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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
EUSA LIQUIDATION INC., **(F/K/A ESCADA (USA) INC.)**	:	**Case No. 09-15008 (SMB)**
Debtor.	:	

EMERGENCY MOTION OF ESCADA US SUBCO, LLC TO ENFORCE THE SALE ORDER

ESCADA US Subco, LLC (the "Purchaser") hereby seeks an Order, pursuant to 11 U.S.C. § 105(a) and 28 U.S.C. § 157(b)(2)(E), enforcing this Court's Order Pursuant to Sections 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006 (i) Approving the Sale of Substantially All of the Debtor's Assets, (ii) Authorizing the Debtor to Enter Into Agreement in Connection Therewith, (iii) Approving the Assumption and Assignment, or Rejection of Executory Contracts and Unexpired Leases and (iv) Related Relief, entered on January 7, 2010 (Docket No. 200) (the "Sale Order"). Specifically, the Purchaser seeks an order (a) enjoining 717 GFC LLC (the "Landlord") from using any purported inadequacy of the Replacement Guaranty (as defined below) executed and delivered by ESCADA Luxembourg, S.a.r.l. ("ESCADA Lux") in connection with the closing of the sale

approved by the Sale Order, to (i) take any action to terminate the lease related to Purchaser's flagship retail store located at 717 Fifth Avenue, New York, New York (the "Fifth Avenue Lease") (ii) draw on that certain Irrevocable Standby Letter of Credit dated January 15, 2010, issued by Deutsche Bank in favor of Landlord on behalf of the Purchaser (the "Letter of Credit"), (iii) assert damages or other remedies under the Fifth Avenue Lease, or (iv) otherwise interfere with Purchaser's use and enjoyment of the premises subject to the Fifth Avenue Lease; and (b) granting such other relief as the Court deems just and proper. In support, the Purchaser respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Court has already determined that the Purchaser has provided adequate assurance to the Landlord by, among other things, delivering a Replacement Guarantee executed by ESCADA Lux, the Purchaser's parent. The Court made that determination as part and parcel of its approval of the sale of the Debtor's assets to Purchaser and the transactions embodied in the Sale Order, including the Replacement Guarantee. The Landlord was given every opportunity to contest the adequacy of the Replacement Guarantee, but chose to take no action prior to (or at) the Sale Hearing or in response to entry of the Sale Order. Instead, weeks after the closing of the transaction, the Landlord is threatening to terminate the Fifth Avenue Lease in willful disregard of this Court's Sale Order in a transparent attempt to improve its position. Such a collateral attack should not be allowed to proceed.

2. Pursuant to the Sale Order, Purchaser acquired substantially all of the assets of ESCADA (USA) Inc. (the "Debtor") free and clear of all liens, claims, encumbrances, defenses and interests. Among the assets transferred to Purchaser was the lease between a

predecessor in interest to the Landlord and the Debtor dated as of September 29, 2000 (as amended) relating to the Fifth Avenue Lease.[1]

3. In the Sale Order, the Court explicitly determined that all counterparties to Assumed Contracts had received adequate assurance of future performance within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of title 11 of the United States Code (the "Bankruptcy Code"), and ordered that all parties that had had not objected to the Sale Motion were deemed to have consented to the transactions contemplated therein. In addition, the Court approved the purchase agreement and all related agreements, including the Replacement Guarantee, as part of the Sale Order.

4. The Landlord was fully aware of the Debtor's chapter 11 proceedings and was sent notices of the Sale Hearing, the Sale Motion and the proposed Sale Order. Nevertheless, the Landlord did not object to the Sale Motion, attend the Sale Hearing, timely appeal the Sale Order or file any pleadings before the Sale Hearing challenging the adequacy of the replacement guarantee to be provided by ESCADA Lux.

5. Despite this failure, the Landlord is now attempting an impermissible end-run around the Court's clear and unambiguous Sale Order by threatening to terminate the Fifth Avenue Lease on the basis that the Replacement Guarantee is inadequate and commence a holdover proceeding in state court to obtain possession. This constitutes a collateral attack on the Sale Order and an attempt to deprive the Purchaser of one of the key assets acquired from the Debtor pursuant to the Sale Order. The Court should not countenance such behavior, and should require the Landlord to comply with the terms of the Sale Order and cease its interference with the Purchaser's right to continue performance under the terms of the Fifth Avenue Lease.

[1] Because the terms of the Fifth Avenue Lease may be confidential, it is not being filed with the Court as an exhibit to the Sercombe Declaration.

6. As set forth in the accompanying Declaration of Sean A. O'Neal (the "O'Neal Declaration"), in light of the fact that the Landlord has indicated its intention to terminate the Fifth Avenue Lease on five-days notice immediately following the close of the Purchaser's alleged "cure" period on March 15, 2010, and in light of the fact that the Landlord may attempt to draw on the Letter of Credit due to the purported inadequacy of the Replacement Guarantee (as defined below), the Purchaser submits that it is appropriate under Local Bankruptcy Rule 9077-1(a) that this Motion be heard by order to show cause rather than by notice of motion. In advance of filing the Motion, the Purchaser has contacted counsel for the Landlord. While the Landlord opposes the relief sought in the Motion, the Landlord's counsel consents to expedited scheduling of the hearing on the Motion, as soon as this week.

BACKGROUND

A. The Sale Process

7. On December 21, 2009, the Debtor filed its Motion Pursuant to Sections 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006 for (i) Approval of the Sale of Substantially All of the Debtor's Assets, (ii) Authorization to Enter into Agreement in Connection Therewith, (iii) Approval of the Assumption and Assignment, or Rejection of Executory Contracts and Unexpired Leases and (iv) Related Relief [Docket No. 171] (the "Sale Motion").

8. All counterparties to the Debtor's executory contracts and unexpired leases, including the Landlord, were served with a copy of the Sale Motion via overnight mail. See Affidavit of Service of Ricardo Tejeda Romero dated December 22, 2009 [Docket No. 177].

9. Among other things, the Sale Motion provides that "Any counterparty to a Contract entitled to adequate assurance of future performance desirous of receiving additional

information should contact the Debtor in advance of the Objection Deadline . . . in order to receive additional information." Sale Motion ¶ 39. Although a number of lease counterparties requested such information prior to the Court's hearing to consider the Sale Motion on December 31, 2009 (the "Sale Hearing"), the Landlord was not one of them.[2] In addition, the Sale Motion informed all counterparties that objections to the assumption and assignment of the leases, including the Fifth Avenue Lease, must be filed prior to the objection deadline. Sale Motion ¶ 40. The Landlord filed no objection to the Sale Motion, and made no appearance at the Sale Hearing.

10. In support of the Sale Motion, the Purchaser submitted a declaration of Harak Banthia, an authorized officer of the Purchaser, which, among other things, stated that, as a form of adequate assurance, "ESCADA Lux has agreed to enter into replacement guarantee agreements with certain lessors that were parties to existing guarantee agreements with ESCADA AG prior to the commencement of the Debtor's chapter 11 proceeding." Declaration of Harak Banthia [Docket No. 194] (the "Banthia Declaration") ¶ 8. The Banthia Declaration was served on the Landlord, among other parties. Certificate of Service of Richard Conza, dated as of January 8, 2010 [Docket No. 205].

11. On December 21, 2009, the Landlord was served with notice of the Sale Hearing, and of the deadline to object to the Sale Motion, by overnight mail. See December 22, 2009, Affidavit of Service of Ricardo Tejeda Romero [Docket No. 177]. In addition, on December 30, 2009, the Landlord was served a copy of Agenda Letter for the Sale Hearing. See December 30, 2009, Affidavit of Service of Ricardo Tejeda Romero [Docket Nos. 193, 195]

[2] The Landlord did not ask for adequate assurance information until January 12, 2010, two weeks after the deadline to object to the Sale Motion and three days prior to closing of the asset sale. (See Sercombe Decl. ¶ 2, Ex. A.) Purchaser promptly forwarded the Landlord the same materials it had supplied to the other counterparties to the Debtor's unexpired leases. Id.

12. At the Sale Hearing, as set forth in the Banthia Declaration, counsel to Purchaser informed the Court that ESCADA Lux would provide a replacement guarantee to any landlord who had obtained a guarantee from ESCADA AG. Hr'g Tr. 46:1-2. In response, the Court commented that, among other things, ESCADA Lux's agreement "to honor guarantees or give guarantees where ESCADA AG had given guarantees" was "prima facie" evidence of adequate assurance. Hr'g Tr. 53:8-14. No party in interest, including the Landlord, objected to this determination or pursued the Court's invitation to demonstrate otherwise.

13. Ultimately, all asserted objections to the Sale Motion were withdrawn or resolved, and on January 7, 2010, the Court entered the Sale Order. The Sale Order provides that all assumed contracts (including the Fifth Avenue Lease) "shall be transferred to the Purchaser and shall remain in full force and effect for the benefit of Purchaser in accordance with their respective terms." Sale Order ¶ 12. In relevant part, the Sale Order also provides that:

> Purchaser's contractual obligation to perform under the Assumed Contracts after the Closing and to replace the Existing Letters of Credit on the same terms as provided in the Existing Letters of Credit, as well as, the information and assurances provided to lessors as set forth in the Banthia Declaration and the representations made on the record of the Sale Hearing, shall constitute adequate assurance of future performance within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. Any objections to the assumption and assignment of any of the Assumed Contracts to the Purchaser that have not been withdrawn, waived, settled or otherwise resolved are hereby overruled.

Sale Order ¶ I.[3]

14. In addition, the Sale Order provides that the "Debtor is hereby authorized and directed, without further order of the Court, to (i) enter into the Agreement, along with any additional instruments or documents that may be reasonably necessary or appropriate to

[3] The only exceptions to this conclusion addressed under the Sale Order relate to objections to the proposed cure amounts and accounting for certain year-end adjustments, not to the terms or adequacy of replacement guarantees or letters of credit.

implement the Agreement, provided that such additional documents do not materially change its terms, (ii) consummate the Sale in accordance with the terms and conditions of the Agreement and the other agreements contemplated thereby, [and] (iii) assume and assign to Purchaser the Assumed Contracts, [and] reject the Rejected Contracts." Sale Order ¶ 3.

15. The Sale Order further provides that "All entities, including without limitation governmental units, that have not objected to the Sale Motion are deemed now to have consented to the relief sought by the Sale Motion and the transactions contemplated therein." Id. ¶ 2. The Landlord did not seek a stay of the Sale Order, timely appeal the Sale Order or ask for reconsideration of the Sale Order.

16. The sale closed on January 15, 2010 (the "Closing"). Immediately prior to the Closing, following intensive discussions with Landlord's counsel, the Landlord accepted the Letter of Credit. (See Sercombe Decl., ¶ 3, Ex. B.) The Letter of Credit contains the same terms as the letter of credit issued by ESCADA AG in support of the Debtor's obligations on the Fifth Avenue Lease.

B. The Notices of Default

17. On January 27, 2010, the Landlord sent a notice (the "Notice of Default") (see Sercombe Decl. ¶ 4, Ex. C) to the Purchaser via overnight mail alleging that Purchaser had failed to replace the ESCADA AG guarantee of the Fifth Avenue Lease dated as of September 2000 (the "Original Guarantee") (see Sercombe Decl. ¶ 5, Ex. D). The Notice of Default asserted that the Purchaser had thirty days in which to cure its purported default by providing the Landlord with "a replacement guaranty from a new Guarantor of reasonably equivalent economic value to the [Original Guarantee] suitable to Landlord." If the Purchaser failed to meet

these conditions, the Notice of Default warned that the Landlord "intends to" serve a written five-day notice of termination of the Fifth Avenue Lease.[4]

18. The Notice of Default cites to no law, provision of the Bankruptcy Code, or clause in the Fifth Avenue Lease that requires a replacement guarantee to be of "reasonably equivalent economic value" to the Original Guarantee. Notwithstanding this basic failure, the Notice of Default states that a "guaranty from a company where the purported 'assets' are, however, effectively unavailable, because of the existence of purported 'shareholder loans' that the company refuses to 'subordinate' to the claims of creditors, would not constitute a reasonably equivalent guaranty" (emphasis in original).

19. In response, on February 2, 2010, the Purchaser delivered to the Landlord by hand a letter responding to the Notice of Default (the "Purchaser Response") (see Sercombe Decl. ¶ 6, Ex. E) and a fully executed guaranty of the Fifth Avenue Lease from ESCADA Lux (the "Replacement Guarantee") (see Sercombe Decl. ¶ 7, Ex. F) under the same terms and conditions as the Original Guarantee. The Purchaser Response stated that by providing the Replacement Guarantee, the Purchaser had cured any breach that may have existed under the Fifth Avenue Lease, and specifically referenced the Court's finding in the Sale Order that a replacement guarantee from ESCADA Lux on such terms satisfied the Purchaser's obligation under the Bankruptcy Code to provide adequate assurance of future performance.

20. Despite these statements, the Landlord persisted and advised the Purchaser by letter dated February 12, 2010 (the "Second Notice of Default") (see Sercombe Decl. ¶ 8, Ex. G) that the Replacement Guarantee did not cure the default asserted in the Notice of Default because the Purchaser had failed to show that the Replacement Guarantee was of a "reasonable

[4] In its January 22, 2010 statement withdrawing its motion to lift the automatic stay [Docket No. 212] (the "Withdrawal Statement"), the Landlord also made clear its intention, following service of the five-day termination notice, to "commence a holdover proceeding in [New York] Civil Court". See Withdrawal Statement ¶ 7.

equivalent economic value" to the Original Guaranty. Again, the Landlord cited to no authority in support of the assertion that the Replacement Guarantee was required to meet a "reasonably equivalent economic value" standard. The Second Notice of Default further provided that the Purchaser had until March 1, 2010 to "cure the violation", and that the Landlord did not believe the retention of jurisdiction provision in the Sale Order was applicable to a dispute over the adequacy of the Replacement Guarantee.[5]

21. By email exchange between counsel to the Purchaser and the Landlord on March 1, 2010, the Landlord extended the alleged "cure" period through and including March 15, 2010, and the Purchaser agreed to "forbear from exercising any rights in the bankruptcy court or otherwise until March 11, 2010." (See Sercombe Decl., ¶ 9, Ex. H.)

22. On March 11, 2010, counsel to The Purchaser requested an additional two-week extension of the "cure period", pending ongoing negotiations between The Purchaser and Landlord over the terms of a new lease for the Fifth Avenue property (the "New Fifth Avenue Lease"). On March 12, 2010, counsel to the Landlord informed the Purchaser that it was unwilling to extend the "cure period" as negotiations over the New Fifth Avenue Lease had reached an impasse. (See Sercombe Decl. ¶ 10, Ex. I.)

JURISDICTION

23. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(N) and (O) and 1334(a) to interpret and enforce the Sale Order, and to grant the relief requested in this Motion. Travelers Indem. Co. v. Bailey, 129 S. Ct. 2195, 2205 (2009); Jamaica Shipping Co. v. Orient Shipping Rotterdam B.V. (In re Millennium Seacarriers, Inc.), 458 F.3d

[5] The Landlord took a contrary position in the Withdrawal Statement, in which the Landlord conceded that it is "fully prepared to litigate these issues before this Court, if this Court believes that these matters fall within this Court's retention of jurisdiction." Withdrawal Statement ¶ 7.

92, 95 (2d Cir. 2006). The Court's jurisdiction extends to disputes between non-debtor parties. See Luan Inv. S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.), 304 F.3d 223, 230 (2d Cir. 2002) (considering a dispute between third parties over the effect of a sale order).

24. In addition, the Sale Order explicitly provides that "the Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement, and enforce the terms and provisions of [the] Order, all amendments thereto and any waivers and consents thereunder." Sale Order ¶ 21.

25. Finally, the Court has inherent authority to enforce its own orders. See NWL Holdings Inc. v. Eden Ctr., Inc. (In re Ames Dep't Stores, Inc.), 317 B.R. 260, 272 (Bankr. S.D.N.Y. 2004) (concluding that a bankruptcy court "has subject matter jurisdiction to enforce its orders not only because they were entered in proceedings in a case under title 11 . . . but also by reason of the power granted to any federal court to enforce its own orders").

26. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

ARGUMENT

A. Any Pursuit of Termination or Other State Law Remedies Premised on the Inadequacy of the Replacement Guarantee is a Violation of this Court's Sale Order.

27. As a matter of law, the Sale Order is res judicata on whether a replacement guarantee from Escada Lux is sufficient, and the Landlord is estopped from either purporting to terminate the lease based on an alleged inadequacy or from attempting to relitigate the issue in a separate proceeding in New York state court. In re HHG Corp., Docket No. 01-B-11982 (ASH), 2006 WL 1288591, at *2 (Bankr. S.D.N.Y. May 2, 2006) (Hardin, J.) ("Having knowingly waived their opportunity to object to the entry of the Sale Order, the Movants are barred by the doctrine of res judicata from challenging its provisions…."). Furthermore, the Sale Order constitutes a final order of the Court regarding the entire transaction contemplated by the asset

sale agreement, including the adequacy of the Replacement Guarantee. In re Clinton Street Food Corp., 254 B.R. 523, 530-532 (holding that a "bankruptcy court order approving a sale of assets is a final order for res judicata purposes" that is "final as to the entire world, including those who were not parties to the sale"). See also, Gekas v. Pipin (In re Met-L Wood Corp.), 861 F.2d 1012, 1017 (7th Cir. 1988) ("A proceeding under section 363 is an in rem proceeding. It transfers property rights, and property rights are rights good against the world, not just against parties to a judgment or persons with notice of the proceeding.").

28. In the Sale Order, the Court specifically ruled that counterparties to leases assumed by the Purchaser pursuant to the Sale had received adequate assurance of future performance on those leases. In addition to the replacement of certain existing letters of credit and information and assurances provided to the lessors in the Banthia Declaration, the adequate assurance included "representations made on the record at the Sale Hearing." Sale Order ¶ I.[6] In addition, the Sale Order approved the sale transaction and all related agreements, including the Replacement Guarantee, and approved the assumption and assignment of the Fifth Avenue Lease. Sale Order ¶ 3.

29. At no time prior to closing on January 15, 2010, did the Landlord or any other party in interest suggest on the record that a replacement guarantee from ESCADA Lux

[6] The Landlord claims that these representations included the promise from the Purchaser's counsel that the Landlord would receive a replacement guarantee of "reasonably equivalent economic value" to the Original Guarantee and that failure to provide such a guarantee constitutes a breach of the Fifth Avenue Lease that entitles the Landlord to terminate the lease after providing the Purchaser with a 30-day cure period. See Second Notice of Default. Not only were such representations never made at the Sale Hearing, they are not reflected in the Sale Motion, the Sale Order, the Banthia Declaration, or any of the other material provided by the Purchaser to the Court or the Landlord. To the contrary, the Banthia Declaration makes clear that ESCADA Lux would "enter into replacement guarantee agreements." Banthia Decl. ¶ 8 (emphasis added). Counsel to the Purchaser similarly stated, on the record at the Sale Hearing, that "if there was [an] existing guarantee, the parent is stepping up and guaranteeing." Hr'g Tr. 46:1-2.

was not a sufficient form of adequate assurance under any of the leases assumed by the Purchaser, including the Fifth Avenue Lease. In fact, at the Sale Hearing, the Court stated that:

> . . . I know the debtor or assignee has the burden of proof, but it just strikes me that the assignee is taking on – is going to be doing the same business under the same name with the same customers selling what I assume is similar merchandise or the same merchandise Escada, the debtor, would be selling, if Escada remained in business; and has agreed to honor guarantees or give guarantees where Escada AG had given guarantees. So prima facie, [it] sounds like there's adequate assurance of future performance, based upon the offers of proof and everything I've heard. But I will give any landlord, any additional landlord, provided they make it known today before we leave, the opportunity to prove otherwise or demonstrate otherwise.

Hr'g Tr. 53:2-14 (emphasis added).

30. If the Landlord had concluded that a guarantee from ESCADA Lux was inadequate, it should have filed an objection to the Sale Motion or otherwise appeared at the Sale Hearing to object to the proposed assumption and assignment of the Fifth Avenue Lease. It did not do so. The Landlord has demonstrated absolutely no reason that it should not be bound by the Court's approval of the sale and related agreements or the assumption and assignment of the Fifth Avenue Lease. Nor has the Landlord demonstrated any reason that the Court's determination that the Replacement Guarantee, in combination with the other forms of adequate assurance provided by the Purchaser, is not legally binding on the Landlord. Because the Landlord failed to object to the Sale Motion, it must be deemed to have consented to the relief outlined therein, including the receipt of the Replacement Guarantee from ESCADA Lux.

B. The Replacement Guarantee Meets the Purchaser's Obligation to Provide Adequate Assurance of Future Performance on the Fifth Avenue Lease.

31. As set forth above, the Court has already approved the sale and the assumption and assignment of the Fifth Avenue Lease, including the adequacy of the Replacement Guarantee. The Court does not need to even consider any contentions with regard

to the sufficiency of the Replacement Guarantee. For the avoidance of doubt, however, it is worth noting that the Landlord's contention in the Notice of Default that the Replacement Guarantee must be of "reasonably equivalent economic value" to the Original Guarantee is pure invention, as is its assertion that any Replacement Guarantee must be "satisfactory to Landlord". There is no provision of the Bankruptcy Code or the Bankruptcy Rules that requires such an evidentiary showing by a debtor or a proposed lease assignee, and neither the Fifth Avenue Lease nor the Original Guarantee address the financial condition of any successor guarantor.

32. To the contrary, the phrase "adequate assurance" is given "a practical, pragmatic construction . . . determined under the facts of each particular case." In re Bygaph, Inc., 56 B.R. 596, 605 (Bankr. S.D.N.Y. 1986). In essence, the "assumption and assignment process is not designed to afford a landlord with a benefit in addition to that which he originally bargained for under the original lease." Id.

33. Rather than addressing the legal standard for adequate assurance or the estoppel effect of the Sale Order, the Notice of Default cites to inapposite cases decided in New York state courts addressing a tenant's obligation to maintain a security deposit for the duration of the tenant's possession of the leased premises. See Atlas v. Moritz, 217 A.D. 38, 42, 216 N.Y.S. 490 (4th Dep't 1926); Park Holding Co. v. Johnson, 106 Misc. 2d 834, 837, 435 N.Y.S.2d 479, 481 (Civ. Ct. N.Y. County 1980). Notably, none of these cases deals even addresses the concept of adequate assurance, much less a bankruptcy court's prior approval for the assumption and assignment of a lease or its related determination of adequate assurance, which is binding on the Landlord. Instead, these cases hold that tenant must maintain a security deposit throughout the term of the lease. They say nothing that could be read to require an affiliate-guarantor of a lease to maintain a particular level of cash on its balance sheet.

34. Purchaser can only speculate that the Landlord's threatened termination of the Fifth Avenue Lease on the basis of an inadequate guarantee is nothing more than an attempt to obtain leverage in the negotiations over a new lease between the Purchaser and the Landlord. While the Purchaser does not dispute the Landlord's right to seek legitimate advantage in any discussions over a completely new lease, the Purchaser does contest the Landlord's right to violate this Court's order, terminate the Fifth Avenue Lease and wage a collateral attack on this Court's approval of the transaction and its finding of adequate assurance.

35. The only law implicated in this dispute is federal bankruptcy law. The issue is not the relative economic merits of the Original Guarantee and the Replacement Guarantee, but whether the Court has approved the assumption and assignment of the Fifth Avenue Lease and whether the Landlord received adequate assurance of the Purchaser's future performance on the Fifth Avenue Lease. In sum, the key issue before the Court is whether the Landlord can collaterally attack the Sale Order and take action under state law to terminate the Fifth Avenue Lease based on the purported inadequacy of the Replacement Guarantee.

NOTICE

36. Contemporaneously with the filing of this Motion, the Purchaser has sought entry of the proposed Order to Show Cause Scheduling Hearing on Emergency Motion to Enforce the Sale Order (the "Proposed Order to Show Cause"), attached hereto as Exhibit A. If ultimately entered by the Court, notice of this Motion and the O'Neal Declaration will be provided in accordance with the Proposed Order To Show Cause. The Purchaser requests that the Court enter the Proposed Order to Show Cause scheduling the hearing on the Motion for March 19, 2010. As set forth in the O'Neal Declaration, while the Purchaser and the Landlord do not agree on the relief the Motion seeks, the Landlord consents to an expedited hearing

schedule, as early as this week. Contemporaneously with filing the Motion, the Purchaser has served (via hand delivery, electronic mail and/or facsimile) the Motion, the O'Neal Declaration, and the Proposed Order To Show Cause on the U.S. Trustee and counsel for each of the Landlord, the Debtors and the Official Committee of Unsecured Creditors. The Purchaser submits that no other or further notice is necessary under the circumstances.

WHEREFORE, Purchaser respectfully requests that the Court enter an order in the form attached hereto as Exhibit B. Specifically, the Purchaser seeks an order (a) enjoining the Landlord from using any purported inadequacy in the Replacement Guaranty to (i) take any action to terminate the Fifth Avenue Lease, (ii) draw on the Letter of Credit, (iii) assert damages or other remedies under the Fifth Avenue Lease, or (iv) interfere with Purchaser's use and enjoyment of the premises subject to the Fifth Avenue Lease; and (b) granting such other relief as the Court deems just and proper.

Dated: New York, New York
March 15, 2010

Respectfully submitted,

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EXHIBIT A: PROPOSED ORDER TO SHOW CAUSE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
EUSA LIQUIDATION INC., **(F/K/A ESCADA (USA) INC.)**	:	**Case No. 09-15008 (SMB)**
Debtor.	:	**Adversary Proceeding No. 10-_____**

ORDER TO SHOW CAUSE SCHEDULING HEARING ON EMERGENCY MOTION OF ESCADA US SUBCO, LLC TO ENFORCE THE SALE ORDER

Upon consideration of (a) the Emergency Motion of ESCADA US Subco, LLC to Enforce the Sale Order (the "Motion")[1], (b) the Declaration of Sean A. O'Neal Pursuant to Local Bankruptcy Rule 9077-1(a) (the "O'Neal Declaration"), and (c) the Declaration of Meghan Sercombe (the "Sercombe Declaration"); and it appearing that expedited hearing on the Motion is warranted; and after due deliberation and sufficient cause appearing therefore, it is:

ORDERED, that Purchaser, Landlord, and all other interested parties appear before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408 at __:__ _.m. (prevailing Eastern Time) on ____day, the ___th day of March, 2010, to show cause why an order granting the Motion should not issue (the "Hearing"); and it is further

FURTHER ORDERED that service copies of the Motion, the O'Neal Declaration, the Sercombe Declaration, and this Order to Show Cause be sent by counsel to Purchaser by email and/or facsimile upon all counsel of record who have appeared in the above-captioned

[1] Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Motion.

proceedings and provided email and/or facsimile service details no later than the date of entry of this Order to Show Cause, with service copies to be delivered via overnight delivery to any remaining counsel of record;

FURTHER ORDERED that objections or opposition to the Motion, if any, be filed and served no later than __:__ _.m. (prevailing Eastern Time) on March __, 2010;

FURTHER ORDERED that replies, if any, to such objections, be filed and served no later than __:__ _.m. (prevailing Eastern Time) on March __, 2010;

FURTHER ORDERED that unless objections or opposition to the Motion are timely filed and served, the Court may sign an order granting the Motion without further notice;

FURTHER ORDERED that notice given in accordance with the provisions of this Order shall constitute good and sufficient notice of the Hearing, the Motion and all matters to be heard in connection therewith, and that no other or further notice shall be necessary or required.

Dated: New York, New York
March ___, 2010

HONORABLE STUART M. BERNSTEIN
CHIEF UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B: PROPOSED ORDER GRANTING MOTION

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
EUSA LIQUIDATION INC., **(F/K/A ESCADA (USA) INC.)**	:	**Case No. 09-15008 (SMB)**
Debtor.	:	**Adversary Proceeding No. 10-_____**

ORDER GRANTING EMERGENCY MOTION OF
ESCADA US SUBCO, LLC TO ENFORCE THE SALE ORDER

Upon consideration of the Emergency Motion of ESCADA US Subco, LLC to Enforce the Sale Order and the supporting declarations and exhibits filed therewith (collectively, the "Motion")[1]; and upon the record of the hearing held to consider the Motion on March [__], 2010; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due, proper and sufficient notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and the Court having found and determined that it should exercise its discretion in accordance with the relief requested in the Motion and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, the Court hereby makes the following orders:

[1] Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Motion.

FINDINGS OF FACT

1. The findings and conclusions set forth herein constitute findings of fact and conclusions of law Fed. R. Bankr. Proc. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. Proc. 9014.

2. On December 21, 2009, the Debtor filed its Sale Motion [Docket No. 171]. Landlord was served with a copy of the Sale Motion via overnight mail, and as such was on notice of the proposed assumption and assignment of the Fifth Avenue Lease and the proposed method for providing adequate assurance of future performance. The Landlord was also served with a Notice of the Sale Hearing on December 22, 2009, which included notification of the deadline to object to the Sale Motion, and with a copy of the Agenda Letter for the Sale Hearing on December 30, 2009.

3. The Landlord filed no objection to the Sale Motion, and did not appear at the Sale Hearing.

4. On December 30, 2009, the Purchaser submitted a declaration of Harak Banthia [Docket No. 194] stating that the Purchaser's parent company, ESCADA Lux, would provide replacement guarantees to lessors that had existing guarantee agreements with ESCADA AG.

5. At the Sale Hearing, the Court determined that, among other things, ESCADA Lux's agreement "to honor guarantees or give guarantees where ESCADA AG had given guarantees" was "prima facie" evidence of adequate assurance. Neither the Landlord nor any other party sought to rebut or challenge that evidence.

6. Accordingly, on January 7, 2010, the Court then entered the Sale Order [Docket No. 200], which provided that "Purchaser's contractual obligation to perform under the

Assumed Contracts after Closing and to replace the Existing Letters of Credit on the same terms as provided in the Existing Letters of Credit, as well as, the information and assurances provided to lessors as set forth in the Banthia Declaration and the representations made on the record at the Sale Hearing, shall constitute adequate assurance of future performance within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. Any objections to the assumption and assignment of any of the Assumed Contracts to the Purchaser that have not been withdrawn, waived, settled or otherwise resolved are hereby overruled."

7. The Landlord is bound by the Court's determination that Purchaser has provided adequate assurance of future performance under the Fifth Avenue Lease.

CONCLUSIONS OF LAW

8. The Court incorporates by reference as if fully set forth herein any findings of fact and conclusions of law made on the record at the hearing to consider the Motion.

9. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b)(1), 157(b)(2)(N) and (O) and 1334. This proceeding is a core proceeding under 28 U.S.C. §157(b)(2). The statutory predicates for the relief sought herein are 11 U.S.C. § 105, and 28 U.S.C. §157(b)(2). Venue of the Debtors' chapter 11 cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

10. In light of the Court's determination that Purchaser has provided adequate assurance, Landlord has been and is enjoined from taking any action against Purchaser, including without limitation, seeking to terminate the Fifth Avenue Lease, drawing on the Letter of Credit or asserting damages or other remedies under the Fifth Avenue Lease, or interfering with Purchaser's use and enjoyment of the premises subject to the Fifth Avenue Lease, in each case on the basis of any purported inadequacy of the Replacement Guarantee.

ORDERS

11. ORDERED that the relief requested in the Motion is granted in its entirety; and it is further

12. ORDERED that the Landlord has been and is enjoined from taking any action, in each case on the basis of any purported inadequacy of the Replacement Guarantee, to (a) terminate the Fifth Avenue Lease, (b) draw on the Letter of Credit, (c) assert any damages or other remedies under the Fifth Avenue Lease, or (d) interfere with Purchaser's use and enjoyment of the premises subject to the Fifth Avenue Lease; and it is further

13. ORDERED that the Court retains jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order.

Dated: New York, New York
March ___, 2010

HONORABLE STUART M. BERNSTEIN
CHIEF UNITED STATES BANKRUPTCY JUDGE