


Below is an Order of the Court.



FRANK R. ALLEY
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

In re:

PACIFIC RECYCLING, INC.,
Debtor.

Case No. 15-62925-fra11

**FINAL ORDER APPROVING
EXCLUSIVE SUPPLY AND FINANCING
AGREEMENT**

THIS MATTER having come before the Court upon Debtor's Motion for Order Authorizing Secured Credit; notice of the Motion having been given pursuant to Bankruptcy Rule 4001, no objections having been filed, and the Court having heard and considered the arguments of counsel at the final hearing on September 30, 2015. The Court being duly advised in the premises finds good cause therefore and that it would be in the best interests of the Debtor and the creditors;

IT IS HEREBY ORDERED:

1. The motion is granted subject to the terms set forth herein, and the terms and provisions of the Exclusive Supply and Financing Agreement dated September 14, 2015 (in the form attached hereto as Exhibit 1, the "Agreement") between the Debtor and Calbag Metals Co.

(“Calbag”) are approved in all respects. The Debtor and Calbag may enter into any non-material amendments, consents, waivers or modifications to the Agreement, in each case without the need for further notice and hearing or any order of this Court; provided, however, that no such amendment or waiver shall increase the amount of the Credit Line limit. This Final Order shall be valid, binding on all parties and fully effective immediately upon entry notwithstanding Bankruptcy Rules 4001(a)(4) and 6004(h). Capitalized terms used but not defined in this Final Order have the meanings given to them in the Agreement.

2. Calbag shall be granted super-priority administrative expense status under Section 364(c)(1) of the Bankruptcy Code for all unpaid Obligations under the Agreement, and Calbag’s security interest under the Agreement shall be a fully perfected first priority lien on all New Inventory and the Credit Line Bank Account, under Section 364(c)(2) of the Bankruptcy Code.

3. The automatic stay is lifted to the extent necessary for Debtor to perform its obligations under the Agreement and to permit Calbag to exercise its rights and remedies with respect to the credit line extended under the Agreement, provided that Calbag must file a notice with this Court prior to exercising any such rights and remedies.

4. Debtor is authorized to reimburse Calbag for Calbag’s reasonable out-of-pocket costs and expenses from time to time, in each case after Calbag files herein a notice that states the amount of reimbursement being sought and includes summary documentation thereof, unless a party in interest files an objection within fourteen (14) days of the filing of such notice.

5. This Final Order is entered pursuant to Section 364 of the Bankruptcy Code and, as such, Calbag is entitled to all of the protections afforded by Section 364(e) of the Bankruptcy Code in the event that any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed.

6. Debtor is authorized to take all actions that are reasonably necessary or desirable to perform its obligations under the Agreement and implement the terms of this Final Order.

7. Except as otherwise provided herein, (a) the protections afforded to Calbag under this Final Order, and any actions taken pursuant hereto, shall survive the entry of an order dismissing this case or converting this chapter 11 case to a case under chapter 7, and (b) the liens and superpriority administrative expense claim granted to Calbag under this Final Order shall continue in this chapter 11 case, in any superseding chapter 7 case or after any such dismissal.

8. This Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this Final Order.

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I certify I have complied with the requirements of LBR 9021-1(a)(2)(A).

Presented by:

CABLE HUSTON LLP

By: /s/ Laura J. Walker

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4846-6901-2777, v. 2

EXCLUSIVE SUPPLY AND FINANCING AGREEMENT

This Exclusive Supply and Financing Agreement (this "Agreement"), dated for reference purposes as of September 14, 2015, is made by and between Calbag Metals Co. ("Calbag") and Pacific Recycling, Inc. ("PRI"), as debtor in possession in the chapter 11 case pending in the United States Bankruptcy Court for the District of Oregon (the "Bankruptcy Court") under Case No. 15-62925-fra11 (the "Bankruptcy Case").

RECITALS

PRI desires to sell to Calbag, and Calbag desires to purchase from PRI, on and subject to the terms and conditions set forth in this Agreement, all non-ferrous scrap metal products of PRI, processed and unprocessed, that are acquired by PRI after the date of the Agreement other than those products that are listed on Calbag's "Do Not Buy" list (as it is may be amended by Calbag from time to time in its sole discretion) and those products that are specifically identified by Calbag from time to time as ineligible for purchase under this Agreement (collectively, "Non-Ferrous Metal" or "New Inventory"). In order to enable PRI to buy and ship New Inventory as contemplated by this Agreement, PRI requires additional working capital for that purpose. To help fulfill this need, Calbag has agreed to provide PRI, on and subject to the terms and conditions set forth in this Agreement, a secured revolving line of credit facility (the "Credit Line") in a principal amount up to but not exceeding \$150,000.

AGREEMENT

For and in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. All capitalized terms shall have the meanings given to them in this Agreement.

2. New Inventory Sales and Purchases

(a) Except as otherwise provided in this Agreement, PRI agrees to sell exclusively to Calbag, and Calbag agrees to purchase from PRI, all Non-Ferrous Metal. New Inventory sold to Calbag under this Agreement will, in each case, be processed or unprocessed, as the parties may agree and as stated in the purchase order.

(b) Calbag will pay PRI Market Prices for all Non-Ferrous Metal that Calbag purchases under this Agreement. As used herein, "Market Prices" means those prices offered by Calbag to its suppliers of similar size and circumstance at the time that PRI delivers Non-Ferrous Metal to Calbag under this Agreement. Should the parties disagree on a Market Price for Non-Ferrous Metal that is part of a specific delivery, and if PRI has an offer from a scrap processor of reasonable size and standing that is at least five percent (5%) higher than the Market Price offered by Calbag for that Non-Ferrous Metal, then PRI will give Calbag the opportunity to match the other scrap processor's offered price. If Calbag declines to match the other scrap

processor's price, then PRI may sell the Non-Ferrous Metal from that delivery to the other scrap processor at the price offered by the other scrap processor.

(c) All sales to Calbag under this Agreement will be delivered FOB at Calbag's facility in Portland, Oregon.

(d) Payment shall be due PRI upon delivery to Calbag. Unless otherwise agreed in writing by Calbag, all payments by Calbag for purchases of Non-Ferrous Metal shall be made to PRI by wire transfer to the new, separate DIP bank account to be established by PRI under this Agreement (the "Credit Line Bank Account").

(e) Calbag will make orders for New Inventory no less than once every seven (7) days. Calbag will provide its first purchase order upon satisfaction of the conditions set forth in Section 4 below. Deliveries of New Inventory to Calbag shall be on a schedule agreed to by the parties.

(f) PRI will furnish to Calbag such records and information respecting PRI's transactions relating to Non-Ferrous Metal as Calbag may from time to time reasonably request.

3. Financing

(a) Calbag will, upon the terms and conditions hereof, make loans to PRI under the Credit Line from time to time during the period from the date of this Agreement until the earlier of December 31, 2016 or the occurrence of an Event of Default (as defined in Section 5(a) below) (the "Termination Date"), provided that at no time will the unpaid principal amount outstanding under the Credit Line exceed the lesser of (i) \$150,000 and (ii) as at the date of determination, the sum of the value of PRI's New Inventory (as determined by PRI's actual cost) then on hand and the unrestricted debit balance in the Credit Line Bank Account. PRI may borrow, pay down and re-borrow on the Credit Line. Subject to the provisions of Section 3(c) below for Brokered Transactions, PRI will request advances under the Credit Line only as reasonably necessary to enable it to buy Non-Ferrous Metal, ship New Inventory to Calbag under this Agreement or make payments required to be made to Calbag under this Agreement.

(b) All Credit Line advances will be deposited and kept only in the Credit Line Bank Account. Unless otherwise agreed by Calbag in writing and subject to the provisions of Section 3(c) below for Brokered Transactions, PRI shall not withdraw any funds from the Credit Line Bank Account except for the purposes of (i) buying Non-Ferrous Metal, (ii) shipping New Inventory to Calbag, (iii) making payments required to be made to Calbag under this Agreement, and (iv) transferring to PRI's general operating bank account following each payment made by Calbag for purchases of New Inventory an amount not to exceed the excess of the purchase price paid by Calbag for such shipment over the total cost to PRI of acquiring and shipping such New Inventory to Calbag. Calbag will have complete and real on-line access to all records relating to transactions in the Credit Line Bank Account.

(c) Except as otherwise provided in the next sentence, the proceeds of Credit Line advances will be used by PRI to buy Non-Ferrous Metal, ship New Inventory to Calbag and make payments required to be made to Calbag under this Agreement, and for no other purpose. Notwithstanding the limitations in the preceding sentence on PRI's use of Credit Line proceeds, if agreed by Calbag in writing, PRI may, from time to time, obtain loans under the Credit Line for purposes of buying Non-Ferrous Metal to be shipped to customers other than Calbag in transactions brokered by PRI ("Brokered Transactions").

(d) PRI shall provide Calbag a regular detailed record of all purchases of scrap metal with the Credit Line proceeds. This report will provide such details as Calbag may require. All New Inventory purchased with proceeds of the Credit Line will be kept separate and not comingled with any other inventory of PRI. Calbag or its agents may inspect such New Inventory at any time. Calbag and PRI will agree on the exact content and schedule of these reports within three (3) business days after the first Credit Line advance is made hereunder.

(e) Any part of the balance outstanding on the Credit Line may be prepaid by PRI at any time without premium or penalty.

(f) Interest on the outstanding and unpaid principal amount of loans made under the Credit Line will accrue at the rate of seven percent (7%) per annum and be payable monthly in arrears on or before the fifth business day of each calendar month.

(g) PRI will pay to Calbag from time to time all reasonable out-of-pocket costs and expenses (including reasonable fees of outside counsel) of Calbag in connection with the preparation, negotiation, approval, execution, delivery, administration, modification, amendment, waiver, enforcement (whether or not an Event of Default has occurred or is continuing and whether enforcement is made through negotiations, legal proceedings or otherwise), and termination of this Agreement and of the other documents to be delivered hereunder and the transactions contemplated hereby and thereby and the fulfillment or attempted fulfillment of conditions precedent hereunder ("Expenses"). Calbag's Expenses will be paid by PRI from time to time promptly after PRI is authorized to pay them under the terms of the Approval Order (as defined in Section 4(a) below).

(h) In connection with each Brokered Transaction, PRI will within two (2) business days after PRI ships the brokered product to its customer, (i) pay Calbag a fee in an amount to be agreed by the parties but not to exceed fifty percent (50%) of PRI's gross margin on such sale, and (ii) pay down on the Credit Line an amount not less than the amount advanced by Calbag to enable PRI to buy the brokered product.

(i) To secure the payment and performance in full of all obligations, indebtedness and liabilities of PRI to Calbag under this Agreement (whether for loans made under the Credit Line or for sales of New Inventory and whenever arising) (collectively, as at any date of determination, the "Obligations"), PRI hereby grants to Calbag a security interest in all of PRI's rights and interests in and to New Inventory and the Credit Line Bank Account, in each case, wherever located and whether now owned or hereafter acquired or arising, and in all proceeds thereof. Calbag's security interest in such collateral shall at all times have first priority

and no such collateral shall be subject to any right or claim of any third party or any adverse lien, security interest or other encumbrance except for Calbag's security interest.

(j) On the Termination Date, the entire unpaid principal balance of the loans made under the Credit Line, all accrued but unpaid interest thereon and all other Obligations of PRI to Calbag then outstanding shall be paid in full.

4. Conditions Precedent. This Agreement and the obligations of the parties hereunder are subject to the satisfaction or waiver by Calbag of each of the following:

(a) The Bankruptcy Court will have entered an order in form and substance satisfactory to Calbag (the "Approval Order"), which order shall be in full force and effect and shall not be subject to an appeal, (i) approving this Agreement and authorizing and approving the transactions contemplated hereby, (ii) granting super-priority administrative expense status under section 364(c)(1) of the Bankruptcy Code for all Obligations, (iii) providing that PRI's security interest under this Agreement is a fully perfected first priority lien under section 364(c)(2) of the Bankruptcy Code, (iv) lifting the automatic stay as necessary to permit PRI to perform its obligations under this Agreement and to permit Calbag to exercise its rights and remedies under Section 5(b) below upon the occurrence of an Event of Default provided that Calbag must file in the Bankruptcy Case a notice before exercising such rights and remedies, and (v) authorizing PRI to reimburse Calbag for its Expenses from time to time under a procedure whereby Calbag will file in the Bankruptcy Case a notice with summary documentation (which may be redacted in part) and PRI will be authorized to pay the amounts set forth in such notice unless a party in interest files an objection within 14 days after such notice is filed.

(b) PRI will have delivered to Calbag such other documents as Calbag or its counsel may reasonably require (including a deposit account control agreement).

5. Events of Default and Remedies.

(a) Events of Default. The occurrence of any of the following will constitute an event of default under this Agreement (each an "Event of Default"): (i) the failure of PRI to pay any of the Obligations relating to the Credit Line in cash in full when due; (ii) breach by PRI of any of its Obligations under this Agreement or the Approval Order and such breach is not remedied within seven (7) days after written notice is given by Calbag to PRI; (iii) any representation or warranty made by PRI to Calbag in connection with this Agreement is untrue, incorrect, incomplete or misleading in any material respect on or as of the date made; (iv) the occurrence of any event that Calbag reasonably determines will have a material adverse impact on PRI's ability to timely pay or perform the Obligations; or (v) the entry of an order of the Bankruptcy Court confirming a plan, converting or dismissing PRI's chapter 11 case, or appointing a trustee or an examiner with powers to direct or control PRI's business.

(b) Remedies. Upon the occurrence of an Event of Default, Calbag may, at any time and without any other notice to or demand on PRI, (i) terminate the Line of Credit whereby Calbag's obligations to make further loans shall terminate, (ii) declare all or any portion of the Obligations immediately due and payable, without presentment, demand, protest or further

notice of any kind, all of which are expressly waived by PRI, and/or (iii) exercise any or all rights, powers and remedies available to Calbag under this Agreement, under the Approval Order and/or at law or in equity.

Calbag Metals Co.

By: _____
Name: _____
Title: _____

Pacific Recycling, Inc.

By: _____
Name: _____
Title: _____