

Background

A. General Background

4. On June 22, 2012 (the "Petition Date"), each of the Debtors filed voluntary petitions in this Court for relief under Chapter 11 of the Bankruptcy Code. The Debtors rely upon and incorporate by reference the factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, set forth in the Declaration of Marc Weinsweig, Chief Restructuring Officer, in Support of Chapter 11 Petitions and First Day Pleadings (the "Weinsweig Declaration") [Docket No. 14].²

5. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. On July 2, 2012, the Office of the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the "Committee") in these Chapter 11 cases.

B. Agreement

7. Nikon is the Debtors' largest supplier of digital cameras, lenses, accessories, and other related products and services (collectively, the "Products"), with Nikon Products accounting for more of RCI's sales than any other single vendor.

8. After the Petition Date, the Debtors requested that Nikon sell and deliver Products to the Debtors, and Nikon agreed to do so subject to certain terms and conditions. Accordingly, the Parties have entered into the Agreement, a copy of which is attached hereto as Exhibit A. The Agreement provides in pertinent part that Nikon will continue to sell and deliver Products in

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Weinsweig Declaration.

an amount of up to \$2,000,000.00 in the next seven weeks on a “cash in advance” basis and on the other terms set forth in the Agreement, provided that (i) the Debtors and any other representative of the Debtors’ bankruptcy estates agree not to assert any claims against Nikon to avoid and/or to recover alleged preferential transfers under Sections 547 and 550 or any other section of the Bankruptcy Code (the “Preference Claims”), and (ii) the Debtors agree to recognize that portion of Nikon’s reclamation claim in the amount of \$484,307.62 as an allowed claim under Section 503(b)(9) of the Bankruptcy Code (the “503(b)(9) Claim”).

Relief Requested

9. By this Motion, the Debtors request that this Court approve the Agreement pursuant to 11 U.S.C. § 363(b) and Bankruptcy Rule 9019(a). Bankruptcy Rule 9019 grants this Court the authority to approve a settlement upon the motion of the trustee. See Fed. R. Bankr. P. 9019(a).

10. To the extent that the Agreement releases all Preference Claims, it is appropriate to consider the standard for approving a compromise. There are four factors that Courts weigh in determining whether to approve a proposed settlement:

- (a) the probability of success in any litigation;
- (b) difficulties to be encountered in collection;
- (c) the complexity of the litigation and related expense and inconvenience; and
- (d) the interests of the creditors.

In re Marvel Entertainment Corp., 222 B.R. 243, 249 (D. Del. 1998) (citing In re Pennsylvania Truck Lines, Inc., 150 B.R. 595, 598 (E.D. Penn. 1992)). The Court must also consider “all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.” Id. (citing Protective Comm. for Indep. Stockholders of TMT Trailer Ferry Inc. v. Anderson, 88 S.Ct. 1157 (1968)). The most important inquiry for the Court is whether the settlement will be

fair, reasonable and in the best interests of the Debtors' estates. See id. (citing In re Louise's Inc., 211 B.R. 798, 801 (D. Del. 1997)); Matter of Foster Mortgage Corp., 68 F.3d 914, 917 (5th Cir. 1995); Depoister v. Holloway Foundation, 36 F.3d 582, 586 (7th Cir. 1994).

11. In the present case, the Debtors have determined that they do not have any valid Preference Claims against Nikon because all transfers made to Nikon within 90 days of the Petition Date are covered by valid defenses under § 547(c) of the Bankruptcy Code. Accordingly, releasing Preference Claims for which there is no probability of success deserves approval, particularly in view of the fact that the Agreement is a business deal of critical importance to the Debtors.

12. Even if there were any arguably valid Preference Claims against Nikon, the Debtors believe, in their business judgment, that the agreement to waive such claims is fair and reasonable consideration for obtaining Nikon's Products as set forth in the Agreement. While the Debtors have a number of significant and important vendors, Nikon, as the vendor providing more products and sales to the Debtors than any other vendor, has unique importance to the Debtors' success.

13. Nikon is the Debtors' largest supplier of digital cameras, lenses, accessories and other related products and services. Nikon Products account for more of the Debtors' sales than any other single vendor. Having Nikon Products in RCI's retail stores and available for RI's internet based business is vital to maintain strong sales levels.

14. If the Debtors' were unable to obtain Nikon's Products, it would cause material harm to the Debtors' reorganization efforts and the performance of their business during this Chapter 11 Case.

15. Obtaining Products from Nikon immediately is of great importance to the Debtors' efforts to achieve a successful sale of their business and assets on a going concern basis. Any further interruption in the Debtors' ability to procure Nikon Products would be very harmful to the Debtors' ability to maximize the value of their business and assets by a sale as a going concern. Accordingly, approval of the Agreement is in the best interest of the Debtors, creditors and the estates, as the Debtors need Nikon's Products for the conduct of their business.

16. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the United States Securities and Exchange Commission; (iii) the Internal Revenue Service; (iv) the Office of the United States Attorney for the District of Delaware; (v) counsel to the Committee; (vi) counsel to the agent for the DIP Lender; and (viii) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court (a) enter the attached proposed Order granting this Motion approving the Agreement and (b) granting such other and further relief as the Court may deem equitable and just.

Dated: July 20, 2012

COLE, SCHOTZ, MEISEL, FORMAN
& LEONARD, P.A.

By: /s/ Therese A. Scheuer
Patrick J. Reilley (No. 4451)
Therese A. Scheuer (No. 5699)
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-and-

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Baltimore, MD 21202
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Proposed Counsel for the Debtors
and Debtors in Possession

EXHIBIT A

Critical Vendor Agreement

CRITICAL VENDOR AGREEMENT

This Critical Vendor Agreement (this "Agreement") is made and entered into as of this 20th day of July, 2012, by and between Ritz Camera & Image, L.L.C. ("RCI") and Ritz Interactive, LLC ("RI" and collectively with RCI, the "Debtors"), on the one hand, and Nikon Inc. ("Nikon") on the other hand. RCI, RI and Nikon shall each be referred to as a "Party" and collectively as the "Parties").

WHEREAS, on June 22, 2012 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). Lead Case No. 12-11868 (the "Bankruptcy Case"); and

WHEREAS, Nikon is the Debtors' largest supplier of digital cameras, lenses, accessories, and other related products and services (collectively, the "Products"), with Nikon Products accounting for more of RCI's sales than any other single vendor;

WHEREAS, Nikon's Products are integral to the success of the Debtors' businesses, and any substantial interruption in the procurement of Nikon's Products would be very harmful to the Debtors' ability to maximize the value of their businesses and assets by a sale on a going-concern basis; and

WHEREAS, after the Petition Date, the Debtors requested that Nikon sell and deliver Products, and Nikon agreed to do so in an amount of up to \$2,000,000.00 in the next seven weeks on a "cash in advance" basis and on the other terms set forth in this Agreement provided that (i) the Debtors and any other representative of the Debtors' bankruptcy estates agree not to assert any claims against Nikon to avoid and/or to recover alleged preferential transfers under Sections 547 and 550 or any other section of the Bankruptcy Code (the "Preference Claims"), and (ii) the Debtors agree to recognize that portion of Nikon's

reclamation claim in the amount of \$484,307.62 as an allowed claim under Section 503(b)(9) of the Bankruptcy Code (the “**503(b)(9) Claim**”); and

WHEREAS, the Debtors have determined that they do not have any valid Preference Claims against Nikon because all transfers made to Nikon within 90 days of the Petition Date are covered by valid defenses under § 547(c) of the Bankruptcy Code, and that even if there were any arguably valid Preference Claims against Nikon, the Debtors believe, in their business judgment, that the agreement to waive such claims is fair and reasonable consideration for obtaining Nikon’s Products as set forth in this Agreement on a postpetition basis; and

WHEREAS, the Debtors have further determined that obtaining Products from Nikon immediately is of critical importance to the Debtors’ efforts to achieve a successful sale of their business and assets on a going concern basis for maximum value; and

WHEREAS, based upon the forgoing, ample cause exists, in the Debtors’ business judgment, to enter into this Agreement, and that the benefits to be derived therefrom are clearly in the best interests of the Debtors, their creditors and their bankruptcy estates.

NOW THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties hereby agree, subject to Bankruptcy Court approval, as follows:

1. **Bankruptcy Court Approval.** This Agreement is subject to Bankruptcy Court approval. The Debtors shall file, on an expedited basis, a motion (the “**Approval Motion**”) requesting the Bankruptcy Court’s approval of this Agreement within two (2) business days of the Debtors’ receipt from Nikon of a signed copy of this Agreement, and will diligently pursue and support Bankruptcy Court approval of this Agreement on an expedited basis. If reasonably

requested by the Debtors, Nikon shall provide reasonable assistance to the Debtors in prosecuting the Approval Motion. Nikon shall be under no obligation to sell or supply Products to the Debtors until this Agreement has been approved by the Bankruptcy Court (such order approving this Agreement being the “**Approval Order**”); provided, however, that Nikon shall ship and deliver to the Debtors an initial shipment of Nikon Products as set forth in paragraph 4 of this Agreement upon the filing of the Approval Motion with the Bankruptcy Court.

2. **Waiver and Release of Preference Claims.** Effective upon entry of the Approval Order, the Debtors for themselves and their estates, successors and assigns shall be deemed to have irrevocably waived all Preference Claims, if any, against Nikon arising under Sections 547 and 550 and any other section of the Bankruptcy Code.

3. **Allowance of 503(b)(9) Claim.** Nikon is hereby allowed a claim in the amount of \$484,307.62 as a Section 503(b)(9) Claim, which shall be paid *pari passu* with other allowed Section 503(b)(9) claims against the Debtors’ estates, including from any proceeds available under the Post Closing Non Priority Carve Out established under the *Final Order pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Lien and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, and (5) Modifying the Automatic Stay.*

4. **Nikon’s Agreement to Ship Goods.** Nikon hereby agrees that promptly after the Debtors file the Approval Motion with the Bankruptcy Court, it shall sell and deliver to RCI an initial order of Nikon Products to be agreed by the Parties (the “Initial Order”) subject to and conditioned on the conditions set forth below in subparagraphs a., b., and c. of this paragraph 4. Further, promptly after entry of the Approval Order, Nikon will continue to sell and deliver

Nikon Products to RCI, upon receipt of RCI's purchase orders, up to the dollar amount remaining after subtracting the dollar amount of the Initial Order from Two Million Dollars (\$2,000,000.00), during the balance of the seven-week period following execution of this Agreement; provided that:

- a. The Debtors pay for the Products on a "cash in advance" basis, by wire transfer or as Nikon may otherwise reasonably require from time to time;
- b. Nikon will have no obligation to provide the Debtors with any anticipation, prompt payment or other cash discount credits that may be available to other Nikon dealers; and
- c. All purchase orders of Nikon Products shall be subject to availability as determined by Nikon in its sole discretion.

5. **Binding Agreement.** Subject to the entry of the Approval Order, this Agreement shall be binding upon the Parties hereto and any trustee appointed in the Debtors' Bankruptcy Case. No plan of reorganization or liquidation may modify the terms of this Agreement without the written consent of Nikon. Each Party represents that such Party has the full power and authority to enter into this Agreement and to bind such Party to this Agreement, and the person executing this Agreement on behalf of a Party represents to the other Parties that such person has the full authority and legal power to enter into this Agreement on behalf of such Party and to bind such party to this Agreement.


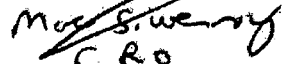
6. **Governing Law and Retention of Jurisdiction.** This Agreement shall be governed by and construed in accordance with the law of the State of Delaware, exclusive of its choice-of-law provisions. The Bankruptcy Court shall retain exclusive jurisdiction over all matters relating to this Agreement.

7. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties regarding the subject matter of this Agreement and fully resolves any disputes with

respect thereto. All prior or contemporaneous understandings, oral representations or agreements made among the Parties as to the subject matter herein are merged and contained in this Agreement. This Agreement may only be modified by a writing signed by all the Parties.

8. **Counterparts; Copies.** This Agreement may be executed in counterparts by facsimile or by e-mail in PDF format, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same document. Copies of this Agreement shall be given the same legal and binding effect as the originals.


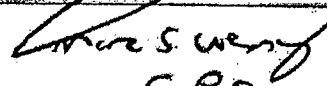
RITZ CAMERA & IMAGE, L.L.C.

By: 
Its: 
CRO

NIKON INC.

By: _____
Its: _____

RITZ INTERACTIVE, LLC

By: 
Its: 
CRO

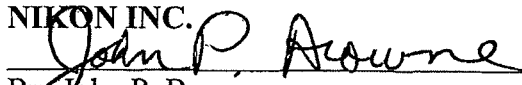
respect thereto. All prior or contemporaneous understandings, oral representations or agreements made among the Parties as to the subject matter herein are merged and contained in this Agreement. This Agreement may only be modified by a writing signed by all the Parties.

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RITZ CAMERA & IMAGE, L.L.C.

By:
Its:

NIKON INC.



By: John P. Browne
Its: Vice president & General Counsel

RITZ INTERACTIVE, LLC

By:
Its:

EXHIBIT B
Proposed Order

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

In re:	:	Chapter 11
RITZ CAMERA & IMAGE, L.L.C., <i>et al.</i> , ¹	:	Case No. 12-11868 (KG)
Debtors.	:	Jointly Administered
	:	Related to Docket No. ____

**ORDER APPROVING MOTION OF THE DEBTORS PURSUANT TO
11 U.S.C. § 363(b) AND BANKRUPTCY RULE 9019 FOR APPROVAL OF
CRITICAL VENDOR AGREEMENT BETWEEN THE DEBTORS AND NIKON INC.**

Upon the Motion of the Debtors pursuant to 11 U.S.C. § 363(b) and Bankruptcy Rule 9019 for Approval of Critical Vendor Agreement between the Debtors and Nikon Inc. (the “Motion”),² due and proper notice of the Motion as required by law having been given; and the Court having jurisdiction over the subject matter of the Motion; and after due deliberation thereon finding good and sufficient causes appears therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Critical Vendor Agreement attached to the Motion is hereby approved pursuant to 11 U.S.C. § 363(b) and Federal Rule of Bankruptcy Procedure 9019(a).
3. This Court shall retain jurisdiction over any and all disputes, controversies, claims or other matters arising under or otherwise related to the Agreement.

Dated: _____, 2012
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
CHIEF UNITED STATES BANKRUPTCY

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Ritz Camera & Image, L.L.C. (7093) and Ritz Interactive, LLC (4904).

² Capitalized terms used but not defined have the meanings given them in the Motion.