

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

In re:

MUJI U.S.A. LIMITED,¹

Debtor.

Chapter 11

Case No. 20-11805 (MFW)

**DECLARATION OF JOHN BITTNER IN SUPPORT OF THE DEBTOR'S CHAPTER 11
PETITION AND REQUESTS FOR FIRST DAY RELIEF**

Pursuant to 28 U.S.C. § 1746, John Bittner, hereby declares, under penalty of perjury, as follows:

1. I am a Senior Managing Director of Mackinac Partners ("Mackinac"). Mackinac is a financial advisory and turnaround management firm with offices in Bloomfield Hills, Michigan; Boston, Massachusetts; Chicago, Illinois; Dallas, Texas; and Santa Monica, California.

2. I hold a Bachelor of Business Administration degree from Texas A&M University and a Master of Business Administration degree from the University of Michigan. I am a certified public accountant, licensed in Texas, a Certified Insolvency and Restructuring Advisor certified by the Association of Insolvency and Restructuring Advisors and a Certified Turnaround Professional certified by the Turnaround Management Association. I have over twenty-five (25) years of strategic, financial and operational and restructuring advisory experience. I also have considerable experience with risk mitigation, performing liquidation analyses and advising companies on valuation-related issues, forensic accounting matters and litigation disputes. Additionally, I have advised numerous companies and stakeholders in complex out-of-court restructurings and chapter 11 reorganizations, including the chapter 11

¹ The last four digits of the Debtor's federal tax identification number are 2229. The location of the Debtor's principal place of business is 250 West 39th Street, Suite 202, New York, NY 10018.

cases of Enron Corporation, Metals USA, Texas Petrochemicals, Parallel Energy Trust, Paul Reinhart Inc., and Idearc/Supermedia.

3. Mackinac has served as financial advisor to MUJI U.S.A. Limited (“MUJI USA” or the “Debtor”) since on or about May 11, 2020. I have at all times led the Mackinac team in connection with its work as financial advisor to MUJI USA. I have been acting as the Chief Restructuring Officer (“CRO”) of MUJI USA since July 7, 2020.

4. On July 10, 2020 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

5. The Debtor continues to operate its business and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. Except as otherwise indicated herein, all facts set forth in this declaration (the “First Day Declaration”) are based upon my personal knowledge of the Debtor’s operations and financings, information learned from my review of relevant documents, information supplied to me by other members of the Debtor’s management and the Debtor’s advisors, or my opinion based on my experience, knowledge, and information concerning the Debtor’s operations and financial condition. I am authorized to submit this First Day Declaration in support of the Debtor’s chapter 11 petition and requests for relief contained in certain “first day” motions filed concurrently with this First Day Declaration (the “First Day Motions”).² If called upon to testify, I could and would testify competently to the facts set forth herein.

7. Part I of this First Day Declaration provides a brief overview of the Debtor and a summary of this chapter 11 case (“Chapter 11 Case”), including detail regarding the Debtor’s

² All capitalized terms used herein, but otherwise not defined, shall have the meanings set forth in the applicable First Day Motion.

business, the developments which led to the Debtor's chapter 11 filing, and the goals during this Chapter 11 Case. Part II sets forth the relevant details of the various First Day Motions.

I. BACKGROUND

8. MUJI USA is a Delaware corporation that was established on October 4, 2006, and is headquartered in New York, New York.

9. The Debtor was initially formed as a wholly owned subsidiary of Ryohin Keikoku Co., Ltd. ("RKJ"). RKJ is incorporated in Japan and based in Tokyo; its subsidiaries are located in several countries in North America, Asia, and Europe.

10. RKJ, together with its subsidiaries (including the Debtor) (collectively, the "MUJI Group"), manufactures and sells household and apparel items, food, and design books in North America, Asia, and Europe under its own private brand, "MUJI". The MUJI Group has since expanded into operating campsites, cafes, meal stores and hotels, and designing and building model houses – selling a wide array of over 7,000 products.

A. MUJI Brand

11. The MUJI brand was founded in Japan in 1980 as an antithesis to the habits of consumer society at that time. On one hand, foreign-made luxury brands were gaining popularity within an economic environment of ever-rising prosperity. On the other hand, poor-quality, low-priced goods were appearing on the market and had a polarizing effect on consumption patterns. MUJI was conceived as a critique of this prevailing condition, with the purpose of restoring a vision of products that are useful for the customer and maintain an ideal of the proper balance between living and the objects that make it possible. The concept was born of the intersection of two distinct stances: no brand (*Mujirushi*) and the value of good items (*ryohin*).

12. The MUJI Group provides customers with products at relatively low prices by focusing on three cost-saving practices: carefully selecting materials, streamlining manufacturing

processes, and simplifying packaging. The MUJI Group searches for quality industrial materials that can be acquired in bulk; minimizes manufacturing processes to only include processes that increase and maintain products' quality (i.e., cutting down extra processes such as sorting, sizing, and polishing); and uses bulk packaging and packages their products in plain, uniform containers. The combination of these cost-saving practices allows the MUJI Group, including MUJI USA, to sell products to end-users at a low price.

B. The Debtor's Business

13. MUJI USA is the main retail distributor of MUJI-products in the U.S. The Debtor opened its first retail store in the SoHo neighborhood of New York City on November 16, 2007. As of the Petition Date, the Debtor operates eighteen (18) locations in the United States, located in California, Oregon, New York, Massachusetts, and New Jersey. The Debtor also maintains an online presence – which accounted for approximately 6% of its annual gross sales during 2019 and nearly all of MUJI USA's sales during the current coronavirus ("COVID-19") pandemic.

14. The Debtor sells products in the four product groups listed below, with virtually all of its sales coming from the apparel and household items categories:

PRODUCT GROUP	INCLUDES:
Apparel	Ladies' and men's wear, toys, accessories, bags, and shoes
Household Items	Linens and interior goods, furniture, electronic appliances, stationary, and health and beauty products
Food	Sweets and snacks, dried fruits, packaged food, and beverages
Diverse	MUJI's design book, entitled <i>MUJI</i>

1. Supply Chain and Agreements with RKJ

15. The Debtor mainly sources its merchandise—approximately 83% for 2019— from RKJ pursuant to the Purchase Master Agreement, dated January 1, 2011 (as may be amended, supplemented and modified from time to time, and together with any memorandums of understanding, the “PMA”), which it then resells in its stores located throughout the United States and online. The Debtor is responsible for purchasing inventory and optimizing inventory levels in the United States, and the Debtor determines which products to purchase from RKJ. During 2018 and 2019 respectively, the Debtor purchased approximately \$29.0 million and \$46.0 million of inventory from RKJ.

16. The Debtor also licenses from RKJ the right to use the “MUJI” brand name, operate and manage MUJI stores and use the business concept and design owned by RKJ pursuant to that certain MUJI License Agreement, effective January 1, 2017 (the “License Agreement”). As consideration for the granting of the license by RKJ to the Debtor, the Debtor is obligated to pay to RKJ a royalty of one percent (1%) of annual net sales. The total royalty expense owed to RKJ for the year ending December 31, 2019 was approximately \$1.0 million.

17. The stated term of the License Agreement ends on January 1, 2021. However, the term of the License Agreement automatically extends to January 1, 2024 unless either the Debtor or RKJ provides a notice of intention not to renew by December 1, 2020.

18. For the year ending December 31, 2018, the Debtor engaged KPMG LLP (“KPMG”) to prepare a transfer pricing analysis of certain transactions between the Debtor and RKJ. Specifically, the analysis done by KPMG tested the arm’s-length nature of the Debtor’s purchase of inventory from RKJ as well as the royalty payable to RKJ with respect to the Debtor’s use of the “MUJI” brand name and right to operate MUJI retail stores. The KPMG

report concluded that the inventory purchased from RKJ was on terms at least as favorable to the Debtor as an arm's length transaction. The same report also concluded that the royalty rate on the License Agreement of one percent (1%) was also consistent with the arm's-length standard.³

19. In addition to the above, the Debtor and RKJ are party to a Software Licensing Agreement, dated May 20, 2016 (the "Systems Agreement"), whereby the Debtor utilizes the accounting and inventory systems that RKJ developed. Pursuant to the Systems Agreement, the Debtor pays RKJ a fee equal to one percent (1%) of net sales. The expense under this agreement for the year ended December 31, 2019 was also approximately \$1.0 million.

20. The Debtor sources the remaining—approximately 17% for 2019—of its merchandise from outside the MUJI Group. The products purchased from these third-party vendors are mainly household items such as essential oil products, plants and books, and these vendors are primarily located in the United States.

21. Before being delivered to the Debtor's retail locations, MUJI USA's household items and apparel items are stored in warehouses in New Jersey and California. These warehouses are run by logistics companies that handle MUJI USA's store and home deliveries. Seasonal items, such as apparel, are primarily held at the store locations.

2. Employees

22. Prior to the COVID-19 pandemic, the Debtor employed more than 400 employees. In March 2020, the federal government and the Centers for Disease Control issued guidance on addressing COVID-19 (which was adopted by various state and local governments) providing for the temporary closure of various non-essential businesses, including

³ KPMG also prepared similar reports relating to prior calendar years. There is not yet a report for 2019.

the Debtor's retail stores. In response to these closure orders, on or about March 17, 2020, the Debtor closed all its stores and furloughed most of its employees.

23. As of the Petition Date, the Debtor employs approximately 408 employees, including approximately 199 full-time employees and approximately 209 part-time and seasonal employees.

24. In addition to its employees, the Debtor also periodically retains independent contractors and temporary workers through various staffing agencies to fulfill certain duties. The independent contractors are a reliable and cost-efficient component of the Debtor's operations, filling certain critical and immediate business needs of the Debtor and allowing the Debtor to have a flexible workforce to meet operational needs in a cost-effective manner.

25. The Debtor is not party to any collective bargaining agreement.

C. Prepetition Corporate and Capital Structure

26. Organizational Structure. As noted above, the Debtor was initially formed as a wholly owned subsidiary of RKJ. In February 2016, pursuant to a share subscription agreement, 20% of the Debtor's common stock was issued to Mitsubishi Corporation ("Mitsubishi").

27. As outlined in that certain Shareholders Agreement (the "Shareholders Agreement") dated February 5, 2016, Mitsubishi could nominate 1 of 5 directors to the Debtor's board of directors and appoint a Vice President of the Debtor. The Shareholders Agreement was amended in May 2019 to increase the Debtor's board of directors to six (6) members, with one (1) member appointed by Mitsubishi and the remaining five (5) members appointed by RKJ.

28. Effective June 1, 2020, Mitsubishi exercised a put option set forth in the Shareholders Agreement, thereby requiring RKJ to purchase all of Mitsubishi's shares for \$1.00.

29. Effective July 7, 2020, Victoria L. Creason, of VLC Associates, was appointed as the independent director of the Debtor's board of directors and the sole member of the board's

Strategic Transaction Committee, which has been vested by the board with the exclusive decision-making authority and power over, among other things, debtor-in-possession financing, the chapter 11 plan to be filed in this Chapter 11 Case, contractual agreements and other business arrangements by and between RKJ and the Debtor, claims of RKJ against the Debtor, claims of the Debtor against RKJ, and overseeing me in my capacity as the Debtor's CRO.

30. Assets and Liabilities. As of May 31, 2020, the Debtor's financial statements reflected assets totaling approximately \$51.6 million and liabilities totaling approximately \$72.6 million.⁴ As of the Petition Date, the Debtor has approximately \$3.3 million in cash on hand.

31. Unsecured Financing Arrangements with RKJ. Until recently, RKJ funded the Debtor through (a) unsecured loans, and (b) a cash pooling arrangement with The Bank of Tokyo-Mitsubishi UFJ, Ltd., New York Branch (n/k/a MUFG Bank, Ltd.) ("MUFG Bank"), and utilized a cash management system under which the Debtor could overdraft on its account with MUFG Bank, and MUFG Bank would debit RKJ's account with MUFG Bank. The bank overdraft represented a borrowing from RKJ on the centrally managed account with MUFG Bank in excess of funds on deposit.

32. As of December 31, 2019, the Debtor had a negative balance in the managed cash overdraft of approximately \$26.5 million. Also on this date, the Debtor was also obligated to RKJ in the aggregate amount of \$7.5 million based upon loan agreements with RKJ entered into between 2012 and 2014. As of December 31, 2019, the interest rate on these loans was 3.34%.

33. On or about April 1, 2020, the Debtor refinanced the outstanding negative balance in the managed cash overdraft (which had grown by a further \$9.0 million in the first

⁴ The Debtor has not closed out its financials for June 2020. Therefore, the May 31, 2020 financials are the most recent ones available as of the Petition Date.

three (3) months of 2020) and the \$7.5 million loan payable and replaced these obligations with new financing arrangements with RKJ consisting of (a) a \$4.0 million short-term loan, maturing December 31, 2020 which carried an interest rate of 1.24% and (b) a \$40 million long-term loan, maturing December 31, 2021 which carried an interest rate of 1.29%. As of the Petition Date, approximately \$44.0 million of principal balance was outstanding on these two loans.

34. Until shortly before the Petition Date, the Debtor continued to operate under the cash pooling arrangement and make overdrafts on the MUFG bank. As of the Petition Date, approximately \$13.8 million was outstanding on overdrafts.

35. RKJ is entitled to additional amounts for, among other things, outstanding royalties and purchase orders, as discussed below.

36. Secured Bridge Financing. Leading up to the bankruptcy filing, given the unprecedented impacts on the business by the COVID-19 pandemic, RKJ determined that it would no longer advance funds to MUJI USA on an unsecured basis, including through the cash pooling system, and informed MUJI USA that any future financing would need to be on a secured basis given the Debtor's deteriorating financial condition.

37. On June 12, 2020, the Debtor, as borrower, and RKJ, as lender (in such capacity, the "Prepetition Lender") executed a Senior Secured Multi-Draw Term Promissory Note (the "Bridge Loan") pursuant to which the Debtor could borrow up to \$4.0 million from the Prepetition Lender to, among other things, fund general corporate working capital needs and pay fees and expenses associated with preparation for this Chapter 11 Case, thereby providing the Debtor with the runway it needed to ensure a smooth and orderly transition into chapter 11 and continued, uninterrupted operations during the weeks following the Petition Date. The Bridge Loan is secured by substantially all of the Debtor's assets. The Bridge Loan matures on July 31,

2020 and carries an interest rate of 8.0% per annum to be paid in kind. As of the Petition Date, approximately \$4.0 million of principal balance was outstanding on the Bridge Loan.

38. Other Unsecured Claims. As of the Petition Date, and excluding the amounts the Debtor owes to RKJ, the Debtor has outstanding unsecured debt obligations in the aggregate amount of approximately \$1.3 million, consisting primarily of obligations owed to the Debtor's landlords for unpaid rent and trade debt.

39. The Debtor moreover owes RKJ approximately \$5.1 million for unpaid invoices for purchases of product, royalties, and other fees. These amounts are in addition to the \$44 million in outstanding principal balances payable to RKJ under the loans and \$13.8 million in advances under the cash pooling arrangement (as discussed above).

D. Events Leading up to the Chapter 11 Case

40. As noted above, the Debtor opened the first of its stores in the United States in late 2007. The Debtor thereafter strategically expanded its footprint in the United States such that by December 31, 2019 the Debtor operated over twenty (20) stores in five states.

41. The Debtor experienced operating losses for each year since 2017. For the years ending December 31, 2018 and 2019, the Debtor experienced net losses of approximately \$8.6 million and \$16.9 million, respectively. These losses were funded by an increase in the managed cash overdraft (discussed above) and issuance of common stock to RKJ. A large portion of these losses are directly attributable to the Debtor having expanded its footprint quickly and entered into expensive, above-market leases for numerous store locations.

42. As evidenced by the 2019 net operating loss, the Debtor was struggling financially even prior to the outbreak of COVID-19. The Debtor experienced continued operating losses in January and February 2020. However, such issues were exacerbated by

COVID-19 as all of the Debtor's stores were forced to close due to orders by various state and local authorities.

43. As a result of the Debtor's substantial losses since 2017, the Debtor holds valuable net operating losses totaling approximately \$35.7 million as of May 31, 2020.

44. The Debtor ultimately determined that a proceeding under chapter 11 of the Bankruptcy Code is in the best interests of the Debtor and its stakeholders.

45. The Debtor intends to restructure its operations and right-size its footprint, while also continuing to grow its online presence. To that end, the Debtor has engaged B. Riley Real Estate, LLC ("B. Riley") to assist with the renegotiation of the Debtor's ongoing lease obligations relating to its stores. B. Riley is in the process of reaching out to landlords to renegotiate the Debtor's leases.

46. In preparation for a bankruptcy filing, the Debtor negotiated with RKJ (in such capacity, the "DIP Lender") to extend its debtor-in-possession financing (the "DIP Financing") consisting of up to \$22.0 million in secured, delayed-draw term loans, as more fully described in my concurrently-filed declaration in support of the DIP Financing. The DIP Financing will provide MUJI USA with timely access to liquidity while it restarts operations, which is important to ensure the Debtor's business is stabilized and value is maximized. The Debtor believes that the DIP Financing also will provide it with the necessary runway to negotiate with its landlords and obtain the needed lease concessions, formulate a chapter 11 plan, and exit chapter 11 within six months.

47. Approval of the DIP Financing and continued use of cash collateral will provide a clear, strong message to the Debtor's customers, vendors, employees, landlords, and contract

counterparties that the Debtor's operations and restart are now appropriately funded and that the bankruptcy filing will not adversely impact the Debtor's business operationally.

II. FIRST DAY MOTIONS

A. **Application of the Debtor for Entry of an Order Authorizing the Debtor to Employ and Retain Donlin, Recano & Company, Inc. as Claims and Noticing Agent *Nunc Pro Tunc* to the Petition Date (the "DRC 156(c) Retention Application")**

48. The Debtor seeks entry of an order authorizing the employment and retention of Donlin, Recano & Company, Inc. ("DRC") as the Claims and Noticing Agent.

49. I understand that the Debtor and its advisors obtained and reviewed engagement proposals from three court-approved claims and noticing agents to ensure selection through a competitive process. Based on my discussions with the Debtor's advisors, I believe that the Debtor's selection of DRC to act as the Claims and Noticing Agent is appropriate under the circumstances and in the best interest of the estate. Moreover, it is my understanding that based on all engagement proposals obtained and reviewed that DRC's rates are competitive and comparable to the rates charged by its competitors for similar services.

50. Although the Debtor has not yet filed its schedules of assets and liabilities, it anticipates that there will be hundreds of persons and entities to be noticed in this Chapter 11 Case. In view of the number of anticipated claimants of the Debtor's business, the Debtor submits that the appointment of DRC as the Claims and Noticing Agent is both necessary and in the best interests of both the Debtor's estate and its creditors.

B. Motion of the Debtor for Entry of Interim and Final Orders Authorizing (I) the Debtor to Pay Prepetition Taxes and Regulatory Fees in the Ordinary Course of Business and (II) Banks and Financial Institutions to Honor and Process Checks and Transfers Related Thereto (“Taxes Motion”)

51. Pursuant to the Taxes Motion, the Debtor seeks entry of interim and final orders authorizing, but not directing, payment of certain prepetition taxes and regulatory fees in the ordinary course of business.

52. In connection with the normal operations of its business, the Debtor collects, incurs, and pays income and franchise taxes, personal property taxes, sales and use taxes, business license fees, regulatory fees, and other taxes and fees (collectively, the “Taxes and Fees”)⁵ to certain federal, state, and local taxing and regulatory authorities (collectively, the “Taxing Authorities”), including, but not limited to, those Taxing Authorities listed on Exhibit C to the Taxes Motion. Some Taxes and Fees may have accrued prior to the Petition Date but are not yet due and owing to the applicable Taxing Authorities.

53. Among other Taxes and Fees, the Debtor is responsible for are: (i) general sales and use taxes, gross receipts taxes, and other similar taxes (the “Sales and Use Taxes”), (ii) state and local franchise taxes, commercial rent tax, and business license and regulatory fees (collectively, “Franchise Taxes and Fees”) to operate its business in applicable jurisdictions as well as state and federal income and withholding taxes (the “Income Taxes”), and (iii) personal property taxes against the Debtor’s personal property (the “Personal Property Taxes”).

54. The Debtor estimates that approximately \$192,000 in Taxes and Fees relating to the prepetition period are or will become due and owing to the Taxing Authorities after the

⁵ Payroll, withholding, and other employee-related tax obligations are separately addressed in the Employee Wages and Benefits Motion (defined herein). In addition, custom and import duties are separately addressed in the Shippers, Warehousemen, and Customs Broker Motion (defined herein).

Petition Date, including \$77,500 that will become due and owing within 30 days after the Petition Date, as follows:

Type of Tax	Interim Amount	Total Amount
Sales and Use Tax	\$ 27,500	\$ 55,000
Income Taxes and Franchise Taxes and Fees	\$ 0	\$ 87,000
Personal Property Taxes	\$ 50,000	\$ 50,000
Total	\$ 77,500	\$ 192,000

55. I believe the continued payment of the Taxes and Fees will ultimately preserve the resources of the Debtor's estate and help the Debtor avoid serious disruption to its operations that would result from the failure to pay such Taxes and Fees. If such obligations are not timely paid, the Taxing Authorities may take precipitous action, which could include filing liens, interfering with or withdrawing concessions, preventing the Debtor from conducting business in applicable jurisdictions, and seeking to lift the automatic stay, each of which could disrupt the Debtor's day-to-day operations and impose significant costs on the Debtor's estate and destroy the going concern value of the Debtor's business.

56. I believe that failure to pay the Taxes and Fees to the Taxing Authorities in full and on time, thereby risking the cessation of normal relations between the Taxing Authorities and the Debtor, will make the Debtor's estate worse off than it would be having paid the Taxes and Fees. Therefore, I believe it is in the best interests of the Debtor's estate that the Taxes and Fees be paid on time to avoid administrative difficulties.

C. Motion of the Debtor for Entry of Interim and Final Orders (I) Authorizing the Debtor to Maintain and Administer Its Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief (the “Customer Programs Motion”)

57. Pursuant to the Customer Programs Motion, the Debtor seeks entry of interim and final orders authorizing the Debtor to maintain and administer its customer-related programs (collectively, the “Customer Programs”) as described in the Customer Programs Motion and honor certain prepetition obligations related thereto.

58. The Debtor has historically provided certain incentives, discounts, and accommodations to its customers to attract and maintain positive customer relationships. The Customer Programs promote customer satisfaction and inure to the goodwill of the Debtor’s business and the value of its brand. Accordingly, maintaining the goodwill of its customers is critical to the Debtor’s ongoing operations in this Chapter 11 Case and is necessary to maximize value for the benefit of all of the Debtor’s stakeholders.

59. The Debtor offers a refund and exchange program (the “Refund and Exchange Program”), pursuant to which the Debtor allows its customers, with certain exceptions, to return or exchange certain purchased merchandise within 30 days of purchase or delivery date so long as the merchandise is returned in original packaging, unused, with tags attached, and accompanied by the original receipt or packing slip, as applicable. Based on historical return rates, the Debtor estimates that the cash outlay for the Refund and Exchange Program will be approximately \$50,000 in the first 30 days of this Chapter 11 Case.

60. In addition, the Debtor formerly maintained a gift card program through which customers could purchase pre-paid, non-expiring gift cards in various denominations to use to purchase merchandise at a later date (collectively, the “Gift Cards”). The Debtor estimates that as of the Petition Date approximately \$100,000 in issued Gift Cards are outstanding.

61. Moreover, in the ordinary course of business, the Debtor occasionally conducts sales promotions, both online and at select stores (the “Sales Promotions”), and issues coupons for discounts on future purchases, which can be presented by customers at the time of purchase of goods at the Debtor’s brick-and-mortar stores or online on the Debtor’s e-commerce platform (the “Coupons”). The Sales Promotions and Coupons consist of clearance discounts, seasonal discounts, and other promotions. To provide one example of these programs, on the Debtor’s e-commerce platform students can obtain a one-time 10% off coupon on selected items. The Debtor also occasionally offers free shipping promotions (the “Free Shipping”). Importantly, the Sales Promotions, Coupons, and Free Shipping programs involve no cash outlay.

62. In addition to cash, the Debtor accepts the following methods of payment from customers at in-store and online points of sale: PayPal, Visa, MasterCard, American Express, and Discover credit cards (collectively, the “Non-Cash Payments”). To process the Non-Cash Payments, the Debtor is party to certain agreements with payment processors. The Debtor’s continued acceptance of Non-Cash Payments is essential to the operation of the Debtor’s business because the majority of the Debtor’s sales are made using Non-Cash Payments. Requiring all purchases to be made in cash would have a severe negative effect on the Debtor’s ongoing operations and effectively eliminate the Debtor’s ability to continue and expand its vital e-commerce platform, the cost of which would be borne by its estate.

63. The Debtor must promptly assure its customers of its continued ability to satisfy prepetition and postpetition obligations under the Customer Programs to maintain its valuable customer base, goodwill, and a myriad of other important benefits derived therefrom, following the commencement of this Chapter 11 Case.

64. I believe that the failure to honor the Customer Programs could place the Debtor at a competitive disadvantage in the marketplace, amplifying the negative effect of customer uncertainty that may arise from the chapter 11 filing. Such uncertainty could erode the Debtor's hard-earned reputation and brand loyalty, which, in turn, could adversely impact its prospects for a successful emergence from bankruptcy.

65. Continued use of the Customer Programs, on the other hand, will enable the Debtor to protect its customer base. Accordingly, I believe that continuing to administer the Customer Programs without interruption during the pendency of this Chapter 11 Case will help preserve the Debtor's valuable customer relationships and goodwill, which will inure to the benefit of all of the Debtor's creditors and benefit its estate.

D. Motion of the Debtor for Entry of Interim and Final Orders (I) Authorizing the Debtor to Pay Certain Prepetition Claims of Shippers, Warehousemen, and the Customs Broker; and (II) Granting Related Relief (the "Shippers, Warehousemen, and Customs Broker Motion")

66. Pursuant to the Shippers, Warehousemen, and Customs Broker Motion, the Debtor seeks entry of interim and final orders authorizing, but not directing, the Debtor, in its sole discretion, to pay certain prepetition claims held by Shippers, Warehousemen, and the Customs Broker (each, as defined below) and granting related relief.

67. Shippers and Warehousemen. In operating its retail and e-commerce business, the Debtor depends on the uninterrupted flow of inventory, merchandise, and other goods (collectively, the "Merchandise") through its domestic and international supply chain and distribution network. Critical to the Debtor's operations, therefore, are (a) common carriers, movers, shippers, delivery services, and freight forwarders (collectively, the "Shippers") and (b) warehousemen, bailees, consignees, storage facilities, loading and unloading services, and other third-party providers of storage services (collectively, the "Warehousemen," and the claims

of Shippers and Warehousemen, the “Shippers and Warehousemen Claims”) that transport and store the Merchandise. The Debtor estimates that, as of the Petition Date, it owes approximately \$185,000 in the aggregate to the Shippers and Warehousemen on account of prepetition Shippers and Warehousemen Claims, all of which will come due in the first 30 days of this Chapter 11 Case.

68. Customs Broker. The Debtor is required to pay certain foreign duties, customs duties, and similar taxes, fees and expenses (collectively, the “Customs Duties”) related to Merchandise purchased from outside of and imported into the United States. The Debtor sources the vast majority of Merchandise from RKJ. As such, nearly all Merchandise sold in the United States is imported. In this process, the Debtor utilizes the services of Nippon Express Co., Ltd., a customs broker (the “Customs Broker”), who facilitates the payment of the Customs Duties for a fee (such fee, the “Broker Fees” and together with the Customs Duties, the “Customs Duties and Fees”). The Debtor estimates that, as of the Petition Date, it owes approximately \$105,000 in Customs Duties (which is paid via the Customs Broker) and Broker Fees on account of prepetition transactions, all of which will come due in the first 30 days of this Chapter 11 Case.

69. The Debtor relies on timely and frequent delivery of Merchandise and any interruption in this supply—however brief—would disrupt the Debtor’s operations and could potentially cause irreparable harm to its business, goodwill, employees, customer base, and market share. Such harm would likely far outweigh the cost of payment of the Shippers and Warehousemen Claims and the Customs Duties and Fees.

70. I believe that the relief requested in the Shippers, Warehousemen, and Customs Broker Motion will allow the Debtor to preserve stakeholder value by paying the prepetition claims of certain vendors and counterparties that are critical to the Debtor’s business enterprise.

I accordingly believe that the relief requested in the Shippers, Warehousemen, and Customs Broker Motion is in the best interests of the Debtor's estate, its creditors, and all other parties in interest, and will enable the Debtor to continue to operate its business in chapter 11.

E. Motion of the Debtor for Entry of Interim and Final Orders (I) Authorizing the Debtor to Pay (A) All Prepetition Employee Obligations and (B) Prepetition Withholding Obligations, and (II) Directing Banks to Honor Related Transfers (the "Employee Wages and Benefits Motion")

71. Pursuant to the Employee Wages and Benefits Motion, the Debtor seeks entry of interim and final orders authorizing, but not directing, the Debtor to continue to honor and pay (a) all prepetition employee obligations and (b) all prepetition federal and state withholding obligations, and granting related relief.

72. As of the Petition Date, the Debtor employs approximately 408 employees (collectively, the "Employees"), including approximately 199 full-time employees and approximately 209 part-time and seasonal employees. In addition to the Employees, the Debtor also periodically retains independent contractors and temporary workers (collectively, the "Independent Contractors") through various staffing agencies (collectively, the "Staffing Agencies") to fulfill certain duties.

73. The Debtor believes that the skills and experience of its Employees, as well as their relationships with customers and vendors and institutional knowledge are essential to the Debtor's ability to effectively operate its business. In order to maintain morale, the Debtor requests authority to pay and honor certain prepetition claims and obligations to all of its Employees. In particular, I believe it is necessary for the Debtor to:

- a. satisfy prepetition obligations to Employees, including accrued prepetition wages, salaries, overtime, and other obligations (collectively, the "Employee Compensation"). As of the Petition Date, the Debtor estimates that it owes approximately \$323,621 on account of unpaid Employee Compensation earned by Employees prior to the Petition Date;

- b. pay obligations to or on account of the Independent Contractors and Staffing Agencies. As of the Petition Date, the Debtor estimates that Independent Contractors and Staffing Agencies are owed an aggregate of approximately \$2,000 on account of accrued services rendered prior to the Petition Date;
- c. pay over to the appropriate parties all prepetition withholdings from Employees and payroll-related taxes associated with the Employee Compensation and the Employee Benefit Programs (collectively, "Withholding Obligations"). As of the Petition Date, the Debtor estimates that it owes approximately \$105,809 on account of Withholding Obligations;
- d. pay obligations to or on account of ADP, Inc. ("ADP"), its third-party payroll processor. As of the Petition Date, the Debtor estimates that it owes approximately \$10,000 in the aggregate on account of the accrued services of ADP rendered prior to the Petition Date;
- e. reimburse Employees for prepetition reimbursable expenses, consisting of out-of-pocket expenses incurred in the ordinary course of business (collectively, the "Reimbursable Expenses"). As of the Petition Date, the Debtor estimates that no more than \$10,000 of Reimbursable Expenses are outstanding;
- f. pay unpaid corporate credit card expenses in the ordinary course and consistent with past practices. The Debtor believes that there are no outstanding prepetition amounts owed on account of the Corporate Credit Cards;
- g. honor and continue in the ordinary course of business and pay the prepetition amounts associated with benefit plans for eligible Employees such as healthcare plans, health savings accounts, paid time off, and workers compensation plan (as defined in the Employee Wages and Benefits Motion, the "Employee Benefits Programs"). As of the Petition Date, the Debtor estimates that it owes approximately \$206,038 in the aggregate on account of Employee Benefits Programs; and
- h. honor and continue in the ordinary course of business the Debtor's commuter benefit plan (the "Commuter Benefits Plan"). As of the Petition Date, the Debtor estimates that it owes approximately \$38 in costs to maintain the Commuter Benefits Plan.

74. The majority of the Debtor's Employees rely on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses. The Employees may suffer substantial personal hardship and, in some cases, be unable to meet their basic needs if the Debtor is not permitted to continue the Employee Compensation and Employee Benefits Programs in the ordinary course of business. The Debtor seeks to minimize the personal hardship

the Employees would suffer if Employee Obligations are not paid when due or as expected. Importantly, the Debtor does not believe that it owes any individual Employee more than the statutory cap. Consequently, I believe the relief requested is necessary and appropriate.

75. I believe the Employees provide the Debtor with services necessary to conduct the Debtor's business, and, absent the payment of the Employee Compensation and the Employee Benefits Programs owed to the Employees, the Debtor will likely experience Employee turnover and instability at this critical time. I believe that, without these payments, the Employees may become demoralized and unproductive because of the potential significant financial strain and other hardships the Employees may face. Employees may then elect to seek alternative employment opportunities. I believe the Debtor's value may be materially impaired to the detriment of all stakeholders in such a scenario. I, therefore, believe that payment of the prepetition obligations with respect to the Employee Compensation and Employee Benefits Programs is a necessary and critical element of the Debtor's efforts to preserve value and will give the Debtor the greatest likelihood of retention of its Employees as the Debtor seeks to operate its business in this Chapter 11 Case.

F. Motion of the Debtor for Entry of Interim and Final Orders (I) Authorizing the Debtor to Maintain Existing Insurance Policies, Pay All Policy Premiums Arising Thereunder, and Renew Such Policies, (II) Authorizing Banks to Honor and Process Checks and Electronic Transfer Requests Related Thereto, and (III) Granting Related Relief (the "Insurance Motion")

76. In the ordinary course of the Debtor's business, the Debtor maintains numerous insurance policies (collectively, the "Policies") with various insurance companies (collectively, the "Insurance Companies") providing coverage for, *inter alia*, general liability, umbrella, excess

liability, property, inland marine, excess property, boiler and machinery, auto, directors and officers liability, employment practices liability, and cyber liability.⁶

77. Each of the Policies has a one (1) year term, and coverage began on February 1, 2020 for most of the Policies. The Debtor pays the annual premiums of the Policies in quarterly installments, with the exception of the annual premiums for the Debtor's (i) directors and officers liability policy and (ii) employment practices liability policy, which were paid in full when such policies commenced. As of the Petition Date, the Debtor has paid the first two quarterly installments on February 1, 2020 and May 1, 2020, respectively, and the final two installments will come due on August 1, 2020 and November 1, 2020, respectively.

78. The Debtor's ability to continue to pay the premiums arising under the Policies is necessary in order to avoid immediate and irreparable harm to the Debtor's estate because failure to do so would jeopardize the Debtor's ability to maintain the insurance coverage necessary to continue the Debtor's business operations. Specifically, quarterly installments of certain of the annual premiums are soon to come due. The Debtor believes that if the insurance premiums are not paid when due, the Insurance Companies may seek to terminate the Policies. The effect of potential cancellation of the Policies would adversely impact the estate, particularly at the early stage of the Chapter 11 Case. Having to obtain alternative, comparable insurance policies from other insurance companies could result in considerable additional cash expenditures as well as disruption and delays that would be detrimental to the Debtor's efforts to preserve and maximize the value of the estate. Moreover, cancellation of the Policies would cause the Debtor to be in violation of the *Operating and Reporting Guidelines Issued for Debtors in Possession and*

⁶ The Debtor maintains other insurance policies and programs with respect to employee benefits including, without limitation, health, dental, disability and life insurance. These programs and policies are addressed in the Employee Wages and Benefits Motion..

Trustees by the Office of the United States Trustee for the District of Delaware, which require the Debtor to maintain insurance coverage through the pendency of the Chapter 11 Case.

79. Accordingly, by the Insurance Motion, the Debtor requests authorization to honor its obligations under the current Policies, pay postpetition installment payments in the ordinary course of business, and, to the extent any of the Policies expire during the Chapter 11 Case, renew or otherwise obtain new policies without further order of the Court. The Debtor also seeks interim relief to pay the quarterly installment of certain annual premiums in the aggregate amount of approximately \$110,000 that will come due on August 1, 2020.

G. Motion of the Debtor for Entry of Interim and Final Orders (I) Authorizing the Maintenance of Bank Accounts and Continued Use of Existing Business Forms, (II) Authorizing the Continued Use of Cash Management System, (III) Waiving Certain Deposit Guidelines, and (IV) Granting Related Relief (“Cash Management Motion”)

80. Pursuant to the Cash Management Motion, the Debtor seeks entry of interim and final orders (i) authorizing, but not directing, the maintenance of bank accounts and continued use of existing business forms and checks; (ii) authorizing, but not directing, continued use of the cash management system described in the Cash Management Motion (the “Cash Management System”); (iii) extending the time to comply with certain deposit guidelines promulgated by the Office of the United States Trustee, and (iv) granting related relief.

81. In the ordinary course of business, the Debtor maintains twenty-six (26) accounts (collectively, the “Bank Accounts”) with four (4) banks: twenty-three (23) accounts with Citibank, N.A. (“Citi”); one (1) account with Wells Fargo, N.A. (“Wells”); one (1) account with Bank of America, N.A. (“BofA”); and one (1) account with MUFG (and together with BofA, Citi and Wells, the “Banks”).

82. The Cash Management System provides the Debtor with an efficient means of collecting, disbursing, and transferring funds. The Debtor's accounting department manages the Cash Management System and provides daily oversight over its functions and controls.

83. The Debtor's transition into chapter 11 will be significantly less disruptive if the Bank Accounts are maintained following the commencement of the Chapter 11 Case with the same account numbers and, where applicable, automated relationship.

84. In addition, in the ordinary course of business, the Debtor uses pre-printed check stock with its name printed thereon, and also maintains pre-printed correspondence and business forms, including, but not limited to, letterhead, envelopes, promotional materials, and other business forms (together with the Debtor's checks (if any), the "Business Forms"). I believe that authorizing the Debtor to continue to use its Business Forms substantially in the forms existing immediately prior to the Petition Date will minimize administrative expense and delay.

85. Furthermore, as part of the Cash Management System, the Debtor provides corporate credit and debit cards that are issued in the Controller's name, which are used primarily to pay e-commerce and café-related vendors who prefer to be paid via credit or debit card instead of via wire transfer. These two cards are issued in the Controller's name, though the Debtor is ultimately liable for these charges. I believe that authorizing the Debtor to continue to use corporate cards in the ordinary course will minimize administrative expense and delay.

86. The continued use of the Cash Management System is essential to the Debtor's business operations during the Chapter 11 Case and the Debtor's goal of maximizing value for the benefit of all parties in interest. I believe that requiring the Debtor to adopt a new cash management system would be expensive, impose needless administrative burdens, and cause undue disruption. Any disruption in the collection of funds as currently implemented would

adversely (and perhaps irreparably) affect the Debtor's ability to maximize estate value. For these reasons, I believe that maintaining the existing Cash Management System without disruption is in the best interests of the Debtor, its estate, and all interested parties.

H. Motion of the Debtor for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Discontinuing, Altering, or Refusing Service; (II) Authorizing the Proposed Form of Adequate Assurance of Payment; (III) Establishing and Approving Procedures for Resolving Requests by Utility Providers for Additional Adequate Assurance; and (IV) Granting Related Relief (the "Utilities Motion")

87. Pursuant to the Utilities Motion, the Debtor seeks entry of interim and final orders (i) prohibiting Utility Providers from discontinuing, altering, or refusing service to the Debtor on the basis of the commencement of this Chapter 11 Case, prepetition amounts outstanding, or on account of any perceived inadequacy of the Debtor's proposed adequate assurance, or requiring the Debtor to furnish any additional deposit or other security for the continued provision of services; (ii) authorizing the proposed form of adequate assurance of payment to the Utility Providers (as defined below); (iii) establishing and approving procedures for resolving requests by Utility Providers for additional adequate assurance; and (iv) granting related relief.

88. To operate its business and manage its properties, the Debtor obtains various utility services, such as electric, telephone, network/internet, garbage, and other services (collectively, the "Utility Services"), from a number of utility providers (collectively, the "Utility Providers").

89. Prior to the Petition Date, the Debtor spent approximately \$209,413 in the aggregate each month for Utility Services, calculated as a historical average payment for the 12-month period ending May 31, 2020. The Debtor expects that its go-forward utility expense will be reduced, however, to the extent certain brick-and-mortar stores are permanently closed. The Debtor currently has an aggregate of \$24,199 in deposits held by the Utility Providers

(excluding deposits for the John F. Kennedy Airport store that has been vacated and utility deposits that are with landlords in the form of general rent deposits).

90. The Debtor estimates that the aggregate amount of unpaid invoices for Utility Providers as of the Petition Date is approximately \$1,445. All of those unpaid invoices are due on the Petition Date or will become due shortly thereafter.

91. I believe that uninterrupted Utility Services are essential to the Debtor's business operations and the preservation of the Debtor's estate during the pendency of this Chapter 11 Case. If any Utility Provider alters, refuses, or discontinues service, even for a brief period, the Debtor's ability to preserve and maximize the value of its estate could be severely and irreparably harmed. Indeed, any interruption of the Utility Services would disrupt the Debtor's ability to operate and maintain its business and would thereby negatively affect the Debtor's customer relationships, revenues, and profits. Such a result could seriously jeopardize the Debtor's continued operations and, ultimately, its value and constituent recoveries.

92. The Debtor intends to pay all postpetition obligations and I expect that revenues generated from the Debtor's business operations and funds from the DIP Financing will be sufficient to pay all undisputed postpetition obligations owed to the Utility Providers in a timely manner. However, to provide adequate assurance of payment for future services to the Utility Providers, the Debtor proposes to deposit into a segregated bank account for the benefit of the Utility Providers cash in an amount equal to one-half of the Debtor's average monthly cost of Utility Services for the 12-month period ending May 31, 2020, less any deposit held by a Utility Provider and excluding Utility Services billed directly to the Debtor's landlords (the "Adequate Assurance Deposit"). Based on this formula, the Debtor estimates that the total amount of the

Adequate Assurance Deposit should equal \$92,844. The Debtor's creditors, including the DIP Lender and Prepetition Lender, will not have a lien on the Adequate Assurance Deposit.

93. If any Utility Provider believes adequate assurance is required beyond Adequate Assurance Deposit, the Debtor proposes that such Utility Provider request such assurance pursuant to certain procedures set forth in the Utilities Motion (the "Adequate Assurance Procedures").

94. Accordingly, based on the foregoing and those additional reasons set forth in the Utilities Motion, I believe that the relief requested in such motion is necessary to avoid immediate and irreparable harm and is in the best interests of the Debtor's estate, its creditors, and all other parties in interest.

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CONCLUSION

95. The Debtor has filed this case with the goal of preserving and maximizing the value of its assets. For the reasons described herein and in the First Day Motions, I believe that the prospect for achieving these objectives for the benefit of creditors and other stakeholders will be substantially enhanced if this Court grants the relief requested in each of the First Day Motions and respectfully request the Court to do so.

I declare under penalty of perjury that, based upon my knowledge, information and belief as set forth in this Declaration, the foregoing is true and correct.

Executed on July 10, 2020

/s/ John Bittner

John Bittner
Chief Restructuring Officer