

Hearing Date: August 26, 2020 at 11:00 a.m. (prevailing Eastern Time)
Objection Deadline: August 19, 2020 at 4:00 p.m. (prevailing Eastern Time)

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Proposed Counsel for Debtor and Debtor-in-Possession

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

In re:

NTS W. USA CORP., A DELAWARE
CORPORATION,

Debtor.

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:
:
Chapter 11

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:
Case No. 20-35769 (CGM)

**NOTICE OF DEBTOR'S MOTION FOR ENTRY OF ORDER (I) ALLOWING DEBTOR
TO EXERCISE ITS AUTHORITY TO PAY SALES COMMISSIONS TO THIRD
PARTY SALES AGENTS, AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on August 11, 2020, the above-captioned debtor and debtor in possession, NTS W. USA Corp., a Delaware corporation, doing business as Desigual and Desigual USA (“DUSA” or “Debtor”), by and through its counsel filed the *Debtor's Motion for Entry of Order (I) Allowing Debtor to Exercise its Authority to Pay Sales Commissions to Third Party Sales Agents, and (II) Granting Related Relief* (the “Wholesale Commissions Motion”).

PLEASE TAKE FURTHER NOTICE that a hearing (the “Hearing”) on the Wholesale Commissions Motion will be held before The Honorable Cecelia G. Morris, Chief Bankruptcy Judge of the United States Bankruptcy Court for the Southern District of New York (the “Court”), 355 Main Street, Poughkeepsie, New York 12601-3315, on **August 26, 2020 at 11:00 a.m.**

(prevailing Eastern Time). In accordance with General Order M-543 (General Order M-543 can be found at www.nysb.uscourts.gov, the official website for the Court), dated March 20, 2020, the Hearing will only be conducted telephonically. Any parties wishing to participate in the Hearing must make arrangements through CourtSolutions LLC. Instructions to register for CourtSolutions LLC are attached to General Order M-543.

PLEASE TAKE FURTHER NOTICE that any responses or objections (the “Objections”) to the Wholesale Commissions Motion shall: (a) be in writing; (b) conform to the Bankruptcy Rules, the Local Rules, and all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York; (c) (i) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, be filed with the Court electronically on the docket of *In re NTS W. USA Corp., a Delaware corporation*, Case No. 20-35769 (CGM) by registered users of the Court’s electronic filing system and in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov) with a hard copy delivered directly to the Court’s chambers or (ii) by all other parties in interest in accordance with the customary practices of the Bankruptcy Court and General Order M-399; and (d) be served so as to be actually received no later than **August 19, 2020 at 4:00 p.m. (prevailing Eastern Time)** (the “Objection Deadline”), by the following parties or their respective counsel: (a) undersigned counsel to the Debtor; (b) the Office of the United States Trustee for the Southern District of New York, (c) the Subchapter V trustee, (d) DUSA’s 20 largest unsecured creditors; (e) the Debtors’ employees and Sales Representatives; (f) the Office of the United States Attorney for the Southern District of New York; (g) the banks and financial institutions where DUSA maintains accounts; and (h) any such other party entitled to notice pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York or that requests notice pursuant to Bankruptcy Rule

2002.

PLEASE TAKE FURTHER NOTICE that a copy of the Wholesale Commission Motion may be obtained free of charge by visiting the website of Stretto at <https://cases.stretto.com/desigual>. You may also obtain copies of any pleadings by visiting the Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned thereafter from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or at a later hearing.

PLEASE TAKE FURTHER NOTICE that if no objections or other responses are timely filed and served with respect to the Wholesale Commissions Motion, the Debtor shall, on or after the Objection Deadline, submit to the Court an order substantially in the form annexed as **Exhibit A** to the Wholesale Commission Motion, which order the Court may enter with no further notice or opportunity to be heard.

[Remainder of Page Left Intentionally Blank]

Dated: New York, NY
August 11, 2020

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Proposed Counsel for Debtor and Debtor-in-Possession

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

In re:

NTS W. USA CORP., A DELAWARE
CORPORATION,

Debtor.

Chapter 11

Case No. 20-35769 (CGM)

**DEBTOR'S MOTION FOR ENTRY OF ORDER (I) ALLOWING DEBTOR TO
EXERCISE ITS AUTHORITY TO PAY SALES COMMISSIONS TO THIRD PARTY
SALES AGENTS, AND (II) GRANTING RELATED RELIEF**

The above-captioned debtor in possession, NTS W. USA Corp., doing business as Desigual and Desigual USA (“DUSA”), by and through counsel, hereby files this motion (the “Motion”) seeking entry of an order substantially in the form attached hereto as Exhibit A (the “Proposed Order”) (I) allowing DUSA to exercise its authority to pay prepetition commissions owed to third party sales agents not employed by DUSA (“Commissions”), and (II) granting related relief. The Motion is filed as a supplement to DUSA’s *Emergency Motion for Entry of Order (I) Authorizing Debtor to (A) Pay Prepetition Wages, Salaries, Reimbursable Expenses, and Other Employee Compensation, (B) Honor Certain Employee Benefits and Other Associated Obligations, and (C)*

Pay Prepetition Sales Commissions to Third Party Sales Agents, and (II) Granting Related Relief [Dkt. No. 32] (“Wages and Commissions Motion”); in which, DUSA requested authority to pay, among others, sales commissions owed to third party sales agents as of the Petition Date and estimated that the amount of Commissions due was \$1,966.24. The Wages and Commissions Motion was granted in its entirety by the Court’s order entered on July 28, 2020 [Dkt. No. 32] (“Wages and Commissions Order”). DUSA has since calculated that the total amount of Commissions is approximately \$21,056 with no single representative owed more than \$13,650.00 in total prepetition obligations from DUSA. In support of this Motion DUSA relies upon and incorporates by reference the Declaration of Brian Ryniker in Support of Emergency “First Day” Motions (the “Ryniker Declaration”) [Docket No. 15] and the Declaration of Brian Ryniker concurrently filed with this Motion, and respectfully states as follows:

RELIEF REQUESTED

1. DUSA seeks entry of an order, substantially in the form attached hereto as Exhibit A, allowing DUSA to pay prepetition commissions owed to certain sales representatives who are not employed by DUSA (“Commissions”).

BACKGROUND

2. On July 22, 2020 (“Petition Date”), DUSA filed an emergency petition for chapter 11 bankruptcy relief under subchapter V of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). DUSA is authorized to continue to operate its business and manage its properties as debtor in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. No trustee, examiner, or statutory committee of creditors has been appointed in this chapter 11 case.

3. On July 27, 2020, along with its other “first day” motions, DUSA filed the Wages and Commissions Motion and sought authority to pay, among others, prepetition commissions

owed to third party sales representatives not employed by DUSA. DUSA explained that it contracts with third party representatives, who promote the sale of DUSA products (collectively, the “Sales Representatives”). The Sales Representatives act as independent contractors of DUSA and are not employees. As compensation, the Sales Representatives receive commissions based on a percentage of DUSA’s collected sales resulting from the representatives’ sales efforts at the end of each calendar month. At the time, DUSA estimated in the motion that the total amount of prepetition sales commissions owed was \$1,966.24.

4. On July 28, 2020, the Court held a hearing on the Wages and Commissions Motion along with DUSA’s other first day motions. By the Wages and Commissions Order entered that same day as Docket No. 32, the Court granted all the relief requested in the Wages and Commissions Motions, including granting DUSA authority to pay, in its sole discretion, the Commissions as and when such obligations are due.

5. DUSA has calculated the total amount of Commissions to be paid to the Sales Representatives is approximately \$21,056 with no single representative to receive more than \$13,650 in total prepetition obligations from DUSA.

6. Additional factual background regarding DUSA, including its business operations, capital and debt structure, and the events leading to the filing of this chapter 11 case, is set forth in more detail in the Ryniker Declarations.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 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 predicates for the relief sought in this Motion are 11 U.S.C. §§

105(a), 363(b), 541(b)(1), 1107(a) and 1108 and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”).

DUSA’S PREPETITION COMMISSIONS

8. DUSA has calculated that it owes prepetition Commissions to the following Sales Representatives:

Sales Representatives	Amount of Prepetition Commissions¹
Statements Inc.	\$12,352.00
Gina Perez	\$761.00
Anna Blanch	\$43.00
Capture Showroom Inc.	\$5,382.00
Perlmanrep LLC	\$2,518.00
TOTAL	\$21,056.00

9. The Sales Representatives promote sales of DUSA apparel in the regions in which they operate. The sales generated by Sales Representative are crucial to DUSA’s continuing operations and reorganization efforts. Without payment of the Commissions earned prior to the Petition Date, DUSA believes that the Sales Representatives are not likely to continue performing critical services.

BASIS FOR RELIEF

10. The Court has authorized DUSA “to pay and/or honor, in its sole discretion” prepetition Commissions owed to sales representatives not employed by DUSA. *See* ¶2 of the Wages and Commissions Order. However, given the not insignificant discrepancy between the estimated amount in the prior motion and the approximate total amount of Commissions owed that

¹ DUSA believes that these amounts are accurate but requests authority to make adjustments to ensure that DUSA has fully paid the Commissions owed to Sales Representative.

was recently calculated, DUSA seeks allowance for it to exercise its authority to pay Commissions owed to the Sales Representatives.

11. DUSA's business and reorganization depend on the sales of its products. It is therefore important to ensure that Sales Representative continue to promote and generate sales of DUSA's products by paying the full amount of Commissions owed to the Sales Representatives. A failure to do so will likely result in Sales Representatives deprioritizing or ceasing promotion of DUSA's product in their applicable sales regions.

12. Pursuant to the Wages and Commissions Order and sections 105(a), 363, 541, 1107(a), and 1108 of the Bankruptcy Code, DUSA seeks entry of order allowing it to exercise its authority to pay, in its discretion, all Commissions owed to the Sales Representatives in full. This relief is necessary to retain the services of the Sales Representatives, the loss of which would be to the detriment of DUSA's business operations and reorganization efforts.

WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)

13. To implement the foregoing successfully, DUSA requests that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that DUSA has established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

14. Nothing in this Motion should be construed as (a) authority to assume or reject any executory contract or unexpired lease, or as a request for the same, (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on DUSA's ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law, (c) a promise to pay any claim or other obligation, (d) granting

third-party-beneficiary status or bestowing any additional rights on any third party, (e) being otherwise enforceable by any third-party, or (f) otherwise prejudicial to DUSA's rights to contest any amounts owed in connection with the obligations discussed herein.

NOTICE

15. DUSA will provide notice of this Motion to: (i) the Office of the United States Trustee for the Southern District of New York, (ii) the Subchapter V trustee, (iii) DUSA's 20 largest unsecured creditors; (iv) the Debtors' employees and Sales Representatives; (v) the Office of the United States Attorney for the Southern District of New York; (vi) the banks and financial institutions where DUSA maintains accounts; and (vii) any such other party entitled to notice pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York or that requests notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, DUSA submits that no other or further notice need be provided.

NO PRIOR REQUEST

16. No prior request for the relief sought in this Motion has been made in this court or in any other court.

CONCLUSION

WHEREFORE, DUSA respectfully requests that the Court grant the relief requested herein, enter an order in the form of the proposed order attached in Exhibit A, and grant such other and further relief as is just and appropriate.

[Signature on Following Page]

Dated: New York, NY
August 11, 2020

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Proposed Counsel for the Debtor and Debtor-in-Possession

Exhibit A

Proposed Order

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

In re:

NTS W. USA CORP., A DELAWARE
CORPORATION,

Debtor.

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Chapter 11

Case No. 20-35769 (CGM)

**ORDER (I) ALLOWING DEBTOR TO EXERCISE ITS AUTHORITY TO PAY
SALES COMMISSIONS TO THIRD PARTY SALES AGENTS,
AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of NTS W. USA Corp., doing business as Desigual and Desigual USA (“DUSA”), in the above-referenced chapter 11 case, as debtor and debtor in possession, for entry of an Order (this “Order”), allowing DUSA to exercise its authority to fully pay prepetition commissions owed to certain sales representatives not employed by DUSA (the “Commissions”), and granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having incorporating by reference its prior order granting authority for DUSA to pay the Commission, entered on July 28, 2020 as Docket Number 32; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this

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

Court; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on to the extent set forth herein.
2. DUSA is allowed to exercise its authority to fully pay, in its sole discretion, the Commissions that are owed to certain third party sales representatives not employed by DUSA.
3. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claims, including any claim held by any employee or any third party.
4. Any party receiving payment from DUSA is authorized and directed to rely upon the representations of DUSA as to which payments are allowed by this Order.
5. Nothing in the Motion or this Order or the relief granted (including any actions taken or payments made by DUSA pursuant thereto) shall be construed as (a) authority to assume or reject any executory contract or unexpired lease, or as a request for the same, (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on DUSA's ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law, (c) a promise to pay any claim or other obligation, (d) granting third-party-beneficiary status or bestowing any additional rights on any third party, (e) being otherwise enforceable by any third-party, or (f) otherwise prejudicial to DUSA's rights to contest any amounts owed in connection with the obligations discussed herein.
6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.
7. DUSA is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

8. The requirements set forth in Local Bankruptcy Rule 9013-1(b) are satisfied by the contents of the Motion.

9. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

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

In re:

NTS W. USA CORP., A DELAWARE
CORPORATION,

Debtor.

Chapter 11

Case No. 20-35769 (CGM)

**DECLARATION OF BRIAN RYNIKER IN
SUPPORT OF DEBTOR'S MOTION FOR ENTRY OF ORDER (I) ALLOWING
DEBTOR TO EXERCISE ITS AUTHORITY TO PAY SALES COMMISSIONS TO
THIRD PARTY SALES AGENTS, AND (II) GRANTING RELATED RELIEF**

1. I am over 18 years of age. I am currently serving as the Chief Restructuring Officer of the debtor and debtor-in-possession NTS W. USA Corporation (“DUSA”). In this capacity, I am familiar with the day-to-day operations, businesses, and financial affairs of DUSA.

2. If called as a witness, I could and would competently testify with respect to the matters set forth in this declaration from my own personal knowledge or from knowledge gathered from others within the debtor's organization and the debtor's advisors, my review of relevant documents, or my opinion based upon my experience concerning the debtor's organization.

3. I submit this declaration to supplement the *Declaration of Brian Ryniker in Support of Emergency “First Day” Motions* [Docket No. 15] (“First Day Declaration”) and in support of the concurrently filed *Debtor’s Motion for Entry of Order (I) Allowing Debtor to Exercise Its Authority to Pay Sales Commissions to Third Party Sales Agents, and (II) Granting Related Relief*.

4. As set forth in the First Day Declaration, I stated that as of the Petition Date, the outstanding sale commissions owed to third party sales representatives not employed by DUSA was \$1,966.24.

5. Based on DUSA’s books and records, I now believe DUSA owes prepetition sales commissions to the following third party sales representatives not employed by DUSA and therefore am filing this supplemental declaration:

Sales Representatives	Amount of Prepetition Commissions
Statements Inc.	\$12,352.00
Gina Perez	\$761.00
Anna Blanch	\$43.00
Capture Showroom Inc.	\$5,382.00
Perlmanrep LLC	\$2,518.00
TOTAL	\$21,056.00

6. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on Tuesday, August 11, 2020, at Nassau, New York.



Brian Ryniker