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Attorneys for Debtor

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF IDAHO**

In re:

WESTERN AUTO SALES, LLC

Debtor.

Case No. 16-01375-DJP

Chapter 11

**SECOND AMENDED MOTION FOR USE OF CASH COLLATERAL<sup>1</sup>**

COMES NOW the Debtor, and moves the Court for an order authorizing Debtor the use of cash collateral consisting of income from the operation of its business, as shown on the attached spreadsheet and in this motion hereafter. The funds are needed for the payment of operating expenses for the business and to preserve the business pending final hearing on this Motion. Without use of cash collateral the business could not continue. In support of this Motion, Debtor represents to the Court and parties as follows:

1. On the Filing Date, Debtor filed a bankruptcy petition under Chapter 11 of the

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<sup>1</sup> This motion is amended a second time to adjust Debtor's proposed use of cash collateral.

Bankruptcy Code in the United States Bankruptcy Court for the District of Idaho. Debtor is operating as a debtor in possession pursuant to the provisions of Chapter 11.

2. Each of the secured creditors hereafter named are secured by the assets as shown in the attached lien search summary from the Idaho Secretary of State. The creditors with a lien on items of cash collateral are Nextgear Capital, Inc. (F/K/A/ Dealer Services Corporation) (“Nextgear”), Automotive Finance Corporation (“AFC”), and Westlake Flooring Company, LLC (“Westlake”). The security interests of the above-three creditors includes not only perfected purchase money security interests in Debtor’s inventory, but also the profits it makes from the sale of its inventory. A copy of the UCC-1 Financing statement for each creditor is attached to this Motion. Each secured creditor is owed as follows:<sup>2</sup>

- ◆ Nextgear Capital, approximately \$484,023.69, secured by the 41 vehicles listed on the attached "Nextgear Floored Vehicles" list;<sup>3</sup>
- ◆ AFC, approximately \$257,219.44, secured by the 33 vehicles listed on the attached "AFC Floored Vehicles" list<sup>4</sup>;
- ◆ Westlake Flooring Company, approximately \$ 94,141.33, secured by the 11 vehicles listed on the attached "Westlake Floored Vehicles" list.

Debtor estimates it would be able to liquidate its inventory in a reasonable time for

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<sup>2</sup> The balances are approximate.

<sup>3</sup> Per post-petition communications with Nextgear, this amount is subject to dispute. Per Nextgear, the amount owed is \$527,214.65 secured by 48 cars. The parties are in the process of reconciling this difference.

<sup>4</sup> Per post-petition communication with AFC, the amount owed may be \$257,949.44. The parties are in the process of reconciling this difference.

approximately \$1,300,000, which exceeds the value of the flooring creditors' purchase money security interests by approximately \$420,695 if the flooring creditors' liens are correct.

3. Debtor currently has on hand \$51,049.53; the source of which are gross funds received from the pre-petition sale of inventory. Additionally, Debtor has \$10,302.26 in cashier's checks ready to be tendered to AFC for payoffs on two vehicles sold pre-petition. Further Debtor has \$19,837.00 in a cashier's check ready to be tendered to Nextgear for payoffs on two vehicles sold pre-petition.

4. Debtor needs the use of the cash collateral to provide for the following:
- A. Payoffs for vehicles sold pre-petition in order to receive titles for such vehicles; Debtor estimates this amount to be a total of:
    - i.* AFC: \$31,536.16
    - ii.* Nextgear: \$20,770.50
    - iii.* Westlake: \$0.00
  - B. Payoffs for traded-in vehicles subject to loans<sup>5</sup>; Debtor estimates this amount to be: \$12,750
  - C. Pay Ms. Warner for a vehicle Debtor sold on consignment; Debtor estimates this amount to be: \$6,500
  - D. Payoffs for vehicles sold post-petition in order to receive titles for such vehicles;

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<sup>5</sup> Prior to filing, Debtor accepted trade-in vehicles subject to loans. After receiving funding for the sale, Debtor is obligated to pay off the loan secured by the trade-in vehicle.

E. General overhead of the dealership per its budget attached hereto

5. Debtor believes that upon approval of this motion, it will have sufficient funds to pay items A-C above within the next 30 days. Debtor is currently \$21,200 short to get “back in trust.” However, Debtor currently has a non-floored vehicle for which he has a buyer and believes it can net near \$18,000 just for that vehicle. Additionally, Debtor has four vehicles, floored with Nextgear, that is prepared to sell to another dealer and believes it can net approximately \$14,000 from this sale as well. Debtor needs to be able to sell these vehicles, and get back in trust, as well as payoff the liens for each vehicle accepted as a trade-in. Should it be unable to do so, significant harm could come to pre-petition customers, and their lenders, who may not receive titles for their vehicles or have the liens on their trade-in paid.

6. As opposed to originally contemplated, Debtor does not at this present time have the intention to replenish its inventory. It has sufficient inventory at the current moment to last approximately 3-5 months, depending on the pace at which it can sell its inventory. Debtor will discuss replacing its inventory, and the methods by which that may be accomplished in its plan.

7. Debtor requires these funds to continue its operations while it seeks to have a Chapter 11 Plan confirmed by the Court. Debtor is working on a Plan at the present time.

8. Debtor will not use cash collateral for expenses other than expenses incurred in the operation of its business in the ordinary course of business, and as shown in the budget, and all requirements of any order of the Court.

9. For the use of the cash collateral, Debtor proposes adequate protection payments

to the flooring lenders as follows: monthly cash payments of \$10,000.00 to the flooring creditors on a pro rata basis.

As required by LBR 4001.1, the following information is given:

*(1) Identity of all entities known to the debtor or trustee, holding or claiming to hold an interest in cash collateral and a description of such interests.*

The secured creditors known that have a security interest are Nextgear, AFC, and Westlake; see par. 2 above. There are no other known entities known to Debtor to have a security interest in property of the estate.

*(2) Identity of the creditor(s) whose cash collateral is to be utilized and the relationship, if any of the creditor(s) to the debtor.*

Only Nextgear, AFC, and Westlake. There is no relationship of any creditor to Debtor, except that they are existing lenders.

*(3) The amount, nature and source of the cash collateral.*

SEE ATTACHED BUDGET. The source of cash collateral is from the sale of Debtor's inventory. Debtor also has a mechanics shop in which vehicles are reconditioned. Debtor is preparing to open the shop to the general public and believe that is may also generate some revenue.

*(4) If interim use is requested, the amount of cash collateral to be used until the time of the final hearing on the motion to use cash collateral and the amount of cash collateral to be used thereafter.*

SEE ATTACHED BUDGET. The amount to be used until the time of a further hearing is the amount shown in the monthly columns.

*(5) A line-item budget listing projected income and expenses for one year. If interim use is requested, the budget must also include projected income and expenses until the time of the final hearing on the motion.*

SEE ATTACHED BUDGET. This budget is an interim budget for the next 4

months. Debtor is unable to put forth, at this time, budget covering a longer period of time. It is Debtor's intention to take care of the flooring companies in the short interim to keep the business operating. Debtor is optimistic that should it be able to continue operations, a long term budget can be developed. Debtor notes that this budget includes adequate protection for each flooring company.

*(6) The estimated balance owed to the creditor(s) identified in paragraph (a)(2), as of the date the petition was filed, including any accrued, unpaid interest, cost or fees as provided in the agreement.*

The aggregate estimated balance owed to all three flooring lenders is \$835,384.

*(7) If the cash collateral is rent, the amount of the gross and net rent realized each month, a description of the property from which the rent is generated, and an estimate of its fair market value.*

See attached budget and valuation. None is "rent."

*(8) If the cash collateral is receivables, a description and itemization of such receivables and, if any accounts receivable aging statement exists, the same must be provided to the affected creditor(s) and any party requesting such statement.*

While each flooring lender has a lien on Debtor's accounts receivables, Debtor does not have any current accounts receivables.

*(9) The estimated fair market value, and the basis of the estimate, of the collateral which allegedly secures the creditor's claims.*

Debtor estimates the value of the collateral to be \$1,300,000. This figure is based upon the 23 year experience of Todd Martell, Western Auto Sales, LLC's sole shareholder, as a car salesman in Boise, Idaho, and his knowledge of Western Auto Sales, LLC's inventory.

*(10) The method or means by which the interests of the creditor are to be adequately protected, and the estimated value, and the basis for the estimate, of any property offered as adequate protection.*

The flooring creditors are to be adequately protected by pro rata share of monthly cash payments of \$10,000. See attached budget. Adequate protection payments are feasible and Debtor tenders the same to each flooring lender. As Debtor has equity in the vehicles, it believes the flooring creditors are property protected at the moment. However

vehicles depreciate. Debtor's calculation of the adequate protection payments exceed interest that would accrue on each claim at 8.00%. Thus Debtor selected this figure to prevent the claims from increasing due to interest, as well to cover any depreciation that is likely to occur to the flooring creditors' collateral.

*(11) A statement of whether or not the debtor proposes any provision contained in the Guidelines Regarding Motions to Use Cash Collateral or to Obtain Credit, or Stipulations Regarding the Same which is other than a provision normally approved by the court (under subsection (a) of the Guidelines) and, if so, the provision shall be clearly identified.*

Debtor proposes no such provision.

DATED this 28<sup>th</sup> day of October, 2016

LAW OFFICE OF D. BLAIR CLARK PC

By: /s/ Jeffrey P. Kaufman  
Jeffrey P. Kaufman, for Debtor

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28<sup>th</sup> day of October, 2016, I served a true and correct copy of the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

US Trustee  
[ustp.region18.bs.ecf@usdoj.gov](mailto:ustp.region18.bs.ecf@usdoj.gov)

I further certify that on such date I served the foregoing on the following non-CM/ECF Registered Participants in the manner indicated:

Via email addressed as follows:

John Kurtz, representing Nextgear Capital, Inc.  
[jkurtz@hawleytroxell.com](mailto:jkurtz@hawleytroxell.com)

Randy French, representing Automotive Finance Corp.  
[rfrench@rfrenchlaw.com](mailto:rfrench@rfrenchlaw.com)

Via first class mail, postage prepaid addressed as follows:

Automotive Finance Corp  
13085 Hamilton Crossing Blvd.  
Suite 300  
Carmel, IN 46032

Westlake Flooring Co., LLC  
4751 Wilshire Blvd.  
Suite 100  
Los Angeles, CA, 90010

Nextgear Capital, Inc.  
1320 City Center Dr.  
Suite 100  
Carmel, IN 46032

And the 20 largest unsecured claims as addressed on the attached list.

/s/ Jeffrey P. Kaufman  
Jeffrey P. Kaufman



ADESA  
780 South 5600 West  
Salt Lake City, UT 84104

AGWS  
PO Box 768  
Warrenville, IL 60555

Boise City Utility Billing  
P.O. Box 2760  
Boise, ID 83701

Century Link  
PO Box 29040  
Phoenix, AZ 85038

Chevron & Texaco  
PO BOX 9560  
Concord, CA 94524-1901

Cornerstone United  
1020 Main Ave. NW  
Hickory, NC 28601

Dent King of Oregon  
475 Jasmine Rd.  
Ontario, OR 97914

Idaho Power  
P.O. Box 70  
Boise, ID 83707

Idaho State Tax Commission  
PO Box 36  
Boise, ID 83720

iDNS  
924 Bergen Ave.  
Suite 289  
Jersey City, NJ 07306-3018

Intermountain Gas Co.  
PO BOX 64  
Boise, ID 83732

J & S Transportation  
7 N 17th St.  
Billings, MT 59101

M & M Wholesale  
123 Bomar Ave  
Fort Worth, TX 76103

McDowell's Specialty Repair  
10443 W. Fairview Ave  
Boise, ID 83704

National Safe Drivers  
800 Yamato Road  
Boca Raton, FL 33431

Norco, Inc  
1125 W. Amity Rd.  
Boise, ID 83705

OSI  
1311 N. Plano Rd.  
Richardson, TX 75081

Pacific Mobile Structures  
5305 W. Diamond St.  
Boise, ID 83705

Performance Electric, LLC  
6097 Kuna Rd.  
Kuna, ID 83634

Western Auto Sales  
Nextgear floored vehicles

Vehicle	VIN	Pay Off Amount
2012 Ford F350SD XL	1FT8X3B60CEB70903 STK: 848	\$15,253.08
2009 Ford F150 Lariat	1FTPW14V09FB23994 STK: 842	\$15,757.81
2009 Chevy Avalanche LS	3GNFK12019G1967 STK: 842	\$13,294.54
2009 GMC Sierra 1500 SLE	3GTEK13339G197010 STK: 843	\$17,179.91
2008 GMC Sierra 1500 SLT	2GTEK 133281196759 STK: 841	\$19,820.94
2004 Ford F450SD XLT	1FDXW47P84EB54421 STK: 846	\$7,778.85
2012 Dodge Journey R/T	3C4PDDFG2CT334469 STK: 845	\$10,145.62
2015 Chrysler 200	1C3CCCAB5FN688423 STK: 823	\$11,150.99
2008 Ford F350 SD XL	1FTWW31R28EB37866 STK: 824	\$11,699.18
2005 Ford F250SD XL	1FTSW21P85EB14658 STK: 828	\$8,464.41
2008 Ford F250SD XL	1FTSW21548ED43504 STK: 830	\$9,823.56
2011 FORD F205SD XL	1FT7W2BT5BEA STK: 826	\$16,492.42
2010 Ford F450SD XL	1FTXW4DR2AEA44227 STK: 831	\$18,499.42
2006 Ford F350SD XL	1FTWW31P96EC07486 STK: 813	\$5,110.01
2011 Ford350SD XLT	1FT7W3BT6BED07023 STK: 814	\$11,036.30
2005 Truck Camper Lance 1191	157993 STK: 851	\$9,839.93
2007 Ford F350SD XL	1FTWW31P87EA13064 STK: 850	\$11,302.55
2006 Ford F350SD XL	1FTWW31PX6ED08519 STK: 853	\$10,529.52
2008 Ford F350SD XL	1FTWW31R98EC72018 STK: 852	\$13,721.36
2007 GMC Yukon XL 1500 SLE	1GKFK16307J211347 STK: 836	\$11,253.44
2004 Ford F250SD XL	1FTNW21P04EB08008 STK: 833	\$9,884.77
2008 Ford F250SD XL	1FTSW21R88ED08967 STK: 835	\$12,617.58
2016 Chrysler 200 Sedan	1C3CCCAB4GN126708 STK: 854	\$12,840.62
2015 Dodge Dart	1C3CDFB7FD344563 STK: 855	\$10,713.75
2015 Kia Rio	KNADM4A35F6455578 STK: 856	\$9,199.51
2010 Ford Expedition	1FMJK1K54AEA34343 STK: 840	\$12,556.54
2010 Chevy Silverado 2500 LT	1GC4KXBG5AF106425 STK: 838	\$9,067.32
2011 Ram 1500 SLT	1D7RV1GT1BS600909 STK: 837	\$9,067.32
2010 Ford F350SD XL	1FTWW3BR4AEA04918 STK: 859	\$13,277.21
2008 Ford F450SD Lariat	1FTXW43R68EA88646 STK: 857	\$13,277.21
2015 Volkswagen Jetta SE	3VWD17AJ4FM294648 STK: 860	\$11,612.89
2009 GMC Sierra 1500 SLE	3GTEK13C59G279708 STK: 858	\$10,251.18
2007 Ford F150 XLT	1FTRW14W47FA53351 STK: 861	\$8,229.38
2014 Volkswagen Jetta	3VWD17AJ5EM312332 STK: 862	\$10,584.19
2006 Ford F350SD Lariat	1FTWX31P96ED41363 STK: 865	\$10,190.47
2004 Ford F250SD Lariat	1FTNW21P24EC10765 STK: 868	\$8,480.86
2005 Dodge Ram 3500 Laramie	3D7LR38C65G726697 STK: 866	\$13,298.31
2007 Ford F350SD XLT	1FTWW33P97EA56017 STK: 869	\$11,190.16
2007 Ford F150 Harley Davidson	1FTPW14V97FA81693 STK: 867	\$11,393.72
2004 Ford F350 Harley Davidson	1FSW31P94EC50172 STK: 863	\$11,493.99
2012 Chevy Silverado LT	3GCPKSE71CG126412 STK: 864	\$16,642.87
	<b>Total</b>	<b>\$484,023.69</b>

Western Auto Sales  
AFC floored vehicles

Vehicle	VIN	Pay Off Amount
Ford F250SD	1FTSX20P96EB60757	\$4,391.88
2008 Chrysler Town & Country	2A8HR44H88675007	\$3,762.41
2004 Ford F250SD	1FTNX21P74EB30150	\$6,386.49
2005 Ford F2050 SD	1FTSX21P75EB4183	\$8,189.85
2003 Chevy Avalanche	3GNEK13T53G114028	\$2,688.41
2004 Chevy Silverado	1GCEK19T94E151673	\$3,593.77
2000 GMC Yukon XL	1GKFK16T9YJ101155	\$2,489.15
2004 Chevy Suburban	3GNFK16Z64G247256	\$3,499.51
2000 GMC SIEERA 2500	1GTGK29U1YE121838	\$3,821.95
2006 Ford F550 SD XL	1FDAF57R26EA14461	\$4,830.62
2006 Dodge Ram 3500	3D3MX48C26G207875	\$15,326.00
2009 Ford Explorer	1FMEU74E99UA14361	\$7,749.95
2001 Ford F350SD	1FTSW31F61EA83482	\$8,766.92
2003 Nissan Xterra	5N1MD28YX3C657768	\$2,235.67
2011 Ford Ranger	1FTLR4FE2BPB22852	\$9,820.87
2007 Ford F350SD	1FTWW31P67EB37009	\$14,092.35
2005 GMC Yukon	1GKEK63U25J234003	\$6,472.09
2003 Dodge Ram 1500	1D7HU18Z83S201594	\$4,843.80
2006 Ford F250SD	1FTSW21P86ED80442	\$11,837.51
2007 GMC Sierra 1500HD	1GTGK13U37F134019	\$10,518.50
2015 Nissan Versa	3N1CE2CP0FL406605	\$8,327.71
2016 Ford Focus	1FADP3F22GL26483	\$12,258.37
2003 Mercedes Benz	WDBNG74J13A359397	\$7,499.18
2015 Chevy Cruze	1G1PG55B1F7130075	\$13,321.13
2001 Chevy Silverado 2500	1GCHK23U81F165154	\$5,244.47
2015 Volkswagen Passat	1VWAT7A33FC085191	\$13,120.15
2007 Ford F250SD	1FTSW20P87EB08072	\$10,247.70
2008 GMC Sierra	2GTEK13M781184728	\$9,996.12
2004 Ford F250SD	1FTNW21P74EE08029	\$8,577.38
2008 GMC Sierra 1500	2GTEK190381218409	\$10,231.40
2010 Dodge Ram 1500	1D7RV1CT3AS128149	\$15,265.13
2008 Chevy Impala	2G1WT58N781283875	\$4,775.96
2007 Mazda Mazda3	JIM1BK144171659232	\$3,037.04
	<b>Total:</b>	<b>\$257,219.44</b>

Western Auto Sales  
Westlake floored vehicles

<b>Vehicle</b>	<b>VIN Ending</b>	<b>Pay Off Amount</b>
2008 Ford F350D	B39144	\$5,429.00
2003 Ford F350D	D48874	\$8,397.76
2016 Ford Fusion	198705	\$14,625.50
2016 Hyundai Sonata	273627	\$13,417.50
2006 Ford F350D	F350SD	\$10,021.84
2005 Ford F350D	B20668	\$8,666.11
2008 GMC Acadia	268029	\$7,881.22
2006 Ford F250D	C30653	\$4,242.17
2004 Ford F250D	B49753	\$8,466.32
2004 Chevy Silverado	203780	\$8,466.32
2004 Ford F350D	C75466	\$4,527.59
	<b>Total:</b>	<b>\$94,141.33</b>

	<u>November '16</u>	<u>December '16</u>	<u>January '17</u>	<u>February '17</u>
<b><u>Income</u></b>				
Gross Sales	\$400,000.00	\$350,000.00	\$300,000.00	\$250,000.00
Estimated Sales Taxes	\$24,000.00	\$21,000.00	\$18,000.00	\$15,000.00
<b>Total Gross</b>	<b>\$424,000.00</b>	<b>\$371,000.00</b>	<b>\$318,000.00</b>	<b>\$265,000.00</b>
<b><u>Expenses</u></b>				
Estimated Vehicle Payoffs	\$272,000.00	\$238,000.00	\$204,000.00	\$170,000.00
Vehicle reconditioning	\$5,000.00	\$0.00	\$0.00	\$0.00
Payroll				
Mechanics	\$8,500.00	\$5,000.00	\$5,000.00	\$5,000.00
Floor salesman	\$7,500.00	\$7,500.00	\$5,000.00	\$2,500.00
Desk Manager	\$5,000.00	\$5,000.00	\$2,500.00	\$2,500.00
Finance Manager	\$2,500.00	\$2,000.00	\$2,000.00	\$1,500.00
Asst. General Manager	\$3,000.00	\$3,000.00	\$2,500.00	\$2,000.00
General Manager	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
Payroll Expenses	\$7,875.00	\$6,875.00	\$5,500.00	\$4,625.00
General Office Expenses				
Lot Rent	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
Office Trailer	\$400.00	\$400.00	\$400.00	\$400.00
Utilities	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
Alarm	\$150.00	\$150.00	\$150.00	\$150.00
Bank Fees	\$175.00	\$175.00	\$175.00	\$175.00
Cleaning Supplies	\$225.00	\$225.00	\$225.00	\$225.00
Credit review fees	\$500.00	\$500.00	\$500.00	\$500.00
PC hardware/software	\$950.00	\$950.00	\$950.00	\$950.00
Insurance	\$650.00	\$650.00	\$650.00	\$650.00
Merchant Acct Fees	\$675.00	\$675.00	\$675.00	\$675.00
Office Supplies	\$900.00	\$900.00	\$900.00	\$900.00
Postage/FedEx	\$250.00	\$250.00	\$250.00	\$250.00
Marketing	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00
Estimated Sales Taxes	\$24,000.00	\$21,000.00	\$18,000.00	\$15,000.00
Professional Fees				
Bookkeeping	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
Accountant	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
UST Fees	\$217.00	\$217.00	\$217.00	\$217.00
Legal Fees	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00
<b>Total Expenses</b>	<b>\$363,467.00</b>	<b>\$316,467.00</b>	<b>\$272,592.00</b>	<b>\$231,217.00</b>
Profits:	<u>\$60,533.00</u>	<u>\$54,533.00</u>	<u>\$45,408.00</u>	<u>\$33,783.00</u>
Adequate Protection Payments:	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
to Nextgear (\$527,214.65) - 59.96%	\$5,996.00	\$5,996.00	\$5,996.00	\$5,996.00
to AFC (\$257,949.44) - 29.34%	\$2,934.00	\$2,934.00	\$2,934.00	\$2,934.00
to Westlake (\$94,141.33) - 10.71%	\$1,071.00	\$1,071.00	\$1,071.00	\$1,071.00