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Counsel for the Chapter 11 Trustee

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

| | | |
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| | : | |
| In re | : | Chapter 11 |
| | : | |
| FIRESTAR DIAMOND INC., <i>et al.</i> , ¹ | : | Case No. 18-10509 (SHL) |
| | : | |
| Debtors. | : | Jointly Administered |
| | : | |
| ----- | X | |

**CHAPTER 11 TRUSTEE’S MOTION FOR ORDER ESTABLISHING PROCEDURES FOR
PRIVATE SALES OF ASSETS FREE AND CLEAR OF LIENS AND OTHER INTERESTS**

Richard Levin, not individually but solely as chapter 11 trustee (the “**Trustee**”) for the above-captioned debtors (the “**Debtors**”), moves under 11 U.S.C. §§ 105 and 363 and Federal Rule of Bankruptcy Procedure 6004 for an order establishing procedures for private sales of assets of Debtors Firestar Diamond, Inc., Fantasy, Inc., and Old AJ, Inc. f/k/a A. Jaffe, Inc. free and clear of liens and other interests. In support of the Motion, the Trustee respectfully states:

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Firestar Diamond, Inc. (2729), Fantasy, Inc. (1673), and Old AJ, Inc. f/k/a A. Jaffe, Inc. (4756).

JURISDICTION & VENUE

1. The Court has jurisdiction over this matter under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2) in which the Court may constitutionally enter a final order, and the Trustee consents to the entry of a final order by the Court. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

2. This Motion is made under sections 105 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), among other sections and Rules.

BACKGROUND

3. On February 26, 2018, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing these chapter 11 cases. On June 14, 2018, the Court entered an order approving the appointment of the Trustee. [Dkt. 227.]

4. Before the date of the filing of the chapter 11 petitions, each of the Debtors conducted business as wholesalers of fine jewelry. The Trustee is now managing the Debtors’ estates to maximize recoveries for the Debtors’ creditors.

5. The Trustee has employed a jewelry expert and appraiser to advise him on the values of the estate’s inventory and on the market for sales, but the Trustee has not requested formal appraisals of the inventory, because the number of individual items in the inventory is large, and appraisals of all items would be unduly expensive and unnecessary to enhance the value the Trustee expects to realize.

6. On August 24, 2018, the Court approved the Trustee’s proposed procedures for selling estate assets free and clear of all liens and other interest by public sales [Dkt. 389] (the “**Public Sale Procedures Order**”).

7. After the entry of the Public Sale Procedures Order, the Trustee provided notice of and held auctions for approximately 85 lots of the Debtors' intellectual property and inventory. Nearly all those sales have been approved by the Court and are proceeding to closing.

8. The Trustee has a substantial amount of inventory, intellectual property, and other assets that are substantially similar to the assets already sold, which the Trustee now intends to sell. Having completed auctions of dozens of lots, the Trustee believes he now has a reliable sense of the market for the remaining assets. He believes that the Debtors' estates will be best served by establishing streamlined procedures permitting the Trustee to sell the Debtors' remaining assets through private sales, subject to potential overbids.

9. To facilitate the proposed private sales and reduce the court and legal time and expense to comply with the Bankruptcy Code, the Rules, and the Local Bankruptcy Rules, the Trustee proposes the following procedures for the private sale of remaining inventory and intellectual property and seeks this Court's approval of the procedures.

PROPOSED PRIVATE SALE PROCEDURES

10. As they did for the prior sales, the Trustee and his appraiser will group the assets into lots for sale. They will contact parties they believe might be interested in purchasing each lot, based on the purchases by buyers who participated in the public sale auctions previously held by the Trustee.

11. Then, exercising his business judgment, the Trustee will negotiate the best and highest terms for the sale of each lot. He will then file with the Court a notice of his intent to sell the lot ("**Notice of Private Sale**"). The Notice of Private Sale will be in the form attached to this Motion as **Exhibit A** and will include a description of the property to be sold, the identity of the purchaser, the purchase price, the deadline to object to the proposed sale or to submit an overbid, and the date on which the Trustee intends to consummate the proposed sale unless an objection

to the proposed sale is filed or an overbid is received. The Notice of Private Sale will also describe the terms of the sale, which are set forth in the form of **Bill of Sale** attached to this Motion as **Exhibit B**, which the Trustee will use to document the sale, and will provide a copy of the required **Declaration of Connections** describing any connections the buyer might have with the Debtors' prior management, in the form attached to this Motion as **Exhibit C**, which the Trustee will require of any buyer of the assets.

12. The Notice of Private Sale will also identify any liens or other interests in the property of which the Trustee is aware based on the Debtors' books and records, their Schedules and Statements of Financial Affairs, and on public filings, so that any entity that holds such a lien or other interest receives notice of the proposed sale free and clear. The Trustee intends that this Motion, coupled with each Notice of Private Sale, serve as the motion required under Rule 6004(c).

13. The Trustee will serve the Notice of Private Sale in accordance with the *Order Establishing Notice and Case Management Procedures* [Dkt. 530] (the "**Notice Procedures Order**"). The deadline to object to the Notice of Private Sale or to submit an overbid to the Trustee shall each be seven days after the Notice of Private Sale is filed and served.

14. If an objection or other response is filed, the Trustee will promptly schedule a hearing on the objection and will not consummate the proposed sale unless and until the Court overrules the objection. If an overbid is received, the Trustee will, exercising his business judgment, negotiate the best and highest terms for the sale of the applicable lot among the interested parties. He will then file and serve a new Notice of Private Sale in accordance with the procedures described above.

15. If no objections or overbids are received, to the extent he has not done so already, the Trustee will submit a proposed order approving the private sale, substantially in the form attached as **Exhibit D**, to the Court.

RELIEF REQUESTED

16. By this Motion, under Bankruptcy Code sections 363(b), (f) and (m), Bankruptcy Rules 6004 and 2002, and Local Bankruptcy Rules 9074-1 and 6004-1, the Trustee seeks an order:

- A. Approving the Trustee's proposed sale procedures to apply to private sales of lots of inventory, intellectual property, and other assets that are property of the estates, including approval of the form of the Notice of Private Sale;
- B. Treating this Motion, when combined with each Notice of Private Sale, as a motion under Bankruptcy Rule 6004(c) to authorize each sale to be free and clear of liens, claims, encumbrances, and other interests;
- C. Shortening the time for objection or other response to each Notice of Private Sale to seven calendar days and requiring the Trustee to set a hearing before this Court on any objection or other response to a Notice of Private Sale;
- D. Deeming each Notice of Private Sale that attaches a proposed order approving the sale as constituting a presentment under Local Bankruptcy Rule 9074-1(b) that may be entered immediately after the conclusion of the objection period;
- E. Determining that the buyer's declaration in the form attached as Exhibit C to this Motion constitutes adequate *prima facie* evidence of the buyer's good faith within the meaning of Bankruptcy Code section 363(m) and that, absent an objection, no additional evidence of good faith is required for the Court to make a good faith finding;

- F. Limiting the parties entitled to notice of each proposed sale to those provided for in the Notice Procedures Order;
- G. Waiving the 14-day stay under Bankruptcy Rule 6004(h), and permitting the order approving a proposed sale to be effective and enforceable immediately; and
- H. Finding that the Trustee has given appropriate notice under the circumstances of this Motion and of the proposed sale procedures and that no further or other notice is necessary.

BASIS FOR RELIEF

17. The Bankruptcy Code permits a trustee to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). In approving a transaction under section 363(b)(1), courts consider whether the trustee exercised sound business judgment. *See In re Chateaugay Corp.*, 973 F.2d 141, 144-45 (2d Cir. 1992) (section 363(b) was applicable because sound business judgment supported the sale of the assets); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1072 (2d Cir. 1983) (the application of section 363(b) must be supported by “some articulated business justification, other than appeasement of major creditors” and that “a judge determining a § 363(b) application [must] expressly find from the evidence presented before him at the hearing a good business reason to grant such an application”); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003) (citing *In re Lionel Corp.*, 722 F.2d at 1071) (emphasizing the business judgment standard).

18. Although the determination of what constitutes a sufficient business reason depends on the facts and circumstances of each case, a trustee often satisfies the business judgment standard if he “acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. 650,

656 (Bankr. S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Courts should not generally interfere with business decisions absent a showing of “bad faith, self-interest, or gross-negligence.” *Id.* at 646.

19. The Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules impose procedural requirements on sales of property of the estate. Section 363(b) permits a trustee to sell property of the estate “after notice and a hearing.” Rule 6004(a) requires notice of a proposed sale of property of the estate to be given under Rule 2002(a)(2), (c)(1), (i), and (k). Rule 2002(a)(2) requires 21 days’ notice of a proposed sale. Rule 2002(c)(1) requires that the notice “include the time and place of any public sale, the terms and condition as of any private sale and the time fixed for filing objections.” Rule 2002(i) permits the court to limit notice to those who have served on the trustee and filed with the court a request for notice and to the United States trustee. Rule 2002(k) requires notice to the United States trustee.

20. Local Rule 9074-1(c)(1) requires that a notice of proposed action that may be taken “after notice and a hearing” set forth “(A) a statement of the action proposed to be taken or the order to be presented, including a concise statement of the terms and conditions of, and the reasons for, the proposed action or order; (B) the date by which objections or responses to the proposed action or order must be served and filed; (C) the date and time when the action will be taken or the proposed order will be presented for signature if there is no objection, and a statement that the action will be taken or the order may be entered without a hearing unless a timely objection is made; and (D) the date on which a hearing will be held if a timely objection is made.” Local Rule 9074-1(c)(2) requires 21 days’ notice, as required under Rule 2002, or seven days, if the Court has issued an order requiring that notice be given to fewer than all creditors, and permits objections until seven days before the scheduled hearing or presentment date if 21 days’ notice is given or one day if seven days’ notice is given. Under Local Rule 9074-1(c)(5), a

hearing is not held unless a timely objection is filed. Local Rules 9074-1(b) and (d) permit an order to be submitted on presentment under certain conditions.

21. To sell property of the estate free and clear of liens and other interests, Rule 6004(c) requires a motion under Rule 9014 “served on parties who have liens or other interests in the property to be sold.” Rule 9014 governs motion practice.

22. The Trustee believes the proposed sale procedures comply with each of these requirements. The proposed sales meet the requirements for sales out of the ordinary course of business under section 363(b). The Trustee has determined that he must sell all of the Debtors’ remaining inventory, intellectual property, and other assets because the Debtors’ businesses have been terminated, and converting the assets to cash is necessary to provide funds to pay creditors and other parties in interest. In the Trustee’s judgment, after conducting approximately 80 auctions in this case and consulting with the jewelry industry expert he has employed, selling the Debtors’ remaining assets through private sales is likely to realize the highest value for the assets.

23. Having completed approximately 85 auctions already, the Trustee believes he has a reliable sense of the market for the Debtors’ assets, with respect to both their fair market value and the parties most likely to be interested in them. As the Trustee intends to solicit the opportunity to participate in each private sale to all parties that have previously participated in auctions held by the Trustee, the proposed sale procedures are designed to target the most likely prospective purchasers. Moreover, the Trustee believes that selling the Debtors’ remaining assets through private sales will enable him to reach a broader pool of prospective buyers who may not otherwise wish to deal with the hassle of a public auction process. Any proposed private sale will remain subject to overbids, which will further ensure that the Trustee realizes the highest value for the Debtors’ assets. Private sales will also save the estates the additional administrative expenses associated with conducting further auctions.

24. The proposed procedures comply with Local Bankruptcy Rule 9074-1(c) by providing, in the Notice of Private Sale, at least seven days' notice to the United States Trustee and other parties required by the Notice Procedures Order of the presentment of an order approving each sale and requiring the Trustee to set a hearing date on any objection or other response to such a Notice that might be filed.

25. Finally, to obtain an order authorizing a sale free and clear of liens and other interests, Bankruptcy Rule 6004(c) requires a motion to be served on parties who have a lien or other interest in the property to be sold. Based on the Debtors' Schedules and Statements of Financial Affairs, the Trustee believes that the only liens or other interest in the property to be sold are held by HSBC Bank USA and Israel Discount Bank of New York (the "**Lenders**"), whose liens and claims have previously been stipulated and validated.² Moreover, as set forth in the stipulation the Trustee recently filed [Dkt. 563], the Trustee intends to make a distribution to the Lenders in full satisfaction of their claims against the Debtors in the near future. At that time, the Lenders will have no interest in any proposed private sales.

26. The Trustee is serving this Motion in accordance with the Notice Procedures Order. The Trustee believes that the procedures comply with Bankruptcy Rule 6004(f) without the need for a separate motion under Bankruptcy Rule 9014 to sell free and clear for each proposed sale.

27. As adequate protection for any entity that asserts a lien or other interest in the property to be sold, the Trustee proposes that the lien or other interest attach to the proceeds of sale to the same extent, validity and priority, if any, as it attaches to the property itself, subject to

² See *Seventh Interim Order (I) Authorizing Debtors Firestar Diamond, Inc. And Fantasy, Inc.'s Use Of Cash Collateral, (II) Granting Adequate Protection Claims And Liens, (III) Modifying The Automatic Stay, (IV) Scheduling A Final Hearing, And (V) Granting Related Relief*, entered August 24, 2018 [Dkt. 391] ("**Seventh Cash Collateral Order**").

the disposition of proceeds in accordance with the Seventh Cash Collateral Order and the *Stipulation And Order Between Chapter 11 Trustee Richard Levin And Punjab National Bank Regarding The Allocation Of Sale Proceeds*, entered July 26, 2018 [Dkt.327].

WHEREFORE, the Trustee respectfully requests that this Court issue an order substantially in the form of the proposed order attached as Exhibit E:

- A. Approving the Trustee's proposed sale procedures to apply to private sales of lots of inventory, intellectual property, and other assets that are property of the estates, including approval of the form of notice of each private sale;
- B. Treating this Motion, when combined with each Notice of Private Sale, as an adequate motion under Bankruptcy Rule 6004(c) to authorize each sale to be free and clear of liens and other interests;
- C. Shortening the time for objection or other response to each Notice of Private Sale to seven calendar days and requiring the Trustee to set a hearing before this Court on any objection or other response to a Notice of Proposed Sale;
- D. Deeming each Notice of Private Sale that attaches a proposed order approving the sale as constituting a presentment under Local Bankruptcy Rule 9074-1(b) that may be entered immediately after the conclusion of the objection period;
- E. Determining that the buyer's declaration in the form attached as Exhibit C to this Motion constitutes adequate *prima facie* evidence of the buyer's good faith within the meaning of Bankruptcy Code section 363(m) and that absent an objection, no additional evidence of good faith is required for the Court to make a good faith finding;

- F. Limiting the parties entitled to notice of each proposed sale to those provided for in the Notice Procedures Order;
- G. Waiving the 14-day stay under Bankruptcy Rule 6004(h), and permitting the order approving a proposed sale to be effective and enforceable immediately;
- H. Finding that the Trustee has given appropriate notice under the circumstances of this Motion and of the proposed sale procedures and that no further or other notice is necessary; and
- I. Granting such other further relief as the Court deems equitable.

Dated: November 5, 2018
New York, New York

Respectfully submitted,

JENNER & BLOCK LLP

By: /s/ Marc Hankin

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Counsel for the Chapter 11 Trustee

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

FIRESTAR DIAMOND, INC., *et al.*

Debtors.¹

Chapter 11

No. 18-10509 (SHL)

(Jointly Administered)

**NOTICE OF CHAPTER 11 TRUSTEE'S MOTION FOR ORDER
ESTABLISHING PROCEDURES FOR PRIVATE SALES OF ASSETS FREE
AND CLEAR OF ALL LIENS AND OTHER INTERESTS**

On November 5, 2018, Chapter 11 Trustee Richard Levin (the "**Trustee**") filed the annexed *Chapter 11 Trustee's Motion For Order Establishing Procedures For Private Sales Of Assets Free And Clear Of All Liens And Other Interests* (the "**Private Sale Procedures Motion**").

A hearing on the Private Sale Procedures Motion will be held before the Honorable Sean H. Lane of the United States Bankruptcy Court for the Southern District of New York on **November 29, 2018 at 10:00 a.m. (Eastern Daylight Time)**, or as soon thereafter as counsel may be heard (the "**Hearing**"), in Courtroom 701 of the United States Bankruptcy Court for the

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Firestar Diamond, Inc. (2729), Fantasy, Inc. (1673), and Old AJ, Inc. f/k/a A. Jaffe, Inc. (4756).

Southern District of New York (the “**Bankruptcy Court**”), One Bowling Green, New York, New York 10004.

Objections, if any, to approval of the Private Sale Procedures Motion and entry of the proposed order must: (i) be made in writing; (ii) state with particularity the grounds therefor; (iii) be filed with the Bankruptcy Court (with a copy to the Judge’s chambers); and (iv) be served upon (a) counsel to the United States Trustee for Region 2, 201 Varick Street, Suite 1006, New York, NY 10014 (Attn: Richard Morrissey, Esq.); (b) counsel to the Trustee, Jenner & Block LLP, 919 Third Avenue, New York, New York 10022 (Attn: Richard Levin, Esq.); (c) counsel to the Debtors, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st St., 17th Floor, New York, NY 10036 (Attn: Ian Winters, Esq.); (d) counsel to Israel Discount Bank of New York, Troutman Sanders LLP, 875 Third Avenue, New York, New York 10022 (Attn: Brett D. Goodman, Esq.) and Troutman Sanders LLP, 600 Peachtree Street, NE., Suite 3000, Atlanta, Georgia (Attn: Harris B. Winsberg, Esq. and Matthew R. Brooks, Esq.); (e) counsel to HSBC Bank USA, National Association, Allen & Overy LLP 1221 Avenue of the Americas, New York, New York 10020 (Attn: Ken Coleman, Esq.); and (f) counsel to Punjab National Bank, Cleary, Gottlieb, Steen & Hamilton LLP, One Liberty Plaza, New York, NY 10006 (Attn: Sean O’Neal) so as to be received by each of them no later than 5:00 p.m. (Eastern Daylight Time) on November 22, 2018 (the “**Objection Deadline**”).

If no responses or objections are served by the Objection Deadline, the relief may be granted as requested in the Private Sale Procedures Motion without further notice or a hearing. You need not appear at the Hearing if you do not object to the relief requested in the Private Sale Procedures Motion. The Hearing may be continued or adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or at a later hearing.

Dated: November 5, 2018
New York, New York

Respectfully submitted,

JENNER & BLOCK LLP

By: /s/ Marc Hankin

Marc Hankin

Carl Wedoff

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Counsel for the Chapter 11 Trustee

Exhibits

- A. Form of Notice of Proposed Private Sale
- B. Form of Bill of Sale
- C. Form of Connections Declaration
- D. Form of Sale Order
- E. Proposed Order Approving Motion for Order Establishing Sale Procedures

EXHIBIT A

Notice of Proposed Private Sale

JENNER & BLOCK LLP
 Marc Hankin
 Carl Wedoff
 919 Third Avenue, 37th Floor
 New York, New York 10022
 Telephone: (212) 891-1600

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

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| | : | |
| In re | : | Chapter 11 |
| | : | |
| FIRESTAR DIAMOND INC., <i>et al.</i> , ³ | : | Case No. 18-10509 (SHL) |
| | : | |
| Debtors. | : | Jointly Administered |
| | : | |
| ----- | X | |

NOTICE OF PROPOSED PRIVATE SALE

Richard Levin, Chapter 11 Trustee (the “**Trustee**”) for the above-captioned debtors (the “**Debtors**”), proposes to sell for \$_____ in cash the following property of the Debtors’ estates:

[Property description] (the “**Property**”)

The Trustee certifies that the sale process was conducted regularly and without any appearance of collusion among potential buyers.

The Trustee intends to consummate the sale of the Property to Buyer upon the Court’s entry of an order approving the sale.

The sale will be made free and clear of all liens, claims, encumbrances, and other interests in the Property, with any such interests to attach to the proceeds of the sale. [The Trustee believes

³ The debtors and the last four digits of their respective taxpayer identification numbers are as follows: Firestar Diamond, Inc. (2729), Fantasy, Inc.(1673), and A. Jaffe, Inc. (4756).

that the only such interests in the Property are the security interest of HSBC Bank USA and Israel Discount Bank of New York / The Trustee believes there are no such interests in the Property.]

On November __, 2018, the Court entered an *Order Establishing Private Sale Procedures For Trustee To Sell Assets Free And Clear Of All Liens And Other Interests* [Dkt. __] (the “**Private Sale Procedures Order**”). Under the Private Sale Procedures Order, any overbid for the Property must be submitted to the Trustee, and any other objection or other response to the Proposed Sale must be filed with the Court and served on the parties listed in the Sale Service List maintained by Omni Management Group ([website link for list of parties entitled to notice](#)) in the manner specified in that list, on or before the date that is seven days after the date of this Notice.

If there are no overbids, objections, or other responses to the proposed sale, the Chapter 11 Trustee will present an order to the Court to approve the sale, and the Court may issue the order approving the sale without further notice or a hearing.

If the Chapter 11 Trustee receives an overbid, he will, exercising his business judgment, negotiate the best and highest terms for the sale of the applicable lot among the interested parties and file and serve a new Notice of Private Sale in accordance with the procedures described above.

If there is an objection or other response, the Chapter 11 Trustee will schedule a hearing on the objection or response and notify the objector and other parties in interest of the date, time, and place of the hearing and will not consummate the proposed sale unless the Court approves.

Dated: _____, 2018.
New York, New York

Respectfully submitted,

JENNER & BLOCK LLP

By: /s/_____
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Counsel for the Chapter 11 Trustee

EXHIBIT B

Form of Bill of Sale

BILL OF SALE

THIS BILL OF SALE is executed and delivered as of _____, 2018, by **RICHARD LEVIN, NOT INDIVIDUALLY BUT SOLELY IN HIS CAPACITY AS CHAPTER 11 TRUSTEE ("Seller") OF [Debtor Name]**, a Delaware corporation ("**Debtor**") and _____ ("**Buyer**") (each a "**Party**"). Seller and Buyer agree:

Transfer of Transferred Assets. Effective as of the date hereof, for the consideration set forth below of this Bill of Sale, Seller sells, assigns, transfers, and delivers to Buyer all of Seller's right, title and interest in, to, and under the inventory listed on the attached Schedule (the "**Transferred Assets**"), in each case free and clear of all liens, claims, encumbrances, and other interests. .

Title to Assets. Whenever and as often as reasonably requested to do so by Buyer, Seller agrees to acknowledge, execute, and deliver such other instruments of transfer and take such other action as may be required more effectively to transfer to, and vest in, Buyer all of Seller's right, title, and interest in, to, and under the Transferred Assets.

Purchase Price. In consideration of the transaction contemplated hereby (the "**Transaction**"), Buyer shall, subject to the terms and conditions of this Bill of Sale, pay Seller an aggregate amount of \$ _____ (the "**Purchase Price**").

"AS IS" Transaction. Buyer acknowledges and agrees that Seller makes no representations or warranties whatsoever, statutory, express, or implied, with respect to any matter relating to Debtor's diamond and jewelry businesses (the "**Business**") or with respect to the Transferred Assets, including income to be derived or expenses to be incurred in connection with the Business or the Transferred Assets, the physical condition of any personal property comprising any part of the Transferred Assets, the value or transferability of the Transferred Assets (or any portion thereof), or the merchantability or fitness for any particular purpose as to any portion of the Transferred Assets. Buyer acknowledges that Buyer has had an opportunity to conduct an independent inspection and investigation of the physical condition of the Transferred Assets. Accordingly, Buyer accepts the Transferred Assets at the closing date "**AS IS,**" "**WHERE IS,**" and "**WITH ALL FAULTS,**" subject to the provisions of this Bill of Sale providing that the sale of the Transferred Assets is free and clear of all liens, claims, encumbrances, and other interests.

Binding Effect. This Bill of Sale shall be binding upon, and inure to the benefit of, Seller's and Buyer's respective successors and assigns.

Counterparts. This Bill of Sale may be executed in several counterparts (including by fax or PDF via email), each of which when so executed will be deemed to be an original and all of which will together constitute one and the same agreement.

Governing Law; Venue. This Bill of Sale is and shall be deemed to be a contract entered into and made under the laws of the State of New York and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York, without reference to its conflict of laws principles. Any action, claim, suit, or proceeding arising out of, based upon or relating to this Bill of Sale or the Transaction (an "**Action**") shall be brought solely in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**"). Each

Party agrees that it will not bring any Action in any other court; but if the Bankruptcy Court does not have jurisdiction, any Action shall be heard and determined solely in the appropriate courts located in the County of New York. **EACH PARTY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL RIGHT SUCH PARTY MAY HAVE TO TRIAL BY JURY IN ANY ACTION.**

Seller's Capacity as Trustee of the Debtor; Limitation on Liability. Buyer acknowledges that Seller is the Chapter 11 trustee of the Debtor's estate and that Seller enters into this Bill of Sale solely in his capacity as Chapter 11 trustee of the Debtor's estate and not in his personal capacity, and no liability or obligations accrue to him personally as a result of this Bill of Sale. Buyer acknowledges and understands that (i) case no. 18-10509-SHL was filed as a voluntary case and that the Seller has very limited information regarding the Debtor and its assets, and the sale of the Transferred Assets is "as is" "where is" as set forth in Section 4 of this Bill of Sale and (ii) any claim that it may assert under this Bill of Sale or under the Transaction will be made solely against the Debtor's bankruptcy estate.

**RICHARD LEVIN, NOT INDIVIDUALLY BUT
SOLELY IN HIS CAPACITY AS CHAPTER 11
TRUSTEE OF [Debtor Name].**

[BUYER]

By: _____

Name:

Title:

Schedule of Transferred Assets

EXHIBIT C

Form of Declaration Regarding Connections

Declaration Regarding Connections (Firestar Diamond, Inc. Asset Sale)

In connection with an offer to purchase assets of Firestar Diamond, Inc., *et al.* in their chapter 11 cases pending in the United States Bankruptcy Court for the Southern District of New York, case no. 18-10509-SHL, I make the following representations:

1. I do not have a financial, corporate governance, family, or personal relationship with any of:

- Firestar International Limited,
- Firestar Holdings Limited,
- Synergies Corporation,
- Firestar Group, Inc.,
- Firestar Diamond International, Inc.,
- AVD Trading, Inc., and
- Nirav Modi Inc.,

or with any of their agents, representatives, or affiliates.

2. I have not had any direct or indirect communications relating to the purchase of assets from Firestar Diamond, Inc., Fantasy, Inc., or Old AJ, Inc. (f/k/a A. Jaffe, Inc.):

- with any of the entities listed in paragraph 1 since February 21, 2018,
- with Mihir Bhansali since May 18, 2018, or
- with Ajay Gandhi since June 21, 2018.

I declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Dated: _____, 2018

Printed Name: _____

EXHIBIT D

Form of Order Approving Sale of Assets

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

FIRESTAR DIAMOND, INC., *et al.*

Debtors.¹

Chapter 11

No. 18-10509 (SHL)

(Jointly Administered)

**ORDER AUTHORIZING PRIVATE SALE OF CERTAIN INVENTORY
FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND
ENCUMBRANCES AND GRANTING RELATED RELIEF**

On November __, 2018, this Court entered an *Order Establishing Sale Procedures For Trustee To Sell Assets Free And Clear Of All Liens And Other Interests By Private Sales* [Dkt. ____] (the “**Private Sale Procedures Order**”). Under the Private Sale Procedures Order, any objection or other response to the Proposed Sale must be filed with the Court and served as provided in the Private Sale Procedures Order on or before the date that is seven days after the date of filing with the Court and service of a Notice of Private Sale as provided in the Private Sale Procedures Order.

On _____, 2018, the Chapter 11 Trustee Richard Levin filed and served a Notice of Private Sale to sell the Property identified therein to _____ (“**Buyer**”). No objection or other response to the Notice of Private Sale has been filed with the Court. Based on the Private Sale Procedures Order, the Notice of Private Sale, and the affidavit of service thereof, the Buyer’s Declaration of Connections filed with the Notice of Private Sale, and the record in these chapter 11 cases, the Court finds (i) there is a good business reason for the sale (ii) the purchase price is a reasonable price for the Property; (iii) the Buyer is purchasing the Property in good faith within the meaning of 11 U.S.C. § 363(m); (iv) the Trustee has given appropriate notice under the

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Firestar Diamond, Inc. (2729), Fantasy, Inc. (1673), and Old AJ, Inc. f/k/a A. Jaffe, Inc. (4756).

circumstances of the Proposed Sale and no other or further notice is necessary; and (v) in light of the absence of any objection or other response to the Notice of Private Sale, any party with a lien, claim, encumbrance, or other interest in or against the Inventory has consented to the sale free and clear within the meaning of 11 U.S.C. § 363(f)(2).

Now, therefore, IT IS ORDERED:

1. The Trustee is authorized under 11 U.S.C. § 363(b) and (f) and Fed. R. Bankr. P. 6004 to sell the estates' interest in the Property to the Buyer under the Bill of Sale attached as Exhibit A to this Order, which agreement is approved in its entirety.

2. The sale of the Property to the Buyer shall be free and clear of all liens, claims, encumbrances, constructive trust, or other interests, with any such interests to attach to the proceeds of the sale.

3. Under Fed. R. Bankr. P. 6004(h), this Order shall not be stayed for fourteen days after entry, but shall be effective and enforceable immediately.

Dated: _____, 2018

The Honorable Sean H. Lane
United States Bankruptcy Judge

EXHIBIT E

Proposed Order Granting Motion for Order Establishing Private Sale Procedures

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

FIRESTAR DIAMOND, INC., *et al.*

Debtors.¹

Chapter 11

No. 18-10509 (SHL)

(Jointly Administered)

**[PROPOSED] ORDER ESTABLISHING PRIVATE SALE PROCEDURES FOR TRUSTEE TO
SELL ASSETS FREE AND CLEAR OF ALL LIENS AND OTHER INTERESTS**

Upon the motion (the “**Private Sale Procedures Motion**”) of Richard Levin, not individually but solely in his capacity as chapter 11 trustee (the “**Trustee**”) for Firestar Diamond, Inc. (“**Firestar**”), Fantasy, Inc. (“**Fantasy**”) and Old AJ, Inc. f/k/a A. Jaffe, Inc. (“**A. Jaffe**” and collectively, with Firestar and A. Jaffe, the “**Debtors**”), for an order (the “**Order**”), *inter alia*, under section 363 of the United States Bankruptcy Code and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”) authorizing and approving procedures for the private sale of the Debtors’ assets free and clear of liens, claims, interests, and encumbrances, described in and under the terms and conditions of a form of Bill of Sale for the Transferred Assets; and the Court having conducted a hearing on the Private Sale Procedures Motion on November __, 2018 (the “**Sale Hearing**”); and the Court having considered the Private Sale Procedures Motion, all responses filed thereto, if any, as well as any evidence presented at the hearing; and the Court having jurisdiction to consider and determine the Private Sale Procedures Motion in accordance with 28 U.S.C. §§ 157 and 1334; and appropriate notice under the circumstances of the Sale Procedures Motion having been provided, and it appearing that no

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other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor,

IT IS ORDERED:

1. The proposed sale procedures described in the Private Sale Procedures Motion, including the form of the Notice of Private Sale, for sales of lots of inventory, intellectual property, and other assets that are property of the estates are approved, and the Trustee is authorized (but not required) to conduct private sales of such property in the manner described in the Private Sale Procedures Motion.

2. Each Notice of Private Sale shall be filed and served in accordance with the *Order Establishing Notice and Case Management Procedures Order* [Dkt. 530].

3. The Private Sale Procedures Motion, when combined with each Notice of Private Sale, shall be deemed to be a motion under Bankruptcy Rule 6004(c) for authority to sell property free and clear of liens, claims, encumbrances, and other interests, with any such interests to attach to the proceeds of sale.

4. As adequate protection for any entity that asserts a lien or other interest in the property to be sold, the lien or other interest shall attach to the proceeds of sale to the same extent, validity and priority, if any, as it attaches to the property itself[, subject to the disposition of proceeds in accordance with the Seventh Cash Collateral Order and the *Stipulation And Order Between Chapter 11 Trustee Richard Levin And Punjab National Bank Regarding The Allocation Of Sale Proceeds*, entered July 26, 2018 [Dkt.327]].

5. The time for objection or other response to each Notice of Private Sale, as well as for overbids, shall be seven calendar days after the filing and service of the Notice of Private Sale. The Trustee shall set a hearing before this Court on any such objection or other response.

6. Each Notice of Private Sale that attaches a proposed order approving the sale shall constitute a presentment under Local Bankruptcy Rule 9074-1(b), and the Court may issue the order immediately after the conclusion of the objection period.

7. The buyer's declaration in the form attached as Exhibit C to the Private Sale Procedures Motion shall constitute adequate *prima facie* evidence of the buyer's good faith within the meaning of Bankruptcy Code section 363(m); absent an objection, no additional evidence of good faith shall be required for the Court to find that the buyer purchased the property in "good faith" as that term is used in section 363(m) of the Bankruptcy Code.

8. An order approving a proposed sale under the sale procedures approved by this Order shall be effective and enforceable immediately, notwithstanding the 14-day stay under Bankruptcy Rule 6004(h).

9. The Trustee has given appropriate notice under the circumstances of this Motion and of the proposed sale procedures, and no further or other notice is necessary.

Dated: _____, 2018

The Honorable Sean H. Lane
United States Bankruptcy Judge