

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 (A) MAINTAIN AND
ADMINISTER THEIR EXISTING CUSTOMER PROGRAMS AND (B) HONOR
CERTAIN PREPETITION OBLIGATIONS AND (II) 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”

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.



link on Judge Lopez’s homepage. Select the case name, complete the required fields and click “Submit” to complete your appearance.

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 filed with this motion (the “Order”), (a) authorizing the Debtors to (i) maintain and administer their Customer Programs and (ii) honor certain related prepetition obligations on a postpetition basis in the ordinary course, and (b) 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 are sections 105(a) and 363 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”).

² 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”) filed concurrently with this Motion.

Customer Programs

5. The Debtors have approximately 23,000 customers (“Customers”). The Debtors’ Customer base can be broken into two key customer groups: (a) installers (“Installers”) and (b) jobbers (“Jobbers”). Installers are service providers (e.g., mechanics and garages) that order automotive parts directly from the Debtors. Jobbers are wholesalers that purchase larger quantities of automotive parts that they can distribute to their own customers.

6. The Debtors engage in certain business practices to develop and sustain positive reputations in the marketplace and amongst Customers for their products and services. These programs include the Commercial Marketing Program, Professional Services Centers Program, VIP Accounts Program, Pricing Programs, the Legacy AIM Rebate Program, the Drop Ship Program, the Return Program, and the Warranty Program (collectively, the “Customer Programs”).

I. Commercial Marketing Program.

7. The Debtors currently maintain a commercial marketing program (the “Commercial Marketing Program”) to directly connect certain vendor brands with Customers. The Commercial Marketing Program is vendor funded, in which certain vendors participating in the program give the Debtors money quarterly. With that money, the Debtors able to provide that value to the Customers and bring that amount down. The next quarter another advance is given, and the process repeats. The largest Commercial Marketing Program is DRiV, which funds about \$2.5 million marketing dollars per year, paid in quarterly installments. The Commercial Marketing Program engages Customers and drives brand loyalty and advocacy. The Debtors seek authority to honor any prepetition obligations under the Commercial Marketing Program and to continue the Pricing Program postpetition.

II. Professional Services Centers Program.

8. The Debtors maintain a professional services center program (the “Professional Services Centers Program”) for Installers. Currently, over 2,000 Installers are enrolled in the Professional Services Centers Program. The Debtors offer members of the Professional Services Centers a variety of benefits. Installer members are able to enroll in either the elite tier or the select tier to receive these benefits. Both tiers offer a wide variety of benefits, however members in the elite tier receive additional and enhanced benefits. The monthly membership fee for the Professional Services Centers Program is \$39.95 for the select tier and \$74.95 for the elite tier. As of the Petition Date, the Debtors estimate the value of outstanding prepetition obligations under the Professional Services Centers Program is approximately \$1.6 million. The Debtors seek authority to continue the Professional Services Centers Program postpetition in the ordinary course.

A. Partner Assurance Program.

9. The Debtors offer members of the Professional Services Centers Program protection and peace of mind through the partner assurance program. This program allows members to offer their customers repair, labor, rescue, and tire assurance. Repair assurance differs by membership tier. However, both elite and select members are able to offer customers a nationwide warranty for a certain amount of time or miles after a repair. Similarly, labor assurance differs by membership tier. But, both elite and select members are able to offer customers a labor claim program for a certain amount of time or miles after a part was installed limiting the amount a customer pays for labor. Rescue assurance enables members to offer customers complimentary roadside assistance. Tire assurance enables members to offer customers a road hazard protection program.

B. Branding and Marketing Solutions.

10. Members of the Professional Services Centers Program all receive a kit that helps brand the interior of the member's service center and are also added to the Debtors' service locator on autoplusap.com. Elite members have access to purchase exterior professional branding as well, including lighted or unlighted exterior signage, awnings, or metal signs. Elite members also have the opportunity to add digital signage to their locations, including car system animation videos that can be shared with the member's customers.

C. Rebates.

11. Members of the Professional Services Centers Program can offer customers rebates on certain products. Typically, these consumer rebates are paid to customers with an Auto Plus prepaid MasterCard. Members also receive rebates as part of the Professional Services Centers Program based on their purchase volume. The member rebates are typically paid via check or as a credit on the member's statement.

D. Shop Management and Repair Support.

12. Under the Professional Services Centers Program, members are given access to vehicle inspection forms upgraded online ordering along with informational tool tips special rates for shop management systems, in person or virtual training programs, and rewards for passing the automotive service excellence ("ASE") test or for getting their shop ASE blue seal certified. Elite members also receive access to a repair telediagnosics hotline.

E. Business Solutions & Savings.

13. The Debtors negotiate discounts for various service center tools and pass those savings along to the members of the Professional Services Centers Program. Members receive

discounted rates for business insurance, uniforms, office supplies, consumer creditor cards, and other miscellaneous items to help maintain a successful service center.

III. VIP Accounts Program.

14. The Debtors offer pricing discounts to loyal Customers through the “VIP Accounts Program”). The VIP Accounts Program offers different levels of discounts for Customers. The Customers who spend more receive higher discounts. The VIP Accounts Program is beneficial because it rewards returning Customers and incentivizes them to purchase more products from the Debtors in order to receive even better deals. The Debtors do not believe they owe any prepetition amounts on account of the VIP Accounts Program. Out of abundance of caution, the Debtors seek authority to honor any prepetition obligations related to the VIP Accounts Program and to continue the program postpetition in the ordinary course.

IV. Pricing Program.

15. The Debtors offer special rates and rebates to certain Customers (the “Pricing Program”). For example, many municipalities and fleets receive discounted prices. The Debtors also offer certain rebates to Customers under the Pricing Program. Continuing the Pricing Program is crucial to maintaining the Debtors strong brand reputation and maintaining Customer relationships. The Debtors seek authority to honor any prepetition obligations under the Pricing Program and to continue the Pricing Program postpetition in the ordinary course.

V. Legacy AIM Rebate Program.

16. Prior to the Petition Date, Debtor IEH AIM LLC offered Customers rebates (the “Legacy AIM Rebate Program”) and concluded the program. The Debtors currently have a reserve for outstanding rebate claims under the program. The Debtors believe the reserve far exceeds the amount of rebate claims that will be made. Out of abundance of caution, the Debtors

seek authority to continue to honor the rebates of the Legacy AIM Rebate Program. If the rebate claims exceed the amount in the reserve, the Debtors will seek further order from the Court.

VI. Drop Ship Program.

17. Under the drop ship program (the “Drop Ship Program”), when customers purchase merchandise, the Debtors transfer each purchase order directly to certain manufacturers for fulfillment. According to certain packaging specifications, the manufacturer then directly ships the merchandise to the customer bypassing the Debtors’ warehouses. The Drop Ship Program is beneficial to the Debtors because it enables them to reduce times for fulfillment and shipping in many cases. Further, under the Drop Ship Program, the Debtors still receive their margins based on the merchandise’s sale price. The Drop Ship Program improves the Debtors’ cash flow by reducing the Debtors’ investment in certain inventory. In turn, this allows the Debtors to offer a broader array of inventory, which attracts Customers.

18. The Debtors seek authorization to continue their Drop Ship Program and to honor all of the Debtors’ related obligations, including satisfying any prepetition obligations on a postpetition basis in a manner consistent with past practice.

VII. Return Program.

19. The Debtors may have a Customer that rejects a delivered product for a variety of reasons. When this occurs, the Debtors either refund the Customer or repair the part (the “Return Program”). The Debtors average approximately \$160 million annually under their Return Program. For certain Customers, this obligation may be satisfied by the Customer partially setting off the amount owed to the Debtors by the amount the Debtors owe under the Return Program. The Debtors seek authorization to continue their Return Program and to honor all of the Debtors’

related obligations, including satisfying any prepetition obligations on a postpetition basis in a manner consistent with past practice.

VIII. Warranty Program.

20. To help maintain their reputation for quality and to maximize customer loyalty, the Debtors provide, in the ordinary course of business and consistent with industry practice, general product warranties (the “Warranties”) for their own product line covering defects in their parts (the “Warranty Program”). Generally, the Warranties cover latent defects that are not immediately discoverable by the customer and not attributable to external factors, such as damage caused by the customer or other third parties. The duration of the Warranties varies, but generally the Warranties last between one and five years, depending on the particular product.

21. The Debtors operate in a highly competitive market where warranties, similar to those offered by the Debtors, are standard. Without the ability to continue the Warranties, the Debtors risk losing their Customers to their competitors. Historically, the Debtors paid approximately 3.2% of sales per year on account of the Warranty Program. The Debtors seek authorization to continue their Warranty Program and to honor all of the Debtors’ related obligations, including satisfying any prepetition obligations on a postpetition basis in a manner consistent with past practice.

Basis for Relief

22. Section 363(c) of the Bankruptcy Code authorizes a debtor in possession to use the property of the estate in the ordinary course of business without notice or a hearing. Consequently, the postpetition continuation, renewal, and replacement of obligations under the Customer Programs in the ordinary course of business is likely permitted by sections 363(c), 1107(a), and 1108 of the Bankruptcy Code, without further application to the Court. Out of an abundance of caution, however, the Debtors filed this Motion.

23. 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.³ Courts approving such motions acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

24. Pursuant to section 363(b) of the Bankruptcy Code, courts may authorize payment of prepetition obligations where a sound business purpose exists for doing so.⁴ In addition, courts may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Under section 105(a) of the Bankruptcy Code, courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's business.⁵ The Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity").⁶

25. The Court can authorize the Debtors to continue the Customer Programs and satisfy prepetition related obligations pursuant to sections 105(a) and 363(b) of the Bankruptcy Code. Continuing to administer the Customer Programs without interruption during the pendency of these chapter 11 cases is critical to preserving the value of the Debtors' estates. Customers expect and rely on the Customer Programs and may not continue supporting the Debtors' businesses if

³ See, e.g., *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

⁴ See *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).

⁵ See *In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999); see also *In re Fin. News Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991) (holding that the "doctrine of necessity" stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor's reorganization).

⁶ *Ionosphere Clubs*, 98 B.R. at 176.

the Customer Programs are discontinued. It is incontrovertible that support from the Debtors' Customers is essential for go-forward operations.

26. The substantial benefit conferred on the Debtors' estates by the Customer Programs warrants the authority to honor the Customer Programs and any of the Debtors' related obligations. The Debtors request the authority to continue administering their Customer Programs and honor prepetition related obligations in the ordinary course of business consistent with past practices on a postpetition basis.

Emergency Consideration

27. 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)

28. The Debtors request that the Court enter an order providing that notice of the relief requested 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

29. 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 and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
Dated: January 31, 2023

/s/ Veronica A. Polnick

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*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**

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

ORDER (I) AUTHORIZING THE DEBTORS TO (A) MAINTAIN AND ADMINISTER THEIR EXISTING CUSTOMER PROGRAMS AND (B) HONOR CERTAIN PREPETITION OBLIGATIONS AND (II) 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”), (a) authorizing the Debtors to (i) maintain and administer their Customer Programs and (ii) honor certain related prepetition obligations on a postpetition basis in the ordinary course, and (b) 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); that it may enter a final order consistent with Article III of the United States Constitution; that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and that the

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 in the motion have the meanings ascribed to them in the Motion.

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 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; 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, but not directed, to continue to administer the Customer Programs described in the Motion and to satisfy prepetition related obligations.

2. The Debtors will notify counsel to the proposed DIP Lender, the United States Trustee, and any statutory committee appointed in these cases if Debtors make any material changes to Debtors' Customer Programs practices and procedures.

3. 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.

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

5. Notice of the Motion is 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.

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

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

8. 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