

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:)	
)	Chapter 11
)	
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹)	Case No. 23-90054 (CML)
)	
Debtors.)	(Joint Administration Requested)
)	(Emergency Hearing Requested)

**DEBTORS’ EMERGENCY MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION
TRADE CLAIMS, (II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF
OUTSTANDING PURCHASE ORDERS, AND (III) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 4:00 p.m. (prevailing Central Time) on February 1, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on February 1, 2023, at 4:00 p.m. (prevailing Central Time) in Courtroom 401, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Lopez’s conference room number is 590153. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Lopez’s homepage. The meeting code is “JudgeLopez”. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Lopez’s homepage. Select the case name, complete the required fields and click “Submit” to complete your appearance.

¹ The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.



The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion (this “Motion”):²

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto (the “Order”), (a) authorizing the Debtors to pay certain prepetition trade claims, (b) confirming administrative expense priority of outstanding purchase orders, and (c) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157 (b). The Debtors confirm their consent to the entry of a final order by the Court.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a), 363, 503(b), 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 1075-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

Trade Claims Overview

5. As of January 31, 2023 (the “Petition Date”), the Debtors owe approximately \$159.7 million (gross) to their trade creditors. The Debtors seek authority to pay the portion of those outstanding payables necessary to preserve the value of their estates. The Debtors have

² Capitalized terms used but not otherwise defined in this Motion have the meanings ascribed to them in the *Declaration of Michael Neyrey in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith.

identified four categories of trade claims where payments are warranted: (a) amounts owed to shippers, warehousemen, third-party contractors, and other actual or potential lien holders (the “Lien Claims”); (b) amounts entitled to priority under section 503(b)(9) of the Bankruptcy Code (the “503(b)(9) Claims”); (c) amounts incurred to purchase and import goods from foreign manufacturers (the “Import Claims”); and (d) amounts owed to providers of certain essential goods and services (the “Critical Vendor Claims” and, together with the Lien Claims, 503(b)(9) Claims, and Import Claims, the “Trade Claims”). The following table summarizes the estimated amounts outstanding to each category of Trade Claims as of the Petition Date and amounts the Debtors seek authorization to pay pursuant to this Order:³

Category	Estimated Total Amount Outstanding as of the Petition Date	Amount For Which Authority to Pay is Sought
Lien Claims	\$3.0 million	\$3.0 million
503(b)(9) Claims	\$17.0 million	\$17.0 million
Import Claims	\$6.7 million	\$6.5 million
Critical Vendor Claims	\$109.8 million	\$30.0 million
Total	\$136.5 million	\$56.5 million
Total as a % of Total Gross Trade Accounts Payable	85%	35%

6. These categories are associated with goods and services that are essential to the successful operation of the Debtors’ business and administration of these chapter 11 cases. The Debtors offer to their customers one of the most extensive catalogues of premium, name-brand auto parts. The Debtors stock hundreds of thousands of products from over 100 brands, including

³ The estimated amounts owed disclosed in this motion are based on gross outstanding trade payables. The Debtors anticipate that they will have approximately \$46.5 million in credits against the \$159.7 million total outstanding to all their trade creditors, however such amount is currently an estimate that will be reconciled postpetition (and, with respect to any individual vendor, prior to the payment of any Trade Claim pursuant to the Order).

suspension and driveline parts from MOOG®, brake parts from Wagner®, “engine-to-tailpipe” components such as mufflers, catalytic converters, and pipe from Walker®, spark plugs and oil filters from Champion®, and technology solutions for all types of engines from Delphi Technologies®. The Debtors source a majority of their inventory directly from the manufacturers, but also from wholesalers and other retailers.

7. Almost none of the Debtors’ relationships with their vendors are governed by long-term contracts. Instead, the Debtors obtain their inventory, goods, and other materials on an order-by-order basis. As a result, vendors could refuse to supply new orders or otherwise interfere with the Debtors’ receipt of goods and services if their Trade Claims remain unpaid. Any disruption would significantly and negatively affect the Debtors’ estates as the Debtors’ business is entirely dependent on a steady flow of inventory for all of the various product lines they carry. Without that flow, the Debtors’ business will effectively starve.

8. Somewhat unique to the Debtors’ business, loss of just one product could result in the cancellation of entire customer orders that include that product, magnifying lost revenue. The Debtors would experience lost profits not only on the specific product withheld, but on whole multi-product orders from customers who will only buy from a distributor who can fill their orders in their entirety. While the Debtors have deeply entrenched relationships with their customers, most of whom place *daily* orders, those customers strongly prefer not to source the products they need from multiple parts distributors. Instead, if the Debtors cannot provide all parts requested in one delivery, a customer will move on to one of the Debtors’ competitors. The Debtors cannot afford to risk losing their critical jobber and installer customers (who make up the majority of the Debtors’ revenue) by being unable to continue providing the extensive catalogue and rapid order fulfilment customers depend on.

9. Replacing lost vendors is very difficult. Even where alternative providers exist, those providers are unlikely to have replacement product available to ship to the Debtors on the short timelines their business requires. Most product sitting ready to deliver in the auto parts industry has already been allocated to buyers, and the lead-time to increase available supplies is usually several months—far too long to allow the Debtors to successfully meet imminent customer demand. The Debtors expect to need to make \$8.2 million worth of inventory purchases *each week* during the chapter 11 cases to support anticipated customer sales. If the Debtors are unable to procure all of that projected product from their vendors, they will be at significant risk of losing customer business. This would compromise revenues and, in turn, constrict the ability to buy product in the future, further pressuring the business. Maintaining good relationships with their vendors to ensure continuity of supply is of the utmost importance to the Debtors and all their stakeholders.

10. The Debtors will use their business judgment and discretion on a claim-by-claim basis and pay only those Trade Claims (or portion thereof) that are critical to maintaining the supply chain and operations and provide the Debtors with favorable postpetition terms.

I. Lien Claims.

11. The Debtors' business depends on the uninterrupted flow of inventory and other goods through its supply chain and distribution network, including the purchase, import, storage, and shipment of the merchandise sold by the Debtors to its customers. Manufacturers, through freight forwarders, ship merchandise to the Debtors' 21 distribution centers. The Debtors' supply chain depends on services provided by, among others, various freight forwarders, common carriers, and custom brokers (collectively, the "Shippers and Warehousemen"). Certain non-domestic manufacturers ship merchandise and other goods to the Debtors either "free on board" or "delivery duty paid." Under either arrangement, Shippers and Warehousemen transporting the

goods may refuse (and have in refused in the past) to release merchandise or other goods for shipment to the United States if they are not paid current. As of the Petition Date, the Debtors estimate that approximately \$3.0 million is outstanding to Shippers and Warehousemen, approximately \$2.9 million of which is or will become due and owing within the first twenty-one days of these chapter 11 cases.

12. In the ordinary course of business, from time to time, the Debtors also directly engage certain third-parties to perform essential maintenance and repairs (the “Third-Party Contractors”) to elevators, plumbing, electrical, and other infrastructure at the Debtors’ 326 locations, including their headquarters, warehouses and distribution centers, corporate-owned stores, and independent Auto Plus member locations. The maintenance and repair services are essential to the operation of the Debtors’ business, particularly in light of customers’ expectation that orders be completed from or at these locations in a matter of days or even hours. As of the Petition Date, the Debtors estimate that there are no amounts outstanding directly from the Debtors to such Third-Party Contractors; however the Debtors seek the requested relief out of an abundance of caution.

13. Under certain non-bankruptcy laws, Shippers and Warehousemen, Third-Party Contractors, and certain other creditors may be able to assert liens on the goods in their possession or on the property they improved to secured payment. In the event these Lien Claims remain unpaid, the holders could attempt to assert liens and refuse to deliver or release goods in their possession or otherwise impede the Debtors’ use of property, which would disrupt operations and the efficient administration of the chapter 11 cases. In many cases, the cost of such disruption would likely be greater than the Lien Claim. Holders of Lien Claims could also be entitled to adequate protection under section 363(e) of the Bankruptcy Code, which would unnecessarily

drain estate assets. Therefore, the Debtors seek authority to pay Lien Claims up to an aggregate amount of \$3.0 million. The Debtors will pay Lien Claims where payment is, in the Debtors' sole discretion, necessary or appropriate to maintain reliable, efficient, and smooth operations or induce the holders of Lien Claims to continue performing or otherwise support the Debtors on a postpetition basis.

II. 503(b)(9) Claims.

14. In the twenty days immediately preceding the Petition Date, the Debtors received certain inventory, goods, or materials, which are accorded administrative priority under section 503(b)(9) of the Bankruptcy Code. Because the vast majority of vendors holding 503(b)(9) Claims are not party to long-term contracts with the Debtors, such vendors could refuse to accept new purchase orders while payment remains outstanding on a prior order. Because section 1129(a)(9) of the Bankruptcy Code requires 503(b)(9) Claims to be paid in full under a confirmed chapter 11 plan, the likely costs to the Debtors' estates of paying 503(b)(9) Claims following entry of the Order pale in comparison to the potential damage to the Debtors' business and their stakeholders' interests if holders of 503(b)(9) Claims refused to continue to trade with the Debtors. The effect of the requested relief is likely to be only the timing of payment of the 503(b)(9) Claims, rather than the total amount. Therefore, the Debtors seek authority to pay 503(b)(9) Claims up to an aggregate amount of \$17.0 million, which is the amount the Debtors estimate is outstanding on account of such claims, approximately \$3.5 million of which is or will become due and owing within the first twenty-one days of these chapter 11 cases.

III. Import Claims.

15. In the ordinary course of business, the Debtors obtain approximately 20% of their inventory and related materials (collectively, the "Imported Goods") from foreign vendors. These vendors are manufacturers of products in a very important segment of the Debtors' business—the

Debtors' private label merchandise for three products in the best-selling brakes category (rotors, hub bearings, and axles). These suppliers are located primarily in China. It is likely impossible, logistically impracticable, and cost-prohibitive to purchase these goods from a domestic vendor. These foreign vendors are irreplaceable due to the specialized and customized nature of the products they supply. The facilities in which these vendors manufacture the Debtors' private label products are specifically "tooled" for each product, and the Debtors work with each vendor to develop product-specific quality control and other specifications to govern production. Switching to a new manufacturing supplier could take a year (if not longer), at significant cost to the Debtors. A year without one of these "high-velocity" products would hurt a major segment of the business.

16. Failure to pay foreign vendors on account of outstanding claims could cause the vendors to refuse to provide the Imported Goods, which could put entire product lines out of the Debtors' reach and jeopardize all customer orders that include any of the withheld Imported Goods. The company's foreign vendors lack meaningful, if any, contacts with the United States and may not understand or comply with the automatic stay, thinking they are beyond the jurisdiction of this Court. These vendors could pursue lawsuits and other remedies, such as assertion of liens, in non-U.S. jurisdictions. Defending those efforts by seeking to enforce this Court's authority across various foreign jurisdictions would be unduly time-consuming and burdensome, adding to the cost and disruption to the Debtors.

17. The Debtors also pay various charges to import the Imported Goods, including customs duties, detention and demurrage fees, tariffs and excise taxes, and similar obligations.⁴ Absent payments to obtain and import the Imported Goods, such goods may be delayed or blocked.

⁴ The Debtors also incur and remit taxes to domestic authorities on account of Imported Goods. The Debtors seek authority to pay any such taxes accrued and owing in the *Debtors' Emergency Motion to Approve the Payment of Certain Prepetition Taxes and Fees*, filed concurrently herewith.

Timely receipt or transmittal of the Imported Goods is important to the Debtors' business. Any disruption or delay could adversely affect the Debtors' operations and customer relationships and impair the Debtors' ability to administer the chapter 11 cases by reducing essential inventory available for sale. The ultimate value of the Imported Goods is worth far more to the Debtors (both in terms of future sales revenues and maintaining valuable customer goodwill) than the aggregate amount of incurred, but unpaid, charges for and related to the Imported Goods.

18. As of the Petition Date, the Debtors estimate that approximately \$6.7 million is outstanding on Import Claims, approximately \$3.0 million of which is or will become due and owing within the first twenty-one days of these chapter 11 cases.

IV. Critical Vendor Claims.

19. The Debtors are in a competitive business. The Debtors' ability to generate revenue is dependent on the sale of a broad range of curated third-party manufactured goods on short delivery schedules. It is essential to their business that the Debtors maintain at the ready the full suite of merchandise advertised to customers. If any one type of product runs out, entire multi-product orders are jeopardized, creating asymmetrical damage to the business.

20. The Debtors have identified vendors that supply products that are impossible or difficult to replace and crucial to the fulfillment of customer orders (the "Critical Goods"). For example, brake parts made up nearly 20% of the Debtors' sales in FY2021. Customers strongly favor brake parts from premium brands Wagner® and Raybestos®, which can be sourced only directly from the manufacturers. Losing those two relationships alone would put a material dent in sales, revenue, and ongoing customer satisfaction. Given that brand names are important to customers and that manufacturers and distributors allocate their projected supply to the Debtors and their competitors up to years in advance of delivery, in some cases there may be no replacement available if a relationship with a vendor of Critical Goods falters. Even where

alternative vendors may exist, the time and cost to switch to the alternative would likely be significant and still result in a debilitating gap in the receipt of Critical Goods that could jeopardize retaining customer orders. The cumulative impact of such a disruption could have a catastrophic effect on the Debtors' operations and negatively influence the ongoing sale process by degrading the overall value of the Debtors' business. Attempting to procure Critical Goods from alternative suppliers would also impose a severe strain on the Debtors' management and operations at a time when the Debtors should be focused on shepherding the business through chapter 11 and shoring up relationships with their existing valued vendors and customers.

21. With the assistance of their advisors, the Debtors have spent significant time reviewing and analyzing their accounts payable, customer order trends, and other books and records, consulting operations managers and purchasing personnel, reviewing purchase orders, vendor arrangements, and other supply agreements, and analyzing historical practice to identify Critical Goods, hard-to-replace suppliers of those Critical Goods, and other essential business relationships, the loss of which would immediately and irreparably harm their businesses. In evaluating harm to the business, the Debtors focused on whether loss of a vendor and the goods or services they supply would likely result in the cancellation or revocation of a material number of customer orders, shrink the Debtors' market share, reduce enterprise value, and ultimately impair the Debtors' viability as a going-concern. The Debtors examined a variety of factors, including:

- whether a vendor is a sole-source, limited-source, or high-volume supplier of goods or services critical to the Debtors' business operations;
- the volume of goods expected to be delivered by the vendor during these chapter 11 cases;
- whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms;
- whether alternative vendors are available that can provide requisite volumes of similar goods or services on equal (or better) terms and, if so, whether the Debtors would be

able to continue operating while transitioning business thereto;

- whether certain specifications or contract requirements prevent, directly or indirectly, the Debtors from obtaining goods or services from alternative sources;
- the degree to which replacement costs (including, pricing, transition expenses, professional fees, and lost sales or future revenue) exceed the amount of a vendor's prepetition claim;
- whether the Debtors' inability to pay all or part of the vendor's prepetition claim could trigger financial distress for the applicable vendor;
- the likelihood that a temporary break in the vendor's relationship with the Debtors could be remedied through use of the tools available in these chapter 11 cases;
- whether failure to pay all or part of a particular vendor's claim could cause the vendor to hold goods owned by the Debtors, or refuse to ship inventory or to provide critical services on a postpetition basis;
- the location and nationality of the vendor; and
- whether failure to pay a particular vendor could result in contraction of trade terms as a matter of applicable non-bankruptcy law or regulation.

22. The Debtors' analysis concluded that approximately \$109.8 million is owed as of the Petition Date to vendors who supply Critical Goods; approximately \$54.4 million of which is or will become due within the first twenty-one days of these chapter 11 cases. The Debtors seek authority to pay Critical Vendor Claims up to an aggregate amount of \$30.0 million.

Customary Trade Terms

23. The Debtors seek authority to pay Trade Claims only to the extent necessary to preserve the value of their estates. To that end, the Debtors will condition payment of a Trade Claim on the holder's agreement (a) to continue or recommence supplying goods and services to the Debtors on terms at least as favorable to the Debtors as the most favorable terms in place during the twelve months prior to the Petition Date and (b) while these chapter 11 cases are pending, they are not permitted to cancel any contract, agreement, or arrangement (including any Outstanding Orders) pursuant to which they provide goods or services to the Debtors; *provided* that the Debtors

continue to pay for such goods and services and are not otherwise in breach of such contract, agreement, or arrangement. Such agreement must be provided to the Debtors in writing in advance of any payment on a Trade Claim and may be agreed to via email between the vendor and the Debtors (or their counsel) or, at the Debtors' discretion, through entry into a contractual agreement, the form of which is attached to the Order as **Exhibit A** (the "Trade Agreement").

24. The Debtors request that if any party accepts payment pursuant to the Order and thereafter ceases to provide goods and services in accordance with the agreed-upon trade terms, then (a) any payment of a Trade Claim received by such party shall be deemed an improper postpetition transfer and be recoverable by the Debtors in cash, (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made, (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the Order to such outstanding postpetition balance and such party will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise, and (d) the Debtors may pursue any other remedy available to them under the Order, applicable law, or any executed Trade Agreement with such party.

Outstanding Purchase Orders

25. Before the Petition Date and in the ordinary course of business, the Debtors ordered goods that will not be delivered until after the Petition Date (collectively, the "Outstanding Orders"). To avoid becoming general unsecured creditors of the Debtors' estates, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition. To prevent any disruption to the Debtors' business operations, and given that goods delivered after the Petition

Date are afforded administrative expense priority under section 503(b) of the Bankruptcy Code, the Debtors seek an order (a) granting administrative expense priority under section 503(b) of the Bankruptcy Code to all undisputed obligations of the Debtors arising from the acceptance of goods subject to Outstanding Orders and (b) authorizing the Debtors to satisfy such obligations in the ordinary course of business.

Basis for Relief

I. The Court Should Authorize Payment of the Trade Claims.

26. It is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value.⁵ Several legal theories rooted in sections 105(a), 363(b), and 1107(a) of the Bankruptcy Code support the payment of prepetition Trade Claims as outlined in this Motion. Section 363(b) of the Bankruptcy Code permits a debtor, subject to court approval, to pay prepetition obligations where a sound business purpose exists for doing so.⁶ Under section 1107(a) of the Bankruptcy Code, a debtor in possession is given the same rights and powers as a trustee appointed in a bankruptcy case, including the "implied duty of the debtor-in-possession to 'protect and preserve the estate, including an operating business' going-concern value."⁷ Under section 105(a) of the Bankruptcy

⁵ See, e.g., *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) ("Cases cited by Debtors that refer to necessity of payment to preserve going concern value imply such a rule, and this Court is prepared to apply the Doctrine of Necessity to authorize payment of prepetition claims in appropriate cases."); see also *In re Scotia Dev., LLC*, No. 07-20027, 2007 WL 2788840, at *2 (Bankr. S.D. Tex. Sep. 21, 2007) (outlining the factors for when a critical vendor payment is necessary).

⁶ See, e.g., *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (noting that section 363(b) provides "broad flexibility" to authorize a debtor to honor prepetition claims where supported by an appropriate business justification).

⁷ *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004).

Code, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].”⁸

27. Lien Claims. Certain holders of Lien Claims may be entitled under applicable non-bankruptcy law to assert certain possessory liens on the Debtors’ goods or equipment in their possession (notwithstanding the automatic stay under section 362 of the Bankruptcy Code) in an attempt to secure payment of their prepetition claim. Under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay.⁹ The Debtors anticipate that certain holders of Lien Claims may assert or perfect liens, simply refuse to turn over goods in their possession, or stop performing their ongoing obligations. Even absent a valid lien, to the extent creditors have possession of the Debtors’ inventory, equipment, or products, mere possession or retention could disrupt the Debtors’ operations. Paying the Lien Claims should not impair unsecured creditor recoveries in these chapter 11 cases. Where the amount owed on a Lien Claim is less than the value of the goods that could be held to secure the Lien Claim, the holder may be a fully-secured creditor of the Debtors’ estates. In such instances, payment now only provides the holder with what they might be entitled to receive under a chapter 11 plan, without any interest costs that might otherwise accrue during these chapter 11 cases. Conversely, all creditors will

⁸ See also *CoServ, L.L.C.*, 273 B.R. at 497 (“These are simply examples of claims that may require satisfaction for the debtor in possession to perform its fiduciary obligations. In such instances, it is only logical that the bankruptcy court be able to use Section 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.”); *CEI Roofing, Inc.*, 315 B.R. at 56 (citing *In re Mirant Corp.*, 296 B.R. 427 (Bankr. N.D. Tex. 2003)).

⁹ See 11 U.S.C. § 546(b)(1)(A) (providing that a debtor’s lien avoidance powers “are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection”).

benefit from the seamless transition of the Debtors' operations into bankruptcy and the ultimate delivery to and sale of inventory by the Debtors.

28. 503(b)(9) Claims. Section 503(b)(9) provides administrative priority for the “value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor’s business.” These 503(b)(9) Claims must be paid in full for the Debtors to confirm a chapter 11 plan.¹⁰ The timing of such payments also lies squarely within the Court’s discretion.¹¹ Absent payment of the 503(b)(9) Claims at the outset of these chapter 11 cases—which merely accelerates the timing of payment and not the ultimate treatment of such claims—the Debtors could be denied access to the inventory and other goods necessary to maintain the Debtors’ business operations and maximize the value of the Debtors’ estates.

29. Import Claims. There is material risk that foreign vendors may consider themselves beyond the jurisdiction of this Court and disregard the automatic stay (notwithstanding its global effect). Therefore, failure to pay the Import Claims held by such vendors in the ordinary course could lead those vendors to cease providing Imported Goods to the Debtors and pursue remedies to assert liens or collect payment. Separately, Import Claims for the costs of importing goods to the U.S. would likely be paid in full under any chapter 11 plan pursuant to Bankruptcy Code section 507(a)(8), which provides eighth priority status to the claims of a governmental unit based on a customs duty arising out of the importation of certain merchandise. Payment of those Import Claims merely accelerates the distribution that the import providers would receive in any event

¹⁰ See 11 U.S.C. § 1129(a)(9)(A).

¹¹ See *In re Global Home Prods., LLC*, No. 06-10340 (KG), 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that “the timing of the payment of that administrative expense claim is left to the discretion of the Court”).

upon confirmation of a plan and would have no substantial effect on the relative distribution of the estates' assets. In contrast, non-payment of the Import Claims could lead to immediate and significant disruption to the Debtors' private label business that would heavily outweigh the cost of paying such claims.

30. Critical Vendor Claims. There are instances in which debtors in possession can fulfill their fiduciary duties “only . . . by the preplan satisfaction of a prepetition claim.”¹² Courts across the Fifth Circuit have followed *CoServ*'s three-part test to determine whether a prepetition claim of a “critical vendor” may be paid outside of the plan process, which examines whether (a) “it is critical that the debtor deal with the claimant,” (b) not paying the vendor “risks the probability of harm” or “loss of economic advantage . . . disproportionate to the amount of the claimant's pre-petition claim,” and (c) there is “no practical or legal alternative” to payment of the claim.¹³ Allowing the Debtors to pay Trade Claims is especially appropriate where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving the going concern value for the Debtors' business and maximizing the value of property available to satisfy creditors.¹⁴

31. The Debtors require a steady stream of Critical Goods to maintain operational stability and customer relationships. The products the Debtors have identified as critical are regularly included in 80-85% of their customer orders. Without continued access to Critical Goods, the Debtors will lose out on a significant number of anticipated orders and, in the near

¹² *CoServ, L.L.C.*, 273 B.R. at 497.

¹³ *In re CoServ, L.L.C.*, 273 B.R. at 498; *see also In re Scotia Dev., LLC*, 2007 WL 2788840, at *2.

¹⁴ *See Bank of Am. Nat'l Trust & Savs. Ass'n v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434, 453 (1999) (describing a reconciliation of “the two recognized policies underlying Chapter 11 . . . preserving going concerns and maximizing property available to satisfy creditors”).

term, likely degrade or lose altogether valuable repeat customers. Given the difficulty or impossibility of replacing these vendors, and the fact that almost none are parties to long-term contracts with the Debtors, it is essential to the Debtors' business to induce these vendors to continue trading. In the rare instances where the Debtors might find another vendor to provide a Critical Good, quickly pivoting to the alternative vendor would likely be impossible, and even if achievable, require the Debtors to agree to less favorable trade terms. Any disruption to the Debtors' supply chain for the Critical Goods would likely significantly depress the value of the business, impairing stakeholder value at the outset of these chapter 11 cases.

II. The Court Should Confirm Outstanding Purchase Orders Have Administrative Expense Priority and Payment of Such Claims is Authorized.

32. Pursuant to section 503(b)(1) of the Bankruptcy Code, obligations that arise in connection with the postpetition delivery of goods and services, including goods ordered prepetition, are administrative expense priority claims because they benefit the estates postpetition.¹⁵ Granting the relief sought with respect to the Outstanding Orders will not afford such claimants any greater priority than they otherwise would have if the relief were not granted, and will not prejudice any other party in interest.

33. Absent such relief, however, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Orders to assure suppliers of their administrative priority status. The disruption to the continuous and timely flow of critical product and other goods would critically jeopardize the Debtors' ability to fill customer orders, damage the Debtors' business reputation, erode the Debtors' customer base, and ultimately lead to a loss of revenue, all to the detriment of the Debtors and their creditors. The Court should therefore confirm the administrative

¹⁵ See 11 U.S.C. § 503(b)(1)(A) (providing that the "actual [and] necessary costs and expenses of preserving the estate" are administrative expenses).

expense priority status of the Outstanding Orders and authorize the Debtors to pay the Outstanding Orders in the ordinary course of business.

Emergency Consideration

34. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm,” and Bankruptcy Local Rule 9013-1(i). An immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. The failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture and imperil the Debtors’ restructuring. The Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

35. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

36. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Prepetition Lender; (d) counsel to the proposed DIP Lender; (e) the Office of the United States Attorney for the Southern District of Texas; (f) the state attorneys general for states in which the Debtors conduct business; (g) the Internal Revenue Service; (h) the Securities and Exchange

Commission; (i) the Environmental Protection Agency; (j) other governmental agencies having a regulatory or statutory interest in these cases; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

The Debtors request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
Dated: January 31, 2023

/s/ Veronica A. Polnick

JACKSON WALKER LLP

Matthew D. Cavanaugh (TX Bar No. 24062656)

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vpolnick@jw.com

vanaya@jw.com

emeraia@jw.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Veronica A. Polnick

Veronica A. Polnick

Certificate of Service

I certify that, on January 31, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Veronica A. Polnick

Veronica A. Polnick

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

<p>In re:</p> <p>IEH AUTO PARTS HOLDING LLC, <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 23-90054 (CML)</p> <p>(Joint Administration Requested)</p> <p>Re: Docket No. _____</p>
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**ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION
TRADE CLAIMS, (II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF
OUTSTANDING PURCHASE ORDERS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (i) authorizing the Debtors to pay certain prepetition Lien Claims, 503(b)(9) Claims, Import Claims, and Critical Vendor Claims (collectively, the “Trade Claims”) (ii) confirming the administrative priority of all undisputed obligations of the Debtors for postpetition goods and services ordered under prepetition purchase orders and authorizing the payment of such obligations in the ordinary course, and (iii) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this

¹ The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.

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

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 the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; 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, if any (the "Hearing"); 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 Court; and after due deliberation and sufficient cause appearing therefor, it is ORDERED THAT:

1. The Debtors are authorized to pay, honor, or otherwise satisfy accrued and unpaid prepetition Trade Claims in an aggregate amount not to exceed \$56.5 in their sole discretion, in the ordinary course of business, and consistent with their prepetition practices. In the event the Debtors exceed \$30.0 in aggregate payments on prepetition Critical Vendor Claims, the Debtors shall file a notice of the overage with the Court.

2. The Debtors are authorized to pay, honor, or otherwise satisfy all undisputed amounts owed for Outstanding Orders in the ordinary course of business and consistent with their prepetition practices. For the avoidance of doubt, all such undisputed amounts (including disputed amounts that become undisputed by consensual resolution or order of this Court) are entitled to administrative expense priority in accordance with section 503(b)(1)(A) of the Bankruptcy Code.

3. As a condition to receiving payment on account of a Trade Claim, each claimant that accepts payment of a Trade Claim paid pursuant to this Order shall agree in writing (email or executed Trade Agreement sufficient) in advance of such payment (a) to continue or recommence

supplying goods and services to the Debtors on terms at least as favorable to the Debtors as the most favorable terms in place during the twelve months prior to the Petition Date and (b) while these chapter 11 cases are pending, they are not permitted to cancel any contract, agreement, or arrangement (including any Outstanding Orders) pursuant to which they provide goods or services to the Debtors; *provided* that the Debtors continue to pay for such goods and services and are not otherwise in breach of such contract, agreement, or arrangement. The Debtors are permitted to require additional favorable trade terms as a condition of payment of any Trade Claim.

4. If any party accepts payment of a Trade Claim pursuant to this Order and does not continue to supply goods or services in accordance with their written agreement pursuant to paragraph 3 hereof, then (a) any payment of a Trade Claim received by such party shall be deemed an improper postpetition transfer and be recoverable by the Debtors in cash, (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made, (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to this Order to such outstanding postpetition balance and such party will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise, and (d) the Debtors may pursue any other remedy available to them under this Order, applicable law, or any executed Trade Agreement with such party. If there is a dispute regarding whether a recipient of a Trade Claim payment has discontinued supplying goods or services to the Debtors in accordance with their written agreement, the matter will be submitted to this Court for determination.

5. The form of Trade Agreement, attached as **Exhibit A** to this Order, is approved. The Debtors are authorized to enter into Trade Agreements consistent with this Order.

6. The Debtors shall maintain a schedule of amounts paid, directly or indirectly, pursuant to this Order that sets forth: (a) the name(s) of the payee; (b) the amount of the payment; (c) the date of the payment; (d) the category of Trade Claim the payment falls under; (e) the Debtor(s) that made the payment; and (f) the outstanding balance (if any) of the Trade Claim following payment (the “Trade Claim Report”). The Debtors shall provide a copy of the Trade Claim Report to the U.S. Trustee, counsel to the DIP Lender, and counsel to any official committee of unsecured creditors in these chapter 11 cases on a monthly basis, to be delivered (email sufficient) by the 15th day after the end of the month being reported.

7. For the avoidance of doubt, this Order does not authorize payments to insiders (as such term is defined in section 101(31) of the Bankruptcy Code) of the Debtors.

8. Except as otherwise provided in this Order or a Trade Agreement, nothing contained in the Motion or this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors’ estates; (g) a waiver or limitation of the Debtors’, or any other party in interest’s, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law,

statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

9. Notwithstanding anything else contained herein, (a) any relief granted herein, including any payment to be made or authorization contained hereunder, shall be subject in all respects to the terms and conditions of, including all requirements imposed upon the Debtors under, any interim or final order of the Court in these chapter 11 cases approving the postpetition secured financing facility and authorizing the use of cash collateral (as may be modified, amended or supplemented, the “DIP Orders”) (including, without limitation, the budget required in connection therewith)) the DIP Term Sheet, and the DIP Documents (each as defined in the DIP Orders) approved therein and (b) to the extent there is any inconsistency between the terms and conditions of such DIP Orders or DIP Documents and any action taken or proposed to be taken hereunder, the terms and conditions of such DIP Orders, the DIP Term Sheet, or DIP Documents shall control.

10. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

13. All time periods and deadlines set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

14. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

15. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2023

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

Exhibit A to Order

Form of Trade Agreement

TRADE AGREEMENT

[Debtor Entity] (the “Company”) and [Counterparty Entity] (the “Vendor”) hereby enter into this trade agreement (the “Trade Agreement”) as of the earliest date set forth in the signature page(s) below (the “Agreement Date”).

On January 31, 2023 (the “Petition Date”), the Company and certain of its affiliates (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of Texas (the “Court”), which are being jointly administered under lead case no. 23-90054 (collectively, the “Chapter 11 Cases”).

On February [●], 2023, the Court entered the *Order (I) Authorizing the Debtors to Pay Certain Prepetition Trade Claims, (II) Confirming Administrative Expense Priority of Outstanding Purchase Orders, and (III) Granting Related Relief* [ECF No. ●] (the “Vendors Order”), authorizing the Debtors to pay certain prepetition claims of certain vendors and suppliers in accordance with the terms, conditions, and limitations set forth therein.¹

The Company and the Vendor (each, a “Party,” and, together, the “Parties”) agree to the following terms as a condition of payment by the Company or the Debtors (as applicable) of certain Trade Claims the Vendor may hold against the Company, as required by the Vendors Order.

1. Agreed Trade Claim. The Vendor represents and agrees that, after due investigation, the sum of all amounts due by the Company to the Vendor on account of goods and services provided to or received by the Company prior to the Petition Date—net of any setoffs, credits, or discounts—is \$[_____] (the “Agreed Trade Claim”).
 - a. Following the execution of this Trade Agreement, the Company shall pay the Vendor \$[_____] on account of the Agreed Trade Claim (the “Agreed Payment”), without interest, penalties, or other charges, as such amounts become due and payable in the ordinary course of business on the Customary Trade Terms (defined below).
 - b. If the Agreed Payment is equal to the Agreed Trade Claim, then the Agreed Payment will be in full and final satisfaction of the Agreed Trade Claim. If the Agreed Payment is less than the Agreed Trade Claim, then the Vendor shall be entitled to apply the Agreed Payment to its oldest outstanding invoices and shall have an allowed claim for the difference between the Agreed Trade Claim and the Agreed Payment (the “Deficiency Claim”).
 - c. For the avoidance of doubt, any undisputed amounts owed by the Company to the Vendor for goods or services provided to or received by the Company on or after the Petition Date (regardless of the date of the applicable Purchase Order(s)) shall

¹ Capitalized terms used but not defined herein shall have the meanings set forth in the Vendors Order.

be administrative claims and shall be paid in the ordinary course of business on Customary Trade Terms (defined below), as set forth in the Vendors Order.

2. Agreement to Supply. In accordance with the Vendors Order, the Vendor represents and agrees:
- a. To continue or recommence supplying goods and services to the Company on the following terms (collectively, the “Customary Trade Terms”):²
 - i. [The open trade balance or credit line that Vendor will extend to the Company for the shipment of postpetition goods is \$[____], which shall not be less than the greater of the open trade balance outstanding on [____] or on normal and customary terms for the twelve-month period immediately prior to the Petition Date;]
 - ii. [The Company’s standard terms and conditions shall otherwise govern the commercial trade relationship between the Parties; and]
 - iii. [_____];
 - b. While the Chapter 11 Cases are pending,³ the Vendor is not permitted to (and shall not) cancel any contract, agreement, or arrangement (including any outstanding purchase orders) pursuant to which the Vendor provides goods or services to the Company; *provided* that the Company continues to pay for such goods and services and is not otherwise in breach of such contract, agreement, or arrangement;
 - c. The Vendor shall continue to honor any existing allowances, credits, contractual obligations, or balances that accrued as of the Petition Date and shall apply all such allowances, credits, contractual obligations, or balances to orders placed on or after the Petition Date in the ordinary course of business; *provided* that the Company shall perform any postpetition obligations arising under any contract, agreement, or arrangement giving rise to such allowances, credits, contractual obligations, or balances, subject to and in accordance with the Customary Trade Terms; and
 - d. The Vendor shall continue all shipments of goods and provision of services in the ordinary course of business and shall fill orders for goods and services requested

² Each agreement to specify customized terms that are at least as favorable to the Company as the most favorable terms in place between the Parties during the twelve months prior to the Petition Date. “Terms” includes the normal and customary trade terms, practices, and programs (including credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, and normal product mix and availability).

³ “While the Chapter 11 Cases are pending” means until the earlier of (i) the effective date of a chapter 11 plan in the Company’s Chapter 11 Case (a “Plan”), (ii) the closing of a sale of all or substantially all of the Company’s assets pursuant to Bankruptcy Code section 363 that results in a permanent cessation of go-forward orders by the Company of the Vendor’s goods and services; or (iii) the liquidation of the Company or the conversion of the Company’s Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

by the Company in the ordinary course of business pursuant to the Customary Trade Terms.

3. Other Matters in the Chapter 11 Cases.

- a. The Vendor agrees that is shall not require a lump-sum payment upon the effective date of a Plan on account of any outstanding administrative claims the Vendor may assert. The Vendor agrees that administrative claims will be paid in the ordinary course of business, including after confirmation and consummation of a Plan, pursuant to the Customary Trade Terms then in effect.
- b. A Plan will not vary the terms of this Trade Agreement, which terms shall be (i) binding on any later-appointed chapter 11 trustee, examiner, committee, plan administrator, and other fiduciaries of the Debtors and their estates and (ii) survive any conversion or dismissal of any of the Chapter 11 cases.
- c. The Vendor will not separately seek payment from the Debtors on account of any prepetition claim (including, without limitation, any reclamation claim or any claim pursuant to section 503(b)(9) of the Bankruptcy Code outside the terms of this Trade Agreement or a confirmed Plan.
- d. The Vendor will not file or otherwise assert against the Debtors, or any other person or entity, or any of the foregoing parties' assets or property (real or personal), any lien, regardless of the statute or other legal authority upon which the lien is asserted, related in any way to any remaining prepetition amounts allegedly owed to the Vendor by the Debtors arising from any prepetition contract, agreement, arrangement, or transaction. If the Vendor has taken steps to file or assert such a lien prior to entering into this Trade Agreement, the Vendor will promptly take all actions necessary or advisable to remove such liens and authorizes the Debtors to take any such actions on its behalf.

4. Breach.

- a. If the Vendor fails to perform its undisputed obligations arising under this Trade Agreement (a "Vendor Breach"), upon written notice to the Vendor, the Vendor shall promptly pay to the Company cash equal to the Agreed Payment received by the Vendor. The Vendor agrees and acknowledges that irreparable damage would occur from a Vendor Breach and remedies at law would not be adequate to compensate the Company. Accordingly, the Vendor agrees that, following a Vendor Breach, the Company shall have the right (in addition to any other rights and remedies it may have) to enforce all Vendor obligations hereunder and all rights and remedies available to the Company under the Vendors Order or applicable bankruptcy or nonbankruptcy law by any method, including an action for damages, specific performance, and/or other equitable relief. The Vendor hereby waives any defense that a remedy at law is adequate and any requirement that the Company post a bond or other security in connection with actions for specific performance or other equitable remedies.

- b. If the Company fails to pay for goods or services delivered under this Trade Agreement in accordance with the Customary Trade Terms, which shall account for any period required for the Company to reconcile discrepancies between goods or services ordered and received⁴ (a “Default”), the Company shall have ten (10) business days following receipt of a written notice of Default from the Vendor (the “Cure Period”) in accordance with section 5 hereof to cure the Default or file an emergency motion with the Court seeking a determination as to whether a Default has occurred.
 - i. If at the end of the Cure Period, the Company has not cured or filed an emergency motion with respect to the Default, the Vendor shall have the right to terminate this Trade Agreement, in which event the Vendor (A) shall have no obligation to provide goods or services to the Company pursuant to the Customary Trade Terms and (B) may exercise any rights and remedies available under applicable law, subject to applicable bankruptcy law.
 - ii. If the Company files an emergency motion with the Court and the Court determines that a Default has occurred, the Vendor may terminate this Trade Agreement and cease providing goods or services to the Company if the Company has not cured all Defaults within three (3) business days of the order entered by the Court determining that a Default had occurred. If the Court determines that a Default has not occurred, this Trade Agreement and the Company’s rights hereunder shall remain in full force and effect.

5. Notice.

- a. If to the Vendor:

[Vendor Entity]
[Address]
[Address]
Attn: [_____]

- b. If to the Company:

[Company Entity]
[Address]
[Address]
Attn: [_____]

⁴ Such discrepancies include, but are not limited to the following: physical receipt of goods and quantities associated, returns associated with the quality of receipt of goods, returns associated with core, timing of receipt of goods due to backorder issues, pricing issues pertaining to price table management, and pricing changes due to new or modified articles, and other items not listed here.

With a copy to:

Jackson Walker LLP
1401 McKinney Street, Suite 1900
Houston, TX 77010

Attn: Veronica A. Polnick (vpolnick@jw.com), Vienna Anaya (vanaya@jw.com),
and Emily Meraia (emeraia@jw.com)

6. Representations and Acknowledgements. The Parties agree, acknowledge, and represent that:
 - a. The Parties have reviewed the terms and provisions of the Vendors Order and this Trade Agreement and consent to be bound by such terms and that this Trade Agreement is expressly subject to the procedures approved pursuant to the Vendors Order;
 - b. Any payments made on account of the Agreed Trade Claim shall be subject to the terms and conditions of the Vendors Order;
 - c. If there is a disagreement between the Parties regarding whether a breach has occurred, either Party may apply to the Court for a determination of their relative rights, but until a ruling of the Court is obtained no action (including discontinuing the shipment of goods or provision of services by the Vendor) may be taken by either Party.

7. Confidentiality. In addition to any other obligations of confidentiality between the Parties, the Vendor agrees to keep confidential and not disclose to any party this Trade Agreement or any of the Customary Trade Terms or other payment terms set forth herein, or any and all payments made by the Company pursuant to this Trade Agreement (the “Confidential Information”); *provided* that if any party seeks to compel the Vendor’s disclosure of Confidential Information or the Vendor intends to disclose any Confidential Information, the Vendor shall immediately provide the Company with prompt written notice in accordance with section 5 hereof prior to the disclosure so that the Company may seek an injunction, protective order, or other available remedy; *provided, further*, that if such remedy is not obtained, the Vendor shall disclose only information the Vendor is legally required to provide.

8. Miscellaneous.
 - a. The Parties represent and warrant that (i) they have full authority to execute this Trade Agreement, (ii) they have full knowledge of, and have consented to, this Trade Agreement, and (iii) the person signing on their behalf is authorized to bind such Party to each and all of the terms and conditions of this Trade Agreement.
 - b. This Trade Agreement sets forth the entire understanding of the Parties regarding the subject matter hereof and supersedes all prior oral or written agreements between them. This Trade Agreement may not be changed, modified, amended, or

supplemented, except in a writing signed by both Parties. If there is any inconsistency between the terms of this Trade Agreement and the terms of the Vendors Order, the Vendors Order shall prevail.

- c. Signatures by facsimile or electronic signatures shall count as original signatures for all purposes.
- d. This Trade Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.
- e. The Parties submit to the exclusive jurisdiction of the Court to resolve any dispute with respect to or arising from this Trade Agreement.
- f. This Trade Agreement shall be deemed to have been drafted jointly by the Parties, and any uncertainty or omission shall not be construed as an attribution of drafting by any Party.

[Signature Pages Follow]

THIS TRADE AGREEMENT IS AGREED AND ACCEPTED AS OF _____, 2023.

[DEBTOR ENTITY]

[VENDOR ENTITY]

By: _____
Name: _____
Title _____

By: _____
Name: _____
Title _____

[Signature Page to Trade Agreement]