

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 CONTINUE THE
INVENTORY MANAGEMENT PROGRAM 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” link on Judge Lopez’s homepage. Select the case name, complete the required fields

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.



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 attached hereto (the “Order”) (a) authorizing the Debtors to continue implementation of an Inventory Management Program, 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 herein are sections 105(a), 363, and 554(a) of title 11 of the United States Code (the “Bankruptcy Code”), rule 6003, 6004, and 6007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

Inventory Management Program

5. In February 2022, the Debtors determined that the existing inventory (the “Inventory”) at approximately fifteen (15) of their primary distribution centers (the “Key”

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.

Distribution Centers”) was nearing or at capacity, with approximately \$73 million of Inventory on the Debtors’ books. The Debtors decided to begin processing and reorganizing their inventory. This effort included selling or otherwise disposing of, the Inventory at the Key Distribution Centers by initiating an ongoing inventory management program (the “Inventory Management Program”). The goal of the Inventory Management Program is to maximize the value of the Inventory for the Debtors, whether by restocking the Inventory or selling it as is. Through the Inventory Management Program, the Debtors are able to dispose of Inventory that cannot be sold in the retail stores for more than it costs to maintain in stock. The disposal of burdensome inventory may occur through either scrapping the product, returning it to the supplier, or selling it through an inventory vendor.

6. To assist with the disposal of Inventory under the Inventory Management Program, the Debtors, entered into an agreement with Cam International LLC (the “Inventory Vendor”). The Inventory Vendor is a third-party independent contractor who specializes in selling aftermarket automotive parts. The Inventory Vendor sells certain portions of the Inventory that the Debtors determine should not be restocked, returned to a vendor, or otherwise scrapped (for example, parts over a certain age). The Debtors also hired certain Stephen Gould Corporation (the “Inventory Processor”) to assist with processing, sorting, and reorganizing Inventory at certain Key Distribution Centers where the volume of existing Inventory was particularly high. The Inventory Processor helps streamline the Inventory Management Program. However, the Debtors maintain substantial control over tactical and strategic decisions regarding which portions of the Inventory, if any, should be restocked, returned to vendors, or otherwise disposed of.

7. The Debtors, Inventory Vendor, and Inventory Processor made significant progress with the Inventory Management Program, substantially improving the functioning of the Debtors’

supply lines, overall ability to manage the Inventory, and ability to procure new inventory. The Debtors estimate that only approximately \$15 million of Inventory remains to be processed. They expect the Inventory Management Program to conclude in or around late February or early March 2023.

8. The Debtors believe the Inventory Management Program constitutes a series of ordinary course transactions and that any sales conducted in connection with the Inventory Management Program constitute sales in the ordinary course of business. However, out of an abundance of caution and in light of the critical role the Inventory Management Program has in the Debtors' ongoing operation of their business, the Debtors seek authority to continue the Inventory Management Program in the ordinary course of business, consistent with past practices.

Basis for Relief

9. The Debtors are operating their businesses as debtors in possession under Bankruptcy Code sections 1107(a) and 1108 as fiduciaries for their estates. A debtor in possession has, among other things, the "implied duty of the debtor-in-possession to 'protect and preserve the estate, including an operating business' going-concern value."³ Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value."⁴ 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 Courts acknowledge that several legal theories rooted in

³ *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004); *In re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

⁴ *Id.* at 497.

⁵ *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) ("The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation

sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

10. 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 There are instances when a debtor's fiduciary duty can "only be fulfilled by the pre-plan satisfaction of a prepetition claim."⁷ Paying or continuing certain obligations that accrued prepetition, but that are crucial to ongoing operations, is in the best interest of these estates.

11. Section 105(a) of the Bankruptcy Code permits this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). This Court's power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations is popularly referred to as the "necessity of payment" rule or the "doctrine of necessity" and has long been recognized as precedent within the Fifth Circuit.⁸ Continuing to implement the Inventory Management Program is warranted under the doctrine of necessity. Further, pursuant to section 554(a) of the Bankruptcy Code, a debtor, after notice and a hearing, is authorized to "abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

12. The Debtors believe that continuing to implement the Inventory Management Program is in their best interests and the best interests of their estates and reflects a sound exercise of their business judgment. The Inventory Management Program is necessary for a variety of

of the debtor is not a novel concept.").

⁶ See *Ionosphere Clubs*, 98 B.R. at 175 (noting that Bankruptcy Code section 363(b) provides "broad flexibility" to authorize a debtor to honor prepetition claims where supported by an appropriate business justification).

⁷ *CoServ*, 273 B.R. at 497.

⁸ See *CoServ*, 273 B.R. at 492–93.

business purposes and is fundamental to the Debtors' ability to continue to operate their business Program. Without the Inventory Management Program, the Debtors would be unable to process, reorganize, or restock substantial portions of the Inventory which will result in the Inventory being sold for less than the highest or best price. In addition to maximizing the return on the Inventory, the Inventory Management Program also ensures and increases supply-chain effectiveness and the overall efficiency of operations at the Key Distribution Centers. This includes the processing and reorganization of the Inventory and clearing certain aged portions of the Inventory to create the capacity to stock new or improved products at the Key Distribution Centers.

13. The Debtors believe that the Inventory Management Program constitutes a series of ordinary-course transactions. The work currently being performed in the ordinary course both by the Debtors, the Inventory Processor, and the Inventory Vendor. Targeted initiatives to reorganize and clear existing inventory are commonplace in the Debtors' industry and often involve the use of third-party independent contractors who specialize in inventory management and related services, such as the Inventory Processor and the Inventory Vendor. Given the critical role and current state of implementation mid-stream of the Inventory Management Program, the Debtors seek the relief requested herein out of an abundance of caution to avoid disrupting this key aspect of their operations.

14. If the Debtors are not authorized to continue to implement the Inventory Management Program, there could be substantial harm to all stakeholders in these chapter 11 cases. Failing to complete and fully implement the program at this late stage would negate many of the benefits already conferred by it to-date and, potentially, result in substantial portions of the Inventory being sold at below-market prices in addition to limiting the capacity of some of the Key Distribution Centers.

Emergency Consideration

15. 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 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)

16. 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

17. 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; (k) Inventory Vendor; (l) Inventory Processor; and

(m) 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.

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**

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

**ORDER (I) AUTHORIZING THE DEBTORS TO CONTINUE THE
INVENTORY MANAGEMENT PROGRAM 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 continue implementing their existing Inventory Management Program in the ordinary course of business 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); and this Court having found that it 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 Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and

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

opportunity for a hearing on the Motion were appropriate 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 herein; and upon all of the proceedings had before this Court; and after notice and hearing, it is ORDERED THAT:

1. The Debtors, the Inventory Processor, and the Inventory Vendor are authorized, but not directed, to continue implementing the Inventory Management Program, including, without limitation, by processing, restocking, conducting sales of, or abandoning the Inventory in accordance with the Inventory Management Program.

2. As soon as practicable after entry of this Order, the Debtors shall serve a copy of this Order on the Inventory Processor and the Inventory Vendor.

3. The Debtors, the Inventory Processor, and the Inventory Vendor may, without further order of the Court, agree to and implement changes to the Inventory Management Program and related procedures in the ordinary course of business.

4. 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.

5. 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.

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 Motion 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