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**PROPOSED ATTORNEYS FOR DEBTOR**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re: § Chapter 11  
§  
TPP ACQUISITION, INC. d/b/a The § Case No. 16-33437-hdh-11  
Picture People, §  
§  
Debtor. §

**DEBTOR’S EMERGENCY MOTION PURSUANT TO 11 U.S.C. §§ 105  
AND 363 FOR AUTHORITY TO PAY OR HONOR PREPETITION  
OBLIGATIONS TO CERTAIN SHIPPERS, WAREHOUSEMEN  
AND MISCELLANEOUS LIEN CLAIMANTS**

TPP Acquisition, Inc. d/b/a The Picture People (“TPP” or the “Debtor”), debtor-in-possession in the above-referenced chapter 11 case, files this *Debtor’s Emergency Motion Pursuant to 11 U.S.C. §§ 105 and 363 for Authority to Pay or Honor Prepetition Obligations to Certain Shippers, Warehousemen and Miscellaneous Lien Claimants* (the “Motion”) and in support thereof, respectfully represents as follows:



### **Jurisdiction and Venue**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Background**

2. To preserve the value of its assets and restructure its financial affairs, on September 2, 2016 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") commencing the above captioned case (the "Chapter 11 Case"). The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. An official committee of unsecured creditors has yet to be appointed in this Chapter 11 Case. Further, no trustee or examiner has been requested or appointed in this Chapter 11 Case.

4. The Debtor has filed with the Court the *Statement of Background Information and Declaration of Stuart Noyes, Chief Restructuring Officer of TPP Acquisition, Inc. d/b/a The Picture People in Support of Debtor's Chapter 11 Petition and First-Day Motions* (the "Background Statement") which is incorporated by reference in this Motion.

### **Relief Requested**

5. By this Motion, the Debtor seeks authority, but not direction, under Bankruptcy Code §§ 105 and 363 to pay or honor prepetition obligations owed to certain Warehousemen, and Miscellaneous Lien Claimants (collectively, and as described herein, the "Lien Obligations") and to authorize and direct financial institutions to receive, process, honor, and pay checks

presented for payment and electronic payment requests relating to prepetition Lien Obligations, subject to approval by the Debtor's debtor-in-possession lender (the "DIP Lender").

**A. The Debtor's Shippers, Warehousemen, and Storage Operators**

6. To successfully operate its business, the Debtor must ensure that its retail studio locations (the "Studios") are continuously replenished with a supply of goods for use in conducting its photography business. For example, the Debtor requires, *inter alia*, film, camera equipment, on-location photo processing equipment and printing supplies, marketing materials, packaging materials, props, bulk inventory supplies, product packaging supplies, pre-installment fixtures, IT equipment, and other goods and materials (collectively, the "Merchandise"). The Debtor's Merchandise is either shipped directly by the Debtor's vendors to the vendor's studios, or in some instances, shipped via third party distributors (the "Shippers"). During the shipping and storage process, the Merchandise is often temporarily warehoused in third-party warehouse facilities (the "Warehouses") operated by various warehouse operators (together with the Shippers and any bailees capable of asserting a lien on the Debtor's goods, the "Warehousemen"). The Merchandise is thereafter shipped to the Debtor's various Studios.

7. Due to the Debtor's numerous mall-based Studio closures during the weeks and months leading up to the Petition Date, the Debtor has also stored a significant amount of equipment, supplies, inventory, and other goods (the "Stored Equipment") in various storage facilities (the "Storage Facilities") controlled and operated by various third party operators (the "Storage Operators"). The Debtor believes that its Storage Operators have been pre-paid and that the Debtor does not owe any outstanding pre-petition obligations to its Storage Operators in connection with the Storage Facilities. Nevertheless, out of an abundance of caution, the Debtor

is seeking authorization through this Motion to pay any such Storage Operators for any of the Debtor's prepetition obligations relating to the Storage Facilities.

8. In the event that the Debtor fails to reimburse the Warehousemen and Storage Operators for charges incurred in connection with the transport and storage of the Merchandise and Stored Equipment, various state laws may permit the Warehousemen and Storage Operators to assert a statutory lien against the Merchandise and Stored Equipment in their possession (the "Warehousemen Lien Claims") that is the subject of any delinquent charges, potentially blocking the Debtor's access to the stored or shipped Merchandise and Stored Equipment. To maintain access to the Merchandise and Stored Equipment that is essential to the continued viability of the Debtor's retail operations and to preserve the value of the Merchandise and Stored Equipment, the Debtor seeks authority to pay any and all prepetition amounts related to the shipping, warehousing, logistics and other services provided to the Debtor by the Warehousemen and the Storage Operators prior to the Petition Date (collectively, the "Warehousing Charges"). In its sole discretion, the Debtor intends to undertake appropriate efforts to cause Warehousemen to acknowledge in writing that payment of their respective claims is conditioned upon such Warehousemen continuing to supply services to the Debtor on trade terms that such Warehousemen had provided on a historical basis.

**B. Miscellaneous Lien Claimants**

9. The Debtor also regularly has its camera equipment repaired and stored by providers of camera repair services ("Equipment Repair Vendors"). In addition, the Debtor regularly makes improvements and repairs to its property, including the furniture, fixtures and equipment located in the Studios. To do so, the Debtor contracts with numerous third parties

(the “Miscellaneous Lien Claimants” and together with Equipment Repair Vendors and the Warehousemen, the “Lien Claimants”).

10. The Miscellaneous Lien Claimants could potentially assert liens, including mechanic’s liens, artisan’s liens, and materialman’s liens against the Debtor’s property for amounts the Debtor owes to these third parties (collectively, the “Miscellaneous Lien Claims” and together with the Warehousemen Lien Claims, the “Lien Claims”). Pursuant to Bankruptcy Code § 362(b)(3), the act of perfecting such liens, to the extent consistent with Bankruptcy Code § 546(b), is expressly excluded from the automatic stay.<sup>1</sup>

11. If the Debtor is unable to pay the Miscellaneous Lien Claims, the Debtor risks losing access to equipment and other property that is critical to the continued operation of the Studios. The imposition of a Miscellaneous Lien Claim in one of the Debtor’s Studio locations would also likely violate the provisions of many of its leases and related agreements with its business partners. Accordingly, the Debtor seeks authority to pay and discharge, on a case-by-case basis, Miscellaneous Lien Claims that the Debtor believes have created, or could give rise to, a lien against the Debtor’s Studios, property or equipment, regardless of whether such Miscellaneous Lien Claimants have already perfected their interests.<sup>2</sup>

12. The Debtor estimates that there are approximately \$200,000 in Lien Claims as of the Petition Date.<sup>3</sup>

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<sup>1</sup> Under Bankruptcy Code § 546(b), 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 . . .” 11 U.S.C. § 546(b)(1)(A)

<sup>2</sup> To the extent that the Debtor makes any payments with respect to a Miscellaneous Lien Claim, however, no such payment shall be deemed a waiver of the Debtor’s right to challenge the extent, validity, perfection or possible avoidance of such liens or the claims underlying any such Miscellaneous Lien Claim.

<sup>3</sup> Nothing herein shall be deemed an admission by the Debtor as to the validity of any lien nor the validity of any claim relating to such lien. The Debtor reserves all of its rights to contest the validity of any lien or claim regardless of whether the Debtor makes a payment pursuant to this Motion or any Order approved hereunder.

**Basis for Relief Requested**

**A. Payment of Prepetition Claims of Warehousemen and Miscellaneous Lien Claimants is in the Best Interest of the Debtor's Estate and Warranted under the Doctrine of Necessity**

13. The Court may grant the relief requested herein pursuant to Bankruptcy Code §§ 105(a) and 363(b). Bankruptcy Code § 363(b)(1) provides, in relevant part, that, “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). This provision grants a court broad flexibility to authorize a debtor to pay prepetition claims where a sound business purpose exists. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989).

14. Further, § 105(a) provides, in relevant part, that, “[t]he court may 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 provision codifies the inherent equitable powers of the bankruptcy court, including the power to authorize payment of prepetition claims under what is known as the “doctrine of necessity” when such payment is critical to a debtor’s reorganization or necessary for the preservation of the value of the debtor’s estate. *See, e.g., In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *In re Fin. News Network Inc.*, 134 B.R. 732, 735-736 (Bankr. S.D.N.Y. 1991) (“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”); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“[I]t is only logical that the bankruptcy court be able to use [s]ection 105(a) of the Bankruptcy Code to authorize satisfaction of the prepetition claim in aid of preservation nor enhancement of the estate”).

15. The payment of prepetition claims under the doctrine of necessity is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code: preserving going

concern value and maximizing property available to satisfy creditors. *See Bank of Am. Nat'l Trust & Sav. Assoc. v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434, 435 (1999). It is consistent with Bankruptcy Rule 6003, which implies that the payment of prepetition obligations may be permissible within the first 21 days of a case where doing so is “necessary to avoid immediate and irreparable harm.”

16. The relief requested by this Motion represents a sound exercise of the Debtor’s business judgment, is necessary to avoid immediate and irreparable harm to the Debtor’s estate, and is justified under Bankruptcy Code §§ 105(a) and 363(b).

17. This flexible approach is particularly critical where prepetition creditors – here, the Warehousemen and the Miscellaneous Lien Claimants – provide vital goods and services to the Debtor that would be unavailable if the Debtor did not satisfy its prepetition obligations. Indeed, absent the relief requested herein, the Warehousemen may be unwilling to release the Merchandise and Stored Equipment in their possession as to which they may have liens, because releasing possession of the Merchandise and Stored Equipment may convert their claims against the Debtor from secured claims to unsecured claims. Therefore, unless the Court authorizes the Debtor to pay the Warehousemen, it is unlikely the Debtor will continue to have access to the merchandise in the possession of the Warehousemen. More generally, if the Lien Claimants possess lien rights or have the ability to exercise “self-help” remedies to secure payment of their claims, failure to satisfy the Lien Claimants’ claims could significantly interrupt the Debtor’s retail business operations to the detriment of the Debtor’s creditors.

**B. Cause Exists to Authorize the Debtor’s Financial Institutions to Honor Checks and Electronic Fund Transfers**

18. Under the Debtor’s existing cash management system, the Debtor can readily identify checks or wire transfer requests as relating to an authorized payment in respect to the

Warehousing Charges and Miscellaneous Lien Claims. Accordingly, the Debtor believes that checks or wire transfer requests, related to unauthorized payments, will not be honored inadvertently and that the Court should authorize and direct all applicable financial institutions, when requested by the Debtor, to receive, process, honor and pay any and all checks or wire transfer request in respect of the relief requested herein, solely to the extent the Debtor has sufficient funds standing to their credit with such financial institution, and authorize such financial institutions to rely on the representations of the Debtor as to which checks are issued and authorized and which transfers are authorized to be paid in accordance with this Motion.

**Request for Waiver of Stay**

19. To the extent that the relief sought in the Motion constitutes a use of property under Bankruptcy Code § 363(b), the Debtor seeks a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtor requests that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtor to be able to continue to operate its businesses and preserve the value of the estate.

**Notice**

20. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the Debtor and its counsel; (iii) the Debtor's secured creditors; (iv) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (v) counsel for and the members of any official committees appointed by this Court; (vi) the 20 largest unsecured creditors of the Debtor; and (vii) all governmental agencies having a regulatory or statutory interest in this case. No other or further notice need be provided.

WHEREFORE the Debtor respectfully requests that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 2nd day of September, 2016.

**HAYNES AND BOONE, LLP**

By: /s/ Robert D. Albergotti

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
TPP ACQUISITION, INC. d/b/a The Picture People,	§	Case No. 16-33437-hdh-11
	§	
Debtor.	§	

**ORDER GRANTING DEBTOR’S EMERGENCY MOTION PURSUANT  
TO 11 U.S.C. §§ 105 AND 363 FOR AUTHORITY TO PAY OR HONOR  
PREPETITION OBLIGATIONS TO CERTAIN SHIPPERS,  
WAREHOUSEMEN AND MISCELLANEOUS LIEN CLAIMANTS**

On \_\_\_\_\_, 2016, the Court conducted a hearing to consider the *Debtor’s Emergency Motion Pursuant to 11 U.S.C. §§ 105 and 363 for Authority to Pay or Honor Prepetition Obligations to Certain Shippers, Warehousemen and Miscellaneous Lien Claimants* (the “Motion”)<sup>1</sup> filed by TPP Acquisition, Inc. d/b/a The Picture People (“TPP” or the “Debtor”).

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

The Court finds that: (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtor, its estate, and its creditors; (iv) proper and adequate notice of the Motion has been given and no other or further notice is necessary; and (v) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein.

Therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtor is hereby authorized, but not directed, in its sole discretion, to perform and honor its undisputed prepetition obligations to the Lien Claimants.
3. The Authorization to perform and honor prepetition obligations to the Lien Claimants is subject to approval by the Debtor's debtor-in-possession lender in connection with the Debtor's request for authority to enter into a debtor-in-possession financing agreement and the terms and conditions thereof and any interim and/or final order(s) approving the same.
4. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtor, a waiver of the Debtor's rights to subsequently dispute such claim or the assumption or adoption of any agreement, contract or lease under Bankruptcy Code § 365.
5. The banks and financial institutions on which checks were drawn (or were to be drawn) or electronic payment requests were made (or were to be made) in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and

pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtor's designation of any particular check or electronic payment request as being approved by this Order.

6. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

7. The Debtor is authorized to take all actions necessary to effect the relief granted pursuant to this Order in accordance with the Motion.

8. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

9. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

### END OF ORDER ###

**Submitted by:**

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