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8 Proposed Attorneys for Debtor
9 THE WILKES BASHFORD COMPANY

10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 In re
14 The Wilkes Bashford Company,
15 Debtor.
16 Tax I.D. 94-2944325

Case No. 09-33497 TEC

Chapter 11

DECLARATION OF MICHAEL APPEL IN
SUPPORT OF MOTION FOR ORDER (I)
AUTHORIZING SALE OF DEBTOR'S
ASSETS FREE AND CLEAR OF LIENS
PURSUANT TO BANKRUPTCY CODE §
363, (II) AUTHORIZING ASSUMPTION
AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND
UNEXPIRED LEASES PURSUANT TO
BANKRUPTCY CODE § 365, AND (III)
MAKING FINDINGS PURSUANT TO
BANKRUPTCY CODE § 363(m)

Date: [TBD]

Time: [TBD]

Place: United States Bankruptcy Court
235 Pine Street, Courtroom 23
San Francisco, CA

Judge: Thomas E. Carlson

24 I, Michael Appel, hereby declare as follows:

25 1. I am the Interim CEO of The Wilkes Bashford Company ("Debtor"),
26 debtor and debtor in possession in the above-captioned bankruptcy case, and the designated
27 responsible individual for the Debtor. I make this declaration in that capacity and in support
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1 of the Debtor's *Motion for Order (I) Authorizing Sale of Debtor's Assets Free and Clear of*
2 *Liens pursuant to Bankruptcy Code § 363, (II) Authorizing Assumption and Assignment of*
3 *Certain Executory Contracts and Unexpired Leases Pursuant to Bankruptcy Code § 365, and*
4 *(III) Making Findings Pursuant to Bankruptcy Code § 363(m)* (the "Sale Motion").

5 2. If called upon to do so, I could and would testify, of my own personal
6 knowledge, to the facts set forth herein.

7 3. I have served as the Interim CEO of the Debtor since March 2009, and
8 have extensive experience as an executive of retail businesses, with particular expertise in the
9 operations and turnaround of specialty retailers. In my capacity as Interim CEO I have
10 obtained information regarding the operations of the Debtor, its financial performance, its
11 sales and financing efforts during my term as Interim CEO. If called upon to testify as to the
12 matters set forth in this declaration, I could and would competently testify thereto, as the facts
13 set forth herein are personally known to me or I have gained knowledge of them from the
14 business records of the Debtor maintained in the ordinary course of business.

15 **The Chapter 11 Filing**

16 4. On November 8, 2009, the Debtor filed a voluntary petition with this
17 court for reorganization under chapter 11 of Title 11 of the United States Code (the
18 "Bankruptcy Code"). The Debtor continues to manage and operate its business as a debtor in
19 possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has
20 been appointed in this chapter 11 case and no committee has been appointed or designated.

21 **The Debtor's Business and Anticipated Sale**

22 5. The Debtor is a San Francisco institution and a global icon in luxury
23 specialty retail. Founded in 1966 by Wilkes Bashford, the company offers unmatched
24 merchandise quality and an exceptional level of service to its customers. The stores have a
25 loyal and upscale clientele that appreciates the high-quality garments, superb craftsmanship
26 and masterful coordination offered by the Debtor. The company's exceptional customer
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1 service is fully-realized in the long-term relationships established between the members of its
2 sales team and loyal customers.

3 6. The Debtor's flagship store is located in the Union Square district of
4 San Francisco. It houses six floors of merchandise, segmented by men's and women's
5 collections and a home store, and offers a range of product lines. In 1995, the Debtor opened
6 a "Wilkes Sport" store in Mill Valley, California. In 2001, the Debtor opened its Palo Alto
7 store in the Stanford Shopping Center to better serve its customers in Silicon Valley. In 2006,
8 the Debtor expanded to the Monterey Peninsula, opening a store in Carmel, California.

9 7. The 2008-2009 recession resulted in poor performance in the luxury
10 sector of the consumer market, including the Debtor. In Spring 2009, the Debtor retained
11 Quest Turnaround Advisors, LLC ("Quest") to assist it in assessing its financing and strategic
12 alternatives, and to improve operating performance. The result of the Debtor's and Quest's
13 efforts was the closure of the Mill Valley store in September 2009 and the Carmel store in
14 October 2009, and a restructuring of the Debtor's prepetition trade payables. The Debtor's
15 principal liabilities consist of its unsecured obligations to vendors, its secured obligation to
16 Comerica Bank and certain shareholders (as discussed below), and its unsecured obligations
17 to landlords.

18 8. Ultimately, a sale of the business presented the best alternative to
19 address the Debtor's needs. The Debtor entered into negotiations to sell substantially all of its
20 assets to Mitchell. Mitchell is affiliated with a private luxury apparel retailer located on the
21 East Coast. After the closing of the acquisition, Mitchell will continue to operate the San
22 Francisco and Palo Alto stores. This case is filed in order to consummate the sale according
23 to the terms of the Agreement and obtain approval thereof pursuant to Bankruptcy Code
24 § 363.

25 **The Debtor's Prepetition Financing and Marketing Efforts**

26 9. I am informed and have become aware through business records of the
27 Debtor maintained in the ordinary course of business that beginning in November 2008, the
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1 Debtor worked with North Point Advisors, LLC (“North Point”) to raise investment capital
2 for the company through sales of common stock. As a part of its efforts, North Point
3 prepared and distributed detailed marketing information on the company, its assets, its
4 operations, and its people to potential investors. Ultimately, the Debtor was unable to raise
5 sufficient capital to continue pursuing this course of action.

6 10. Then, in March 2009, the Debtor engaged Quest, and through it I
7 became the Interim CEO of the Debtor. Quest’s actions focused on improving the operating
8 performance of the stores, while assessing the financial and strategic alternatives for the
9 company. Through Quest’s involvement, Debtor reduced its cost base and expense year-to-
10 date by approximately 35%. This operational improvement was obtained by closing
11 underperforming stores, negotiating a standstill or forbearance on significant debt, generating
12 cash to support inventory purchases through a warehouse sale, and negotiating purchase terms
13 advantageous to the company given its financial situation. As a result the company
14 positioned itself to operate more efficiently and effectively without sacrificing the service that
15 is a hallmark of luxury retail success. These actions increased the marketability of the
16 Debtor, ultimately resulting in the purchase offer from Mitchell.

17 11. During this restructuring period, in May 2009, the Debtor formally
18 engaged North Point to continue seeking private investment or a sale of the company. Using
19 its experience in the retail marketing area and familiarity with the company, North Point
20 targeted and contacted nineteen potential purchasers. Again, their efforts were unsuccessful.

21 12. The Debtor then engaged the investment banker Stephens, Inc.
22 (“Stephens”) in September 2009 to provide additional assistance in exploring potential sale
23 options. Applying its extensive experience in the luxury retail sector, Stephens identified
24 potential financial and strategic purchasers of the company. Further, Stephens reached out to
25 potential national and international buyers to determine their level of interest in purchasing
26 the company. Their efforts are on-going.

1 13. Throughout its restructuring process, the Debtor recognized that it
2 would need additional capital in Fall 2009 to fund inventory purchases and support
3 operations. Despite its best efforts, the Debtor was unable to raise capital from outside
4 sources. In order to partially bridge the funding gap, the Debtor obtained \$750,000 in
5 additional financing through secured loans from three of its shareholders in August 2009. In
6 addition, the Debtor sought additional financing from customers and community contacts but
7 its efforts were unsuccessful. Despite the cash infusion from the shareholder lenders, the
8 Debtor's cash position has continued to erode and its sales have suffered based on its inability
9 to purchase adequate inventory to support its projected sales plan.

10 14. Meanwhile, during Quest's engagement as financial advisor, it also
11 marketed the company through its contacts in specialty-retail and private equity markets.
12 Based on its contacts and experience, Quest contacted a dozen potential purchasers. Mitchell
13 was one of the strategic purchaser's contacted by Quest. Despite the targeted and extensive
14 marketing efforts of North Point, Stephens, and Quest, the Mitchell offer is the only purchase
15 offer received by the Debtor.

16 15. The Agreement contemplates that following the closing Mitchell will
17 continue to operate the stores in San Francisco and Palo Alto, California. The Debtor
18 understands that the November 30, 2009 closing deadline and the economic terms of the
19 Agreement are based on Mitchell's ability to operate the stores during the holiday season.
20 Historically, December sales represent approximately 13.5% of the company's annual sales.
21 As these sales are generally not discounted prior to Christmas the return on cost of goods is
22 significantly greater in December than in January.

23 16. The Agreement is the result of extensive, arms-length negotiations
24 between the parties, and Mitchell is a good faith purchaser of estate assets.

25 17. The following entities assert liens on all or a portion of the Assets:

- 26 (a) Comerica Bank ("Comerica"): Comerica has a lien upon all
27 assets of the Debtor. Comerica consents to the sale free and
28 clear, provided that its lien shall attach to the proceeds.

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- (b) “Shareholder Lenders”: Three of the Debtor’s shareholders assert security interests in the Assets pursuant to secured loans provided to the Debtor. The Shareholder Lenders consent to the sale free and clear, provided that their liens shall attach to the proceeds. Further, the Shareholder Lenders have agreed to reduce the outstanding obligations owed to them from \$750,000, in the aggregate, to \$300,000, in the aggregate.
- (c) RAI Credit, LLC (“RAI”): RAI asserts a security interest in Cash Collateral consisting of accounts of the Debtor. RAI provides credit card processing services for purchases made using The Wilkes Bashford Company credit card. As RAI deducts its fees prior to distribution of payments received to the Debtor, RAI is holding funds of the Debtor in excess of the amounts owed to it. The Agreement provides that the agreement with RAI will not be assumed and assigned to Mitchell.
- (d) Winthrop Resources Corporation (“Winthrop”): Winthrop leased computer equipment and software to the Debtor. Winthrop asserts that its lease is a true lease and has filed a precautionary UCC-1 financing statement. Pursuant to the Agreement, the leases with Winthrop will be assigned to Mitchell, subject to Winthrop’s lien. If Mitchell determines to reject the Winthrop leases, then its collateral will not be included in the sale.

18. For over eight months, Debtor has worked to improve its operations, while seeking outside financing, and marketing the company; the best, and only, offer it has received is the Mitchell offer. Mitchell is not an insider and the Debtor negotiated the Agreement with Mitchell at arms’ length. The Debtor submits that the proposed sale provides the best potential return to the estate and its creditors. If the sale is not approved and closed on the terms provided, the Debtor will likely be forced to liquidate, resulting in employment losses and a reduced recovery for creditors.

19. The Debtor anticipates that the sale proceeds will provide a positive recovery for the estate. In connection with the sale, the Shareholder Lenders have agreed to reduce their secured claims from an aggregate of \$750,000 to \$300,000. Additionally, to the extent that Quest is entitled to recover a success fee in connection with this sale, allowance of such fee shall be subject to Court authorization pursuant to Bankruptcy Code § 330, and has been voluntarily capped at \$250,000. Following payment of administrative costs and allowed cure amounts, the Debtor anticipates that the sale proceeds will be sufficient to satisfy the

1 secured claims in full (with the Shareholder Lender reduction) and may produce a recovery
2 for general unsecured creditors.

3 I declare under penalty of perjury under the laws of the State of California and
4 the United States of America that the foregoing is true and correct to the best of my
5 knowledge and belief.

6 Executed this 8th day of November, 2009 at Purchase, New York.

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/s/ Michael Appel

Michael Appel