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10 Debtor-in-Possession
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12 UNITED STATES BANKRUPTCY COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 SAN FERNANDO VALLEY DIVISION
15

16 In re) Case No. 1:15-bk-13495-MT
17) [Chapter 11]
18 PICTURE CAR WAREHOUSE, INC.,)
19 Debtor.) DEBTOR'S MOTION FOR ORDER
20) AUTHORIZING SALE OF PERSONAL
21) PROPERTY OF THE ESTATE (UP TO 100
22) EXCESS VEHICLES) FREE AND CLEAR
23) OF LIENS AND ENCUMBRANCES VIA
24) PRIVATE SALE PURSUANT TO 11
25) U.S.C. §363 AND WAIVER OF 14 DAY
26) STAY
27)
28) Date: [To Be Set]
) Time: a.m.
) Place: Courtroom 302
) 21041 Burbank Blvd.
) Woodland Hills, CA 91367

22 Debtor and Debtor-in-Possession Picture Car Warehouse, Inc.
23 ("PCW"), hereby moves the Court for an Order Authorizing:
24 (i) Sale of Certain Personal Property of the Estate (Up to 100
25 Excess Vehicles and (ii) Waiver of the 14 Day Stay.

26 This Motion is made on an emergency basis to sell in a
27 private sale up to 100 excess vehicles to a bona fide third party
28 purchaser. The vehicles to be sold include some not sold in the

1 recently concluded auction and others not included in the
2 auction. This Motion is made on the grounds that the sale of the
3 identified property by private sale to Allan Goddard for \$260,000
4 is in the best interest of the estate and is an exercise of PCW's
5 reasonable business judgment. In order to expedite this process,
6 PCW requests the Court waive the 14 day period.

7 This Motion is based upon 11 U.S.C. §§327(a), 363 and
8 544(a), Rules 2002 and 6004 of the Federal Rules of Bankruptcy
9 Procedure, the Notice of Motion which is being served upon all
10 interested parties, this Motion, the attached Memorandum of
11 Points and Authorities, the Declarations of Ted D. Moser and
12 Carolyn A. Dye, the records and files of this case, and such oral
13 and documentary evidence as may be presented at or prior to the
14 hearing on the Motion.

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I**

17 **FACTUAL BACKGROUND**

18 The factual matters herein are based on the Declarations of
19 Ted D. Moser ("Moser") and Carolyn A. Dye filed with this Motion.

20 PCW has obtained approval of a settlement with creditor,
21 Matthew Talbert and his affiliates ("Talbert"), which requires
22 payment of the settlement amount on or before by July 31, 2016.
23 Intending to use the proceeds of an auction of its excess
24 inventory to fund the settlement, PCW obtained approval of its
25 second auction and held it on July 23, 2016. The date for the
26 auction was set just before the payment date in order to
27 facilitate resolving all the title issues that had come up in the

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1 review of the titles returned to PCW from Talbert. That timing,
2 however, left little time to plan any shortfall.

3 Unfortunately, the proceeds of the auction fell short of the
4 amount needed to satisfy the settlement. Realizing that that
5 consummating the settlement was in jeopardy, Ted Moser, principal
6 of PCW, immediately began a search for an alternate solution to
7 fund the gap.

8 PCW has identified a buyer willing to purchase up to 100
9 vehicles for \$260,000, which is the amount needed to fund the
10 gap. The buyer, Allan Gooddard, is a third party, not connected
11 to PCW in any way. The buyer is also willing to permit PCW to
12 list the purchased vehicles on PCW's website as available for
13 rental, enabling PCW to generate income from these assets from
14 commissions payable for placing and supervising such rentals. In
15 addition, the agreement with Goddard provides that PCW can
16 repurchase the vehicles if it wishes within a year for the same
17 price with 6% interest. Attached as Exhibit A is a true and
18 correct copy of the agreement between the parties. A signed copy
19 will be available by the time of the hearing.

20 This is a win-win for both parties. The purchaser owns some
21 vehicles (which largely do not overlap PCW's inventory) he also
22 rents to studios and the purchase will expand his inventory. The
23 purchased vehicles will remain available to PCW's customers and
24 thus generate income for both parties. In addition, PCW will be
25 freed of the costs to maintain and store the vehicles.

26 Because Talbert will be paid from the sales proceeds he will no
27 longer hold any claim to any of PCW's vehicles and should have no
28 objection (or standing to complain about) to this proposed

1 transaction. Funding the settlement will avoid the potential of
2 litigation with Talbert and allow PCW to move forward in its
3 case, to propose and confirm a plan of reorganization.

4 As the Court is aware, PCW is engaged in the business of
5 owning, restoring and renting various vehicles that are used in
6 the entertainment business. Although PCW believes its "ordinary
7 course" operations would permit this transaction to be
8 consummated without a court order specifically authorizing it,
9 one is sought in an abundance of caution.

10 The only creditor holding any undisputed security interest
11 in the Assets is Bank of the West ("Bank"). Bank does not have
12 any liens or any specific vehicles. The value of the remaining
13 assets will more than cover the Bank's lien of \$100,000.

14 The Talbert claim to a lien will be extinguished by the
15 settlement payment.

16 **II**

17 **TERMS OF SALE**

18 A. Items to be Sold at Auction.

19 The list of vehicles to be sold "as is" is attached as
20 Exhibit A. Goddard will pay the purchase price of \$260,000, all
21 cash no later than July 28 or as soon as the Court approves the
22 sale. To avoid any time delays in transmitting the funds and to
23 meet the deadline for payment, the proceeds may be wired directly
24 to the client trust account of Allan Sarver, Talbert's attorney.

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1 III

2 IT IS IN THE BEST INTEREST OF THE ESTATE
3 FOR THE COURT TO APPROVE THE SALE

4 PCW needs to conclude the settlement. Exercising his
5 business judgment, Moser has determined it is in the best
6 interests of the estate to sell their Assets in order to fund the
7 settlement. He also believes the price is fair.

8 IV

9 THIS COURT SHOULD AUTHORIZE THE AUCTION
10 SALE OF THE ASSETS OUTSIDE
11 OF THE ORDINARY COURSE OF BUSINESS

12 A. The Ninth Circuit Standard for Authority to Use,
13 Sell, or Lease Property Pursuant to 11 U.S.C. §363 is the
14 Articulated Business Justification Test.

15 If the sale is not in the "ordinary course" it should be
16 nonetheless approved. The authority for a Debtor-in-Possession
17 to sell property of an estate is found in 11 U.S.C. §363(b)(1)
18 and 1107(a). PCW, after notice and hearing, may use, sell, or
19 lease, other than in the ordinary course of business, property of
20 the estate. The Ninth Circuit Bankruptcy Appellate Panel in In
21 re Walters, 83 B.R. 14 (9th Cir. B.A.P. 1988), adopted the
22 articulated business judgment standard in deciding whether to
23 approve or disapprove the sale of estate property outside the
24 ordinary course of the PCW's business under §363(b). The court
25 quoted language from In re Continental Airlines, Inc., 780 F.2d
26 1223, 1226 (5th Cir. 1986), as follows:

27 "We also agree with the Second Circuit that
28 implicit in §363(b) is the further requirement of
justifying the proposed transaction. In re Lionel

1 Corporation, 722 F.2d 1063, 1071 (2nd Cir. 1983). That
2 is, for the debtor-in-possession or trustee to satisfy
3 its fiduciary duty to the debtor, creditors and equity
4 holders, there must be some articulated business justifi-
5 cation for using, selling, or leasing the property
6 outside the ordinary course of business...whether the
7 proffered business justification is sufficient depends
8 on the case. As the Second Circuit held in Lionel, the
9 bankruptcy judge should consider all salient factors
10 pertaining to the proceeding and, accordingly, act to
11 further the diverse interests of the debtor, creditors
12 and equity holders, alike..."

13 The majority of courts held that §363(b) allows a debtor to
14 sell the assets of the estate if there is an "articulated
15 business justification for the proposed sale. See Stevens
16 Industries, Inc. v. McClung, 789 F.2d 386 (6th Cir. 1986); In re
17 Lionel Corporation, 722 F.2d 1063 (2nd Cir. 1983); In re Texaco,
18 Inc., 81 B.R. 813 (Bankr. S.D. N.Y. 1988); In re McClane
19 Industries, Inc., 70 B.R. 852 (Bankr. S.D. N.Y. 1987); In re
20 Highway Equipment Company, Inc., 61 B.R. 58 (S.D. Ohio 1986); In
21 re Hunt Energy Company, Inc., 48 B.R. 472 (Bankr. N.D. Ohio
22 1985).

23 Accordingly, PCW's proposed sale of the estate's interest in
24 the Assets described herein pursuant to §363(b) is consistent
25 with well-recognized case law and should be approved by this
26 Court.

27 B. PCW Has Articulated a Business Justification for the
28 Sale.

 The sale of these assets will enable PCW to be able to
fulfill its obligations under the settlement agreement.

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V

WAIVER OF 14 DAY STAY OF SALE

Fed. R. Bank. Pro. 6004(h) provides that "[a]n order authorizing the use, sale or lease of property other than cash collateral is stayed until the expiration of the 14 days after entry of the order, unless the court orders otherwise."

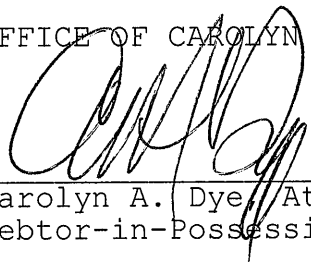
Because of the need to expedite the sale PCW requests the Court exercise its discretion under Rule 6004(h) and order the 14 day stay shall not apply.

VI

CONCLUSION

Based upon the foregoing the PCW respectfully requests that the Court enter an order (i) to permit the PCW to consummate the sale of the Assets via private sale; and (ii) waiving the 14 day stay.

Respectfully submitted,
LAW OFFICE OF CAROLYN A. DYE



Dated: July 26, 2016

By: Carolyn A. Dye, Attorney for Debtor-in-Possession

EXHIBIT A

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE ("Agreement") is made and entered into as of _____, 2016, by and between, Picture Car Warehouse, Inc, Debtor in Possession, ("Seller"), and Allan Goddard ("Buyer").

RECITALS

Seller is in the business of providing cars and other vehicles to the movie, television and commercial production business for use as props and rentals. Seller wishes to sell and convey the certain assets related to its business (the "Assets") to Buyer, and Buyer wishes to acquire the Assets from Seller.

NOW, THEREFORE, in consideration of the mutual covenants, representations and warranties set forth in this Agreement, the parties agree as follows:

PURCHASE AND SALE OF ASSETS

Section 1. Sale Items. Seller shall sell to Buyer and Buyer shall buy from Seller, on the terms and conditions, and in the manner set forth in this Agreement, the Assets more particularly described on Exhibit A, attached hereto and made part hereof. Seller shall execute and deliver to Buyer all documents necessary to transfer title to the Assets to Buyer.

Section 2. Liens. Seller shall convey title to the Assets to Buyer free and clear of all liens, security interests, and encumbrances of any kind or nature.

Section 3. Purchase Price. The purchase price to be paid by Buyer to Seller for the Assets (the "Purchase Price") shall be \$260,000, which shall be paid in full in good funds at the Closing, defined below.

Section 4. Allocation of Purchase Price. The allocation of the Purchase Price for the Assets shall be as designated on Exhibit A. Buyer and Seller acknowledge that the amount allocated to each asset category described in this Section shall represent its fair market value determined by the parties pursuant to an arm's length negotiation. The parties agree to abide by the allocation of the Purchase Price specified in this Section and agree to report the transaction as so allocated for registration, transfer and income tax purposes.

Section 5. Time and Place of Closing. The closing for the purchase and sale of the Assets (the "Closing") shall be held on July 28, 2016 at 9:00 a.m. or at such other time and at the place as the parties may mutually agree in writing (the "Closing Date"). At Closing, Seller shall convey title to the Assets to Buyer as provided in this Agreement and Buyer will pay the Purchase Price in good and immediately available funds.

Section 6. Rental of Assets. Buyer agrees that the Assets shall remain on the Seller's website and advertised as available for rental. In the event that Seller is able to obtain agreements for the rental of any of the vehicles listed on Exhibit A from its clients, Seller shall be entitled to

a placement commission to be negotiated between the parties based on the time of the proposed rentals and the gross rental amounts to be collected. Seller shall be the intermediary between the renter and the Seller.

Section 7. Option to Repurchase. At any time within a year from the Closing Date, Seller may have the right to repurchase the Assets for the Purchase Price plus 6% interest commencing from the Closing Date.

Section 8. Headings. All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9. Counterparts. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one counterpart has been signed by each party and delivered to the other party to this Agreement.

Section 10. Time of Essence. Time shall be of the essence with respect to the obligations of the parties to this Agreement.

Section 11. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California.

Section 12. Severability. In the event any provision of this Agreement is deemed to be invalid, illegal or unenforceable, all other provisions of the Agreement which are not affected by such invalidity, illegality or unenforceability shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

SELLER:
Picture Car Warehouse, Inc.

By Ted Moser, President

BUYER:
Allan Goddard
