

E-Filed: January 12, 2017

1 Samuel A. Schwartz, Esq.
Nevada Bar No. 10985
2 Bryan A. Lindsey, Esq.
Nevada Bar No. 10662
3 M. Michelle Nisce, Esq.
Nevada Bar No. 13552
4 Schwartz Flansburg PLLC
5 6623 Las Vegas Blvd. South, Suite 300
6 Las Vegas, Nevada 89119
7 Telephone: (702) 385-5544
8 Facsimile: (702) 385-2741
Proposed Attorneys for the Debtor

10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF NEVADA**

12 In re:) Case No.: 16-16771-LED
13)
Nutrition Rush, LLC) Chapter 11
14)
15 Debtor.) Hearing Date: February 21, 2017
16) Hearing Time: 9:30 a.m.

17 **MOTION FOR ENTRY OF AN ORDER UNDER 11 U.S.C. §§ 105 AND 363 AND**
18 **FED. R. BANKR. P. 6004 APPROVING THE SALE OF THE DEBTOR’S**
19 **COOLER EQUIPMENT LOCATED IN DEBTOR’S RETAIL STORES**

20 The above captioned debtor and debtor-in-possession (the “Debtor”), hereby moves this
21 Court for entry of an order under 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 6004
22 approving the sale of the Debtor’s cooler equipment located in retail stores (the “Motion”). In
23 support of the Motion, the Debtor respectfully states as follows:

24 **JURISDICTION**

25 1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This
26 is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2). Venue of this Chapter 11
27 case in this district is proper under 28 U.S.C. §§ 1408 and 1409.

28 2. The statutory bases for the relief requested herein are sections 105, 363, and 506
29 of title 11 of the United States Code (as amended, the “Bankruptcy Code”).
30
31
32

BACKGROUND

1
2 3. The Debtors filed a voluntary petition in this Court on December 22, 2016, for
3 reorganization relief under Chapter 11 of the Bankruptcy Code.
4

5 4. The Debtor is a health supplement retailer, operating in Nevada, Arizona, and
6 California.
7

8 5. The Debtor owns and maintains commercial-grade coolers (the “**Equipment**”)
9 located in their retailer stores for their inventory.
10

11 6. The Debtor has several lease agreements with EOS Fitness Brand, LLC (the
12 “**Buyer**”).
13

14 7. The Buyer has agreed to purchase the Equipment currently located in retail stores
15 leased with the Buyer, including those listed on **Exhibit A**, attached hereto (the “**Equipment**
16 **for Sale**”), for the prices listed on **Exhibit A**.
17

18 8. Importantly, the Debtor will no longer be operating its business in those retail
19 stores and no longer has a need for the Equipment for Sale.
20

III. RELIEF REQUESTED

21 9. By this Motion, the Debtors seek an order authorizing the sale of the Equipment
22 for Sale at a total minimum sale price of \$22,400.00, clear of all liens, claims, encumbrances,
23 and interests and exempt from any stamp, transfer, recording or similar tax.
24

25 10. The Debtors further request that the Buyer be designated as a good faith
26 purchaser.
27

28 ///

29 ///

30 ///

31 ///

32 ///

IV. BASIS FOR RELIEF

A. Request for Approval of Sale Pursuant to 11 U.S.C. § 363(b)

11. The Debtors may sell their Equipment currently located in multiple retail stores maintained by the Debtor. Under section 363(b) of the Bankruptcy Code, the debtor in possession “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. 363(b). Courts in this jurisdiction stated that section 363(b) “allows the debtor in possession to sell, other than in the ordinary course of business, ‘property of the estate.’” See In re Hurt, 9 Fed.Appx. 780 (9th Cir. 2001). Here, the Equipment is property of Debtors’ estate, and therefore could be sold pursuant to section 363(b).

12. Further, Debtor’s decision to sell the Equipment for Sale to the Buyer is supported by the Debtor’s sound business judgment and will benefit the debtor’s estate. It would be easier and economical for the Debtor to the Buyer, rather than moving the Equipment for Sale in other retail stores they are maintaining.

B. Request for Approval of Sale Fee and Clear of All Liens and Encumbrances

13. The Debtors request that the Court approve the sale of the Equipment free and clear of all liens, claims, encumbrances and interests which may be asserted against the Equipment (collectively, the “**Encumbrances**”), with all such Encumbrances attaching only to the proceeds of the sale of the Equipment.

C. No Prior Relief Requested

14. No prior Motion for the relief requested has been made to this or any other Court.

V. NOTICE

1
2 15. The Debtors provided notice of the Motion to 20 largest creditors, the United
3 States Trustee, and EOS Fitness Brand, LLC. Accordingly, the Debtors submit the Motion
4 complies with Bankruptcy Rule 6004. Further, due to the exigencies of the Debtors agreement
5 with EOS Fitness Brand, LLC, the Debtors submit waiver of the 14-day stay of the Bankruptcy
6 Rule 7062 is appropriate in this case, and ask that the Court approve the Motion with those
7 caveats.
8
9

VI. CONCLUSION

10
11
12 WHEREFORE, the Debtors respectfully request that the Court enter an order (a)
13 authorizing the Debtors to sell the Equipment free and clear of all liens and encumbrances; (b)
14 finding the Buyers as good faith purchasers; and (c) granting such other relief as the Court
15 deems just and proper.
16

17 Dated this 12th day of January, 2017.
18

19 /s/Samuel A. Schwartz
20 Samuel A. Schwartz, Esq.
21 Nevada Bar No. 10985
22 Bryan A. Lindsey, Esq.
23 Nevada Bar No. 10662
24 M. Michelle Nisce, Esq.
25 Nevada Bar No. 13552
26 Schwartz Flansburg PLLC
27 6623 Las Vegas Blvd. South, Suite 300
28 Las Vegas, Nevada 89119
29 Telephone: (702) 385-5544
30 Facsimile: (702) 385-2741
31 Attorneys for Debtors
32

EXHIBIT A

STORE	QUANTITY		
	Single-Door	Double-Door	Triple-Door
#2 Lake Mead		1	
#12 Centennial			1
#21 Stephanie	1	1	
#26 Serene		1	
#29 Aliante	2		
#36 Durango	1	1	
#38 Cimarron		1	
#17 Murrieta	1	1	
#28 San Diego	1	1	
#32 Temecula		1	
#34 Airport		3	
#35 Palm Desert		2	
#22 Dysart	1	1	
#23 Thunderbird	1	1	
#24 Northsight	1	1	
#25 Washington			1
#30 Elliot	1	1	
#31 Gilbert	2	1	
#33 Warner		1	
Total Quantity	12	19	2
Sale Price per Unit	\$400.00	\$800.00	\$1,200.00
Total Sale Price	\$4,800.00	\$15,200.00	\$2,400.00
			\$22,400.00

CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing was sent electronically via the Court's CM/ECF system on January 12, 2017, to the following:

U.S. TRUSTEE - LV - 11
USTPRegion17.lv.ecf@usdoj.gov

I hereby certify that a true and correct copy of the foregoing was sent via U.S. Regular Mail on January 12, 2017, to the following:

United States Trustee
300 Las Vegas Blvd. South #4300
Las Vegas, NV 89101

4070 Airport Center, LLC
41865 Boardwalk Ste 106
Palm Desert, CA 92211

Clark County Assessor
c/o Bankruptcy Clerk
500 S Grand Central Pkwy
Box 551401
Las Vegas, NV 89155-1401

American Pacific Capital Trop
Decatur Company, LLC
c/o Great American Capital
8350 West Sahara Avenue, Suite 210
Las Vegas, NV 89117

Clark County Treasurer
c/o Bankruptcy Clerk
500 S Grand Central Parkway
PO Box 551220
Las Vegas, NV 89155-1220

Arizona Attorney General Mark Brnovick
Office of the Attorney General
Phoenix Office
1275 West Washington Street
Phoenix, AZ 85007-2926

Dept of Employment, Training and Rehab
Employment Security Division
500 East Third Street
Carson City, NV 89713

AZ Dept of Economic Security
PO Box 6028
Phoenix, AZ 85005-6028

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

AZ Dept of Revenue
Attn: Education and Compliance
1600 West Monroe Street
Phoenix, AZ 85007

Nevada Dept of Taxation, BK Section
555 E. Washington Ave. #1300
Las Vegas, NV 89101

Brian Kuveke
1051 Olsen #711
Henderson, NV 89011

State of Nevada Dept. of Motor Vehicles
Attn: Legal Division
555 Wright Way
Carson City, NV 89711

C & C Roofing
Attn: Chuck Grape
1605 Palm Street
Henderson, NV 89011

1 CA Dept of Industrial Relations
2 Labor Law Enforcement
3 1550 West Main Street
4 El Centro, CA 92243-2105

Centurylink Communications, LLC
c/o The Corp. Trust Co. of NV
Resident Agent
701 S. Carson St Ste 200
Carson City, NV 89701

5 CA Dept of Unemployment
6 658 San Brier Drive, Suite 300
7 San Bernardino, CA 92408

Craig T. and Karen K. Bauske
941 Pyrite Avenue
Henderson, NV 89011

8 CA Div of Labor Standards Enforcement
9 7575 Metropolitan Dr., Suite 210
10 San Diego, CA 92108-4424

CTD Sports, LLC
c/o Jay J. Schuttert, Esq.
Snell & Wilmer, LLP
3883 Howard Hughes Pkwy., Suite 1100
Las Vegas, NV 89169

11 CA Employment Dev Dept
12 State of California
13 Bankruptcy Unit - MIC 92E
14 P.O. 826880
15 Sacramento, CA 94280

Desert Country Plaza, LLC
68936 Adelina Road
Cathedral City, CA 92234

16 California Franchise Tax Board
17 Bankruptcy Section, MS A340
18 PO Box 2952
19 Sacramento, CA 95812-2952

DKN Holdings, LLC
c/o WestMar Property Management
41623 Margarita Road, Suite 100
Temecula, CA 92591

20 California State Board of Equalization
21 P.O. Box 942879
22 Sacramento, CA 94279

DNA Industries, Inc.
7927 Orion Avenue
Van Nuys, CA 91406

23 Canyon Plastics
24 28455 Livingston Ave.
25 Valencia, CA 91355

DNA Sports Nutrition
Attn: Anne R. Grupp, Esq.
1418 Carne Road, Suite 200
Ojai, CA 93023

26 Capstone Brokerage, Inc.
27 8681 W. Sahara Ave., Suite 100
28 Las Vegas, NV 89117

Downtown Wholesalers
5899 S Downey Rd.
Los Angeles, CA 90058

29 Centra Pecos Legacy, LLC
30 c/o Alan C. Sklar, Registered Agent
31 410 S. Rampart Blvd. Ste 350
32 Las Vegas, NV 89145

Durham Jones & Pinegar
10785 West Twain Avenue
Suite 200
Las Vegas, NV 89135

Century Link
PO Box 4300
Carol Stream, IL 60197-4300

1 E&P Retail, LLC
2 c/o DSA Development
3 8965 S. Eastern Avenue, Suite 360
4 Las Vegas, NV 89123

5 Estate of Christopher Rosales and
6 Bryttny Raene Henson
7 c/o Jerome R. Bowen, Esq.
8 9960 W. Cheyenne Ave., Suite 250
9 Las Vegas, NV 89129

10 Europa Sports Product, Inc.
11 11401 Granite Street, Suite H
12 Charlotte, NC 28273

13 First Place Nutrition #1, LLC
14 9691 Trailwood Dr., Ste. 109
15 Las Vegas, NV 89134

16 FirstComp
17 PO Box 3009
18 Omaha, NE 68103-0009

19 Focus Receivables Management, LLC
20 1130 Northchase Pkwy Ste 150
21 Marietta, GA 30067

22 GWI
23 14821 Northam Street
24 La Mirada, CA 90638

25 HI Tech Pharmacueticals
26 1615-B Unity Dr.
27 Norcross, GA 30071

28 International Property Syndications Ltd
29 RE: Shops at Grand Canyon 14
30 9440 W. Sahara Blvd., Suite 240
31 Las Vegas, NV 89117

32 Iron Mag Labs
1860 Whitney Mesa Dr Ste 120
Henderson, NV 89014-2095

Island Oasis
141A Norfolk St
Walpole, MA 02081

JMS Associates for Lonestar Distribution
1489 W. Palmetto Park Road #480
Boca Raton, FL 33486

Las Vegas Athletic Clubs
2655 South Maryland Parkway, Suite 201
Las Vegas, NV 89109

Laura Kuveke
1051 Olsen #711
Henderson, NV 89011

LMP, LLC
c/o John M. Netzorg, Esq.
2810 W. Charleston Blvd., Suite H-81
Las Vegas, NV 89102

Lori J. Smith LLC
c/o Lori Smith
3155 East Patrick Lane, Ste 1
Las Vegas, NV 89120

M&I Asset Management Company
c/o Tony L. Abbatangelo, Esq.
Colquitt & Abbatangelo, Ltd.
321 S. Casino Center Blvd., #112
Las Vegas, NV 89101

M&I Asset Management Company
c/o William P. Miguel
4025 Baldwin Avenue
321 S. Casino Center Blvd., #112
El Monte, CA 91731

M&I Asset Management Company
c/o Signa Realty Group
601 S. Rancho Dr., Ste. A-5
Las Vegas, NV 89106

1 Markel Corporation
2 PO Box 3009
3 Omaha, NE 68103

Randolph Law Firm
6260 N. Durango Dr.
Las Vegas, NV 89149

4 Mer-Car Corporation
5 c/o Gatski Commercial Real Estate Svcs.
6 4755 Dean Martin Drive
7 Las Vegas, NV 89103

Sahara-Edmond Plaza, LLC
Attn: John Weisler
PO Box 60752
Boulder City, NV 89006

8 Muscle Foods USA
9 100 Keystone Industrial Park Road
10 Unit 1B
11 Scranton, PA 18512

Schiek Sports Inc
2010 S. Oakwood Rd
Oshkosh, WI 54903

12 North, LLC
13 2655 South Maryland Pkwy, Suite 201
14 Las Vegas, NV 89109-1666

Shops at Grand Canyon 14
Syndications Group, LLC
9440 W. Sahara Ave., Suite 240
Las Vegas, NV 89117

15 Nutrition 53
16 Acct No x9158
17 3706 Mt. Diablo Blvd. #300
18 Lafayette, CA 94549

Sierra Town Center III, LLC
c/o David A. Carroll, Esq.
Rice Reuther Sullivan & Carroll, LLP
3800 Howard Hughes Parkway, Suite 1200
Las Vegas, NV 89169

19 Omega RMS, LLC
20 PO Box 801688
21 Kansas City, MO 64180-1688

Social Security Administration
Office of the Regional Chief Counsel
Region IX
160 Spear Street, Suite 800
San Francisco, CA 94105-1545

22 Perfect Nutrition, Inc.
23 16201 Lindbergh Street
24 Van Nuys, CA 91406

Southern Nevada Health District
PO Box 3902
Las Vegas, NV 89127

25 Print Partners
26 1022 Eulalia Road
27 Atlanta, GA 30319

Southern Nevada Health District
Main Facility
280 S. Decatur Blvd.
Las Vegas, NV 89107

28 Procore
29 PO Box 425
30 Layton, UT 84041

31 Rainbow Lake Mead, LLC
32 Attn: Chad O. Smith
2655 South Maryland Parkway, Suite 201
Las Vegas, NV 89109-1666

Spring Valley Food Operations Office
Attn: Candice Sims
Senior Environmental Health Specialist
280 S. Decatur Blvd.
Las Vegas, NV 89107

1	State of California	United States Attorney's Office
2	Employment Development Dept	Attn: Civil Process Clerk
3	PO Box 826880 MIC 4	333 Las Vegas Blvd., South, Suite 5000
	Sacramento, CA 94280-0001	Las Vegas, NV 89101
4	State of California	US Attorney General
5	Office of the Attorney General	United States Dept. of Justice
6	P.O. Box 70550	Ben Franklin Station
7	Oakland, CA 94612-0550	P.O. Box 683
		Washington, DC 20044
8	State of California	US Attorney's Office
9	Office of the Attorney General	Southern District of California
10	P.O. Box 944255	880 Front Street, Suite 6293
	Sacramento, CA 94244-2550	San Diego, CA 92101
11	State of California	US Department of the Treasury
12	Office of the Attorney General	1500 Pennsylvania Avenue, NW
13	P.O. Box 85266-5299	Washington, DC 20220
	San Diego, CA 92186-5266	
14	State of California Employment	US Dept of Labor, Wage and Hour Division
15	Development Dept.	Western Regional Office
16	Bankruptcy Group MIC 92E	90 7th Street, Suite 13100
17	P.O. Box 826880	San Francisco, CA 94103-6710
	Sacramento, CA 94280-0001	
18	Sterns Bank, N.A. Equip. Finance Div.	US EPA Regional 9 Bankruptcy Contact
19	500 13th Street	Lewis Maldonado
20	P.O. Box 750	Office of Regional Counsel, ORC-3
	Albany, MN 56307	75 Hawthorne Street
21		San Francisco, CA 94105
22	Toan N. Nguyen	US Securities and Exchange Commission
23	7276 Bluemist Mountain Court	Attn: Bankruptcy Counsel
24	Las Vegas, NV 89113	444 South Flower Street, Suite 900
		Los Angeles, CA 90071-9591
25	Trailwood Center, LLC	US Small Business Administration
26	3224 Club Drive	Southern California Legal Unit
27	Los Angeles, CA 90064	330 North Brand Blvd., Suite 1200
		Glendale, CA 91203-2304
28	Tropics Desert Distributors	Vegas Stephanie, LLC
29	41625 Eclectic Street Suite J2	c/o Anthony R. Ager, Esq.
30	Palm Desert, CA 92260	Durham Jones & Pinegar, P.C.
31		10785 W. Twain Ave., Suite 200
32		Las Vegas, NV 89135

1 Vegas Stephanie, LLC
2 c/o Tavaco Properties
3 9229 West Sunset Blvd., Suite 310
4 West Hollywood, CA 90069

Viva Vitamins
25908 McBean Pkwy
Valencia, CA 91355

Vivint
7505 NW Tiffany Springs Pkwy #500
Kansas City, MO 64153

6 /s/Christy L. Cahall
7 Christy L. Cahall, an employee of
8 Schwartz Flansburg PLLC

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32