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6 Attorneys for Spectre Performance, a
California corporation, the Debtor and Debtor in Possession

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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION**

11 In re
12 **SPECTRE PERFORMANCE, a**
California corporation,
13 **aka SPECTRE INDUSTRIES, INC.,**
14 Debtor.

Case No. 6:12-bk-21890-MH

Chapter 11

**ORDER AUTHORIZING DEBTOR TO
OBTAIN POSTPETITION FINANCING
AND GRANTING LIENS AND
SUPERPRIORITY ADMINISTRATIVE
EXPENSE STATUS PURSUANT TO
11 U.S.C. § 364; AND AUTHORIZING
USE OF CASH COLLATERAL**

Date: July 31, 2012
Time: 2:00 P.M.
Place: Courtroom 303
3420 Twelfth Street
Riverside, California

1 The Motion for Order Authorizing Debtor to Obtain Postpetition Financing and Granting
2 Liens and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. § 364; and
3 Authorizing Use of Cash Collateral (“Motion”), filed by Spectre Performance, a California
4 corporation, the debtor and debtor in possession herein (“Debtor”), was heard on July 31, 2012,
5 before the Honorable Mark D. Houle, United States Bankruptcy Judge.

6 The Debtor appeared through Shulman Hodges & Bastian LLP by Mark Bradshaw.
7 K&N Engineering, Inc. (“K&N”) appeared through Best Best & Krieger, LLP by Franklin C.
8 Adams. Comerica Bank appeared through Frandzel Robins Bloom & Csato, L.C. by Reed S.
9 Waddell. The Official Committee of Unsecured Creditors appeared through Marshack Hays,
10 LLP by Martina Slocomb. Other appearances were made as reflected on the Court’s record.

11 The Court having reviewed the pleadings filed in support of and in opposition to the
12 Motion, the Court having considered the arguments and representations of counsel, and the
13 record in this case; the Court having found that proper notice has been given under the
14 circumstances of this case, and it appearing that the relief requested by the Motion is in the best
15 interest of the Debtor’s bankruptcy estate (“Estate”) and its creditors and good cause appearing,
16 it is hereby,

17 **ORDERED** as follows:

18 1. Through and including October 1, 2012, the Debtor is authorized to use cash
19 collateral of Comerica Bank, K&N, Bank of America and Wachovia Bank consistent with the
20 budget attached hereto (“Budget”), and if necessary, to exceed the amounts set forth in the
21 Budget by as much as ten percent (10%) of the total Budget. Any expenditures in excess of this
22 authorization will require further order of the Court after appropriate notice.

23 2. As adequate protection for Debtor’s use of any cash collateral of Comerica Bank,
24 Comerica Bank shall be granted a first priority replacement lien on *inter alia*, all of the Debtor’s
25 right, title and interest in and to all of Debtor’s prepetition and/or post-petition assets including,
26 but not limited to all inventory, equipment, accounts, general intangibles, investment property,
27 goods and negotiable collateral pursuant to the Debtor’s pre-petition loan agreements with
28 Comerica Bank, to the extent that any cash collateral of Comerica Bank is actually used by the

1 Debtor, which lien shall be senior in priority to all other pre or post-petition liens encumbering
2 the Debtor's assets. The liens granted under this paragraph shall not extend to claims or causes
3 of action possessed by the Debtor's Estate under Bankruptcy Code Sections 544, 545, 547, 548,
4 549, 553(b), 723(b) or 724(a), or the proceeds therefrom provided however, that the foregoing
5 shall not be read to limit the operation of Bankruptcy Code Section 507(a)(2) and (b).

6 3. The Debtor and Comerica agree that all of the terms and conditions of the
7 Debtor's use of cash collateral is subject to the terms and conditions identified in the Amended
8 and Restated Loan and Security Agreement (Accounts and Inventory) dated May 1, 2007 [which
9 amended and restated in full that certain Loan and Security Agreement (Accounts and Inventory)
10 dated November 30, 1999], as amended and modified by the following: First Modification to
11 Amended and Restated Loan and Security Agreement dated December 20, 2007, the Second
12 Modification to Amended and Restated Loan and Security Agreement dated May 30, 2008, the
13 Third Modification to Amended and Restated Loan and Security Agreement dated September 10,
14 2008, the Fourth Modification to Amended and Restated Loan and Security Agreement dated
15 January 20, 2009, the Fifth Modification to Amended and Restated Loan and Security
16 Agreement and First Modification to Note dated June 3, 2009, Sixth Modification to Amended
17 and Restated Loan and Security Agreement dated January 15, 2010, Seventh Modification to
18 Amended and Restated Loan and Security Agreement dated July 21, 2010, Eighth Modification
19 to Amended and Restated Loan and Security Agreement dated April 29, 2011 and Ninth
20 Modification to Amended and Restated Loan and Security Agreement dated September 30, 2011,
21 the Forbearance Agreement and Release dated as of April 2, 2012, the Second Extension to
22 Forbearance Agreement and Release attached as Exhibit C to the Motion, the May 24, 2012
23 Interim Order, the June 28, 2012 Final Order, and the July 19, 2012 Financing Order
24 (collectively the "Comerica Loan Agreement"). Comerica agrees that the right to use cash
25 collateral shall continue up to an including October 1, 2012. In the event of default of the terms
26 of the Comerica Loan Agreement, Comerica reserves the right to terminate the use of cash
27 collateral.

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1 4. Pursuant to Section 364(c) and (d) of the Bankruptcy Code, the Debtor is
2 authorized to continue the use of its line of credit facility with Comerica Bank under the
3 Comerica Loan Agreement on post-petition basis pursuant to the terms and conditions of the
4 Comerica Loan Agreement and to perform its obligations thereunder. Comerica Bank shall have
5 a first priority lien against the Debtor's assets as detailed in the Comerica Loan Agreement.

6 5. Through and including October 1, 2012, the Debtor is authorized to borrow
7 against the Comerica Bank line of credit not to exceed \$3,774,442, pursuant to the terms and
8 conditions of the Comerica Loan Agreement.

9 6. Comerica Bank shall be granted an allowed claim against the Estate pursuant to
10 Bankruptcy Code Section 364(c) and (d) for all amounts advanced to the Debtor under line of
11 credit under the Comerica Loan Agreement which allowed claim is secured by a first priority
12 lien on *inter alia*, all of the Debtor's right, title and interest in and to all of Debtor's prepetition
13 and/or post-petition assets including, but not limited to all inventory, equipment, accounts,
14 general intangibles, investment property, goods and negotiable collateral of the Debtor. Such
15 lien shall be senior in priority to pre-petition and post-petition liens against the Debtor's assets.

16 7. Comerica Bank shall have an allowed super-priority administrative expense claim
17 with priority in the Debtor's case under sections 364(b), 503(b), and 507(b) of the Bankruptcy
18 Code and otherwise over all administrative expense claims and unsecured claims against the
19 Debtor and its estate, now existing or hereafter arising, of any kind or nature whatsoever
20 including, without limitation, administrative expenses of the kinds specified in, arising, or
21 ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b),
22 546(c), 546(d), 726(b), 1113, and 1114 of the Bankruptcy Code, whether or not such expenses or
23 claims may become secured by a judgment lien or other non-consensual lien levy or attachment,
24 provided, that this DIP super-priority claim does not extend to any proceeds of avoidance claims.

25 8. As adequate protection and for Debtor's use of any cash collateral of K&N, K&N
26 shall be granted a replacement lien on the Debtor's post-petition personal property and accounts
27 receivable to the same extent and priority as any duly perfected and unavoidable lien held by
28 K&N as of the date of the Petition Date, to the extent that any cash collateral of K&N is actually

1 used by the Debtor. The liens granted under this paragraph shall not extend to claims or causes
2 of action possessed by the Debtor's Estate under Bankruptcy Code Sections 544, 545, 547, 548,
3 549, 553(b), 723(b) or 724(a), or the proceeds therefrom provided however, that the foregoing
4 shall not be read to limit the operation of Bankruptcy Code Section 507(a)(2) and (b). The
5 Debtor shall provide reporting to K&N about receipts and disbursements on at least a weekly
6 basis.

7 9. As adequate protection and for Debtor's use of any cash collateral of Bank of
8 America, Bank of America Bank shall be granted a replacement lien on the Debtor's post-
9 petition accounts receivable from (i) The Pep Boys, Manny Moe & Jack under the Customer
10 Managed Services Agreement between Primerevenue, Inc. and The Pep Boys, Manny Moe &
11 Jack and (ii) Debtor's accounts receivable from Advance Stores Company, Inc. under the
12 Customer Managed Services Agreement between Primerevenue, Inc. and Advance Stores
13 Company, Inc., to the same extent and priority as any duly perfected and unavoidable lien held
14 by Bank of America as of the date of the filing of the Debtor's bankruptcy petition ("Petition
15 Date"), to the extent that any cash collateral of Bank of America is actually used by the Debtor.
16 The liens granted under this paragraph shall not extend to claims or causes of action possessed
17 by the Debtor's Estate under Bankruptcy Code Sections 544, 545, 547, 548, 549, 553(b), 723(b)
18 or 724(a), or the proceeds therefrom provided however, that the foregoing shall not be read to
19 limit the operation of Bankruptcy Code Section 507(a)(2) and (b).

20 10. As adequate protection and for Debtor's use of any cash collateral of Wachovia
21 Bank (Wells Fargo Bank), Wachovia Bank (Wells Fargo Bank) shall be granted a replacement
22 lien on the Debtor's post-petition accounts receivable from Autozone, to the same extent and
23 priority as any duly perfected and unavoidable lien held by Wachovia Bank (Wells Fargo Bank)
24 as of the date of the filing of the Debtor's bankruptcy petition ("Petition Date"), to the extent that
25 any cash collateral of Wachovia Bank (Wells Fargo Bank) is actually used by the Debtor. The
26 liens granted under this paragraph shall not extend to claims or causes of action possessed by the
27 Debtor's Estate under Bankruptcy Code Sections 544, 545, 547, 548, 549, 553(b), 723(b) or
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1 724(a), or the proceeds therefrom provided however, that the foregoing shall not be read to limit
2 the operation of Bankruptcy Code Section 507(a)(2) and (b).

3 11. This Court shall retain exclusive jurisdiction to enforce the provisions of this
4 Order and to resolve any dispute(s) concerning this Order or the rights and duties of the parties
5 hereunder or thereunder or any issues relating to this Order including, but not limited to,
6 interpretation of the terms, conditions and provisions thereof, and all issues and disputes arising
7 in connection with the relief authorized herein.

8 12. The Debtor is authorized to sign such documents and perform such actions as are
9 consistent with the purpose of the Motion, the Budget, the Comerica Loan Agreement (including
10 the Second Extension to Forbearance Agreement and Release attached as Exhibit C to the
11 Motion) and this Order.

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25 DATED: August 14, 2012
26 United States Bankruptcy Judge
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	<u>5/25/2012</u>	<u>6/1/2012</u>	<u>6/8/2012</u>	<u>6/15/2012</u>	<u>6/22/2012</u>	<u>6/29/2012</u>	<u>7/6/2012</u>	<u>7/13/2012</u>	<u>7/20/2012</u>	<u>7/27/2012</u>	<u>8/3/2012</u>
LOC Balance - beginning of week	3,774,442	3,587,440	3,587,440	3,593,662	3,645,477	3,466,103	3,543,308	3,527,645	3,589,514	3,578,372	2,984,186
Expected cash receipts - paydown of LOC:											
Paydowns from cash receipts	(228,871)	(512,039)	(440,273)	(257,876)	(570,796)	(222,950)	(393,882)	(330,652)	(383,293)	(1,010,012)	(597,240)
Supply Chain Discount/Int/Fee	-	8,812	5,943	3,205	-	1,737	6,242	-	-	34,600	5,305
Total paydowns from C/R less Supply Chain	(228,871)	(503,227)	(434,330)	(254,671)	(570,796)	(221,213)	(387,640)	(330,652)	(383,293)	(975,412)	(591,935)
Advances required for :											
Payments to suppliers	143,271	372,740	305,767	255,162	263,338	250,215	297,073	237,717	236,398	272,013	239,886
G&A & Other overhead											
Payroll			66,233		62,123		62,510		69,288	15,000	57,500
Payroll taxes			28,381		-	26,331		26,259	5,518	23,500	
LEGAL 20%											
legal&acct 80% (incl appeal, bk, class acti	-	-	-	-	-	-	-	-	-	292,604	-
***Note: professional fees remain											
unpaid pending court order										(292,604)	
Monthly payments approved by court										20,000	
Rent			-	-	18,525			-		18,525	
Lease payments											
US Bank	-	980	-		-	-	-	989	979	980	
Hasler	-	307		207					-		
Verizon	-	158			158				158	158	
Volvo		-	475				475				475
Intech		1,034					1,034				1,034
Stratasys		-	2,306				2,306				2,306
Utilities (Phone, Elec, City)			-	1,920	3,175	359	698	5,739	2,489		
Principal Financial			-	6,428	-	6,217		6,154		6,300	
Anthem, Delta, Aflac, Hartford	-	21,880	-	21,225	573	277	-	78,674	-	500	35,770
Comerica (loans/int)		-	24,410					23,723			22,000
Comerica (svc chgs)	-	-	-	-	-	40	-	962	-	-	1,000
Property Tax											
Rebates	-	-	-	-	-	1,680	580	476	710	500	500
US Trustee Fee			-				-	-	4,875	5,000	
Credit Card and Gas Cards	-	500	578	7,500	-	-	-	4,503	-	9,000	500
Public Relations				4,000	2,000	6,000	2,000	2,000	-		
Reps	-	-	9,552	-	35,279	-	-	-	40,343	-	-
GA Others Total	-	4,726	2,850	10,044	6,251	7,299	5,301	5,325	11,393	9,750	9,750
Total advance required	143,271	402,325	440,552	306,486	391,422	298,418	371,977	392,521	372,151	381,226	370,721
LOC Balance assuming all checks have cleared the bank	3,587,440	3,486,538	3,593,662	3,645,477	3,466,103	3,543,308	3,527,645	3,589,514	3,578,372	2,984,186	2,762,972

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W/E	W/E	W/E	W/E	W/E	W/E	W/E	W/E	W/E
<u>8/10/2012</u>	<u>8/17/2012</u>	<u>8/24/2012</u>	<u>8/31/2012</u>	<u>9/7/2012</u>	<u>9/14/2012</u>	<u>9/21/2012</u>	<u>9/28/2012</u>	<u>10/5/2012</u>
2,762,972	2,734,616	2,644,926	2,520,547	2,349,181	2,213,583	2,068,986	1,910,357	1,719,128
(381,459)	(456,988)	(449,566)	(501,684)	(463,822)	(413,488)	(397,201)	(399,081)	(408,949)
8,712	10,453	11,082	10,657	9,183	9,183	9,183	9,183	8,683
(372,747)	(446,535)	(438,484)	(491,027)	(454,639)	(404,305)	(388,018)	(389,898)	(400,266)
271,886	284,886	229,906	264,386	187,206	188,906	139,906	133,426	216,656
26,355	57,500	26,355		57,500		57,500	-	57,500
-	-	-	172,000	-			116,000	
			(172,000)				(116,000)	-
			20,000				20,000	
			18,525			18,525		
		980					980	
	208					208		
		158					158	
				475				475
				1,034				1,034
				2,306				2,306
6,900					6,900			
6,000			6,000		-	-	6,000	
				35,770				35,770
				22,000				22,000
-	1,500	-	-	1,000	-	1,500	-	1,000
7,000								
500	500	500	500	500	500	500	500	500
-								
12,000	500	500	500	500	12,000	500	500	500
4,000					4,000			
-	-	45,956	-	-	34,652	-	-	-
9,750	11,750	9,750	9,750	10,750	12,750	10,750	10,750	10,750
344,391	356,844	314,105	319,661	319,041	259,708	229,389	198,669	348,491
2,734,616	2,644,926	2,520,547	2,349,181	2,213,583	2,068,986	1,910,357	1,719,128	1,667,353

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: **8105 Irvine Center Drive, Suite 600, Irvine, California 92618**

A true and correct copy of the foregoing document entitled (*specify*): **ORDER AUTHORIZING DEBTOR TO OBTAIN POSTPETITION FINANCING AND GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO 11 U.S.C. § 364; AND AUTHORIZING USE OF CASH COLLATERAL** will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **Not Applicable**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **Not Applicable**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **August 3, 2012**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Judge's Copy - Via Messenger

U.S. Bankruptcy Court
Mark D. Houle, Bankruptcy Judge
Bin Outside Courtroom 303
3420 Twelfth Street
Riverside, CA 92501

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

August 3, 2012
Date

Lorre Clapp
Printed Name

/s/ Lorre Clapp
Signature

SERVICE LIST – VIA EMAIL

Interested Party - Office of the United States Trustee (RS)

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Attorneys for the Committee

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Martina A Slocomb, Esq: mslocomb@marshackhays.com

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*): **ORDER AUTHORIZING DEBTOR TO OBTAIN POSTPETITION FINANCING AND GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO 11 U.S.C. § 364; AND AUTHORIZING USE OF CASH COLLATERAL** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner stated below:

1. **SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)** – Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of (*date*) **August 8, 2012**, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

- Franklin C Adams franklin.adams@bbklaw.com, arthur.johnston@bbklaw.com;lisa.spencer@bbklaw.com;bknoces@bbklaw.com
- Dennis G Bezanson dennis.bezanson@bbklaw.com, arthur.johnston@bbklaw.com;arlene.cabang@bbklaw.com
- Mark Bradshaw mbradshaw@shbllp.com
- Michael J Bujold Michael.J.Bujold@usdoj.gov
- Jennifer S Coleman jcoleman@hopkinscarley.com, bward@hopkinscarley.com
- Harold L Collins halc@knfilters.com, hcollinslaw@aol.com
- Abram Feuerstein abram.s.feuerstein@usdoj.gov
- Jeffery D Hermann jhermann@orrick.com
- Robert E Huttenhoff rhuttenhoff@shbllp.com
- Stephen J Kottmeier skottmeier@hopkinscarley.com
- Richard A Marshack rmarshack@marshackhays.com, lbergini@marshackhays.com;ecfmarshackhays@gmail.com
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- United States Trustee (RS) ustpreion16.rs.ecf@usdoj.gov
- Reed S Waddell rwaddell@frandzel.com, efiling@frandzel.com;sking@frandzel.com
- Craig A Welin cwelin@frandzel.com, efiling@frandzel.com;bwilson@frandzel.com

Service information continued on attached page

2. **SERVED BY THE COURT VIA UNITED STATES MAIL:** A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses indicated below:

Debtor –Via U.S. Mail
Spectre Performance
1720 S Carlos Avenue
Ontario, CA 91761

Service information continued on attached page

3. **TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by United States mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following persons and/or entities at the addresses, facsimile transmission numbers, and/or email addresses stated below:

Service information continued on attached page