

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

\_\_\_\_\_  
In re: ) Chapter 11  
 )  
 ) Case No. 23-90055 (CML)  
AUTO PLUS AUTO SALES LLC,<sup>1</sup> )  
 )  
 ) (Formerly Jointly Administered under  
Wind-Down Debtor. ) Lead Case IEH Auto Parts Holding  
 ) LLC, Case No. 23-90054)  
 )  
\_\_\_\_\_

PLAN AGENT’S MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
THE PLAN AGENT TO MERGE WIND-DOWN DEBTOR’S 401(K) PLAN

**If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within twenty-one days from the date this application was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this application was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.**

The Plan Agent<sup>2</sup> on behalf of the above-captioned debtor (the “Debtor” before the Effective Date and “Wind-Down Debtor” after the Effective Date) states as follows in support of this motion (this “Motion”):<sup>3</sup>

<sup>1</sup> The Wind-Down Debtor’s service address is: 5330 Carmel Crest Lane, Charlotte, North Carolina 28226. All pleadings related to these chapter 11 cases may be obtained from the website of the Wind Down Debtor’s claims and noticing agent at <https://www.kcellc.net/autoplus>.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Plan (defined below).

<sup>3</sup> On January 31, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Capitalized terms used but not otherwise defined in this Motion have the meanings ascribed to them in the *Declaration of Michael Neyrey, Chief Executive Officer of IEH Auto Parts Holding LLC, in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) or the Signature Motion, as applicable.



### **Relief Requested**

1. The Plan Agent seeks entry of an order, substantially in the form attached hereto (the “Order”), authorizing Plan Agent to merge the Wind-Down Debtors’ 401(k) plan with the 401(k) plan of The Pep Boys – Manny, Moe & Jack LLC (“Pep Boys”).

### **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 Wind-Down Debtors confirm their consent to the entry of a final order by the Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), rules 9018 and 9037-1 Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1 of the Local Bankruptcy Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

### **Background**

4. On January 31, 2023 (the “Petition Date”), the Debtor and each of its affiliates (collectively, the “Debtors,” and after the Effective Date, the “Wind-Down Debtors”) filed their respective voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, commencing the above captioned, jointly administered chapter 11 cases.

5. On August 10, 2023, the Court entered the *Order Confirming the Third Amended Combined Disclosure Statement and Joint Plan of Liquidation of IEH Auto Parts Holding LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the “Confirmation Order”) [Docket No. 749], confirming the Debtors’ *Amended Chapter 11 Plan* (the “Plan”) [Docket No. 738]. On October 6, 2023, the Plan went effective (the “Effective Date”).

6. Prior to the Petition Date, in the ordinary course of the Debtors' business, the Debtors maintained the IEH Auto Parts LLC 401(k) Plan (the "IEH 401(k) Plan"), a retirement savings plan for the benefit of their employees pursuant to section 401(k) of the Internal Revenue Code of 1986, as amended (the "Code"). Effective June 30, 2017, The Pep Boys Savings Plan (the "Prior Pep Boys 401(k) Plan"), a retirement savings plan maintained by Pep Boys, was merged into the IEH 401(K) Plan, creating one combined 401(k) plan for the two companies. Effective January 1, 2023, The Pep Boys 401(k) Plan (the "Pep Boys 401(k) Plan") was spun off from the IEH 401(k) Plan, creating two standalone 401(k) plans for the two companies and applicable participating employers.

7. After the Effective Date, the IEH 401(k) Plan revested in the Wind-Down Debtors pursuant to the Plan and Confirmation Order. *See* Plan, Art. IV.A.

8. As of December 29, 2023, there are no active employees contributing to the IEH 401(k) Plan.

9. The IEH 401(k) Plan has a forfeiture account for unvested employer contributions which totals approximately \$720,000 (the "Forfeiture Account"). The Forfeiture Account has been accumulating since prior to 2016 when the IEH 401(k) Plan was originally combined with the Prior Pep Boys 401(k) Plan and after January 1, 2023, when the Pep Boys 401(k) Plan was spun off from the IEH 401(k) Plan. The IEH 401(k) Plan generally permits the use of the Forfeiture Account in two different ways: (a) offset IEH 401(k) Plan contribution obligations, or (b) use to pay IEH 401(k) Plan administration expenses. Since prior contribution obligations are satisfied and IEH has no future obligation to make contributions to the IEH 401(k) Plan because there are no active participants employed, and eligible to contribute to the IEH 401(k) Plan, using the Forfeiture Account to fund employer contributions to the IEH 401(k) Plan is not possible.

Additionally, the go-forward administration expenses are very low for the IEH 401(k) Plan and cannot exhaust the Forfeiture Account in a timely manner.

10. As such, the Plan Agent is seeking authority, but not direction, to merge the IEH 401(k) Plan with and transfer all assets and liabilities to the Pep Boys 401(k) Plan such that that Pep Boys 401(k) Plan shall be the surviving 401(k) plan (referred to hereafter as the “Combined 401(k) Plan”) so the Forfeiture Account can be used for administration expenses of the Combined 401(k) Plan or to reduce the contribution obligations of Pep Boys to the Combined 401(k) Plan. Such merger shall comply with the requirements of section 208 of the Employee Retirement Income Security Act of 1974 and section 414(l) of the Code.

**Basis for Relief**

11. Section 105(a) of the Bankruptcy Code codifies the inherent equitable powers of the bankruptcy court and empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Section 105(a) grants bankruptcy judges “broad authority,” *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 375 (2007) and should be “interpreted liberally” so long as any action taken pursuant to section 105(a) is “consistent with the rest of the Bankruptcy Code.” *In re Zale Corp.*, 62 F. 3d 746, 760 (5th Cir. 1995). Section 105(a) permits bankruptcy courts to “fashion such orders as are necessary to further the substantive provisions of the Bankruptcy Code.” *In re Sadkin*, 36 F.3d 473, 478 (5th Cir. 1994).

12. Under the Plan, “The Plan Agent shall have the sole and exclusive corporate authority to act for the Debtors and shall retain and have all the rights, powers, and duties necessary to carry out his or her responsibilities under this Plan and Confirmation Order.” Plan, Art. IV.A. As such, the Wind-Down Debtor believes the Plan Agent has authority pursuant to the Plan to

merge the IEH 401(k) Plan with the Pep Boys 401(k) Plan, but out of an abundance of caution, seeks explicit authority from this Court.

13. The merger of the IEH 401(k) Plan is further in the best interest of the plan participants. By merging the IEH 401(k) Plan with the Pep Boys 401(k) Plan, the IEH 401(k) Plan participant accounts will be transferred to Fidelity Investments, which has lower fees and better features than the current participant accounts.

14. Approval of the requested relief is justified under section 105(a) of the Bankruptcy Code, the Plan, and is in the best interest of the Wind-Down Debtor's estate and the IEH 401(k) Plan participants. As such the Plan Agent requests the Court grant him authority to merge the IEH 401(k) Plan and the Pep Boys 401(k) Plan.

**Notice**

15. The Plan Agent is giving notice of this Motion to the United States Trustee, all parties receiving notice through CM/ECF, and 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 Plan Agent respectfully requests that the Court enter the Order granting the relief requested in this Motion and such other and further relief as may be just and proper.

Houston, Texas  
Dated: February 11, 2025

*/s/ Veronica A. Polnick*

---

**JACKSON WALKER LLP**

Matthew D. Cavanaugh (TX Bar No. 24062656)

Veronica A. Polnick (TX Bar No. 24079148)

Vienna Anaya (TX Bar No. 24091225)

Emily Meraia (TX Bar No. 24129307)

1401 McKinney Street, Suite 1900

Houston, TX 77010

Telephone: (713) 752-4200

Facsimile: (713) 752-4221

Email: mcavanaugh@jw.com

vpolnick@jw.com

vanaya@jw.com

emeraia@jw.com

*Counsel to the Plan Agent*

**Certificate of Service**

I certify that on February 11, 2025, 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>AUTO PLUS AUTO SALES LLC,<sup>1</sup></p> <p style="text-align: center;">Wind-Down Debtor.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 23-90055 (CML)</p> <p>(Formerly Jointly Administered under Lead Case IEH Auto Parts Holding LLC, Case No. 23-90054)</p>
-----------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------

---

**ORDER AUTHORIZING THE PLAN AGENT  
TO MERGE WIND-DOWN DEBTOR’S 401(K) PLAN**

---

Upon the motion (the “Motion”)<sup>2</sup> of the Plan Agent seeking entry of an order (this “Order”) authorizing the Plan Agent to merge the IEH Auto Parts LLC 401(k) Plan into The Pep Boys 401(k) Plan; all as more fully set forth in the Motion; 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)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Wind-Down Debtors, their creditors, and other parties in interest; and this Court having found that the Plan Agent’s notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the

---

<sup>1</sup> The Wind-Down Debtor’s service address is: 5330 Carmel Crest Lane, Charlotte, North Carolina 28226. All pleadings related to these chapter 11 cases may be obtained from the website of the Wind Down Debtor’s claims and noticing agent at <https://www.kcellc.net/autoplus>.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to such terms in the Motion.



proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is ORDERED THAT:

1. The Plan Agent is authorized, but not directed, to merge the IEH Auto Parts LLC 401(k) Plan with and into The Pep Boys 401(k) Plan.

2. The requirements set forth in Bankruptcy Local Rule 9013-1 and Bankruptcy Local Rule 9037-1 are satisfied by the contents of the Motion.

3. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion.

4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Plan Agent is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

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

Dated: \_\_\_\_\_, 2025

---

CHRISTOPHER M. LOPEZ  
UNITED STATES BANKRUPTCY JUDGE