, and applicable law.

(h) Reservation of Rights. Nothing herein shall be construed to impair the right or ability of any party to object to the fees, expenses, reimbursement, or other compensation described with respect to these Carve-Out provisions.

40. Limitations on the Use of DIP Proceeds, Cash Collateral and Carve Out. The DIP ABL Credit Facility, the DIP Term Loan Credit Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, and the Carve Out may not be used in connection with:

(a) preventing, hindering, or delaying any of the DIP ABL Agent's, the DIP Term Loan Agent's, the DIP ABL Secured Parties', the DIP Term Loan Parties', the Prepetition ABL Secured Parties' or the Prepetition Term Loan Parties' enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (b) using or seeking to use Cash Collateral without the consent of the DIP ABL Agent or the DIP Term Loan Agent and the Required DIP Term Loan Lenders; (c) using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP ABL Agent or the DIP Term Loan Agent and the Required DIP Term Loan Lenders, as applicable, *provided, however* that the Debtors may use or seek to use any insurance proceeds constituting DIP Collateral if the DIP Obligations are repaid in full in accordance with the terms of the DIP Documents; (d) incurring Indebtedness (as defined in the DIP ABL Credit Agreement or the DIP Term Loan Credit Agreement, as applicable) secured by liens senior or *pari passu* to the DIP ABL Liens, the Prepetition ABL Liens, and/or the Prepetition ABL Adequate Protection Liens without the prior consent of the DIP ABL Agent or the DIP Term Loan Agent and the Required DIP Term Loan Lenders, as applicable, except to the extent permitted under the DIP ABL Credit Agreement or DIP Term Loan Credit Agreement, as applicable, *provided, however* that the Debtors may incur Indebtedness if the DIP ABL Obligations are repaid in full in accordance with the terms of the DIP ABL Documents; (e) seeking to amend or modify any of the rights granted to the DIP ABL Agent, DIP Term Loan Agent, the DIP ABL Secured Parties, the DIP Term Loan Parties, the Prepetition ABL Secured Parties or the Prepetition Term Loan Parties under the Interim Order, this Final Order, the DIP ABL Documents, the DIP Term Loan Documents, the Prepetition ABL Documents or the Prepetition Term Loan Documents, including seeking to use Cash Collateral and/or DIP Collateral on a contested basis; (f) objecting to or challenging in any way the DIP ABL Liens, DIP Term Loan Liens, DIP ABL Obligations, DIP Term Loan Obligations, Prepetition ABL Liens,

Prepetition Term Loan Liens, Prepetition ABL Obligations, Prepetition Term Loan Obligations, DIP Collateral (including Cash Collateral) or, as the case may be, Prepetition Collateral, or any other claims or liens, held by or on behalf of any of the DIP ABL Agent, DIP Term Loan Agent, the DIP ABL Secured Parties, the DIP Term Loan Parties, the Prepetition ABL Secured Parties or the Prepetition Term Loan Parties, respectively; (g) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions to recover or disgorge payments, against any of the DIP ABL Agent, DIP Term Loan Agent, the DIP ABL Secured Parties, the DIP Term Loan Parties, the Prepetition ABL Secured Parties or the Prepetition Term Loan Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees; (h) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP ABL Obligations, DIP Term Loan Obligations, the DIP ABL Liens, DIP Term Loan Liens, Prepetition ABL Liens, Prepetition Term Loan Liens, Prepetition ABL Obligations, Prepetition Term Loan Obligations or any other rights or interests of any of the DIP ABL Agent, DIP Term Loan Agent, the DIP ABL Secured Parties, the DIP Term Loan Parties, the Prepetition ABL Secured Parties or the Prepetition Term Loan Parties; or (i) seeking to subordinate, recharacterize, disallow or avoid the DIP ABL Obligations, DIP Term Loan Obligations, Prepetition ABL Obligations or Prepetition Term Loan Obligations; *provided, however*, that the Carve Out and such collateral proceeds and loans under the DIP ABL Documents and DIP Term Loan Documents may be used for allowed fees and expenses, in an amount not to exceed \$200,000 in the aggregate, incurred solely by the Creditors' Committee, in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority or extent of the Prepetition ABL

Liens or Prepetition Term Loan Liens (the “Limited Amount”); provided, however, that nothing herein shall be deemed to limit the Debtors or the Creditors’ Committee from taking any actions that they deem to be required in the exercise of their fiduciary obligations. Notwithstanding anything to the contrary in this Order, nothing herein shall be deemed to (a) limit the ability of the Creditors’ Committee’s professionals to be paid from unencumbered assets for services rendered in the investigation or prosecution of claims against the Prepetition ABL Secured Parties or Prepetition Term Loan Parties; (b) preclude the Court from awarding fees and expenses to the Creditors’ Committee professionals pursuant to section 330 of the Bankruptcy Code for such services rendered; nor (c) relieve the Debtors or any plan proponent(s) from paying all allowed administrative expenses in connection with confirmation of any plan.

41. Payment of Compensation. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any Professional Person or shall affect the right of the DIP ABL Agent, DIP Term Loan Agent, the DIP ABL Secured Parties, the DIP Term Loan Parties, the Prepetition ABL Secured Parties or the Prepetition Term Loan Parties to object to the allowance and payment of such fees and expenses. So long as an unwaived Event of Default or “Event of Default” (as defined in the DIP Term Loan Credit Agreement) has not occurred, the Debtors shall be permitted to pay fees and expenses allowed and payable by final order of the Court (that has not been vacated or stayed, unless the stay has been vacated) under sections 328, 330, 331, and 363 of the Bankruptcy Code, as the same may be due and payable, as reflected in the most recent Approved Budget provided by the Debtors to the DIP ABL Agent and DIP Term Loan Agent.

42. Effect of Stipulations on Third Parties.

(i) *Generally.* Except as set forth in this Final Order, upon the expiration of the Challenge Period (as defined below) except and solely to the extent a Challenge or Challenge Motion has been interposed, unless and until such Challenge is overruled, settled, or denied by Final Order of the Court, the admissions, stipulations, agreements, releases, and waivers set forth in this Final Order are and shall be deemed effective and binding in all circumstances and for all purposes on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including, without limitation, any chapter 7 or chapter 11 trustee or examiner appoint or elected for any of the Debtors and official committee that may be appointed in these cases (each, a “Challenge Party”), unless, and solely to the extent that the Court rules in favor of the Challenge Party in any such timely and properly filed Challenge (as defined herein); *provided, however*, that any releases by the DIP Term Loan Parties and Prepetition Term Loan Parties of the Put Purchasers shall be governed by the Restructuring Support Agreement (as defined in the Plan). For purposes of this paragraph 42: (a) “Challenge” means any claim against any of the Prepetition ABL Secured Parties or the Put Purchasers (as to the Put Purchasers, solely with respect to the Put Purchasers’ interests in the Last Out Obligations and entry into the Put Agreement and Existing Participation Agreement) by or on behalf of the Debtors, or to object to or to challenge the stipulations, findings or Debtors’ Stipulations set forth herein, including, but not limited to those in relation to: (i) the validity, extent, priority, or perfection of the mortgage, security interests, and liens of any Prepetition ABL Secured Party; (ii) the validity, allowability, priority, or amount of the Prepetition ABL Obligations; or (iii) any liability of any of the Prepetition ABL Secured Parties or the Put Purchasers (as to the Put Purchasers, solely with

respect to the Put Purchasers' interests in the Last Out Obligations and entry into the Put Agreement and Existing Participation Agreement, and subject to and only effective upon the Disinterested Director's Determination and the Challenge Period Termination Date and subject to the rights of the Committee set forth in this paragraph 42) with respect to anything arising from any of the respective Prepetition ABL Documents and the entry into the Put Agreement and Existing Participation Agreement; and (b) "Challenge Period" means sixty (60) days after the entry of this Final Order (or such longer period as the Court orders for cause shown before the expiration of such period or is agreed to by the Prepetition ABL Agent in writing). During the Challenge Period, a Challenge Party shall be entitled to determine whether a basis to assert a Challenge exists. Nothing herein shall be deemed to grant standing in favor of any Challenge Party absent further order of this Court, *provided* that nothing herein shall limit any party in interests rights, if any, to object to any claims pursuant to section 502(a) of the Bankruptcy Code until the expiration of the Challenge Period Termination Date, nor limit the rights of any other parties to contest any such claims asserted pursuant to section 502(a). Notwithstanding anything to the contrary in this Final Order, the Debtors, if timely notified of a potential Challenge (a "Challenge Notice"), shall retain authority to prosecute, settle, or compromise such Challenge in the exercise of their business judgment and subject to any applicable further order of court. Nothing herein shall limit the Creditors' Committee's ability to (x) file a motion in respect of any timely Challenge Notice (a "Challenge Motion"), provided that such Challenge Motion is filed before the Challenge Period Termination Date (or such later date as may be agreed upon among the applicable Debtor(s) and the applicable parties subject to such Challenge Notice) and such Challenge Motion is in respect of a Challenge for which it cannot obtain standing, but meets the standard applicable to pursue such matters for the applicable Debtor(s) derivatively assuming the applicable Debtor were not a

limited liability company, and (y) seek pursuant to that Challenge Motion a mechanism by which to prosecute such Challenge described in such Challenge Notice. In the event the Creditors' Committee files a Challenge Motion for which it cannot obtain standing, the expiration of the Challenge Period solely for the specific Challenge set forth in the Challenge Motion shall be tolled pending further order of the Court, and applicable parties shall meet and confer with respect to an appropriate process for the prosecution of any such Challenge.

(ii) *Binding Effect.* Upon the expiration of the Challenge Period (the "Challenge Period Termination Date"), without the filing of a Challenge or Challenge Motion, or, upon the filing of a Challenge or Challenge Motion, a Final Order of the Court overruling, settling, or denying the Challenge: (A) any and all such Challenges and objections by any party (including, without limitation, the Creditors' Committee, any Chapter 11 trustee, and/or any examiner or other estate representative appointed in these Cases, and any Chapter 7 trustee and/or examiner or other estate representative appointed in any Successor Case), shall be deemed to be forever waived, released and barred, (B) all matters not subject to the Challenge, findings, Debtors' Stipulations, waivers, releases, affirmations and other stipulations as to the priority, extent, and validity as to each Prepetition ABL Secured Parties' claims, liens, interests, and validity of the Prepetition ABL Obligations shall be of full force and effect and forever binding upon the Debtors, the Debtors' bankruptcy estates and all creditors, interest holders, and other parties in interest in these Cases and any Successor Cases; and (C) any and all claims or causes of action against (i) any of the Prepetition ABL Secured Parties or (ii) the Put Purchasers relating in any way to the Put Purchasers' interests in the Last Out Obligations and entry into the Put Agreement and Existing Participation Agreement, shall, in each of clause (i) and clause (ii) be forever waived and released by the Debtors' estates, all creditors, interest holders and other parties in interest in these Cases



and any Successor Cases, provided that the binding effect of the findings, Debtors' Stipulations and release of the Put Purchasers is only effective as to third parties upon the later of the occurrence of the Disinterested Director's Determination and the Challenge Period Termination Date and the rights of the Creditors' Committee pursuant to this paragraph 42.

43. No Third Party Rights/No Superior Rights of Reclamation. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary. Based on the findings and rulings herein concerning the integrated nature of the DIP ABL Credit Agreement and the Prepetition ABL Credit Facility and the relation back of the DIP ABL Liens, in no event shall any alleged right of reclamation or return (whether asserted under Section 546(c) of the Bankruptcy Code or otherwise) be deemed to have priority over the DIP ABL Liens.

44. [Reserved].

45. No Marshaling/Applications of Proceeds. Except as otherwise set forth in paragraph 7, the DIP ABL Agent, DIP ABL Secured Parties, DIP ABL Obligations, Prepetition ABL Secured Parties and Prepetition ABL Obligations shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as the case may be, and proceeds shall be received and applied pursuant to this Final Order, including, for the avoidance of doubt, in accordance with paragraph 24 hereof, and the DIP ABL Documents notwithstanding any other agreement or provision to the contrary.

46. Section 552(b). The Prepetition ABL Secured Parties and Prepetition ABL Obligations are each entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall

not apply to the Prepetition ABL Secured Parties and Prepetition ABL Obligations, with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

47. Access to DIP Collateral. Without limiting any other rights or remedies of the DIP Agents, and subject to and consistent with any applicable rights that a landlord may have under applicable nonbankruptcy law (except to the extent that such rights are modified by the Court upon a separate motion with notice to the applicable landlords of the leased premises and an opportunity for such landlords to respond and be heard), upon not less than three (3) Business Days' written notice to the landlord of any leased premises that an Event of Default or a Termination Date has occurred and is continuing, the DIP ABL Agent or DIP Term Loan Agent, as applicable, subject to the applicable notice provisions if any, in this Final Order, the Canadian Recognition Orders, and any separate applicable agreement by and between such landlord and the DIP ABL Agent or DIP Term Loan Agent may obtain access to Collateral subject to the following conditions: unless otherwise approved by landlord, (i) any such notice to landlord shall specifically identify any Collateral to be accessed and provide details of any removal actions; (ii) any access or removal actions shall be subject to reasonable rules and restrictions by landlord and shall not unreasonably interfere with the conduct of business at the leased premises; and (iii) any party accessing the leased premises shall pay the rent and operating expenses currently in effect on a per diem basis and such occupancy period shall not extend past 30 days without prior landlord approval, *provided, however*, that nothing in this Final Order shall be deemed to grant the DIP ABL Agent or DIP Term Loan Agent an assignment of the Debtors' rights under the lease or a waiver of any provisions under the lease or applicable non-bankruptcy law relating to notice or foreclosure, all of which are preserved in favor of the landlord and not waived or altered by this

Final Order. Nothing herein shall require the DIP ABL Agent or DIP Term Loan Agent to assume any lease as a condition to the rights afforded in this paragraph.

48. Exculpation. Nothing in the Interim Order, this Final Order, the DIP ABL Documents, the existing agreements, or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon any DIP ABL Secured Parties or DIP ABL Agent any liability for any claims arising from the postpetition activities of the DIP Parties, including in the operation of their businesses, or in connection with their restructuring efforts and administration of these Cases. In addition, (a) the DIP ABL Secured Parties and DIP ABL Agent shall not, in any way or manner, be liable or responsible for: (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any Diminution in Value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person, and (b) all risk of loss, damage, or destruction of the DIP Collateral shall be borne by the DIP Parties.

49. Limits on Lender Liability. The DIP ABL Agent, the DIP ABL Secured Parties and the Prepetition ABL Secured Parties, each in their capacities as such, solely by reason of entering into the DIP ABL Credit Facility and taking the actions permitted under the DIP ABL Documents, the Interim Order and this Final Order, shall not be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors, so long as the DIP ABL Secured Parties’ other actions do not otherwise constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by a Debtor, or otherwise cause liability to arise to the federal or state Government or the status of responsible

person or managing agent to exist under applicable law (as such terms, or any similar terms, are used in the Internal Revenue Code, WARN Act, the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute).

50. [Reserved].

51. Joint and Several Liability. Nothing in the Interim Order or this Final Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Borrowers and the DIP ABL Guarantors shall be jointly and severally liable for the obligations hereunder and all DIP ABL Obligations in accordance with the terms hereof and of the DIP ABL Credit Facility and the DIP ABL Documents.

52. Rights Preserved. Notwithstanding anything in the Interim Order or this Final Order to the contrary, the entry of the Interim Order and this Final Order are without prejudice to, and do not constitute a waiver of, expressly or implicitly: (a) the DIP ABL Agent's, DIP ABL Secured Parties', and Prepetition ABL Secured Parties' right to seek any other or supplemental relief in respect of the Debtors; (b) any of the rights of any of the DIP ABL Agent, DIP ABL Secured Parties and Prepetition ABL Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases or Successor Cases, conversion of any of the Cases to cases under Chapter 7, or appointment of a Chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans; or (c) subject to the DIP Intercreditor Agreement, any other rights, claims or privileges (whether legal, equitable or otherwise) of any of the DIP ABL Agent, DIP ABL Secured Parties, or Prepetition ABL Secured

Parties. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors', the Creditors' Committee's, or any party in interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Final Order.

53. No Waiver by Failure to Seek Relief. The failure of the DIP ABL Agent, DIP ABL Secured Parties, or Prepetition ABL Secured Parties to seek relief or otherwise exercise their rights and remedies under this Final Order, the DIP ABL Documents, the Prepetition ABL Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP ABL Agent, DIP ABL Secured Parties, Prepetition ABL Secured Parties, Prepetition Term Loan Parties, Creditors' Committee, or any party in interest.

54. Binding Effect of Interim Order and Final Order. Immediately upon execution by this Court, the terms and provisions of the Interim Order became valid and binding and the terms and provisions of this Final Order shall become valid and binding (in which any conflict shall be construed in favor of this Final Order) upon and inure to the benefit of the Debtors, DIP ABL Agent, DIP Term Loan Agent, DIP ABL Secured Parties, DIP Term Loan Parties, the DIP ABL Obligations, the DIP Term Loan Obligations, the Prepetition ABL Secured Parties, the Prepetition ABL Obligations, Prepetition Term Loan Parties, all other creditors of any of the Debtors, the Creditors' Committee (or any other court appointed committee) appointed in the Cases, and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Cases, any Successor Cases, or upon dismissal of any Case or Successor Case.

55. No Modification of Final Order. Until and unless the DIP ABL Obligations and the Prepetition ABL Obligations have been indefeasibly paid in full in cash, and all letters of credit under the DIP ABL Credit Facility shall have been cancelled, backed, or cash collateralized in accordance with the terms thereof (such payment being without prejudice to any terms or provisions contained in the DIP ABL Credit Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP ABL Credit Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly:

(a) without the prior written consent of the DIP ABL Agent and the DIP ABL Secured Parties (or the Prepetition ABL Agent), (i) any material modification, stay, vacatur or amendment to this Final Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation any administrative expense of the kind specified in sections 503(b), 506(c), 507(a), or 507(b) of the Bankruptcy Code) in any of the Cases or Successor Cases, equal or superior to the DIP ABL Superpriority Claims or Prepetition ABL Superpriority Claims, other than the Carve Out and the Canadian Intercompany Superpriority Administrative Claims, as set forth herein;

(b) without the prior written consent of the DIP ABL Agent (or the Prepetition ABL Agent) any order allowing use of Cash Collateral (other than as permitted during the Remedies Notice Period) resulting from DIP Collateral or Prepetition Collateral; (c) without the prior written consent of the DIP ABL Agent, any lien on any of the DIP Collateral with priority equal or superior to the DIP ABL Liens, except as specifically provided in the DIP ABL Documents; or (d) without the prior written consent of the Prepetition ABL Agent, any lien on any of the DIP Collateral with priority equal or superior to the Prepetition ABL Liens or Prepetition ABL Adequate Protection Liens, except as specifically provided in the DIP ABL Documents. The Debtors irrevocably waive any

right to seek any amendment, modification or extension of this Final Order without the prior written consent, as provided in the foregoing, of the DIP ABL Agent (or the Prepetition ABL Agent), and no such consent shall be implied by any other action, inaction or acquiescence of the DIP ABL Agent or the Prepetition ABL Agent.

56. Continuing Effect of DIP Intercreditor Agreement; Participation Agreement. The Debtors, DIP ABL Agent, DIP Term Loan Agent, DIP ABL Secured Parties, DIP Term Loan Parties, Prepetition ABL Secured Parties, and Prepetition Term Loan Parties each shall be bound by, and in all respects of the DIP ABL Credit Facility and DIP Term Loan Credit Facility shall be governed by, and be subject to all the terms, provisions, and restrictions of the DIP Intercreditor Agreement, except as may be expressly modified by this Final Order. The parties to the Participation Agreement shall continue to be bound by, governed by, and be subject to all the terms, provisions, and restrictions of the Participation Agreement.

57. Final Order Controls. In the event of any inconsistency between the terms and conditions of the Interim Order and of this Final Order or the DIP ABL Documents and of this Final Order, the provisions of this Final Order shall govern and control. In the event of any inconsistency between the terms and conditions of any other order regarding any postpetition financing or use of cash collateral, the provisions of this Final Order shall govern and control to the extent such terms and conditions relate to the Prepetition ABL Credit Facility, Prepetition ABL Secured Parties, Prepetition ABL Obligations, Prepetition ABL Documents, Prepetition Collateral, Prepetition ABL Liens, Prepetition ABL Priority Collateral, Prepetition ABL Superpriority Claims, Prepetition ABL Adequate Protection Payments, Prepetition ABL Adequate Protection Liens, DIP ABL Credit Facility, DIP ABL Secured Parties, DIP ABL Obligations, DIP ABL Documents, DIP ABL Collateral, DIP ABL Liens, DIP ABL Priority Collateral, or DIP ABL Superpriority Claims.

Notwithstanding anything to the contrary in the Interim Order, upon entry of this Final Order, any modifications by the Interim Order to the DIP ABL Documents shall be superseded by this Final Order and such modifications shall no longer have any effect.

58. Discharge. The DIP ABL Obligations and the obligations of the Debtors with respect to the adequate protection provided herein shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash (and “payment in full” as provided by the DIP ABL Credit Agreement), on or before the effective date of such confirmed plan of reorganization, or each of the DIP ABL Agent, DIP ABL Secured Parties and Prepetition ABL Agent, as applicable, has otherwise agreed in writing. None of the Debtors shall propose or support any plan of reorganization or sale of all or substantially all of the Debtors’ assets, or order confirming such plan or approving such sale, that is not conditioned upon the indefeasible payment of the DIP ABL Obligations, and the payment of the Debtors’ obligations with respect to the adequate protection provided for herein, in full in cash within a commercially reasonable period of time (and in no event later than the effective date of such plan of reorganization or sale) (a “Prohibited Plan or Sale”) without the written consent of the DIP ABL Agent and the Prepetition ABL Agent, as applicable. For the avoidance of doubt, the Debtors’ proposal or support of a Prohibited Plan or Sale, or the entry of an order with respect thereto, shall constitute an Event of Default hereunder and under the DIP ABL Documents.

59. Survival. The provisions of the Interim Order, this Final Order, and any actions taken pursuant thereto and hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Cases; (b) converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing any of the Cases or any Successor



Cases; or (d) pursuant to which this Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of the Interim Order and this Final Order, including the claims, liens, security interests, and other protections granted to the DIP ABL Agent, DIP ABL Secured Parties, DIP ABL Obligations, the Prepetition ABL Secured Parties and the Prepetition ABL Obligations granted pursuant to the Interim Order, this Final Order and/or the DIP ABL Documents, shall continue in the Cases, in any Successor Cases, or following dismissal of the Cases or any Successor Cases, and shall maintain their priority as provided by the Interim Order and this Final Order until: (i) in respect of the DIP ABL Credit Facility, all the DIP ABL Obligations, pursuant to the DIP ABL Documents, the Interim Order, and this Final Order, have been indefeasibly paid in full in cash and all letters of credit under the DIP ABL Credit Facility shall have been cancelled or cash collateralized in accordance with the terms thereof (such payment being without prejudice to any terms or provisions contained in the DIP ABL Credit Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP ABL Credit Facility are terminated and (ii) in respect of the Prepetition ABL Facility, all of the Prepetition ABL Obligations pursuant to the Prepetition ABL Documents, the Interim Order and this Final Order, have been indefeasibly paid in full in cash. The terms and provisions concerning the indemnification of the DIP ABL Agent and DIP ABL Secured Parties shall continue in the Cases, in any Successor Cases, following dismissal of the Cases or any Successor Cases, following termination of the DIP ABL Documents and/or the indefeasible repayment of the DIP ABL Obligations.

60. Dallas County, Texas Ad Valorem Taxes. Notwithstanding any other provisions of this Final Order, any valid liens currently held by Dallas County shall neither be primed by nor subordinated to any liens granted hereby. Subject to further order of this Court, up

to a maximum of \$380,000 of proceeds of the sales of assets located in the state of Texas that are subject to a lien held by Dallas County shall be deposited in a segregated account as adequate protection for the secured claims of Dallas County prior to the distribution of any such proceeds to any other creditor; *provided* that the segregated amount shall be reduced if the actual or estimated taxes are less than \$380,000 at the time of any such sale; and provided further that such amount up to \$380,000 shall be funded first from DIP Term Priority Collateral located in the state of Texas. Any valid liens of Dallas County shall attach to these proceeds to the same extent and with the same priority as such liens currently attach to the applicable property of the Debtors. These funds shall be in the nature of adequate protection and shall constitute neither the allowance of the claims of Dallas County, nor a cap on the amounts it may be entitled to receive. The claims and liens of Dallas County shall remain subject to any objections made by any party (including the Debtors) who would otherwise be entitled to raise any objection as to, among other things, the claim amount or the priority, validity, or extent of such liens. These segregated proceeds may be distributed upon agreement among Dallas County, the Debtors, the DIP ABL Secured Parties and the DIP Term Loan Parties, or upon order of the Court with notice to Dallas County. Nothing in this Final Order shall be deemed an admission as to the validity of any claim of Dallas County against a Debtor entity.

61. Canadian Intercompany Superpriority Administrative Claims. The Canadian Intercompany Superpriority Administrative Claims shall be subject to the Carve Out and shall otherwise be junior only to: (a) with respect to the DIP ABL Priority Collateral (1) Permitted Prior Liens; (2) the DIP ABL Liens; (3) the Prepetition ABL Liens; and (4) the Prepetition ABL Adequate Protection Liens; and (b) with respect to the DIP Term Loan Priority Collateral (1) Prepetition Term Loan Permitted Prior Liens; (2) the DIP Term Loan Liens; (3) the Prepetition

Term Loan Liens; (4) the Prepetition Term Loan Adequate Protection Liens; (5) the DIP ABL Liens; (6) the Prepetition ABL Liens; and (7) the Prepetition ABL Adequate Protection Liens; and shall otherwise be senior to all other security interests in, liens on, or claims against any of the Debtors' assets.

62. Necessary Action. The Debtors are authorized to take any and all such actions as are necessary or appropriate to implement the terms of the Interim Order and this Final Order.

63. Bankruptcy Rules. The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of the DIP Motion.

64. Nunc Pro Tunc Effect of this Final Order. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

65. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules, or any local bankruptcy rules, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

66. The Debtors shall within two (2) business days of its entry serve copies of this Final Order to the parties having been given notice of the Final Hearing and to any party that has filed a request for notices with this Court.

Dated: New York, New York  
July 3, 2019

s/Michael E. Wiles

THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Budget



**CONSOLIDATED - USD**

UNCONSOLIDATED - USD		0	Actual 1	Actual 2	Actual 3	Actual 4	Estimated 5	Estimated 6	Forecast 7	Forecast 8	Forecast 9	Forecast 10	Forecast 11	Forecast 12	Forecast 13	Forecast 14	Forecast 15	Forecast 16	Forecast 17	18
Week #	Week Start Date	5/13/19	5/20/19	5/27/19	6/3/19	6/10/19	6/17/19	6/24/19	7/1/19	7/8/19	7/15/19	7/22/19	7/29/19	8/5/19	8/12/19	8/19/19	8/26/19	9/2/19	9/9/19	TOTAL
	Week End Date	5/17/19	5/24/19	5/31/19	6/7/19	6/14/19	6/21/19	6/28/19	7/5/19	7/12/19	7/19/19	7/26/19	8/2/19	8/9/19	8/16/19	8/23/19	8/30/19	9/6/19	9/13/19	17 WEEKS
CASH BALANCE & AVAILABILITY																				
Operating Cash Balance																				
	Beginning Cash Balance		523	472	115	(208)	(108)	363	485	250	250	250	250	250	250	250	250	250	250	-
	Net Operating Cash Flow	A-B	(691)	31	4,208	(4,846)	(6,496)	(4,530)	(10,625)	651	(2,282)	(2,217)	(3,516)	1,141	1,861	(1,487)	519	(287)	(4,501)	(33,067)
	Term DIP Cash Disbursement	E	825	3,000	-	-	300	8,000	7,083	-	-	-	980	-	-	-	-	412	5,914	26,514
	ABL Draw/(Repayment)		(1,543)	(2,885)	(4,419)	4,387	5,676	(3,490)	3,306	(651)	2,282	2,217	2,536	(1,141)	(1,861)	1,487	(519)	(125)	(1,413)	3,844
	Timing/Other	E	1,357	(503)	(112)	559	991	143												2,436
	Net Operating Cash On Hand		472	115	(208)	(108)	363	485	250	250	250	250	250	250	250	250	250	250	250	(2,710)
Term DIP Cash Balance																				
	Beginning Balance		15,000	14,175	11,175	11,175	11,175	10,875	2,875	-	-	-	2,792	1,812	1,812	1,812	1,812	1,812	1,400	-
	Term DIP Draws	15,000	-	-	-	-	-	-	4,208			2,792							6,000	28,000
	Disbursements	E	(825)	(3,000)	-	-	(300)	(8,000)	(7,083)	-	-	-	(980)	-	-	-	-	(412)	(5,914)	(26,514)
	Term DIP Cash Ending Balance	15,000	14,175	11,175	11,175	11,175	10,875	2,875	-	-	-	2,792	1,812	1,812	1,812	1,812	1,812	1,400	1,486	1,486
	Total Cash Balance		14,647	11,290	10,967	11,067	11,238	3,360	250	250	250	3,042	2,062	2,062	2,062	2,062	2,062	1,650	1,736	1,736
Professional Fees Carve Out Balance																				
	Beginning Balance		-	2,608	3,626	3,947	4,429	4,912	5,366	5,318	5,333	4,497	4,587	4,945	5,292	5,939	4,966	5,613	5,551	-
	Funding	D	2,608	1,181	320	483	511	497	852	540	540	540	647	647	647	647	647	187	187	11,684
	Disbursements	C	-	(162)	-	-	(29)	(43)	(899)	(526)	(1,376)	(451)	(289)	(301)	-	(1,620)	-	(250)	(5,738)	(11,684)
	Professional Fees Carve Out Ending Balance		2,608	3,626	3,947	4,429	4,912	5,366	5,318	5,333	4,497	4,587	4,945	5,292	5,939	4,966	5,613	5,551	-	-
ABL Availability																				
	ABL Total Borrowing Base After Reserves		64,063	66,823	66,823	61,815	63,345	63,345	63,182	65,673	67,406	68,885	68,786	69,938	69,789	69,371	68,248	67,653	66,178	66,178
	Cash Secured L/C Balance		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	ABL Balance		(45,104)	(42,219)	(37,800)	(42,188)	(47,864)	(44,373)	(47,680)	(47,029)	(49,310)	(51,527)	(54,063)	(52,922)	(51,061)	(52,548)	(52,030)	(51,904)	(50,491)	(50,491)
	L/C Balance		(5,136)	(5,136)	(5,136)	(5,136)	(5,136)	(5,136)	(5,136)	(5,136)	(5,136)	(5,136)	(5,136)	(5,136)	(5,136)	(5,136)	(5,136)	(5,136)	(5,136)	(5,136)
	Professional Fee Carve Out (Week Delay)		(2,608)	(2,608)	(3,626)	(3,947)	(4,429)	(4,912)	(5,366)	(5,318)	(5,333)	(4,497)	(4,587)	(4,945)	(5,292)	(5,939)	(4,966)	(5,613)	(5,551)	(5,551)
	Total Availability		11,215	16,859	20,260	10,545	5,916	8,924	5,000	8,189	7,627	7,724	5,000	6,934	8,300	5,747	6,117	5,000	5,000	5,000
	Net Cash on Hand + Availability		25,862	28,150	31,227	21,612	17,154	12,284	5,250	8,439	7,877	10,766	7,062	8,996	10,361	7,809	8,179	6,650	6,736	6,736
Pre-Petition ABL Balance																				
	Pre-Petition ABL Beginning Balance	61,648	46,648	39,654	33,291	22,116	13,503	6,125	756	-	-	-	-	-	-	-	-	-	-	\$ 61,648
	Draws	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Repayments	-	(6,993)	(6,363)	(11,176)	(8,613)	(7,378)	(5,369)	(756)	-	-	-	-	-	-	-	-	-	-	(46,648)
	Balance Transfer	(15,000)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(15,000)
	Pre-Petition ABL Ending Balance	46,648	39,654	33,291	22,116	13,503	6,125	756	-	-	-	-	-	-	-	-	-	-	-	-
ABL DIP Balance																				
	ABL DIP Beginning Balance	-	-	5,450	8,928	15,685	28,685	41,738	43,617	47,680	47,029	49,310	51,527	54,063	52,922	51,061	52,548	52,030	51,904	\$ -
	Draws	-	5,450	3,478	6,757	13,000	13,053	2,818	7,877	10,084	11,263	9,759	11,444	8,415	8,457	10,932	9,825	9,852	9,225	151,688
	Repayments	-	-	-	-	-	-	(939)	(3,814)	(10,734)	(8,981)	(7,542)	(8,908)	(9,555)	(10,318)	(9,445)	(10,344)	(9,978)	(10,638)	(101,197)
	Balance Transfer	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	ABL DIP Ending Balance	-	5,450	8,928	15,685	28,685	41,738	43,617	47,680	47,029	49,310	51,527	54,063	52,922	51,061	52,548	52,030	51,904	50,491	50,491
	Total Wells ABL/ABL DIP Balance	46,648	45,104	42,219	37,800	42,188	47,864	44,373	47,680	47,029	49,310	51,527	54,063	52,922	51,061	52,548	52,030	51,904	50,491	50,491
Term DIP Balance																				
	DIP Beginning Balance	-	15,000	15,000	15,000	15,000	15,000	15,000	15,000	19,208	19,208	19,208	22,000	22,000	22,000	22,000	22,000	22,000	22,000	\$ -
	Draws	15,000	-	-	-	-	-	-	4,208	-	-	2,792	-	-	-	-	-	-	6,000	28,000
	Repayments	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	DIP Ending Balance	15,000	15,000	15,000	15,000	15,000	15,000	15,000	19,208	19,208	19,208	22,000	22,000	22,000	22,000	22,000	22,000	22,000	28,000	28,000
Sentinel ABL																				
	Sentinel ABL Beginning Balance	-	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	\$ -
	Balance Transfer	15,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	15,000
	Sentinel ABL Ending Balance	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000

THIS IS EXHIBIT "P" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.



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Commissioner for Taking Affidavits

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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (____)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS (A) AUTHORIZING THE PAYMENT OF CERTAIN  
PREPETITION TAXES AND FEES AND (B) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion:

**Relief Requested**

1. By this motion, the Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, (a) authorizing the Debtors to remit and pay certain accrued and outstanding prepetition Taxes and Fees (as defined herein) in the ordinary course of business, including those obligations subsequently determined upon audit or otherwise

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.



to be owed for prepetition periods, and (b) granting related relief. In addition, the Debtors request that the Court (as defined herein) schedule a final hearing within approximately 25 days from the date hereof (the “Petition Date”) to consider approval of this motion on a final basis.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

### **Background**<sup>2</sup>

5. Hollander Sleep Products is the largest pillow and mattress pad manufacturer in North America. The Debtors also manufacture comforters and other basic bedding products. The Debtors have their own brands, including Great Sleep®, I AM®, LC®, PCF®, and

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<sup>2</sup> The facts and circumstances supporting this motion are set forth in the *Declaration of Marc Pfefferle, Chief Executive Officer of Hollander Sleep Products, LLC, in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein.

Restful Nights®, and also manufacture and sell licensed brands, including Simmons®, Ralph Lauren®, CHAPS®, Calvin Klein®, Therapedic®, Nautica®, 37.5®, and Dr. Maas®. The Debtors are headquartered in Boca Raton, Florida, operate a main showroom in New York City, and have thirteen manufacturing facilities throughout the United States and Canada. The Debtors generated approximately \$527 million in net revenue in fiscal year 2018 and currently employ more than 2,300 people across the United States and Canada. As of the date hereof, the Debtors have approximately \$233 million in funded debt.

6. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have concurrently filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

### **The Debtors' Tax and Fee Obligations**

7. In the ordinary course of business, the Debtors collect, incur, and pay, among other taxes, sales taxes, use taxes, annual report and licensing fees, personal property taxes, franchise taxes and fees, foreign taxes, and various other governmental taxes, fees, and assessments, and pay fees on account of tax services provided to the Debtors (collectively, the "Taxes and Fees").<sup>3</sup>

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<sup>3</sup> By this motion, the Debtors do not seek the authority to collect and remit state and federal employee-related taxes and fees. The Debtors instead request such relief in the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief*, filed concurrently herewith. Similarly, the Debtors do not seek authority to pay duty and excise taxes and fees related to purchases of goods from or in foreign jurisdictions. The Debtors instead request such relief in the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of (A) Lien Claimants, (B) Import Claimant, (C) 503(b)(9) Claimants, (D) Foreign Vendors, and (E) Critical Vendors, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief*, filed contemporaneously herewith.

The Debtors remit the Taxes and Fees to various federal, state, local, and foreign governmental units, including taxing authorities (collectively, the “Governmental Authorities”).

8. The Debtors also use, in the ordinary course of business, third-party service providers to facilitate the payment of the Taxes and Fees (the “Third-Party Service Providers”). Such services include calculating sales and use taxes and remitting taxes to the Governmental Authorities on the Debtors’ behalf, among others. As of the Petition Date, the Debtors do not believe that they owe any amounts to the Third-Party Service Providers on account of fees or any other form of compensation for such services. Nevertheless, out of an abundance of caution, the Debtors seek authority to honor any amounts owed to the Third-Party Service Providers in the ordinary course of business on a postpetition basis to ensure timely payment of the Taxes and Fees.

9. A schedule identifying the Governmental Authorities and Third-Party Service Providers is attached hereto as Exhibit C.<sup>4</sup> Taxes and Fees are remitted and paid by the Debtors through checks and electronic transfers that are processed through the financial institutions at which the Debtors maintain the bank accounts that comprise their cash management system. The Debtors estimate that approximately \$679,000 in Taxes and Fees is outstanding as of the Petition Date or otherwise relates to the prepetition period and will become due and owing to the Governmental Authorities in the ordinary course after the Petition Date.<sup>5</sup> The Debtors further estimate that approximately \$421,000 in Taxes and Fees outstanding as of the Petition Date or otherwise relating to the prepetition period are or will become due to the Governmental Authorities within the first 25 days after the Petition Date.

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<sup>4</sup> Although Exhibit C is intended to be comprehensive, the Debtors may have inadvertently omitted Governmental Authorities on Exhibit C. By this motion, the Debtors request relief with respect to Taxes and Fees payable to all Governmental Authorities, regardless of whether any such authority is specifically identified on Exhibit C.

<sup>5</sup> This estimate does not include any potential prepetition tax liability that may later come due as the result of an Audit (as defined herein).

10. The following table contains a summary of the Taxes and Fees:

Category	Description	Approximate Amount Due as of Petition Date	Approximate Amount Due Within 25 Days of Petition Date
Sales and Use Taxes	<p>The Debtors incur sales, use, and related taxes in various states in connection with the sale of goods and services in those states (collectively, the “<u>Sales and Use Taxes</u>”).</p> <p>Depending on the applicable jurisdiction, sales and use taxes are due monthly, quarterly, semi-annually, or annually.</p>	\$25,000	\$24,000
Real Property Taxes	<p>The Debtors remit property taxes directly to Governmental Authorities on account of production plants, offices, and work place locations that the Debtors use in the operation of their businesses (the “<u>Property Taxes</u>”).</p> <p>The Debtors collect and remit Real Property Taxes to the relevant Governmental Authorities on a quarterly, semi-annual, or annual basis, depending on the applicable jurisdiction.</p>	\$225,000	\$0
Foreign Taxes	The Debtors pay taxes and fees imposed by foreign Governmental Authorities that are required to conduct business in the ordinary course.	\$230,000	\$225,000
Business License Fees	<p>The Debtors pay fees for business licenses and permits and other fees associated with conducting business pursuant to state and local laws (collectively, the “<u>Business License Fees</u>”).</p> <p>Generally, the Debtors collect and remit Business License Fees to the relevant Governmental Authorities on an annual basis.</p>	\$9,000	\$9,000
Franchise Taxes	<p>The Debtors pay taxes required to conduct business in the ordinary course (the “<u>Franchise Taxes</u>”).</p> <p>The Debtors pay Franchise Taxes to the relevant Governmental Authorities on an annual basis.</p>	\$100,000	\$100,000
Other Taxes	The Debtors remit other taxes and fees required to operate their businesses in certain states, including personal property, mercantile, and commercial activity taxes as well as annual report fees.	\$90,000	\$63,000
<b>Total</b>		<b>\$679,000</b>	<b>\$421,000</b>

11. The Debtors believe that failing to pay the Taxes and Fees could materially disrupt the Debtors' business operations in several ways. **First**, failing to pay certain of the Taxes and Fees likely would cause the Debtors to lose their ability to conduct business in certain jurisdictions. **Second**, the Governmental Authorities could initiate audits, suspend operations, file liens, or seek to lift the automatic stay, which would unnecessarily divert the Debtors' attention from the chapter 11 process. **Third**, failing to pay Taxes and Fees could potentially subject certain of the Debtors' directors and officers to claims of personal liability, which likely would distract those key persons from their duties related to the Debtors' restructuring. **Fourth**, unpaid Taxes and Fees may result in penalties, the accrual of interest, or both, which could negatively impact the Debtors' business or the restructuring process. Moreover, the Debtors collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Governmental Authorities, and these funds may not constitute property of the Debtors' estates. Accordingly, the Debtors seek authority to pay the Taxes and Fees in the ordinary course of business consistent with historic practice as set forth more fully herein.

#### **Audits**

12. The Debtors are currently subject to an ongoing sales-tax audit investigation in Canada and may be subject to further investigations on account of tax returns and/or obligations in prior years (collectively, the "Audits"). The Audits may result in additional prepetition Taxes and Fees being assessed against the Debtors. As of the Petition Date, the Debtors are not aware of any amounts owed on account of the Audits, but, out of an abundance of caution, seek authority to pay such obligations as they arise in the ordinary course.

### **Basis for Relief**

#### **I. Certain of the Taxes and Fees Are Not Property of the Debtors' Estates.**

13. Many of the Taxes and Fees are collected or withheld by the Debtors on behalf of the applicable Governmental Authorities and are held in trust by the Debtors. *See, e.g.*, I.R.C. § 7501 (stating that taxes collected and payable to the United States are held in trust). As such, these Taxes and Fees are not property of the Debtors' estates under section 541 of the Bankruptcy Code. *See, e.g.*, 11 U.S.C. § 541(d); *Begier v. IRS*, 496 U.S. 53, 57–60 (1990) (holding that any prepetition payment of trust fund taxes is not an avoidable preference since funds are not the debtor's property); *In re Shank*, 792 F.2d 829, 833 (9th Cir. 1986) (finding that sales tax required by state law to be collected by sellers from their customers is a “trust fund” tax and not released by bankruptcy discharge); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435–36 (2d Cir. 1985) (same). Because the Debtors may not have an equitable interest in funds held on account of such “trust fund” taxes, the Debtors should be permitted to pay those funds to the Governmental Authorities as they become due.<sup>6</sup>

#### **II. Payment of the Taxes and Fees as Provided Herein Is a Sound Exercise of the Debtors' Business Judgment.**

14. Courts in this district generally acknowledge that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate. *See In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (authority to pay prepetition claims of suppliers). In so doing,

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<sup>6</sup> For the avoidance of doubt, the Debtors hereby request authority to pay the Taxes and Fees as provided herein regardless of whether such Taxes and Fees constitute “trust fund” taxes.

these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as requested herein.

15. Pursuant to section 363(b) of the Bankruptcy Code, courts may authorize payment of prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification); *see also James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants). Indeed, courts have recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

16. Courts also may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) codifies the Court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *See In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996) (recognizing that the “doctrine of necessity” stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor’s reorganization); *see also Ionosphere Clubs*, 98 B.R. at 176 (holding that a court may authorize payments of prepetition obligations under section 105(a) of the Bankruptcy Code pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”)).

17. Here, the Debtors' ability to pay the Taxes and Fees is critical to the efficient and value-maximizing administration of the Debtors' estates. If certain Taxes and Fees remain unpaid, Governmental Authorities may seek to impose penalties on the Debtors' directors, officers, or employees, thereby distracting them from the administration of the Debtors' chapter 11 cases. *See, e.g.,* N.Y. Tax Law § 1133 (“[E]very person required to collect any tax imposed by this article shall be personally liable for the tax imposed, collected or required to be collected under this article.”). The dedicated and active participation of the Debtors' officers and employees is essential to the orderly administration of these chapter 11 cases and maximizing the value of the Debtors' estates for the benefit of their stakeholders. Thus, any collection action on account of such penalties, and any ensuing liability, would distract the Debtors and their personnel to the detriment of all parties in interest.

18. Moreover, many of the Taxes and Fees may be entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code. Claims entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code must be paid in full to confirm a plan under section 1129(a)(9)(C) of the Bankruptcy Code. The Debtors' failure to pay the prepetition Taxes and Fees as they come due thus may ultimately increase the amount of priority claims held by the Governmental Authorities against the Debtors' estates to the detriment of the Debtors' general unsecured creditors and other stakeholders. *See* 11 U.S.C. § 507(a)(8)(G). Accordingly, the Court should grant the Debtors authority to pay, in their sole discretion, the prepetition Taxes and Fees as provided herein.

19. Courts in this district and elsewhere routinely approve relief similar to that requested herein. *See, e.g., In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Apr. 22, 2019) (authorizing debtors to pay prepetition taxes); *In re Synergy*



*Pharm. Inc.*, No. 18-14010 (JLG) (Bankr. S.D.N.Y. Jan. 23, 2019) (same); *In re Glansaol Holdings Inc.*, No. 18-14102 (MEW) (Bankr. S.D.N.Y. Jan. 22, 2019) (same); No 18-13648 (SMB) (Bankr. S.D.N.Y. Dec. 19, 2018) (same); *In re Aegean Marine Petroleum Network Inc.*, No. 18-13374 (MEW) (Bankr. S.D.N.Y. Dec. 6, 2018) (same).<sup>7</sup>

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

20. The Debtors have sufficient funds to pay any amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral and postpetition financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion; provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments.

**The Requirements of Bankruptcy Rule 6003 Are Satisfied**

21. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief

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<sup>7</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this important juncture. For the reasons discussed herein, the relief requested is necessary for the Debtors to operate their business in the ordinary course and preserve the ongoing value of the Debtors' operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

22. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

23. Nothing contained herein or any actions taken pursuant to such relief requested is intended to or should be construed as (a) an admission as to the validity of any prepetition claim against a Debtor entity, (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law, or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the relief requested in this motion are valid, and

the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

#### **Motion Practice**

24. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this motion. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1(a).

#### **Notice**

25. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent for the Debtors' term loan facility and counsel thereto; (d) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (e) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel thereto; (f) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; (g) the United States Attorney's Office for the Southern District of New York; (h) the Internal Revenue Service; (i) the attorneys general for the states in which the Debtors operate; (j) the Governmental Authorities; (k) the Third-Party Service Providers; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

#### **No Prior Request**

26. No prior request for the relief sought in this motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested herein and granting such other relief as is just and proper.

New York, New York  
Dated: May 19, 2019

/s/ Joshua A. Sussberg  
Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL**  
**LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

- and -

Joseph M. Graham (*pro hac vice* pending)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL**  
**LLP**  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Interim Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	
	)	<b>Re: Docket No. ___</b>

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**INTERIM ORDER (A) AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION  
TAXES AND FEES AND (B) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), (a) authorizing the Debtors to remit and pay certain accrued and outstanding prepetition Taxes and Fees in the ordinary course of business, including those obligations subsequently determined upon audit or otherwise to be owed for prepetition periods, (b) scheduling a final hearing to consider approval of the Motion on a final basis, and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2019, at \_\_\_\_:\_\_\_\_.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion must be filed with the Court on or before 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2019.
3. The Debtors are authorized, but not directed, to (a) pay or remit the Taxes and Fees accrued prior to the Petition Date that will become payable during the pendency of these chapter 11 cases at such time when the Taxes and Fees are payable in the ordinary course of business and (b) pay Taxes and Fees that arise in the ordinary course of business on a postpetition basis.
4. The Debtors are authorized, but not directed, to pay claims of the Third-Party Service Providers in the ordinary course of business and consistent with their prepetition practices.
5. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.
6. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or

requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.



9. Notwithstanding the relief granted in this Interim Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

10. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

14. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

New York, New York

Dated: \_\_\_\_\_, 2019

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Proposed Final Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	
	)	<b>Re: Docket No. ___</b>

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**FINAL ORDER (A) AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION  
TAXES AND FEES AND (B) GRANTING RELATED RELIEF**

---

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) authorizing the Debtors to remit and pay certain accrued and outstanding prepetition Taxes and Fees in the ordinary course of business, including those obligations subsequently determined upon audit or otherwise to be owed for prepetition periods and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to (a) pay or remit the Taxes and Fees accrued prior to the Petition Date that will become payable during the pendency of these chapter 11 cases at such time when the Taxes and Fees are payable in the ordinary course of business and (b) pay Taxes and Fees that arise in the ordinary course of business on a postpetition basis.
3. The Debtors are authorized, but not directed, to pay claims of the Third-Party Service Providers in the ordinary course of business and consistent with their prepetition practices.
4. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law,

statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

7. Notwithstanding the relief granted in this Final Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

11. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

New York, New York

Dated: \_\_\_\_\_, 2019

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit C**

**List of Governmental Authorities**

Governmental Authority	Address	City	State	Postal Code	Type
Avalara Inc.	100 Ravine Lane, Suite 220	Bainbridge Island	WA	98110	Sales & Use Tax
Arkansas Secretary of State	State Capitol, Suite 256 500 Woodlane Street	Little Rock	AR	72201	Annual Report
Arkansas Department of Revenue	P.O. Box 1272	Little Rock	AR	72203	Sales & Use Tax
California Department of Commerce	Bureau of Household Goods and Services 4244 South Market Court, Suite D	Sacramento	CA	95834-1243	Bedding License Renewal
California Department of Tax and Fee Administration	450 North Street	Sacramento	CA	94279	Sales & Use Tax
	P.O. Box 942879	Sacramento	CA	94279-6001	Environmental Fee
California State Water Resources Control Board	P.O. Box 1888	Sacramento	CA	95812-1888	Permit-Water Code
California Secretary of State	1500 11th Street	Sacramento	CA	95814	Annual Report
Canada Revenue Agency	c/o London-Windsor Tax Services Office Non-Resident Registration & Security 441 University Ave West, Suite 101	Windsor	ON	N9A 5S8	Goods and Service Tax
Colorado Department of Revenue	Attn: Lu Cordova P.O. Box 17087	Denver	CO	80261	Sale & Use Tax
City of Compton	205 South Willowbrook Avenue	Compton	CA	90220	Business License Renewal
Connecticut Department of Commerce	450 Columbus Blvd., Suite 5	Hartford	CT	06103	Bedding License Renewal
CT Corporation	P.O. Box 4349	Carol Stream	IL	60197-4349	Annual Report Processing Fees
Franchise Tax Board	P.O. Box 942857	Sacramento	CA	94257-0531	Franchise Tax
Delaware Department of Commerce	Division of Corporations P.O. Box 898	Dover	DE	19903	Bedding License Renewal
Delaware Secretary of State	401 Federal Street	Dover	DE	19901	Annual Report
Florida Department of Revenue	P.O. Box 6668	Tallahassee	FL	32314-6668	Sales & Use Tax
Florida Secretary of State	P.O. Box 6327	Tallahassee	FL	32314	Annual Report
Georgia Department of Revenue	1800 Century Blvd., NE	Atlanta	GA	30345	Sales & Use Tax
Georgia Secretary of State	214 State Capitol	Atlanta	GA	30334	Annual Report
Guilford County Tax Department	P.O. Box 1550	Jamestown	NC	27282	Real Estate Tax
HAB-BPT	C/O Berkheimer 325-A N Ottstown Pike	Exton	PA	19341-2290	Mercantile Tax
Boston Hensley, Hart County Sheriff	P.O. Box 206	Munfordville	KY	42765	Tangible Property Tax; Real Estate Tax
Illinois Department of Revenue	P.O. Box 19035	Springfield	IL	62794-9035	Sale & Use Tax
Illinois Secretary of State	213 State Capitol	Springfield	IL	62756	Annual Report
Iowa Department of Revenue	P.O. Box 10471	Des Moines	IA	50306-0471	Sale & Use Tax



Governmental Authority	Address	City	State	Postal Code	Type
Iowa Secretary of State	First Floor, Lucas Building 321 E. 12th St.	Des Moines	IA	50319	Biennial Report
Jackson County Treasurer	201 West Platt Street	Maquoketa	IA	52060	Real Estate Tax
Jefferson County Sheriff's Office	P.O. Box 34570	Louisville	KY	40232-4570	Real Estate Tax; Personal Property Tax
City of Jefferstown	P.O. Box 991458	Louisville	KY	40269-1458	Annual Business License
	10416 Watterson Trail	Jeffersontown	KY	40299	Real Estate Tax
Kentucky Department of Revenue	Division of Sales and Use Tax Station 67, P.O. Box 181	Frankfort	KY	40602-0181	Sales & Use Tax
Kentucky Secretary of State	700 Capital Ave., Suite 152	Frankfort	KY	40601	Annual Report
King County Treasury	500 Fourth Ave. Room 600	Seattle	WA	98104-2340	Property Tax; Real Estate Tax
LA County Agricultural Commissioner/ Weights & Measures	12300 Lower Azusa Road	Arcadia	CA	91006-5872	Registration for Weights and Measures
Los Angeles County Tax Collector	225 North Hill Street, Room 122	Los Angeles	CA	90012	Unsecured Property Tax
Manitoba Chambers of Commerce	227 Portage Avenue	Winnipeg	MB	R3B 2A6	Bedding License Renewal
Massachusetts Department of Commerce	136 Blackstone Street, 5th floor	Boston	MA	02109	Bedding License Renewal
McDuffie County Planning Commission	210 Railroad Street, Suite 1544	Thomson	GA	30824	Business License
Stacey W. Thomas McDuffie County Tax Commissioner	P.O. Box 955	Thomson	GA	30824	Real Estate Tax; Personal Property Tax
Michigan Department of Commerce	Department of Licensing and Regulatory Affairs Ottawa Building 611 W. Ottawa P.O. Box 30004	Lansing	MI	48909	Bedding License Renewal
Miami-Dade Tax Collector	200 NW 2nd Avenue	Miami	FL	33128-1733	Tangible Personal Property Tax
Minnesota Department of Revenue	600 N Robert St	St. Paul	MN	55146	Sale & Use Tax
City of Munfordville	P.O. Box 85	Munfordville	KY	42765	Real Estate Tax; Tangible Property Tax
Nebraska Department of Revenue	Attn: Tony Fulton P.O. Box 94818	Lincoln	NE	68509-4818	Sale & Use Tax
New Jersey Secretary of State	P.O. Box 300	Trenton	NJ	08625	Annual Report
New York Department of Commerce	99 Washington Avenue, 6th floor	Albany	NY	12231	Bedding License Renewal
New York Secretary of State	One Commerce Plaza 99 Washington Ave	Albany	NY	12231-0001	Annual Report
New York State Department of Tax & Finance	Bankruptcy Section P.O. Box 5300	Albany	NY	12205-0300	Partnership Tax; Sale & Use Tax

Governmental Authority	Address	City	State	Postal Code	Type
North Carolina Department of Commerce	4301 Mail Service Center	Raleigh	NC	27699-4301	Bedding License Renewal
North Carolina Department of Revenue	Bankruptcy Unit P.O. Box 1168	Raleigh	NC	27602-1168	Sale & Use Tax
North Carolina Secretary of State	P.O. Box 29622	Raleigh	NC	27626-0622	Annual Report
Ohio Department of Commerce	77 South High Street, 23rd Floor	Columbus	OH	43215-6123	Bedding License Renewal
Ohio Department of Taxation	P.O. Box 16158	Columbus	OH	43216-6158	Commercial Activity Tax
Ontario Department of Commerce	Economic Development, Job Creation and Trade Communications Branch College Park, 777 Bay St., 21st Floor	Toronto	ON	M5G 2N4	Bedding License Renewal
Tax Collector Palm Beach County	P.O. Box 3353	West Palm Beach	FL	33402-3353	Tangible Personal Property Tax; Local Business Tax
Pennsylvania Department of Commerce	Commonwealth Keystone Building 400 North Street, 4th Floor	Harrisburg	PA	17120-0225	Bedding License Renewal
Pennsylvania Department of Revenue	Bureau Of Business Trust Fund Taxes P.O. Box 280905	Harrisburg	PA	17128-0905	Sale & Use Tax
City of Pico Rivera	8839 N Cedar Ave #212	Fresno	CA	93720-1832	Business License
Ministry of Finance	12 rue Saint-Louis	Quebec City	QC	G1R 5L3	Bedding License Renewal
Revenu Québec	3800 rue de Marly	Quebec City	QC	G1X 4A5	Quebec Sales Tax
Rhode Island Department of Commerce	315 Iron Horse Way, Suite 101	Providence	RI	02908	Bedding License Renewal
City of Seattle	P.O. Box 34907	Seattle	WA	98124-190	Business License Renewal
Texas Comptroller of Public Accounts	P.O. Box 149348	Austin	TX	78714-9348	Franchise Tax
Texas Department of Revenue	P.O. Box 13528, Capitol Station	Austin	TX	78711-3528	Sales & Use Tax
Utah Department of Commerce	SM Box 146701	Salt Lake City	UT	84114-6701	Bedding License Renewal
Vance County Tax Administration	122 Young Street Suite E	Henderson	NC	27536	Real Estate Tax
Virginia Department of Commerce	P.O. Box 1475	Richmond	VA	23218	Bedding License Renewal
Washington Secretary of State	Legislative Building P.O. Box 40220	Olympia	WA	98504-0220	Annual Report
West Virginia Department of Commerce	1900 Kanawha Blvd. East Building 3, Suite 600	Charleston	WV	25305	Bedding License Renewal
Worldwide Registration	10612-D Providence Road Suite 257	Charlotte	NC	28277	Bedding License Renewal



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. 8</b>

**FINAL ORDER (A) AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION  
TAXES AND FEES AND (B) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) authorizing the Debtors to remit and pay certain accrued and outstanding prepetition Taxes and Fees in the ordinary course of business, including those obligations subsequently determined upon audit or otherwise to be owed for prepetition periods and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to (a) pay or remit the Taxes and Fees accrued prior to the Petition Date that will become payable during the pendency of these chapter 11 cases at such time when the Taxes and Fees are payable in the ordinary course of business and (b) pay Taxes and Fees that arise in the ordinary course of business on a postpetition basis.
3. The Debtors are authorized, but not directed, to pay claims of the Third-Party Service Providers in the ordinary course of business and consistent with their prepetition practices.
4. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law,

statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

7. Notwithstanding the relief granted in this Final Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

11. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

New York, New York  
Dated: July 2, 2019

s/Michael E. Wiles

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THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**THIS IS EXHIBIT "R" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.**

A handwritten signature in blue ink, consisting of a stylized 'E' followed by a horizontal line and a small dot.

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**Commissioner for Taking Affidavits**



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Christopher T. Greco, P.C.  
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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	
	)	Chapter 11
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (____)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

**DEBTORS' MOTION FOR ENTRY OF AN ORDER  
(A) PROHIBITING UTILITY PROVIDERS FROM ALTERING,  
REFUSING, OR DISCONTINUING UTILITY SERVICES, (B) DETERMINING  
ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY  
SERVICES, (C) ESTABLISHING PROCEDURES FOR DETERMINING  
ADEQUATE ASSURANCE OF PAYMENT, AND (D) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion:

**Relief Requested**

1. By this motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) prohibiting utility providers from altering, refusing, or discontinuing services, (b) determining adequate assurance of payment for future utility services,

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

(c) establishing procedures for determining adequate assurance of payment for future utility services, and (d) granting related relief.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are Sections 105(a) and 366 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and Rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

### **Background<sup>2</sup>**

5. Hollander Sleep Products is the largest pillow and mattress pad manufacturer in North America. The Debtors also manufacture comforters and other basic bedding products. The Debtors have their own brands, including Great Sleep®, I AM®, LC®, PCF®, and Restful Nights®, and also manufacture and sell licensed brands, including Simmons®, Ralph Lauren®,

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<sup>2</sup> The facts and circumstances supporting this motion are set forth in the *Declaration of Marc Pfefferle, Chief Executive Officer of Hollander Sleep Products, LLC, in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein.

CHAPS®, Calvin Klein®, Therapedic®, Nautica®, 37.5®, and Dr. Maas®. The Debtors are headquartered in Boca Raton, Florida, operate a main showroom in New York City, and have thirteen manufacturing facilities throughout the United States and Canada. The Debtors generated approximately \$527 million in net revenue in fiscal year 2018 and currently employ more than 2,300 people across the United States and Canada. As of the date hereof, the Debtors have approximately \$233 million in funded debt.

6. On the the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have concurrently filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

### **The Utility Services**

7. In connection with the operation of their businesses, the Debtors obtain water, sewer service, electricity, waste disposal, natural gas, and other similar services (collectively, the “Utility Services”) from a number of utility providers or their brokers (collectively, the “Utility Providers”). A nonexclusive list of the Utility Providers and their affiliates that provide Utility Services to the Debtors as of the Petition Date is attached hereto as **Exhibit B** (the “Utility Providers List”).<sup>3</sup>

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<sup>3</sup> Although the Utility Providers List is intended to be comprehensive, the Debtors may have inadvertently omitted one or more of the Utility Providers. By this motion, the Debtors request relief applicable to all of the Utility Providers, regardless of whether any individual Utility Provider is specifically identified on the Utility Providers List.

8. Preserving Utility Services on an uninterrupted basis is essential to the Debtors' operations. The Debtors' business includes showrooms, warehouses, plants, and corporate offices. These locations require electricity, telecommunications, internet, water, waste management (including sewer and trash), and other Utility Services to operate. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtors' business operations would be disrupted, and such disruption could jeopardize the Debtors' ability to continue to operate the business at such location or administer their chapter 11 cases. Any such disruption could adversely affect customer goodwill and employee relations, which, in turn, could negatively affect the Debtors' revenues. Accordingly, it is essential that the Utility Services continue uninterrupted during the chapter 11 cases.

9. On average, the Debtors pay approximately \$510,000 each month for Utility Services, calculated as a historical average payment for a twelve-month period, which is representative of the Debtors' ongoing obligations. Accordingly, the Debtors estimate that their cost for Utility Services during the next 30 days (not including any deposits to be paid) will be approximately \$510,000. The Debtors estimate the amount currently held as security deposits with respect to any Utility Provider is approximately \$220,000.

10. The Debtors also indirectly remit payment to certain of these Utility Providers through the Debtors' landlords (collectively the "Landlords"), who pay certain Utility Providers directly for 'non-technical' Utility Services such as water, sewer, trash, electric, and gas. These Utility Services are paid directly by the Landlords and therefore the Proposed Adequate Assurance (as defined herein) does not allocate any amounts toward these Utility Providers because they do not directly rely on the Debtors for payment for such Utility Services. Out of an abundance of

caution, however, the relief requested herein is requested with respect to all Utility Providers providing Utility Services to the Debtors.

**I. The Proposed Adequate Assurance and Adequate Assurance Procedures.**

11. The Debtors intend to pay postpetition obligations owed to the Utility Providers in the ordinary course of business and in a timely manner. Cash held by the Debtors, cash generated in the ordinary course of business, and cash available to the Debtors under their proposed postpetition financing facilities will provide sufficient liquidity to pay the Debtors' Utility Service obligations in accordance with their prepetition practice.

12. To provide additional assurance of payment, the Debtors propose to deposit \$255,000 (the "Adequate Assurance Deposit") into a segregated account for the benefit of the Utility Providers (the "Adequate Assurance Account"). The Adequate Assurance Deposit represents an amount equal to approximately one half of the Debtors' average monthly cost of Utility Services, calculated based on the Debtors' average utility expenses over a twelve month period, which is representative of the Debtors ongoing obligations. The Adequate Assurance Deposit will be held in the Adequate Assurance Account for the duration of these chapter 11 cases and may be applied to any postpetition defaults in payment to the Utility Providers. The Adequate Assurance Deposit will be held by the Debtors; no liens will encumber the Adequate Assurance Deposit or the Adequate Assurance Account. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for future Utility Services in accordance with their prepetition practices (collectively, the "Proposed Adequate Assurance"), constitutes sufficient adequate assurance to the Utility Providers in full satisfaction of section 366 of the Bankruptcy Code.

13. Any Utility Provider that is not satisfied with the Proposed Adequate Assurance may make a request for adequate assurance of future payment (each, an "Adequate Assurance

Request”) pursuant to the adequate assurance procedures set forth in the proposed order (the “Adequate Assurance Procedures”). The Adequate Assurance Procedures set forth a streamlined process for Utility Providers to address potential concerns with respect to the Proposed Adequate Assurance, while allowing the Debtors to administer their chapter 11 estates uninterrupted. More specifically, the Adequate Assurance Procedures permit a Utility Provider to object to the Proposed Adequate Assurance by serving an Adequate Assurance Request upon certain notice parties. The Debtors may then resolve any Adequate Assurance Request by mutual agreement with the Utility Provider and without further order of the Court. If the Debtors determine that the Adequate Assurance Request cannot be resolved by mutual agreement, the Debtors will seek Court resolution of the Adequate Assurance Request. Moreover, unless and until a Utility Provider files an objection or serves an Additional Assurance Request, such Utility Provider shall be (a) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider in compliance with section 366 of the Bankruptcy Code and (b) forbidden to discontinue, alter, or refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.

14. Absent compliance with the Adequate Assurance Procedures, the Debtors request that the Utility Providers, including any subsequently added Utility Providers, be forbidden from altering, refusing, or discontinuing service or requiring additional assurance of payment other than the Proposed Adequate Assurance.

## **II. Subsequently Identified Utility Providers.**

15. To the extent the Debtors identify new or additional Utility Providers or discontinue services from existing Utility Providers, the Debtors seek authority to add or remove such parties

from the Utility Providers List. For any Utility Provider that is subsequently added to the Utility Providers List, the Debtors will serve such Utility Provider a copy of the Court's order regarding Utility Services, including the Adequate Assurance Procedures, and provide such Utility Provider two weeks' notice to object to the inclusion of such Utility Provider on the Utility Providers List. The Debtors request that the terms of that order and the Adequate Assurance Procedures apply to any subsequently identified Utility Provider.

### **Basis for Relief**

16. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination or alteration of utility services after the Petition Date. *See* 11 U.S.C. § 366. Section 366(c) requires the debtor to provide “adequate assurance” of payment for postpetition utility services in a form “satisfactory” to the utility provider within thirty days of the petition date, or the utility provider may alter, refuse, or discontinue service. 11 U.S.C. § 366(c)(2). Section 366(c)(1) enumerates what constitutes “assurance of payment.” 11 U.S.C. § 366(c)(1). Although assurance of payment must be “adequate,” it need not constitute an absolute guarantee of the debtors' ability to pay. *See, e.g., In re Great Atl. & Pac. Tea Co.*, No. 11-CV-1338, 2011 WL 5546954, at \*5 (S.D.N.Y. Nov. 14, 2011) (finding that “[c]ourts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full”); *In re Caldor, Inc.*, 199 B.R. 1,3 (S.D.N.Y. 1996), *aff'd sub nom., Va. Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646 (2d Cir. 1997) (“Section 366(b) requires . . . ‘adequate assurance’ of payment. The statute does not require an absolute guarantee of payment.”) (citation omitted).

17. When considering whether a given assurance of payment is “adequate,” courts should examine the totality of the circumstances to make an informed decision as to whether a utility provider will be subject to an unreasonable risk of nonpayment. *See Mass. Elec. Co. v.*

*Keydata Corp. (In re Keydata Corp.)*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981) (citing *In re Cunha*, 1 B.R. 330 (Bankr. E.D. Va. 1979)); *In re Adelphia Bus. Solutions, Inc.*, 280 B.R. 63, 82–83 (Bankr. S.D.N.Y. 2002). In determining the requisite level of adequate assurance, however, “a bankruptcy court must focus upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Va. Elec. & Power Co.*, 117 F.3d at 650 (internal quotations omitted) (citing *In re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987)); *see also Great Atl. & Pac.*, 2011 WL 5546954, at \*5–6 (holding that no additional adequate assurance deposit was necessary where such deposit would impose an unreasonable burden on reorganizing debtors). Accordingly, demands by a utility provider for a guarantee of payment should be refused when a debtor’s specific circumstances already afford adequate assurance of payment.

18. Here, the Utility Providers are adequately assured against any risk of nonpayment for future services. The Adequate Assurance Deposit and the Debtors’ ongoing ability to meet obligations as they come due in the ordinary course provide assurance of the Debtors’ payment of their future utility obligations. Moreover, termination of the Utility Services could result in the Debtors’ inability to operate their businesses to the detriment of all stakeholders. *Cf. In re Monroe Well Serv., Inc.*, 83 B.R. 317, 321–22 (Bankr. E.D. Pa. 1988) (noting that without utility service, the debtors “would have to cease operations” and that section 366 of the Bankruptcy Code “was intended to limit the leverage held by utility companies, not increase it”).

19. Courts may fashion reasonable procedures, such as the Adequate Assurance Procedures proposed herein, to implement the protections afforded under section 366 of the Bankruptcy Code. *See, e.g., In re Circuit City Stores Inc.*, No. 08-35653, 2009 WL 484553, at \*5 (Bankr. E.D. Va. Jan. 14, 2009) (“The plain language of § 366 of the Bankruptcy Code allows the



court to adopt the Procedures set forth in the Utility Order.”) Such procedures are important because, without them, the Debtors “could be forced to address numerous requests by utility companies in an unorganized manner at a critical period in their efforts to reorganize.” *Id.* Here, notwithstanding a determination that the Debtors’ Proposed Adequate Assurance constitutes sufficient adequate assurance, any rights the Utility Providers believe they have under sections 366(b) and 366(c)(2) of the Bankruptcy Code are wholly preserved under the Adequate Assurance Procedures. *See id.* at \*5–6. The Utility Providers still may choose, in accordance with the Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance. *See id.* at \*5. The Adequate Assurance Procedures, however, avoid a disorganized process whereby each Utility Provider could make a last-minute demand for adequate assurance that would force the Debtors to pay under the threat of losing critical Utility Services. *See id.* at \*5. Because the Adequate Assurance Procedures are reasonable and in accord with the purposes of section 366 of the Bankruptcy Code, the Court should grant the relief requested herein.

20. Further, the Court possesses the power, under section 105(a) of the Bankruptcy Code, to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The Adequate Assurance Procedures and the Proposed Adequate Assurance are necessary and appropriate to carry out the provisions particularly section 366 the Bankruptcy Code. Accordingly, the Court should exercise its powers under sections 366 and 105(a) of the Bankruptcy Code and approve both the Adequate Assurance Procedures and the Proposed Adequate Assurance. Indeed, similar procedures have been approved by courts in this district. *See, e.g., In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Apr. 22, 2019) (approving payment of a deposit into a segregated interest bearing account as adequate assurance to utility providers); *In re Aegean Marine*, No. 18-13375 (MEW)

(Bankr. S.D.N.Y. Dec. 6, 2018) (same); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. May 2, 2018) (same); *In re Cenveo, Inc.*, No. 18-22178 (RDD) (Bankr. S.D.N.Y. Mar. 8, 2018) (same); *In re 21st Century Oncology Holdings, Inc.*, No. 17-22770 (RRD) (Bankr. S.D.N.Y. June 20, 2017) (same).<sup>4</sup>

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

21. The Debtors have sufficient funds to pay any amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral and postpetition financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion; provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

22. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

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<sup>4</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

### **Reservation of Rights**

23. Nothing contained herein or any actions taken pursuant to such relief requested is intended to or should be construed as (a) an admission as to the validity of any prepetition claim against a Debtor entity, (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law, or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

### **Motion Practice**

24. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this motion. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1(a).

### **Notice**

25. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent for the Debtors' term loan facility and counsel thereto; (d) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (e) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel thereto; (f) the administrative agent

for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; (g) the United States Attorney's Office for the Southern District of New York; (h) the Internal Revenue Service; (i) the attorneys general for the states in which the Debtors operate; (j) the Utility Providers; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

26. No prior request for the relief sought in this motion has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A** granting the relief requested herein and granting such other relief as is just and proper.

New York, New York  
Dated: May 19, 2019

/s/ Joshua A. Sussberg  
Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

- and -

Joseph M. Graham (*pro hac vice* pending)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

HOLLANDER SLEEP PRODUCTS, LLC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 19-11608 (\_\_\_\_)  
)  
) (Joint Administration Requested)  
)  
) **Re: Docket No. \_\_\_\_**

**ORDER (A) PROHIBITING UTILITY PROVIDERS FROM  
ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES,  
(B) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE  
UTILITY SERVICES, (C) ESTABLISHING PROCEDURES FOR DETERMINING  
ADEQUATE ASSURANCE OF PAYMENT, AND (D) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) prohibiting Utility Providers from altering, refusing, or discontinuing services; (b) determining adequate assurance of payment for future Utility Services; (c) establishing procedures for determining adequate assurance of payment for future Utility Services; (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors shall serve a copy of this Order on any Utility Provider identified prior to the entry of this Order no later than three business days after the date this Order is entered.
3. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in a segregated account during the pendency of these chapter 11 cases.
4. The Adequate Assurance Deposit, together with the Debtors' ability to pay for future utility services in the ordinary course of business subject to the Adequate Assurance Procedures, shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.
5. If an amount relating to Utility Services provided postpetition by a Utility Provider is unpaid, and remains unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Account by giving notice to: (a) the Debtors, Hollander Sleep Products, LLC, 901 Yamato Road, Suite 250, Boca Raton, Florida 33431, Attn: Marc Pfefferle; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Derek Hunter, and Kirkland & Ellis LLP, 300 North



LaSalle Street, Chicago, Illinois 60654, Attn: Joseph M. Graham and Laura Krucks; (c) the Office of the United States Trustee, Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn: Shannon Scott and Paul Schwartzberg; and (d) counsel to any official committee appointed in these chapter 11 cases (collectively, the “Notice Parties”). The Debtors shall honor such request within five business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Provider to resolve any dispute regarding such request without further order of the Court. To the extent a Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

6. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors on the earlier of (a) reconciliation and payment by the Debtors of the Utility Provider’s final invoice in accordance with applicable non-bankruptcy law following the Debtors’ termination of Utility Services from such Utility Provider and (b) the effective date of any chapter 11 plan confirmed in these chapter 11 cases.

7. The following “Adequate Assurance Procedures” are hereby approved on a final basis:

- a. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an “Additional Assurance Request”) on the Notice Parties. An Additional Assurance Request may be made at any time.
- b. Any Additional Assurance Request must (i) be made in writing, (ii) identify the location for which Utility Services are provided, (iii) include information regarding any security deposits paid by the Debtors, (iv) provide evidence that the Debtors have a direct obligation to the Utility Provider, and (v) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

- c. Upon the Debtors' receipt of an Adequate Assurance Request, the Debtors shall have 21 days from the receipt of the Adequate Assurance Request (the "Resolution Period") to negotiate with the Utility Provider to resolve the Utility Provider's Adequate Assurance Request; provided, the Debtors and Utility Provider may extend the Resolution Period by mutual agreement.
- d. Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Provider serving an Additional Assurance Request if the Debtors determine that the Additional Assurance Request is reasonable.
- e. If the Debtors determine, in their sole discretion, that the Additional Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider, the Debtors, during or immediately after the Resolution Period, may request a hearing (a "Determination Hearing") before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to section 366(c)(3) of the Bankruptcy Code. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Adequate Assurance Request; or (iii) any objections filed in response to the Proposed Adequate Assurance.

8. The Utility Providers are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

9. Unless and until a Utility Provider files or serves an Additional Assurance Request, the Utility Provider shall be (a) deemed to have received "satisfactory" adequate assurance of payment in compliance with Section 366 of the Bankruptcy Code and (b) forbidden from (i) discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance, or (ii) requiring additional assurance of payment other than the Proposed Adequate Assurance.

10. The Debtors will cause a copy of this Order, including the Adequate Assurance Procedures, to be served on any subsequently identified Utility Provider and any such Utility Provider shall be bound by the Adequate Assurance Procedures.

11. To the extent the Debtors identify new or additional Utility Providers or discontinue services from existing Utility Providers, the Debtors are authorized to add or remove such parties from the Utility Providers List. For any Utility Provider that is subsequently added to the Utility Providers List, the Debtors shall serve such Utility Provider a copy of the Court's order regarding Utility Services, including the Adequate Assurance Procedures, and provide such Utility Provider two weeks' notice to object to the inclusion of such Utility Provider on the Utility Providers List. The terms of this order and the Adequate Assurance Procedures shall apply to any subsequently identified Utility Provider

12. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in

interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

13. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

14. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor in possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

15. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

16. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

19. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York

Dated: \_\_\_\_\_, 2019

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Utility Providers List**

**Utility Providers**

Name of Utility Provider	Type of Service	Account Number	Address	Location	Adequate Assurance Amount	Debtor Served
Allstream	Phone	4572335	c/o T4622 PO Box 4622 STN A Toronto, ON M5W 0J9	5415 De La Cote - De-Liesse CH Saint-Laurent, QC H4P 1A1	\$87.99	Hollander Sleep Products, LLC
Allstream	Internet	CW0055505/121464	c/o T4622 PO Box 4622 STN A Toronto, ON M5W 0J9	5415 De La Cote - De-Liesse CH Saint-Laurent, QC H4P 1A1	\$447.01	Hollander Sleep Products Canada Limited
Allstream	Telecom	763411	PO Box 2966, Milwaukee, WI 53201-2966	1736 4th Ave S, Seattle, WA 98134	\$443.73	Hollander Sleep Products Canada Limited
AT&T	Phone	561 997-2395 001 0454	PO Box 105262 Atlanta, GA 30348-5263	901 W Yamato Road FL 2 Boca Raton, FL 33431-4497	\$597.58	Hollander Sleep Products, LLC
AT&T	Phone	831-000-7932 594	PO Box 5019 Carol Stream, IL 60197-5019	2615 Gifford St Grand Prairie, TX 75050	\$334.54	Hollander Sleep Products, LLC
AT&T	Phone	502 263-7116 003 0489	PO Box 105262 Atlanta, GA 30348-5263	10608 Watterson Center Court #200 Louisville, KY 40209	\$12,000.00	Hollander Sleep Products, LLC
AT&T	Phone	972-264-2734 926 6	PO Box 105414 Atlanta, GA 30348-5414	2615 Gifford St Grand Prairie, TX 75050	\$745.63	Hollander Sleep Products, LLC

Name of Utility Provider	Type of Service	Account Number	Address	Location	Adequate Assurance Amount	Debtor Served
AT&T	Phone	561-443-4127 001 0455	PO Box 105262 Atlanta, GA 30348-5262	901 W Yamato Road FL 2 Boca Raton, FL 33431- 4497	\$973.55	Hollander Sleep Products, LLC
AT&T	Phone	831-000-7932 607	PO Box 5019 Carol Stream, IL 60197-5019	2615 Gifford St Grand Prairie, TX 75050	\$235.00	Hollander Sleep Products, LLC
AT&T	Phone	831-000-7935 728	PO Box 5019 Carol Stream, IL 60197-5019	8500 Rex Road Pico Rivera, CA 90660		Hollander Sleep Products, LLC
					\$1,174.68	
AT&T	Phone	561 994-9095 002 0456	PO Box 105262 Atlanta, GA 30348-5263	901 W Yamato Road FL 2 Boca Raton, FL 33431- 4497	\$90.82	Hollander Sleep Products, LLC
AT&T	Phone	831-000-6201 800 (Convergent bill)	PO Box 5019 Carol Stream, IL 60197-5019	Multiple Hollander Locations	\$60.12	Hollander Sleep Products, LLC
AT&T	Phone	831-000-7689 395	PO Box 5019 Carol Stream, IL 60197-5019	901 NW 51st St Boca Raton, FL 33431	\$254.75	Hollander Sleep Products, LLC
AT&T Mobility	Phone	824884924	PO Box 6463 Carol Stream, IL 60197-6463	1736 4th Ave S Suite B Seattle, WA 98134		Hollander Sleep Products, LLC
					\$106.49	
Atmos Energy	Gas	4026771751	PO Box 790311, St Louis, MO 63179-0311	100 Quality St, Munfordville, KY 42765-0000	\$581.87	Hollander Sleep Products, LLC



Name of Utility Provider	Type of Service	Account Number	Address	Location	Adequate Assurance Amount	Debtor Served
Bell Canada	Phone	533062345	Centre de Versements Clients CP 11490 Station Centre Ville Montreal, QC H3C 5R7	5415 De La Cote - De-Liesse CH Saint-Laurent, QC H4P 1A1	\$352.66	Hollander Sleep Products Canada Limited
Black Hills Energy	Gas	0777 3070 10	PO Box 6001 Rapid City, SD 57709-6001	902 S Walton Blvd. Ste B22/23 Bentonville, AR 72712	\$476.04	Hollander Sleep Products Canada Limited
Black Hills Energy	Gas	0512 6949 39	PO Box 6001, Rapid City, SD 57709-6001	305 Jacobsen Dr. Maquoketa, IA 52060	\$270.38	Hollander Sleep Products Canada Limited
Black Hills Energy	Gas	2708 1739 23	PO Box 6001, Rapid City, SD 57709-6001	1725 E Maple St. Maquoketa, IA 52060	\$210.94	Hollander Sleep Products, LLC
Black Hills Energy	Gas	4013 6862 33	PO Box 6001, Rapid City, SD 57709-6001	1204 E Summit St. Maquoketa, IA 52060	\$210.94	Hollander Sleep Products, LLC
California Water Service	Water	1238467217	PO Box 51967, Los Angeles, CA 90051-6267	615 W Walnut Street, Compton, CA 90220	\$210.94	Hollander Sleep Products, LLC
California Water Service	Water	5439357543	PO Box 51967, Los Angeles, CA 90051-6268	601 W Walnut Street, Compton, CA 90220	\$632.81	Hollander Sleep Products, LLC

Name of Utility Provider	Type of Service	Account Number	Address	Location	Adequate Assurance Amount	Debtor Served
California Water Service	Water	5396810110	PO Box 51967, Los Angeles, CA 90051-6269	615 W Walnut Street, Compton, CA 90220	\$288.42	Hollander Sleep Products, LLC
Center Point Energy	Gas	5312271	P.O. Box 733609, Dallas, TX 75373-3609	660 National Turnpike, Munfordville, KY 42765	\$288.42	Hollander Sleep Products, LLC
CenturyLink	Internet	308256363	PO Box 4300, Carol Stream, IL 60197-4300	100 Comfort Dr. Henderson, NC 27537	\$288.42	Hollander Sleep Products, LLC
CenturyLink	Telecom	563-652-9927 621	PO Box 4300, Carol Stream, IL 60197-4300	1725 E Maple St. Maquoketa, IA 52060	\$4,959.47	Hollander Sleep Products, LLC
CenturyLink	Telecom	563-652-4918 607	PO Box 4300, Carol Stream, IL 60197-4300	1725 E Maple St. Maquoketa, IA 52060	\$120.83	Hollander Sleep Products, LLC
CenturyLink	Telecom	563-652-1150 522	PO Box 4300, Carol Stream, IL 60197-4300	1725 E Maple St. Maquoketa, IA 52060	\$120.83	Hollander Sleep Products, LLC
CenturyLink	Telecom	563-652-1839 347	PO Box 4300, Carol Stream, IL 60197-4300	1725 E Maple St. Maquoketa, IA 52060	\$120.83	Hollander Sleep Products, LLC
CenturyLink	Telecom	563-652-1980 125	PO Box 4300, Carol Stream, IL 60197-4300	1725 E Maple St. Maquoketa, IA 52060	\$120.83	Hollander Sleep Products, LLC

Name of Utility Provider	Type of Service	Account Number	Address	Location	Adequate Assurance Amount	Debtor Served
City of Bentonville	Electricity	16019-140992	117 W Central Ave Bentonville AR 72712	902 S Walton Blvd Ste B22 Bentonville, AR 72712	\$120.83	Hollander Sleep Products, LLC
City of Bentonville	Electricity	16019-140996	117 W Central Ave Bentonville AR 72712	902 S Walton Blvd Ste B23 Bentonville, AR 72712	\$120.84	Hollander Sleep Products, LLC
City of Compton	Water/Gas/Sewer	062769-000	Municipal Utilities Billing Dept. LA23194, Pasadena, CA 91185-3194	601 W Walnut Street, Compton, CA 90220	\$46.00	Hollander Sleep Products, LLC
City of Henderson	Water/Sewer	1137484	PO Box 1434, Henderson, NC 27536	220 Miriam St, Henderson, NC 27536	\$41.00	Hollander Sleep Products, LLC
City of Henderson	Water/Sewer	1135526	PO Box 1434, Henderson, NC 27536	100 Comfort Dr. Henderson, NC 27536	\$2,138.45	Hollander Sleep Products, LLC
City of High Point	Electric	101076	PO Box 10039, High Point , NC 27261-3039	210 Pendleton St. High Point, NC 27260	\$833.46	Hollander Sleep Products, LLC
City of Maquoketa	Water/Sewer	1-741541-02	201 E Pleasant Street, Maquoketa, IA 52060	1725 E Maple St. Maquoketa, IA 52060	\$833.45	Hollander Sleep Products, LLC
City of Maquoketa	Water/Sewer	1-896979-01	201 E Pleasant Street, Maquoketa, IA 52060	1202 E Summit St. Maquoketa, IA 52060	\$2,209.50	Hollander Sleep Products, LLC

Name of Utility Provider	Type of Service	Account Number	Address	Location	Adequate Assurance Amount	Debtor Served
City of Maquoketa	Water/Sewer	1-896980-01	201 E Pleasant Street, Maquoketa, IA 52060	1204 E Summit St. Maquoketa, IA 52060	\$54.34	Hollander Sleep Products, LLC
City of Pico Rivera Water Dept.	Water	8827-001	PO Box 36588, Los Angeles, CA 90036-0588	7600 Industry Ave. Pico Rivera, CA 90660	\$54.34	Hollander Sleep Products, LLC
City of Pico Rivera Water Dept.	Water	3718-001	PO Box 36588, Los Angeles, CA 90036-0588	7600 Industry Ave. Pico Rivera, CA 90660	\$54.34	Hollander Sleep Products, LLC
City of Pico Rivera Water Dept.	Water	23114-001	PO Box 36588, Los Angeles, CA 90036-0588	8500 Rex Rd. Pico Rivera, CA 90660	\$54.25	Hollander Sleep Products, LLC
City of Pico Rivera Water Dept.	Water	23115-001	PO Box 36588, Los Angeles, CA 90036-0588	8500 Rex Rd. Pico Rivera, CA 90660	\$54.25	Hollander Sleep Products, LLC
City of Pico Rivera Water Dept.	Water	23116-001	PO Box 36588, Los Angeles, CA 90036-0588	8500 Rex Rd. Pico Rivera, CA 90660	\$226.91	Hollander Sleep Products, LLC
City of Thomson	Water/Gas/Sewer	1513680000	P.O. Box 1017, 210 Railroad Street, Thomson, GA 30824	3301 Stagecoach Rd NE Thomson, GA 30824	\$226.91	Hollander Sleep Products, LLC
Comcast	Internet	939801701	PO Box 37601 Philadelphia, PA 19101-0601	901 W Yamato Road FL 2 Boca Raton, FL 33431-4497	\$226.91	Hollander Sleep Products, LLC

Name of Utility Provider	Type of Service	Account Number	Address	Location	Adequate Assurance Amount	Debtor Served
Comcast	Internet	8771 10 087 0733175	PO Box 70219 Philadelphia, PA 19176-0219	9933 Lawler Ave Ste 205 Skokie, IL 60077-3755	\$232.15	Hollander Sleep Products, LLC
Comcast	Internet	934577286	PO Box 37601 Philadelphia, PA 19101-0601	1736 4th Ave S Suite B Seattle, WA 98134	\$965.82	Hollander Sleep Products, LLC
Comcast	Cable/Internet	934577286	PO Box 37601, Philadelphia, PA 19101-0601	1736 4th Ave S, Suite B Seattle, WA 98134	\$612.32	Hollander Sleep Products, LLC
Consolidated Edison of NY	Electricity	41-1215-2835-0002-0	Cooper Station PO Box 138 New York, NY 10276- 0138	440 Park Ave. S. 10F New York, NY 10016	\$63.45	Hollander Sleep Products, LLC
Constellation	Gas	BG-98993	PO Box 4911, Houston, TX 77210-4911	1202 E Summit St. Maquoketa, IA 52060-9338	\$1,177.57	Hollander Sleep Products, LLC
Constellation	Gas	BG-98972	PO Box 4911, Houston, TX 77210-4911	1725 E Maple St. Maquoketa, IA 52060-9214	\$910.02	Hollander Sleep Products, LLC
Duke Energy Progress	Electric	282 775 3985	PO Box 1003, Charlotte, NC 28201-1003	220 Miriam St, Henderson, NC 27536	\$1,759.50	Hollander Sleep Products, LLC
Duke Energy Progress	Electric	526 910 8287	PO Box 1003, Charlotte, NC 28201-1003	100 Comfort Dr, Henderson, NC 27536	\$1,759.50	Hollander Sleep Products, LLC

Name of Utility Provider	Type of Service	Account Number	Address	Location	Adequate Assurance Amount	Debtor Served
Farmers Rural Electric Cooperative	Electric	87320006	PO Box 1298, Glasgow, KY 42142-1298	100 Quality St, Munfordville, KY 42765-0000	\$25,541.00	Hollander Sleep Products, LLC
Frontier Communication	Cable/Internet	562-463-1616-030718-5	PO Box 5157, Tampa, FL 33675	8500 Rex Rd. Pico Rivera, CA 90660	\$2,418.85	Hollander Sleep Products, LLC
Frontier Communication	Cable/Internet	562-949-6325-121600-5	PO Box 5157, Tampa, FL 33675	8500 Rex Rd. Pico Rivera, CA 90660		Hollander Sleep Products Canada Limited
Frontier Communication	Cable/Internet	562-949-0328-110600-5	PO Box 5157, Tampa, FL 33675	8500 Rex Rd. Pico Rivera, CA 90660	\$8.90	Hollander Sleep Products Canada Limited
Frontier Communication	Telecom/Internet	562-463-1616-030718-5	PO Box 5157, Tampa, FL 33675	8500 Rex Rd. Pico Rivera, CA 90660		Hollander Sleep Products, LLC
Georgia Power	Electric	07936-36012	96 Annex, Atlanta, GA 30396-0001	3301 Stagecoach Rd. NE Thomson, GA 30824	\$197.97	Hollander Sleep Products, LLC
KU-Kentucky Utilities Company	Electric	3000-2556-8811	PO Box 9001954, Louisville, KY 40290-1954	660 National Turnpike No 1, Munfordville, KY 42765	\$94.37	Hollander Sleep Products, LLC
					\$94.37	

Name of Utility Provider	Type of Service	Account Number	Address	Location	Adequate Assurance Amount	Debtor Served
KU-Kentucky Utilities Company	Electric	3000-2556-8746	PO Box 9001954, Louisville, KY 40290-1955	660 National Turnpike No 1, Munfordville, KY 42765	\$94.37	Hollander Sleep Products, LLC
KU-Kentucky Utilities Company	Electric	3000-2556-8803	PO Box 9001954, Louisville, KY 40290-1956	660 National Turnpike No 1, Munfordville, KY 42765	\$94.37	Hollander Sleep Products, LLC
KU-Kentucky Utilities Company	Electric	3000-2556-8795	PO Box 9001954, Louisville, KY 40290-1957	660 National Turnpike, Munfordville, KY 42765		Hollander Sleep Products, LLC
KU-Kentucky Utilities Company	Electric	3000-2556-8829	PO Box 9001954, Louisville, KY 40290-1958	660 National Turnpike, Munfordville, KY 42765	\$4,492.49	Hollander Sleep Products, LLC
LG&E-Louisville Gas and Electric	Gas/Electric	3000-2632-4727 (Master)	PO Box 9001960, Louisville, KY 40290-1960	Multiple Hollander Locations	\$4,492.49	Hollander Sleep Products, LLC
LG&E-Louisville Gas and Electric	Gas/Electric	3000-3459-8163	PO Box 9001960, Louisville, KY 40290-1961	2102 Production Dr., Louisville, KY 40299		Hollander Sleep Products, LLC
Louisville Water Company	Water	3801330000	PO Box 32460, Louisville, KY 40232-2460	2102 Production Dr., Louisville, KY 40299	\$4,492.49	Hollander Sleep Products, LLC
Louisville Water Company	Water	4801330000	PO Box 32460, Louisville, KY 40232-2461	2109 Carton Dr., Louisville, KY 40299		Hollander Sleep Products, LLC

Name of Utility Provider	Type of Service	Account Number	Address	Location	Adequate Assurance Amount	Debtor Served
Louisville Water Company	Water	5801330000	PO Box 32460, Louisville, KY 40232-2462	10401 Bunsen Way, Louisville, KY 40299	\$12,547.91	Hollander Sleep Products, LLC
Louisville Water Company	Water	6801330000	PO Box 32460, Louisville, KY 40232-2463	10401 Bunsen Way, Louisville, KY 40299	\$1,974.87	Hollander Sleep Products, LLC
Maquoketa Municipal Electric Utility	Electric	18-7850	201 E Pleasant Street, Maquoketa, IA 52060	1204 E Summit St. Maquoketa, IA 52060-9338	\$264.25	Hollander Sleep Products, LLC
Maquoketa Municipal Electric Utility	Electric	18-7855	201 E Pleasant Street, Maquoketa, IA 52060	1202 E Summit St. Maquoketa, IA 52060-9338	\$264.25	Hollander Sleep Products, LLC
Maquoketa Municipal Electric Utility	Electric	18-9515	201 E Pleasant Street, Maquoketa, IA 52060	1725 E Maple St. Maquoketa, IA 52060	\$264.25	Hollander Sleep Products, LLC
MCI	Phone	2DG94111	PO Box 15043 Albany, NY 12212-5043	25 Keystone Blvd. St 100 Pottsville, PA 17901-8993	\$264.25	Hollander Sleep Products, LLC
Munfordville Municipal Water and Sewer	Sewer	0002-02645-001	P.O. Box 85, Munfordville, KY 42765	660 National Turnpike No 1, Munfordville, KY 42765	\$1,636.65	Hollander Sleep Products, LLC
Munfordville Municipal Water and Sewer	Sewer	0002-03029-005	P.O. Box 85, Munfordville, KY 42766	100 Quality St. Munfordville, KY 42765-0000	\$1,636.65	Hollander Sleep Products, LLC



<b>Name of Utility Provider</b>	<b>Type of Service</b>	<b>Account Number</b>	<b>Address</b>	<b>Location</b>	<b>Adequate Assurance Amount</b>	<b>Debtor Served</b>
North State Communications	Telecom	158371	PO Box 612, High Point, NC 27261-0612	210 Pendleton St. High Point, NC 27260	\$1,636.65	Hollander Sleep Products, LLC
North State Communications	Telecom	158348	PO Box 612, High Point, NC 27261-0612	210 Pendleton St. High Point, NC 27260	\$433.30	Hollander Sleep Products, LLC
North State Communications	Telecom	186055	PO Box 612, High Point, NC 27261-0612	210 Pendleton St. High Point, NC 27260		Hollander Sleep Products, LLC
North State Communications	Telecom	190131	PO Box 612, High Point, NC 27261-0612	210 Pendleton St. High Point, NC 27260	\$333.99	Hollander Sleep Products, LLC
PPL Electric Utilities	Electric	51738-56011	P.O. Box 25222, Lehigh Valley, PA 18002-5222	25 Keystone Blvd. Warehouse, Pottsville, PA 17901	\$42.48	Hollander Sleep Products, LLC
PPL Electric Utilities	Electric	20200-83007	P.O. Box 25222, Lehigh Valley, PA 18002-5223	32 Industrial Park, Frackville, PA 17931	\$42.48	Hollander Sleep Products, LLC
PSNC Energy	Gas	7-2100-8493-0983	PO Box 100256, Columbia, SC 29202	100 Comfort Dr. Henderson, NC 27537-8789	\$42.48	Hollander Sleep Products, LLC
PSNC Energy	Gas	3-2100-8164-4476	PO Box 100256, Columbia, SC 29202	100 Croscill Dr. Henderson, NC 27537-5964	\$42.48	Hollander Sleep Products, LLC

Name of Utility Provider	Type of Service	Account Number	Address	Location	Adequate Assurance Amount	Debtor Served
Saveutel	Telecom	No Acct #	400 Applewood Crescent Unit 100 Vaughan, ON L4K 0C3	5415 De La Cote - De-Liesse CH Saint-Laurent, QC H4P 1A1	\$5,345.00	Hollander Sleep Products, LLC
Selectcom Telecom	Telecom	330-000015	300-5151 Jean Talon East Montreal, QC H1S 1K8	5415 De La Cote - De-Liesse CH Saint-Laurent, QC H4P 1A1	\$5,345.00	Hollander Sleep Products, LLC
South Central Rural Telephone Inc.	Telecom	2065700	PO Box 159, Glasgow, KY 42142-0159	660 National Turnpike No 1, Munfordville, KY 42765	\$1,712.35	Hollander Sleep Products, LLC
Southern California Edison	Electric	2349227561	PO BOX 600, Rosemead, CA 91771-0001	601 W. Walnut Street, Compton, CA 90220	\$1,712.35	Hollander Sleep Products, LLC
Southern California Edison	Electric	2226234847	PO BOX 600, Rosemead, CA 91771-0002	8500 Rex Rd. Unit A Pico Rivera, CA 90660	\$56.50	Hollander Sleep Products, LLC
Southern California Edison	Electric	2-22-623-4847	PO Box 6400, Rancho Cucamonga, CA 91729-6400	8500 Rex Rd. Pico Rivera, CA 90660	\$7.48	Hollander Sleep Products Canada Limited
Southern California Edison	Electric	2-19-890-1191	PO Box 300, Rosemead, CA 91772-0001	7600 Industry Ave. Pico Rivera, CA 90660	\$687.31	Hollander Sleep Products, LLC
Sprint	Phone	926862999	PO Box 219903 Kansas City, MO 64121-9903	1736 4th Ave. S Suite B Seattle, WA 98134	\$17,406.29	Hollander Sleep Products, LLC

Name of Utility Provider	Type of Service	Account Number	Address	Location	Adequate Assurance Amount	Debtor Served
Summer Energy	Electric	05461455-808-5	PO Box 660938, Dallas, TX 75266-0938	2615 Gifford St. HSMT Grand Prairie, TX 75050-440	\$17,406.29	Hollander Sleep Products, LLC
The So Cal Gas Company	Gas	770014178	PO Box C, Monterey Park, CA 91756-5111	601 W Walnut Street Compton, CA 90220	\$8,703.15	Hollander Sleep Products, LLC
Time Warner Cable	Cable/Internet	202-852454001-001	PO Box 70872, Charlotte, NC 28272-0872	100 Comfort Dr. Henderson, NC 27537-8789		Hollander Sleep Products, LLC
UGI Central Penn Gas Inc	Gas	421000-577328	PO Box 15503, Wilmington, DE 19886-5503	25 Keystone Blvd. Warehouse, Pottsville PA 17901	\$8,703.14	Hollander Sleep Products, LLC
Verizon	Phone	212 575 0400 867 74 9	PO Box 15124 Albany, NY 12212-5124	440 Park Ave S 10th Floor New York, NY 10016	\$4,651.76	Hollander Sleep Products, LLC
Verizon	Phone	F1726182	PO Box 15043 Albany, NY 12212-5043	25 Keystone Blvd St 100 Pottsville, PA 17901-8993		Hollander Sleep Products, LLC
Verizon	Phone	450-589-865-0001-00	PO Box 28000 Lehigh Valley, PA 18002-8000	25 Keystone Blvd. Ste 100 Pottsville, PA 17901-8993	\$32.02	Hollander Sleep Products, LLC
Verizon	Phone	450-406-466-0001-83	PO Box 28000 Lehigh Valley, PA 18002-8000	25 Keystone Blvd. Ste 100 Pottsville, PA 17901-8993	\$287.82	Hollander Sleep Products, LLC

Name of Utility Provider	Type of Service	Account Number	Address	Location	Adequate Assurance Amount	Debtor Served
Verizon	Phone	250-406-467-0001-01	PO Box 28000 Lehigh Valley, PA 18002-8000	25 Keystone Blvd. Ste 100 Pottsville, PA 17901-8993	\$7,308.77	Hollander Sleep Products Canada Limited
Verizon	Phone	U0182927	PO Box 15043 Albany, NY 12212-5043	Multiple Hollander Locations	\$951.48	Hollander Sleep Products Canada Limited
Verizon	Phone	972338118-00001	PO Box 660108 Dallas, TX 75266-0108	1736 4th Ave. S Suite B Seattle, WA 98134	\$5,742.46	Hollander Sleep Products, LLC
Verizon Business	Phone	VN93358887/y2703843	PO Box 15043 Albany, NY 12212-5043	Multiple Hollander Locations	\$168.30	Hollander Sleep Products, LLC
Verizon Wireless	Phone	320066080-00007	PO Box 660108 Dallas, TX 75266-0108	Multiple Hollander Locations	\$434.82	Hollander Sleep Products, LLC
Ville De Montreal - Saint Laurent	Water/Sewer	25-015419-110	Service de Finances CP 11043 Succ Centre-Ville Montreal QC H3C 4X8	5415 De La Cote - De-Liesse CH Saint-Laurent, QC H4P 1A1	\$423.93	Hollander Sleep Products Canada Limited

THIS IS EXHIBIT "S" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.

A handwritten signature in blue ink, appearing to be "JH" followed by a long horizontal stroke.

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Commissioner for Taking Affidavits

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. 17</b>

**ORDER (A) PROHIBITING UTILITY PROVIDERS FROM  
ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES,  
(B) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE  
UTILITY SERVICES, (C) ESTABLISHING PROCEDURES FOR DETERMINING  
ADEQUATE ASSURANCE OF PAYMENT, AND (D) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) prohibiting Utility Providers from altering, refusing, or discontinuing services; (b) determining adequate assurance of payment for future Utility Services; (c) establishing procedures for determining adequate assurance of payment for future Utility Services; (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors shall serve a copy of this Order on any Utility Provider identified prior to the entry of this Order no later than three business days after the date this Order is entered.
3. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in a segregated account during the pendency of these chapter 11 cases. Notwithstanding anything to the contrary herein or any other court order, the funds contained in the Adequate Assurance Deposit shall be and remain unencumbered and may only be used by the Debtors in furtherance of section 366 of the Bankruptcy Code unless and until otherwise ordered by this Court.
4. The Adequate Assurance Deposit, together with the Debtors' ability to pay for future utility services in the ordinary course of business subject to the Adequate Assurance Procedures, shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.
5. If an amount relating to Utility Services provided postpetition by a Utility Provider is unpaid, and remains unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Account by giving notice to: (a) the Debtors,

Hollander Sleep Products, LLC, 901 Yamato Road, Suite 250, Boca Raton, Florida 33431, Attn: Marc Pfefferle; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Derek Hunter, and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joseph M. Graham and Laura Krucks; (c) the Office of the United States Trustee, Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn: Shannon Scott and Paul Schwartzberg; and (d) proposed counsel to the Official Committee of Unsecured Creditors, Pachulski Stang Ziehl & Jones, LLP, 780 Third Avenue, Suite 3400, New York, New York 10027, Attn: Bradford J. Sandler, Robert J. Feinstein and Jeffrey Pomerantz (collectively, the “Notice Parties”). The Debtors shall honor such request within five business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Provider to resolve any dispute regarding such request without further order of the Court. To the extent a Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

6. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors on the earlier of (a) reconciliation and payment by the Debtors of the Utility Provider’s final invoice in accordance with applicable non-bankruptcy law following the Debtors’ termination of Utility Services from such Utility Provider and (b) the effective date of any chapter 11 plan confirmed in these chapter 11 cases.

7. The following “Adequate Assurance Procedures” are hereby approved on a final basis:

- a. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an “Additional Assurance Request”) on the Notice Parties. An Additional Assurance Request may be made at any time.



- b. Any Additional Assurance Request must (i) be made in writing, (ii) identify the location for which Utility Services are provided, (iii) include information regarding any security deposits paid by the Debtors, (iv) provide evidence that the Debtors have a direct obligation to the Utility Provider, and (v) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- c. Upon the Debtors' receipt of an Adequate Assurance Request, the Debtors shall have 21 days from the receipt of the Adequate Assurance Request (the "Resolution Period") to negotiate with the Utility Provider to resolve the Utility Provider's Adequate Assurance Request; *provided* the Debtors and Utility Provider may extend the Resolution Period by mutual agreement.
- d. Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Provider serving an Additional Assurance Request if the Debtors determine that the Additional Assurance Request is reasonable.
- e. If the Debtors determine, in their sole discretion, that the Additional Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider, the Debtors, during or immediately after the Resolution Period, may request a hearing (a "Determination Hearing") before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to section 366(c)(3) of the Bankruptcy Code. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Adequate Assurance Request; or (iii) any objections filed in response to the Proposed Adequate Assurance.

8. The Utility Providers are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures, *provided* that the Adequate Assurance Procedures are without prejudice to any Utility Providers' ability to seek relief from this Court in respect of an Additional Assurance Request on an expedited basis.

9. Unless and until a Utility Provider files or serves an Additional Assurance Request, the Utility Provider shall be (a) deemed to have received "satisfactory" adequate assurance of payment in compliance with Section 366 of the Bankruptcy Code and (b) forbidden from (i) discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on

account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance, or (ii) requiring additional assurance of payment other than the Proposed Adequate Assurance.

10. The Debtors will cause a copy of this Order, including the Adequate Assurance Procedures, to be served on any subsequently identified Utility Provider and any such Utility Provider shall be bound by the Adequate Assurance Procedures.

11. To the extent the Debtors identify new or additional Utility Providers or discontinue services from existing Utility Providers, the Debtors are authorized to add or remove such parties from the Utility Providers List. For any Utility Provider that is subsequently added to the Utility Providers List, the Debtors shall serve such Utility Provider a copy of the Court's order regarding Utility Services, including the Adequate Assurance Procedures, and provide such Utility Provider two weeks' notice to object to the inclusion of such Utility Provider on the Utility Providers List. The terms of this order and the Adequate Assurance Procedures shall apply to any subsequently identified Utility Provider

12. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other

applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

13. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

14. Except as provided in paragraph 3, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor in possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

15. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

16. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

19. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York  
Dated: July 3, 2019

**s/Michael E. Wiles**

THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**THIS IS EXHIBIT "T" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.**

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**Commissioner for Taking Affidavits**

Hearing Date and Time: June 13, 2019, at 11:00 a.m. (prevailing Eastern Time)

Objection Deadline: June 6, 2019, at 4:00 p.m. (prevailing Eastern Time)

Joshua A. Sussberg, P.C.  
 Christopher T. Greco, P.C.  
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 Telephone: (312) 862-2000  
 Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

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In re:

HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup>

Debtors.

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)  
)  
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Chapter 11

Case No. 19-11608 (MEW)

(Jointly Administered)

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**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER  
 (A) AUTHORIZING THE RETENTION AND COMPENSATION  
 OF CERTAIN PROFESSIONALS UTILIZED IN THE ORDINARY  
 COURSE OF BUSINESS AND (B) GRANTING RELATED RELIEF**

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**PLEASE TAKE NOTICE** that a hearing on the *Debtors' Motion for Entry of an Order*

*(A) Authorizing the Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business and (B) Granting Related Relief* (the "Motion") will be held before the Honorable Michael E. Wiles, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York (the "Court"), One Bowling Green, Courtroom No. 617, New York, New York 10004-1408, on **June 13, 2019, at 11:00 a.m., prevailing Eastern Time.**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the relief requested in the Motion shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York; (c) be filed electronically with the Court on the docket of *In re Hollander Sleep Products, LLC*, Case No. 19-11608 (MEW) by registered users of the Court's electronic filing system and in accordance with the General Order M-399 (which is available on the Court's website at <http://www.nysb.uscourts.gov>); and (c) be served so as to be actually received by **June 6, 2019, at 4:00 p.m., prevailing Eastern Time**, by (i) the entities on the Master Service List available on the above-captioned debtors and debtors in possession' (the "Debtors") case website at <https://omnimgt.com/hollander> and (ii) any person or entity with a particularized interest in the subject matter of the Motion.

**PLEASE TAKE FURTHER NOTICE** that only those responses that are timely filed, served, and received will be considered at the hearing. Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the Debtors.

New York, New York  
Dated: May 30, 2019

/s/ Joshua A. Sussberg, P.C.  
Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
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- and -

Joseph M. Graham (admitted *pro hac vice*)  
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Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*





without the need for each OCP to file formal applications for retention and compensation, and  
(b) granting related relief.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a), 327, 328, 330, and 331 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”).

### **Background**

5. Hollander Sleep Products is the largest pillow and mattress pad manufacturer in North America. The Debtors also manufacture comforters and other basic bedding products. The Debtors have their own brands, including Great Sleep®, I AM®, LC®, PCF®, and Restful Nights®, and also manufacture and sell licensed brands, including Simmons®, Ralph Lauren®, CHAPS®, Calvin Klein®, Therapedic®, Nautica®, 37.5®, and Dr. Maas®. The Debtors are headquartered in Boca Raton, Florida, operate a main showroom in New York City, and have thirteen manufacturing facilities throughout the United States and Canada. The Debtors generated approximately \$527 million in net revenue in fiscal year 2018 and currently employ more than

2,300 people across the United States and Canada. As of May 19, 2019 (the “Petition Date”), the Debtors had approximately \$233 million in funded debt.

6. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are being jointly administered. As of the date hereof, no party has requested the appointment of a trustee or an examiner in these chapter 11 cases. On May 30, 2019, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code.

#### **The Ordinary Course Professionals**

7. The Debtors employ various law firms, attorneys, accountants, consultants, and other non-attorney professionals in the ordinary course of their business (such professionals, collectively, the “OCPs”). The OCPs provide services for the Debtors in a variety of matters unrelated to these chapter 11 cases, including specialized legal, business advisory, accounting, and tax services relating to corporate, financial, tax, intellectual property, labor, and other matters. A nonexclusive list of the Debtors’ OCPs as of the date hereof (the “OCP List”) is attached hereto as **Exhibit 2A** and **Exhibit 2B** to the Order. The Debtors may also seek to employ additional OCPs as necessary during the course of these chapter 11 cases, subject to the procedures set forth herein.

8. The continued employment and compensation of the OCPs is in the best interests of the Debtors’ estates, their creditors, and other parties in interest. The OCPs have significant knowledge, expertise, and familiarity with the Debtors and their operations. Although the Debtors anticipate that the OCPs will wish to continue to represent the Debtors during these chapter 11 cases, many will not be in a position to do so if the Debtors cannot meet their payment obligations

on a regular basis. And, without the OCPs' knowledge, expertise, and familiarity in certain matters, the Debtors undoubtedly would incur additional and unnecessary expenses in educating and retaining replacement professionals. Accordingly, the Debtors' estates and their creditors are best served by avoiding any disruption in the professional services that are required for the day-to-day operations of the Debtors' business.

9. Moreover, in light of the time and expense associated with the preparation of separate retention and fee applications for professionals who will receive relatively small fees, it is impractical and inefficient for the Debtors to prepare such individual applications for each OCP. Further, individual retention and fee applications would unnecessarily burden the Court and the U.S. Trustee, while adding to the administrative costs of these chapter 11 cases without a corresponding benefit to the Debtors' estates. Therefore, the Debtors request that the Court grant the Debtors relief from the requirement of filing individual retention and fee applications with respect each individual OCP.

10. Although some of the OCPs may hold unsecured claims against the Debtors in connection with services rendered to the Debtors prepetition, the Debtors do not believe that any OCP holds an interest materially adverse to the Debtors, their creditors, or other parties in interest.

#### **The OCP Procedures**

11. The Debtors request that the Court approve the following procedures for retention and payment of the OCPs (the "OCP Procedures"):

- a. ***Declaration of Disinterestedness.*** Within 30 days of the date on which an OCP commences work for the Debtors, such OCP shall cause a declaration of disinterestedness, substantially in the form annexed as **Exhibit 1** to the Order (each, a "Declaration of Disinterestedness"), to be filed with the Court and served upon: (i) Hollander Sleep Products, LLC, 901 Yamato Road, Suite 250, Boca Raton, Florida, 33431, Attn: Marc Pfefferle; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Derek

I. Hunter, and 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joseph M. Graham and Laura E. Krucks; (iii) the U.S. Trustee, 201 Varick Street, Room 1006, New York, New York, 10014, Attn: Shannon A. Scott and Paul K. Schwartzberg; (iv) counsel to the administrative agent for the Debtors' prepetition and debtor-in-possession term loan facilities, King & Spalding LLP, Attn: Austin Jowers and Stephen M. Blank; (v) counsel to the administrative agent for the Debtors' prepetition and debtor-in-possession asset-based lending credit facilities, Goldberg Kohn Ltd., Attn: Randall Klein; (vi) counsel to any statutory committee appointed in these chapter 11 cases; and (vii) to the extent not listed herein those parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties").

- b. ***Objection Procedures.*** The Notice Parties shall have until 12:00 p.m., prevailing Eastern Time, on the date that is 14 days after the date of filing of each OCP's Declaration of Disinterestedness (the "Objection Deadline") to object to the retention of such OCP. The objecting party shall file any such objection and serve such objection upon the Notice Parties and the respective OCP on or before the Objection Deadline. If any such objection cannot be resolved within 14 days of its receipt, the matter shall be scheduled for hearing before the Court at the next regularly scheduled omnibus hearing date that is no less than 14 days from that date or on a date otherwise agreeable to the parties. The Debtors shall not be authorized to retain and compensate such OCP until all outstanding objections have been withdrawn, resolved, or overruled by order of the Court.
- c. ***No Objection.*** If no objection is received from any of the Notice Parties by the Objection Deadline with respect to any particular OCP, the Debtors shall be authorized to (i) retain such OCP as of the date such OCP commenced providing services to the Debtors, and (ii) compensate such OCP as set forth below.
- d. ***OCP Monthly and Case Caps.*** The Debtors shall be authorized to pay, without formal application to the Court by any OCP, 100% of fees and disbursements to each of the OCPs retained by the Debtors pursuant to the OCP Procedures upon submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date; *provided, however*, that the following limitations, exclusive of costs and disbursements, shall apply to the compensation:
- for each OCP set forth on **Exhibit 2A** attached to the Order (collectively, the "Tier 1 OCPs"), \$70,000 per month on average over a rolling three month period (the "Tier 1 OCP

Cap,") with an overall case cap of \$350,000 (the "Tier 1 Case Cap"); and

- for each OCP set forth on **Exhibit 2B** attached to the Order (collectively, the "Tier 2 OCPs"), \$25,000 per month on average over a rolling three month period (the "Tier 2 OCP Cap," and together with the Tier 1 OCP Cap, the "OCP Monthly Caps") with an overall case cap of \$400,000 (the "Tier 2 Case Cap," and together with the Tier 1 Case Cap, the "OCP Case Caps").

The OCP Monthly Caps and/or the OCP Case Caps may be increased by mutual agreement between the Debtors, the U.S. Trustee, and the counsel to any statutory committee appointed in these chapter 11 cases (the "Excess Fees"); *provided* that the Debtors shall file a notice with the Court of any such increase (the "Notice of Excess Fees") and an invoice setting forth, in reasonable detail, the nature of the services rendered and disbursements actually incurred. Interested parties shall have 15 days to file an objection to the Notice of Excess Fees with the Court. If after 15 days no objection is filed, the Excess Fees shall be deemed approved, and the OCP may be paid 100% of its fees and 100% of its expenses without the need to file a fee application.

- e. ***Exceeding OCP Monthly Caps.*** To the extent there is no agreement with respect to the OCP Monthly Caps as indicated in subparagraph (d), the OCP shall file with the Court a fee application for the amount in excess of the applicable OCP Monthly Cap in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, unless the U.S. Trustee agrees otherwise.
- f. ***Exceeding OCP Case Caps.*** To the extent there is no agreement with respect to the OCP Case Caps as indicated in subparagraph (d), the OCP shall file with the Court a retention application in accordance with section 327 of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, unless the U.S. Trustee agrees otherwise.
- g. ***OCP Statements.*** Beginning on the quarter ending June 30, 2019, and for each quarter thereafter during which these chapter 11 cases are pending, the Debtors shall within 30 days thereof file with the Court and serve on the Notice Parties a statement with respect to each OCP paid during the immediately preceding quarterly period (the "Quarterly Statement"). Each Quarterly Statement shall include (i) the name of the OCP, (ii) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses

incurred by that OCP during the reported quarter, and (iii) a general description of the services rendered by that OCP.

- h. ***Additional OCPs.*** The Debtors reserve the right to retain additional OCPs from time to time during these chapter 11 cases by (i) including such OCPs on an amended version of the OCP List that is filed with the Court and served on the Notice Parties, and (ii) having such OCPs comply with the OCP Procedures.

12. By this motion, the Debtors are not requesting authority to pay prepetition amounts owed to OCPs.

### **Basis for Relief**

13. Section 327 of the Bankruptcy Code requires court approval for the employment of “professional persons” retained to represent or perform services for the estate. In determining whether an entity is a “professional” within the meaning of section 327 of the Bankruptcy Code and, therefore, must be retained by express approval of the court, courts generally consider whether such entity is involved in the actual reorganization effort, rather than a debtor’s ongoing business operations. *See, e.g., Comm. of Asbestos Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986) (“[T]he phrase ‘professional persons,’ as used in § 327(a), is a term of art reserved for those persons who play an intimate role in the reorganization of a debtor’s estate.”). In making this determination, courts often consider the following factors in determining whether an entity is a “professional” within the meaning of section 327 of the Bankruptcy Code:

- a. whether the entity controls, manages, administers, invests, purchases, or sells assets that are significant to the debtor’s reorganization;
- b. whether the entity is involved in negotiating the terms of a plan of reorganization;
- c. whether the entity’s employment is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor’s business operations;

- d. whether the entity is given discretion or autonomy to exercise its own professional judgment in some part of the administration of the debtor's estate;
- e. the extent of the entity's involvement in the administration of the debtor's estate; and
- f. whether the entity's services involve some degree of special knowledge or skill, such that it can be considered a "professional" within the ordinary meaning of the term.

*See, e.g., In re First Merchs. Acceptance Corp.*, No. 97-1500 JJF, 1997 WL 873551, at \*3 (D. Del. Dec. 15, 1997) (listing factors); *see also In re Am. Tissue, Inc.*, 331 B.R. 169, 174–75 (Bankr. D. Del. 2005) (applying the *First Merchants* factors and holding that litigation consulting firm was not a "professional" for section 327 purposes); *In re Riker Indus., Inc.*, 122 B.R. 964, 973 (Bankr. N.D. Ohio 1990) (not requiring section 327 of the Bankruptcy Code approval of the fees of a management and consulting firm that performed only "routine administrative functions" and whose "services were not central to th[e] bankruptcy case"); *In re Fretheim*, 102 B.R. 298, 299 (Bankr. D. Conn. 1989) (holding that only those professionals involved in the "administration of the debtor's estate," rather than debtor's ongoing business, require approval under section 327 of the Bankruptcy Code). The foregoing factors must be considered as a whole when determining if an entity is a "professional" within the meaning of section 327 of the Bankruptcy Code. None of the factors alone is dispositive. *See First Merchs.*, 1997 WL 873551, at \*3 ("In applying these factors, the Court stresses that no one factor is dispositive and that the factors should be weighed against each other and considered in toto.").

14. Upon consideration of the foregoing factors, and because the OCPs will not be involved in the administration of these chapter 11 cases, the Debtors do not believe that the OCPs are "professionals" requiring formal retention proceedings under section 327 of the Bankruptcy Code. Nevertheless, to provide clarity and an opportunity for oversight, the Debtors seek the relief



requested herein to establish clear mechanisms for retention and compensation of the OCPs pursuant to the OCP Procedures and thereby avoid any subsequent controversy with respect thereto.

15. The Debtors respectfully submit that (a) the retention of the OCPs as provided herein is reasonably necessary for the day-to-day operations of the Debtors' business, (b) expenses for the OCPs will be monitored closely by the Debtors, and (c) the OCPs will not perform substantial bankruptcy related services related to these chapter 11 cases without filing an application with the Court for separate retention as a non-ordinary course professional.

16. Moreover, in light of the number of OCPs and the significant costs associated with the preparation of retention applications for professionals who will receive relatively modest fees, the Debtors submit that it would be impractical, inefficient, and costly for the Debtors and their legal advisors to prepare and submit individual applications and proposed retention orders for each OCP. Therefore, the Debtors submit that it is in the best interests of all creditors and parties in interest to retain the OCPs in accordance with the OCP Procedures and avoid any disruption in the professional services that are required for the day-to-day operation of the Debtors' business.

17. Although some of the OCPs may hold unsecured claims against the Debtors in connection with services rendered to the Debtors prepetition, the Debtors do not believe that any of the OCPs have an interest materially adverse to the Debtors, their creditors, or other parties in interest. In any event, the OCP Procedures include a requirement that each OCP file a Declaration of Disinterestedness before an OCP can be compensated.

18. The relief requested herein is commonly granted in this district. *See, e.g., In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Apr. 22, 2019) (authorizing the debtors' retention and compensation of OCPs); *In re Aegean Marine Petroleum*

*Network Inc.*, No. 18-13374 (MEW) (Bankr. S.D.N.Y. Dec. 6, 2018) (same); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. May 7, 2018) (same); *In re Cenveo, Inc.*, No. 18-22178 (RDD) (Bankr. S.D.N.Y. Mar. 8, 2018) (same); *In re 21st Century Oncology Holdings, Inc.*, No. 17-22770 (RDD) (Bankr. S.D.N.Y. July 19, 2017) (same).<sup>2</sup>

19. For the reasons set forth herein, the Debtors respectfully submit that the relief requested is in the best interest of the Debtors, their estates, creditors, stakeholders, and other parties in interest, and therefore should be granted.

### **Motion Practice**

20. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this motion. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1(a).

### **Notice**

21. The Debtors will provide notice of this motion to: (a) the U.S. Trustee; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent for the Debtors' term loan facility and counsel thereto; (d) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (e) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel thereto; (f) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; (g) the United States Attorney's Office for the Southern District of New York; (h) the Internal Revenue Service; (i) the attorneys general for the states in which the Debtors operate; (j) counsel to the official committee of

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<sup>2</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

unsecured creditors appointed in these chapter 11 cases; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

22. No prior request for the relief sought in this motion has been made to this or any other court.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

New York, New York  
Dated: May 30, 2019

/s/ Joshua A. Sussberg, P.C.  
Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

- and -

Joseph M. Graham (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

HOLLANDER SLEEP PRODUCTS, LLC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 19-11608 (MEW)  
)  
) (Jointly Administered)  
)  
) **Re: Docket No. \_\_**

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**ORDER (A) AUTHORIZING THE RETENTION AND COMPENSATION OF  
PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS  
AND (B) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) (a) authorizing the Debtors to retain and compensate professionals utilized in the ordinary course of business and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized to retain and compensate the professionals identified on the OCP List (collectively, the “OCPs”), attached as **Exhibit 2A** and **Exhibit 2B** to this Order, in the ordinary course of business, pursuant to the following OCP Procedures:

- a. ***Declaration of Disinterestedness.*** Within 30 days of the date on which an OCP commences work for the Debtors, such OCP shall cause a declaration of disinterestedness, substantially in the form annexed as **Exhibit 1** hereto (each, a “Declaration of Disinterestedness”), to be filed with the Court and served upon: (i) Hollander Sleep Products, LLC, 901 Yamato Road, Suite 250, Boca Raton, Florida, 33431, Attn: Marc Pfefferle; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Derek I. Hunter, and 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joseph M. Graham and Laura E. Krucks; (iii) the Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Room 1006, New York, New York, 10014, Attn: Shannon A. Scott and Paul K. Schwartzberg; (iv) counsel to the administrative agent for the Debtors’ prepetition and debtor-in-possession term loan facilities, King & Spalding LLP, Attn: Austin Jowers and Stephen M. Blank; (v) counsel to the administrative agent for the Debtors’ prepetition and debtor-in-possession asset-based lending credit facilities, Goldberg Kohn Ltd., Attn: Randall Klein; (vi) counsel to any statutory committee appointed in these chapter 11 cases; and (vii) to the extent not listed herein those parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”).
- b. ***Objection Procedures.*** The Notice Parties shall have until 12:00 p.m., prevailing Eastern Time, on the date that is 14 days after the date of filing of each OCP’s Declaration of Disinterestedness (the “Objection Deadline”) to object to the retention of such OCP. The objecting party shall file any such objection and serve such objection upon the Notice Parties and the respective OCP on or before the Objection Deadline. If any such objection cannot be

resolved within 14 days of its receipt, the matter shall be scheduled for hearing before the Court at the next regularly scheduled omnibus hearing date that is no less than 14 days from that date or on a date otherwise agreeable to the parties. The Debtors shall not be authorized to retain and compensate such OCP until all outstanding objections have been withdrawn, resolved, or overruled by order of the Court.

- c. ***No Objection.*** If no objection is received from any of the Notice Parties by the Objection Deadline with respect to any particular OCP, the Debtors shall be authorized to (i) retain such OCP as of the date such OCP commenced providing services to the Debtors, and (ii) compensate such OCP as set forth below.
- d. ***OCP Monthly and Case Caps.*** The Debtors shall be authorized to pay, without formal application to the Court by any OCP, 100% of fees and disbursements to each of the OCPs retained by the Debtors pursuant to the OCP Procedures upon submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date; *provided, however*, that the following limitations, exclusive of costs and disbursements, shall apply to the compensation:
- for each OCP set forth on **Exhibit 2A** attached to this Order (collectively, the “Tier 1 OCPs”), \$70,000 per month on average over a rolling three month period (the “Tier 1 OCP Cap,”) with an overall case cap of \$350,000 (the “Tier 1 Case Cap”); and
  - for each OCP set forth on **Exhibit 2B** attached to this Order (collectively, the “Tier 2 OCPs”), \$25,000 per month on average over a rolling three month period (the “Tier 2 OCP Cap,” and together with the Tier 1 OCP Cap, the “OCP Monthly Caps”) with an overall case cap of \$400,000 (the “Tier 2 Case Cap,” and together with the Tier 1 Case Cap, the “OCP Case Caps”).

The OCP Monthly Caps and/or the OCP Case Caps may be increased by mutual agreement between the Debtors, the United States Trustee, counsel to any statutory committee appointed in these chapter 11 cases (the “Excess Fees”); *provided* that the Debtors shall file a notice with the Court of any such increase (the “Notice of Excess Fees”) and an invoice setting forth, in reasonable detail, the nature of the services rendered and disbursements actually incurred. Interested parties shall have 15 days to file an objection to the Notice of Excess Fees with the Court. If after 15 days no objection is filed, the Excess Fees shall



be deemed approved, and the OCP may be paid 100% of its fees and 100% of its expenses without the need to file a fee application.

- e. ***Exceeding OCP Monthly Caps.*** To the extent there is no agreement with respect to the OCP Monthly Caps as indicated in subparagraph (d), the OCP shall file with the Court a fee application for the amount in excess of the applicable OCP Monthly Cap in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, unless the U.S. Trustee agrees otherwise.
- f. ***Exceeding OCP Case Caps.*** To the extent there is no agreement with respect to the OCP Case Caps as indicated in subparagraph (d), the OCP shall file with the Court a retention application in accordance with section 327 of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, unless the U.S. Trustee agrees otherwise.
- g. ***OCP Statements.*** Beginning on the quarter ending June 30, 2019, and for each quarter thereafter during which these chapter 11 cases are pending, the Debtors shall within 30 days thereof file with the Court and serve on the Notice Parties a statement with respect to each OCP paid during the immediately preceding quarterly period (the “Quarterly Statement”). Each Quarterly Statement shall include (i) the name of the OCP, (ii) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by that OCP during the reported quarter, and (iii) a general description of the services rendered by that OCP.
- h. ***Additional OCPs.*** The Debtors reserve the right to retain additional OCPs from time to time during these chapter 11 cases by (i) including such OCPs on an amended version of the OCP List that is filed with the Court and served on the Notice Parties, and (ii) having such OCPs comply with the OCP Procedures.

3. The Debtors are authorized to supplement the OCP List as necessary to add or remove OCPs, from time to time in its sole discretion, without the need for any further hearing and without the need to file individual retention applications for newly added OCPs. In such event, the Debtors shall file the amended OCP List with this Court and serve such list on the Notice Parties. Each additional OCP listed in the OCP List shall file with this Court and serve a Declaration of Disinterestedness on the Notice Parties as provided in the OCP Procedures.

If no objections are filed within 14 days to any such additional OCP's Declaration of Disinterestedness, then retention of such OCPs shall be deemed approved by this Court pursuant to this Order without a hearing or further order.

4. Nothing contained herein shall affect the Debtors' or any appropriate party in interest's ability to dispute any invoice submitted by an OCP, and nothing contained herein shall preclude the Debtors from seeking authority to pay any OCP in an amount greater than the applicable OCP Monthly Cap, subject to the rights of any party in interest to oppose any such request.

5. This Order shall not apply to any professional retained by the Debtors pursuant to a separate order of the Court.

6. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

10. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York

Dated: \_\_\_\_\_, 2019

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Declaration of Disinterestedness**

	)	
In re:	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

I, [NAME], declare under penalty of perjury:

1. I am a [POSITION] of [ENTITY], located at [STREET, CITY, STATE, ZIP CODE] (the “Firm”).

2. The above-captioned debtors and debtors in possession (collectively, the “Debtors”), have requested that the Firm provide [SPECIFIC DESCRIPTION] services to the Debtors, and the Firm has consented to provide such services.

3. The Firm may have performed services in the past, may currently perform services, and may perform services in the future in matters unrelated to these chapter 11 cases for persons that are parties in interest in the Debtors' chapter 11 cases. The Firm, however, does not perform services for any such person in connection with these chapter 11 cases, or have any relationship with any such person, their attorneys, or accountants that would be adverse to the Debtors or their estates.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

4. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties in interest in these chapter 11 cases.

5. Neither I nor any principal, partner, director, officer, [etc.] of, or professional employed by, the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Firm.

6. Neither I nor any principal, partner, director, officer, [etc.] of, or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which the Firm is to be employed.

7. The Debtors owe the Firm \$[\_\_\_\_] for prepetition services, the payment of which is subject to limitations contained in title 11 of the United States Code, 11 U.S.C. §§ 101–1532.

8. As of the Petition Date, which was the date on which the Debtors commenced these chapter 11 cases, the Firm [was/was not] party to an agreement for indemnification with certain of the debtor entities. [A copy of such agreement is attached as **Exhibit 1** to this Declaration.]

9. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: \_\_\_\_\_, 2019

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**[DECLARANT'S NAME]**

**Exhibit 2A**

**Tier 1 Ordinary Course Professionals**



**Tier 1 Ordinary Course Professionals**

<b>Name</b>	<b>Address</b>	<b>Type of Service</b>
Frost Brown Todd LLC	One Columbus, Suite 2300 10 West Broad Street Columbus, OH 43215	Legal Services - Labor

**Exhibit 2B**

**Tier 2 Ordinary Course Professionals**

**Tier 2 Ordinary Course Professionals**

<b>Name</b>	<b>Address</b>	<b>Type of Service</b>
Stikeman Elliott LLP	5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9	Legal Services - Canada Employment
K&L Gates RCAC	1717 Main Street, Suite 2800 Dallas, TX 75201	Legal Services - Corporate
Lerner David Littenberg Krumholz & Mentlik LLP	600 South Avenue West Westfield, NJ 07090	Legal Services - Intellectual Property
Lewis Brisbois Bisgaard & Smith LLP	633 W. Fifth Street, Suite 4000 Los Angeles, CA 90071	Legal Services - Corporate
Aguilar Y Loera S.C.	Guillermo Gonzalez Camarena 1200 Piso 4A Col. Santa Fe 01210 Alvaro Obregon, Cuidad De Mexico C.P. 01210 Mexico	Legal Services - Mexico
Bingham Greenbaum Doll	3913 Solutions Center Chicago, IL 60677	Legal Services - Corporate
Fox Rothschild LLP	1250 Constellation Blvd., Suite 900 Los Angeles, CA 90067-6209	Legal Services - Employment
Gordon & Rees Scully Mansukhani LLP	633 West Fifth Street, Suite 5200 Los Angeles, CA 90071	Legal Services - Corporate
Sandler, Travis & Rosenberg P.A.	1000 NW 57th Court, Suite 600 Miami, FL 33126	Legal Services - International Trade

THIS IS EXHIBIT "U" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.

A handwritten signature in blue ink, appearing to be "J Hr", is written above a horizontal line.

Commissioner for Taking Affidavits

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

HOLLANDER SLEEP PRODUCTS, LLC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 19-11608 (MEW)  
)  
) (Jointly Administered)  
)  
) **Re: Docket No. 67**

**ORDER (A) AUTHORIZING THE RETENTION AND COMPENSATION OF  
PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS  
AND (B) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) (a) authorizing the Debtors to retain and compensate professionals utilized in the ordinary course of business and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized to retain and compensate the professionals identified on the OCP List (collectively, the “OCPs”), attached as **Exhibit 2A** and **Exhibit 2B** to this Order, in the ordinary course of business, pursuant to the following OCP Procedures:<sup>3</sup>

- a. ***Declaration of Disinterestedness.*** Within 30 days of the date on which an OCP commences work for the Debtors, such OCP shall cause a declaration of disinterestedness, substantially in the form annexed as **Exhibit 1** hereto (each, a “Declaration of Disinterestedness”), to be filed with the Court and served upon: (i) Hollander Sleep Products, LLC, 901 Yamato Road, Suite 250, Boca Raton, Florida, 33431, Attn: Marc Pfefferle; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Derek I. Hunter, and 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joseph M. Graham and Laura E. Krucks; (iii) the Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Room 1006, New York, New York, 10014, Attn: Shannon A. Scott and Paul K. Schwartzberg; (iv) counsel to the administrative agent for the Debtors’ prepetition and debtor-in-possession term loan facilities, King & Spalding LLP, Attn: Austin Jowers and Stephen M. Blank; (v) counsel to the administrative agent for the Debtors’ prepetition and debtor-in-possession asset-based lending credit facilities, Goldberg Kohn Ltd., Attn: Randall Klein; (vi) counsel to any statutory committee appointed in these chapter 11 cases; and (vii) to the extent not listed herein those parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”).
- b. ***Objection Procedures.*** The Notice Parties shall have until 12:00 p.m., prevailing Eastern Time, on the date that is 14 days after

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<sup>3</sup> For the avoidance of doubt, and notwithstanding anything to the contrary in the Motion, the Debtors may only retain and compensate as OCPs, and the OCP List shall exclusively include, law firms and attorneys acting in their capacities as such.

the date of filing of each OCP's Declaration of Disinterestedness (the "Objection Deadline") to object to the retention of such OCP. The objecting party shall file any such objection and serve such objection upon the Notice Parties and the respective OCP on or before the Objection Deadline. If any such objection cannot be resolved within 14 days of its receipt, the matter shall be scheduled for hearing before the Court at the next regularly scheduled omnibus hearing date that is no less than 14 days from that date or on a date otherwise agreeable to the parties. The Debtors shall not be authorized to retain and compensate such OCP until all outstanding objections have been withdrawn, resolved, or overruled by order of the Court.

- c. ***No Objection.*** If no objection is received from any of the Notice Parties by the Objection Deadline with respect to any particular OCP, the Debtors shall be authorized to (i) retain such OCP as of the date such OCP commenced providing services to the Debtors, and (ii) compensate such OCP as set forth below.
- d. ***OCP Monthly and Case Caps.*** The Debtors shall be authorized to pay, without formal application to the Court by any OCP, 100% of fees and disbursements to each of the OCPs retained by the Debtors pursuant to the OCP Procedures upon submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date; *provided, however*, that the following limitations, exclusive of costs and disbursements, shall apply to the compensation:
  - for each OCP set forth on **Exhibit 2A** attached to this Order (collectively, the "Tier 1 OCPs"), \$70,000 per month on average over a rolling three month period (the "Tier 1 OCP Cap," with an overall case cap of \$350,000 (the "Tier 1 Case Cap"); and
  - for each OCP set forth on **Exhibit 2B** attached to this Order (collectively, the "Tier 2 OCPs"), \$25,000 per month on average over a rolling three month period (the "Tier 2 OCP Cap," and together with the Tier 1 OCP Cap, the "OCP Monthly Caps") with an overall case cap of \$400,000 (the "Tier 2 Case Cap," and together with the Tier 1 Case Cap, the "OCP Case Caps").

The OCP Monthly Caps and/or the OCP Case Caps may be increased by mutual agreement between the Debtors, the United States Trustee, counsel to any statutory committee appointed in these chapter 11 cases (the "Excess Fees"); *provided* that the Debtors shall file a notice with the Court of any such increase

(the “Notice of Excess Fees”) and an invoice setting forth, in reasonable detail, the nature of the services rendered and disbursements actually incurred. Interested parties shall have 15 days to file an objection to the Notice of Excess Fees with the Court. If after 15 days no objection is filed, the Excess Fees shall be deemed approved, and the OCP may be paid 100% of its fees and 100% of its expenses without the need to file a fee application.

- e. ***Exceeding OCP Monthly Caps.*** To the extent there is no agreement with respect to the OCP Monthly Caps as indicated in subparagraph (d), the OCP shall file with the Court a fee application for the amount in excess of the applicable OCP Monthly Cap in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, unless the U.S. Trustee agrees otherwise.
- f. ***Exceeding OCP Case Caps.*** To the extent there is no agreement with respect to the OCP Case Caps as indicated in subparagraph (d), the OCP shall file with the Court a retention application in accordance with section 327 of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, unless the U.S. Trustee agrees otherwise.
- g. ***OCP Statements.*** Beginning on the quarter ending June 30, 2019, and for each quarter thereafter during which these chapter 11 cases are pending, the Debtors shall within 30 days thereof file with the Court and serve on the Notice Parties a statement with respect to each OCP paid during the immediately preceding quarterly period (the “Quarterly Statement”). Each Quarterly Statement shall include (i) the name of the OCP, (ii) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by that OCP during the reported quarter, and (iii) a general description of the services rendered by that OCP.
- h. ***Additional OCPs.*** The Debtors reserve the right to retain additional OCPs from time to time during these chapter 11 cases by (i) including such OCPs on an amended version of the OCP List that is filed with the Court and served on the Notice Parties, and (ii) having such OCPs comply with the OCP Procedures.

3. The Debtors are authorized to supplement the OCP List as necessary to add or remove OCPs, from time to time in their sole discretion, without the need for any further hearing and without the need to file individual retention applications for newly added OCPs. In such event, the Debtors shall file the amended OCP List with this Court and serve such list on the Notice



Parties. Each additional OCP listed in the OCP List shall file with this Court and serve a Declaration of Disinterestedness on the Notice Parties as provided in the OCP Procedures. If no objections are filed within 14 days to any such additional OCP's Declaration of Disinterestedness, then retention of such OCPs shall be deemed approved by this Court pursuant to this Order without a hearing or further order.

4. Nothing contained herein shall affect the Debtors' or any appropriate party in interest's ability to dispute any invoice submitted by an OCP, and nothing contained herein shall preclude the Debtors from seeking authority to pay any OCP in an amount greater than the applicable OCP Monthly Cap, subject to the rights of any party in interest to oppose any such request.

5. This Order shall not apply to any professional retained by the Debtors pursuant to a separate order of the Court.

6. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

10. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York  
Dated: July 2, 2019

s/Michael E. Wiles  
THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Declaration of Disinterestedness**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	

**DECLARATION OF DISINTERESTEDNESS OF [ENTITY]  
PURSUANT TO THE ORDER AUTHORIZING HOLLANDER SLEEP  
PRODUCTS, LLC, *ET AL.*, FOR THE RETENTION AND COMPENSATION  
OF PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

I, [NAME], declare under penalty of perjury:

1. I am a [POSITION] of [ENTITY], located at [STREET, CITY, STATE, ZIP CODE] (the “Firm”).

2. The above-captioned debtors and debtors in possession (collectively, the “Debtors”), have requested that the Firm provide [SPECIFIC DESCRIPTION] services to the Debtors, and the Firm has consented to provide such services.

3. The Firm may have performed services in the past, may currently perform services, and may perform services in the future in matters unrelated to these chapter 11 cases for persons that are parties in interest in the Debtors’ chapter 11 cases. The Firm, however, does not perform services for any such person in connection with these chapter 11 cases, or have any relationship with any such person, their attorneys, or accountants that would be adverse to the Debtors or their estates.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

4. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties in interest in these chapter 11 cases.

5. Neither I nor any principal, partner, director, officer, [etc.] of, or professional employed by, the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Firm.

6. Neither I nor any principal, partner, director, officer, [etc.] of, or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which the Firm is to be employed.

7. The Debtors owe the Firm \$[\_\_\_\_] for prepetition services, the payment of which is subject to limitations contained in title 11 of the United States Code, 11 U.S.C. §§ 101–1532.

8. As of the Petition Date, which was the date on which the Debtors commenced these chapter 11 cases, the Firm [was/was not] party to an agreement for indemnification with certain of the debtor entities. [A copy of such agreement is attached as **Exhibit 1** to this Declaration.]

9. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: \_\_\_\_\_, 2019

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**[DECLARANT'S NAME]**

**Exhibit 2A**

**Tier 1 Ordinary Course Professionals**

**Tier 1 Ordinary Course Professionals**

Name	Address	Type of Service
Frost Brown Todd LLC	One Columbus, Suite 2300 10 West Broad Street Columbus, OH 43215	Legal Services - Labor



**Exhibit 2B**

**Tier 2 Ordinary Course Professionals**

**Tier 2 Ordinary Course Professionals**

<b>Name</b>	<b>Address</b>	<b>Type of Service</b>
Stikeman Elliott LLP	5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9	Legal Services - Canada Employment
K&L Gates RCAC	1717 Main Street, Suite 2800 Dallas, TX 75201	Legal Services - Corporate
Lerner David Littenberg Krumholz & Mentlik LLP	600 South Avenue West Westfield, NJ 07090	Legal Services - Intellectual Property
Lewis Brisbois Bisgaard & Smith LLP	633 W. Fifth Street, Suite 4000 Los Angeles, CA 90071	Legal Services - Corporate
Aguilar Y Loera S.C.	Guillermo Gonzalez Camarena 1200 Piso 4A Col. Santa Fe 01210 Alvaro Obregon, Cuidad De Mexico C.P. 01210 Mexico	Legal Services - Mexico
Bingham Greenbaum Doll	3913 Solutions Center Chicago, IL 60677	Legal Services - Corporate
Fox Rothschild LLP	1250 Constellation Blvd., Suite 900 Los Angeles, CA 90067-6209	Legal Services - Employment
Gordon & Rees Scully Mansukhani LLP	633 West Fifth Street, Suite 5200 Los Angeles, CA 90071	Legal Services - Corporate
Sandler, Travis & Rosenberg P.A.	1000 NW 57th Court, Suite 600 Miami, FL 33126	Legal Services - International Trade

THIS IS EXHIBIT "V" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3 , 2019.

A handwritten signature in blue ink, appearing to be "JH" followed by a horizontal line.

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Commissioner for Taking Affidavits

Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
601 Lexington Avenue  
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Telephone: (212) 446-4800  
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Joseph M. Graham (*pro hac vice* pending)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	
	)	Chapter 11
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (____)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

**DEBTORS' APPLICATION FOR ENTRY OF AN ORDER (I) AUTHORIZING AND APPROVING THE APPOINTMENT OF OMNI MANAGEMENT GROUP AS CLAIMS AND NOTICING AGENT AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this application:

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) appointing Omni Management Group ("Omni") as claims and noticing agent (the "Claims and Noticing Agent") for the Debtors and their chapter 11 cases, effective *nunc pro tunc* to the date hereof (the "Petition Date"), including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

in the Debtors' chapter 11 cases and (b) granting related relief. In support of this application, the Debtors submit the *Declaration of Alison Miller in Support of the Debtors' Application for Entry of an Order (I) Authorizing and Approving the Appointment of Omni Management Group as Claims and Noticing Agent and (II) Granting Related Relief* (the "Miller Declaration"), attached hereto as **Exhibit B**. The Debtors submit that Omni's rates are competitive and reasonable given Omni's quality of services and expertise. The terms of Omni's retention are set forth in the Engagement Agreement attached hereto as **Exhibit C** (the "Engagement Agreement"); *provided* that Omni is seeking approval solely of the terms and provisions as set forth in this application and the proposed order attached hereto.

2. By separate application, the Debtors will seek authorization to retain and employ Omni as administrative advisor in these chapter 11 cases pursuant to section 327(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), because the administration of these chapter 11 cases will require Omni to perform duties outside the scope of 28 U.S.C. § 156(c).

### **Jurisdiction and Venue**

3. The United States Bankruptcy Court for the Southern District of New York (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this application to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are section 156(c) of title 28 of the United States Code and Rule 5075-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

### **Background**

6. Hollander Sleep Products is the largest pillow and mattress pad manufacturer in North America. The Debtors also manufacture comforters and other basic bedding products. The Debtors have their own brands, including Great Sleep®, I AM®, LC®, PCF®, and Restful Nights®, and also manufacture and sell licensed brands, including Simmons®, Ralph Lauren®, CHAPS®, Calvin Klein®, Therapedic®, Nautica®, 37.5®, and Dr. Maas®. The Debtors are headquartered in Boca Raton, Florida, operate a main showroom in New York City, and have thirteen manufacturing facilities throughout the United States and Canada. The Debtors generated approximately \$527 million in net revenue in fiscal year 2018 and currently employ more than 2,300 people across the United States and Canada. As of the date hereof, the Debtors have approximately \$233 million in funded debt.

7. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have concurrently filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

### **Omni’s Qualifications**

8. Omni employs leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. Omni’s professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases in matters of this size and complexity.

Omni's professionals have acted as debtors' administrative advisor and/or official claims and noticing agent in many large bankruptcy cases in districts nationwide, including: *In re Mission Coal Company, LLC*, No. 18-04177 (TOM) (Bankr. N.D. Ala. Oct. 16, 2018); *In re PES Holdings, LLC*, No. 18-10122 (KG) (Bankr. D. Del. Jan. 23, 2018); *In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Dec. 13, 2017); *In re Answers Holdings, Inc.*, No. 17-10496 (SMB) (Bankr. S.D.N.Y. Mar. 10, 2017); *In re Memorial Production Partners LP*, No. 17-30262 (MI) (Bankr. S.D. Tex. Jan. 18, 2017); *In re ITT Educational Services, Inc.*, No. 16-07207 (JMC) (Bankr. S.D. Ind. Oct. 4, 2016); *In re Joyce Leslie, Inc.*, No. 16-22035 (RDD) (Bankr. S.D.N.Y. Jan. 12, 2016); *In re Phoenix Brands, LLC*, No. 16-11242 (BLS) (Bankr. D. Del. May 23, 2016); *In re Mission Grp. Kansas*, No. 16-20656 (RDB) (Bankr. D. Kan. May 3, 2016); *In re Quirky, Inc.*, No. 15-12596 (MG) (Bankr. S.D.N.Y. Sept. 28, 2015); *In re First Mariner Bancorp*, No. 14-11952 (DER) (Bankr. D. Md. Mar. 13, 2014); *In re Budget Travel*, No. 12-14815 (ALG) (Bankr. S.D.N.Y. May 2, 2013); *In re MetroPark USA, Inc.*, No. 11-22866 (RDD) (Bankr. S.D.N.Y. May 9, 2011); *In re Lehr Construction Corp.*, No. 11-10723 (SHL) (Bankr. S.D.N.Y. Mar. 24, 2011).<sup>2</sup> Omni will follow procedures that conform to applicable guidelines promulgated by the Clerk (as defined below) and the Judicial Conference and any procedures the Court might establish by order during these chapter 11 cases.

9. By appointing Omni as the Claims and Noticing Agent in these chapter 11 cases, the distribution of notices and the processing of claims will be expedited, and the Office of the Clerk of the United States Bankruptcy Court for the Southern District of New York (the "Clerk") will be relieved of the administrative burden of processing proofs of claims, if any.

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<sup>2</sup> Because of the voluminous nature of the orders cite herein, such orders have not been attached to this application. Copies of these orders are available upon request to the Debtors' proposed counsel.

**Services to be Provided**

10. This application pertains only to the work to be performed by Omni under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and any work to be performed by Omni outside of this scope is not covered by this application or by any order granting approval hereof. Specifically, Omni will perform the following tasks in its role as Claims and Noticing Agent, as well as all quality control relating thereto:

- a. prepare and serve required notices and documents in these chapter 11 cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of these chapter 11 cases and the initial meeting of creditors, if any, under section 341(a) of the Bankruptcy Code, (ii) notice of any claims bar date, if necessary, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement or confirmation of the Debtors' plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan, and (vii) all other notices, orders, pleadings, publications, and other documents as the Debtors or the Court may deem necessary or appropriate for an orderly administration of these chapter 11 cases;
- b. maintain an official copy of the Debtors' schedules of assets and liabilities, schedules of current income and expenditures, schedules of executory contracts and unexpired leases, statements of financial affairs, schedules of current income and expenditures, and schedules of executory contracts and unexpired leases (collectively, the "Schedules"), to the extent the filing of the Schedules is necessary in these chapter 11 cases, listing the Debtors' known creditors and the amounts owed thereto, if the requirement to file such Schedules is not waived by the Court;
- c. maintain (i) a list of all potential creditors, equityholders, and other parties in interest; and (ii) a "core" mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j), and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; and update and make said lists available upon request by a party in interest or the Clerk;
- d. furnish a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Court, and notify said potential creditors of the existence, amount, and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the



lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;

- e. maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- f. for *all* notices, applications, orders, or other pleadings or documents served, prepare and file or cause to be filed with the Clerk an affidavit or certificate of service within seven business days of service which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- g. process all proofs of claim received, if any, including those received by the Clerk, confirm processing for accuracy, and maintain the original proofs of claim in a secure area;
- h. provide an electronic interface for filing proofs of claim;
- i. (i) maintain the official claims register for each Debtor (collectively, the “Claims Registers”) on behalf of the Clerk on a case-specific website, (ii) upon the Clerk’s request, provide the Clerk with certified, duplicate unofficial Claims Registers, and (iii) specify in the Claims Registers the following information for each claim docketed: (A) the claim number assigned; (B) the date received; (C) the name and address of the claimant and agent, if applicable, who filed the claim; (D) the amount asserted; (E) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, etc.); (F) the applicable Debtor; and (G) any disposition of the claim;
- j. provide public access to the Claims Registers, including complete proofs of claim with attachments, if any, without charge;
- k. implement necessary security measures to ensure the completeness and integrity of the Claims Registers, if any, and the safekeeping of the original claims;
- l. record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- m. relocate, by messenger or overnight delivery, all of the proofs of claim filed directly with the Court to Omni’s offices, not less than weekly;
- n. upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the Claims Registers for the Clerk’s review (upon the Clerk’s request);

- o. monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the Claims Registers and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- p. identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- q. assist in the dissemination of information to the public and respond to requests for administrative information regarding these chapter 11 cases as directed by the Debtors or the Court, including through the use of a case website and/or call center;
- r. if these chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk within three days of notice to Omni of entry of the order converting these chapter 11 cases;
- s. thirty days prior to the close of these chapter 11 cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing Omni and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of these chapter 11 cases;
- t. within seven days of notice to Omni of entry of an order closing these chapter 11 cases, provide to the Court the final version of the Claims Registers as of the date immediately before the close of these chapter 11 cases; and
- u. at the close of these chapter 11 cases, box and transport all original documents, in proper format, as provided by the Clerk, to (i) the Federal Archives Record Administration, located at Central Plains Region, 200 Space Center Drive, Lee's Summit, Missouri 64064 (the "Federal Archives Record Administration") or (ii) any other location requested by the Clerk.

11. The Claims Registers shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by Omni.

#### **Professional Compensation**

12. The Debtors respectfully request that the undisputed fees and expenses incurred by Omni in the performance of the above services be treated as administrative expenses of the Debtors' chapter 11 estates pursuant to 28 U.S.C. § 156(c) and section 503(b)(1)(A) of

the Bankruptcy Code and be paid in the ordinary course of business without further application to or order of the Court. Omni agrees to maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and to serve monthly invoices on the Debtors, the office of the U.S. Trustee for the Southern District of New York, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party in interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Engagement Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Court.

13. Prior to the Petition Date, the Debtors provided Omni a retainer in the amount of \$25,000. Omni seeks to hold the retainer under the Engagement Agreement during these chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

**Disinterestedness**

14. Although the Debtors do not propose to employ Omni under section 327 of the Bankruptcy Code pursuant to this application (such retention will be sought by separate application), Omni has nonetheless reviewed its electronic database to determine whether it has any relationships with the Debtors' creditors and parties in interest, and, to the best of the Debtors' knowledge, information, and belief, and except as disclosed in the Miller Declaration, Omni has represented that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

15. Moreover, in connection with its retention as Claims and Noticing Agent, Omni represents in the Miller Declaration, among other things, that:

- a. Omni is not a creditor of the Debtors;
- b. Omni will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these chapter 11 cases;
- c. by accepting employment in these chapter 11 cases, Omni waives any rights to receive compensation from the United States government in connection with these chapter 11 cases;
- d. in its capacity as the Claims and Noticing Agent in these chapter 11 cases, Omni will not be an agent of the United States and will not act on behalf of the United States;
- e. Omni will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these chapter 11 cases;
- f. Omni is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
- g. in its capacity as Claims and Noticing Agent in these chapter 11 cases, Omni will not intentionally misrepresent any fact to any person;
- h. Omni shall be under the supervision and control of the Clerk with respect to the receipt and recordation of claims and claim transfers;
- i. Omni will comply with all requests of the Clerk and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- j. none of the services provided by Omni as Claims and Noticing Agent in these chapter 11 cases shall be at the expense of the Clerk.

Omni will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

**Compliance with Claims and Noticing Agent Protocol**

16. This application complies with and substantially conforms to the standard application in use in this Court. To the extent that there is any inconsistency between this application, the Order, and the Engagement Agreement, the Order shall govern.

**Basis for Relief**

17. Section 156(c) of title 28 of the United States Code, which governs the staffing and expenses of bankruptcy courts, authorizes the Court to use “facilities” or “services” other than the Clerk for administration of bankruptcy cases. It states:

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

18. The Debtors submit that Omni’s rates are competitive and reasonable given Omni’s quality of services and expertise. The terms of Omni’s retention are set forth in the Engagement Agreement; *provided* that Omni is seeking by this application approval solely of the terms and provisions as set forth in this application and the proposed order attached hereto as **Exhibit A**.

19. The Debtors anticipate that there will be thousands of persons and entities to be noticed in these chapter 11 cases, many of which are expected to file proofs of claim. Given the number of creditors and other parties in interest involved in these chapter 11 cases, the Debtors seek an order appointing Omni as the Claims and Noticing Agent in these chapter 11 cases pursuant to 28 U.S.C. § 156(c) to relieve this Court and the Clerk of such administrative burdens.

**Notice**

20. The Debtors will provide notice of this application to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent for the Debtors’ term loan facility and counsel thereto; (d) the administrative agent for the Debtors’ revolving loan credit facility and counsel thereto; (e) the administrative agent for the Debtors’ proposed debtor in

possession financing facility and counsel thereto; (f) the United States Attorney's Office for the Southern District of New York; (g) the Internal Revenue Service; (h) the attorneys general for the states in which the Debtors operate; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

21. No prior request for the relief sought in this application has been made to this or any other court.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

New York, New York  
Dated: May 19, 2019

/s/ Joshua A. Sussberg  
Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

- and -

Joseph M. Graham (*pro hac vice* pending)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

HOLLANDER SLEEP PRODUCTS, LLC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 19-11608 (\_\_\_\_)  
)  
) (Joint Administration Requested)  
)  
) **Re: Docket No. \_\_\_\_**

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**ORDER (I) AUTHORIZING AND APPROVING THE  
APPOINTMENT OF OMNI MANAGEMENT GROUP AS NOTICE  
AND CLAIMS AGENT TO THE DEBTORS AND (II) GRANTING RELATED RELIEF**

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Upon the application (the “Application”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an order (this “Order”), (a) appointing Omni as Claims and Noticing Agent for the Debtors and their chapter 11 cases effective *nunc pro tunc* to the Petition Date, including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Debtors’ chapter 11 case, and (b) granting related relief, all as more fully set forth in the Application; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application.

28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Application and opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. Notwithstanding the terms of the Engagement Agreement attached as Exhibit C to the Application, the Application is granted as set forth herein.

2. The Debtors are authorized to retain Omni as Claims and Noticing Agent under the terms of the Engagement Agreement, and Omni is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these chapter 11 cases, and all related tasks, all as described in the Application.

3. Omni shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these chapter 11 cases and is authorized and directed to maintain official Claims Registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by the Court, and to provide the Clerk with certified duplicates thereof upon the request of the Clerk.

4. Omni is authorized and directed to obtain a post office box or address for the receipt of proofs of claim.

5. Omni is authorized to take such other action to comply with all duties set forth in the Application.

6. The Debtors are authorized to compensate Omni in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Omni and the rates charged for each, and to reimburse Omni for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for Omni to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. Omni shall maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on the Debtors, the office of the U.S. Trustee for the Southern District of New York, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party in interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices; *provided* that the parties may seek resolution of the matter from this Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses Omni incurs pursuant to this Order shall be administrative expenses of the Debtors' estates.

10. Omni may hold its retainer under the Engagement Agreement during the chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

11. To the extent applicable in the Engagement Agreement, all requests by Omni for the payment of indemnification shall be made by means of an application to the Court and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Agreement and is reasonable under the circumstances of the litigation or settlement in respect of which indemnity is sought; *provided* that in no event shall Omni be

indemnified in the case for its own bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct.

12. In the event that Omni seeks reimbursement from the Debtors for attorneys' fees in connection with the payment of an indemnity claim, the invoices and supporting time records for the attorneys' fees and expenses shall be included in Omni's own applications, both interim and final, but determined by this Court after notice and a hearing.

13. In the event Omni is unable to provide the services set out in this Order, Omni will immediately notify the Clerk and the Debtors' counsel and, upon approval of this Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' counsel.

14. The Debtors may submit a separate retention application, pursuant to 11 U.S.C. § 327 and/or any applicable law, for work that is to be performed by Omni but is not specifically authorized by this Order.

15. Omni shall not cease providing claims processing services during these chapter 11 cases for any reason, including nonpayment, without an order of this Court; *provided* that Omni may seek such an order on expedited notice by filing a request with this Court with notice of such request to be served on the Debtors, the office of the U.S. Trustee for the Southern District of New York, and any official committee of creditors appointed in these cases by facsimile or overnight delivery; *provided, further*, that except as expressly provided herein, the Debtors and Omni may otherwise terminate or suspend other services as provided under the Engagement Agreement.

16. After entry of an order terminating Omni's services as the Claims and Noticing Agent, upon the closing of these cases or for any other reason, Omni shall be responsible for archiving all proofs of claim with the Federal Archives Record Administration, if applicable.

17. In the event of any inconsistency between the Engagement Agreement, the Application, and this Order, this Order shall govern.

18. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

19. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

20. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

21. The Debtors and Omni are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Application.

22. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York  
Dated: \_\_\_\_\_, 2019

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Miller Declaration**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup>

Debtors.

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)  
) Chapter 11  
)  
) Case No. 19-11608 (\_\_\_\_)  
)  
) (Joint Administration Requested)  
)

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**DECLARATION OF ALISON MILLER IN SUPPORT OF DEBTORS' APPLICATION  
FOR ENTRY OF AN ORDER (I) AUTHORIZING AND APPROVING THE  
APPOINTMENT OF OMNI MANAGEMENT GROUP AS CLAIMS AND  
NOTICING AGENT AND (II) GRANTING RELATED RELIEF**

---

I, Alison Miller, under penalty of perjury, declare as follows:

1. I am a Senior Vice President of Omni Management Group ("Omni"), a chapter 11 administrative services firm, whose offices are located at 1120 Avenue of the Americas, 4th Floor, New York, New York 10036. Except as otherwise noted, I have personal knowledge of the matters set forth herein and, if called and sworn as a witness, I could and would testify competently thereto.

2. This Declaration is made in support of the *Debtors' Application for Entry of an Order (I) Authorizing and Approving the Appointment of Omni Management Group as Claims and Noticing Agent and (II) Granting Related Relief*, which was filed contemporaneously herewith (the "Application").<sup>2</sup>

3. Omni comprises leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. Omni's professionals have

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Application.

experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. Omni's professionals have acted as debtors' administrative advisor and/or official claims and noticing agent in many large bankruptcy cases in this and other districts nationwide, including: *In re Mission Coal Company, LLC*, No. 18-04177 (TOM) (Bankr. N.D. Ala. Oct. 16, 2018); *In re PES Holdings, LLC*, No. 18-10122 (KG) (Bankr. D. Del. Jan. 23, 2018); *In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Dec. 13, 2017); *In re Answers Holdings, Inc.*, No. 17-10496 (SMB) (Bankr. S.D.N.Y. Mar. 10, 2017); *In re Memorial Production Partners LP*, No. 17-30262 (MI) (Bankr. S.D. Tex. Jan. 18, 2017); *In re ITT Educational Services, Inc.*, No. 16-07207 (JMC) (Bankr. S.D. Ind. Oct. 4, 2016); *In re Joyce Leslie, Inc.*, No. 16-22035 (RDD) (Bankr. S.D.N.Y. Jan. 12, 2016); *In re Phoenix Brands, LLC*, No. 16-11242 (BLS) (Bankr. D. Del. May 23, 2016); *In re Mission Grp. Kansas*, No. 16-20656 (RDB) (Bankr. D. Kan. May 3, 2016); *In re Quirky, Inc.*, No. 15-12596 (MG) (Bankr. S.D.N.Y. Sept. 28, 2015); *In re First Mariner Bancorp*, No. 14-11952 (DER) (Bankr. D. Md. Mar. 13, 2014); *In re Budget Travel*, No. 12-14815 (ALG) (Bankr. S.D.N.Y. May 2, 2013); *In re MetroPark USA, Inc.*, No. 11-22866 (RDD) (Bankr. S.D.N.Y. May 9, 2011); *In re Lehr Construction Corp.*, No. 11-10723 (SHL) (Bankr. S.D.N.Y. Mar. 24, 2011).<sup>3</sup>

4. As agent and custodian of Court records pursuant to 28 U.S.C. § 156(c), Omni will perform, at the request of the Office of the Clerk of the Bankruptcy Court (the "Clerk"), the services specified in the Application and the Engagement Agreement, and, at the Debtors' request, any related administrative, technical, and support services as specified in the Application

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<sup>3</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to the Application. Copies of these orders are available upon request to the Debtors' proposed counsel.



and the Engagement Agreement. In performing such services, Omni will charge the Debtors the rates set forth in the Engagement Agreement, which is attached as **Exhibit C** to the Application.

5. Before the Petition Date, the Debtors provided Omni a retainer in the amount of \$25,000. Omni seeks to hold the retainer under the Engagement Agreement during these chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

6. Omni represents, among other things, the following:

- a. Omni is not a creditor of the Debtors;
- b. Omni will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these chapter 11 cases;
- c. by accepting employment in these chapter 11 cases, Omni waives any rights to receive compensation from the United States government in connection with these chapter 11 cases;
- d. in its capacity as the Claims and Noticing Agent in these chapter 11 cases, Omni will not be an agent of the United States and will not act on behalf of the United States;
- e. Omni will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these chapter 11 cases;
- f. Omni is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
- g. in its capacity as Claims and Noticing Agent in these chapter 11 cases, Omni will not intentionally misrepresent any fact to any person;
- h. Omni shall be under the supervision and control of the Clerk with respect to the receipt and recordation of claims and claim transfers;
- i. Omni will comply with all requests of the Clerk and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- j. none of the services provided by Omni as Claims and Noticing Agent in these chapter 11 cases shall be at the expense of the Clerk.

7. To the best of my knowledge, and based solely upon information provided to me by the Debtors, and except as provided herein, neither Omni, nor any employee thereof, has any materially adverse connection to the Debtors, their creditors, or other relevant parties. Omni may have relationships with certain of the Debtors' creditors as a vendor or in connection with cases in which Omni serves or has served in a neutral capacity as noticing, claims, and balloting agent for another chapter 11 debtor.

8. Omni personnel may have relationships with some of the Debtors' creditors or other parties in interest. However, to the best of my knowledge, such relationships, to the extent they exist, are of a personal nature and completely unrelated to these chapter 11 cases. Omni has and will continue to represent clients in matters unrelated to these chapter 11 cases. In addition, Omni has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals, and other parties in interest that may be involved in the Debtors' cases in matters unrelated to these cases. Omni may also provide professional services to entities or persons that may be creditors or parties in interest in these chapter 11 cases, which services do not directly relate to, or have any direct connection with, these chapter 11 cases or the Debtors. To the best of my knowledge, neither Omni, nor any employees thereof, represents any interest materially adverse to the Debtors' estates with respect to any matter upon which Omni is to be engaged.

9. Although the Debtors do not propose to retain Omni under section 327 of the Bankruptcy Code (such retention will be sought by separate application), Omni has nonetheless reviewed its electronic database to determine whether it has any relationships with the entities provided by the Debtors. At this time, we are not aware of any relationship which would present a disqualifying conflict of interest. Should Omni discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, Omni will use reasonable

efforts to promptly file a supplemental declaration. Omni will also comply with all requests of the Clerk and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

10. Based on the foregoing, I believe that Omni is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Dated: May 19, 2019  
New York, New York

*Alison Miller*

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Alison Miller  
Senior Vice President  
Omni Management Group

**Exhibit C**

**Engagement Agreement**



April 29, 2019

Dream II Holdings, LLC  
Attn: Mr. Marc Pfefferle  
Chief Executive Officer  
901 Yamato Road  
Suite 250  
Boca Raton, FL 33431

**Re: Omni Retention letter**

Mr. Pfefferle:

This letter (the "Agreement") will acknowledge that Dream II Holdings, LLC and certain affiliated entities (the "Client"), has requested Omni Management Group ("Omni") to provide administrative services in connection with the Clients' chapter 11 cases. Omni will make itself available to the Clients, as requested, for the purposes of assisting the Clients with administration matters including data entry, maintenance of the creditor matrix, noticing services, compilation of the Schedules of Assets and Liabilities and Statement of Financial Affairs, claims management, maintain an informational website, 800# services, solicitation services (if required) and any other administrative services as may be requested by the Clients.

The services to be rendered by Omni will be billed at a discount of 10% to our standard hourly rates which range from \$25.00 to \$155.00 per hour as per the attached rate sheet. Rates are adjusted annually on January 2<sup>nd</sup> of each year and are subject to increases not to exceed ten (10%) percent per annum. Increases greater than ten (10%) percent per annum will be discussed with you, and be subject to your prior approval, before becoming effective.

For this engagement, Omni shall require a general retainer of \$25,000. Omni shall be compensated on a monthly basis for those services performed by Omni during the preceding calendar month. Invoices are payable upon submission.



Mr. Marc Pfefferle  
April 29, 2019  
Page 2

Each of Omni and the Client, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

The parties understand that the software programs and other materials furnished by Omni pursuant to this Agreement and/or developed while this Agreement by Omni are the sole property of Omni. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Client agree not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement. The Client further agrees that any ideas, concepts, know-how or techniques relating to data processing or Omni's performance of its services developed while its Agreement by Omni shall be the exclusive property of Omni.

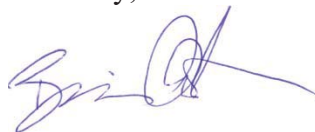
This Agreement is terminable at will by the parties hereto upon thirty (30) days written notice. Notwithstanding the foregoing, either party may terminate this Agreement immediately upon written notice in the event of a breach by the other party. In the event that this Agreement is terminated, regardless of the reason for such termination, Omni shall cooperate with the Client to maintain an orderly transfer of all records, data and information and record keeping functions, and shall provide all necessary staff, services and assistance required for an orderly transfer. The Client agrees to pay for such services in accordance with Omni's then existing prices for such services.



Mr. Marc Pfefferle  
April 29, 2019  
Page 3

Please acknowledge the above by signing and returning a copy of this letter.  
Should you have any questions regarding the above, please do not hesitate to call me.

Sincerely,



Brian Osborne  
President

Enc.

cc: Alison Miller

Date: 4/29/19

By: \_\_\_\_\_

Mr. Marc Pfefferle  
Chief Executive Officer of Dream II Holdings,  
LLC.





## Rate Sheet

WWW.OMNIMGT.COM

### Hourly Rates for Standard and Custom Services

#### RATE/COST

Analyst	\$25.00 - \$40.00 per hour
Consultants	\$50.00 - \$125.00 per hour
Senior Consultants	\$140.00 - \$155.00 per hour
Equity Services	\$175.00 per hour
Technology/Programming	\$85.00 - \$135.00 per hour
President/Executive (Brian Osborne and Paul Deutch, with 52 years combined restructuring experience, provide supervisory services at no charge.)	Waived

### Printing and Noticing Services

Copy	\$.10 per image
Document folding and insertion	No Charge
Labels/Envelope printing	\$.035 each
E-mail noticing	No charge
Bulk E-mail noticing (Over 10,000 parties)	Quote Upon Request
Certified email	Quote upon request
Facsimile noticing	\$.10/image
Postage	At cost (Advance payment required for postage charges over \$10,000)
Envelopes	Varies by size

### Newspaper and Legal Notice Publishing

Coordinate and publish legal notice	Quote prior to publishing
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### Claims Management

Inputting proofs of claim	Hourly rates (No per claim charges)
Scanning	\$.10/image
Remote Internet access for claims management	
Setup	No charge
Access	No charge

### Creditor Database

Data storage	Waived for 3 months. Under 10,000 records - No charge, Over 10,000 records - .05 per record, Over 100,000 records - .04 per record
Per image storage	No charge

### Informational Website

Creation, configuration, and initial setup	No charge
Data entry/information updates	\$60.00 per hour
Programming and customization	\$85 - \$135.00 per hour
Debtor website hosting	No charge
Committee website hosting	No charge



## Rate Sheet

WWW.OMNIMGT.COM

Shareholder website hosting	No charge
Scanning	\$.10/image

### Virtual Data Rooms

Quote upon request

### Call Centers / Dedicated Line

Creation, configuration and initial setup	No charge
Hosting fee	\$5.50 per month
Usage	\$.0825 per minute
Service rates (actual talk and log-entry time)	\$60.00 per hour

### Case Docket / Claims Register

No charge

### Solicitation and Tabulation

Plan and disclosure statement mailings	Quoted prior to printing
Ballot tabulation	Standard hourly rates apply

### Public Debt and Equities Securities and/Rights Offerings Services

Noticing Services	Standard hourly rates apply
Solicitation, Balloting and Tabulation	Standard hourly rates apply
Rights Offerings	Standard hourly rates apply
Security Position Identification Reports	Standard hourly rates apply

### Schedules / SoFA

Preparation and updating of schedules and SoFAs	\$50.00 - \$155.00 per hour
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### UST Reporting Compliance

(e.g., assist debtors to meet satisfy jurisdictional requirements, preparation of monthly operating and post-confirmation reports)	Standard hourly rates apply
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### Miscellaneous

Telephone charges	At cost
Delivery	At cost
Archival DVD/CD-Rom	\$40.00 per copy

### Real-Time Reports

Claims dashboard	No charge
Claim reports	\$25.00
Solicitation dashboard	No charge
Tabulation dashboard	No charge
Solicitation reports	\$25.00
Service list manager	\$0.05 per party, per generated list



THIS IS EXHIBIT "W" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.

A handwritten signature in blue ink, appearing to be "JHV" followed by a long horizontal stroke.

---

Commissioner for Taking Affidavits

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. 66</b>

**ORDER AUTHORIZING AND APPROVING  
THE EMPLOYMENT AND RETENTION OF OMNI MANAGEMENT  
GROUP AS ADMINISTRATIVE ADVISOR FOR THE DEBTORS  
AND DEBTORS IN POSSESSION *NUNC PRO TUNC* TO THE PETITION DATE**

Upon the application (the “Application”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) (a) appointing Omni as administrative advisor (“Administrative Advisor”) *nunc pro tunc* to the Petition Date and (b) granting related relief, all as more fully set forth in the Application; and upon the First Day Declaration and the Miller Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Application.

notice of the Application and opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Application is granted to the extent set forth herein.
2. The Debtors are authorized to retain Omni as Administrative Advisor effective *nunc pro tunc* to the Petition Date under the terms of the Engagement Agreement, and Omni is authorized to perform the bankruptcy administration services described in the Application and set forth in the Engagement Agreement.
3. Omni is authorized to take such other actions as are necessary to comply with all duties set forth in the Application.
4. Omni shall apply to this Court for allowance of compensation and reimbursement of expenses incurred after the Petition Date in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, standing General Order M-447 (*Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases*), effective February 5, 2013 (the “Amended Guidelines”), the United States Trustee Fee Guidelines (the “U.S. Trustee Guidelines”), and any orders entered in these chapter 11 cases regarding professional compensation and reimbursement of expenses in connection with its services as Administrative Advisor.

5. In the event that Omni seeks reimbursement from the Debtors for attorneys' fees and expenses in connection with its Administrative Advisor services, the invoices and supporting time records for the attorneys' fees and expenses shall be included in Omni's own applications, both interim and final, and these invoices and time records shall be subject to the Amended Guidelines, the U.S. Trustee Guidelines, and the approval of the Bankruptcy Court pursuant to sections 330 and 331 of the Bankruptcy Code without regard to whether such attorneys have been retained under section 327 of the Bankruptcy Code, and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code. Omni shall not be entitled to reimbursement by the Debtors for any fees, disbursements, or other charges of Omni's counsel other than those approved by the Court.

6. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

8. The Debtors and Omni are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

9. In the event of an inconsistency between the Engagement Agreement, the Application, and this Order, this Order shall govern.

10. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

11. This Court retains exclusive jurisdiction with respect to all matters arising from, or related to, the implementation, interpretation, and enforcement of this Order.

New York, New York  
Dated: July 2, 2019

**s/Michael E. Wiles**

THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

THIS IS EXHIBIT "X" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.

A handwritten signature in blue ink, appearing to be "Zhr" followed by a long horizontal stroke.

---

Commissioner for Taking Affidavits



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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

---

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) ESTABLISHING  
CERTAIN NOTICE, CASE MANAGEMENT, AND ADMINISTRATIVE  
PROCEDURES AND (B) GRANTING RELATED RELIEF**

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The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion:

**Relief Requested**

1. By this motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) approving and implementing the notice, case management, and

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

administrative procedures attached as **Exhibit 1** to **Exhibit A** attached hereto (the “Case Management Procedures”),<sup>2</sup> and (b) granting related relief.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 102(1), 105(a), and 105(d) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rules 1015(c), 2002(m), 9006, 9007, and 9014, and Rule 9074-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

### **Background**<sup>3</sup>

5. Hollander Sleep Products is the largest pillow and mattress pad manufacturer in North America. The Debtors also manufacture comforters and other basic bedding products. The Debtors have their own brands, including Great Sleep®, I AM®, LC®, PCF®, and Restful

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed such term in the Case Management Procedures.

<sup>3</sup> The facts and circumstances supporting this motion are set forth in the *Declaration of Marc Pfefferle, Chief Executive Officer of Hollander Sleep Products, LLC, in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein.

Nights®, and also manufacture and sell licensed brands, including Simmons®, Ralph Lauren®, CHAPS®, Calvin Klein®, Therapedic®, Nautica®, 37.5®, and Dr. Maas®. The Debtors are headquartered in Boca Raton, Florida, operate a main showroom in New York City, and have thirteen manufacturing facilities throughout the United States and Canada. The Debtors generated approximately \$527 million in net revenue in fiscal year 2018 and currently employ more than 2,300 people across the United States and Canada. As of the date hereof, the Debtors have approximately \$233 million in funded debt.

6. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have concurrently filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

#### **Proposed Case Management Procedures**

7. The proposed Case Management Procedures, among other things, (a) establish requirements for filing and serving Court Filings, (b) delineate standards for notices of hearings and agenda letters, (c) fix periodic omnibus hearing dates and articulate mandatory guidelines for the scheduling of hearings and objection deadlines, and (d) limit matters that are required to be heard by the Court.

8. Given the size and complexity of these chapter 11 cases, the Debtors believe that implementing the Case Management Procedures will facilitate the fair and efficient administration of these cases and promote judicial economy. Specifically, the proposed Case Management Procedures will benefit the Debtors, the Court, and all parties in interest by, among other things:

- a. reducing the need for emergency hearings and requests for expedited relief;

- b. providing for omnibus hearings for the Court to consider motions, pleadings, applications, objections, and responses thereto;
- c. fostering consensual resolution of important matters;
- d. assuring prompt and appropriate notice of matters affecting parties' interests;
- e. allowing for electronic notice pursuant to the Court's electronic filing system;
- f. providing ample opportunity to parties in interest to prepare for and respond to matters before the Court;
- g. reducing the substantial administrative and financial burden that would otherwise be placed on the Debtors and other parties in interest who file documents in these chapter 11 cases; and
- h. reducing the administrative burdens on the Court and the Clerk of the Court.

9. To ensure that parties in interest in these chapter 11 cases are made aware of the Case Management Procedures, the Debtors propose to (a) serve the Case Management Procedures on the Master Service List, (b) publish the Case Management Procedures on the Debtors' restructuring website at [www.omnimgt.com/hollander](http://www.omnimgt.com/hollander) (the "Case Website"), and (c) make the Case Management Procedures readily available on request to the Debtors' proposed claims and noticing agent, Omni Management Group ("Omni").

#### **Basis for Relief**

10. The Bankruptcy Code, the Bankruptcy Rules, and the Local Rules provide the Court with authority to approve notice, case management, and administrative procedures. Specifically, Bankruptcy Rule 2002(m) states that "[t]he court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules." *See* Fed. R. Bankr. P. 2002(m); *see also* Fed. R. Bankr. P. 9007 ("When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the

form and manner in which the notice shall be given.”). In addition, Bankruptcy Rule 9036 authorizes parties in interest to request that “all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission.” *See* Fed. R. Bankr. P. 9036.

11. Section 102(1) of the Bankruptcy Code provides that if the Bankruptcy Code requires an action to occur “after notice and a hearing,” such action may occur “after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances.” 11 U.S.C. § 102(1)(A). Moreover, section 105(a) of the Bankruptcy Code states that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); *see also* 11 U.S.C. § 105(d)(1) (allowing the court to schedule status conferences as necessary to further the resolution of the case).

12. In addition, Local Rule 9074-1 allows the Court to set appropriate notice requirements and objection deadlines in connection with the facts and circumstances of these chapter 11 cases. *See, e.g.*, Local Rule 9074-1(c)(3), (4). Further, pursuant to the Court’s General Order M-399, *Electronic Means for Filing, Signing and Verification of Documents*, dated May 17, 2010, a party’s request for an electronic filing password and “[t]he Court’s issuance of a [CM/ECF] account to a System user constitutes waiver of conventional service.” General Order M-399 at § II.B.

13. The Case Management Procedures in these chapter 11 cases should be approved. Approval of the Case Management Procedures will promote the efficient and orderly administration of these chapter 11 cases by, among other things, (a) limiting service of Court filings to those parties that have an interest in the subject matter thereof, (b) authorizing electronic service, and (c) fixing monthly omnibus hearings. The omnibus hearings and electronic notice

requirements as provided in the Case Management Procedures will alleviate any notice or hearing burdens that may arise in these chapter 11 cases whenever possible by establishing set hearings and briefing schedules. Parties will then also be able to seek emergency relief as is necessary as provided by the Case Management Procedures. Moreover, General Order M-399 expressly provides that any party submitting a Court Filing with the Electronic Filing System already has consented to electronic service as provided by the proposed order and will not be prejudiced by electronic notice. Such registered participants will receive a “Notice of Electronic Filing” via email whenever a filing is made, which will provide additional notice to such parties. If a party cannot reasonably obtain access to email, then such party may seek an exemption from electronic service to receive paper copies of any Court Filing as set forth in the proposed order. Therefore, no party will be affected adversely by electronic service as set forth in the Case Management Procedures.

14. Courts in this district regularly grant relief similar to that requested herein to expedite case administration and to reduce the costs thereof. *See, e.g., In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Apr. 22, 2019); *In re FULLBEAUTY Brands Holding Corp.*, No. 19-22185 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2019); *In re Aegean Marine Petroleum Network, Inc.*, No. 18-13374 (MEW) (Bankr. S.D.N.Y. Nov. 27, 2018); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. Apr. 13, 2018); *In re Cenveo, Inc.*, No. 18-22178 (RDD) (Bankr. S.D.N.Y. Mar. 15, 2018).<sup>4</sup> Accordingly, the Debtors believe that the proposed order is appropriate and should be approved and implemented in these chapter 11 cases.

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<sup>4</sup> Because of the voluminous nature of these orders, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.

**Motion Practice**

15. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this motion. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1(a).

**Notice**

16. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent for the Debtors' term loan facility and counsel thereto; (d) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (e) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel thereto; (f) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; (g) the United States Attorney's Office for the Southern District of New York; (h) the Internal Revenue Service; (i) the attorneys general for the states in which the Debtors operate; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

17. No prior request for the relief sought in this motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

New York, New York  
Dated: May 19, 2019

/s/ Joshua A. Sussberg  
Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
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- and -

Joseph M. Graham (*pro hac vice* pending)  
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*Proposed Counsel to the Debtors and Debtors in Possession*



**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

HOLLANDER SLEEP PRODUCTS, LLC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 19-11608 (\_\_\_\_)  
)  
) (Joint Administration Requested)  
)  
) **Re: Docket No. \_\_\_\_**

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**ORDER (A) ESTABLISHING CERTAIN NOTICE, CASE MANAGEMENT, AND  
ADMINISTRATIVE PROCEDURES AND (B) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an order (this “Order”) approving and implementing the notice, case management, and administrative procedures annexed hereto as **Exhibit 1** (the “Case Management Procedures”), all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Case Management Procedures, as set forth in Exhibit 1 attached hereto, are approved and shall govern all applicable aspects of these chapter 11 cases, except as otherwise ordered by this Court.
3. The first four Omnibus Hearings are scheduled as follows:
  - \_\_: \_\_ .m. on the \_\_th day of \_\_\_\_\_;
  - \_\_: \_\_ .m. on the \_\_th day of \_\_\_\_\_;
  - \_\_: \_\_ .m. on the \_\_th day of \_\_\_\_\_; and
  - \_\_: \_\_ .m. on the \_\_th day of \_\_\_\_\_.
4. The Debtors’ claims and noticing agent, Omni Management Group, is authorized to establish the Case Website, available at [www.omnimgt.com/hollander](http://www.omnimgt.com/hollander), where, among other things, electronic copies of all Court Filings will be posted and viewable free of charge.
5. Any notice sent by the Debtors or any other party to the Master Service List or the 2002 List, or to any parties required by the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Case Management Procedures, or further order of this Court, shall be deemed sufficient and in compliance with thereof.
6. All time periods set forth in this Order or in the Case Management Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a).

7. Notice of the Motion as provided herein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rules and the Local Rules are satisfied by such notice.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

9. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York

Dated: \_\_\_\_\_, 2019

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Case Management Procedures**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

)  
) Chapter 11  
)

HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup>

) Case No. 19-11608 (\_\_\_\_)  
)

Debtors.

) (Joint Administration Requested)  
)

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**CASE MANAGEMENT PROCEDURES**

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On May 19, 2019 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”), each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (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.<sup>2</sup>

On \_\_, 2019, the Court entered an order [Docket No. \_\_] (the “Order”) approving these case management procedures (the “Case Management Procedures”) set forth herein pursuant to sections 102(1), 105(a), and 105(d) of the Bankruptcy Code, Rules 2002(m), 9007, 9036 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9074-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”). Anyone may obtain a copy of the Order, as well as any Court Filing filed with the Court in these chapter 11 cases, by:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not immediately defined herein have the meanings given to such terms elsewhere in these Case Management Procedures.

(a) accessing the website maintained by Omni Management Group (“Omni” or the “Claims and Noticing Agent”), at [www.omnimgt.com/hollander](http://www.omnimgt.com/hollander) (the “Case Website”); (b) contacting Omni directly at Hollander Sleep Products, LLC, c/o Omni Management Group, 5955 DeSoto Avenue, Suite #100, Woodland Hills, CA 91367, telephone (844) 212-9942 (for domestic or Canadian callers) and (818) 906-8300 (international), email [hollander@omnimgt.com](mailto:hollander@omnimgt.com); or (c) accessing the PACER system on the Court’s website at <https://www.nysb.uscourts.gov> for a nominal fee.

Pursuant to the Order, all notices, motions, applications, briefs, memoranda, affidavits, declarations, objections, responses, and other documents filed in these chapter 11 cases are subject to, and will not be deemed properly served unless they are served in accordance with, these Case Management Procedures. Additionally, while the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules apply to these chapter 11 cases, to the extent there is a conflict between the foregoing and these Case Management Procedures, these Case Management Procedures shall govern in all respects. *Accordingly, all parties in interest are strongly encouraged to review these Case Management Procedures in their entirety and consult their own legal counsel with respect to any of the matters discussed herein before filing any documents in these chapter 11 cases.*

### **Case Management Procedures**

#### **I. Hearing Procedures.**

1. *All Matters to Be Heard at Omnibus Hearings.* The Court shall schedule periodic omnibus hearings (the “Omnibus Hearings”) to consider all notices, motions, applications, and other requests for relief, briefs, memoranda, affidavits, declarations, replies, and other documents filed in support of such papers seeking relief (collectively, the “Requests for Relief”), and all objections and responses to such Requests for Relief (collectively, the “Objections,” and together

with the Requests for Relief and all other filed documents, the “Court Filings”) pursuant to the following procedures:

2. ***Initial Omnibus Hearings.*** The first four Omnibus Hearings are scheduled as follows:

- \_\_\_\_:\_\_\_\_.m. on the \_\_\_\_th day of \_\_\_\_\_;
- \_\_\_\_:\_\_\_\_.m. on the \_\_\_\_th day of \_\_\_\_\_;
- \_\_\_\_:\_\_\_\_.m. on the \_\_\_\_th day of \_\_\_\_\_; and
- \_\_\_\_:\_\_\_\_.m. on the \_\_\_\_th day of \_\_\_\_\_.

3. ***Subsequent Omnibus Hearings.*** At or before the Omnibus Hearing held on \_\_\_\_, 2019 the Debtors shall request that the Court schedule additional Omnibus Hearings. The Court shall schedule such Omnibus Hearings and, upon scheduling, Omni shall post the dates of the additional Omnibus Hearings on the Case Website. Parties may contact Omni for information concerning all scheduled Omnibus Hearings.

4. ***Proposed Omnibus Hearing Agenda.*** Two business days before each Omnibus Hearing, the Debtors’ counsel shall file a proposed agenda with regard to the matters scheduled to be heard at such Omnibus Hearing (the “Proposed Hearing Agenda”). The Proposed Hearing Agenda may include notice of matters that have been consensually adjourned to a later Omnibus Hearing in lieu of parties filing a separate notice of adjournment; *provided* that for all matters adjourned to a later Omnibus Hearing or some other future date, the Debtors also will electronically file (but need not serve) a notice of adjournment with respect to such matters.

5. ***Content of Proposed Hearing Agenda.*** The Proposed Hearing Agenda will include, to the extent known by Debtors’ counsel: (a) the docket number and title of each matter scheduled to be heard at such Omnibus Hearing, including the initial filing and any objections, replies, or documents related thereto; (b) whether the matters are contested or uncontested;



(c) whether the matters have settled or are proposed to be continued; (d) a suggestion for the order in which the matters should be addressed; and (e) any other comments that will assist the Court.

6. ***Evidentiary Hearings.*** With respect to any Court Filing, if Objections are filed, the Omnibus Hearing shall not be deemed an evidentiary hearing at which witnesses may testify unless the Proposed Hearing Agenda provides otherwise. Additionally, any Court Filing requesting or requiring the Court to make a factual finding must be supported by competent evidence (*e.g.*, declarations, affidavits, and exhibits).

7. ***Telephonic Appearances.*** A party desiring to participate in a hearing telephonically must request permission from chambers and notify the Debtors' counsel at least 48 hours before the applicable hearing. If chambers permits telephonic participation, the party participating telephonically must arrange such participation with CourtCall, adhering to the procedures for telephonic participation applicable in the Court. Those parties participating by phone may not use speakerphones unless authorized by the Court.<sup>3</sup> Parties participating by phone must put their phones on "mute," except when they need to be heard, and are not to put their phones on "hold" in any circumstances.

8. ***Listen-Only Lines.*** Any party may attend hearings through a listen-only line (each, a "Listen-Only Line") by arranging such Listen-Only Line with CourtCall. For the avoidance of doubt, any party wishing to use a Listen-Only Line need not seek permission from the Debtors or the Court.

9. ***Matters that May Be Heard at Non-Omnibus Hearings.*** Subject to consultation with the Court's chambers, hearings in connection with applications for professional compensation

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<sup>3</sup> Because of technical limitations of the equipment and the way speakerphones disrupt proceedings in the courtroom, speakerphone authorizations usually will not be granted.

and reimbursement, pre-trial conferences, asset sales, and trials related to adversary proceedings, approval of a disclosure statement, confirmation of a plan, and any other Court Filing filed by the Debtors and not heard may be scheduled for dates other than the Omnibus Hearing dates; *provided, however*, that nonemergency hearings in connection therewith may be scheduled on a non-Omnibus Hearing date; *provided, however*, that initial pre-trial conferences scheduled in connection with adversary proceedings involving the Debtors shall be set on the next available Omnibus Hearing date that is at least 45 days after the filing of the complaint; and *provided, further*, that hearings on all other Requests for Relief, except for those Requests for Relief specifically referenced in this paragraph or requiring emergency relief, filed by any party must be scheduled for an Omnibus Hearing.

## **II. Filing and Service Procedures.**

10. All Court Filings filed in these chapter 11 cases shall be filed electronically with the Court on the docket of *In re Hollander Sleep Products, LLC*, Case No. 19-11608 (\_\_\_), in accordance with the Court's General Order M-399, by registered users of the Court's electronic case filing system (the "Electronic Filing System"). Further, pursuant to Local Rule 9070-1, at least one hard copy of any Court Filing (other than proofs of claim) shall be: (a) marked "Chambers Copy" and delivered in an unsealed envelope to the chambers of the Honorable Judge \_\_\_\_\_, United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408, no later than the next business day following the date on which such Court Filing is electronically filed; and (b) delivered by first class mail to Shannon Scott, of the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee").

**A. The Service List.**

11. ***Parties Entitled to Service.*** All Court Filings (other than proofs of claim) shall be served on the following list of parties (the “Service List”), according to the following notice procedures.

- a. ***Master Service List.*** Omni shall maintain a master service list (the “Master Service List”). The Master Service List shall be made available by (i) accessing the Case Website, (ii) contacting the Claims and Noticing Agent directly, or (iii) contacting the Debtors’ counsel directly. The Master Service List shall include the following parties:
- i. the Office of the U.S. Trustee for the Southern District of New York;
  - ii. the Debtors and their counsel;
  - iii. the official committee of unsecured creditors (if any) appointed in these chapter 11 cases (the “Committee”) and its counsel;
  - iv. holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis);<sup>4</sup>
  - v. counsel to the administrative agent for the Debtors’ term loan facility, King & Spalding LLP, Attn: Austin Jowers and Stephen M. Blank;
  - vi. counsel to the administrative agent for the Debtors’ revolving loan credit facility, Goldberg Kohn Ltd., Attn: Randall Klein;
  - vii. the Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Room 1006, New York, New York, 10014, Attn: Shannon Scott;
  - viii. the United States Attorney’s Office for the Southern District of New York;
  - ix. the Internal Revenue Service;
  - x. the office of the attorneys general for the states in which the Debtors operate;
  - xi. the Securities and Exchange Commission; and
  - xii. any party that has requested notice pursuant to Bankruptcy Rule 2002.

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<sup>4</sup> Once the Committee is appointed and counsel is retained, holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis) shall not be included in the Master Service List.

- b. **2002 List.** Omni shall maintain a list of all parties that have filed a request to receive service of Court Filings pursuant to Bankruptcy Rule 2002 (the “2002 List”).
  - i. **Filing Requests for Documents Requires Email Address.** A request for service of Court Filings pursuant to Bankruptcy Rule 2002 (each, a “2002 Notice Request”) filed with the Court shall be deemed proper only if it includes the following information with respect to the party filing such request: (a) name; (b) street address; (c) name of client(s), if applicable; (d) telephone number; (e) facsimile number; and (f) email address.
  - ii. **Certification Opting Out of Email Service.** Any party filing a 2002 Notice Request who does not maintain (and cannot practicably obtain) an email address and thereafter cannot receive service by email must include in the 2002 Notice Request a certification to that effect (each, a “Certification”). A Certification shall include a statement certifying that the party (a) does not maintain an email address and (b) cannot practicably obtain an email address at which the party could receive service. Such party will thereafter receive paper service in accordance with the Case Management Procedures.
  - iii. **Email Address Required.** If a 2002 Notice Request fails to include an email address or a Certification, the Debtors shall forward a copy of the Case Management Procedures to such party within five business days requesting an email address. If no email address or Certification is provided in response to such request, such party shall not be added to the 2002 List or served with copies of Court Filings unless such Court Filings directly affect such party.
  - iv. **Changes in Information.** Each party submitting a 2002 Notice Request is responsible for filing with the Court an updated 2002 Notice Request as necessary to reflect changes to any notice information and must serve a copy of such updated 2002 Notice Request upon the Debtors.
- c. **Affected Entities.** All entities with a particularized interest in the subject matter of a specific Court Filing, including the entity filing the Request for Relief is an “Affected Entity” and entitled to be served with all Court Filings relating to that interest.

12. **Maintenance of the Service List.** At least every 15 days during the first 60 days of these chapter 11 cases, and at least every 30 days thereafter, Omni shall update the Service List by making any additions and deletions and post the updated Service List on the Case Website.

**B. Filing and Service of Court Filings Generally.**

13. ***Electronic Filing and Service.*** All Court Filings shall be filed electronically with the Court, using the Court's Electronic Filing System and served via email, other than service of a summons and complaint in an adversary proceeding or documents filed under seal, which shall be deemed to constitute proper service for all parties who are sent such email service; *provided, however,* that Court Filings shall be served on the Master Service List by email and by first class mail. Subject to the limited exclusions, each party that files a notice of appearance and a 2002 Notice Request shall be deemed to have consented to electronic service of all Court Filings, except as provided below.

- a. ***Email Subject Line.*** With respect to the service of any Court Filing, the subject line of the email shall include (i) the Debtors' case name and number *In re Hollander Sleep Products, LLC*, Case No. 19-11608 (\_\_\_), (ii) the name of the party filing such Court Filing, and (iii) the title of the Court Filing being served. If the title of the Court Filing is too long to fit within the subject line of the email, the subject line shall contain a shortened version of such title, and the text of the email shall contain the full title of such Court Filing.
- b. ***Email Attachments.*** All Court Filings served by email shall include the entire document, including any proposed form(s) of order and exhibits, attachments, or other materials, in PDF, readable by Adobe Acrobat or other equivalent document reader programs commonly available without cost. The relevant Court Filing shall either be attached to the email in a format specified above or the email shall contain a link to such filing in such format. Notwithstanding the foregoing, if a Court Filing cannot be attached to an email (because of its size, technical difficulties, or other concerns), the filing party may serve the Court Filing by U.S. mail, including the proposed form(s) of order and any exhibits, attachments, and other relevant materials; *provided* that the Court Filing is served by hand or overnight delivery on the Service List.

14. ***Paper Service of Certain Affected Entities.*** To the extent an Affected Entity's email address is not available, the Debtors (or any other party filing a Court Filing) shall serve such Affected Entity with paper copies by first class mail or private mail service.

15. ***Waiver of Filing Deadlines.*** If any Court Filing is filed and served electronically via the Electronic Filing System, the filing deadlines requiring three additional days' notice set forth in Rule 6(e) of the Federal Rules of Civil Procedure (made applicable to adversary proceedings by Bankruptcy Rule 7005(b)(2)(D)), and Bankruptcy Rule 9006(f) shall not apply.

16. ***Form of Papers.*** Unless granted prior permission, motions, applications, and objections are limited to 40 pages and replies and statements are limited to 15 pages. All Court Filings (other than exhibits) shall be double-spaced, 12-point font, with one-inch margins. This provision is subject to the Local Rules and any individual rules of the Judge.

17. ***Certificates of Service.*** Certificates of service for all Court Filings, including the Service List, need only be filed with the Court.

18. ***Right to Request Special Notice Procedures.*** Nothing in the Case Management Procedures shall prejudice the right of any party to seek an amendment or waiver of the provisions of the Case Management Procedures upon a showing of good cause including, without limitation, the right to file a motion seeking emergency *ex parte* relief or relief upon shortened notice.

19. ***Section 342 Notice Requirements.*** Any notice sent by the Debtors or any other party in interest shall be deemed to comply with the requirements set forth in section 342(c)(1) of the Bankruptcy Code.

**C. Filing and Service of Requests for Relief.**

20. ***Requests for Relief to Be Heard at Omnibus Hearing.*** In accordance with Local Rule 9006-1(b), in the event that a party files and serves a Request for Relief at least 14 days before the next Omnibus Hearing, the matter shall be set for hearing at such Omnibus Hearing. If a Request for Relief is served by overnight delivery, it must be filed and served at least 15 calendar days before the next Omnibus Hearing. If a Request for Relief is served by U.S. mail only, it must

be filed and served at least 17 calendar days before the next Omnibus Hearing. If a Request for Relief is filed by a party other than the Debtors and purports to set a hearing date inconsistent with the Case Management Procedures, the Request for Relief shall be heard, without the necessity of a Court order, at the first Omnibus Hearing after the applicable notice period has expired.

21. ***Emergency Scheduling Procedures.*** If a movant or applicant other than the Debtors determines that a Request for Relief requires emergency or expedited relief, the movant or applicant shall contact attorneys for (a) the Debtors and (b) the Committee, if applicable, by telephone and request that the Request for Relief be considered on an expedited basis. If the Debtors or the Committee disagrees with the movant's or applicant's request for emergency or expedited relief, the movant or applicant shall (a) inform the Court of the disagreement by telephone and (b) arrange for a chambers conference, telephonic or in-person, to discuss the disagreement. If the Court agrees with the movant or applicant regarding the necessity for expedited consideration, the movant or applicant may, by order to show cause, request an expedited hearing.

22. ***Notices of Requests for Relief.*** A notice shall be affixed to the front of each Request for Relief and shall set forth (a) the title of the Request for Relief, (b) the time and date of the objection deadline, (c) the parties on whom any objection is to be served, and (d) the Omnibus Hearing date at which the party intends to present the Request for Relief. The notice may also include a statement that the relief requested therein may be granted without a hearing if no objection is timely filed and served in accordance with the Case Management Procedures (a "Presentment Notice"). Subject to Section E of these Case Management Procedures, if the notice filed with a Request for Relief includes a Presentment Notice, after the objection deadline has passed and if no objection has been filed and served in accordance with these Case

Management Procedures, counsel to the party who filed the Request for Relief may file a certification that no objection has been filed or served on them, and may request that the Court grant the relief and enter an order without a hearing.

23. ***Service of Requests for Relief.*** For any Court Filing for which particular notice is required to be served on all creditors and parties with a particular interest in the relief sought by any Request for Relief, including Bankruptcy Rules 2002(a)(2) and (3), 4001, 6004, 6007, and 9019, parties shall serve all such Court Filings only on the Service List in accordance with the following, unless otherwise ordered by the Court:

- a. in the case of any use, sale, lease, or abandonment of substantially all of the Debtors' property, on each party asserting an interest in that property;
- b. in the case of any relief from or modification of the automatic stay, on each party asserting a lien or other encumbrance on the affected property;
- c. in the case of the use of cash collateral or obtaining of credit, on each party asserting an interest in the cash collateral or a lien or other interest in property upon which a lien or encumbrance is proposed to be granted;
- d. in the case of a motion under Bankruptcy Rule 9019, on all parties to the relevant compromise and settlement, or that may be directly affected by such compromise or settlement;
- e. in the case of assumption, assignment, or rejection of an executory contract or an unexpired lease, on each party to the executory contract or the unexpired lease;
- f. any objection, opposition, response, reply, or further document filed directly in response to another party's Court Filing, on such other party; and
- g. on all parties as required by the Bankruptcy Rules, unless otherwise directed by the Court.

24. ***Notice Provisions Not Applicable to Certain Matters.*** Except as set forth in the Case Management Procedures or otherwise provided by order of the Court, the notice provisions of the Case Management Procedures shall not apply to notices of the matters or proceedings described in the following Bankruptcy Rules:



- a. Bankruptcy Rule 2002(a)(1) (meeting of creditors pursuant to section 341 of the Bankruptcy Code);
- b. Bankruptcy Rule 2002(a)(2) (any proposed use, sale, or lease of property of the estate other than in the ordinary course of business, to the extent that such use, sale, or lease concerns all or substantially all of the Debtors' assets);
- c. Bankruptcy Rule 2002(a)(4) (hearing on the dismissal of a case or cases or the conversion of a case to another chapter);
- d. Bankruptcy Rule 2002(a)(5) (time fixed to accept or reject a proposed modification of a chapter 11 plan);
- e. Bankruptcy Rule 2002(a)(7) (time fixed for filing a proof of claim pursuant to Bankruptcy Rule 3003(c));
- f. Bankruptcy Rule 2002(b)(1) (time fixed for filing objections to and any hearing to consider approval of a disclosure statement);
- g. Bankruptcy Rule 2002(b)(2) (time fixed for filing objections to and any hearing to consider confirmation of a chapter 11 plan);
- h. Bankruptcy Rule 2002(d) (certain matters for which notice is to be provided to equity security holders);
- i. Bankruptcy Rule 2002(f)(1) (entry of an order for relief);
- j. Bankruptcy Rule 2002(f)(2) (dismissal or conversion of a case to another chapter of the Bankruptcy Code);
- k. Bankruptcy Rule 2002(f)(3) (time allowed for filing claims pursuant to Bankruptcy Rule 3002);
- l. Bankruptcy Rule 2002(f)(6) (waiver, denial, or revocation of a discharge as provided in Bankruptcy Rule 4006);
- m. Bankruptcy Rule 2002(f)(7) (entry of an order confirming a chapter 11 plan); and
- n. Bankruptcy Rule 2002(f)(8) (summary of the trustee's final report and account should a case be converted to chapter 7 of the Bankruptcy Code).

25. ***Requests for Relief to Include Proposed Order.*** Parties submitting written motions or other Requests for Relief shall be required to include a proposed order with such Request for Relief.

**D. Filing and Service of Objections and Replies.**

26. ***Deadline for Objections.*** Any Objection to a Request for Relief must be filed with the Court and served upon the party filing the Request for Relief and those parties on the Service List by the following deadlines (each, as applicable, the “Objection Deadline”):

- a. in the case of a Request for Relief filed 14 or more days before the applicable hearing, 4:00 p.m. (prevailing Eastern Time), 3 calendar days before the applicable hearing;
- b. in the case of a Request for Relief set for hearing on an expedited basis and filed fewer than 10 days before the applicable hearing, 12:00 p.m. (prevailing Eastern Time) on the business day preceding the applicable hearing; or
- c. in any case, as otherwise ordered by the Court.

27. ***Extension of Objection Deadline.*** The Objection Deadline may be extended without order of the Court upon the consent of the party filing the Request for Relief, which consent may be granted via email.

28. ***Effect of Failure to File Objection by Objection Deadline.*** Failure to file an Objection by the Objection Deadline may cause the Court to disregard the Objection.

29. ***Service of Objections.*** All Objections shall be filed with the Court and served by the applicable Objection Deadline upon the party filing the Request for Relief, and those parties on the Service List including each Affected Entity; *provided* that if the Objection Deadline is after the date that is seven days before the applicable hearing, then Objections shall also be served by email, facsimile, hand delivery, or overnight mail upon the following parties: (a) the Debtors and their counsel; (b) the Office of the United States Trustee for the Southern District of New York; (c) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis);<sup>5</sup>

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<sup>5</sup> Once the Committee is appointed and counsel is retained, holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis) shall not need to be served with an Objection.

(d) the administrative agent for the Debtors' term loan facility and counsel thereto; (e) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (f) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel thereto; (g) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002.

30. ***Service of Replies to Objections.*** If a Court Filing is a reply to an Objection, such reply shall be filed with the Court and served so as to actually be received by (a) the Debtors and their counsel, (b) counsel for the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis),<sup>6</sup> (c) the administrative agent for the Debtors' term loan facility and counsel thereto; (d) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (e) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel thereto; (f) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; and (g) each Affected Entity, in each case by 4:00 p.m. (prevailing Eastern Time) on the business day preceding the applicable hearing date. Sur-replies shall be not permitted or considered unless authorized by the Court.

31. ***Settlements.*** In the event that a matter is properly noticed for hearing and the parties reach a settlement of the dispute prior to the scheduled hearing, the parties may announce the settlement at the scheduled hearing. In the event that the Court determines that the notice of the dispute and the hearing is adequate notice of the effects of the settlement (*i.e.*, that the terms of the

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<sup>6</sup> Once the Committee is appointed and counsel is retained, holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis) shall not need to be served with a reply to an Objection.

settlement are not materially different from what parties in interest could have expected if the dispute were fully litigated), the Court may approve the settlement at the hearing without further notice of the terms of the settlement.

32. ***Supplemental Notice.*** In the event that the Court determines that additional or supplemental notice is required, the Debtors shall serve such notice in accordance with the Case Management Procedures, and a hearing to consider such settlement shall be held on the next hearing date deemed appropriate by the Court.

**E. Granting a Request for Relief Without a Hearing.**

33. ***Certificate of No Objection.*** If no Objection to a Request for Relief is filed after the Request for Relief is filed and served in a timely fashion, the movant may submit a proposed order granting the Request for Relief to the Court along with a certificate of no objection (a “Certificate of No Objection”) stating that no Objection has been filed or served on the movant. By filing such certification, counsel for the movant represents to the Court that the movant is unaware of any Objection to the Request for Relief and that counsel has reviewed the Court’s docket and no Objection appears thereon.

34. ***Order May Be Entered Without Hearing.*** Upon receipt of a Certificate of No Objection, the Court may enter an order granting the Request for Relief without further pleading, hearing, or request, and once an order granting such Request for Relief is entered, no further hearing on the Request for Relief shall be held.

35. ***Request for Relief May be Heard at a Hearing.*** After a Certificate of No Objection has been filed, the Request for Relief may be heard at the next Omnibus Hearing if the Court does not enter an order granting the Request for Relief before such Omnibus Hearing.

**F. Filing and Service of Orders.**

36. *Service of Orders.* All parties submitting orders shall serve a conformed copy of any entered order on (a) each Affected Entity, (b) the Debtors, and (c) Omni, within two business days of entry of the applicable order. Omni shall post all orders on the Case Website.

**G. Filing and Service of Adversary Proceedings.**

37. *Serving Adversary Proceedings.* All Court Filings in any adversary proceeding commenced in these chapter 11 cases shall be served upon each Affected Entity and any other parties required to be served under any applicable Bankruptcy Rule or Local Rule.

38. *Discovery Rules in Contested Matters and Adversary Proceedings.* Federal Rules of Civil Procedure 26(a)(1) (initial disclosures), 26(a)(2) (disclosures with respect to expert testimony), 26(a)(3) (additional pretrial disclosures), and 26(f) (mandatory meeting before scheduling conference/discovery plan) are inapplicable in contested matters but are applicable to adversary proceedings arising under these chapter 11 cases.

39. *Briefing Schedule in Adversary Proceedings.* After a hearing date has been set by the Court, unless otherwise ordered by the Court, the parties to the adversary proceeding shall confer and agree upon a briefing schedule for all adversary matters, which shall be submitted for approval of the Court.

**H. Other Pleadings.**

40. *Joinders.* Any party seeking to support any Court Filing may file an expression of support of such Court Filing (a “Joinder”). Unless otherwise ordered by the Court, filing a Joinder does not entitle such party to: (a) be an independent proponent of the Court Filing; (b) independently support or oppose any related Court Filings; (c) independently settle the underlying Request for Relief that is the subject of the applicable Court Filing; or

(d) independently receive a ruling from the Court on the Court Filing. The Court may deem a Joinder to be a brief in support of the applicable Court Filing, but the Court shall not consider any arguments or factual allegations contained in a Joinder but not in the related Court Filing, and no party shall be required to separately respond to a Joinder.

41. ***Motion Practice for Lift Stay Actions.*** A motion filed by a non-debtor party seeking relief from the automatic stay (a “Stay Relief Motion”) in accordance with section 362 of the Bankruptcy Code shall be noticed for consideration on the Omnibus Hearing date that is at least 21 days after the Stay Relief Motion is filed and notice thereof is served upon the Debtors. Unless otherwise ordered by the Court, the objection deadline shall be the later of (a) 14 calendar days after the filing and service of the Stay Relief Motion or (b) three calendar days prior to the hearing scheduled with respect thereto.

42. ***Continuation of Automatic Stay.*** Notwithstanding section 362(e) of the Bankruptcy Code, if a Stay Relief Motion is scheduled in accordance with the Case Management Procedures for, or adjourned to, a hearing date 30 days after the filing of the Stay Relief Motion, the moving party shall be deemed to have consented to the continuation of the automatic stay in effect pending the conclusion of, or as a result of, a final hearing and determination under section 362(d) of the Bankruptcy Code, and shall be deemed to have waived its right to assert the termination of the automatic stay under section 362(e) of the Bankruptcy Code.

43. ***Motions for Summary Judgment.*** Pursuant to Local Rule 7056-1, no motion for summary judgment may be made without first seeking a pre-motion conference. A request for such conference should be made by letter setting forth the issues to be presented under the summary judgment motion, which letter shall be filed and served in accordance with the Case Management Procedures.

44. ***Motions for Reargument.*** Motions for reargument must identify with particularity the matter for reconsideration in accordance with Local Rule 9023-1. If, after review of the motion, the Court determines that it wishes a response, and/or hearing, it will notify the applicable parties accordingly.

45. ***Motions for Temporary Restraining Orders.*** Parties seeking a temporary restraining order (a “TRO”) must comply with the requirements of Federal Rule of Civil Procedure 65(b). Applications for a TRO will be heard in open court, on the record, with a court reporter or audio recording. Parties wishing to oppose a TRO will be heard by telephone upon request. Applicants seeking TROs are reminded of the need to submit with their motion papers the written affidavit required under Federal Rule of Civil Procedure 65(b) confirming the notice provided to anyone who might wish to oppose the application. Any assertions that notice cannot or should not be given must likewise be supported by affidavit. Any request for a TRO must be preceded by a telephone call to chambers, advising chambers of the nature of the controversy, the need for emergency relief, why a noticed hearing for a preliminary injunction would be insufficient, when a hearing on the TRO application is needed, and when the motion papers will be forthcoming. Except in those rare cases where advance notice of the TRO application would vitiate the purpose of a TRO (and where that can be established by affidavit), immediate telephonic notice of the application must be provided to all parties reasonably expected to be affected by entry of the TRO, or provisions therein. In addition, the motion papers on any TRO application must be hand delivered, emailed, or faxed to any such parties at the same time that the papers are provided to chambers.

46. ***Automatic Extension of Certain Time Periods.*** If a Request for Relief to extend the time to take any action is filed prior to the expiration of the time period provided by the

Bankruptcy Code (including any Request for Relief pursuant to section 1121 of the Bankruptcy Code), the Bankruptcy Rules, the Local Rules, or any order of the Bankruptcy Court, the time to so take action shall be automatically extended until the Bankruptcy Court considers and rules upon the Request for Relief.

### **III. Additional Case Management Procedures.**

47. ***Adequate Notice.*** Notice and service accomplished in accordance with the provisions set forth in the Case Management Procedures shall be deemed adequate in all respects pursuant to the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

48. ***Computation of Time.*** Unless otherwise specified, all time periods referenced in the Case Management Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a).

49. ***Effect of the Case Management Procedures.*** The Bankruptcy Rules and the Local Rules shall continue to apply to all proceedings in these chapter 11 cases, except to the extent that any provision of the Case Management Procedures by its terms supersedes or is inconsistent with such rules.

50. ***Promulgation of the Case Management Procedures.*** As soon as practicable after the entry of the proposed Order, a copy of the Case Management Procedures shall be served by the Debtors on each of the parties on the Master Service List. In addition, shortly after the end of each calendar month, Omni or counsel to the Debtors shall serve a copy of the Case Management Procedures upon any party filing a 2002 Notice Request within such calendar month. To help ensure that all parties who may participate in these chapter 11 cases are aware of the terms of the Case Management Procedures, the Debtors will post the Case Management Procedures on the Case Website.

\* \* \* \* \*



**THIS IS EXHIBIT "Y" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3 , 2019.**

A handwritten signature in blue ink, appearing to be "LH" followed by a long horizontal stroke.

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**Commissioner for Taking Affidavits**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
HOLLANDER SLEEP PRODUCTS, LLC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. 14</b>

**ORDER (A) ESTABLISHING CERTAIN NOTICE, CASE MANAGEMENT, AND  
ADMINISTRATIVE PROCEDURES AND (B) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an order (this “Order”) approving and implementing certain notice, case management, and administrative procedures; and it appearing that the proposed procedures that are annexed hereto as **Exhibit 1** (the “Case Management Procedures”) will assist in the efficient handling of these cases, it is HEREBY ORDERED THAT:

1. The Case Management Procedures, as set forth in **Exhibit 1** attached hereto, shall govern all applicable aspects of these chapter 11 cases, except as otherwise ordered by this Court.
2. The first four Omnibus Hearings are scheduled as follows:
  - 11:00 a.m. on August 1, 2019;
  - 11:00 a.m. on September 4, 2019;
  - 11:00 a.m. on October 3, 2019; and
  - 11:00 a.m. on November 7, 2019.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

3. The Debtors' claims and noticing agent, Omni Management Group, is authorized to establish the Case Website, available at [www.omnimgt.com/hollander](http://www.omnimgt.com/hollander), where, among other things, electronic copies of all Court Filings will be posted and viewable free of charge.

4. Any notice sent by the Debtors or any other party in interest that includes the disclosure contained at footnote 1 of **Exhibit 1** shall be deemed to comply with the requirements set forth in section 342(c)(1) of the Bankruptcy Code.

5. All time periods set forth in this Order or in the Case Management Procedures shall be calculated in accordance with Bankruptcy Rule 9006.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York  
Dated: July 3, 2019

s/Michael E. Wiles

THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Case Management Procedures**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (MEW)
Debtors.	)	(Jointly Administered)

**CASE MANAGEMENT PROCEDURES**

All notices, motions, applications, briefs, memoranda, affidavits, declarations, objections, responses, and other documents filed in these chapter 11 cases are subject to these Case Management Procedures. *Accordingly, all parties in interest are strongly encouraged to review these Case Management Procedures in their entirety, as well the Local Rules and Chambers' Rules, and consult their own legal counsel with respect to any of the matters discussed herein before filing any documents in these chapter 11 cases.*

**Case Management Procedures<sup>2</sup>**

**I. Case Website**

1. The claims and noticing agent of above-captioned debtors and debtors in possession (the "Debtors"), Omni Management Group ("Omni"), is authorized to establish the case website (the "Case Website"), available at [www.omnimgt.com/hollander](http://www.omnimgt.com/hollander), where, among other things, electronic copies of all Court Filings will be posted and viewable free of charge.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used but not immediately defined herein have the meanings given to such terms elsewhere in these Case Management Procedures.

## II. Hearing and Scheduling Procedures.

### A. Omnibus Hearings

2. ***Matters to Be Heard at Omnibus Hearings.*** Except as set forth in paragraphs 8, 12 and 28, the United States Bankruptcy Court for the Southern District of New York (the “Court”) shall schedule periodic omnibus hearings (the “Omnibus Hearings”) to consider all notices, motions, applications, and other requests for relief, briefs, memoranda, affidavits, declarations, replies, and other documents filed in support of such papers seeking relief (collectively, the “Requests for Relief”), and all objections and responses to such Requests for Relief (collectively, the “Objections,” and together with the Requests for Relief and all other filed documents, the “Court Filings”) pursuant to the following procedures:

3. ***Initial Omnibus Hearings.*** The first four Omnibus Hearings are scheduled as follows:

- 11:00 a.m. on August 1, 2019;
- 11:00 a.m. on September 4, 2019;
- 11:00 a.m. on October 3, 2019; and
- 11:00 a.m. on November 7, 2019.

4. ***Subsequent Omnibus Hearings.*** At or before the Omnibus Hearing held on October 3, 2019 the Debtors shall request that the Court schedule additional Omnibus Hearings. The Court shall schedule such Omnibus Hearings and, upon scheduling, Omni shall post the dates of the additional Omnibus Hearings on the Case Website.

5. ***Requests for Relief to Be Heard at Omnibus Hearing.*** In accordance with Local Rule 9006-1(b), in the event that a party files and serves a Request for Relief at least fourteen (14) days before the next Omnibus Hearing, the matter shall be set for hearing at such Omnibus Hearing. If a Request for Relief is served by overnight delivery, it must be filed and served at least fifteen (15) calendar days before the next Omnibus Hearing. If a Request for Relief is served by

U.S. mail only, it must be filed and served at least seventeen (17) calendar days before the next Omnibus Hearing. If a Request for Relief is filed by a party other than the Debtors and purports to set a hearing date inconsistent with these Case Management Procedures, the Request for Relief shall be heard, without the necessity of a Court order, at the first Omnibus Hearing after the applicable notice period has expired. In addition, initial pre-trial conferences scheduled in connection with adversary proceedings involving the Debtors shall be set on the next available Omnibus Hearing date that is at least 45 days after the filing of the complaint.

6. ***Proposed Omnibus Hearing Agenda.*** Two business days before each Omnibus Hearing, the Debtors' counsel shall file a proposed agenda with regard to the matters scheduled to be heard at such Omnibus Hearing (the "Proposed Hearing Agenda"). The Proposed Hearing Agenda may include notice of matters that have been consensually adjourned to a later Omnibus Hearing in lieu of parties filing a separate notice of adjournment; *provided* that for all matters adjourned to a later Omnibus Hearing or some other future date, the Debtors also will electronically file (but need not serve) a notice of adjournment with respect to such matters.

7. ***Content of Proposed Hearing Agenda.*** The Proposed Hearing Agenda will include, to the extent known by Debtors' counsel: (a) the docket number and title of each matter scheduled to be heard at such Omnibus Hearing, including the initial filing and any objections, replies, or documents related thereto; (b) whether the matters are contested or uncontested; (c) whether the matters have settled or are proposed to be continued; (d) a suggestion for the order in which the matters should be addressed; and (e) any other comments that will assist the Court.

8. ***Matters that May Be Heard at Non-Omnibus Hearings.*** Subject to consultation with the Court's chambers, hearings in connection with applications for professional compensation and reimbursement, pre-trial conferences, asset sales, trials related to adversary proceedings,

approval of a disclosure statement, confirmation of a plan, and any other Court Filing filed by the Debtors and not heard may be scheduled for dates other than the Omnibus Hearing dates.

**B. Procedures Governing Hearings and Scheduling**

9. ***Evidentiary Hearings.*** With respect to any Court Filing, if Objections are filed, the Omnibus Hearing shall not be deemed an evidentiary hearing at which witnesses may testify unless the Court notifies the parties, in advance of the hearing, otherwise. Additionally, any Court Filing requesting or requiring the Court to make a factual finding must be supported by competent evidence (*e.g.*, declarations, affidavits, and exhibits).

10. ***Telephonic Appearances.*** A party desiring to participate in a hearing telephonically must consult chambers' rules regarding telephonic appearances (which discourage such appearances if counsel intends to make substantive argument or a party intends to testify), and request permission from chambers and notify the Debtors' counsel at least 48 hours before the applicable hearing. If chambers permits telephonic participation, the party participating telephonically must arrange such participation with CourtCall (requesting a "live" line), adhering to the procedures for telephonic participation applicable in the Court. Those parties participating by phone may not use speakerphones unless authorized by the Court.<sup>3</sup> Parties participating by phone must put their phones on "mute," except when they need to be heard, and are not to put their phones on "hold" in any circumstances.

11. ***Listen-Only Lines.*** Any party may attend hearings through a listen-only line (each, a "Listen-Only Line") by arranging such Listen-Only Line with CourtCall. For the avoidance of

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<sup>3</sup> Because of technical limitations of the equipment and the way speakerphones disrupt proceedings in the courtroom, speakerphone authorizations usually will not be granted.



doubt, any party wishing to use a Listen-Only Line need not seek permission from the Debtors or the Court.

12. ***Emergency Scheduling Procedures.*** If a movant or applicant other than the Debtors determines that a Request for Relief requires emergency or expedited relief, the movant or applicant shall contact attorneys for (a) the Debtors and (b) the Committee by telephone and request that the Request for Relief be considered on an expedited basis. If the Debtors or the Committee disagrees with the movant's or applicant's request for emergency or expedited relief, the movant or applicant shall (a) inform the Court of the disagreement by telephone and (b) arrange for a chambers conference, telephonic or in-person, to discuss the disagreement. If the Court agrees with the movant or applicant regarding the necessity for expedited consideration, the movant or applicant may, by order to show cause, request an expedited hearing for a date that is not an Omnibus Hearing date.

### **III. Procedures Governing Filings**

#### **A. Courtesy Copies and Electronic Filing**

13. ***Filings.*** All Court Filings filed in these chapter 11 cases shall be filed electronically with the Court on the docket of *In re Hollander Sleep Products, LLC*, Case No. 19-11608 (MEW), in accordance with the Court's General Order M-399, by registered users of the Court's electronic case filing system (the "Electronic Filing System").

14. ***Courtesy Copies to the U.S. Trustee.*** Pursuant to Rule 9070-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), at least one hard copy of any Court Filing (other than proofs of claim) shall be delivered by first class mail to Shannon Scott, of the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee").

15. ***No Courtesy Copies to Court.*** Parties should **NOT** submit hard copies of Court Filings to chambers, unless otherwise directed.

**B. Deadlines for Filings**

16. ***Automatic Extension of Certain Time Periods.*** If a Request for Relief to extend the time to take any action is filed prior to the expiration of the time period provided by the Bankruptcy Code (including any Request for Relief pursuant to section 1121 of the Bankruptcy Code), the Bankruptcy Rules, the Local Rules, or any order of the Bankruptcy Court, the time to so take action shall be automatically extended until the Bankruptcy Court considers and rules upon the Request for Relief.

17. ***Deadlines for Objections.*** Any Objection to a Request for Relief must be filed with the Court and served upon the party filing the Request for Relief and those parties on the Service List (as defined in section IV) by the following deadlines (each, as applicable, the “Objection Deadline”):

- a. in the case of a Request for Relief filed 14 or more days before the applicable hearing, 4:00 p.m. (prevailing Eastern Time), 3 calendar days before the applicable hearing;
- b. in any other case, as otherwise ordered by the Court.

18. ***Extension of Objection Deadline.*** The Objection Deadline may be extended upon both the consent of the party filing the Request for Relief, which consent may be granted via email, and Court approval.

19. ***Filing and Service of Objections.*** All Objections shall be filed with the Court and served by the applicable Objection Deadline upon the party filing the Request for Relief, and those parties on the Service List including each Affected Entity (both terms, as defined in section IV); *provided* that if the Objection Deadline within seven (7) days of the applicable hearing, then Objections shall also be served by email, facsimile, hand delivery, or overnight mail upon the

following parties: (a) the Debtors and their counsel; (b) the Office of the United States Trustee for the Southern District of New York; (c) counsel for the Committee; (d) the administrative agent for the Debtors' term loan facility and counsel thereto; (e) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (f) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel thereto; (g) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002.

20. ***Filing and Service of Replies to Objections.*** If a Court Filing is a reply to an Objection, such reply shall be filed with the Court and served so as to actually be received by (a) the Debtors and their counsel; (b) counsel for the Committee; (c) the administrative agent for the Debtors' term loan facility and counsel thereto; (d) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (e) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel thereto; (f) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; and (g) each Affected Entity (as defined in section IV), in each case by 12:00 p.m. (prevailing Eastern Time) on two (2) business days before the applicable hearing date. Sur-replies shall not be permitted or considered unless authorized by the Court.

**C. Form of Filings**

21. ***Form of Papers.*** Unless granted prior permission, motions, applications, and objections are limited to 40 pages and replies and statements are limited to 15 pages. All Court Filings (other than exhibits) shall be double-spaced, 12-point font, with one-inch margins. This provision is subject to the Local Rules and any individual rules of the Judge.

22. ***Notices of Requests for Relief.*** A notice shall be affixed to the front of each Request for Relief and shall set forth (a) the title of the Request for Relief, (b) the time and date of the objection deadline, (c) the parties on whom any objection is to be served, and (d) the Omnibus Hearing date at which the party intends to present the Request for Relief. The notice may also include a statement that the relief requested therein may be granted, pursuant to Local Rule 9074-1, without a hearing if no objection is timely filed and served in accordance with the Case Management Procedures (each, a “Presentment Notice”). Subject to subsection D below of these Case Management Procedures, if the notice filed with a Request for Relief includes a Presentment Notice, after the objection deadline has passed and if no objection has been filed and served in accordance with these Case Management Procedures, counsel to the party who filed the Request for Relief may file a certification that no objection has been filed or served on them, and may request that the Court grant the relief and enter an order without a hearing.

23. ***Requests for Relief to Include Proposed Order.*** Parties submitting written motions or other Requests for Relief shall be required to include a proposed order with such Request for Relief. All parties submitting orders shall serve a conformed copy of any entered order on (a) each Affected Entity (as defined in section IV), (b) the Debtors, and (c) Omni, within two business days of entry of the applicable order. Omni shall post all orders on the Case Website.

**D. Granting a Request for Relief Without a Hearing.**

24. ***Certificates of No Objection.*** If no Objection to a Request for Relief is filed after the Request for Relief is filed and served in a timely fashion, the movant may submit a proposed order to chambers granting the Request for Relief to the Court along with a certificate of no objection (a “Certificate of No Objection”) representing that no Objection has been filed or served

on the movant, that the docket does not show that any Objection has been filed, and that the movant is aware of no informal Objections.

25. ***Order May Be Entered Without Hearing.*** Following the receipt of a Certificate of No Objection, the Court may enter an order granting the Request for Relief without further pleading, hearing, or request, and once an order granting such Request for Relief is entered, no further hearing on the Request for Relief shall be held. **However, the movant must confirm with the Court whether the relevant hearing will still move forward at least one business day prior to the hearing.**

**E. Additional Rules Governing Certain Pleadings**

26. ***Joinders.*** Any party seeking to support any Court Filing may file an expression of support of such Court Filing (a “Joinder”). Unless otherwise ordered by the Court, filing a Joinder does not entitle such party to: (a) be an independent proponent of the Court Filing; or (b) independently receive a ruling from the Court on the Court Filing. The Court may deem a Joinder to be a brief in support of the applicable Court Filing, and no party shall be required to separately respond to a Joinder.

27. ***Motion Practice for Lift Stay Actions.*** A motion filed by a non-debtor party seeking relief from the automatic stay (a “Stay Relief Motion”) in accordance with section 362 of the Bankruptcy Code shall be noticed for consideration on the Omnibus Hearing date that is at least 21 days after the Stay Relief Motion is filed and notice thereof is served upon the Debtors. Unless otherwise ordered by the Court, the objection deadline shall be the later of (a) 14 calendar days after the filing and service of the Stay Relief Motion or (b) one week prior to the hearing scheduled with respect thereto.

28. ***Motions for Temporary Restraining Orders.*** Parties seeking a temporary

restraining order (a “TRO”) must comply with the requirements of Federal Rule of Civil Procedure 65(b), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7065. Applications for a TRO will be heard in open court, on the record. Any request for a TRO must be preceded by a telephone call to chambers, advising chambers of the nature of the controversy, the need for emergency relief, why a noticed hearing for a preliminary injunction would be insufficient, when a hearing on the TRO application is needed, and when the motion papers will be forthcoming. Except in those rare cases where advance notice of the TRO application would vitiate the purpose of a TRO (and where that can be established by affidavit), immediate telephonic notice of the application must be provided to all parties reasonably expected to be affected by entry of the TRO, or provisions therein. In addition, the motion papers on any TRO application must be hand delivered, emailed, or faxed to any such parties at or about the same time that the papers are provided to chambers.

#### **IV. Procedures Governing Service.**

##### **A. The Service List.**

29. ***Parties Entitled to Service.*** All Court Filings (other than proofs of claim) shall be served on the following list of parties (the “Service List”), according to the notice procedures in section IV.

- a. ***Master Service List.*** Omni shall maintain a master service list (the “Master Service List”). The Master Service List shall be made available by (i) accessing the Case Website, (ii) contacting the Claims and Noticing Agent directly, or (iii) contacting the Debtors’ counsel directly. The Master Service List shall include the following parties:
  - i. the Office of the U.S. Trustee for the Southern District of New York;
  - ii. the Debtors and their counsel;
  - iii. proposed counsel to the official committee of unsecured creditors appointed in these chapter 11 cases (the “Committee”), Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 34<sup>th</sup> Floor, New York, New York 10017, Attn: Robert J. Feinstein and Bradford J. Sandler

and Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13<sup>th</sup> Floor, Los Angeles, California 90067, Attn: Jeffrey N. Pomerantz;

- iv. counsel to the administrative agent for the Debtors' term loan facility, King & Spalding LLP, Attn: Austin Jowers and Stephen M. Blank;
  - v. counsel to the administrative agent for the Debtors' revolving loan credit facility, Goldberg Kohn Ltd., Attn: Randall Klein;
  - vi. counsel to the administrative agent for the Debtors' proposed debtor in possession term loan financing facility
  - vii. counsel to the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility
  - viii. the Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Room 1006, New York, New York, 10014, Attn: Shannon Scott;
  - ix. the United States Attorney's Office for the Southern District of New York;
  - x. the Internal Revenue Service;
  - xi. the office of the attorneys general for the states in which the Debtors operate;
  - xii. the Securities and Exchange Commission; and
  - xiii. any party that has requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").
- b. **2002 List.** Omni shall maintain a list of all parties that have filed a request to receive service of Court Filings pursuant to Bankruptcy Rule 2002 (the "2002 List").
- i. ***Filing Requests for Documents Requires Email Address.*** A request for service of Court Filings pursuant to Bankruptcy Rule 2002 (each, a "2002 Notice Request") filed with the Court shall be deemed proper only if it includes the following information with respect to the party filing such request: (a) name; (b) street address; (c) name of client(s), if applicable; (d) telephone number; (e) facsimile number; and (f) email address.
  - ii. ***Certification Opting Out of Email Service.*** Any party filing a 2002 Notice Request who does not maintain (and cannot practicably obtain) an email address and thereafter cannot receive service by email must include in the 2002 Notice Request a certification to that effect (each, a "Certification"). A Certification shall include a statement certifying that the party (a) does not maintain an email address and (b) cannot practicably obtain an email address at which

the party could receive service. Such party will thereafter receive paper service in accordance with the Case Management Procedures.

iii. ***Email Address Required.*** If a 2002 Notice Request fails to include an email address or a Certification, the Debtors shall forward a copy of the Case Management Procedures to such party within five business days requesting an email address. If no email address or Certification is provided in response to such request, such party shall not be added to the 2002 List or served with copies of Court Filings unless such Court Filings directly affect such party.

iv. ***Changes in Information.*** Each party submitting a 2002 Notice Request is responsible for filing with the Court an updated 2002 Notice Request as necessary to reflect changes to any notice information and must serve a copy of such updated 2002 Notice Request upon the Debtors.

c. ***Affected Entities.*** All entities with a particularized interest in the subject matter of a specific Court Filing, including the entity filing the Request for Relief is an “Affected Entity” and entitled to be served with all Court Filings relating to that interest.

30. ***Maintenance of the Service List.*** At least every 15 days during the first 60 days of these chapter 11 cases, and at least every 30 days thereafter, Omni shall update the Service List by making any additions and deletions and post the updated Service List on the Case Website.

## **B. Service Procedures**

31. ***Electronic Service.*** All Court Filings shall be served via email, other than service of a summons and complaint in an adversary proceeding or documents filed under seal, which shall be deemed to constitute proper service for all parties who are sent such email service; *provided, however*, that Court Filings shall be served on the Master Service List by email and by first class mail. Subject to the limited exclusions, each party that files a notice of appearance and a 2002 Notice Request shall be deemed to have consented to electronic service of all Court Filings, except as provided below.

a. ***Email Subject Line.*** With respect to the service of any Court Filing, the subject line of the email shall include (i) the Debtors’ case name and number *In re Hollander Sleep Products, LLC*, Case No. 19-11608 (MEW), (ii) the name of the party filing such Court Filing, and (iii) the title of the



Court Filing being served. If the title of the Court Filing is too long to fit within the subject line of the email, the subject line shall contain a shortened version of such title, and the text of the email shall contain the full title of such Court Filing.

- b. ***Email Attachments.*** All Court Filings served by email shall include the entire document, including any proposed form(s) of order and exhibits, attachments, or other materials, in PDF, readable by Adobe Acrobat or other equivalent document reader programs commonly available without cost. The relevant Court Filing shall either be attached to the email in a format specified above or the email shall contain a link to such filing in such format. Notwithstanding the foregoing, if a Court Filing cannot be attached to an email (because of its size, technical difficulties, or other concerns), the filing party may serve the Court Filing by U.S. mail, including the proposed form(s) of order and any exhibits, attachments, and other relevant materials; *provided* that the Court Filing is served by hand or overnight delivery on the Service List.

32. ***Paper Service of Certain Affected Entities.*** To the extent an Affected Entity's email address is not available, the Debtors (or any other party filing a Court Filing) shall serve such Affected Entity with paper copies by first class mail or private mail service.

33. ***Certificates of Service.*** Certificates of service for all Court Filings, including the Service List, need only be filed with the Court.

34. ***Service of Requests for Relief.*** For any Court Filing for which particular notice is required to be served on all creditors and parties with a particular interest in the relief sought by any Request for Relief, including Bankruptcy Rules 2002(a)(2) and (3), 4001, 6004, 6007, and 9019, parties shall serve all such Court Filings only on the Service List in accordance with the following, unless otherwise ordered by the Court:

- a. in the case of any use, sale, lease, or abandonment of substantially all of the Debtors' property, on each party asserting an interest in that property;
- b. in the case of any relief from or modification of the automatic stay, on each party asserting a lien or other encumbrance on the affected property;
- c. in the case of the use of cash collateral or obtaining of credit, on each party asserting an interest in the cash collateral or a lien or other interest in property upon which a lien or encumbrance is proposed to be granted;

- d. in the case of a motion under Bankruptcy Rule 9019, on all parties to the relevant compromise and settlement, or that may be directly affected by such compromise or settlement;
- e. in the case of assumption, assignment, or rejection of an executory contract or an unexpired lease, on each party to the executory contract or the unexpired lease;
- f. any objection, opposition, response, reply, or further document filed directly in response to another party's Court Filing, on such other party;
- g. on all parties as required by the Bankruptcy Rules, unless otherwise directed by the Court; and
- h. on any parties as directed by the Court.

35. ***Service for Objections and Replies to Requests for Relief.*** Service for Objections and replies to Requests for Relief shall comply with the rules set forth in paragraphs 19 and 20.

36. ***Notice Provisions Not Applicable to Certain Matters.*** Except as set forth in the Case Management Procedures or otherwise provided by order of the Court, the notice provisions of the Case Management Procedures shall not apply to notices of the matters or proceedings described in the following Bankruptcy Rules:

- a. Bankruptcy Rule 2002(a)(1) (meeting of creditors pursuant to section 341 of the Bankruptcy Code);
- b. Bankruptcy Rule 2002(a)(2) (any proposed use, sale, or lease of property of the estate other than in the ordinary course of business, to the extent that such use, sale, or lease concerns all or substantially all of the Debtors' assets);
- c. Bankruptcy Rule 2002(a)(4) (hearing on the dismissal of a case or cases or the conversion of a case to another chapter);
- d. Bankruptcy Rule 2002(a)(5) (time fixed to accept or reject a proposed modification of a chapter 11 plan);
- e. Bankruptcy Rule 2002(a)(7) (time fixed for filing a proof of claim pursuant to Bankruptcy Rule 3003(c));
- f. Bankruptcy Rule 2002(b)(1) (time fixed for filing objections to and any hearing to consider approval of a disclosure statement);

- g. Bankruptcy Rule 2002(b)(2) (time fixed for filing objections to and any hearing to consider confirmation of a chapter 11 plan);
- h. Bankruptcy Rule 2002(d) (certain matters for which notice is to be provided to equity security holders);
- i. Bankruptcy Rule 2002(f)(1) (entry of an order for relief);
- j. Bankruptcy Rule 2002(f)(2) (dismissal or conversion of a case to another chapter of the Bankruptcy Code);
- k. Bankruptcy Rule 2002(f)(3) (time allowed for filing claims pursuant to Bankruptcy Rule 3002);
- l. Bankruptcy Rule 2002(f)(6) (waiver, denial, or revocation of a discharge as provided in Bankruptcy Rule 4006);
- m. Bankruptcy Rule 2002(f)(7) (entry of an order confirming a chapter 11 plan); and
- n. Bankruptcy Rule 2002(f)(8) (summary of the trustee's final report and account should a case be converted to chapter 7 of the Bankruptcy Code).

#### **V. Adversary Proceedings.**

37. ***Initial pre-trial conference.*** As set forth in paragraph 5, initial pre-trial conferences for adversary proceedings shall take place on the first Omnibus Hearing date that is at least 45 days after the filing of the complaint.

38. ***Briefing Schedule.*** After the initial pre-trial conference, unless otherwise ordered by the Court, the parties to the adversary proceeding shall confer and agree upon a briefing schedule for all adversary matters, which shall be submitted for approval of the Court.

39. ***Motions for Summary Judgment.*** Pursuant to Local Rule 7056-1, no motion for summary judgment may be made without first seeking a pre-motion conference. A request for such conference should be made by letter setting forth the issues to be presented under the summary judgment motion, which letter shall be filed and served in accordance with the Case Management Procedures.

## VI. Settlements

40. ***Settlements.*** In the event that a matter is properly noticed for hearing and the parties reach a settlement of the dispute prior to the scheduled hearing, the parties may announce the settlement at the scheduled hearing. In the event that the Court determines that the notice of the dispute and the hearing is adequate notice of the effects of the settlement (*i.e.*, that the terms of the settlement are not materially different from what parties in interest could have expected if the dispute were fully litigated), the Court may approve the settlement at the hearing without further notice of the terms of the settlement. In the event that the Court determines that additional or supplemental notice is required, the Debtors shall serve such notice in accordance with the Case Management Procedures, and the Court will schedule a hearing to consider such settlement. **Parties shall contact the Bankruptcy Court's chambers as soon as possible in the event that a matter that is properly noticed for hearing is settled prior to the scheduled hearing.**

## VII. Additional Case Management Procedures.

41. ***Requests for Departures from the Case Management Procedures.*** Nothing in the Case Management Procedures shall prejudice the right of any party to seek an amendment or waiver of the provisions of the Case Management Procedures upon a showing of good cause including, without limitation, the right to file a motion seeking emergency *ex parte* relief or relief upon shortened notice.

42. ***Promulgation of the Case Management Procedures.*** As soon as practicable after the entry of the proposed Order, a copy of the Case Management Procedures shall be served by the Debtors on each of the parties on the Master Service List. In addition, shortly after the end of each calendar month, Omni or counsel to the Debtors shall serve a copy of the Case Management Procedures upon any party filing a 2002 Notice Request within such calendar month. To help ensure that all parties who may participate in these chapter 11 cases are aware of the terms of the

Case Management Procedures, the Debtors will post the Case Management Procedures on the Case Website.

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THIS IS EXHIBIT "Z" REFERRED TO IN THE  
AFFIDAVIT OF EVAN BARZ SWORN ON  
JULY 3, 2019.



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Commissioner for Taking Affidavits

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)

) Case No. 19-11608 (MEW)  
)

) (Jointly Administered)  
)

) Re: Docket Nos. 13 & 53  
)

**SECOND INTERIM ORDER (A) AUTHORIZING THE DEBTORS TO OBTAIN  
POSTPETITION FINANCING, (B) AUTHORIZING THE DEBTORS TO USE CASH  
COLLATERAL, (C) GRANTING LIENS AND PROVIDING SUPERPRIORITY  
ADMINISTRATIVE EXPENSE STATUS, (D) GRANTING ADEQUATE PROTECTION  
TO THE PREPETITION TERM LOAN LENDERS, (E) MODIFYING THE  
AUTOMATIC STAY, (F) SCHEDULING A FINAL HEARING, AND (G) GRANTING  
RELATED RELIEF**

Upon the motion, dated May 19, 2019 (the “DIP Motion”) of Hollander Sleep Products, LLC (the “DIP Term Loan Borrower”) and Hollander Home Fashions Holdings, LLC, Hollander Sleep Products Kentucky, LLC, Hollander Sleep Products Canada Limited, Pacific Coast Feather, LLC and Pacific Coast Feather Cushion, LLC (collectively the “DIP ABL Borrowers”) and together with the DIP Term Loan Borrower, the “Borrowers”) on behalf of themselves and their affiliated debtors and debtors-in possession (together with Dream II Holdings, LLC (“Parent”), collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Cases”), seeking entry of an order (this “Second Interim Order”) and a Final Order pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), 507 and 552 of chapter 11 of title 11 of the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Local Rule 4001-2, *inter alia* authorizing the Debtors to obtain postpetition financing [Docket No. 13] (the “DIP Motion”) and the Court having considered the DIP Motion, the exhibits attached thereto, the *Declaration of Saul Burian in Support of the Debtors’ Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Lenders, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief*, the DIP Documents, the *Declaration of Marc Pfefferle, Chief Executive Officer of Hollander Sleep Products, LLC, in Support of Debtors’ Chapter 11 Petitions and First Day Motions* [Docket No. 19], and the evidence submitted and argument made at the interim hearing on May 21, 2019 (the “First Interim Hearing”); and notice of the First Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the First Interim Hearing having been held and concluded; and certain modifications to the proposed interim order having been made at the direction of the Court, as reflected therein; and the Court having entered an Interim Order on May 23, 2019 [Docket No. 53] (the “First Interim Order”);<sup>2</sup> and the Court having conducted an additional interim hearing on July 1, 2019 (the “Second Interim Hearing”); and the Debtors having requested entry of the Second Interim Order; and it appearing that approval of the interim relief requested in the DIP Motion and this Second Interim Order is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is reasonable and in the best interests of the Debtors, their estates and all parties-in-interest, and is

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Interim Order or the DIP Term Loan Credit Agreement, as applicable.



essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the Debtors' entry into the DIP Term Loan Credit Agreement is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor, the Court hereby enters this Second Interim Order.

**IT IS HEREBY ORDERED THAT:**

1. The First Interim Order shall continue to govern the DIP Term Loan Secured Parties and Prepetition Term Loan Secured Parties during the Second Interim Period (as defined herein) with respect to the relief sought in the DIP Motion, subject to the modifications set forth herein. As used in this Second Interim Order, "Second Interim Period" shall mean the period beginning with the entry of this Second Interim Order through and including the earliest to occur of (i) entry of the Final Order, (ii) July 19, 2019, or (iii) the Termination Declaration.

2. With respect to the DIP ABL Parties, the DIP ABL Credit Facility, the Prepetition ABL Secured Parties, and the Prepetition ABL Credit Facility, this Second Interim Order shall be superseded in all respects, by any Final Order entered by this Court pertaining to the DIP ABL Parties, the DIP ABL Credit Facility, the Prepetition ABL Secured Parties and the Prepetition ABL Credit Facility (the "Final DIP ABL Order"), *provided, however*, that a final determination on the relief sought in the DIP Motion concerning a section 506(c) waiver shall be adjourned for the duration of the Second Interim Period with respect to the DIP ABL Parties and the Prepetition ABL Secured Parties and the DIP ABL Parties and the Prepetition ABL Secured Parties shall retain their right to seek approval of a 506(c) waiver at the Final Hearing. To the extent of any conflict between this Second Interim Order and any Final Order as to the DIP ABL

Parties, the DIP ABL Credit Facility, the Prepetition ABL Secured Parties, and the Prepetition ABL Credit Facility, such Final DIP ABL Order shall control.

3. Paragraph 3 of the First Interim Order, entitled “Authorization to Borrow,” is to be replaced in its entirety with the following:

Authorization to Borrow. From the entry of this Second Interim Order through and including the earliest to occur of (i) entry of the Final Order (with respect to the DIP Term Loan Credit Facility), (ii) July 19, 2019, or (iii) the Termination Declaration (as defined below) (such date, the “Second Interim Period”), and subject to the terms, conditions, and limitations on availability and reserves set forth in the DIP Term Loan Documents (to the extent not conflicting with this Second Interim Order) and this Second Interim Order, in addition to the \$15,000,000 that has been borrowed under the DIP Term Loan Credit Facility by the Debtors pursuant to the First Interim Order, the Debtors are hereby further authorized to forthwith borrow money pursuant to the DIP Term Loan Agreement, and the DIP Term Loan Guarantors are hereby authorized to guaranty the DIP Term Loan Parties’ DIP Term Loan Obligations with respect to such borrowings, in each case in an aggregate principal amount of up to \$5,000,000 on an interim basis (the “Incremental Interim Financing,” and together with the interim financing provided under the DIP Term Loan Credit Facility pursuant to the First Interim Order, the “Interim Financing”) together with applicable interest, expenses, fees and other charges payable in connection with the DIP Term Loan Credit Facility, subject to any limitations on borrowing under the DIP Term Loan Documents not in conflict with this Second Interim Order. In order to access any portion of the \$5,000,000 Incremental Interim Financing, the Debtors shall be required to make a written borrowing request of the DIP Term Loan Agent and DIP Term Loan Lenders, who may deny or accept such request (and, if such request is granted, make the requested portion of the Interim Incremental Financing available to the Debtors) in the discretion of the DIP Term Loan Agent, at the direction of the Required DIP Term Loan Lenders. The Interim Financing shall be used for all purposes permitted under the DIP Term Loan Documents, including, without limitation, to provide working capital for the DIP Parties and to pay interest, fees, costs, charges and expenses in accordance with this Second Interim Order, the DIP Term Loan Documents, and the Approved Budget (subject to the variances permitted by the DIP Term Loan Agreement). In connection with obtaining and using funds to enable the Debtors to pay the expenses set forth in the Approved Budget (subject to the variances permitted by the DIP Agreements), the Debtors shall borrow and use (or in the case of amounts already then borrowed under the DIP Term Loan Credit Facility, use), on a weekly and cumulative basis, an approximately equal amount from the DIP ABL Credit Facility (subject to Availability) and the amounts borrowed under the DIP Term Loan Credit Facility.

4. Paragraph 9 of the First Interim Order, entitled “Use of Proceeds of DIP Facilities,” shall be renamed “Use of Proceeds of DIP Term Loan Credit Facility” and shall be replaced in its entirety with the following and the Exhibit A referenced therein is attached hereto as Exhibit A:

Use of Proceeds of DIP Term Loan Credit Facility. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Term Loan Credit Facility, in accordance with the Approved Budget (subject to such variances as permitted in the DIP Agreements), only for the purposes specifically set forth in this Second Interim Order and the DIP Term Loan Documents, and in compliance with the terms and conditions in this Second Interim Order and the DIP Term Loan Documents, *provided, however*, that the Approved Budget attached hereto as Exhibit A will expire and cease to be an Approved Budget upon expiration of this Second Interim Period. Any subsequent Approved Budget (including, without limitation, any Approved Budget attached to the Final Order (with respect to the DIP Term Loan Credit Facility)) must be reasonably acceptable to the DIP Term Loan Agent and the Required DIP Term Loan Lenders.

5. It shall be an Event of Default if the Final Order (with respect to the DIP Term Loan Credit Facility) is not entered within two business days of July 17, 2019, and section (a)(ii) of Paragraph 31 of the First Interim Order (entitled “Events of Default”) shall be replaced with the following: “failure of the Debtors to obtain, within two business days of July 17, 2019, the entry of the Final Order (with respect to the DIP Term Loan Credit Facility), on the terms and conditions contemplated by the DIP Term Loan Documents and otherwise in form and substance satisfactory to the DIP Term Loan Agent.”

6. Paragraph 60 of the First Interim Order, entitled “Final Hearing,” shall be replaced in its entirety with the following:

Final Hearing. The Final Hearing to consider entry of the Final Order (with respect to the DIP Term Loan Credit Facility), the entry of a Final Order with respect to approval of a 506(c) waiver as it relates to the DIP ABL Parties and Prepetition ABL Secured Parties, and final approval of the DIP Term Loan Credit Facility is scheduled for July 17, 2019, at 2:00 p.m., prevailing Eastern Time, before the Honorable United States Bankruptcy Judge Michael E. Wiles, in Courtroom 617, at the United States Bankruptcy Court for the Southern District of New York. On

or before July 3, 2019, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Second Interim Order and of the Final Hearing (the “Final Hearing Notice”) on: (a) the parties having been given notice of the Second Interim Hearing; (b) any party which has filed prior to such date a request for notices with this Court; (c) the Office of the United States Trustee for the Southern District of New York; (d) counsel for the Creditors’ Committee; (e) the Securities and Exchange Commission; and (f) the Internal Revenue Service. The Final Hearing Notice shall state that the Creditors’ Committee shall file written objections with the Clerk of the Court no later than 4:00 p.m., on July 10, 2019, which objections shall be served so as to be received on or before such date by: (i) counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C. and Christopher T. Greco, P.C., and Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654, Attn: Joe Graham and Laura Krucks; (ii) counsel to the DIP ABL Agent and Prepetition ABL Agent, Goldberg Kohn Ltd. 55 East Monroe, Suite 3300, Chicago, Illinois 60603, Attn: Randall Klein and Prisca Kim, and Orrick, 51 W. 52nd Street, New York, New York, 10019, Attn: Laura Metzger and Peter Amend; and (iii) counsel to the DIP Term Loan Agent and Prepetition Term Loan Agent, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036, Attn: W. Austin Jowers, Christopher Boies, and Stephen M. Blank.

Dated: New York, New York  
July 3, 2019

**s/Michael E. Wiles**

THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

**Budget**



[illegible]

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS  
AMENDED

Court File No: CV-19-620484-00CL

AND IN THE MATTER OF HOLLANDER SLEEP PRODUCTS LLC, HOLLANDER SLEEP PRODUCTS CANADA LIMITED, DREAM II  
HOLDINGS, LLC, HOLLANDER HOME FASHIONS HOLDINGS, LLC, PACIFIC COAST FEATHER, LLC, HOLLANDER SLEEP PRODUCTS  
KENTUCKY, LLC, AND PACIFIC COAST FEATHER CUSHION, LLC

APPLICATION OF HOLLANDER SLEEP PRODUCTS LLC UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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Lawyers for the Applicant

Matter No: 1200852



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AMENDED

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**MOTION RECORD**

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