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

-----X
: **Chapter 11**
: **Case No. 16-11275 (SHL)**
: **Jointly Administered**
: **Debtors.¹**
: **Jointly Administered**
: **Jointly Administered**
-----X

**NOTICE OF MOTION OF DEBTORS PURSUANT
TO 11 U.S.C. § 1121(d), FED. R. BANKR. P. 9006(b)(1), AND
LOCAL RULE 9006-2 TO EXTEND EXCLUSIVITY PERIODS**

PLEASE TAKE NOTICE that a hearing on the annexed Motion, dated August 31, 2016 (the “*Motion*”) of Aéropostale, Inc. and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*”), for entry of an order pursuant to 11 U.S.C. § 1121(d), Bankruptcy Rule 9006(b)(1), and Local Rule 9006-2 extending the Debtors’ exclusive periods in which to file a chapter 11 plan and solicit acceptances thereof, will be held before the Honorable Sean H. Lane, United States Bankruptcy

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s federal tax identification number, as applicable, are as follows: Aéropostale, Inc. (3880); Aéropostale West, Inc. (7013); Jimmy’Z Surf Co., LLC (0461); Aero GC Management LLC (4257); Aeropostale Procurement Company, Inc. (8518); Aeropostale Licensing, Inc. (8124); P.S. from Aeropostale, Inc. (5900); GoJane LLC (4923); Aeropostale Holdings, Inc. (7729); and Aeropostale Puerto Rico, Inc. (6477). The Debtors’ corporate headquarters is located at 112 West 34th Street, 22nd Floor, New York, NY 10120.

Court for the Southern District of New York, One Bowling Green, New York, NY 10004, Courtroom 701 (the “*Bankruptcy Court*”), on **September 13, 2016 at 11:30 a.m. (Eastern Time)** (the “*Hearing*”).

PLEASE TAKE FURTHER NOTICE that any responses or objections (“*Objections*”) to the Motion shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399 and the *Order Pursuant to 11 U.S.C. § 105(a) and (d) and Fed. R. Bankr. P. 1015(c), 2002(m), and 9007 Implementing Certain Notice and Case Management Procedures*, entered on June 3, 2016 [ECF No. 255], so as to be so filed and received no later than **September 9, 2016 at 12:00 p.m. (Eastern Time)** (the “*Objection Deadline*”).

PLEASE TAKE FURTHER NOTICE that if an Objection to the Motion is not received by the Objection Deadline, the relief requested shall be deemed unopposed, and the Bankruptcy Court may enter an order granting the relief sought without a hearing.

PLEASE TAKE FURTHER NOTICE that objecting parties are required to attend the Hearing, and failure to appear may result in relief being granted upon default.

Dated: August 31, 2016
New York, New York

/s/ Jacqueline Marcus
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : **Chapter 11**
:
AÉROPOSTALE, INC., *et al.*, : **Case No. 16-11275 (SHL)**
:
Debtors.¹ : **Jointly Administered**
:
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**MOTION OF DEBTORS PURSUANT TO
11 U.S.C. § 1121(d), FED. R. BANKR. P. 9006(b)(1), AND
LOCAL RULE 9006-2 TO EXTEND EXCLUSIVITY PERIODS**

TO THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE:

Aéropostale, Inc. and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*”), respectfully represent as follows:

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s federal tax identification number, as applicable, are as follows: Aéropostale, Inc. (3880); Aéropostale West, Inc. (7013); Jimmy’Z Surf Co., LLC (0461); Aero GC Management LLC (4257); Aeropostale Procurement Company, Inc. (8518); Aeropostale Licensing, Inc. (8124); P.S. from Aeropostale, Inc. (5900); GoJane LLC (4923); Aeropostale Holdings, Inc. (7729); and Aeropostale Puerto Rico, Inc. (6477). The Debtors’ corporate headquarters is located at 112 West 34th Street, 22nd Floor, New York, NY 10120.

Preliminary Statement

1. On July 15, 2016, the Debtors filed the Plan (as defined below). The Debtors have the exclusive right to solicit acceptances of the Plan through and including October 31, 2016. Notwithstanding the filing of the Plan within the Exclusive Filing Period (as defined below), the Debtors require additional time to complete the Sale Transaction (as defined below) and to proceed to confirmation of a plan that will resolve these chapter 11 cases.

2. The Debtors request an extension of the Exclusive Filing Period in order to preserve their exclusive right to modify the Plan as a result of recent developments and further negotiations that are likely to ensue. The Debtors also request an extension of the Exclusive Solicitation Period (as defined below) to the extent that the Debtors file a new or amended plan, but are unable to solicit votes for such plan prior to the expiration of the Exclusive Solicitation Period.

3. Absent the relief requested herein, the Debtors would face the prospect of a plan process involving multiple competing plans. The filing of competing plans at this key stage of the Debtors' chapter 11 cases would delay and disrupt the plan process and be an inefficient use of estate resources. No creditor will be prejudiced by the requested extensions and the Debtors believe that ample cause exists to grant the relief requested herein.

Background

4. On May 4, 2016 (the "*Commencement Date*"), each of the Debtors commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "*Bankruptcy Code*"). The Debtors are authorized to 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 these chapter 11 cases.

5. The Debtors' chapter 11 cases are being jointly administered for procedural purposes only pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

6. On May 11, 2016, the United States Trustee for Region 2 appointed the statutory committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "**Creditors' Committee**").

7. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of David J. Dick Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York*, sworn to and filed on the Commencement Date [ECF No. 4].

The Plan and Disclosure Statement

8. On July 15, 2016, the Debtors filed the *Joint Plan of Reorganization of Aéropostale, Inc. and its Affiliated Debtors* [ECF No. 436] (as amended, modified, and/or supplemented, the "**Plan**") and the related *Proposed Disclosure Statement for Joint Plan of Reorganization of Aéropostale, Inc. and its Affiliated Debtors* [ECF No. 437] (as amended, modified, and/or supplemented, the "**Disclosure Statement**"). The Plan contemplates a sale of all or substantially all of the Debtors' assets (the "**Sale Transaction**").

9. The Debtors filed amended versions of the Plan and Disclosure Statement on July 24, 2016 [ECF Nos. 500 and 502, respectively] and second amended versions of the Plan and Disclosure Statement on July 29, 2016 [ECF Nos. 525 and 526, respectively].

10. Pursuant to the order approving the Disclosure Statement, entered on July 29, 2016 [ECF No. 527] (the "**Disclosure Statement and Bid Procedures Order**") and the *Order Amending (I) The DIP Milestones Under the Final Debtor-in-Possession Financing Order and*

(II) *Related Deadlines Contained in the Disclosure Statement and Bid Procedures Order*, entered on August 12, 2016 [ECF No. 643] (the “*Extension Order*”), the following milestones were established in connection with the Debtors’ sale and plan process: (i) the deadline for potential bidders to submit a bid (the “*Bid Deadline*”) for all or substantially all of the Debtors’ assets (the “*Assets*”) was scheduled for August 25, 2016; (ii) an auction with respect to the Assets (the “*Auction*”), if necessary, was scheduled for August 29, 2016; (iii) the deadline for holders of claims entitled to vote on the Plan to submit their ballots (the “*Voting Deadline*”) is scheduled for August 31, 2016; and (iv) the hearing to confirm the Plan or to approve a Sale Transaction pursuant to section 363 of the Bankruptcy Code (the “*Hearing*”).

Jurisdiction

11. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

12. Section 1121(b) of the Bankruptcy Code provides for an initial period of 120 days after the commencement of a chapter 11 case during which a debtor has the exclusive right to file a chapter 11 plan (the “*Exclusive Filing Period*”). Section 1121(c)(3) of the Bankruptcy Code provides that if a debtor files a plan within the 120-day Exclusive Filing Period, it has an exclusive period of 180 days after the commencement of the chapter 11 case to obtain acceptances of its plan (the “*Exclusive Solicitation Period*” and, together with the Exclusive Filing Period, the “*Exclusive Periods*”). The Debtors’ initial Exclusive Filing Period and Exclusive Solicitation Period are currently set to expire on September 1, 2016 and October 31, 2016, respectively.

13. By this Motion, the Debtors request an extension of the Exclusive Periods pursuant to section 1121(d) of the Bankruptcy Code, Bankruptcy Rule 9006(b)(1), and Rule 9006-2 of the Local Bankruptcy Rules for the Southern District of New York (the “*Local Rules*”), without prejudice to the Debtors’ right to seek additional extensions of such periods. Specifically, the Debtors seek to extend the Exclusive Filing Period through and including October 17, 2016 and the Exclusive Solicitation Period through and including December 15, 2016. The Debtors request such extensions out of an abundance of caution to ensure that they have an opportunity to confirm and consummate the Plan, or if need be, a new or amended plan, before the Exclusive Periods expire.

14. The Creditors’ Committee and the Prepetition Term Loan Parties (as defined in the Final DIP Order) support the relief requested in this Motion. To the extent necessary, the Debtors also anticipate requesting a further consensual extension of certain sale and plan related milestones set forth in the Disclosure Statement and Bid Procedures Order and the Extension Order in accordance with the terms of the *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364 and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (I) Authorizing Incurrence by the Debtors of Postpetition Secured Indebtedness, (II) Granting Liens, (III) Authorizing Use of Cash Collateral by the Debtors and Providing for Adequate Protection, and (IV) Modifying the Automatic Stay* [ECF No. 298] (the “*Final DIP Order*”).

15. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A** (the “*Proposed Order*”).

Basis for Relief Requested

16. Pursuant to section 1121(d) of the Bankruptcy Code, the Court may extend the Exclusive Periods for cause. *See* 11 U.S.C. § 1121(d) (“[O]n request of a party in interest

made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.”). However, the 120-day period “may not be extended beyond a date that is 18 months after the [commencement] date” and the 180-day period “may not be extended beyond a date that is 20 months after the [commencement] date.” 11 U.S.C. § 1121(d)(2).

17. The Exclusive Periods established by Congress were incorporated in the Bankruptcy Code to afford a full and fair opportunity for a debtor to propose a chapter 11 plan and solicit acceptances of the plan without the deterioration and disruption of a debtor’s business typically caused by the filing of competing plans. Extending the Exclusive Periods, as requested, will provide the Debtors with a full and fair opportunity to accomplish this objective.

18. The Bankruptcy Code neither defines the term “cause” for purposes of section 1121(d) nor establishes formal criteria for an extension of the Exclusive Periods. The legislative history of section 1121 of the Bankruptcy Code indicates, however, that it is intended to be a flexible standard to balance the competing interests of a debtor and its creditors. *See* H.R. Rep. No. 95-595, at 231-32 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963 (noting that Congress intended to give bankruptcy courts great flexibility to protect a debtor’s interests by allowing a debtor an unimpeded opportunity to negotiate settlement of debts without interference from other parties in interest).

19. In exercising its broad discretion, a bankruptcy court may consider a variety of factors to assess the totality of circumstances in each case and to determine the existence of “cause” under section 1121(d) of the Bankruptcy Code. *See In re Borders Grp., Inc.*, 460 B.R. 818, 821-22 (Bankr. S.D.N.Y. 2011) (“The determination of cause under section

1121(d) is a fact-specific inquiry and the court has broad discretion in extending or terminating exclusivity.”); *In re Adelpia Commc’ns Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006) (identifying objective factors courts historically have considered in determining whether cause exists to extend or terminate exclusivity); *see also In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987) (identifying factors used by courts to determine whether cause exists to extend exclusivity); *In re Dow Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997) (same); *In re Express One Int’l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (same). These factors are not exclusive and include, without limitation:

- (i) the size and complexity of the debtor’s case;
- (ii) the necessity for sufficient time to permit the debtor to negotiate a chapter 11 plan and prepare adequate information;
- (iii) the existence of good faith progress towards reorganization;
- (iv) the fact that the debtor is paying its bills as they become due;
- (v) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- (vi) whether the debtor has made progress in negotiations with its creditors;
- (vii) the amount of time which has elapsed in the case;
- (viii) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor’s reorganization demands; and
- (ix) whether an unresolved contingency exists.

In re Adelpia Commc’ns Corp., 352 B.R. at 587 (noting that the nine factors listed above are “objective factors which courts historically have considered in making determinations of this character”); *see also In re Borders Grp., Inc.*, 460 B.R. at 822 (evaluating the nine factors set forth in *Adelpia* to hold that debtor established cause to extend exclusivity); *In re McLean Indus., Inc.*, 87 B.R. at 834; *In re Express One Int’l, Inc.*, 194 B.R. at 100 (identifying all of the

nine factors as relevant in determining whether cause exists to extend exclusivity); *In re United Press Int'l, Inc.*, 60 B.R. 265, 269 (Bankr. D.C. 1986) (holding that debtor showed cause to extend exclusive period based upon certain of the nine factors). The exercise of the Court's discretion is based upon the totality of the circumstances.

Cause Exists for Extending the Exclusive Periods

20. The application of the above factors to the facts and circumstances of these chapter 11 cases demonstrates that the requested extensions are both appropriate and necessary to afford the Debtors adequate time to confirm and consummate the Plan. This is the Debtors' first request for an extension of the Exclusive Periods. As the Court is aware, these cases have been on an extraordinarily fast track since the Commencement Date. The Debtors' principal focus has been on the best means to quickly and efficiently arrange for a going concern sale that provides for the greatest recovery to all creditor constituents. Based upon recent events, the Debtors are optimistic that they have accomplished these goals. The Debtors believe that, given the progress to date, extensions of the Exclusive Periods are in the best interests of the Debtors, their estates, and all parties in interest.

A. The Debtors Continue to Make Good Faith Progress to Achieve the Objectives of Chapter 11

21. There can be no question that the Debtors have made significant progress under chapter 11, including stabilizing their businesses, reaffirming relationships with key suppliers and service providers, implementing cost-reduction measures, and generally administering the chapter 11 cases efficiently and economically.

22. At the time the Plan was filed, the Debtors expected that the Sale Transaction would be effectuated pursuant to the Plan. Consequently, the Debtors filed the Plan and the Disclosure Statement, solicited votes on the Plan, and prepared for confirmation. As

events have transpired and negotiations have occurred, it has been apparent that the most efficient means to move forward is to have the Sale Transaction approved at the Hearing under section 363 of the Bankruptcy Code and to defer confirmation of the Plan.

23. In connection with the Sale Transaction, the Debtors and other parties in interest have engaged in negotiations that are likely to result in amendments to the Plan and, hopefully, confirmation of the Plan, as amended, on an uncontested basis. The Debtors have used their initial Exclusive Periods constructively and, therefore, deserve an extension to complete the administration of these chapter 11 cases.

B. The Requested Extension Has a Proper Purpose

24. The Debtors are not seeking the extension of the Exclusive Periods as a negotiation tactic, to artificially delay the conclusion of these chapter 11 cases, or to hold creditors hostage to an unsatisfactory plan proposal. To the contrary, this request is intended to maintain a framework conducive to an orderly, efficient, and cost-effective confirmation process and to enable the Debtors to consummate the Sale Transaction and prosecute the Plan without the distractions and costs attendant to competing plans of reorganization.

25. Additionally, extending the Exclusive Periods is particularly necessary given that the Auction was delayed, pursuant to the Extension Order, to ensure that the Debtors obtained viable, cost-maximizing bids in connection with the Sale Transaction. As a result of the delayed Auction, the Hearing was scheduled for a date after the expiration of the Exclusive Filing Period. Accordingly, the requested extensions are necessary in order to allow the Debtors to close the Sale Transaction and to proceed to the next stage of these chapter 11 cases in an orderly and efficient manner.

C. The Debtors Are Making Required Postpetition Administrative Expense Payments as They Come Due and Have the Ability to Continue to Do So

26. Courts considering an extension of the Exclusive Periods may also assess a debtor's liquidity and solvency. *See In re Adelpia Commc'ns*, 352 B.R. at 587. Here, the Debtors are current on payment of all of their postpetition obligations and have sufficient liquidity to pay their undisputed administrative expenses in the ordinary course. As such, the requested extension of the Exclusive Periods will not prejudice the legitimate interests of creditors, and this factor weighs in favor of allowing the Debtors to extend the Exclusive Periods.

D. The Automatic Extension of the Exclusive Filing Period

27. Although the Exclusive Filing Period is set to expire on September 1, 2016, Local Bankruptcy Rule 9006-2 provides that if a motion to extend time to take an action is filed prior to the expiration of such period, with a return date that is no later than fourteen days after the date of the filing of the motion, the applicable deadline shall automatically be extended "until the Court resolves the motion to extend the time." Therefore, by filing this Motion prior to the expiration of the Exclusive Filing Period, Local Bankruptcy Rule 9006-2 automatically extends the Exclusive Filing Period until the Court resolves the Motion.

28. In light of the foregoing, the Debtors respectfully request that the Court approve the requested extensions of the Exclusive Periods pursuant to section 1121(d) of the Bankruptcy Code.

Notice

29. Notice of this Motion has been provided to all parties in interest in accordance with the procedures set forth in the *Order Pursuant to 11 U.S.C. § 105(a) and (d) and Fed. R. Bankr. P. 1015(c), 2002(m), and 9007 Implementing Certain Notice and Case*

Management Procedures, entered on June 3, 2016 [ECF No. 255]. The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

30. No previous request for the relief sought by this Motion has been made by the Debtors to this or any other Court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order and such other and further relief as the Court may deem just and appropriate.

Dated: August 31, 2016
New York, New York

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Exhibit A

Proposed Order

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

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In re	:	Chapter 11
	:	
AÉROPOSTALE, INC., et al.,	:	Case No. 16-11275 (SHL)
	:	
Debtors.¹	:	Jointly Administered
	:	
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**ORDER PURSUANT TO 11 U.S.C. § 1121(d), FED. R. BANKR.
P. 9006(b)(1), AND LOCAL RULE 9006-2 EXTENDING EXCLUSIVITY PERIODS**

Upon the Motion, dated August 31, 2016 (the “*Motion*”),² of Aéropostale, Inc. and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*”), pursuant to section 1121(d) of the Bankruptcy Code, Bankruptcy Rule 9006(b)(1), and Local Rule 9006-2, for entry of an order extending the Exclusive Periods, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s federal tax identification number, as applicable, are as follows: Aéropostale, Inc. (3880); Aéropostale West, Inc. (7013); Jimmy’Z Surf Co., LLC (0461); Aero GC Management LLC (4257); Aeropostale Procurement Company, Inc. (8518); Aeropostale Licensing, Inc. (8124); P.S. from Aeropostale, Inc. (5900); GoJane LLC (4923); Aeropostale Holdings, Inc. (7729); and Aeropostale Puerto Rico, Inc. (6477). The Debtors’ corporate headquarters is located at 112 West 34th Street, 22nd Floor, New York, NY 10120.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, 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 and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and all parties in interest, 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,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Pursuant to section 1121(d) of the Bankruptcy Code, the Exclusive Filing Period is extended through and including October 17, 2016.
3. Pursuant to section 1121(d) of the Bankruptcy Code, the Exclusive Solicitation Period is extended through and including December 15, 2016.
4. The extensions of the Exclusive Periods granted herein are without prejudice to such further requests that may be made by the Debtors or any party in interest, for cause shown, upon notice and a hearing.
5. Except as expressly amended by this Order, all terms and conditions of the Final DIP Order shall otherwise remain unchanged and shall remain in full force and effect.

6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: September ____, 2016
New York, New York

UNITED STATES BANKRUPTCY JUDGE