

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

In re

SPORTS AUTHORITY HOLDINGS, INC., *et al.*¹,

Debtors.

Chapter 11

Case No. 16-10527 (MFW)

(Jointly Administered)

Re: D.I. 9, 15, 20, 644

**JOINDER OF PERFORMANCE APPAREL CORP. TO THE
OMNIBUS OBJECTION OF ASICS AMERICA CORPORATION TO
DEBTORS’ MOTIONS FOR ENTRY OF FINAL ORDERS ON THE
(1) CONSIGNMENT MOTION; (2) GOB MOTION; AND (3) DIP MOTION**

Performance Apparel Corp. (“Performance”), a supplier of goods on a consignment basis to the above-captioned Debtors, by and through its undersigned counsel, hereby concurs with and joins (the “Joinder”) for the reasons set forth herein, in all respects, unless otherwise noted, hereby joins, supports, and adopts the omnibus objection by Asics America Corporation (the “ASICS Objection”) to the Debtors’ Motions for Orders on the following:

- A. *Debtors’ Motion for Interim and Final Orders (A) Authorizing the Debtors to (I) Continue to Sell Consigned Goods in the Ordinary Course of Business Free and Clear of all Liens, Claims and Encumbrances and (II) Grant Administrative Expense Priority to Consignment Vendors for Consigned Goods Delivered Postpetition, and (B) Grant Replacement Liens to Consignment Vendors with Perfected Security Interests in Consigned Goods and/or Remit the Consignment Sale Price arising from Sale of Consigned Goods to Putative Consignment Vendors [D.I. No. 9] (the “Consignment Motion”);*
- B. *Debtors’ Emergency Motion for Interim and Final Orders (A) Authorizing the Debtors to Assume the Closing Store Agreement, (B) Authorizing and Approving Store Closing Sales Free and Clear of all Liens, Claims and Encumbrances, (C) Authorizing the Implementation of Customary Employee Bonus Program and Payments to Non-Insiders Thereunder, (D) Approving Dispute Resolution Procedures, and (E) Approving the Debtors’ Store Closing Plan [D.I. No. 15] (the “GOB Motion”); and*

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.



- C. *Debtors' Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364; (II) Granting Liens and Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C. §§ 364 and 507; (III) Authorizing the Use of Cash Collateral and Providing Adequate Protection to Prepetition Secured Parties and Modifying the Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(B) and (C) And Local Rule 4001-2 [D.I. No. 20] (the "DIP Motion" and together with the Consignment Motion and GOB Motion, the "Motions").*

In support of this Joinder, Performance respectfully states as follows:

1. Performance has delivered from time to time certain goods on consignment (the "Performance Goods") to TSA Stores, Inc. ("TSA") pursuant to a pay-by-scan vendor management program instituted by TSA.
2. Performance entered into a pay-by-scan contract with TSA on or about August 17, 2015. The contract had an effective date from February 1, 2015, through January 30, 2016.
3. The Performance property delivered to TSA pursuant to the pay-by-scan program consists of winter base layers and socks.
4. Prior to the petition date, the pay-by-scan contract between Performance and TSA was terminated and TSA agreed that the seasonal goods would be returned to Performance pursuant to the return to vendor program incorporated into the pay-by-scan contract.
5. The Performance Goods are seasonal and a new pay-by-scan contract was not executed after the existing contract expired, and was terminated by the parties effective January 30, 2016.
6. Performance joins in, and incorporates herein, the ASICS Objection and adopts the arguments set forth therein as its own with respect to the Performance Goods.
7. For the reasons set forth in the ASICS Objection and herein, Performance respectfully requests that the Court deny the Consignment Motion, GOB Motion, and DIP

Motion unless the issues raised by the ASICS Objections are addressed in any order granting the Motion.

8. Performance contends that the objections raised in the ASICS Objection apply equally to the Performance Goods and maintains that the Debtor's proposed sale of the Performance Goods is without Performance's consent under the holdings of *In re Whitehall Jewelers*, No. 08-11261 (KG), 2008 WL 2951974, at *4 (Bankr. D. Del. July 28, 2008) and *SLW Capital, LLC v. Mansaray-Ruffin (In re Mansaray-Ruffin)*, 530 F.3d 230, 237 (3d Cir. 2008). The Debtors cannot sell the Performance Goods unless and until the goods are determined to be an asset of the bankruptcy estate after a conclusion of the adversary proceeding filed by the Debtor on or about March 16, 2016.

9. Pursuant to Paragraph 4 of the court's order governing consigned goods issued on March 11, 2016 (Doc. 278), Performance provided the Debtor with written notice to stop selling the Performance Goods.

10. To the extent not inconsistent with the relief sought herein, Performance joins in any other objection to the Consignment Motion, GOB Motion, and DIP Motion filed by a consignment vendor.

11. Performance reserves the right to amend or supplement this Joinder as warranted prior to the hearing on the Consignment Motion, GOB Motion, and DIP Motion.

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WHEREFORE, Performance respectfully requests this Court (i) modify the Consignment Motion, GOB Motion, and DIP Motion to provide as requested herein, (ii) reserve all rights of Performance to assert further and other objection to the Consignment Motion, GOB Motion, and DIP Motion, and (iii) grant such further relief to Performance as the Court deems appropriate under the circumstances.

Dated: March 22, 2016
Wilmington, Delaware

**GELLERT SCALI BUSENKELL
& BROWN, LLC**

By: /s/ Margaret F. England

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Counsel for Performance Apparel Corp.

CERTIFICATE OF SERVICE

I, Margaret England, Esquire, hereby certify that on March 22, 2016, I caused a true and correct copy of the *Joinder of Performance Apparel Corp. to Omnibus Objection of Asics America Corporation to Debtors' Motions for Final Orders on the (1) Consignment Motion; (2) GOB Motion; (3) DIP Motion* to be served via the CM/ECF electronic notification and served via hand delivery and first class mail to the parties listed on the parties listed below.

<p><u>VIA HAND DELIVERY</u> Michael R. Nestor, Esq. Kenneth J. Enos, Esq. Andrew L. Magaziner, Esq. Young Conaway Stargatt & Taylor, LLP Rodney Square 1000 North King Street Wilmington, DE 19801</p>	<p><u>VIA FIRST CLASS MAIL</u> Robert A. Klyman, Esq. Matthew J. Williams, Esq. Jeremy L. Graves, Esq. Sabina Jacobs, Esq. Gibson, Dunn & Crutcher LLP 333 South Grand Avenue Los Angeles, CA 90071-1512</p>
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Date: March 22, 2016

/s/ Margaret England
 Margaret England (No. 4248)