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13
14 **UNITED STATES BANKRUPTCY COURT**
15 **DISTRICT OF NEVADA**

16 In re:

- 17 X-TREME BULLETS, INC.,
- 18 AMMO LOAD WORLDWIDE, INC.,
- 19 CLEARWATER BULLET, INC.,
- 20 FREEDOM MUNITIONS, LLC,
- 21 HOWELL MACHINE, INC.,
- 22 HOWELL MUNITIONS & TECHNOLOGY, INC.,
- 23 LEWIS-CLARK AMMUNITION COMPONENTS, LLC,
- 24 COMPONENTS EXCHANGE, LLC,
- 25 All Debtors.

26 Debtors and
Debtors-in-Possession.

Jointly Administered under

Case No. 18-50609-btb with

Case Nos. 18-50610-btb; 18-50611-btb;
18-50613-btb; 18-50614-btb; 18-50615-btb;
18-50616-btb; and 18-50617-btb

Chapter 11 Proceedings

**DEBTORS’ MOTION FOR ORDER:
(1) APPROVING SALE AND BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS FREE AND CLEAR OF LIENS AND INTERESTS; AND (2) APPROVING MANNER OF NOTICE TO BE PROVIDED TO CREDITORS AND PARTIES-IN-INTEREST IN CONNECTION WITH SALE MOTION; MEMORANDUM OF POINTS AND AUTHORITIES**

[11 U.S.C. §§ 363 and 365]

[DECLARATION OF J. MICHAEL ISSA IN SUPPORT OF THE MOTION FILED

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CONCURRENTLY HEREWITH]

Date: September 12, 2019
Time: 2:00 p.m.
Place: Courtroom 2 (5th Floor)
C. Clifton Young Federal Bldg.
300 Booth Street
Reno, NV 89509

TO THE HONORABLE BRUCE T. BEESLEY, UNITED STATES BANKRUPTCY JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, AND OTHER PARTIES-IN-INTEREST:

X-Treme Bullets, Inc. (“X-Treme”), Ammo Loan Worldwide, Inc. (“ALW”), Clearwater Bullets, Inc. (“Clearwater”), Freedom Munitions, LLC (“Freedom”), Howell Machine, Inc. (“Howell Machine”), Howell Munitions & Technology, Inc. (“HMT”), Lewis-Clark Ammunition and Components, LLC (“LCAC”) and Components Exchange, LLC (“Components Exchange”), the debtors and debtors-in-possession in the above-captioned Chapter 11 cases (“Debtors”), hereby submit this Motion for Order: (1) Approving Sale and Bidding Procedures in Connection with the Sale of Substantially All of the Assets of the Debtors Free and Clear of Liens and Interests; and (2) Approving Manner of Notice to Be Provided to Creditors and Parties-in-Interest in Connection with Sale Motion (“Sale Procedures Motion”).

By this Sale Procedures Motion, the Debtors request that this Court enter an order granting to the Debtors, in part, the following relief:

1. Approving the sale and bidding procedures, set forth in that Sale Procedures Memorandum attached as Exhibit “1” to the Declaration of J. Michael Issa filed concurrently herewith (“Issa Declaration”), that the Debtors hereby propose in connection with the conducting of an auction with respect to a proposed sale of substantially all of the assets and properties of the Debtors;
2. Approving the Break-Up Fee proposed hereby; and
3. Approving the manner of the notice to be provided to creditors and parties-in-interest in connection with a hearing on a motion for an order authorizing the sale and assignment of substantially all of the assets and properties of the Debtors (“Sale Motion”) that will be filed by the Debtors by September 18, 2019.

1 Subject to the approval of this Court, the Debtors and Kash CA, Inc. (“Kash CA”), have
2 entered into that Asset Purchase Agreement (“Kash Asset Purchase Agreement”) pursuant to
3 which the Debtors have agreed to sell to Kash CA and Kash CA has agreed to purchase from the
4 Debtors the Purchased Assets, as such term is defined in the Kash Asset Purchase Agreement
5 attached as Exhibit “2” to the Issa Declaration. The Debtors have determined that the best means
6 to obtain the most favorable recovery for creditors in these cases is for the Debtors to conduct an
7 Auction of the Purchased Assets, subject to open bidding, with the Auction to be conducted before
8 this Court immediately before the hearing on the Sale Motion (“Sale Motion Hearing”). The
9 Debtors then will seek, at the Sale Motion Hearing, the Court’s approval of the Successful Bidder
10 for the Purchased Assets, so that a Closing of the Transaction may occur by October 31, 2019. By
11 this Sale Procedures Motion, the Debtors request that the Court approve the sale and bidding
12 procedures proposed by the Debtors, as described in the Sale Procedures Memorandum, in
13 connection with the sale process and the conducting of the Auction.¹

14 In support of this Sale Procedures Motion, the Debtors respectfully represent as follows:

15 First, the sale and bidding procedures hereby proposed by the Debtors are fair, and
16 provide for a “level playing field” for prospective bidders with respect to the Transaction
17 contemplated herein.

18 Second, the proposed Break-Up Fee that may become payable to Kash CA under
19 the Kash Asset Purchase Agreement is fair.

20 Third, the manner of the notice that the Debtors propose hereby to provide to
21 creditors and parties-in-interest in connection with the Sale Motion Hearing is designed
22 reasonably to enhance interest in the acquisition of the Purchased Assets and is sufficient
23 under the circumstances of these cases.

24 The Official Committee of Unsecured Creditors (“Committee”) has been an active
25 participant in the sale process in the Debtors’ cases. **The Committee** has reviewed the Sale
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28 ¹ Unless otherwise defined herein, the definitions of the capitalized terms contained herein are as set forth in the Sale Procedures Memorandum.

1 Procedures Memo (Exhibit “1” to the Issa Declaration) and **supports the Court’s approval of the**
2 **Sale Procedures Memo and the relief requested hereby by the Debtors.**

3 This Sale Procedures Motion is made and based upon the allegations and representations
4 set forth hereinabove, the Memorandum of Points and Authorities attached hereto, the Issa
5 Declaration filed concurrently herewith, the pleadings, papers, and other documents on file in
6 these Chapter 11 cases, and any supplemental evidence, both oral and documentary, that the
7 Debtors may submit to this Court at or before the time of the hearing on this Sale Procedures
8 Motion.

9 **WHEREFORE**, the Debtors request that this Court enter an order:

10 1. Approving the sale and bidding procedures that the Debtors hereby propose
11 in connection with the sale process and the Auction as set forth in the Sale Procedures
12 Memorandum;

13 2. Approving the proposed Break-Up Fee that may become payable to Kash
14 CA, as the “stalking horse bidder,” as set forth in the Kash Asset Purchase Agreement;

15 3. Approving as adequate under the circumstances of these cases (i) the
16 marketing of the Debtors’ assets, and (ii) the manner of the notice to be provided to the
17 Debtors’ creditors and parties-in-interest in these cases in connection with the Sale Motion
18 Hearing, as described hereinbelow; and

19 4. Granting to the Debtors such other and further relief as this Court deems
20 just and proper under the circumstances of these cases.

21 DATED: September 6, 2019

WINTHROP COUCHOT
GOLUBOW HOLLANDER, LLP

22
23
24 By: /s/ Robert E. Opera
Robert E. Opera
Peter W. Lianides
Alastair M. Gesmundo
25 General Insolvency Counsel for
26 Debtors and Debtors-in-Possession
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 After consultation with the Committee, the Debtors have determined, that, in order to
5 maximize the value of the Debtors' estates, the Debtors should seek to effectuate a prompt, going
6 concern sale of their businesses and the assets used therein, subject to a competitive bidding and
7 sale process.

8 After extensive marketing of the Debtors' assets, the Debtors have determined, subject to
9 the approval of the Court, to sell and to assign to Kash CA substantially all of the Debtors' assets
10 and properties pursuant to the terms and conditions of the Kash Asset Purchase Agreement
11 (Exhibit "2" to the Issa Declaration). The Debtors believe strongly that the proposed Transaction
12 is in the best interests of the Debtors' creditors, in part, because substantial sale proceeds will be
13 generated from the proposed Transaction which will enable the Debtors to make significant
14 distributions to unsecured creditors in these cases.

15 The Debtors propose the sale and bidding procedures described herein in order to facilitate
16 the sale process and potentially an Auction of the Purchased Assets, for the benefit of the Debtors'
17 creditors. The Debtors believe that the proposed sale and bidding procedures are fair, will lead to
18 an orderly sale process, and will ensure a level playing field for all prospective purchasers.

19 **II.**

20 **STATEMENT OF FACTS**

21 **A. General Description of the Debtors.**

22 David C. Howell ("Mr. Howell") is the principal of each of the Debtors.

23 On January 1, 2014, Mr. Howell caused HMT to be formed. Mr. Howell owns 95% of the
24 issued and outstanding shares of stock in HMT. HMT, in turn, is the sole shareholder of the
25 following Debtors: X-Treme; Clearwater; ALW; and Howell Machine. HMT is the sole member
26 of Freedom. Mr. Howell owns 100% of the membership interests in LCAC. Mr. Howell owns
27 90% of the membership interests in Components Exchange.

28 A description of each Debtor and its operations is set forth hereinbelow.

1 and assembles ammunition for HMT and is paid for labor and overhead to perform
2 this service. Components Exchange holds a federal license to manufacture
3 ammunition.

4 Components Exchange’s financial affairs largely have been maintained separately from the
5 other Debtors.

6 **B. Financial Performance of the Debtors.**

7 The Debtors, together with their affiliates, Twin River Contract Loading, Inc. (“Twin
8 River”) and Big Canyon Environmental, LLC (“Big Canyon”), historically have prepared financial
9 statements on a consolidated basis.² The net sales of the Debtors, Twin River and Big Canyon for
10 the past several years are as follows:

- 11 1. 2015 -- \$85,811,134.
- 12 2. 2016 -- \$104,671,762.
- 13 3. 2017 -- \$74,624,745.
- 14 4. 2018 -- \$33,648,082.

15 The consolidated operations of the Debtors, Twin River and Big Canyon were profitable in
16 2016, but were unprofitable in 2017 and 2018. The Debtors’ operations have not been profitable
17 since the Petition Date.

18 The Debtors’ assets consist primarily of the following: cash; accounts receivable;
19 inventory; machinery and equipment; office equipment, furniture and fixtures; vehicles; and
20 potential bankruptcy avoidance claims and other litigation claims. Twin River’s and Big
21 Canyon’s assets consist primarily of mothballed machinery and equipment of limited value.

22 **C. Retention of CRO/Chapter 11 Filings.**

23 On June 7, 2018, the Debtors engaged J. Michael Issa (“Mr. Issa”) of GlassRatner
24 Advisory & Capital Group LLC (“GlassRatner”) to act as Chief Restructuring Officer (“CRO”) of
25 the Debtors.

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28 ² Information contained herein regarding the financial affairs of the Debtors, Twin River and Big Canyon for 2015 and 2016 are derived from their audited consolidated financial statements. The financial information for the Debtors, Twin River and Big Canyon for 2017 and for 2018 derives from unaudited, internally-prepared financial statements.

1 On June 8, 2018 (“Petition Date”), the Debtors filed petitions for relief under Chapter 11 of
2 the Bankruptcy Code commencing these cases. Mr. Issa, as CRO, effectively has acted as the
3 chief executive officer of the corporate Debtors and as a manager of the limited liability company
4 Debtors, and has been primarily responsible for overseeing the Debtors’ business operations and
5 for administering the Debtors’ Chapter 11 cases. Since the Petition Date, the Debtors have acted
6 diligently, as debtors-in-possession, to restructure their operations and to enhance the profitability
7 of their businesses for the benefit of the Debtors’ creditors.

8 **D. Zions Secured Claim.**

9 Zions is the Debtors’ primary pre-petition secured lender. On July 19, 2018, Zions filed in
10 each of the Debtors’ cases a proof of claim asserting against each of the Debtors a secured claim
11 (“Zions Secured Claim”) in the amount of approximately \$17,529,219 (exclusive of certain
12 interest and fees and costs) (which now has been reduced by a \$200,000 payment made by the
13 Debtors). Zions asserts that its loans to the Debtors are secured by a first-priority security interest
14 encumbering substantially all of the assets of the Debtors, substantially all of the assets of Twin
15 River and Big Canyon, and by deeds of trust encumbering two real properties owned by Mr.
16 Howell (“Howell Deeds of Trust”).

17 **E. TTB’s Claim.**

18 On or about January 12, 2017, the Department of the Treasury Alcohol and Tobacco Trade
19 and Tax Bureau (“TTB”) filed a federal tax lien against the assets of Twin River. The TTB’s
20 claim arises from Twin River’s failure to pay to the TTB excise taxes associated with Twin
21 River’s manufacture of ammunition. Twin River filed a federal excise tax return with the TTB
22 and was the company that failed to pay excise taxes to the TTB. The Debtors believe that they
23 have no liability to the TTB.

24 On or about December 3, 2018, the TTB filed in HMT’s case, as Claim 52-1, a proof of
25 claim asserting against HMT a claim in the aggregate amount of \$12,183,415.27, consisting of a
26 secured claim in the amount of \$5,079,998.40 and an unsecured claim in the amount of
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1 \$7,103,416.87.³ The Debtors dispute the TTB's claim. The Debtors believe that the TTB's claim
2 is against only Twin River, and not against any of the Debtors. Moreover, the Debtors believe that
3 the TTB can have no valid secured claim of any nature against the Debtors, in part, because (i) the
4 TTB's pre-petition lien was recorded only against Twin River and not against any of the Debtors,
5 and (ii) the TTB's lien is junior in priority to Zions's first-priority liens (Zions's liens were
6 recorded years prior to the TTB's filing of the tax lien against Twin River) and, consequently, the
7 TTB's lien unquestionably is "out of the money" and valueless.

8 **F. Marketing of Debtors' Assets.**

9 **1. Marketing Efforts.** The Debtors have acted diligently to market their
10 assets. As set forth in the Issa Declaration, the Debtors, under the supervision of Mr. Issa,
11 have sent "teaser" memoranda to numerous potential strategic or financial purchasers in
12 order to solicit interest in the Debtors' assets. The Debtors have had meaningful
13 discussions with five potential purchasers of the Debtors' assets. Four potential purchasers
14 have conducted on-site visits to the Debtors' facilities, have had access to an extensive data
15 room established by the Debtors and have participated in discussion with the Debtors'
16 management regarding the Debtors' financial affairs. The Debtors have received from each
17 of such four potential purchasers comprehensive asset purchase agreements.

18 **2. Ammo, Inc.** Over a period of several months, the Debtors and Ammo, Inc.
19 engaged in extensive negotiations regarding a possible purchase and sale transaction.
20 Ammo, Inc. performed extensive diligence investigations with respect to the Debtors'
21 financial affairs and conducted three on-site visits to the Debtors' facilities. The Debtors
22 and Ammo, Inc. exchanged several drafts of a proposed asset purchase agreement,
23 pursuant to which Ammo, Inc. proposed to acquire substantially all of the Debtors' assets
24 and properties. In November 2018, the Debtors determined to pursue instead a possible
25 purchase and sale transaction with Marksman Acquisitions, LLC because (i) the terms of
26 the proposed transaction with Marksman Acquisitions, LLC were more favorable to the
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³ The TTB filed a proof of claim only against HMT. The TTB did not file a proof of claim against any other Debtor.

1 Debtors than the transaction proposed by Ammo, Inc., and (ii) Ammo, Inc. could not
2 demonstrate to the satisfaction of the Debtors that it would have promptly the funding
3 needed by for its proposed transaction with the Debtors.

4 **3. Marksman Acquisitions, LLC.** In November 2018, the Debtors
5 commenced negotiations with Marksman Acquisitions, LLC (“Marksman”) with respect to
6 a possible purchase and sale transaction. After extensive negotiations and after preparation
7 of several drafts of an asset purchase agreement, the Debtors and Marksman reached an
8 agreement by which the Debtors, Twin River and Big Canyon (collectively, “Sellers”)
9 would sell and assign to Marksman, and Marksman would acquire from the Sellers,
10 substantially all of the assets and properties of the Sellers.

11 In furtherance of the purchase and sale transaction among the Sellers and
12 Marksman, Zions and Marksman entered into an agreement pursuant to which Zions
13 agreed to sell and assign to Marksman, and Marksman agreed to acquire from Zions, the
14 Zions Secured Claim, all of Zions’s liens and interests with respect to the assets of the
15 Sellers and the Howell Deeds of Trust (“Zions/Marksman Loan Purchase Agreement”).
16 Zions agreed to sell the Zions Secured Claim to Marksman at a discount in excess of
17 several million dollars, provided that the Zions/Marksman Loan Purchase Agreement were
18 consummated by not later than December 21, 2018.

19 Zions required, as a condition to its entering into the Zions/Marksman Loan
20 Purchase Agreement (and the sale of the Zions Secured Claim to Marksman for a very
21 substantial discount) that the Sellers and Mr. Howell waive and release any and all claims
22 that they may have against Zions pursuant to a settlement and release agreement
23 satisfactory to Zions (“Zions/Marksman Settlement Agreement”). Moreover, Marksman
24 required, as a condition to its entering into the Zions/Marksman Loan Purchase Agreement
25 and an asset purchase agreement with the Sellers (“Marksman Asset Purchase
26 Agreement”), that the Sellers and Mr. Howell waive and release any and all claims that
27 they may have against Marksman and to waive any and all defenses to the loans, liens and
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1 the loan documents related to the Zions Secured Claim, pursuant to a settlement and
2 release agreement satisfactory to Marksman (“Marksman Settlement Agreement”).

3 In furtherance of the Zions/Marksman Loan Purchase Agreement and the Debtors’
4 purchase and sale transaction with Marksman, on December 11, 2018, the Debtors filed
5 their Motion for Order Approving Compromise of Controversies [Docket No. 297]
6 (“Marksman Rule 9019 Motion”), requesting that the Court authorize the Debtors to enter
7 into the Zions/Marksman Settlement Agreement and the Marksman Settlement Agreement
8 pursuant to the provisions of Rule 9019 of the Federal Bankruptcy Rules. Zions and the
9 Committee supported the Court’s granting of the Marksman Rule 9019 Motion. At a
10 hearing held on December 19, 2018, the Court granted the Marksman Rule 9019 Motion.

11 In furtherance of the purchase and sale transaction among the Sellers and
12 Marksman, agreements were reached among the Debtors, the Committee, Zions and
13 Marksman regarding the form and content of the Zions/Marksman Loan Purchase
14 Agreement, the Zions/Marksman Settlement Agreement, the Marksman Settlement
15 Agreement and the Marksman Asset Purchase Agreement.

16 The Debtors believe that the terms of the Marksman Asset Purchase Agreement
17 were favorable to the Debtors’ creditors. Pursuant to the proposed purchase and sale
18 transaction with Marksman, substantial obligations of the Debtors were to have been
19 extinguished and substantial proceeds were to have been made available to the Debtors in
20 order to enable very significant distributions to be made to unsecured creditors of the
21 Debtors. Regrettably, in late December 2018, Marksman terminated the Zions/Marksman
22 Loan Purchase Agreement (and, hence, the purchase and sale transaction with the Sellers),
23 asserting that it was unable to reach with David Howell Rentals an agreement satisfactory
24 to Marksman with respect to the modification of David Howell Rentals’s real property
25 leases with HMT and an assignment of such modified leases to Marksman.⁴

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28 ⁴ Mr. Howell disputes Marksman’s assertion that Marksman terminated the purchase and sale transaction with the Sellers because of disagreements with David Howell Rentals regarding the assignment to Marksman of David Howell Rentals’s leases with HMT.

1 **4. PDRR-Iowa, LLC.** In or about December 2018, the Debtors commenced
2 discussions with PDRR-Iowa, LLC (“PDRR”) regarding a possible purchase and sale
3 transaction with the Debtors. PDRR has conducted an extensive diligence investigation
4 with respect to the Debtors’ assets and properties and has conducted on-site visits to the
5 Debtors’ facilities in connection with a possible purchase and sale transaction with the
6 Debtors.

7 In or about March 2019, in furtherance of a possible purchase and sale transaction
8 with the Debtors, PDRR and Zions entered into an agreement pursuant to which PDRR
9 agreed to acquire from Zions, and Zions agreed to sell and assign to PDRR, the Zions
10 Secured Claim. In May 2019, subject to the approval of the Court, the Debtors and PDRR
11 entered into an asset purchase agreement pursuant to which the Debtors agreed to sell and
12 assign to PDRR, and PDRR agreed to acquire from the Debtors, substantially all of the
13 Debtors’ assets. However, PDRR terminated its agreement with Zions, and, consequently,
14 PDRR’s asset purchase and sale transaction with the Debtors was not effectuated.

15 The Debtors believe that PDRR was unable to obtain financing sufficient to fund its
16 proposed transactions with Zions and the Debtors. PDRR asserts, however, that it now has
17 obtained access to financing sufficient to fund the proposed transactions with Zions and the
18 Debtors. On August 7, 2019, PDRR submitted to Zions a proposed agreement to purchase
19 the Zions Secured Claim as a “back-up” to the Kash Loan Purchase Agreement (as defined
20 in paragraph H hereof).

21 **G. Kash Asset Purchase Agreement.**⁵

22 Material terms of the Kash Asset Purchase Agreement include the following:⁶

- 23 **1. Sale and Assignment of Assets and Properties of the Debtors.** Pursuant to
24 Section 2.1 of the Kash Asset Purchase Agreement, the Debtors will sell and assign
25 to Kash CA, and Kash CA will purchase from the Debtors, all of the assets and
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27 ⁵ This section is intended to be merely a summary of certain material terms of the Kash Asset Purchase Agreement. In
28 the event of any inconsistency between this summary and the terms of the Kash Asset Purchase Agreement, the Kash
Asset Purchase Agreement will control.

⁶ Unless otherwise defined herein, the definitions of the capitalized terms contained herein are as set forth in
Section 1.1 of the Kash Asset Purchase Agreement.

1 properties of the Debtors, except only for the Excluded Assets identified expressly
2 in the Kash Asset Purchase Agreement. Kash CA will have the right to make a
3 credit bid for the Debtors' assets and properties up to the full amount of the Zions
4 Secured Claim to be acquired by Kash CA pursuant to the Kash Loan Purchase
5 Agreement, in accordance with Section 363(k) of the Bankruptcy Code. The assets
6 and properties of the Debtors will be sold to Kash CA free and clear of all claims,
7 liens and interests pursuant to Section 363(f) of the Bankruptcy Code.

8 **2. Excluded Assets.** Pursuant to Section 2.2 of the Kash Asset Purchase Agreement,
9 the Debtors will not sell to Kash CA, but will retain, among other assets and
10 properties of the Debtors: certain refunds, rebates and deposits; the Debtors'
11 directors and officers insurance policy and all claims and recoveries with respect
12 thereto; all preference, fraudulent transfer and other bankruptcy avoidance claims
13 under Chapter 5 of the Bankruptcy Code; and cash and cash equivalents of the
14 Debtors (including, without limitation, \$832,000 in funds on deposit in an account
15 of HMT at Zions upon which the TTB levied on or about June 4, 2018 (the "TTB
16 Levied Funds")).

17 **3. Assumed Liabilities.** Pursuant to the Kash Asset Purchase Agreement, Kash CA
18 will not assume or be liable for any of the liabilities of the Debtors, except only for
19 the Assumed Liabilities set forth in Section 2.3 of the Kash Asset Purchase
20 Agreement. In accordance with the provisions of Section 2.3 of the Kash Asset
21 Purchase Agreement, Kash CA will assume certain liabilities of the Debtors
22 including: certain liabilities relating to vacation days, sick days and other paid time-
23 off of employees of the Debtors who are hired by Kash CA; and the obligation to
24 pay certain Cure Amounts under executory contracts and leases that may be
25 assigned to Kash CA pursuant to the Kash Asset Purchase Agreement.
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1 **4. Purchase Price.** Pursuant to Sections 3.1 and 3.2 of the Kash Asset Purchase
2 Agreement, the Purchase Price to be paid by Kash CA will be as follows:⁷

- 3 a. Credit Bid. A credit bid by Kash CA in an amount not less than \$8.8
4 million on account of the Zions Secured Claim that Kash CA will acquire
5 from Zions pursuant to the Kash Loan Purchase Agreement, or such greater
6 amount of the Zions Secured Claim at the Auction to be determined by
7 Kash CA in the exercise of its sole and absolute discretion, in accordance
8 with Section 363(k) of the Bankruptcy Code, and with Kash CA's
9 subordinating any balance of the Zions Secured Claim as of the Closing
10 Date in accordance with the terms and conditions of the Kash Asset
11 Purchase Agreement;
- 12 b. Cash/Note. A \$3.0 million payment for the benefit of creditors of the
13 Debtors, payable \$125,000 in cash and \$2,875,000 by a promissory note;
- 14 c. Release of Liens Encumbering Excluded Assets. A release of the liens that
15 Kash CA will acquire from Zions pursuant to the Kash Loan Purchase
16 Agreement with respect to the Excluded Assets, including the Debtor's cash
17 as of the Closing and the TTB Levied Funds (\$832,000); and
- 18 d. Assumption of Assumed Liabilities. Kash CA's assumption of the
19 Assumed Liabilities.

20 **5. Termination of Kash Asset Purchase Agreement.** Pursuant to Section 4.4 of the
21 Kash Asset Purchase Agreement, Kash CA may terminate the Kash Asset Purchase
22 Agreement, in part, on the following grounds:

- 23 a. If this Bidding Procedures Motion is not approved by the Court by
24 September 13, 2019;
- 25 b. If the hearing on the Sale Motion to be filed in this Court has not taken
26 place by October 15, 2019;⁸

27 _____
28 ⁷ Pursuant to Section 3.2 of the Kash Asset Purchase Agreement, Kash CA will pay portions of the Purchase Price pursuant to a subordination of the Zions Secured Claim and related liens that Kash CA will acquire from Zions pursuant to the Kash Loan Purchase Agreement.

- 1 c. If the Court has not entered the Sale Order approving the Sale Motion by
2 October 18, 2019; or
- 3 d. If the Closing of the Transaction has not occurred by October 31, 2019.
- 4 **6. Kash CA is Not an Insider of the Debtors.** Pursuant to Section 6.10 of the Kash
5 Asset Purchase Agreement, Kash CA represents and warrants that neither Kash CA
6 nor any of its Representatives is an insider of the Debtors.
- 7 **7. Break-Up Fee.** Pursuant to Section 8.1 of the Kash Asset Purchase Agreement,
8 Kash CA will be entitled to a Break-Up Fee in the amount of \$150,000 if the Kash
9 Asset Purchase Agreement is terminated because the Debtors have entered into an
10 Alternative Transaction with another bidder and such Alternative Transaction
11 closes.
- 12 **8. Good Faith Finding.** Pursuant to Section 8.3 of the Kash Asset Purchase
13 Agreement, the Debtors covenant to use their commercially reasonable efforts to
14 obtain from the Court a finding that Kash CA is a good faith purchaser under
15 Section 363(m) of the Bankruptcy Code.
- 16 **9. No Diligence Contingency.** Pursuant to Section 9.2 of the Kash Asset Purchase
17 Agreement, Kash CA acknowledges and agrees that Kash CA's obligation to
18 consummate the Transaction is not subject to Kash CA's being satisfied with
19 results of its diligence investigation.
- 20 **10. Kash CA's Enforcement of Remedies Against Twin River and Big Canyon.**
21 Pursuant to Section 9.14 of the Kash Asset Purchase Agreement, the Debtors agree
22 not to oppose, and to cause Twin River not to oppose, Kash CA's exercise of Kash
23 CA's rights and remedies as a secured creditor against assets and properties of
24 Twin River and Big Canyon, which rights and remedies Kash CA will acquire as a
25 result of Kash CA's acquisition of the Zions Secured Claim pursuant to the Kash
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28 ⁸ By stipulation with Kash CA, the October 15, 2019 deadline for the conducting of a hearing on the Sale Motion has been extended to October 16, 2019.

1 Loan Purchase Agreement, including Kash CA’s right to foreclose against such
2 assets and properties.

3 **11. Jurisdiction of this Court.** Pursuant to Section 13.6 of the Kash Asset Purchase
4 Agreement, this Court will have sole and exclusive jurisdiction over any and all
5 disputes arising out of or related to the Kash Asset Purchase Agreement.

6 **12. Debtors’ Right to Solicit Other Bids.** Pursuant to Section 13.17 of the Kash
7 Asset Purchase Agreement, the Debtors may solicit other bids for the assets and
8 properties of the Debtors.

9 **H. Kash Loan Purchase Agreement.**

10 Zions and Kash CA have entered into the Kash Loan Purchase Agreement, pursuant to
11 which Zions has agreed to sell and assign to Kash CA, and Kash CA has agreed to purchase from
12 Zions, the Zions Secured Claim and all of Zions’s liens and interests encumbering the assets and
13 properties of the Debtors, Twin River and Big Canyon and the Howell Deeds of Trust. Pursuant
14 to the Kash Loan Purchase Agreement, Zions has agreed to sell to Kash CA the Zions Secured
15 Claim for \$8.8 million in cash, a discount in excess of \$8.5 million.

16 Zions has required, as a condition to Zions’s entering into the Kash Loan Purchase
17 Agreement, that the Debtors, Twin River, Big Canyon and Mr. Howell settle and release their
18 claims against Zions, in accordance with the terms and conditions of a settlement agreement
19 among Zions and other parties, on one hand, and the Debtors, Twin River, Big Canyon and Mr.
20 Howell, on the other hand (“Zions Settlement Agreement”). On August 19, 2019, the Debtors
21 filed a motion to obtain from the Court, pursuant to Rule 9019 of the Federal Rules of Bankruptcy
22 Procedure, approval of the Zions Settlement Agreement and two other settlement agreements to
23 which the Debtors are parties, and, by order entered on August 30, 2019 [Dkt. No. 611], the Court
24 approved such settlement agreements acknowledging the amount, scope, validity, perfection and
25 enforceability of Zions’s first-priority secured claims with respect to the Purchased Assets and
26 Excluded Assets subject to the Kash Asset Purchase Agreement (“Compromise Order”).

27 The Compromise Order further authorized Kash CA, pursuant to Section 363(k) of the
28 Bankruptcy Code, to make a credit bid for the Debtors’ assets and properties up to the full amount

1 of the Zions Secured Claim that it may acquire pursuant to the Kash Loan Purchase Agreement,
2 pursuant to the Kash Asset Purchase Agreement or at any Auction.

3 It is the Debtors' understanding that Zions and Kash CA are working toward closing the
4 Kash Loan Purchase Agreement, that, assuming Zions's satisfaction of the remaining standard
5 closing conditions and delivery of the deliverables set forth therein, a \$2.0 million deposit made
6 by Kash CA pursuant to the Kash Loan Purchase Agreement now has become nonrefundable
7 pursuant to the provisions of the Kash Loan Purchase Agreement, and that Zions and Kash CA
8 anticipate that the closing of such transaction will occur by September 20, 2019.

9 **I. Sale Motion.**

10 At the request of the Debtors, the Court has scheduled a hearing on the Sale Motion for
11 October 16, 2019. In accordance with the requirements of the Kash Asset Purchase Agreement,
12 the Debtors will use their commercially reasonable efforts to cause the Closing of the Transaction
13 to occur by October 31, 2019.

14 **J. The Proposed Sale and Bidding Procedures.**

15 In order to create a fair, orderly and competitive process for the bidding on the
16 Purchased Assets, the Debtors propose hereby that the Court approve sale and bidding procedures
17 with respect to the contemplated sale of the Purchased Assets in substantially the form reflected in
18 the Sale Procedures Memorandum attached as Exhibit "1" to the Issa Declaration. The Debtors
19 believe that the proposed sale and bidding procedures are fair, and provide for a level playing field
20 to all prospective bidders.

21 **III.**

22 **GOOD CAUSE EXISTS TO APPROVE THE DEBTORS'**
23 **PROPOSED SALE AND BIDDING PROCEDURES**

24 The sale and bidding procedures that the Debtors propose to govern the sale and auction
25 process in these cases are set forth in the Sale Procedures Memorandum (Exhibit "1" to the Issa
26 Declaration).

27 The Debtors believe that the proposed sale and bidding procedures are reasonable, provide
28 "transparency" in the sale process in these cases, and will facilitate an orderly and fair sale process

1 in these cases. As set forth in the Issa Declaration, the Debtors believe that the proposed sale and
2 bidding procedures are reasonable and treat all parties fairly. Under normal circumstances, sales
3 of businesses are fraught with complexity. In the context of bankruptcy, such sales become even
4 more challenging, due, in part, to a debtor's duty to maximize the value of estate assets and the
5 obligation to encourage competitive bidding in order to achieve the highest and best price for the
6 sale of the debtor's assets. It is clear that few potential buyers of a debtor's business would be
7 willing to enter into a purchase agreement in the context of a debtor's bankruptcy case without
8 assurance that the bidding process will treat all parties fairly.

9 In this case, for among others the reasons set forth below, the Debtors believe that the
10 proposed sale and bidding procedures are fair and should be approved by this Court.

11 **A. The Proposed Sale Procedures Are Fair.**

12 The Debtors' proposed sale procedures are fair and do not unduly favor any prospective
13 bidders in the bidding process. The fairness of the sale procedures is evidenced by the following:

14 **1. Same Diligence Rights.** All prospective bidders have been afforded an
15 opportunity to review and may continue to review financial reporting associated with the
16 Debtors' businesses, the Purchased Assets and all agreements associated with the
17 Purchased Assets. All prospective bidders have had and will continue to have the same
18 and equal access to the Debtors' books and records, the Debtors' employees and the
19 Debtors' premises with respect to the Purchased Assets for the purpose of conducting a
20 due diligence investigation with respect to a Transaction. All prospective bidders must
21 complete their due diligence by the same time (i.e., by the Bid Deadline).

22 **2. Fair Procedures for Qualifying Bidders.** The proposed procedures for
23 qualifying prospective bidders are fair, and the requirements imposed upon prospective
24 bidders to become Qualified Bidders are reasonable.

25 **3. Same Disclosure Regarding Bid.** All Qualified Bidders will receive a
26 copy of the Kash Asset Purchase Agreement of Kash CA, and have the same opportunity
27 to obtain from the Debtors copies of all other bids.

28

1 **4. Open Auction Proceeding.** The proposed sale procedures provide for an
2 “open auction” process by and among all Qualified Bidders, thereby providing to all
3 bidders an equal opportunity to present competitive offers. The Auction will be conducted
4 before this Court, thereby ensuring the fairness of the auction process.

5 **B. The Proposed Break-Up Fee is Fair.**

6 Pursuant to Sections 4.4(j), 4.5(c) and 8.1 of the Kash Asset Purchase Agreement, Kash
7 CA, as the “stalking horse bidder,” will be entitled to a \$150,000 Break-Up Fee if the Kash Asset
8 Purchase Agreement is terminated because the Debtors have entered into an Alternative
9 Transaction with another bidder and such Alternative Transaction closes. Kash CA will be
10 entitled to no other expense reimbursement or fee. The Debtors believe that the proposed Break-
11 Up Fee is fair.

12 In addressing break-up fees in bankruptcy proceedings, the court in the case, In re
13 Integrated Res., Inc., 135 B.R. 746 (Bankr. S.D.N.Y.), aff'd, 147 B.R. 650 (S.D.N.Y. 1992), stated
14 as follows:

15 In order to encourage the making of bids, debtors entice potential purchasers by
16 utilizing various incentives, such as break-up fees, topping fees and expense
17 reimbursement agreements. A “break-up fee” is a fee paid to a potential acquiror of a
18 business, or certain assets, by the seller, in the event that the transaction contemplated
19 fails to be consummated and certain criteria in the purchase agreement are met. The
20 condition most commonly giving rise to the payment of a break-up fee is the seller's
 acceptance of a later bid. Break-up fees may take the form of paying the out-of-pocket
 expenses incurred in arranging the deal, including due diligence expenses, or break-up
 fees may be wholly independent of the transaction costs. For example, a break-up fee
 may include compensation for a bidder's lost opportunity costs.

21 In re Integrated Res., Inc., 135 B.R. 746, 750 (Bankr. S.D.N.Y.), aff'd, 147 B.R. 650 (S.D.N.Y.
22 1992).

23 See also, In re Genco Shipping & Trading Ltd., 509 B.R. 455, 465 fn 6 (Bankr. S.D.N.Y.
24 2014) (“A ‘stalking horse bidder’ refers to a preliminary bidder whose offer can be ‘shopped
25 around’ to attract higher bids. Break-up fees can be used to overcome bidders' reluctance ‘to make
26 the first bid for fear that it will be shopped around and ‘topped’ by an entity relying on the initial
27 offeror's due diligence.”).

28

1 Courts recognize that a provision for a break-up fee can serve several beneficial purposes
2 for a debtor. A break-up fee encourages bidding in a bankruptcy sale context by providing
3 protection to a prospective purchaser that makes an offer that is then “shopped around” to attract
4 higher offers, and by providing compensation to a prospective purchaser if another bidder relies
5 on the prospective purchaser’s due diligence and other work to make a higher offer. A break-up
6 fee also may aid a debtor as follows: a break-up fee may serve to discourage a bidding strategy
7 designed to hold back competitive bids until late in the sale process and may aid the debtor to
8 negotiate an initial bid that is the bidder’s highest bid; a break-up fee may establish a high floor
9 early in the bidding process; and a break-up fee may enhance the bidding process by creating
10 momentum toward closing a sale. Canatxx Gas Storage Ltd. v. Silverhawk Capital Partners, LLC,
11 2008 WL 1999234, at *7 (S.D. Tex. May 8, 2008).

12 Break-up fee arrangements outside bankruptcy are presumptively valid under the business
13 judgment rule. See, In re Integrated Res., Inc., 147 B.R. 650 (Bankr. S.D.N.Y. 1992) (citing
14 Cottle v. Storer Comm’ns, Inc., 849 F.2d 570 (11th Cir. 1988)) (\$29 million termination fee
15 protected by business judgment rule); CRTF Corp. v. Federated Dep’t Stores, 683 F.Supp. 422
16 (S.D.N.Y. 1988) (break-up fees not illegal when they enhance rather than hamper bidding). See
17 also, Mark F. Hebbeln, The Economic Case For Judicial Deference To Break-Up Fee Agreements
18 In Bankruptcy, 13 Bankr. Dev. J. 475, 502-505 (1997) (unless the court determines that a break-
19 up fee arrangement is tainted with self-dealing, fraud, or bad faith, courts should accord
20 “substantial deference” to the fiduciary duty of the debtor’s board members who approved the
21 terms of the break-up fee).

22 While few courts have addressed the validity of break-up fees in bankruptcy, the court in
23 the Integrated Resources case, supra, found that courts addressing this issue routinely have asked
24 the following questions:

- 25 • Is the relationship of the parties who negotiated the break-up fee tainted by self-
26 dealing or manipulation such that the business judgment rule should not be
27 applied? A court will uphold a decision by the board of directors of a debtor if the
28

1 decision was safeguarded by the scrutiny of disinterested directors or other means.

2 In re Integrated Res., Inc., *supra*, at 657.

- 3 • Does the break-up fee materially hamper bidding? In assessing the effect of a
4 break-up fee, a court should determine whether the amount of the break-up fee is
5 so substantial that it has a “chilling” effect. In re Integrated Res., Inc., *supra*, at
6 660.
- 7 • Is the amount of the break-up fee unreasonable relative to the proposed purchase
8 price? A break-up fee should constitute a fair and reasonable percentage of the
9 proposed purchase price, and should be reasonably related to the risk, effort and
10 expenses of the prospective purchaser. In re Integrated Res., Inc., *supra*, at 662
11 (the court heard expert testimony that “the average break-up fee in the industry is
12 3.3 percent [of the Purchase Price]”).

13 In this case, the Debtors believe, and hereby respectfully represent to the Court, that the
14 proposed Break-Up Fee is fair and should be approved by the Court.

15 First, the proposed Break-Up Fee has been approved by the CRO, acting as an independent
16 fiduciary on behalf of the Debtors. The Committee also has approved the proposed Break-Up Fee.
17 Kash CA is not an insider of the Debtors. Therefore, there is no “taint” to the agreement by the
18 Debtors to provide the Break-Up Fee to Kash CA pursuant to the Kash Asset Purchase
19 Agreement.

20 Second, the proposed Break-Up Fee should not materially chill any competitive bidding at
21 an Auction. Requiring an overbidder to pay a \$150,000 Break-Up Fee on a Transaction with a
22 Purchase Price in an amount of almost \$12.0 million should not impose a material burden on the
23 overbidder.

24 Third, the amount of the proposed Break-Up Fee is reasonable compared with the amount
25 of the Purchase Price to be paid by Kash CA pursuant to the Kash Asset Purchase Agreement.
26 The proposed \$150,000 Break-Up Fee represents only about 1.3% of the Purchase Price.
27 Furthermore, the amount of the proposed Break-Up Fee has a reasonable relationship to the risk,
28 effort and expenses of Kash CA. Kash CA has expended substantial time and resources in

1 connection with acquiring the Zions Secured Claim pursuant to the Kash Loan Purchase
2 Agreement, conducting diligence regarding the Transaction, and negotiating the terms of the Kash
3 Asset Purchase Agreement with the Debtors. The Debtors believe that the proposed Break-Up Fee
4 is not unreasonable given the efforts made by and the expenses incurred by the Kash CA.

5 The Committee has been involved actively in the sale process in these cases, has evaluated
6 the proposed Break-Up Fee and does not oppose the allowance of the Break-Up Fee.

7 Based upon the foregoing, the Debtors believe, and hereby respectfully represent to the
8 Court, that authorizing the possible payment of a Break-Up Fee to Kash CA is fair and reasonable
9 under the circumstances of these cases.⁹

10 **C. The Proposed Bidding Procedures at an Auction Are Fair.**

11 Similarly, the Debtors' proposed procedures for the conducting of the Auction and for the
12 Closing of the Transaction are fair, and provide for a level playing field for all prospective bidders.
13 The fairness of such procedures is evidenced by the following:

14 **1. Equal Disclosure Regarding Bids.** Subject to the approval of the Court,
15 the Debtors will conduct the Auction in an open manner before this Court, and provide an
16 opportunity for all Qualified Bidders to engage in competitive bidding. All Qualified
17 Bidders will know each bid made at the Auction, and will have a reasonable opportunity to
18 evaluate the bids. The Debtors will provide full and equal disclosure to all Qualified
19 Bidders relative to the Debtors' position regarding bids made at the Auction. Each
20 Qualified Bidder will have the right, but not the obligation, to improve its bid at the
21 Auction. The Auction will be conducted, therefore, in an open and transparent manner
22 under the supervision of this Court.

23 **2. Initial Bidding Increment Is Fair.** The initial overbidding increment with
24 respect to the Transaction is \$250,000. Kash CA's bid has a value of almost \$12.0 million
25 (the initial overbid, then, is only about 2.1% of Kash CA's bid). The proposed initial
26 bidding increment should not impair materially any competitive bidding.

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⁹ Pursuant to the Sale Procedures Memorandum, no overbidder will be entitled to payment of a Break-Up Fee.

1 **3. Same Incremental Bids at Auction.** At the Auction, after any initial
2 overbid is made, subsequent overbids must be in minimum \$50,000 increments on terms
3 the same for all Qualified Bidders.

4 **4. Auction Approved by Court.** The Auction will be conducted before this
5 Court and in a manner approved by this Court.

6 **5. Court Will Confirm Successful Bidder.** After the conclusion of any
7 Auction, the Debtors will announce the bid that they propose to accept as the Successful
8 Bid. The Debtors will request, at the Sale Motion Hearing, that this Court confirm such
9 bid as the Successful Bid. This Court will determine, at the Sale Motion Hearing, the bid
10 that is the most favorable bid for the Debtors' creditors. This Court, therefore, will
11 confirm in open Court the Successful Bid(s) with respect to the Purchased Assets.

12 The sale process in these cases have been and will continue to be conducted primarily by
13 Mr. Issa, as CRO. Mr. Issa is an independent party with no material connections with Kash CA or
14 with any other potential bidder in these cases. The CRO's handling the sale process in these cases
15 provides assurance that the sale process will be conducted fairly and in an open and transparent
16 manner, with no bias in favor of Kash CA or any other bidder. Mr. Issa is charged with the
17 responsibility of conducting a fair and open sale process and attempting to maximize the recovery
18 from the sale of the Debtors' assets, and will owe his duty and loyalty in these cases solely to the
19 Debtors' estates, and not to the Debtors' insiders or to Kash CA.

20 In addition, the Debtors note that the Committee has been involved actively, and will
21 continue to be involved actively, in all aspects of the sale process in these cases. The Committee's
22 active involvement in the sale process helps to ensure that the sale process will be conducted fairly
23 and in a manner designed to maximize the recovery by unsecured creditors in these cases.

24 Based upon the foregoing, the Debtors respectfully submit that the proposed sale and
25 bidding procedures, as set forth in the Sale Procedures Memorandum, are reasonable.

26 Pursuant to Section 8.1 of the Kash Asset Purchase Agreement, an order approving this
27 Sale Procedures Motion must "approve the Break-Up Fee and the Bid Protections" (i.e., an initial
28 overbid in the amount of \$250,000 and minimum bid increments thereafter in the amount of

1 \$50,000). The Debtors request, therefore, that this Court approve the Break-Up Fee and the Bid
2 Protections and the other sale and bidding procedures reflected in the Sale Procedures
3 Memorandum by **September 13, 2019**, the deadline set forth by the Kash Asset Purchase
4 Agreement for the Debtors to obtain approval of this Sale Procedures Motion.

5 **IV.**

6 **THIS COURT SHOULD APPROVE THE MANNER OF THE NOTICE**
7 **PROPOSED TO BE PROVIDED IN CONNECTION WITH THE SALE MOTION**

8 The Kash Asset Purchase Agreement provides that the Sale Motion Hearing must be
9 conducted by October 15, 2019 (since extended to October 16, 2019) and that the Closing of the
10 Transaction must occur by October 31, 2019. The Debtors have scheduled, with the approval of
11 the Court, the Sale Motion Hearing for October 16, 2019. Conducting the Sale Motion Hearing on
12 October 16, 2019 will allow notice of the Sale Motion Hearing, which will include notice of sale
13 and bidding procedures approved by the Court, to be served in accordance with the 28 days' notice
14 requirement of Rule 9014(a)(1) of the Local Rules. Accordingly, creditors and parties-in-interest,
15 and any prospective bidders for the Purchased Assets, will be given ample notice of the Sale
16 Motion Hearing.

17 As set forth in the Issa Declaration, the Debtors have conducted already extensive
18 marketing of the Debtors' assets and properties. About 25 companies in the Debtors' industry,
19 including primary competitors of the Debtors, have been contacted to notify them of the purchase
20 and sale opportunity. There has been substantial follow up with potential purchasers. The
21 Debtors have had meaningful discussions with five potential purchasers of the Debtors' assets and
22 properties. Four potential purchasers have conducted on-site visits to the Debtors' facilities and
23 have performed extensive diligence investigations regarding the Debtors' financial affairs. Four
24 potential purchasers emerged as the primary candidates to acquire the Debtors' assets -- Kash CA,
25 with which the Debtors have negotiated the Kash Asset Purchase Agreement; Ammo, Inc. with
26 which the Debtors exchanged several drafts of an asset purchase agreement; Marksman with
27 which the Sellers negotiated an asset purchase agreement but thereafter terminated its transaction
28

1 with the Sellers; and PDRR-Iowa, LLC, which continues to pursue a possible transaction with the
2 Debtors.

3 As set forth in the Issa Declaration, the Debtors believe that, as a result of the Debtors'
4 marketing efforts to date, they have created significant interest in a potential purchase and sale
5 transaction with respect to the Debtors' assets and properties and have had success reaching the
6 likely market for the Debtors' assets and properties.

7 In furtherance of the Debtors' marketing efforts, the Debtors propose to advertise the sale
8 of the Debtors' assets in the following publications:

- 9 • The Wall Street Journal; and
- 10 • American Rifleman

11 The Debtors believe that, given the extensive marketing conducted to date by the Debtors
12 and the limited resources available to the Debtors, such additional advertising should be deemed
13 to be sufficient.

14 The Debtors will serve on creditors and parties-in-interest notice of the Sale Motion
15 Hearing ("Sale Motion Hearing Notice"). The Sale Motion Hearing Notice will set forth clearly
16 the sale and bidding procedures proposed herein, the date and time of the Auction and the Sale
17 Motion Hearing, the date by which any objections to the Sale Motion must be filed, and all other
18 material information relevant to the sale process.

19 The Debtors will serve the Sale Motion Hearing Notice on the following entities: (i) all
20 creditors of the Debtors' estates and parties-in-interest in these cases; (ii) all entities who have
21 requested special notice in these cases; and (iii) all entities that have expressed interest, or that the
22 Debtors believe may have legitimate interest, in acquiring the Purchased Assets, (e.g., PDRR,
23 Marksman, Ammo, Inc. and competitors of the Debtors and other potential strategic acquirers, a
24 list of which has been developed by GlassRatner with input from the Debtors). The Debtors
25 believe that the notice proposed by the Debtors will help to ensure that the sale of the Purchased
26 Assets will receive as much exposure as possible under the circumstances.

27 The Debtors will serve a copy of the Sale Motion on the following entities: (i) the Office
28 of the United States Trustee; (ii) the Committee; (iii) those parties whose unexpired leases or

1 executory contracts are proposed to be assumed and assigned, or rejected, in connection with the
2 Transaction; (iv) the creditors who will receive notice electronically by the Court (NEF); and (v)
3 Kash CA. All creditors and parties-in-interest will receive a copy of the Sale Motion Hearing
4 Notice.

5 The Debtors respectfully submit that the proposed notice to be provided to creditors and
6 parties-in-interest (including, without limitation, the entities most likely to submit bids for the
7 purchase of the Purchased Assets) is well designed to attract the most interest in the acquisition of
8 the Purchased Assets, and thereby to maximize the value of the Purchased Assets, and is sufficient
9 under the circumstances of these cases. The Debtors respectfully request, therefore, that this Court
10 approve as adequate under the circumstances of these cases the marketing of the Debtors' assets
11 and the manner of giving notice of the Sale Motion Hearing, as set forth herein.¹⁰

12 V.

13 CONCLUSION

14 Based upon the foregoing, the Debtors hereby respectfully request that this Court
15 (i) approve the sale and bidding procedures that the Debtors propose hereby, as reflected in the
16 Sale Procedures Memorandum; (ii) approve as sufficient the marketing of the Debtors' assets and
17 the manner of giving notice to the Debtors' creditors and parties-in-interest in connection with the
18 Sale Motion Hearing as described herein; and (iii) grant to the Debtors such other and further

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25 ¹⁰ The Debtors acknowledge that, if Kash CA consummates its acquisition of the Zions Secured Claim pursuant to the
26 Kash Loan Purchase Agreement, in light of credit bid rights provided by Section 363(k) of the Bankruptcy Code,
27 overbidders may face substantial difficulty competing successfully against Kash CA at an Auction. Nevertheless, the
28 Debtors are pursuing approval of sale and bidding procedures and the Break-Up Fee pursuant to this Sale Procedures
Motion, in part, because: (i) the Debtors are required to do so pursuant to the Kash Asset Purchase Agreement;
(ii) notwithstanding the credit bid provisions of Section 363(k), overbidders still may be able to bid successfully
against Kash CA; and (iii) there is no absolute assurance that Kash CA will perform its obligations under the Kash
Asset Purchase Agreement and, accordingly, it is prudent for the Debtors to pursue diligently an orderly and vibrant
sale process and Auction.

1 relief as this Court deems just and proper under the circumstances of these cases.

2 DATED: September 6, 2019

WINTHROP COUCHOT
GOLUBOW HOLLANDER, LLP

3
4 By: /s/ Robert E. Opera
5 Robert E. Opera
6 Peter W. Lianides
7 Alastair M. Gesmundo
8 General Insolvency Counsel for
9 Debtors and Debtors-in-Possession
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