

STORCH AMINI & MUNVES PC  
Bijan Amini (BA 3533)  
Avery Samet (AS 1483)  
2 Grand Central Tower, 25<sup>th</sup> Floor  
140 East 45<sup>th</sup> Street  
New York, NY 10017  
(212) 490-4100

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:	Chapter 11
VALUE CITY HOLDINGS, INC., et al.,	Case Nos. 08-14197 (JMP)
Debtors.	(Jointly Administered)

-----X

**APPLICATION OF THE DEBTORS FOR AN ORDER  
AUTHORIZING THE RETENTION AND EMPLOYMENT OF  
STORCH AMINI & MUNVES PC AS SPECIAL COUNSEL  
TO ANALYZE AND LITIGATE PREFERENCE CLAIMS**

Value City Holdings, Inc., and its subsidiaries, as debtors and debtors in possession (collectively, “Value City” or the “Debtors”), respectfully represent:

**SUMMARY OF RELIEF REQUESTED**

1. The Debtors submit this application (the “Application”) for an order under 11 U.S.C. §§ 327(a) and 329 authorizing the retention of the law firm of Storch Amini & Munves PC (“SAM”) as special counsel, effective as of June 29, 2009. In particular, Value City seeks to employ SAM as special counsel to review, analyze, and prosecute certain preferential transfers in accordance with sections 547 and 550 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors respectfully request entry of the proposed order approving the retention of SAM in accordance with the terms and conditions set forth in that certain letter agreement dated June 29, 2009 (the “Engagement Letter”).

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is § 327 of Bankruptcy Code.

## **BACKGROUND**

3. On October 26, 2008 (the “Petition Date”),<sup>1</sup> each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors’ Chapter 11 cases.

4. On November 3, 2008, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed an Official Committee of Unsecured Creditors (the “Creditors’ Committee”). On December 16, 2008, and on April 21, 2009, the U.S. Trustee amended its appointment of the Creditors’ Committee.

5. As of the Petition Date, the Debtors operated a full-line, value-price retailer carrying men’s, women’s and children’s apparel, accessories, jewelry, shoes, home fashions, electronics and seasonal items. The Debtors (and their predecessors) operated stores in the Midwest, Mid-Atlantic and Southeastern United States for over 80 years. The Debtors’ stores were traditionally filled with a wide assortment of designer, department, discount and specialty store deals at prices substantially lower than competing department and discount stores. Prior to the Petition Date, the Debtors initiated a liquidation of their remaining merchandise and

---

<sup>1</sup> Two of the Debtors filed petitions for relief under chapter 11 of the Bankruptcy Code on October 27, 2008. These entities are Retail Ventures Jewelry, Inc. and VCHI Acquisition Company.

inventory through store closing, liquidation, or other promotional sales (the “GOB Sales”). The Debtors have completed all of the GOB Sales.

6. As of August 30, 2008, the Debtors recorded total assets of approximately \$139 million and total liabilities of approximately \$160 million. For the seven months ended August 31, 2008, the Debtors recorded total revenue of approximately \$289 million.

### **BASIS FOR RELIEF**

7. At present, the Debtors are winding down their operations having conducted Court approved GOB sales, disposed of the remainder of their owned and leased properties, and otherwise attempting to maximize values and recoveries with respect to their other non-liquid assets. In addition, the Debtors are in the process of commencing actions to avoid certain prepetition preferential transfers, pursuant to sections 547, 550 and 551, as well as other relevant provisions of the Bankruptcy Code (the “Preference Actions”). The Debtors’ primary goals are to maximize the value of their assets for the benefit of all creditors and bring their Chapter 11 cases to conclusion as swiftly as possible.

8. The Debtors have selected SAM as special counsel because of the firm’s extensive experience in litigating preference actions under Chapter 11 of the Bankruptcy Code. SAM has previously served as counsel litigating various bankruptcy matters, most recently prosecuting over 900 preference actions on behalf of the Chapter 11 estate of Ames Department Stores, Inc.

9. The Debtors’ board of directors has determined that retaining SAM as special counsel is in the best interest of the Debtors’ estates because it will result in the most expeditious and efficient resolution of the Preference Actions and related claims. Given the magnitude of payments made within 90 days of the Petition Date, the Debtors believe that engaging an

additional firm to review, analyze, file and prosecute the Preference Actions will enable such actions to be commenced and brought to resolution quickly. SAM will coordinate its efforts with the Debtors' other counsel to avoid duplication of efforts. Nevertheless, due to the contingent nature of SAM's compensation as discussed more fully below, any duplication of services will not result in additional costs to these estates.

10. To the best of the Debtors' knowledge, the members and associates of SAM do not have any connection with the Debtors, their creditors or any other party in interest, or their respective attorneys, except as disclosed in the attached affidavit. See Declaration of Bijan Amini ("Amini Dec."), attached hereto as Exhibit B, ¶5. The Debtors are satisfied that SAM represents no adverse interest to the Debtors which would preclude it from acting as special counsel to the Debtors in matters upon which it is to be engaged, and that its employment will be in the best interest of the estates.

11. The Debtors believe that SAM is qualified to represent the Debtors in the preference actions in a cost-effective, efficient and timely manner.

#### **SERVICES TO BE RENDERED**

12. Subject to the control and further order of this Court, the professional services that SAM will render, as necessary, to the Debtors include, but are not limited to, the following:

- a. At the Debtors' direction, undertake any investigation, litigation, mediation, arbitration or any other action on the Debtors' behalf to avoid and recover any preferential payments or payments that are otherwise avoidable;
- b. At the Debtors' request, appear, as appropriate, before this Court and any appellate court to protect the interests of the Debtors in connection with any Preference Action or other matter related thereto; and
- c. Perform all other necessary legal services as requested by the Debtors in connection with the Preference Actions and these Chapter 11 cases.

13. SAM intends to work closely with other professionals retained by the Debtors, to ensure that there is no unnecessary duplication of services performed or charged to the Debtors' estates.

14. SAM has indicated a willingness to act on behalf of the Debtors in the provision of the above noted services.

### **TERMS OF EMPLOYMENT**

15. Value City desires to employ SAM pursuant to the terms and conditions set forth in the Engagement Agreement, a copy of which is attached to the Amini Dec. as Exhibit "A" and incorporated by reference herein.

16. Pursuant to the Engagement Agreement, and in accordance with section 328 of the Bankruptcy Code, SAM proposes to be compensated on a contingency basis pursuant to the terms and provisions of the Bankruptcy Code, the Bankruptcy Rules, the local rules of this Court and any other order entered by this Court pertaining to the payment of retained attorneys.

17. Pursuant to the Engagement Agreement, SAM will be paid on a contingency fee, according to the following scale, based upon collections realized on the recovery (whether through settlement, compromise or otherwise) of any preference claim (the "Special Counsel Fee"):

- a. 15% of the gross amount of any recovery prior to the filing of an answer by a defendant;
- b. 18% of any recovery after an answer is filed;
- c. 21% of any recovery after discovery responses are served;
- d. 24% of any recovery after a deposition commences; and
- e. 28% of any recovery occurring three weeks or less before the first scheduled trial or arbitration proceeding.

However, in no event shall SAM's total contingency fee exceed 24% of SAM's total recoveries of the estate. At any point in time in which SAM's total contingency fee exceeds 24% of SAM's total recoveries, SAM shall disgorge such portion of the Special Counsel Fee to the estate. SAM shall only be paid out of recoveries actually received, and at no time shall the Debtors be required to compensate or reimburse SAM other than by actual reduction in the net recoveries to the Debtors' estates. Recoveries shall be paid to the Debtors periodically as requested. In addition, we shall provide reports on a monthly basis to the Bankruptcy Court and to the Debtors, showing recoveries received, fees and expenses paid to SAM and funds remitted to the Debtors during the period. Monthly reports shall be filed with the Bankruptcy Court and provided to the Debtors within 20 days after the end of each calendar month.

18. The Special Counsel Fee will be calculated based on the settlement value realized from a recovery. For instance, if a settlement is comprised of a \$25,000 cash payment and waiver of an existing claim that has an established dividend value of \$5,000, the Special Counsel Fee would be based on the total settlement value of \$30,000. SAM shall be entitled to deduct its Special Counsel Fee directly from the proceeds of any recovery obtained for the estate. However, all fees payable to SAM shall be subject to final application made under Bankruptcy Code Sections 330(a)(1) and 331 and subject to Bankruptcy Code Section 328.

19. In addition to the Special Counsel Fee, SAM will be entitled to reimbursement of all reasonable and documented out-of-pocket expenses incurred in connection with the pursuit of potentially avoidable transfers on behalf of the Debtors, in accordance with all applicable rules and guidelines promulgated by the Bankruptcy Court for the Southern District of New York and the office of the U.S. Trustee. SAM shall similarly be entitled to deduct such reasonable

documented expenses directly from the proceeds of any recovery obtained on behalf of the estate.

### **DISINTERESTEDNESS OF PROFESSIONALS**

20. As set forth in the Amini Dec., and to the best of the Debtors' knowledge, Mr. Amini and the other members and professionals of SAM (i) do not have any connection with the Debtors, their creditors, or any other party in interest, or their respective attorneys or accountants, (ii) are "disinterested persons" as defined in the Bankruptcy Code, and (iii) do not hold or represent an interest adverse to the estate.

21. As set forth in the Amini Dec:

- a. Neither SAM nor any attorney at the firm holds or represents an interest adverse to the Debtors' estates;
- b. Neither SAM nor any attorney at the firm is or was a creditor, an equity security holder or an insider of the Debtors;
- c. Neither SAM nor any attorney at the firm is or was, within two years before the Petition Date, a director, officer or employee of the Debtors;
- d. SAM does not have an interest materially adverse to the interest of the estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with or interest in the Debtors, or for any other reason;
- e. No attorney at SAM is related to any United States District Judge or United States Bankruptcy Judge for the Southern District of New York or to the United States Trustee for such district or to any known employee in the office thereof;
- f. No trustee or examiner has been appointed in the Bankruptcy Cases.

22. Notice of this Application has been provided to: (i) Debtors' counsel, (ii) the U.S. Trustee; (iii) counsel to the Creditors' Committee, (iv) counsel for the Debtor's post-petition

senior bank lenders and (v) those parties who have to date filed notices of appearance or requests for service in these cases. The Debtors submit no further notice is necessary or required.

23. No previous request for the relief sought in the Application has been made to this or any other Court.

24. The Application does not raise any novel issues of law and, accordingly, the Debtors respectfully request that the Court waive the requirement under Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York for the filing of a memorandum of law.

WHEREFORE, Value City respectfully requests entry of an order substantially in the form attached hereto as exhibit A, authorizing the retention of SAM as its special counsel in accordance with the terms and conditions set forth in the Engagement Agreement and other and further relief as may be just and proper.

Dated: New York, New York  
June 29, 2009

STORCH AMINI & MUNVES PC

By /s/Bijan Amini  
Bijan Amini (BA 3533)  
Avery Samet (AS 1483)  
2 Grand Central Tower  
140 East 45<sup>th</sup> Street, 25<sup>th</sup> Floor  
New York, New York 10017  
Tel: (212) 490-4100