

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

In re:

BLITZ U.S.A., INC., *et al.*,<sup>1</sup>

Debtors.

BLITZ U.S.A., INC., *et al.*,

Plaintiffs,

vs.

TABITHA ALEXSON AS NATURAL  
GUARDIAN AND NEXT FRIEND FOR ETHAN  
GROOMS; JASMINE ALEXIS BALLEW, A  
MINOR, BY AND THROUGH HER GUARDIAN  
AD LITEM, KAREN BRITT PEELER AND  
JASMINE BALLEW; JERRY C. BARNETT AND  
DANIEL R. FULTON; MIGUEL BARRERA,  
INDIVIDUALLY AND AS PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
SIXIA FREDO BARRERA; LANDON  
BEADORE, BY AND THROUGH HIS PARENTS,  
PAUL BEADORE AND MELISSA WEEKS, AND  
MELISSA WEEKS, AND PAUL BEADORS,  
INDIVIDUALLY; CHRISTOPHER BOSSE;  
AMANDA BURCH, INDIVIDUALLY AND AS  
NEXT FRIEND AND NATURAL GUARDIAN  
FOR TIMOTHY BURCH; CHRISTOPHER  
DRONEY; JESSICA FENN AND JEREMIAH  
FENN, SR., INDIVIDUALLY AND ON BEHALF  
OF THEIR DECEASED SON AND DAUGHTER,  
JEREMIAH FENN, JR. AND JA'EL FENN;  
KAYLEE FREELAND, A MINOR; CHAD  
FUNCHESS; KAREN GUENIOT-KORNEGAY,  
INDIVIDUALLY, AND ON BEHALF OF ALL OF  
THE WRONGFUL DEATH BENEFICIARIES OF  
MATTHEW DYLAN KORNEGAY; WADE  
GUILFORD; ROBERT JACOBY; RANDALL

) Chapter 11

) Case No. 11-13603 (PJW)

) (Joint Administration Requested)

) Adv. Proc. No. 11-53578 (PJW)

) **Proposed Hearing Date: 11/10/11 at a  
time to be determined**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Blitz U.S.A., Inc. (8104); LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); and F3 Brands, LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is: 404 26th Ave. NW, Miami, OK 74354.



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JESUS SANTIAGO ROSA, IN HIS OWN RIGHT; )  
MARY JO PIERCE FOR B.P., A MINOR, BY HIS )  
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SHERRI PURVIS INDIVIDUALLY AND AS )  
NEXT FRIEND AND NATURAL GUARDIAN )  
FOR JAMES C. PURVIS; LORI SHICKEL, BOTH )  
INDIVIDUALLY AND AS MOTHER AND NEXT )  
FRIEND OF JORDAN SHICKEL, A MINOR; )  
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MINOR, SUING BY HIS NEXT FRIEND AND )  
GUARDIAN, DIANA TREVINO, AND DIANA )  
TREVINO, INDIVIDUALLY; KENNETH WARD )  
AND CURTIS WARD; RICHARD L YIM, JR.; and )  
JOHN DOES 1-1000, )

Defendants. )

**EMERGENCY MOTION OF BLITZ U.S.A., INC., ET AL. TO SCHEDULE  
AN EXPEDITED HEARING ON THEIR MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION STAYING THE PCGC  
LITIGATION AND FUTURE PCGC ACTIONS AGAINST CERTAIN THIRD PARTIES**

Blitz U.S.A., Inc., *et al.* (“Blitz” and/or the “Debtors”), debtors and debtors-in-possession in the above-captioned chapter 11 cases, hereby submit this emergency motion (the “Motion”) for an order scheduling an expedited hearing on *Blitz U.S.A., Inc., et al.’s Motion for a Temporary Restraining Order and Preliminary Injunction Staying the PCGC Litigation and Future PCGC Actions Against Certain Third Parties* (the “TRO Motion”). In support of this Motion, Blitz states as follows:

1. Blitz filed the TRO Motion for a temporary restraining order pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and section 105 of title 11 of the United States Code (the “**Bankruptcy Code**”) to immediately enjoin the PCGC Litigation<sup>2</sup> and Future PCGC Actions, and an order seeking an extension of the automatic stay to enjoin the PCGC Litigation and Future PCGC Actions pursuant to sections 362 and 105 of the Bankruptcy Code or, in the alternative, an order enjoining the PCGC Litigation and Future PCGC Actions during the pendency of the Debtors’ bankruptcy cases pursuant to section 105 of the Bankruptcy Code. The facts supporting the TRO Motion are set forth in the *Verified Complaint for Declaratory and Injunctive Relief* (the “**Complaint**”), the *Declaration of James R. King in Support of Blitz U.S.A., Inc.’s Motion for a Temporary Restraining Order and Preliminary Injunction Staying the PCGC Litigation and Future PCGC Actions Against Wal-Mart, Inc. and Blitz’s Other Retailers*, and the *Declaration of Rocky Flick, President and Chief Executive Officer of Blitz U.S.A., Inc. in Support of Debtors’ Chapter 11 Petitions and First Day Motions*, and the legal bases supporting the TRO Motion are set forth in an opening brief, each as filed contemporaneously with this Motion.

2. Blitz seeks this injunctive relief under sections 105 and 362 of Bankruptcy Code and Bankruptcy Rule 7065, including because: (a) if the PCGC Litigation is allowed to go forward against the Other Defendants, the Debtors may be subject to indemnification and other claims from one or more of the Other Defendants; (b) the continued prosecution of the PCGC Litigation will distract the Debtors’ personnel from their reorganization efforts; and (c) the continued prosecution of the PCGC Litigation may expose the Debtors to the risk of collateral estoppel, evidentiary prejudice, or other potentially preclusive determinations of fact or law, and

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the TRO Motion.

may require the Debtors to actively participate in discovery, other pretrial proceedings and/or trial in order to avoid potentially preclusive determinations of fact or law and/or evidentiary prejudice, all to the detriment of the Debtors and their estates.

3. By this Motion, Blitz respectfully requests that the Court schedule a hearing in connection with the Complaint and TRO Motion on November 10, 2011, or as soon thereafter as the Court's calendar permits.

4. Rule 7065(b) of the Federal Rules of Bankruptcy Procedure contemplates that motions for temporary restraining orders will be heard on an immediate, emergency basis, even without notice to the other side if the facts and circumstances warrant immediate relief. As set forth above and in the TRO Motion, such circumstances are present in this case. This Court has the authority to "issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Section 105 codifies this Court's inherent power to manage its docket. *See Lacey v. Cessna Aircraft Co.*, 932 F.2d 170, 176 (3d Cir. 1991) (the court is allowed substantial discretion in managing its own docket); *Gold v. Johns-Manville Sales Corp.*, 723 F.2d 1068, 1077 (3d Cir. 1983) ("The power to stay proceedings is incidental to the power inherent in every court to schedule disposition of the cases on its docket so as to promote fair and efficient adjudication."); *The Copley Press, Inc. v. Peregrine Sys., Inc. (In re Peregrine Sys. Inc.)*, 311 B.R. 679, 690 (D. Del. 2004). To that end, the decision to schedule an expedited hearing is one left to the sound discretion of the Court.

5. Moreover, to the extent practicable, Blitz believes that it has provided notice of the relief requested in the Complaint, TRO Motion, and this Motion by facsimile to the attorneys of record for the PCGC Claimants in the PCGC Litigation.

6. No prior request for the relief requested herein has been made by Blitz.

WHEREFORE Blitz respectfully requests that the Court enter an order, substantially in the form of the order attached hereto as **Exhibit A**, (a) scheduling a hearing in connection with Blitz's Complaint and TRO Motion on November 10, 2011, or as soon thereafter as the Court's calendar permits and (b) granting such further relief as this Court deems equitable and just.

Dated: November 9, 2011  
Wilmington, Delaware



Daniel J. DeFranceschi (No. 2732)  
Michael J. Merchant (No. 3854)  
Marcos A. Ramos (No. 4450)  
Julie A. Finocchiaro (No. 5303)  
Amanda R. Steele (No. 5530)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

Proposed Attorneys for Plaintiffs

## **EXHIBIT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
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Defendants.	)

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**ORDER GRANTING EMERGENCY MOTION OF BLITZ U.S.A., INC., ET AL. TO SCHEDULE AN EXPEDITED HEARING ON THEIR MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION STAYING THE PCGC LITIGATION AND FUTURE PCGC ACTIONS AGAINST CERTAIN THIRD PARTIES**

Upon the emergency motion (the “**Motion**”) of Blitz U.S.A., Inc., *et al.* (“**Blitz**” and/or the “**Debtors**”) for an order scheduling an expedited hearing on their *Motion for a Temporary Restraining Order and Preliminary Injunction Staying the PCGC Litigation and Future PCGC Actions Against Certain Third Parties* (the “**TRO Motion**”); and it appearing that the relief requested in the Motion is in the best interests of the above-captioned debtors’ estates, their creditors and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the Motion is a core



proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion was appropriate under the particular circumstances and no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED.
2. A hearing with respect to the TRO Motion and any objections thereto shall be held on November \_\_\_\_, 2011 at \_\_\_\_:\_\_\_\_.m. (prevailing Eastern Time).
3. This Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Dated: November \_\_\_\_, 2011  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE