

ENTERED

February 01, 2023

Nathan Ochsner, Clerk

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

In re:) Chapter 11
)
) Case No. 23-90054 (CML)
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹)
) (Jointly Administered)
Debtors.)
) Re: Docket No. 9

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.

Signed: February 01, 2023



Christopher 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]