

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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: Chapter 11
In re: :
APP WINDDOWN, LLC, et al.,¹ : Case No. 16-12551 (BLS)
: :
Debtors. : (Jointly Administered)
: :
-----x **Hearing Date: March 29, 2017 at 11:00
a.m. (Eastern Time)**
**Objection Deadline: March 22, 2017 at
4:00 p.m. (Eastern Time)**

**DEBTOR'S MOTION FOR AN ORDER
(I) AUTHORIZING THE SALE OF CERTAIN NO_x EMISSION
REDUCTION TRADING CREDITS FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES AND INTERESTS AND (II) GRANTING RELATED RELIEF**

APP D&F Winddown, Inc. (the "Seller" or the "Debtor") hereby submits this motion (the "Motion") pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code"), rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") for entry of an order (i) authorizing the Debtor to enter into an agreement with Chaos Trading LLC (the "Buyer") to sell certain nitrogen oxide ("NO_x") emission reduction trading credits (the "Sale"), (ii) authorizing, but not directing, the Debtor to execute, deliver, perform under, consummate and implement the Sale, and (iii) granting certain related relief. In support of the

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): APP Winddown, LLC (f/k/a American Apparel, LLC) (0601); APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC) (8940); APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.) (7829); APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.) (0324); APP Knitting Winddown, LLC (f/k/a KCL Knitting, LLC) (9518); and APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.) (3870). The address of each of the Debtors is 747 Warehouse Street, Los Angeles, California 90021.

Motion, the Debtors rely upon and incorporate by reference the declaration of Mark Weinsten, which will be filed subsequent to the filing of this Motion, the *Declaration of Saul E. Burian in Support of Sale and Bidding Procedures Motion* [Docket No. 53, Ex. D] (the "Burian Declaration") and the *Supplemental Declaration of Saul E. Burian in Support of Debtors' Sale and Bidding Procedures Motion and Entry of One or More Sale Orders* [Docket No. 485] (the "Supplemental Burian Declaration" and, together with the Burian Declaration, the "Burian Sale Declarations"). In further support of this Motion, the Debtors respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

A. Case Background

2. On November 14, 2016 (the "Petition Date"), the Debtor and certain of its domestic affiliates (collectively, and as listed in footnote 1, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing in possession of their properties and are managing their businesses, as debtors in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On November 22, 2016, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Committee") in these chapter 11 cases (the "Cases").

3. Additional information regarding the Debtors and these Cases, including the Debtors' businesses, corporate structure, financial condition and the reasons for and

objectives of these Cases, is set forth in the *Declaration of Mark Weinsten in Support of First Day Pleadings* [Docket No. 24] (the "First Day Declaration").

B. The NOx Emission Reduction Credits

4. In 1994, the South Coast Air Quality Management District ("SCAQMD")—the air pollution control agency for, among other locations, the urban portions of Los Angeles County, California—instituted a program known as Regional Clean Air Incentives Market, or RECLAIM. RECLAIM sets a factory-wide pollution limit for each business, and lets businesses decide what equipment, processes and materials they will use to meet their emission limits. Each business participating in RECLAIM receives RECLAIM emission reduction trading credits equal to its annual emissions limit. These credits are assigned each year and can be bought or sold for use within that year. Facilities must hold credits equal to their actual emissions. Companies that are innovative and can reduce emissions can then sell excess RECLAIM trading credits to other businesses that cannot meet their emission limits with their assigned credits alone, or that find the cost of buying credits cheaper than buying and installing new equipment. They can also sell the credits to investors or speculators in RECLAIM trading credits. The SCAQMD maintains a list of all parties holding credits, and has authority over the purchase and trade of RECLAIM credits.²

5. The Debtor holds 5,012 pounds of NOx RECLAIM emissions reduction trading credits (the "Emission Reduction Credits" or the "Assets") related to its Garden Grove Facility (as defined below) that it cannot use now that its manufacturing operations have terminated.

² REGIONAL CLEAN AIR INCENTIVES MARKET (RECLAIM), <http://www.aqmd.gov/home/programs/business/about-reclaim> (last visited March 7, 2017).

C. The Marketing of the Emission Reduction Credits

1. The Stalking Horse Bid and Marketing Process

6. The Debtors first marketed the Emission Reduction Credits as part of their efforts to sell substantially all of their assets. To that end, in July 2016 the Debtors engaged Houlihan Lokey Capital, Inc. ("Houlihan"), and in August Houlihan began to solicit interest in the Debtors' businesses and substantially all of their assets (the "Going Concern Sale Process"). *See, generally*, Burian Declaration. In the months leading up to these Cases, Houlihan's professionals conducted a robust prepetition marketing process, canvassing the market and contacting 53 potential strategic and financial buyers that they believed, based on their experience and involvement in the retail apparel market, might be interested in some or all of the Debtors' businesses. Of the 53 potential strategic and financial buyers Houlihan contacted, 30 parties signed non-disclosure agreements and were provided with access to extensive diligence materials.

7. Of the 30 parties who received diligence materials, seven submitted Indications of Interest with respect to certain of the Debtors' assets, and three of those parties ultimately submitted Letters of Intent. After engaging in extensive negotiations with all parties, the Debtors determined that the bid submitted by Gildan Activewear SRL (the "Stalking Horse" or "Gildan") for the Debtors' intellectual property, wholesale inventory and, at its option, the Debtors' manufacturing and distribution facilities in La Mirada, South Gate and Garden Grove, California, as well as the Debtors' corporate headquarters in Los Angeles (collectively, the "Stalking Horse Assets"), was the highest and best bid available to the Debtors. On November 13, 2016, the Debtors and Gildan entered into a stalking horse asset purchase agreement for the Stalking Horse Assets. The Debtors commenced the Cases the following day.

8. The Debtors continued the Going Concern Sale Process in bankruptcy. To that end, during the Cases, Houlihan contacted approximately 110 potential purchasers or strategic partners (57 of which had not been contacted prepetition). All parties that submitted appropriate confidentiality agreements were provided access to a data room and an opportunity to conduct diligence, including, in several instances, meeting with the Debtors' advisors and members of senior management.

9. As a result of these efforts, at the bid deadline of January 6, 2017, the Debtors received one competing bid for certain of the Stalking Horse Assets, two retail inventory liquidation bids, multiple bids for certain equipment and manufacturing facilities and four bids for unexpired real property leases.

10. The Debtors held a robust auction on January 9-10, 2017 (the "Auction"). And on January 12, 2017, the Court approved the sale of the Debtors' intellectual property and the Debtors' wholesale inventory to Gildan, who prevailed at the Auction (the "Gildan Sale"). The Gildan Sale—which ultimately did not include the Debtors' Garden Grove Facility (or any other manufacturing facilities)—closed on February 8, 2017. The Debtors have since shut down all of their manufacturing facilities, and are continuing to market their remaining assets to create additional value for their stakeholders.³

2. The Further Marketing of the Emission Reduction Credits

11. Among the assets the Debtors are continuing to market in the wake of the Gildan Sale are the Emission Reduction Credits. As neither the Debtor nor the Debtors will continue operating as a going concern—and thus will be unable to realize the value of the Emission Reduction Credits in the ordinary course of their businesses—the Debtor has

³ The Debtors retail operations are ongoing at this time, in the form of store closing sales.

determined that a Sale of the Emission Reduction Credits is in the best interest of the Debtor and its estate.

12. As discussed, a business holding excess RECLAIM trading credits—like the Emissions Reduction Credits—may sell those credits to businesses that do not hold enough RECLAIM credits to meet their allocated emissions limits. They may also sell the credits to investors and speculators in RECLAIM credits. The Debtors have thus explored monetizing their Emissions Reduction Credits by selling them on the RECLAIM trading market.

13. Because SCAQMD only permits certain licensed entities to broker RECLAIM credits for sale, the Debtor needed to work with a licensed SCAQMD broker to market and sell the Emission Reduction Credits. It consulted with two brokers in that regard. The first, Advanced Environmental Controls—with whom the Debtors had an established relationship—was only willing to assist the Debtor upon receiving an upfront payment of its brokerage fee. The second, Air Quality Consultants, Inc. ("AQC" or the "Broker"), had approached the Debtor in August 2016 to explore the Debtor's interest in selling its Emissions Reduction Credits. AQC has over 20 years of experience in brokering RECLAIM credits under SCAQMD oversight⁴ and had conducted significant research with respect to the Debtor's Emission Reduction Credits. Critically, AQC—unlike AEC—was willing to be paid its brokerage fee out of any sale proceeds. After careful consideration of these options, the Debtor determined that it was in its best interest for AQC to broker the Sale of the Emission Reduction Credits.

14. On or around January 19, 2017, the Debtor began working with AQC to gauge the interest of potential purchasers of the Emissions Reduction Credits. Soon thereafter,

⁴ See AQC'S HISTORY, <http://aqc-inc.com/about-aqc/aqcs-history/> (last visited Mar. 7, 2017).

AQC ultimately contacted 10 potential buyers, including various investors and speculators in the market and facilities that have purchased RECLAIM credits in the past or that have indicated interest in future purchases. AQC's marketing efforts resulted in two bids for the Assets. After evaluating the bids in consultation with the Broker, the Debtor determined that the Buyer's offer was the highest and best bid available for the Assets.

D. The Sale Agreement

15. On March 7, 2017, the Debtor entered into the a sale agreement (the "Sale Agreement," attached as Exhibit 1 to the proposed order) with the Buyer. Consummation of the Sale is contingent upon (a) approval of the Sale Agreement and the Sale by the board of directors of APP Winddown, LLC (the Seller's ultimate parent) (the "Parent Board"), and (b) approval of the Sale Agreement by a final order of the Bankruptcy Court, each by June 1, 2017.

16. Pursuant to Local Rule 6004-1, the other significant terms of the Sale Agreement are as follow:⁵

- (a) **Total Purchase Price.** The Buyer will purchase the Assets from the Debtors for a total amount of \$375,900.00 (the "Purchase Price").
- (b) **Brokerage Fee.** A brokerage fee of 3.0%, or \$11,277.00 (the "Brokerage Fee"), will be deducted from the Purchase Price.
- (c) **Submission of Paperwork to SCAQMD:** The Buyer and Seller agree that the Broker will submit the necessary paperwork to SCAQMD within four business days of the Broker's receipt of such paperwork.
- (d) **SCAQMD Transfer Fees:** The Buyer agrees to pay SCAQMD transfer fees of approximately \$152.98 (the "SCAQMD Transfer Fees").
- (e) **Delivery/Settlement of Funds.** The Purchase Price plus the SCAQMD Transfer Fees (the "Total Funds") are due from the Buyer to the Broker within three (3) business days of Broker's receipt of written confirmation from SCAQMD that the Assets have been transferred from Seller's account to the Buyer's account. Within three (3) days of the Broker's

⁵ To the extent the summary of the Sale Agreement's terms contained herein conflicts with the Sale Agreement, the Sale Agreement shall control in all respects.

receipt of the Total Funds from Buyer, the Broker will release the Purchase Price less the Brokerage Fee to the Seller via wire transfer.

- (f) **Termination.** If Sale and the Sale agreement are not (i) approved by a final order of the Bankruptcy Court by no later than June 1, 2017, or (ii) approved by the Parent Board by no later than June 1, 2017, then the Sale and Sale Agreement will automatically terminate and neither the Buyer nor the Seller shall have any further obligations to the other thereunder.

17. The terms of the Sale Agreement are fair and reasonable and are the product of arm's-length negotiation. Approving the Sale Agreement will commit the Buyer to purchase the Assets under the Sale Agreement and ensure that the Debtor will generate substantial value for its estate in return for assets which are no longer of any use to the Debtor's operations. The Debtor thus respectfully requests that the Court authorize entry into the Sale Agreement and the Debtor's performance thereunder pursuant to the terms and conditions of the Sale Agreement.

RELIEF REQUESTED

18. By this Motion, the Debtors request that the Court enter an order (a) authorizing the Debtor's entry into the Sale Agreement for the Sale of the Emission Reduction Credits to the Buyer (subject to confirmation and approval by SCAQMD) and (b) authorizing, but not directing, the Debtor to execute, deliver, perform under, consummate and implement the Sale. The Debtors also request certain protections for the sale of the Assets, including authorization of the Sale free and clear of all claims, liens, interests and encumbrances.

ARGUMENT

A. Entry Into the Sale Agreement and the Sale of the Assets Should be Approved Under Bankruptcy Code Section 363(b).

19. Section 363(b)(1) of the Bankruptcy Code authorizes the debtor to "use, sell, or lease" property of the estate with the Court's approval. 11 U.S.C. § 363(b)(1).

The Debtor's assets may be sold outside of the ordinary course of business, pursuant to section 363(b)(1) of the Bankruptcy Code, if a sound business purpose exists for doing so. *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F. 2d 1063, 1070 (2d. Cir. 1983); *see also The Dai-Ici Kangyo Bank Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate . . . courts require the debtor to show that a sound business purpose justifies such actions"). In evaluating whether a sound business purpose exists, "courts consider a variety of factors which essentially represent a business judgment test." *Id.* (internal quotations and citations omitted).

20. Section 105(a) of the Bankruptcy Code 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).

21. In its business judgment, the Debtor has concluded that the Sale of the Assets in accordance with the Sale Agreement will maximize recoveries to the Debtor's estate. As explained above, because the Debtor will no longer be operating as a going concern, and given that the Debtor was unable to sell the Assets as part of the Gildan Sale, the Debtor has no way to use or realize value from the Assets except to monetize them through a sale. Further, after extensively canvassing potential buyers in the market for these unique Assets and engaging with a number of potential purchasers, two of whom submitted bids for the Assets, the Debtors determined that the Buyer's offer was the highest and best available. The Sale Agreement was then negotiated with the Buyer at arm's-length and in good faith. Based on this, the Debtor concluded in its reasonable business judgment that selling the Assets to the Buyer will result in the highest and best possible return for the Debtor's estate and creditors under the circumstances.

22. For the forgoing reasons, the Debtor submits that the Sale constitutes a sound exercise of the Debtor's business judgment and respectfully requests that the Court approve the Sale Agreement and the Sale.

B. The Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code, Such that the Debtor may Sell the Assets Free and Clear of Claims, Liens, Interests and Encumbrances.

23. The Debtor further seeks to sell the Assets free and clear of claims, liens, interests and encumbrances. Section 363(f) of the Bankruptcy Code provides:

The Trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

24. As section 363(f) of the Bankruptcy Code is stated in the disjunctive, when proceeding pursuant to section 363(b), it is only necessary for a debtor to meet one of the five conditions of section 363(f). *See id.; Mich. Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) written in disjunctive; holding that court may approve sale "free and clear" provided at least one of the subsections of Bankruptcy Code 363(f) is met); *In re Zeigler*, 320 B.R. 362, 381 (Bankr. N.D.Ill. 2005); *In re Dundee Equity Corp.*, No. 89-B-10233 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. Mar. 6, 1992) ("[s]ection 363(f) is in the

disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of §363(f) have been met"); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same).

25. To the extent the Assets are encumbered, any holders of claims, liens interests or encumbrances in or against the Assets would be adequately protected as any such rights or interests would attach to the net proceeds of the Sale. Therefore, the proposed Sale should be approved under section 363(f) of the Bankruptcy Code and the Debtors should be authorized to sell the Assets free and clear of all claims, liens, interests and encumbrances. Moreover, a majority of the Debtor's prepetition secured lenders—who likely have a lien on the Assets pursuant to that certain credit agreement dated February 5, 2016 (as amended, amended and restated, supplemented or otherwise modified through the date hereof, the "Prepetition Credit Agreement") between and among American Apparel (USA), LLC (n/k/a APP USA Winddown, LLC), as borrower and borrower representative, American Apparel Retail, Inc. (n/k/a APP Retail Winddown, Inc.), American Apparel Dyeing & Finishing, Inc. (n/k/a APP D&F Winddown, Inc.), and KCL Knitting, LLC (n/k/a APP Knitting Winddown, LLC), as other borrowers, American Apparel, LLC (n/k/a APP Winddown, LLC) and Fresh Air Freight, Inc. (n/k/a APP Shipping Winddown, Inc.), as guarantors, Wilmington Trust, National Association, as administrative agent, and certain financial institutions from time to time party to thereto, as lenders—have consented to the Sale in accordance with the Prepetition Credit Agreement.

C. The Buyer is Entitled to the Protections of Section 363(m) and Section 363(n) of the Bankruptcy Code.

26. The Debtor requests that this Court make a finding that the Buyer has purchased the Assets in good faith within the meaning of section 363(m) of the Bankruptcy Code

and that the transaction contemplated by the Sale Agreement is not avoidable under section 363(n) of the Bankruptcy Code.

27. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization *to an entity that purchased or leased such property in good faith*, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). While the Bankruptcy Code does not define "good faith", the Seventh Circuit has held that:

[t]he requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

In the Matter of Andy Frain Services, Inc., 798 F.2d 1113, 1125 (7th Cir. 1986) (internal citations omitted); *see also In re Colony Hill Assocs.*, 111 F.3d 269, 276 (2d Cir. 1997)

("[t]ypically, the misconduct that would destroy a [purchaser]'s good faith status at a judicial sale involves fraud, collusion between the [purchaser] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders"); *In re Rock Industries Machinery Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978); *In re Marina City Associates, Ltd.*, 1995 WL 444366, at *10 (N.D.Ill. 1995); *In re Bakalis*, 220 B.R. 525, 537 (Bankr. E.D.N.Y. 1998).

28. Section 363(n) of the Bankruptcy Code provides that "[t]he trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the

value of the property sold exceeds the price at which such sale was consummated"

11 U.S.C. § 363(n); *see also In re Edwards*, 228 B.R. 552, 566-67 (Bankr. E.D. Pa. 1998).

29. The Sale is entitled to the requested protections. As discussed above and as will be discussed in the Weinstein Declaration, the consideration the Buyer will provide for the Assets under the Sale Agreement is fair and reasonable and is the result of a robust marketing process. The Sale Agreement was negotiated at arm's-length, and the Buyer and the Debtor have at all times during the sale process acted in good faith. The Sale was not the result of any fraud or collusion, nor is the Buyer an "insider" of the Debtor, as that term is defined in the Bankruptcy Code.

30. Accordingly, the Debtor requests that the Court finds that (a) the Buyer will be purchasing the Assets in good faith within the meaning of section 363(m) of the Bankruptcy Code and, thus, is entitled to the protections of section 363(m) of Bankruptcy Code and (b) the Sale or any part of the transaction contemplated by the Sale Agreement will not be avoidable under section 363(n) of the Bankruptcy Code.

NOTICE

31. Notice of this Motion shall be given to (a) the U.S. Trustee; (b) all parties filing a notice of appearance and request for notices pursuant to Bankruptcy Rule 2002; (c) Milbank, Tweed, Hadley & McCloy LLP and Fox Rothschild LLP, as counsel to the Committee of Lead Lenders; (d) Covington & Burling LLP, as counsel to Wilmington Trust, National Association, as administrative agent to the Debtors' prepetition secured lenders; (e) Klehr Harrison Harvey Branzburg LLP, as counsel to the Litigation Trustee; (f) Debevoise & Plimpton LLP, as counsel to Standard General, L.P.; (g) Sullivan & Cromwell LLP, as counsel to Gildan; (h) Cooley LLP, as counsel to the Creditors' Committee; (i) the Buyer, (j) SCAQMD, and (k) the Internal Revenue Service, the Securities and Exchange Commission and any other

federal, state or local governmental agency to the extent required by the Bankruptcy Code, the Bankruptcy Rules, the Local Rules or order of the Court. The Debtors submit that no other or further notice need be provided.

NO PREVIOUS REQUEST

32. No previous request for the relief sought herein has been made by the Debtors to this Court or any other court.

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CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed as Exhibit A hereto, granting the relief requested in the Application and such other and further relief as may be just and proper.

Dated: March 8, 2017
Wilmington, Delaware

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Laura Davis Jones

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Co-Counsel for the Debtors and
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EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<p>In re:</p> <p>APP WINDDOWN, LLC, et al.,¹</p> <p style="text-align: center;">Debtors.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>Chapter 11</p> <p>Case No. 16-12551 (BLS)</p> <p>(Jointly Administered)</p> <p>Re: Docket No. _____</p>
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**ORDER APPROVING DEBTOR'S MOTION FOR AN
ORDER (I) AUTHORIZING THE SALE OF CERTAIN NO_x EMISSION
REDUCTION TRADING CREDITS FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES, AND INTERESTS AND (II) GRANTING RELATED RELIEF**

This matter coming before the Court on the *Debtor's Motion for an Order (I) Authorizing the Sale of Certain NO_x Emission Trading Credits Free and Clear of All Liens, Claims, Encumbrances and Interests and (II) Granting Related Relief* (the "Motion"),² filed by APP D&F Winddown, Inc. (the "Debtor") for entry of an order (this "Order"), pursuant to sections 105 and 363 of chapter 11 of the United States Code (the "Bankruptcy Code"), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), authorizing the Debtor to enter into that certain sale agreement dated as of March 7, 2017 by and between the Debtor and Chaos Trading LLC (the "Buyer"), attached hereto as Exhibit 1 (the "Sale Agreement") and approving the sale, pursuant thereto, of certain NO_x emission trading credits free and clear of all liens, claims,

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): APP Winddown, LLC (f/k/a American Apparel, LLC) (0601); APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC) (8940); APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.) (7829); APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.) (0324); APP Knitting Winddown, LLC (f/k/a KCL Knitting, LLC) (9518); and APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.) (3870). The address of each of the Debtors is 747 Warehouse Street, Los Angeles, California 90021.

² Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

interests and encumbrances (the "Sale"); the Court having reviewed the Motion and having heard the statements of counsel regarding the relief requested in the Motion at any hearing before the Court (the "Hearing"); and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, its stakeholders, and all other parties-in-interest; and after due deliberation thereon, and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction over the Motion and the transaction contemplated by the Sale Agreement pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. Notice of this Motion and the Hearing was good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Sale Agreement or the transactions contemplated therein is required.

C. The legal predicates for the relief requested herein are sections 105 and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and Local Bankruptcy Rule 6004-1.

D. As demonstrated by the Weinsten Declaration, the testimony and other evidence proffered or adduced at any Hearing and the representations of counsel made on the record at any Hearing, the Debtor has marketed the Assets and conducted a fair sale process in a manner that afforded a full, fair, and reasonable opportunity for any party to make a higher or better offer to purchase the Assets. There were no higher and better offers for the Assets.

³ The findings of fact and the conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

E. Subject to entry of this Order, the Debtor (i) has full power and authority to execute the Sale Agreement and all other applicable documents contemplated thereby, and the transfer and conveyance of the Assets by the Debtor has been duly and validly authorized by all necessary action of the Debtor, (ii) has all of the power and authority necessary to consummate the transactions contemplated by the Sale Agreement, and (iii) has taken all actions necessary to authorize and approve the Sale Agreement and to consummate the transaction contemplated thereby, and no consents or approvals, other than those expressly provided for in the Sale Agreement, are required for the Debtor to consummate the Sale.

F. The Debtor has demonstrated good, sufficient, and sound business purposes and justification for the Sale because, among other things, the Debtor and its advisors diligently and in good faith analyzed all other available options in connection with the disposition of the Assets and determined that (i) the terms and conditions set forth in the Sale Agreement, (ii) the transfer to Buyer of the Assets pursuant to the terms of the Sale Agreement, and (iii) the purchase price agreed to as reflected in the Sale Agreement are all fair and reasonable and together constitute the highest or otherwise best value obtainable for the Assets.

G. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities, including without limitation: (i) the Buyer; (ii) the official committee of unsecured creditors; (iii) the prepetition secured lenders; (iv) all entities known to have asserted any Interests and/or Claims (as defined below) in, upon, or against the Assets; (v) the United States Trustee; (vi) all other parties who have filed a notice of appearance and request for service of documents in this case; and (vii) such other entities as are required to be served with notices.

H. The Sale Agreement was negotiated, proposed, and entered into by the Debtor and the Buyer without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtor nor the Buyer has engaged in any conduct that would cause or permit the Sale or any part of the transactions contemplated by the Sale Agreement to be avoidable under 11 U.S.C. § 363(n).

I. The Buyer is a good faith purchaser under 11 U.S.C. § 363(m) and, as such, is entitled to all of the protections afforded thereby. The Buyer will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing the transaction contemplated by the Sale Agreement at all times after the entry of this Order.

J. The Buyer is not an "insider" of the Debtor, as that term is defined in section 101(31) of the Bankruptcy Code. No common identity of directors or controlling stockholders exists between the Buyer and the Debtor.

K. The consideration provided by the Buyer for the Assets pursuant to the Sale Agreement (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Assets, (iii) will provide a greater recovery for the Debtor's stakeholders than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession thereof.

L. The transfer of the Assets to the Buyer will be a legal, valid, and effective transfer of the Assets and shall vest the Buyer with all right, title, and interest of the Debtor to the Assets free and clear of any and all liens, claims, defenses (including rights of setoff and recoupment), interests, and encumbrances of any type whatsoever (whether known or unknown, secured or unsecured or in the nature of setoff or recoupment, choate or inchoate, filed or

unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the chapter 11 cases, and whether imposed by agreement, understanding, law, equity, or otherwise, including claims otherwise arising under doctrines of successor liability) (all such liens, claims, interests, and encumbrances, the "Interests and/or Claims").

M. If the Sale of the Assets with respect to the Debtor were not free and clear of all Interests and/or Claims as set forth in the Sale Agreement and this Order, or if the Buyer would, or in the future could, be liable for any of the Interests and/or Claims as set forth in the Sale Agreement and this Order, the Buyer would not have entered into the Sale Agreement and would not consummate the Sale or the transactions contemplated by the Sale Agreement, thus adversely affecting the Debtor, its estate, and its stakeholders.

N. The Debtor may sell their interests in the Assets free and clear of all Interests and/or Claims because, in each case, one or more of the standards set forth in 11 U.S.C. § 363(f)(1)-(5) has been satisfied. All holders of Interests and/or Claims who did not object, or withdrew their objections to the Sale, are deemed to have consented to the Sale pursuant to 11 U.S.C. § 363(f)(2), and all holders of Interests and/or Claims are adequately protected by having their Interests and/or Claims, if any, attach to the cash proceeds of the Sale ultimately attributable to the property against or in which they claim an Interest and/or Claim with the same priority, validity, force, and effect as they attached to such property immediately before the closing of the Sale.

O. Approval of the Sale Agreement and consummation of the Sale of the Assets at this time are in the best interests of the Debtor, its estate, and its stakeholders, and other parties-in-interest. Based on the record of any Hearing, and for the reasons stated on the record at any Hearing and in the Weinstein Declaration, the Sale contemplated by the Sale Agreement must be commenced promptly to maximize the value that the Buyer may realize from the Sale, and the value that the Debtor may realize from entering into the Sale Agreement. Accordingly, cause exists to lift the stay to the extent necessary, as contemplated by Bankruptcy Rules 4001(a).

P. Nothing in the Sale Agreement creates any third party beneficiary rights in any entity not a party to the Sale Agreement.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

A. General Provisions

1. The Motion is GRANTED as set forth herein. Any remaining objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections are overruled on the merits with prejudice and denied. All parties and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief sought therein.

B. Approval of the Sale Agreement

2. Pursuant to sections 105 and 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and Local Bankruptcy Rules 6004-1, the Sale Agreement and all of the terms and conditions thereof are hereby approved. The Debtor is authorized, but not directed, to execute and deliver, and empowered to perform under, consummate, and implement the Sale Agreement, together with all additional instruments and documents as may be reasonably necessary or desirable to implement the Sale Agreement, and to take all further actions necessary

or appropriate to perform its obligations thereunder or as may be requested by the Buyer for the purpose of assigning, transferring, granting, conveying, and conferring to the Buyer the Assets.

3. This Order and Agreement shall be binding in all respects upon the Debtor, its estate, and its stakeholders, the Buyer and its affiliates, successors, and assigns, and any affected third parties, including, but not limited to, all entities asserting an Interest and/or Claim against or in the Assets to be sold to the Buyer pursuant to the Sale Agreement, notwithstanding any subsequent appointment of any trustee or other fiduciary under any section of any chapter of the Bankruptcy Code, as to which trustee or other fiduciary such terms and provisions likewise shall be binding.

4. The Sale Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court; provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtor's estate in the good faith business judgment of the Debtor.

C. Sale and Transfer of the Assets

5. Except as expressly permitted or otherwise specifically provided for in the Sale Agreement or this Order, pursuant to 11 U.S.C. §§ 363(b) and 363(f), upon the consummation of the Sale Agreement, the Debtor's right, title, and interest in the Assets shall be transferred to the Buyer free and clear of all Interests and/or Claims, with all such Interests and/or Claims to attach to the cash proceeds of the Sale in the order of their priority, with the same validity, force, and effect that they had as against the Assets immediately before such transfer, subject to any claims and defenses the Debtor may possess with respect thereto.

6. The transfer of the Assets to the Buyer pursuant to the Sale Agreement constitutes a legal, valid, and effective transfer of the Assets, and shall vest the Buyer with all

right, title, and interest of the Debtor in and to the Assets free and clear of all Interests and/or Claims of any kind or nature whatsoever.

7. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtor to sell and transfer the Assets to the Buyer, in each case in accordance with the terms of the Sale Agreement or this Order.

8. Upon the closing of the Sale, this Order shall be construed as and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of all of the Assets to the Buyer pursuant to the terms of the Sale Agreement.

9. Upon the closing of the Sale, each of the Debtor's creditors is authorized and directed to execute such documents and take all other such actions as may be necessary to release their respective Interests and/or Claims against the Assets, if any, as such Interests and/or Claims may have been recorded or may otherwise exist.

10. Each and every United States federal, state, and local governmental agency or department, and any other person or entity, is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Sale Agreement.

11. All entities which are currently, or as of the closing of the Sale may be, in possession of some or all of the Assets to be sold, transferred, or conveyed pursuant to the Sale Agreement are hereby directed to surrender possession of the Assets to the Buyer upon the closing of the Sale.

12. All entities holding Interests and/or Claims against or in the Debtor or the Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and

permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests and/or Claims of any kind or nature whatsoever against the Buyer, its property, its successors and assigns, or the Assets with respect to any Interest and/or Claim of any kind or nature whatsoever which such person or entity had, has, or may have against or in the Debtor, its estate, its officers, its directors, its shareholders, or the Assets.

D. Additional Provisions

13. Absent further order of this Court, the sale and use of any proceeds shall comply in all respects with the orders approving the Debtor's senior secured post-petition financing [Docket Nos. 114 and 299] and the final order authorizing the Debtor's use of cash collateral [Docket No. 492], and all related financing documents (as such arrangements, orders and financing documents may have been amended from time to time in accordance with the terms set forth therein).

14. The consideration provided by the Buyer for the Assets under the Sale Agreement is hereby deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, and the laws of the United States and any state, territory, or possession thereof.

15. The transactions contemplated by the Sale Agreement are undertaken by the Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale of the Assets shall not affect the validity of the Sale to the Buyer, unless such authorization is duly stayed pending such appeal. The Buyer is a purchaser in good faith of the Assets pursuant to section 363(m) of the Bankruptcy Code, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

16. The consideration provided by the Buyer for the Assets under the Sale Agreement is fair and reasonable and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

17. The failure specifically to include or to reference any particular provision of the Sale Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Sale Agreement be authorized and approved in its entirety.

18. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified with respect to the Debtor to the extent necessary, without further order of this Court, to allow the Buyer to deliver any notice provided for in the Sale Agreement and allow the Buyer to take any and all actions permitted or required under the Sale Agreement in accordance with the terms and conditions thereof. The Buyer shall not be required to seek or obtain any further relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Sale Agreement or any other sale-related document.

19. To the extent any other order in this case (including any order confirming a chapter 11 plan, any order entered after a conversion of this case under chapter 7 of the Bankruptcy Code or any order dismissing these chapter 11 cases) alters, conflicts with, or derogates from the provisions of this Order, the provisions of this Order shall control.

20. This Court retains exclusive jurisdiction to interpret, construe, enforce, and implement the terms and provisions of this Order, the Sale Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets to the Buyer, (b) compel delivery of the purchase price or

performance of other obligations owed pursuant to the Sale Agreement, (c) resolve any disputes arising under or related to the Sale Agreement, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, and (e) protect the Buyer against any Interests and/or Claims against or in the Debtor or the Assets, of any kind or nature whatsoever, attaching to the proceeds of the Sale.

21. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted pursuant to this Order.

22. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

Dated: Wilmington, Delaware
_____, 2017

Honorable Brendan L. Shannon
CHIEF UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Sale Agreement



15541 Commerce Lane
 Huntington Beach, CA 92649
 P: (714) 397-5508

Approval Contingent Agreement for the Purchase of South Coast Air Quality Management District NOx RECLAIM Trading Credits Transaction

Attention: South Coast Air Quality Management District ("SCAQMD")
Date: 03/07/2017
Seller: American Apparel Knit and Dye
Buyer: Chaos Trading LLC
Product(s): Coastal Cycle 1 NOx RECLAIM Trading Credits from 2017+ in perpetuity
Transaction Type: Private & Immediate Sale

Cycle	Zone	Vintage	Volume	Price/Lb.	Total Sales Price
1	Coastal	2017+	5,012	\$ 75	\$ 375,900.00

Settlement: Subject to the conditions below, on an immediate basis, Seller agrees to deliver to Buyer 5,012 lbs. of Coastal Cycle 1 NOx RTCs 2017+ in perpetuity at \$75 per pound; totaling \$375,900.00.

Buyer agrees to pay SCAQMD Transfer fees.

Within five (5) business days of Contingencies being met, and subject to the conditions below, Buyer and Seller agree to sign and date Confirmation of Transaction ("Confirmation") and one (1) 2007-2 RTC Trade Form, and send executed confirmation and 2007-2 RTC Trade Form to Broker for submission to the SCAQMD within four business days.

Buyer will transfer Purchase Price, Brokerage, and SCAQMD Transfer fees to Broker within three (3) business days of written confirmation from the SCAQMD. Within three (3) days of receipt of payment from Buyer, Broker will send Purchase Price less brokerage to Seller.

Contingencies: This transaction is contingent upon (i) Seller receiving approval by the Board of Directors for American Apparel, LLC (Seller's ultimate parent), and (ii) Seller receiving final approval of this Agreement by the Bankruptcy Court for the District of Delaware. If either of these contingencies are not fulfilled by June 1, 2017, this transaction shall automatically terminate and neither party shall have any further obligation to the other.

Counterparties: Buyer

Mark McCormack
 Chaos Trading LLC
 225 West 39th Street, 9th Floor
 New York, New York 10018
 P: 212-610-1730
Mark.mccormack@rnkcapital.com

Seller

Tiffany Felix
 American Apparel Knit and Dye
 747 Warehouse Street
 Los Angeles, CA 90021
 P: 213-488-0226
tiffanyfelix@americanapparel.net

Buyer:	Seller:
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Buyer and Seller are the parties (the "Parties") to the transaction (the "Transaction") described in this confirmation. Each of the Parties agrees that (i) Air Quality Consultants Inc. acted solely as the broker for this Transaction, (ii) the Parties themselves determined the terms and conditions of the Transaction, (iii) Air Quality Consultants made no representations or warranties regarding the financial capability or legal authority of either Party to perform its obligations under the Transaction (the "Obligations"), (iv) the Parties are solely responsible for the performance of their respective Obligations, (v) if a Party defaults in its Obligations, the non-defaulting Party will look solely to the defaulting Party for the performance of its obligations, (vi) Air Quality Consultants Inc. will have no duty to perform a defaulting Party's Obligations or to pay any damages caused by or related to the default, (vii) a Party will have no recourse against Air Quality Consultants Inc. if the other Party is prohibited or restricted from entering into the Transaction or from performing any or all of its Obligations, and (viii) each Party will hold Air Quality Consultants Inc. harmless from any liabilities which may arise out of any dispute between the Parties with respect to the Transaction.



<i>Signature:</i>	<i>Title:</i>	<i>Signature:</i>	<i>Title:</i>
<i>Printed Name:</i>	<i>Date:</i>	<i>Printed Name:</i>	<i>Date:</i>

Buyer and Seller are the parties (the "Parties") to the transaction (the "Transaction") described in this confirmation. Each of the Parties agrees that (i) Air Quality Consultants Inc. acted solely as the broker for this Transaction, (ii) the Parties themselves determined the terms and conditions of the Transaction, (iii) Air Quality Consultants made no representations or warranties regarding the financial capability or legal authority of either Party to perform its obligations under the Transaction (the "Obligations"), (iv) the Parties are solely responsible for the performance of their respective Obligations, (v) if a Party defaults in its Obligations, the non-defaulting Party will look solely to the defaulting Party for the performance of its obligations, (vi) Air Quality Consultants Inc. will have no duty to perform a defaulting Party's Obligations or to pay any damages caused by or related to the default, (vii) a Party will have no recourse against Air Quality Consultants Inc. if the other Party is prohibited or restricted from entering into the Transaction or from performing any or all of its Obligations, and (viii) each Party will hold Air Quality Consultants Inc. harmless from any liabilities which may arise out of any dispute between the Parties with respect to the Transaction.