

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

In re:

GENERAL WIRELESS OPERATIONS INC.  
DBA RADIOSHACK et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-10506 (\_\_\_)

Joint Administration Requested

**EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS  
(I) AUTHORIZING AND APPROVING THE CONDUCT OF INVENTORY  
LIQUIDATION, STORE CLOSING OR SIMILAR THEMED SALES,  
WITH SUCH SALES TO BE FREE AND CLEAR OF ALL LIENS, CLAIMS AND  
ENCUMBRANCES; (II) AUTHORIZING CUSTOMARY BONUSES TO EMPLOYEES  
OF CLOSING BUSINESS LOCATIONS; AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) move (the “Motion”), pursuant to sections 105, 363, 365 and 554 of title 11 of the Bankruptcy Code and Rules 2002, 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of (1) an order (i) authorizing the Debtors to conduct inventory liquidation, store closing or similar themed sales in accordance with the terms of the store closing sale guidelines (the “Sale Guidelines”) attached as Exhibit 1 to the Interim Order, and the “store-within-a-store” closing sale guidelines (the “SWAS Sale Guidelines”) attached as Exhibit 2 to the Interim Order with such sales to be free and clear of all liens, claims and encumbrances and granting certain related relief; (ii) authorizing the Debtors to pay customary retention bonuses to the store-level and certain field employees at closing business locations; and (iii) granting related relief, on an interim basis (collectively, the “Store Closing Relief”), and (2) following service of this motion and after an opportunity to be heard at a final hearing (the

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: General Wireless Operations Inc. dba RadioShack (8040); General Wireless Holdings Inc. (4262); General Wireless Inc. (9245); General Wireless Customer Service Inc. (5813). The notice address for all of the Debtors is: 300 RadioShack Circle, Fort Worth, TX 76102-1964.

“Final Hearing”), a final order (the “Final Order”), granting the Store Closing Relief on a final basis. In support of this motion, the Debtors incorporate the statements contained in the Declaration of Dene Rogers in Support of First Day Pleadings (the “First Day Declaration”) filed contemporaneously herewith, and further respectfully represents as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. sections 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. section 157(b). The Debtors confirm their consent pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue for this matter is proper in this district pursuant to 28 U.S.C. sections 1408 and 1409.

3. The bases for the relief requested herein are sections 105, 363, 365 and 554 of the Bankruptcy Code; (ii) Bankruptcy Rules 2002, 6004, 6006, 9014 and 9018; and (iii) Rules 6004-1 and 9018-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

### **BACKGROUND**

#### ***General Background***

4. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

5. 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, examiner, or official committee of unsecured creditors has been appointed in the Debtors' cases.

6. Simultaneously with the filing of this Motion, the Debtors have sought an order pursuant to Bankruptcy Rule 1015(b) that would provide for the joint administration of these cases and for consolidation for procedural purposes only.

### ***Company Overview***

7. An overview of the Debtors' history and businesses, a summary of the events leading to the commencement of these chapter 11 cases, and the facts supporting this Motion are set forth in the *Declaration of Dene Rogers in Support of Chapter 11 Petitions and First Day Motions*, filed contemporaneously herewith and incorporated by reference herein.

### ***The Proposed Store Closing Sales***

8. The Debtors operate approximately 1,500 retail locations, all on leased premises. The Debtors seek authority, but not the obligation, to close and liquidate the inventory and other assets of between 530 and substantially all of their stores (the "Store Closing Sales," each store, a "Closing Store" and, collectively, the "Closing Stores," and the location of each Closing Store, a "Closing Location"), including certain Sprint store-within-a-store ("SWAS") locations. The assets the Debtors seek to sell include the inventory and other assets attributable to the Closing Stores, including consignment inventory (the "Merchandise") as well as the associated furniture, fixtures and equipment (the "FF&E" and, together with the Merchandise, the "Store Closure Assets"). While the Debtors seek the authority to conduct Store Closing Sales at any or all of their stores, they continue to evaluate the performance of each of their stores, and may continue operations at a subset of higher performing stores.

9. The Debtors have identified and are continuing to identify those stores that are underperforming and have experienced low sales of inventory. The Debtors have divided their stores into three tranches, with different projected closing dates for each tranche, based upon the sales performance and rent value for each store. More specifically, the Debtors identified three tranches of stores, comprised of: (a) 187 stores that the Debtors have been winding down pre-filing and intend to close by approximately March 13 (the “First Tranche Stores”), (b) an additional approximately 365 stores that they intend to close or transfer to Sprint by March 31 (the “Second Tranche Stores”), and (c) the remaining approximately 1,000 stores for which the Debtors will continue to evaluate options during these proceedings.<sup>2</sup> The First Tranche Stores are stores with the lowest sales velocity and highest rent that the Debtors have determined would be dilutive to liquidation recoveries.

10. The Debtors conferred with prospective liquidating agents and assessed the costs associated with engaging a liquidating agent to conduct the Store Closing Sales. In the Prior Chapter 11 Cases, RS Legacy engaged independent consultants, Hilco Merchant Resources, LLC, Gordon Brothers Retail Partners, LLC and Tiger Capital Group, LLC (the “RS Legacy Consultant”), to supervise and assist RS Legacy in conducting store closing sales. Members of the Debtors’ management and personnel were among those at RS Legacy who oversaw the liquidation process in 2015, and were involved intimately in the store closing sales along with ordinary course store downsizing throughout the years. Based on their experience in the Prior Chapter 11 Cases and the lessons learned as a result of that process, as well as the Debtors’ own

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<sup>2</sup> The Debtors will be filing a motion to reject the Sprint agreements, including the Sprint primary lease, and to assume a settlement agreement with Sprint that establishes certain separation procedures for the co-branded that include the conducting of Store Closing Sales in a manner consistent with the SWAS Sale Guidelines. The numbers and amounts provided herein, including with respect to the number of stores in each tranche, the estimated cost savings through the Store Closing Sales, and the amount of Store Closing Bonuses, are with respect to all of the Debtors’ stores, irrespective of whether the Debtors are the primary leaseholder.

wind-down of the First Tranche Stores, the Debtors determined that it would be more cost-effective if they were to conduct the Store Closing Sales themselves, but retain a liquidation consultant to advise them in that process as appropriate.

11. Accordingly, the Debtors have been in discussions with a number of nationally recognized liquidation companies in anticipation of entering into an agreement with a liquidation consultant to advise and assist the Debtors in the management and direction of the Store Closing Sales. These discussions focused on retaining a liquidation consultant that, in the Debtors' business judgment, will provide maximum added value to the Store Closing Sales for the benefit of all stakeholders. Further, the retention of a liquidation consultant is a requirement for the Debtors' continued use of cash collateral in these cases.<sup>3</sup> Consistent with this approach, prior to filing these chapter 11 cases, after thorough, arms-length negotiations, the Debtors' entered into an agreement (the "Liquidation Consultant Agreement") with Tiger Capital Group, LLC (the "Liquidation Consultant") to provide liquidating consulting services in connection with their store closing sales. The Debtors intend to file and serve with opportunity to be heard a separate motion to assume the Liquidation Consultant Agreement in the coming days. Pending assumption of the Liquidation Consultant Agreement, the Debtors intend to honor the terms of the Liquidation Consultant Agreement, including their financial obligations in an amount not to exceed \$75,000 per week.

12. The Debtors' personnel have first-hand knowledge of internal store processes and on-site assets, as well as access to internal analytics that allow them to set pricing strategies on a product-by-product basis – for example, maintaining prices on products that sell quickly and

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<sup>3</sup> See *Interim Order (I) Authorizing Use of Cash Collateral and Affording Adequate Protection; (II) Modifying Automatic Stay; and (III) Scheduling a Final Hearing* at ¶ (the "Proposed Interim Cash Collateral Order").

focusing heavier discounting on slower-moving products. The Debtors plan to use their field team of 180 market managers and regional and area directors to manage the Store Closing Sales. The Debtors' field team includes approximately 150 market managers who will be responsible for personally going to the stores, executing corporate directives, moving merchandise, ensuring that pricing and signage are correct, and taking actions to reduce shrink and increase recovery on-site. The Liquidation Consultant will advise and support the Debtors' field team throughout this process.

13. In the weeks leading up to the Petition Date, the Debtors took initial steps in preparation for and to begin the Store Closing Sales. For example, approximately three weeks prior to the Petition Date, the Debtors began discounting merchandise in all of the stores without displaying external signage. During the week prior to the Petition Date, the Debtors posted signs in a manner consistent with the Sale Guidelines at the First Tranche Stores.

14. Given the significant number of stores that are co-branded with Sprint, the Debtors' plan for implementation of the Store Closing Sales is designed to facilitate a smooth disentanglement of the Debtors' and Sprint's respective operations. As will be set forth in more detail in the Motion For Order (I) Approving Assumption Of Sprint Settlement Agreement; (II) Approving Rejection Of Sprint Alliance And Sublease Agreements; (III) Approving The Release Of Certain Claims Against Sprint; And (IV) Granting Related Relief (the "Sprint Settlement Motion") to be filed shortly, the Debtors reached an agreement with Sprint Solutions, Inc. and Sprint eWireless, Inc. (collectively, "Sprint"), which included the SWAS Sale Guidelines attached hereto as Exhibit 2 to the Interim Order. Pending a ruling on that motion, and thereafter if the motion is approved by the Court, the Debtors propose to conduct their Store Closing Sales in accordance with the SWAS Sale Guidelines worked out with Sprint.

### **RELIEF REQUESTED**

15. The Debtors request entry of interim and final orders: (i) authorizing the Debtors to continue to conduct the Store Closing Sales, with such sales to be free and clear of all liens, claims and encumbrances; (ii) authorizing the Debtors to pay Store Closing Bonuses (as defined and discussed below); and (iii) granting related relief.

### **BASIS FOR RELIEF REQUESTED**

#### ***The Debtors Have a Valid Business Justification for the Store Closing Sales***

16. Section 363(b)(1) of the Bankruptcy Code, which governs asset sales outside of a debtor's ordinary course of business, provides that “the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). When selling assets outside of the ordinary course of business, a debtor must articulate a valid business justification to obtain court approval. See, e.g., Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (citing Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991)); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070-71 (2d Cir. 1983); In re Abbotts Dairies, Inc., 788 F.2d 143, 147-48 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of Lionel Corp. and requiring good faith); In re Delaware & Hudson Ry. Co., 124 B.R. 169, 175-76 (D. Del. 1991) (concluding that the Third Circuit adopted the “sound business judgment” test in the Abbotts Dairies decision); Dai-Icho Kangyo Bank v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (Bankr. D. Del. 1999) (same). When a debtor demonstrates a valid business justification for a decision, a strong presumption arises “that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the

company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1990) (holding that the Delaware business judgment rule has “vitality by analogy” in Chapter 11, especially where the debtor is a Delaware corporation) (quotations omitted).

17. Store closing or liquidation sales are a routine occurrence in chapter 11 cases involving retail debtors. See Ames Dept. Stores, 136 B.R. at 359 (noting that liquidation sales are an important part of “overriding federal policy requiring [a] Debtor to maximize estate assets”). As such, bankruptcy courts in this jurisdiction have approved similar store closing sales. See, e.g., In re Coldwater Creek, Case No. 14-10867 (BLS) (Bankr. D. Del. May 7, 2014); In re Anchor Blue Holding Corp., Case No. 11-10110 (PJW) (Bankr. D. Del. Jan. 13, 2011); In re Samsonite Company Stores, LLC, Case No. 09-13102 (PJW) (Bankr. D. Del. Sept. 10, 2009); In re Sportsman’s Warehouse, Inc., Case No. 09-10990 (CSS) (Bankr. D. Del. Mar. 23, 2009); In re Goody’s, LLC, Case No. 09-10124 (CSS) (Bankr. D. Del. Jan. 21, 2009) In re Boscov’s, Case No. 08-11637 (KG) (Bankr. D. Del. Aug. 15, 2008) (same); In re Goody’s Family Clothing, Inc., et al., Case No. 08-11133 (CSS) (Bankr. D. Del. Jun. 13, 2008) (same); In re Linens Holding Co., et al., Case No. 08-10832 (CSS) (Bankr. D. Del. May 30, 2008) (same); In re Sharper Image Corp., Case No. 08-10322 (KG) (Bankr. D. Del. May 30, 2008) (same); In re Tweeter Home Entm’t Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. July 13, 2007) (same); In re Three A’s Holdings, L.L.C., Case No. 06-10886 (BLS) (Bankr. D. Del. Sept. 25, 2006) (same).

18. Sufficient business justification exists to approve the proposed Store Closing Sales under section 363(b)(1). The Debtors, with the assistance of their advisors, have determined that the Store Closing Sales, on the expedited basis set forth herein, represent the best alternative to maximize recoveries to the Debtors' estates with respect to the Store Closure



Assets. Delay in commencing the Store Closing Sales would diminish the recovery tied to monetization of the Store Closure Assets for several important reasons. Many of the Closing Stores fail to generate positive cash flow and therefore are a significant drain on liquidity. As such, the Debtors will realize an immediate benefit in terms of financial liquidity upon the sale of the Store Closure Assets and the termination of operations at the Closing Stores. Further, the swift and orderly commencement of Store Closing Sales will allow the Debtors to timely reject leases pursuant and, therefore, avoid the accrual of unnecessary administrative expenses. For instance, the Debtors have filed a motion to reject the leases for the First Tranche Stores and believe that they will be able to reject certain Second Tranche Store leases before the end of March. However, delaying the start of the Store Closing Sales may cause the Debtors to pay for April rent at many of the these stores, at a possible cost to the estate of over \$800,000. In addition, the Debtors estimate that the payroll and other operating expenses of each Closing Store costs \$1,600 to \$2,000 per week. Therefore, if the Store Closing Sales are not permitted to go forward on an interim basis, and the Debtors are forced to delay the Store Closing Sales for even one week, the potential loss from ongoing payroll and other operating expenses could be over \$1 million.

19. Equally, just as the Debtors have determined, in their business judgment, that conducting the Store Closing Sales represents the best means for maximizing the value of the Store Closure Assets, the Debtors have also concluded that augmenting their store closing team with the support provided by the Liquidation Consultant will ensure that those Store Closing Sales are conducted in a manner that creates the highest returns for the Debtors' estates. The Liquidation Consultant has extensive experience conducting liquidation sales and can assist in the management and implementation of the Store Closing Sales in an efficient and cost effective

manner. As such, utilizing the Liquidation Consultant and the Debtors honoring their obligations under the Liquidation Consultant Agreement pending entry of an order assuming the Liquidation Consultant Agreement is a sound exercise of the Debtors' business judgment.

***The Court Should Approve of the Sale of the Store Closure Assets Free and Clear of all Liens, Encumbrances and Other Interests under Bankruptcy Code Section 363(f)***

20. The Debtors request approval to sell the Store Closure Assets on a final "as is" basis, free and clear of any and all liens, claims and encumbrances in accordance with section 363(f) of the Bankruptcy Code. A debtor in possession may sell property under sections 363(b) and 363(f) "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied: (i) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (ii) such entity consents; (iii) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (iv) such interest is in bona fide dispute; or (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f); Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that since section 363(f) is written in the disjunctive, the court may approve a sale free and clear if any one subsection is met). Moreover, the Third Circuit has indicated that a debtor possesses broad authority to sell assets free and clear of liens. See In re TWA Inc., 322 F.3d 283, 289 (3d Cir. 2003).

21. Although the term "any interest" is not defined in the Bankruptcy Code, the Third Circuit has noted that the trend in modern cases is toward "a broader interpretation which includes other obligations that may flow from ownership of the property." Folger Adam Security, Inc. v. DeMatteis/MacGregor, JV, 209 F.3d 252, 258-59 (3d Cir. 2000). As the Fourth Circuit held in In re Leckie Smokeless Coal Co., 99 F.3d 573, 581-82 (4th Cir. 1996) (cited with

approval by the Third Circuit in Folger Adam), the scope of section 363(f) is not limited to in rem interests in a debtor's assets. Thus, a debtor can sell its assets under section 363(f) “free and clear of successor liability that otherwise would have arisen under federal statute” Folger Adam, 209 F.3d at 258.

22. The Debtors anticipate securing the consent of their secured lenders to proceed in accordance with the relief requested herein. With respect to any other party asserting a lien, claim, or encumbrance against the Store Closure Assets, the Debtors anticipate that they will be able to satisfy one or more of the conditions set forth in section 363(f). In connection with the sale of the Store Closure Assets, the Debtors propose that any liens, claims, and encumbrances asserted against the Store Closure Assets be transferred to and attach to the amounts earned by the Debtors under the Store Closing Sales.

***The Court Should Approve the Proposed Sale Guidelines and SWAS Guidelines***

23. As a necessary part of this process, the Debtors request the authority to continue to conduct the Store Closing Sales in accordance with the Sale Guidelines and the SWAS Sale Guidelines and without complying with applicable state and local laws, statutes, rules and/or ordinances governing store closing, liquidation or similar sales (collectively, the “Liquidation Laws”). Although the Debtors intend to comply with state and local health and safety laws and consumer protection laws in conducting the Store Closing Sales, many Liquidation Laws require special and cumbersome licenses, waiting periods, time limits and other procedures for store closing, liquidation, or similar sales.

24. To eliminate the time, delay and expense associated with the administrative procedures necessary to comply with the Liquidation Laws, the Debtors propose the Sale Guidelines and SWAS Sale Guidelines as a way to streamline the administrative burdens on their estates while still adequately protecting the broad and varied interests of both landlords and

applicable governmental agencies charged with enforcing any Liquidation Laws that may apply to the Store Closing Sales. As such, the Debtors believe the Sale Guidelines and SWAS Sale Guidelines mitigate any concerns that their landlords or governmental agencies may raise with respect to the Store Closing Sales, and therefore, the below requested relief seeking the waiver of certain state and local laws and lease provisions is appropriate.

***The Court Should Waive Compliance With Laws Regarding Liquidation Sales***

25. Bankruptcy courts have consistently recognized that federal bankruptcy law preempts state and local laws that contravene the underlying policies of the Bankruptcy Code. See Belculfine v. Aloe (In re Shenango Group, Inc.), 186 B.R. 623, 628 (Bankr. W.D. Pa. 1995) (“Trustees and debtors-in-possession have unique fiduciary and legal obligations pursuant to the bankruptcy code. . . . [A] state statute [] cannot place burdens on [a debtor] where the result would contradict the priorities established by the federal bankruptcy code.”), aff’d, 112 F.3d 633 (3d Cir. 1997). Courts have found that preemption of state law is not appropriate if the laws deal with public health and safety. See Baker & Drake, Inc. v. Public Serv. Comm’n of Nev. (In re Baker & Drake, Inc.), 35 F.3d 1348, 1353-54 (9th Cir. 1994) (holding that Bankruptcy Code did not preempt state law prohibiting taxicab leasing that was promulgated in part as public safety measure). However, preemption is appropriate where the only state laws involved concern economic regulation rather than the protection of public health and safety. See In re Baker & Drake, Inc., 35 F.3d at 1353 (finding that “federal bankruptcy preemption is more likely . . . where a state statute is concerned with economic regulation rather than with protecting the public health and safety”).

26. Under the circumstances of this case, enforcing the strict requirements of the Liquidation Laws would undermine the fundamental purpose of section 363(b) of the

Bankruptcy Code by placing constraints on the Debtors' ability to maximize estate assets for the benefit of creditors. Accordingly, authorizing the Store Closing Sales without the delays and burdens associated with obtaining various state and local licenses, observing state and local waiting periods or time limits, and/or satisfying any additional requirements with respect to advertising and similar items is necessary and appropriate. The requested waiver is narrowly tailored to facilitate the successful consummation of Store Closing Sales. The Debtors do not seek a general waiver of all state and local requirements, but only those that apply specifically to liquidation sales. In fact, the Debtors will comply with applicable state and local public health and safety laws, and applicable tax, labor, employment, environmental, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising.

27. Further, this Court has recognized that the Bankruptcy Code preempts certain state laws and have granted relief similar to that requested herein. See, e.g., In re Coldwater Creek, Case No. 14-10867 (BLS) (Bankr. D. Del. May 7, 2014) (stating that debtors were authorized to conduct the store closing sales under the terms of the order “without the necessity of further showing compliance” with liquidation laws); In re Boscov’s, Case No. 08-11637 (KG) (Bankr. D. Del. Aug. 15, 2008) (ordering that “[g]overnmental units shall not fine, assess or otherwise penalize Debtors or Agent (or any of the landlords of the Closing Stores) for conducting or advertising the Store Closing Sales in a manner inconsistent with Liquidation Sales Laws, provided that the Store Closing Sales are conducted and advertised in compliance with this Order”); In re Goody’s Family Clothing, Inc., Case No. 08-11133 (CSS) (Bankr. D. Del. June 13, 2008) (ordering that the “Store Closing Sales at the Closing Stores shall be conducted by the Debtors and the Store Closing Agent without the necessity of compliance with any federal, state or local statute or ordinance, lease provision or licensing requirement affecting

store closing, ‘going out of business’, liquidation or auction sales, or affecting advertising, including signs, banners, and posting of signage, other than Safety Laws and General Laws”).

***The Court Should Waive Compliance with Any Restriction in the Leases***

28. Certain of the Debtors’ leases governing the premises of the stores subject to any Store Closing Sales may contain provisions purporting to restrict or prohibit the Debtors from conducting store closing, liquidation, or similar sales.<sup>4</sup> Such provisions have been held to be unenforceable in chapter 11 cases as they constitute an impermissible restraint on a debtor’s ability to properly administer its reorganization case and maximize the value of its assets under section 363 of the Bankruptcy Code. Ames Dep’t Stores, 136 B.R. at 359 (deciding that enforcement of such lease restrictions would “contravene overriding federal policy requiring debtor to maximize estate assets. . . .”); In re R. H. Macy and Co., Inc., 170 B.R. 69, 73-74 (Bankr. S.D.N.Y. 1994) (holding that the lessor could not recover damages for breach of a covenant to remain open throughout the lease term, because the debtor had a duty to maximize the value to the estate and the debtor fulfilled this obligation by holding a store closing sale and closing the store); In re Tobago Bay Trading Co., 112 B.R. 463, 467-68 (Bankr. N.D. Ga., 1990) (finding that a debtor’s efforts to reorganize would be significantly impaired to the detriment of creditors if lease provisions prohibiting a debtor from liquidating its inventory were enforced); In re Lisbon Shops, Inc., 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982) (holding restrictive lease provision unenforceable in chapter 11 case where debtor sought to conduct a liquidation sale).

29. In addition, this Court has held that restrictive lease provisions affecting store liquidation sales in chapter 11 cases are unenforceable. See, e.g., In re Coldwater Creek, Case

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<sup>4</sup> The Debtors’ settlement agreement with Sprint contains certain provisions regarding store closing sales, which have been incorporated into the SWAS Sale Guidelines.

No. 14-10867 (BLS) (Bankr. D. Del. May 7, 2014) (ordering that store closing sales be conducted without the further need for compliance with, among other things, lease provisions); In re Boscov's, Case No. 08-11637 (KG) (Bankr. D. Del. Aug. 15, 2008) (same); In re Goody's Family Clothing, Inc., Case No. 08-11133 (CSS) (Bankr. D. Del. June 13, 2008) (same); In re Linens Holding Co., Case No. 08-10832 (CSS) (Bankr. D. Del. May 30, 2008) (same). Thus, as a result of the above and to the extent that such provisions or restrictions exist in any of the leases of the stores subject to the Store Closing Sales, the Debtors request that the Court authorize the Debtors to conduct any liquidation sales without interference by any landlords or other persons affected, directly or indirectly, by the liquidation sales.

***The Court Should Approve the Abandonment of Certain Property In Connection with Any Liquidation Sales***

30. After notice and a hearing, a debtor “may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. §554(a); see also Hanover Ins. Co. v. Tyco Indus., Inc., 500 F.2d 654, 657 (3d Cir. 1974) (stating that a trustee “may abandon his claim to any asset, including a cause of action, he deems less valuable than the cost of asserting that claim”).

31. The Debtors are seeking to sell all FF&E remaining in the Closing Stores. However, the Debtors may determine that the costs associated with holding or selling certain property or FF&E exceeds the proceeds that will be realized upon its sale, or that such property is not sellable at all. In such event, the property is of inconsequential value and benefit to the estates and/or may be burdensome to retain.

32. To maximize the value of the Debtors' assets and to minimize the costs to the estates, the Debtors respectfully request authority to abandon any of their remaining FF&E or other property located at any of the Closing Stores without incurring liability to any person or

entity. The Debtors further request that the landlord of each Closing Store with any abandoned FF&E or other property be authorized to dispose of such property without liability to any third parties.<sup>5</sup>

33. Notwithstanding the foregoing, the Debtors will utilize all commercially reasonable efforts to remove or cause to be removed any confidential or personal identifying information (which means information which alone or in conjunction with other information identifies an individual, including, but not limited to, an individual's name, social security number, date of birth, government-issued identification number, account number, and credit or debit card number) in any of the Debtors' hardware, software, computers or cash registers or similar equipment that are to be sold or abandoned.

***The Court Should Find That Any Liquidation Sales Should Be Exempt From Any "Fast Pay" Laws***

34. Many states in which the Debtors operate also have laws and regulations that require the Debtors to pay an employee substantially contemporaneously with his or her termination (the "Fast Pay Laws"). In many cases, these laws require the payment to occur either immediately or within a period of only a few days from the date such employee is terminated. The sweeping nature of any Store Closing Sales will result in a substantial number of employees being terminated. The Debtors' payroll systems may be unable to process the payroll information associated with these terminations in a manner that will be compliant with these state laws and regulations.

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<sup>5</sup> This also may include Sprint-owned FF&E in certain Closing Stores.



35. As set forth above, the Bankruptcy Code preempts state and local laws that conflict with its underlying policies. Preemption is appropriate where, as here, the only state laws involved concern economic regulation rather than the protection of public health and safety.

36. To be clear, the Debtors intend to pay their terminated employees as expeditiously as possible and under normal payment procedures. If the Debtors were required to technically comply with these state laws and regulations in their Store Closing Sales, their efforts to wind-down their operations and stem unnecessary payroll costs may be hampered. Indeed, if forced to comply, the Debtors could face the choice of (a) having to incur the costs of keeping employees “employed” after the conclusion of the Store Closing Sales while payroll is prepared or (b) staging terminations to the detriment of the Debtors’ estates. Both of these choices will provide no benefit to the Debtors’ estates and will only increase the administrative costs of conducting the Store Closing Sales.

37. Accordingly, the Debtors respectfully submit that, at least in regard to the proposed Store Closing Sales, Fast Pay Laws are at odds with the underlying policies of the Bankruptcy Code and, as such, the Debtors should be granted relief from their requirements. See, e.g., Coldwater Creek Inc., Case No. 14-10867 (BLS) (Bankr. D. Del. May 7, 2014) (waiving “fast pay” laws and regulations in connection with approval of store closing sales); Filene’s Basement, LLC, Case No. 11-13511(KJC) (Bankr. D. Del. Nov. 2, 2011) (same); In re Linens Holding Co., Case No. 08-10832 (Bankr. D. Del. Oct. 28, 2008) (same).

***The Court Should Find That Any Sale of the Store Closure Assets Does Not Require the Appointment of a Consumer Privacy Ombudsman***

38. Section 363(b)(1) of the Bankruptcy Code provides that a debtor may not sell or release personally identifiable information about individuals unless such sale or lease is consistent with its policies or upon appointment of a consumer privacy ombudsman pursuant to

section 332 of the Bankruptcy Code. The Debtors will not be selling or releasing personally identifiable information in the course of the Store Closing Sales. Therefore, appointment of a consumer privacy ombudsman is unnecessary.

***The Court Should Authorize the Payment of Store Closing Bonuses to Employees***

39. Through this motion, the Debtors are requesting the authority, but not the obligation, to pay store closing bonuses (the “Store Closing Bonuses”) to non-executive store-level and field employees who remain in the employ of the Debtors during the Store Closing Sales. The Debtors believe that the Store Closing Bonuses will motivate employees during the Store Closing Sales and will enable the Debtors to retain those employees necessary to successfully complete the Store Closing Sales. The Debtors are setting incentive milestones by store based on the gross liquidation value realized from the Store Closing Sales. The amount of and eligibility for the Store Closing Bonuses will vary depending upon a number of factors, including the employee’s position with the Debtors, whether the incentive milestones are achieved, and whether the employee remains employed by the Debtors through the conclusion of the applicable Store Closing Sales. The Debtors estimate that the aggregate cost of the Store Closing Bonus program, if 100% of the incentive milestones are achieved at all stores, will not be more than \$2 million.

40. This Court has the authority, pursuant to sections 105 and 363(b) of the Bankruptcy Code, to authorize the Debtors to pay the Store Closing Bonuses. Store Closing Bonuses are a typical practice in many store liquidations, and courts in this jurisdiction have also approved such payments when debtors choose to enter into consulting agreements with liquidators. See In re Ultimate Acquisition Partners, LP, Case No. 11-10245 (MFW) (Bankr. D. Del. Feb. 11, 2011); In re KB Toys, Case No. 08-13269 (KJC) (Bankr. D. Del. Dec. 18, 2008).

41. In this case, payment of the Store Closing Bonuses in connection with the Store Closing Sales will aid in maximizing the value of the Debtors' estates by inducing employees who are needed to manage and complete the Store Closing Sales to remain in the employ of the Debtors and to maximize the returns from such sales. As discussed above, the Debtors will not be using a third-party liquidating agent and, accordingly, the results of the Store Closing Sales are wholly dependent on their store-level and field employees. Therefore, the Store Closing Bonuses are justified by a sound business purpose and should be approved.

**REQUESTS FOR IMMEDIATE RELIEF AND WAIVER OF STAY**

42. Pursuant to Rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors seek (i) immediate entry of an order granting the relief sought herein and (ii) a waiver of any stay of the effectiveness of such an order. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding ... a motion to pay all or part of a claim that arose before the filing of the petition." Accordingly, where the failure to grant any such requested relief would result in immediate and irreparable harm to the Debtors' estates, the Court may allow the Debtors to pay all or part of a claim that arose before the Petition Date prior to the twenty-first day following the Petition Date. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."

43. As set forth above, the Debtors submit that ample cause exists to justify (i) the immediate entry of an order granting the relief sought herein and (ii) a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

**RESERVATION OF RIGHTS**

44. Nothing contained herein is intended or should be construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim on any grounds; (iii) a promise to pay any claim; or (iv) an implication or admission that any particular claim against the Debtors would constitute a claim for Prepetition Taxes.

**NOTICE**

45. Notice of this Motion shall be given to (i) the office of the United States Trustee for the District of Delaware; (ii) those creditors holding the 30 largest unsecured claims on a consolidated basis against the Debtors' estates; (iii) Royal Bank of Canada, in its capacity as administrative and collateral agent for certain senior secured lenders; (iv) GACP Finance Co., LLC; (v) Cortland Capital Market Services LLC, in its capacity as agent for certain junior secured lenders; (vi) Standard General Master Fund L.P.; (vii) Kensington Technology Holdings, LLC; (viii) all parties who are known by the Debtors to assert liens against the Store Closure Assets; (ix) all state attorneys general in which the Store Closure Assets are located; (x) municipalities in which the Store Closure Assets are located; and (xi) all of the Debtors' landlords at the locations of the Closing Stores. As this Motion is seeking "first day" relief, within two business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m). The Debtors submit that no other or further notice need be provided.

**NO PRIOR REQUEST**

46. No prior request for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Interim Order, substantially in the form attached hereto as Exhibit A, granting, on an interim basis, (a) the Store Closing Relief, and (b) such other and further relief to the Debtors as the Court may deem proper, (ii) set a date for a Final Hearing on the Store Closing Relief sought in this motion, (iii) establish objection and reply deadline for the Final Hearing, and (iv) grant such other relief as the Court deems just and proper.

Dated: March 8, 2017  
Wilmington, Delaware

**PEPPER HAMILTON LLP**

/s/ David M. Fournier  
David M. Fournier (DE Bar No. 2812)  
Michael J. Custer (DE Bar No. 4843)  
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-and-

**JONES DAY**

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*Proposed Attorneys for Debtors  
and Debtors-in-Possession*

**Exhibit A**

**(Proposed Interim Order)**

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

In re:

GENERAL WIRELESS OPERATIONS INC.  
DBA RADIOSHACK et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-10506 (\_\_\_\_)

Joint Administration Requested

**Re: Docket No.** \_\_\_\_\_

**INTERIM ORDER: (I) AUTHORIZING AND APPROVING THE CONDUCT OF INVENTORY LIQUIDATION, STORE CLOSING OR SIMILAR THEMED SALES, WITH SUCH SALES TO BE FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES; (II) AUTHORIZING CUSTOMARY BONUSES TO EMPLOYEES OF CLOSING BUSINESS LOCATIONS; AND (III) GRANTING RELATED RELIEF**

This matter coming before the Court on the motion (the “Motion”)<sup>2</sup> of the above-captioned Debtors for the entry of an interim order (the “Interim Order”), pursuant to Bankruptcy Code sections 105, 363, and 365 and Bankruptcy Rules 2002 and 6004; (i) authorizing the Debtors to conduct inventory liquidation, store closing or similar themed sales (collectively, the “Store Closing Sales”) in accordance with the terms or the store closing sale guidelines (the “Sale Guidelines”) attached as Exhibit 1 to this Interim Order and the terms of the “store-within-a-store” closing sale guidelines (the “SWAS Sale Guidelines”) attached as Exhibit 2 to this Interim Order, with such sales to be free and clear of all liens, claims, encumbrances, and interests (collectively, the “Encumbrances”); (ii) authorizing the Debtors to pay customary retention bonuses to the store-level and certain field employees at closing business locations; and (iii) granting related relief, on an interim basis (collectively, the “Store Closing Relief”); the

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: General Wireless Operations Inc. dba RadioShack (8040); General Wireless Holdings Inc. (4262); General Wireless Inc. (9245); General Wireless Customer Service Inc. (5813). The notice address for all of the Debtors is: 300 RadioShack Circle, Fort Worth, TX 76102-1964.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

Court has reviewed the First Day Declaration and has considered the statements of counsel and the evidence adduced with respect to the Motion. The Court has found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. sections 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. sections 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. section 157(b) and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012, and that this Court may enter a final order consistent with Article III of the United States Constitution, (iv) notice of the Motion and the Hearing was sufficient under the circumstances, and (v) there is good cause to waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h) to the extent it is applicable. After due deliberation, the Court has determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors, and good and sufficient cause having been shown;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The conduct of the Store Closing Sales will provide an efficient means for the Debtors to dispose of the Store Closure Assets.

B. The relief set forth herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates and the Debtors have demonstrated good, sufficient, and sound business purposes and justifications for the relief approved herein.

C. The Store Closing Sales are in the best interest of the Debtors' estates.

D. The Debtors have represented that they are neither selling nor leasing personally identifiable information pursuant to the Motion.



E. The entry of this Interim Order is in the best interest of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein; and now therefore it is hereby.

**ACCORDINGLY, IT IS HEREBY ORDERED THAT:**

1. The Motion, on an interim basis, is GRANTED as set forth herein.
2. On \_\_\_\_\_, 2017, at \_\_\_\_\_ .m (prevailing Eastern Time), a hearing (the "Final Hearing") will be held before this Court to consider the Store Closing Relief requested in the Motion, on a final basis. All objections, if any, to the Motion shall be in writing and filed with this Court and served on counsel for the Debtors and any duly appointed committee, as to be received on or before \_\_\_\_\_, 2017 at \_\_\_\_\_ .m. (prevailing Eastern Time). The Debtors shall file any reply(s) to such objections on or before \_\_\_\_\_, 2017 at \_\_\_\_\_ .m. (prevailing Eastern Time) and serve such replies on the objecting parties and any duly appointed committee.
3. The Debtors are authorized and empowered to take any and all further actions as may be reasonably necessary or appropriate to give effect to this Interim Order.
4. To the extent of any conflict between this Interim Order and the Sale Guidelines, the terms of this Interim Order shall control; provided, however, to the extent of any conflict between this Interim Order or the Sale Guidelines and the SWAS Sale Guidelines, the SWAS Sale Guidelines shall control with respect to any Sprint/Radioshack "store-within-a-store" location.
5. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall take effect immediately upon its entry.

**A. Authority To Engage in Store Closing Sales**

6. The Debtors are authorized, on an interim basis pending the Final Hearing, pursuant to 105(a) and 363(b)(1) of the Bankruptcy Code, to immediately continue and conduct Store Closing Sales at the Closing Stores in accordance with this Interim Order, the Sale Guidelines, and the SWAS Sale Guidelines.

7. The Sale Guidelines and the SWAS Sale Guidelines are approved in their entirety on an interim basis.

8. The Debtors are authorized to discontinue operations at the Closing Stores in accordance with this Interim Order and the Sale Guidelines.

9. All entities that are presently in possession of some or all of the Merchandise or FF&E in which the Debtors hold an interest that are or may be subject to this Interim Order hereby are directed to surrender possession of such Merchandise or FF&E to the Debtors.

10. Neither the Debtors nor any of their officers, employees, or agents shall be required to obtain the approval of any third party, including (without limitation) any Governmental Unit (as defined in Bankruptcy Code section 101(27)) or landlord, to conduct the Store Closing Sales and to take the related actions authorized herein.

**B. Conduct of the Store Closing Sales**

11. All newspapers and other advertising media in which the Store Closing Sales may be advertised and all landlords are directed to accept this Interim Order as binding authority so as to authorize the Debtors to conduct the Store Closing Sales and the sale of Merchandise and FF&E, including, without limitation, to conduct and advertise the sale of the Merchandise and FF&E in the manner contemplated by and in accordance with this Interim Order, the Sale Guidelines, and the SWAS Sale Guidelines.

12. Nothing in this Interim Order releases, nullifies, or enjoins the enforcement of any liability to a Governmental Unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, lessee, or operator of the property after the date of entry of this Interim Order. Nothing contained in this Interim Order shall in any way (i) diminish the obligation of any entity to comply with environmental laws, or (ii) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. Moreover, the sale of the Merchandise and FF&E shall not be exempt from, and the Debtors shall be required to comply with, laws of general applicability, including, without limitation, public health and safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, “General Laws”). Nothing in this Interim Order shall alter or affect the Debtors’ obligations to comply with all applicable federal safety laws and regulations. Nothing in this Interim Order shall be deemed to bar any Governmental Unit from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors’ right to assert in that forum or before this Court that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code, this Interim Order, or otherwise, pursuant to Paragraph 24 hereunder. Notwithstanding any other provision in this Interim Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Interim Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Interim Order shall be deemed to have made any rulings on any such issues.

13. Except to the extent of the reserved rights of Governmental Units expressly granted elsewhere in this Interim Order, during the Interim Sale Period, the Debtors are hereby authorized to take such actions as may be necessary and appropriate to conduct the Store Closing Sales without necessity of further order of this Court as provided in the Sale Guidelines and the SWAS Sale Guidelines, including, but not limited to, advertising the sale as a “store closing sale”, “sale on everything”, “everything must go”, or similar-themed sales through the posting of signs (including the use of exterior banners at non-enclosed mall Closing Locations, and at enclosed mall Closing Locations to the extent the applicable Closing Location entrance does not require entry into the enclosed mall common area), use of signwalkers and street signage.

14. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the sale of the Merchandise and FF&E, to the extent that, prior to the Final Hearing, disputes arise during the course of such sale regarding laws regulating the use of sign-walkers, banners or other advertising and the Debtors are unable to resolve the matter consensually with a Governmental Unit, any party may request an immediate telephonic hearing with this Court pursuant to these provisions. Such hearing will, to the extent practicable, be scheduled initially no later than the earlier of (i) the Final Hearing or (ii) within two (2) business days of such request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

15. The sale of the Merchandise and FF&E shall be conducted by the Debtors notwithstanding any restrictive provision of any lease, sublease or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Store Closing Sales, the rejection of leases, abandonment of assets, or “going dark” provisions. The Debtors and landlords of the Closing Locations are authorized to enter into agreements (“Side Letters”) between themselves

modifying the Sale Guidelines and the SWAS Sale Guidelines without further order of the Court, and such Side Letters shall be binding as among the Debtors and any such landlords, provided that nothing in such Side Letters affects the provisions of Paragraphs 14, 15, and 24 of this Interim Order. In the event of any conflict between the Sale Guidelines and any Side Letter, the terms of such Side Letter shall control; provided, however, to the extent the Debtors wish to enter into any Side Letters with a landlord that purports to modify the SWAS Sale Guidelines, Sprint shall be a party to or otherwise consent in writing to such Side Letter.

16. Except as expressly provided for herein or in the Sale Guidelines or the SWAS Sale Guidelines, and except with respect to any Governmental Unit (as to which Paragraphs 14, 15, and 24 of this Interim Order shall apply), no person or entity, including, but not limited to, any landlord, licensor, service providers, utilities, and creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Store Closing Sales or the sale of Merchandise or FF&E, or the advertising and promotion (including the posting of signs and exterior banners or the use of signwalkers) of such sales, and all such parties and persons of every nature and description, including, but not limited to, any landlord, licensor, service providers, utilities, and creditor and all those acting for or on behalf of such parties, are prohibited and enjoined from (i) interfering in any way with, obstructing, or otherwise impeding, the conduct of the Store Closing Sales and/or (ii) instituting any action or proceeding in any court (other than in the Bankruptcy Court) or administrative body seeking an order or judgment against, among others, the Debtors or the landlords at the Closing Locations that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Store Closing Sales or sale of the Merchandise or FF&E or other liquidation sales at the

Closing Locations and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

17. The Debtors are authorized and empowered to transfer Merchandise and FF&E among the Closing Locations.

18. The Debtors shall have the right to use the Closing Locations and all related Closing Location services, furniture, fixtures, equipment and other assets of the Debtors for the purpose of conducting the Store Closing Sales, free of any interference from any entity or person, subject to compliance with the Sale Guidelines, the SWAS Sale Guidelines and this Interim Order and subject to Paragraphs 14, 15, and 24 of this Interim Order.

19. All sales of Store Closure Assets shall be “as is” and final. However, as to the Closing Stores, all state and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms “as is” or “final sales.” Further, as to the Closing Stores only, the Debtors shall accept return of any goods purchased during the Store Closing Sales that contain a defect which the lay consumer could not reasonably determine was defective by visual inspection prior to purchase for a full refund, provided that the consumer must return the merchandise within seven days of purchase, the consumer must provide a receipt, and the asserted defect must in fact be a “latent” defect. Returns, if permitted, related to the purchase of Store Closure Assets shall not be accepted at stores that are not participating in the Store Closing Sales.

20. The Debtors are directed to remit all taxes arising from the Store Closing Sales to the applicable Governmental Units as and when due, provided that in the case of a bona fide dispute the Debtors are only directed to pay such taxes upon the resolution of the dispute, if and to the extent that the dispute is decided in favor of the applicable Governmental Unit. For the

avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable Governmental Unit for which the sales taxes are collected. This Interim Order does not enjoin, suspend or restrain the assessment, levy or collection of any tax under state law, and does not constitute a declaratory judgment with respect to any party's liability for taxes under state law.

21. Pursuant to section 363(f) of the Bankruptcy Code, the Debtors are authorized to sell the Merchandise and FF&E, and all sales of Merchandise or FF&E pursuant to the Store Closing Sales shall be free and clear of any and all Encumbrances; provided, however, that any such Encumbrances shall attach to the proceeds of the Store Closing Sales with the same validity, in the amount, with the same priority as, and to the same extent that any such liens, claims, and encumbrances have with respect to the Merchandise and FF&E, subject to any claims and defenses that the Debtors may possess with respect thereto; further, provided, however, the Debtors shall establish one or more escrow accounts for the proceeds of the sale of Sprint consigned products and airtime funds in accordance with the terms of the mutual settlement and release, operation wind down and bankruptcy cooperation agreement between the Debtors and Sprint (“Settlement Agreement”).

22. To the extent that the Debtors propose to sell or abandon FF&E which may contain personal and/or confidential information about the Debtors' employees and/or customers (the “Confidential Information”), the Debtors shall remove the Confidential Information from such items of FF&E before such sale or abandonment.

**C. Dispute Resolution Procedures With Governmental Units**

23. To the extent that the sale of Merchandise or FF&E is subject to any federal, state or local statute, ordinance, or rule, or licensing requirement directed at regulating “going out of business,” “store closing,” similar inventory liquidation sales, or bulk sale laws (each a “GOB

Law,” and collectively, the “GOB Laws”), including laws restricting safe, professional and non-deceptive, customary advertising such as signs, banners, posting of signage, and use of sign-walkers solely in connection with the sale and including ordinances establishing license or permit requirements, waiting periods, time limits or bulk sale restrictions that would otherwise apply solely to the sale of the Interim Sale Assets (collectively, the “Liquidation Laws”), the dispute resolution procedures in this section shall apply.

24. Provided that the Store Closing Sales and the sale of Merchandise and FF&E are conducted in accordance with the terms of this Interim Order and the Sale Guidelines, and the SWAS Sale Guidelines, and in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the Debtors shall be presumed to be in compliance with any GOB Laws and Liquidation Laws and, subject to Paragraphs 14, 15, and 23 herein, are authorized to conduct the Store Closing Sales in accordance with the terms of this Order and the Sale Guidelines, and the SWAS Sale Guidelines without the necessity of further showing compliance with any such GOB Laws and Liquidation Laws.

25. Within three business days of entry of this Interim Order, the Debtors shall serve copies of this Order, the Sale Guidelines, and the SWAS Sale Guidelines via e-mail, facsimile or regular mail, on: (i) the Attorney General’s office for each state where the Store Closing Sales are being held, (ii) the county consumer protection agency or similar agency for each county where the Store Closing Sales are being held, (iii) the division of consumer protection for each state where the Store Closing Sales are being held; (iv) the chief legal counsel for the local jurisdiction; and (v) the Debtors’ landlords of the Closing Stores.

26. To the extent that during the period between the Petition Date and the date of the Final Hearing there is a dispute arising from or relating to the Store Closing Sales, this Interim



Order, or the Sale Guidelines, or the SWAS Sale Guidelines, which dispute relates to any GOB Laws or Liquidation Laws (a "Reserved Dispute"), the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute which such Reserved Dispute will be heard at the Final Hearing, absent a party obtaining expedited relief. Nothing in this Interim Order shall constitute a ruling with respect to any issues to be raised with respect to a Reserved Dispute. Any Governmental Unit may assert a Reserved Dispute by sending a notice (the "Dispute Notice") explaining the nature of the dispute to: Pepper Hamilton LLP, 1313 N. Market Street, Suite 5100, Wilmington, DE 19801 (Attn: David M. Fournier, Esq.).

**D. Store Closing Bonuses.**

27. On an interim basis and pending the Final Hearing, the Debtors shall have the authority, but not the obligation, to pay store closing bonuses (the "Store Closing Bonuses") to store-level and certain field employees who remain in the employ of the Debtors during the Store Closing Sales. The Debtors shall have the authority to determine the individual amounts of each Store Closing Bonus, except that the total aggregate cost of the Store Closing Bonus program will not exceed \$200,000.00 on an interim basis pending entry of a final order on the Motion, and will not exceed \$2 million in the aggregate on a final basis, for all employees working at the Closing Stores.

**E. Other Provisions.**

28. Except with respect to any Governmental Unit (as to which the provisions of Paragraphs 14, 15, and 24 of this Interim Order shall apply), this Court shall retain exclusive jurisdiction with regard to all issues or disputes relating to this Interim Order, including, but not limited to, (i) any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit banner and signwalker advertising, including with respect to any allegations that such advertising is not being conducted in a safe, professional and non-deceptive manner,

(ii) any claim of the Debtors and/or the landlords for protection from interference with the Store Closing Sales, (iii) any other disputes related to the Store Closing Sales, and (iv) to protect the Debtors against any assertions of Encumbrances. No such parties or person shall take any action against the Debtors, the landlords or the Store Closing Sales until this Court has resolved such dispute. This Court shall hear the request of such parties or persons with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

29. Pending entry of an order on Debtors' motion to assume Liquidation Consultant Agreement, the Debtors are authorized to perform thereunder and to honor their financial obligations thereunder in an amount not to exceed \$75,000 per week.

30. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Order.

31. This Order shall be immediately effective and enforceable upon its entry. The fourteen-day stay imposed by Bankruptcy Rule 6004(h) is hereby waived.

32. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: March \_\_\_\_, 2017  
Wilmington, Delaware

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United States Bankruptcy Judge

**EXHIBIT 1**

**SALE GUIDELINES**

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

<p>In re:</p> <p>GENERAL WIRELESS OPERATIONS INC. DBA RADIOSHACK <u>et al.</u>,<sup>1</sup></p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 17-10506 (___)</p> <p>Joint Administration Requested</p> <p><b>Re: Docket No.</b> _____</p>
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The following procedures shall apply to each Store Closing Sale<sup>2</sup> (each, the “Sale”) to be held at the Closing Locations:

1. The Sale shall be conducted so that the Closing Locations in which sales are to occur will remain open no longer than during the normal hours of operation provided for in the respective leases for the Closing Locations.
2. The Sale shall be conducted in accordance with applicable state and local “Blue Laws,” where applicable, so that no Sale shall be conducted on Sunday unless the Debtors had been operating such Closing Location on a Sunday.
3. On “shopping center” property, the Debtors shall not distribute handbills, leaflets or other written materials to customers outside of any Closing Location's premises, unless permitted by the lease or, if distribution is customary in the “shopping center” in which such Closing Location is located; provided that the Debtors may solicit customers in the Closing Locations themselves. On “shopping center” property, the Debtors shall not use any flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
4. Subject to the entry of the Final Approval Order: (i) the Debtors may abandon any FF&E and Merchandise not sold in the Sale at the Closing Locations at the earlier of the conclusion of the Sale or the applicable Sale Termination Date; (ii) any abandoned FF&E and Merchandise left in a Closing Location after a lease is rejected shall be deemed abandoned to the landlord having a right to dispose of the same as the landlord chooses without any liability whatsoever on the part of the landlord to any party and without waiver of any damage claims against the Debtors.
5. The Debtors may advertise the sale as a “sale on everything”, “everything

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: General Wireless Operations Inc. dba RadioShack (8040); General Wireless Holdings Inc. (4262); General Wireless Inc. (9245); General Wireless Customer Service Inc. (5813). The notice address for all of the Debtors is: 300 RadioShack Circle, Fort Worth, TX 76102-1964.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

must go”, or similar themed sale. The Debtors may also advertise the sale as a “store closing” and have a “countdown to closing” sign prominently displayed in a manner consistent with these Sale Guidelines.

6. The Debtors shall be permitted to utilize display, hanging signs, and interior banners in connection with the Sale; provided, however, that such display, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. The Debtors may use yellow signage but shall not use neon or day-glo on its display, hanging signs, or interior banners. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Sale Guidelines. In addition, the Debtors shall be permitted to utilize exterior banners at (i) non-enclosed mall Closing Locations and (ii) enclosed mall Closing Locations to the extent the entrance to the applicable Closing Location does not require entry into the enclosed mall common area; provided, however, that such banners shall be located or hung so as to make clear that the Sale is being conducted only at the affected Closing Location, and shall not be wider than the storefront of the Closing Location. In addition, the Debtors shall be permitted to utilize sign walkers in a safe and professional manner. Nothing contained in these Sale Guidelines shall be construed to create or impose upon the Debtors any additional restrictions not contained in the applicable lease agreement.

7. Conspicuous signs shall be posted in the cash register areas of each of the affected Closing Locations to effect that “all sales are final.”

8. Except with respect to the hanging of exterior banners, the Debtors shall not make any alterations to the storefront or exterior walls of any Closing Locations.

9. The Debtors shall not make any alterations to interior or exterior Closing Location lighting. No property of the landlord of a Closing Location shall be removed or sold during the Sale. The hanging of exterior banners or signage or banners in a Closing Location shall not constitute an alteration to a Closing Location.

10. The Debtors shall keep Closing Location premises and surrounding areas clear and orderly consistent with present practices.

11. The Debtors shall have the right to sell all FF&E. The Debtors may advertise the sale of the FF&E in a manner consistent with these guidelines at the Closing Locations. The purchasers of any FF&E sold during the sale shall be permitted to remove the FF&E either through the back shipping areas at any time, or through other areas after Closing Location business hours.

12. At the conclusion of the Sale at each Closing Location, pending assumption or rejection of applicable leases, the landlords of the Closing Locations shall have reasonable access to the Closing Location's premises as set forth in the applicable leases. The Debtors and their agents and representatives shall continue to have exclusive and unfettered access to the Closing Locations until the respective Closing Locations are turned back to the landlord in a manner consistent with the lease rejection procedures approved by the Court.

13. Postpetition rents shall be paid by the Debtors as required by the Bankruptcy Code until the rejection or assumption and assignment of each lease.

14. The rights of landlords against the Debtors for any damages to a Closing Location shall be reserved in accordance with the provisions of the applicable lease.

15. If and to the extent that the landlord of any Closing Location affected hereby contends that the Debtors are in breach of or default under these Sale Guidelines, such landlord shall email or deliver written notice by overnight delivery on the Debtors' counsel as follows: Pepper Hamilton, Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, Delaware 19801 (Attn: David M. Fournier, Esq.), [fournierd@pepperlaw.com](mailto:fournierd@pepperlaw.com).

**EXHIBIT 2**

SWAS SALE GUIDELINES

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

In re:  GENERAL WIRELESS OPERATIONS INC. DBA RADIOSHACK <i>et al.</i> , <sup>1</sup>  <p style="text-align: center;">Debtors.</p>	Chapter 11  Case No. 17-10506 (____)  Joint Administration Requested  <b>Re: Docket No.</b> _____
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**SWAS SALE GUIDELINES**

In addition to the general Store Closing Sale Guidelines governing Sales, the following procedures shall apply to Sales at each Closing Location in which Sprint is a tenant or a subtenant:

1. The Debtors will file a notice (the “Termination Notice”) setting forth the proposed closing of one or more locations listed on Exhibit A hereto, and will serve such a notice by first class mail on: (i) counsel to Sprint; (ii) counsel to the statutory committee of unsecured creditors in these chapter 11 cases, if appointed (the “Committee”); (iii) counsel to Royal Bank of Canada, in its capacity as administrative agent for certain senior secured lenders; (iv) counsel to GACP Finance Co., L.L.C., in its capacity as Agent for certain first-lien term lenders, (v) Cortland Capital Market Services, LLC, in its capacity as Agent for certain second-lien lenders; (vi) the master landlord with respect to the Closing Location (each, a “Master Landlord”); and (vii) the Office of the United States Trustee for the District of Delaware. The Termination Notice will set forth the following, based on the best of the Debtors' information: (i) the name and address of the affected master landlord; (ii) the street address of the real property; (iii) whether the Debtors have commenced, or the projected date on which the Debtors intend to commence, a store closing or similar themed sale (a “Sale”) at the Premises; and (iv) if known, the Debtors’ good faith estimate of the date by which they intend to have vacated the Premises (the “Projected Surrender Date”). Subject to the Debtors’ obligations under the Settlement Agreement, nothing herein shall limit the Debtors’ right to vacate any Premises, or reject any lease, effective as of a date that is earlier or later than the Projected Surrender Date.

2. Pending a ruling on the Debtors’ Motion to Assume the Settlement Agreement, and thereafter if such motion is approved, the Debtors and Sprint will comply their respective rights and obligations under the Settlement Agreement with respect to the Sales and

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: General Wireless Operations Inc. dba RadioShack (8040); General Wireless Holdings Inc. (4262); General Wireless Inc. (9245); General Wireless Customer Service Inc. (5813). The notice address for all of the Debtors is: 300 RadioShack Circle, Fort Worth, TX 76102-1964.



any sale of FF&E at Closing Locations. Nothing herein shall make any third party a beneficiary of the rights and obligations of the parties to the Settlement Agreement.

3. With respect to Closing Locations for which the Debtors are the primary tenant under the lease and Sprint is a subtenant, and excepting only those leases assigned to Sprint by the Debtors by that certain Assignment Agreement dated March 6, 2017, any personal property of Sprint remaining in, on or about the leased premises on the effective date of any rejection of the lease by the Debtors shall be deemed abandoned by Sprint. The affected landlord may dispose of the same as the landlord chooses without any liability on the part of the landlord to any party.

4. Except only as relates to inventory that the Debtors have agreed to remove pursuant to the Settlement Agreement, the Debtors shall be deemed to have abandoned any personal property of Debtors remaining in, on or about (i) any premises subleased to the Debtors by Sprint, on the date the Debtors complete the Sale and vacate such premises; and (ii) any other leased premises, on the effective date of Debtors' rejection of the lease at issue. The affected landlord may dispose of the same as the landlord chooses without any liability on the part of the landlord to any party. Nothing herein shall be deemed to limit or impair the Debtors' abandonment rights as set forth in the Bankruptcy Code, any lease rejection order, or any lease rejection procedures order.

5. The Debtors and Sprint will use commercially reasonable efforts to ensure that the Sales of the Debtors' inventory are handled on the Debtors' point of sale equipment ("POS") and sales of Sprint's inventory are handled through its POS. In the event Sprint's inventory is processed through the Debtors' POS, the Debtors will promptly reimburse Sprint. In the event the Debtors' inventory is processed through the Sprint POS, Sprint will promptly reimburse the Debtors.

6. At the conclusion of the Sale at each Closing Location, but not later than the effective date of rejection of a lease, Sprint and the Debtors shall have reasonable access to the Closing Location's premises as set forth in and consistent with their respective rights under the applicable lease.

7. Nothing herein or in the Settlement Agreement shall be deemed to create an administrative expense obligation for restoration obligations, if any, under any lease or sublease.

8. If and to the extent that Sprint contends that the Debtors are in breach of these SWAS Sale Guidelines, it shall email or deliver written notice by overnight delivery on the Debtors' counsel as follows: Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, Delaware 19801 (Attn: David M. Fournier, Esq.) [fournierd@pepperlaw.com](mailto:fournierd@pepperlaw.com).