

Mark Bradshaw - Bar No. 192540
Robert E. Huttenhoff - Bar No. 214447
SHULMAN HODGES & BASTIAN LLP
8105 Irvine Center Drive, Suite 600
Irvine, CA 92618
Tel: (949) 340-3400
Fax: (949) 340-3000

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re:
SPECTRE PERFORMANCE, a California corporation, fka SPECTRE
INDUSTRIES, INC.,

Debtor(s).

CASE NO.: 6:12-21890-MH

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: 12/18/12

Time: 2:00 p.m.

Location: Courtroom 303, 3420 Twelfth Street, Riverside, CA

Type of Sale: Public Private Last date to file objections: _____

Description of Property to be Sold: See Attached Motion

Terms and Conditions of Sale: See Attached Motion

Proposed Sale Price: See Attached Motion

Overbid Procedure (If Any): See Attached Motion

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

Robert E. Huttenhoff, Esq.
Shulman Hodges & Bastian LLP
8105 Irvine Center Drive, Suite 600
Irvine, CA 92618
Tel: (949) 340-3400 Fax: (949) 340-3000

Date: 11/9/12

Mark Bradshaw - Bar No. 192540
SHULMAN HODGES & BASTIAN LLP
8105 Irvine Center Drive, Suite 600
Irvine, CA 92618
Tel: (949) 340-3400
Fax: (949) 340-3000

Attorney for Spectre Performance, a California corporation

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re: SPECTRE PERFORMANCE, a California corporation, fka SPECTRE INDUSTRIES, INC.,

CHAPTER 11

CASE NUMBER 6:12-bk-21890-MH

DATE: 12/18/12

TIME: 2:00 p.m.

Debtor. COURTROOM: 303

NOTICE OF MOTION FOR:

1) APPROVING THE SALE OF ASSETS TO K&N ENGINEERING, INC.; 2) APPROVING SETTLEMENT WITH K&N; 3) APPROVING ASSUMPTION; 4) APPROVING ANCILLARY AGREEMENT; AND (SEE ATTACHED MTN)

(Specify name of Motion)

- TO: TO THE HONORABLE MARK D. HOULE, THE OFFICE OF THE U.S. TRUSTEE AND ALL INTERESTED PARTIES
- NOTICE IS HEREBY GIVEN that on the following date and time and in the indicated courtroom, Movant in the above-captioned matter will move this Court for an Order granting the relief sought as set forth in the Motion and accompanying supporting documents served and filed herewith. Said Motion is based upon the grounds set forth in the attached Motion and accompanying documents.
- Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

Hearing Date: 12/18/12	Time: 2:00 P.M.	Courtroom: 303	Floor:
<input type="checkbox"/> 255 East Temple Street, Los Angeles	<input type="checkbox"/> 411 West Fourth Street, Santa Ana		
<input type="checkbox"/> 21041 Burbank Boulevard, Woodland Hills	<input type="checkbox"/> 1415 State Street, Santa Barbara		
<input checked="" type="checkbox"/> 3420 Twelfth Street, Riverside			

- Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to Local Bankruptcy Rule 9013-1. If you wish to oppose this Motion, you must file a written response with the Bankruptcy Court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the Court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
- Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according to the Judge's self-calendaring procedures.

Dated: 11/9/12

Shulman Hodges & Bastian LLP

Law Firm Name

By: _____ /s/ Mark Bradshaw

Name: Mark Bradshaw

Attorney for Movant

1 Leonard M. Shulman - Bar No. 126349
Mark Bradshaw - Bar No. 192540
2 Robert E. Huttenhoff – Bar No. 214447
SHULMAN HODGES & BASTIAN LLP
3 8105 Irvine Center Drive, Suite 600
Irvine, CA 92618
4 Telephone: (949) 340-3400
Facsimile: (949) 340-3000
5 Email: lshulman@shbllp.com; mbradshaw@shbllp.com;
rhuttenhoff@shbllp.com

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

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

10
11 In re) Case No. 6:12-bk-21890-MH
12 SPECTRE PERFORMANCE, a) Chapter 11
California corporation, fka SPECTRE)
13 INDUSTRIES, INC.,) **DEBTOR AND DEBTOR IN POSSESSION’S**
) **MOTION FOR ORDER:**
14 Debtor.) (1) **APPROVING THE SALE OF ASSETS TO**
) **K&N ENGINEERING, INC., PURSUANT TO**
15) **BANKRUPTCY CODE SECTION 363(b)(1),**
) **SUBJECT TO OVERBIDS, COMBINED WITH**
16) **NOTICE OF BIDDING PROCEDURES AND**
) **REQUEST FOR APPROVAL OF THE BIDDING**
17) **PROCEDURES UTILIZED;**
) (2) **APPROVING SETTLEMENT AND**
18) **COMPROMISE OF DISPUTES WITH K&N**
) **ENGINEERING, INC. UNDER RULE 9019;**
19) (3) **APPROVING ASSUMPTION AND**
) **ASSIGNMENT OF EXECUTORY CONTRACTS**
20) **AND UNEXPIRED LEASES PURSUANT TO**
) **BANKRUPTCY CODE SECTION 365;**
21) (4) **APPROVING THE ANCILLARY**
) **AGREEMENT BETWEEN THE DEBTOR AND**
22) **K&N ENGINEERING, INC.; AND**
23) (5) **GRANTING RELATED RELIEF;**
) **MEMORANDUM OF POINTS AND**
24) **AUTHORITIES; AND DECLARATION OF**
) **AMIR ROSENBAUM IN SUPPORT THEREOF**
25) **Hearing Date:**
26) **Date: December 18, 2012**
) **Time: 2:00 p.m.**
27) **Place: Courtroom 303,**
) **3420 Twelfth Street, Riverside, CA**
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1 **TO THE HONORABLE MARK D. HOULE, UNITED STATES BANKRUPTCY**
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND OTHER PARTIES-**
3 **IN-INTEREST:**

4 **I. INTRODUCTION**

5 Spectre Performance, Inc., a California corporation, the debtor and debtor in possession
6 (“Debtor”) brings this Motion for Order: (1) Approving the Sale of Assets to K&N Engineering,
7 Inc. (“Purchaser” or “K&N”), Pursuant to Bankruptcy Code Section 363(b)(1), Subject to
8 Overbids, Combined With Notice of Bidding Procedures and Request for Approval of the
9 Bidding Procedures Utilized; (2) Approving Settlement and Compromise of Disputes With K&N
10 Engineering, Inc. Under Rule 9019; (3) Approving the Assumption and Assignment of
11 Executory Contracts and Unexpired Leases Pursuant to Bankruptcy Codes Section 365; (4)
12 Approving the Ancillary Agreement Between the Debtor and K&N Engineering, Inc.; and (5)
13 Granting Related Relief (“Motion”).

14 Through the Motion, the Debtor requests approval of a certain Asset Purchase Agreement
15 (“Agreement”) entered into by and between the Debtor and Purchaser. A true and correct copy of
16 the Agreement is attached as Exhibit 1 to the Declaration of Amir Rosenbaum (“Rosenbaum
17 Declaration”) annexed hereto.

18 Under the transaction, subject to overbids, the Debtor will be selling substantially all the
19 Estate’s business assets to Purchaser, which is described in the Agreement and which includes
20 accounts receivable related to the air filter and chrome businesses, contracts with customers
21 related to such businesses, intellectual property related to such businesses, trademarks and
22 copyright related to the such businesses, phone numbers related to such businesses, websites
23 related to such businesses and inventory related to such businesses together with certain
24 equipment subject to leases related to such businesses (collectively the “Purchased Assets”).¹

25 As set forth below, the Debtor believes that the interests of the creditors and the interest
26 of the Estate would best be served if the Court approves the proposed Agreement for the sale of
27 the Purchased Assets to Purchaser, or the highest and best bidder, as the case may be. Under the

28 ¹ In the event of any conflict of between the terms of this Motion and the Agreement, the provisions of the
Agreement shall control.

1 sale, the Estate will receive cash in the amount of \$8,000,000, subject to adjustments as set forth
2 in the Agreement, that will be used for payment in full of the Debtor's obligations to secured
3 lender Comerica Bank. The balance of such funds paid to the Estate will be held pending
4 expiration of the thirty day period for purchase price adjustments pursuant to the Agreement.

5 Purchaser will also pay \$2,000,000 to the Debtor's insiders, Amir Rosenbaum and
6 Dusanka Rosenbaum in exchange for their non-compete agreement with Purchaser. In the event
7 Purchaser is the successful purchaser, Amir Rosenbaum will enter into a three-year written
8 employment agreement to be negotiated and agreed between Mr. Rosenbaum and Purchaser, and
9 shall be paid at the rate of \$250,000 per year, plus standard company benefits and eligibility for
10 an incentive bonus, in accordance with the Term Sheet which is attached as an exhibit to the
11 Agreement submitted herewith.

12 In addition, under the Agreement, the Debtor and K&N will exchange mutual releases
13 which will resolve the pending litigation and disputes between the parties, including the Debtor's
14 obligations to K&N arising under the Final K&N Judgment (defined below). Attached as Exhibit
15 Schedule 1.5 to the Agreement is the mutual release provisions of the settlement. As such, the
16 sale to Purchaser provides for additional consideration consisting of the release of claims against
17 the Estate exceeding \$9,500,000 and therefore the Debtor believes that the total consideration for
18 the Estate arising from the sale to Purchaser will exceed \$17,500,000. The Debtor calculates the
19 price offered by Purchaser for the Purchased Assets as \$17,530,621.32 (the "Purchase Price"),
20 consisting of \$8 million cash and \$9,530,621.32 in claim waivers.

21 Upon completion of the sale, the Debtor will no longer incur the substantial expenses
22 associated with the litigation of disputes with K&N. In addition to the substantial benefits of the
23 sale, as set forth below, the Debtor believes that the interests of the creditors and the interest of
24 the Estate would best be served if the Court approves the Agreement under the four factors set
25 forth by A & C Properties. The settlement with K&N will allow the Debtor to cease litigation
26 costs associated with the disputes between the Debtor and K&N including the K&N Judgment.
27 The expenses to continue litigation with K&N would likely exceed any benefit that might be
28 achieved from such litigation.

1 The Debtor also requests that the Court approve the Bidding Procedures described below.
2 The Debtor has determined that it would benefit the Estate by permitting all interested parties to
3 receive information and bid for the Purchased Assets instead of selling the Purchased Assets to
4 Purchaser on an exclusive basis. Accordingly, in order to obtain the highest and best offer for the
5 benefit of the creditors of this Estate, the Debtor also seeks Court approval of the Bidding
6 Procedures.

7 Based on the facts and based on the Debtor's business judgment, the Debtor respectfully
8 requests that the Court approve the Motion.

9 **II. MOTION**

10 **A. Case Commencement and Background Information**

11 The Debtor filed a voluntary petition for relief under Chapter 11 of United States
12 Bankruptcy Code on May 14, 2012 ("Petition Date").

13 The Debtor was formed in 1983. The Debtor is a family company which, through their
14 trust, is owned entirely by Amir and Dusanka Rosenbaum. Amir is the Debtor's president and
15 Dusanka is the vice president. The Debtor has approximately thirty employees.

16 The Debtor designs, manufactures and distributes quality, high performance aftermarket
17 automotive products. Although the Debtor's primary product lines are air filters and air intake
18 kits, the Debtor also offers a wide assortment of performance automobile products. The Debtor's
19 products are sold at most major automotive chain stores (e.g. AutoZone), by major performance
20 parts warehouses, and online.

21 **1. The K&N Action**

22 One of the impediments to the Debtor's success before the bankruptcy filing was the
23 legal bills and time commitments associated with the defense, prosecution of counter-claims, and
24 trial in the lawsuit styled K&N Engineering, Inc. v. Spectre Performance, pending in the United
25 States District Court, Central District of California, Case No. 5:09-cv-01900-VAP-DTB ("K&N
26 Action"). K&N is a competitor in the Debtor's industry.

27 Briefly, the K&N Action involves claims of a competitor in the industry (K&N) for
28 alleged false advertising and unfair competition by the Debtor. The jury awarded K&N more

1 than \$7.3 million on the claims brought against the Debtor related to alleged false advertising in
2 connection with the labeling and sale of its performance automotive air filters and air intake
3 systems. The jury also returned a defense verdict in favor of K&N on the Debtor's counterclaims
4 against K&N for false advertising. An order entitled "Final Judgment and Permanent Injunction"
5 after jury verdict was entered by the District Court on December 8, 2011 in the amount of
6 \$7,337,196 ("K&N Judgment"). The K&N Judgment reserved the right to assess attorneys' fees
7 and statutory enhancement award to the K&N Judgment.

8 On December 20, 2011, K&N filed a motion for statutory enhancement of the K&N
9 Judgment seeking to double the amount of judgment and for approximately \$1.6 million in
10 attorneys' fees and costs. The District Court awarded K&N an enhancement payment of
11 \$750,159.68 and attorneys' fees of \$1,352,730.22 in its Minute Order Granting Motion for
12 Attorneys' Fees, in Part filed May 1, 2012.

13 On May 7, 2012, K&N filed a Notice of Lodging of [Proposed] Amended Final Judgment
14 and Permanent Injunction. Thereafter, on June 4, 2012 (entered post-petition), the District Court
15 entered the "Amended and Final Judgment and Permanent Injunction" ("Final K&N Judgment")
16 which included the language from the rulings on December 8, 2011 and May 1, 2012. While the
17 Final K&N Judgment was entered post-petition, the Bankruptcy Court entered an order annulling
18 the relief from stay such that the Final K&N Judgment was not void as a result of the automatic
19 stay violation.

20 Because the K&N Judgment did not resolve all damages issues and specifically reserved
21 the possibility of amending the judgment to address enhanced damages, the Debtor believes that
22 the K&N Judgment was not the requisite one final judgment or the "judgment" within the
23 meaning of the Federal Rules of Civil Procedure or the Federal Rules of Appellate Procedure and
24 that no such "judgment" was entered until June 4, 2012. This would be one of many contested
25 issues that the Debtor and K&N would litigate if the Motion is not granted.

26 The Debtor filed a Notice of Appeal from the K&N Judgment with the United States
27 Court of Appeals for the Ninth Circuit and separately filed a Notice of Appeal from the K&N
28 Post Judgment Award. The Debtor intends to file a Notice of Appeal from the Final K&N

1 Judgment. The Debtor understands that K&N intends to appeal from the Final K&N Judgment to
2 the extent that K&N did not receive all of the enhanced damages and attorney's fees which it
3 requested.

4 K&N sought \$1,647,120.43 total attorneys' fees and the District Court awarded
5 \$1,352,730.22. As such, the additional attorneys' fee amount at issue would appear to be
6 approximately \$238,717.11. K&N also sought \$7,337,196 in enhanced damages (double
7 damages). (Dk 317-1 at 3, 21.) The district court awarded \$750,159.68. Thus, K&N will
8 presumptively seek the difference, \$6,587,036.32, in its cross-appeal. The standard for such an
9 appeal is an abuse of discretion by the District Court.

10 The Debtor intends to consolidate all appeals into one proceeding before the United
11 States Court of Appeals for the Ninth Circuit. The Ninth Circuit has vacated the existing briefing
12 schedule pending the additional appeals and consolidation.

13 On December 27, 2011, K&N filed a Notice of Judgment Lien ("Judgment Lien") with
14 the California Secretary of State based on the K&N Judgment. On January 23, 2012, the District
15 Court in the K&N Action entered an order, granting, among other things, K&N's January 16,
16 2012 application to take the examination of the Debtor relative to enforcement of the K&N
17 Judgment ("Exam Order"). On January 26, 2012, K&N served the Exam Order on the Debtor.
18 K&N asserts that its Claim related to the K&N Judgment is partially secured on account of filing
19 of the Judgment Lien and the service of the Exam Order.

20 After entry of the K&N Judgment, the Debtor explored with Gryphon Investors
21 (Purchaser's majority owner) a possible transaction in the form of a transfer of ownership,
22 merger, exchange or sale of all or a portion of its assets that may have resolved the K&N
23 Judgment and all related issues. The discussions for the acquisition of Debtor's assets along with
24 various incentives and consideration to the shareholders of the Debtor continued for more than
25 three months. Before ninety days elapsed on the seasoning of K&N's Judgment Lien, an
26 agreement was entered with K&N to toll and suspend the running of all statutes of limitation
27 with respect to any adversary proceeding or cause of action that may be asserted by the Debtor
28 against K&N for avoidance and recovery of any liens created by the Judgment Lien or the Exam

1 Order, including but not limited to any cause of action under claims arising under any of
2 Sections 542, 543, 544, 545, 546, 547, 548, 549 and 550 of the Bankruptcy Code, any actions
3 based on applicable nonbankruptcy law that may be incorporated or brought under the foregoing
4 sections of the Bankruptcy Code, or any other similar action or proceeding filed to recover
5 property for or on behalf of the Estate or to avoid a lien or transfer (collectively the “Avoidance
6 Claims”).² This tolling of the statute of limitation for bringing the Avoidance Claims was
7 extended from time to time until around April 19, 2012 when K&N declined to further extend
8 the deadline. The Debtor, after consulting with its counsel and its broker for the sale of assets to
9 K&N or another Gryphon Investors affiliate, and after considering an agreement by K&N to
10 forbear from collection on the K&N Judgment for a period of time, decided to proceed with the
11 sale transaction negotiations and not file a Chapter 11 notwithstanding that any liens arising from
12 the Judgment Lien and/or Exam Order might no longer be avoided. In essence, the Debtor
13 decided that the prospects of a successful asset purchase negotiation with Gryphon Investors
14 outweighed the benefits of an immediate Chapter 11 filing. Discussions with Gryphon Investors
15 regarding the proposed transaction continued all the way up to days before the Chapter 11 filing.
16 However, when the talks with Gryphon Investors appeared that they were not going to result in a
17 definitive agreement, the Debtor made the decision to go forward with the Chapter 11 filing
18 despite the fact that the time for bringing Avoidance Claims against the Judgment Lien may have
19 expired.

20 Given that K&N is a creditor of the Debtor, the Debtor does not want to disclose any
21 legal strategy that would impair its chances with the appeal. Nevertheless, the Debtor has
22 retained specialized appellate counsel that is actively reviewing the record and formulating the
23 precise arguments to be made. Such counsel advises that it expects that arguments may well
24 address legal, instructional, and evidentiary errors as well as an absence of supporting evidence,
25 a grossly excessive damage award and equitable and legal damages constraints that will be
26 subject to a variety of appellate standards of review, including standards that involve de novo
27 review and construing the evidence in the light most favorable to Spectre, in addition to abuse of
28

² K&N asserts that the tolling agreement did not apply to the liens associated with the Exam Order.

1 discretion and substantial evidence standards of review. The Debtor believes the standard of
2 review on K&N's presumed cross appeal issues would be an abuse of discretion by the District
3 Court. The Debtor fully expects K&N to oppose most of the foregoing arguments.

4 If successful on appeal, the Court of Appeals could either i) overturn the K&N Final
5 Judgment and order a retrial at the District Court; ii) reduce the K&N Final Judgment and affirm
6 such Judgment in all other respects, including the injunctive relief contained therein; or iii)
7 remand the matter to the District Court with specific instructs to retry specific issues, including,
8 for example, appropriate damages.

9 K&N has also asserted an intention to file a cross-appeal of the K&N Final Judgment for
10 the portion of attorneys' fees and statutory enhancement penalties that were denied by the
11 District Court. K&N asserts that if K&N is successful in the appeal process, the Court of
12 Appeals could i) affirm the K&N Final Judgment in all respects or ii) increase the K&N Final
13 Judgment for some or all of the amounts requested in K&N's cross-appeal.

14 It is estimated that the total cost of the appeal will be approximately \$500,000. In
15 addition, if the Court of Appeals ordered a retrial on some or all of the issues, the Debtor could
16 incur significant additional litigation costs

17 2. Status of the Debtor's Reorganization

18 Seven days after the Petition Date, on May 21, 2012, the Debtor filed its original
19 proposed disclosure statement and Chapter 11 reorganization plan (the disclosure statement and
20 Chapter 11 reorganization plan, and all amendments thereto, are collectively referred to herein as
21 the "Disclosure Statement" and "Plan").

22 On July 23, 2012, K&N filed its Motion for Reduction of Exclusive Period Under
23 §1121(d)(1) ("Termination of Exclusivity Motion") seeking to terminate the Debtor's exclusivity
24 period for confirming its Plan.

25 The Debtor's Disclosure Statement (as was amended from time to time) was approved at
26 a hearing held on July 31, 2012 and a hearing on confirmation of the Plan was scheduled.

27 On August 17, 2012, the Debtor filed its Motion For Order to Show Cause Why Disputed
28 Creditor K&N Engineering, Inc. Should Not be Sanctioned for Violating Anti-Solicitation

1 Provisions of Bankruptcy Code Section 1125(b) (“Sanction Motion”) and a proposed Order to
2 Show Cause. The Debtor believed that the Sanction Motion was necessary because K&N
3 publically filed and served a detailed plan term sheet (which it called a competing plan) and
4 attached it in support of its Termination of Exclusivity Motion. The Debtor further asserted that
5 K&N disseminated its “plan” before the Debtor’s Disclosure Statement was approved and
6 following publication of the competing “plan” the Debtor spent more time talking with creditors
7 and the Committee about K&N’s plan than about the Debtor’s own Plan. K&N has filed its
8 opposition to the Sanction Motion.

9 At a hearing held on August 21, 2012, the Court continued the hearings on K&N’s
10 Termination of Exclusivity Motion and the Debtor’s Sanction Motion and also ordered the
11 Debtor and K&N to participate at a mediation conference before the Honorable Scott C.
12 Clarkson on September 10, 2012. The Court also tentatively re-scheduled the hearing on
13 confirmation of the Plan and set a briefing schedule with respect to supporting and opposition
14 briefs. The mediation before Judge Clarkson encompassed two full days, September 10 and
15 September 11, 2012.

16 **B. The Agreement with Purchaser**

17 The Agreement that is the subject of this Motion is the result of the two full days of
18 mediation and subsequent extensive written and oral communications between the Debtor and
19 K&N to document the sale and settlement. Subject to approval by the Court, the Debtor and
20 Purchaser have documented sale of the Purchased Assets and release of disputes between the
21 parties, including the Final K&N Judgment and the claims that are the subject of the K&N
22 Action. A true and correct copy of the Agreement is attached as Exhibit 1 to the Rosenbaum
23 Declaration annexed hereto. Attached as Schedule 1.5 to the Agreement is the mutual release of
24 claims between the Debtor and K&N.

25 A summary of the principal terms of the Agreement³ include the following:

- 26 • Purchaser shall pay the sum of \$8,000,000 in good funds at the Closing to acquire

27 ³ The summary and discussion is not meant to be a complete review of every provision of the Agreement. The
28 Agreement itself is the legally binding document the Debtor seeks approval of and, in the event of any inconsistency
between the terms, provisions or effect of the Agreement and the description of it in these pleadings, the Agreement
alone shall govern and not these pleadings or the descriptions herein.

1 the Purchased Assets, inclusive of inventory, accounts receivable, intellectual property and other
2 related assets and specified liabilities, subject to certain adjustments based upon the final
3 inventory and account receivable at the time of Closing.

4 • K&N shall waive the claim evidenced by the Final K&N Judgment (which is
5 currently estimated to be approximately \$9,500,000), together with any other rights to receive
6 any distributions from Debtor's bankruptcy estate except as expressly provided for in the
7 Agreement.

8 • Debtor shall withdraw and dismiss each of its appeals of the Judgment, with
9 prejudice, and K&N shall vacate the Judgment and dismiss the case against Debtor with
10 prejudice.

11 • Purchaser shall pay to the Rosenbaums the sum of \$2,000,000 for a four-year non
12 competition agreement with the Rosenbaums. In the event Purchaser is the successful purchaser,
13 Amir Rosenbaum will enter into a three-year written employment agreement to be negotiated
14 and agreed between Mr. Rosenbaum and Purchaser, and shall be paid at the rate of \$250,000 per
15 year, plus standard company benefits and eligibility for an incentive bonus, in accordance with
16 the Term Sheet which is attached as an exhibit to the Agreement submitted herewith.

17 • Debtor shall retain only those Excluded Assets as provided for in the Purchase
18 Agreement.

19 • Debtor and K&N shall execute full mutual general leases of all known and
20 unknown claims, and shall waive the provisions of the California Civil Code Section 1542.

21 • Debtor shall retain any and all avoidance actions and other claims not specifically
22 assigned to Purchaser under the Agreement.

23 The Debtor considered it desirable to resolve its disputes with K&N through the terms of
24 the sale transaction so that it may avoid further expense, inconvenience, and interference with its
25 ongoing business operations and to dispose of burdensome litigation between the parties.

26 **1. Notice of Bidding Procedures**

27 Consistent with its duty to obtain the highest and best price for its assets, the Debtor has
28 determined that it would benefit the Estate to permit all interested parties to receive information

1 and bid for the Purchased Assets. The Debtor also seeks Court approval of the following bidding
2 procedures (“Bidding Procedures”):

3 Subject to paragraph 9 below, potential overbidders must bid an initial amount of at least
4 \$100,000 over the Purchase Price (which is currently estimated to be \$17,630,621.32 such
5 Purchase Price being subject to adjustment in accordance with Section 1.7 of the Agreement).
6 Minimum bid increments thereafter shall be \$100,000. The Debtor shall determine, in
7 consultation with Comerica Bank and the Creditors’ Committee, which overbid is the highest
8 and best for the Estate and will seek approval from the Court of the same.

9 Prior to receipt by a potential overbidder of any information (including without limitation
10 business and financial information and access to representatives of Debtor) from Debtor, each
11 overbidder shall be required to execute and appropriate confidentiality agreement and deliver
12 evidence reasonably satisfactory to Debtor establishing such potential overbidders financial
13 capability to timely consummate a purchase of the Purchased Assets and the assumption of the
14 Assumed Liabilities (as defined in the Agreement).

15 To qualify as a competing bid to participate against Purchaser in the Auction (as defined
16 below), each overbidder shall, in addition to satisfying the requirements of paragraphs 1 and 2
17 above and 4-12 below, submit a copy of the form of Agreement marked to show changes, along
18 with any other bid package requirements to Debtor (each such bid, a “Qualified Bid”).

19 Overbids must be in writing and be received by the Debtor and the Debtor’s counsel,
20 Shulman Hodges & Bastian LLP to the attention of Leonard M. Shulman on or before 4:00 p.m.
21 (California time) on the date which is two business days prior to the hearing on this Motion (the
22 “Bid Deadline”). Debtor shall provided copies of such bids to counsel to Comerica Bank, the
23 Creditors’ Committee and the other qualified bidders, including Purchaser, on the same day
24 received by Debtor.

25 Overbids must be accompanied by certified funds in an amount equal to three percent
26 (3%) of the overbid purchase price.

27 The overbidder must also provide evidence of having sufficient specifically committed
28 funds to complete the transaction or a lending commitment for the bid amount and such other

1 documentation relevant to the bidder's ability to qualify as the purchaser of Purchased Assets
2 and ability to close the sale and immediately and unconditionally pay the winning bid purchase
3 price at closing.

4 The overbidder must seek to acquire the Purchased Assets on terms and conditions not
5 less favorable to the Estate than the terms and conditions to which Purchaser has agreed to
6 purchase the Purchased Assets as set forth in the Agreement attached as Exhibit 1 to the
7 Rosenbaum Declaration including closing on the sale of in the same time parameters as
8 Purchaser.

9 All competing bids must acknowledge that the Purchased Assets are being sold "AS IS,"
10 it is without warranties of any kind, expressed or implied, being given by the Debtor, concerning
11 the condition of the Purchased Assets or the quality of the title thereto, or any other matters
12 relating to the Purchased Assets. The competing bid buyer must represent and warrant that it is
13 purchasing the Purchased Assets as a result of its own investigations and is not buying the
14 Purchased Assets pursuant to any representation made by any broker, agent, accountant, attorney
15 or employee acting at the direction, or on the behalf of the Debtor. The competing bidder must
16 acknowledge that it has inspected the Purchased Assets, and upon closing of escrow governed by
17 the operative purchase agreement, the buyer forever waives, for itself, its successors and assigns,
18 all claims against the Debtor, its attorneys, agents and employees, the Debtor's Estate and its
19 attorneys, agents and employees, arising or which might otherwise arise in the future concerning
20 the Purchased Assets.

21 Bids may offer to purchase all or substantially all of the Purchased Assets or only a
22 portion of the Purchased Assets; provided that the aggregate consideration offered in any bid or
23 combination of bids for all or substantially all of the Purchased Assets satisfies the minimum
24 \$17,730,621.32 cash bid requirement set forth in paragraph 1 above. If bids for a portion of the
25 Purchased Assets do not provided for a combined cash purchase price of at least \$17,730,621.32,
26 the bidders submitting such bids cannot participate in the Auction.

27 Overbids must identify any and all executory contracts and unexpired leases of the
28 Debtor that the bidder wishes to have assumed and assigned to it at closing (together with any

1 Designation Right Contracts (as defined below) that may be assumed and assigned to it in
2 accordance with the governing terms of any applicable asset purchase agreement).

3 Bids must provide for the payment or assumption of at least all or substantially all of the
4 Assumed Obligations (as defined in the Agreement).

5 Each bid (a) may not contain representations and warranties, covenants, and termination
6 rights materially more onerous in the aggregate to the Debtor than those set forth in the
7 Agreement; (b) may not be conditioned on obtaining financing or any internal approval, or on the
8 outcome or review of due diligence; and (c) may not contain any provision for payment by or on
9 behalf of the Estate of any expense reimbursement, breakup fee, termination or similar fee or
10 payment.

11 If Qualified Bids are received by the Bid Deadline, the Debtor will conduct an auction
12 (the "Auction") for the Purchased Assets to be held at the hearing on the Motion in order to
13 allow all potential bidders submitting Qualified Bids the opportunity to overbid and purchase the
14 Purchased Assets. At the Auction, the Debtor will, in the exercise of its business judgment and
15 subject to Court approval, accept the bidder who has made the highest and best offer to purchase
16 the Purchased Assets, consistent with the Bidding Procedures ("Successful Bidder"). Only
17 Purchaser and bidders who submitted a Qualified Bid will be entitled to make any bids at the
18 Auction. Purchaser shall be entitled to credit bid (pursuant to Bankruptcy Code Section 363(k)
19 or other applicable law) the Final K&N Judgment in the amount of \$9,530,621.32 throughout the
20 Auction. If no Qualified Bid (other than the Agreement) is received by the Bid Deadline, no
21 Auction will be conducted and Purchaser shall be the Successful Bidder.

22 At the hearing on the Motion, the Debtor will seek entry of an order, inter alia,
23 authorizing and approving the sale of the Purchased Assets to the Successful Bidder. Subject to
24 any applicable provisions of the Agreement, the hearing on the Motion may be adjourned or
25 rescheduled without notice other than by an announcement of the adjourned date at the hearing
26 on the Motion.

27 In the event the Successful Bidder (other than Purchaser) fails to close on the sale of the
28 Purchased Assets within the time parameters approved by the Court, the Debtor shall retain the

1 Successful Bidder's Deposit and at Debtor's option, be released from its obligation to sell the
2 Purchased Assets to the Successful Bidder and the Debtor may then sell the Purchased Assets to
3 the first back-up bidder that agreed to serve as such after approval by the Court at the hearing on
4 the Motion ("First Back-Up Bidder").

5 In the event First Back-Up Bidder fails to close on the sale of the Purchased Assets
6 within the time parameters approved by the Court, the Debtor shall retain the First Back-Up
7 Bidder's Deposit (if any) and at Debtor's option will be released from the obligation to sell the
8 Purchased Assets to the First Back-Up Bidder and the Debtor may then sell the Purchased Assets
9 to the second back-up bidder that agreed to serve as such after approval by the Court at the
10 hearing on the Motion.

11 2. Proposed Assumption Procedures

12 To facilitate and effect the sale of the Purchased Assets, the Debtor seeks authority under
13 Bankruptcy Code Sections 105(a) and 365 to assume and assign certain of the Debtor's
14 executory contracts and unexpired leases (each an Assumed Contract and collectively, the
15 "Assumed Contracts") designated in the Agreement, consistent with the procedures established
16 in the Agreement. The Debtor proposes that the procedures set forth in the Agreement apply
17 whether the Purchaser or another party is the Successful Bidder.

18 In addition, as part of the Motion, the Debtor requests the authority to identify at the
19 direction of Purchaser, within 30 days following the sale closing, which of the Assumed
20 Contracts that may be assigned but that are not included as Assumed Contracts as of the closing
21 (the "Designation Rights Contracts") that it will assume or reject, in accordance with the
22 procedures detailed in the Agreement. The Agreement specifies the process by which the Debtor
23 will serve cure notices and the procedures and deadline for counterparties to Assumed Contracts
24 to file and serve objections to the assumption and assignment of Designation Rights Contracts.

25 III. ARGUMENT

26 A. The Court May Authorize the Sale of Assets When There is a Good Faith 27 Purchaser

28 The Debtor, after notice and hearing, may sell property of the Estate. Bankruptcy Code

1 Section 363(b). The standards to establish are that there is a sound business purpose for the sale,
2 that the sale is in the best interests of the estate, i.e., the sale is for a fair and reasonable price,
3 that there is accurate and reasonable notice to creditors and that the sale is made in good faith. *In*
4 *re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); *In re Lionel Corp.*,
5 722 F.2d 1063, 1069 (2d Cir. 1983). Business justification would include the need to close a sale
6 to one of very few serious bidders where an asset has been extensively shopped and a delay
7 could jeopardize the transaction. *See, e.g., In re Crowthers McCall Pattner, Inc.*, 114 B.R. 877,
8 885 (Bankr. S.D.N.Y. 1990) (extreme difficulty finding a buyer justified merger when buyer
9 found). The Debtor's proposed sale of the Purchased Assets meets the foregoing criteria.

10 **B. Sound Business Purpose**

11 The Ninth Circuit in *In re Walter*, 83 B.R. 14 (Bankr. 9th Cir. 1988) has adopted a
12 flexible, case by case test to determine whether the business purpose for a proposed sale justifies
13 disposition of property of the estate under Section 363(b). In *Walter*, the Ninth Circuit, adopting
14 the reasoning of the Fifth Circuit in *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir.
15 1986), and the Second Circuit in *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983), set forth the
16 following standard to be applied under Bankruptcy Code Section 363(b).

17 Whether the proffered business justification is sufficient depends on the case. As the
18 Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient factors pertaining
19 to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and
20 equity holders, alike. He might, for example, look to such relevant factors as the proportionate
21 value of the assets to the estate as a whole, the amount of lapsed time since the filing, the
22 likelihood that a plan of reorganization will be proposed and confirmed in the near future, the
23 effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained
24 from the disposition *vis-a-vis* any appraisals of the property, which of the alternatives of use, sale
25 or lease the proposal envisions and, most importantly perhaps, whether the asset is increasingly
26 or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to
27 the bankruptcy judge. *Walter, supra*, at 19-20 quoting *In re Continental Air Lines, Inc.*, 780 F.2d
28 1223, 1226 (5th Cir. 1986).

1 Here, the facts surrounding the sale of the Purchased Assets support the Debtor's
2 business decision that the proposed sale is in the best interests of the Estate and its creditors.

3 The Debtor believes that the proposed sale is fair and reasonable given the benefits that
4 will be achieved. The Purchased Assets are not necessary for the Debtor's alternative
5 reorganization strategy and will provide for more value of the Estate and its creditors if they are
6 sold and the sale proceeds used to pay off the Debtor's obligations to Comerica Bank in full and
7 to fund the Debtor's distributions to other creditors under a plan of reorganization. The sale to
8 Purchaser provides for total consideration to the Estate that will exceed \$17,500,000 given the
9 cash payment of \$8,000,000 and the release of claims exceeding \$9,500,000. Furthermore, upon
10 completion of the sale, the Debtor will no longer incur the expenses associated with litigating
11 against K&N.

12 Therefore, the Debtor respectfully submits that, if this Court applies the good business
13 reason standard suggested by the Second Circuit in Lionel, the sale should be approved.

14 **C. The Sale Serves The Best Interests Of the Estate and Creditors**

15 The Debtor believes that it would be in the best interests of the Estate and its creditors for
16 the Court to approve this Motion.

17 The Purchased Assets are not necessary for the Debtor's reorganization and will provide
18 for more value of the Estate and its creditors if they are sold and the sale proceeds used to pay in
19 full the Debtor's obligations to Comerica Bank and for funding the Debtor's contemplated plan
20 of reorganization. Furthermore, upon completion of the sale, the Debtor will no longer incur the
21 expenses associated with litigation of disputes with K&N and the K&N Judgment will be
22 resolved without further expense.

23 Thus, the Debtor has made a business decision that it is in the best interest of the creditors
24 of this Estate that this Motion be approved.

25 **D. Accurate and Reasonable Notice**

26 It is expected that notice of this Motion will satisfy the requirements for accurate and
27 reasonable notice and will be appropriate under the circumstances of this case.

28

1 The notice requirements for sales outside the ordinary course are set forth in Federal
2 Rules of Bankruptcy Procedure (“FRBP”) 6004 and 2002. The notice must include the time and
3 place of any public sale, the terms and conditions of any private sale, the time fixed for filing on
4 objections and a general description of the property. Fed. R. Bankr. P. 2002(c)(1).

5 In compliance with FRBP 2002, Bankruptcy Code Section 102(1) and the Court’s order
6 setting the hearing on this Motion, the Debtor is providing notice of the proposed sale to
7 creditors and parties in interests pursuant to the procedures approved by the Court under that
8 certain Order Fixing Manner of General Notice to Creditors and Parties in Interest entered on
9 June 25, 2012 (docket number 121). Debtor has or will as soon as reasonably practicable after
10 filing the within motion serve (to the extent known) all: (i) relevant taxing authorities; (ii) all
11 relevant environmental authorities; (iii) all class action counsel, class representatives and class
12 members; and (iv) such other persons or entities as Purchaser requests in writing. The Debtor
13 submits that the notice requirements will have been satisfied. Hence, no further notice should be
14 necessary.

15 **E. The Sale is Made In Good Faith and the Purchaser is a Good Faith**
16 **Purchaser Entitled to Section 363(m) Protections**

17 The proposed sale to Purchaser of the Purchased Assets is brought in good faith and
18 negotiated on an "arms length" basis.

19 The court, in Wilde Horse Enterprises, set forth the factors in considering whether a
20 transaction is in good faith. The court stated:

21 'Good faith' encompasses fair value, and further speaks to the integrity of the transaction.
22 Typical 'bad faith' or misconduct, would include collusion between the seller and buyer, or any
23 attempt to take unfair advantage of other potential purchasers. . . . And, with respect to making
24 such determinations, the court and creditors must be provided with sufficient information to
25 allow them to take a position on the proposed sale. Id. at 842 (citations omitted)

26 In the present case, the negotiations with K&N have been extensive and at arm’s-length.
27 The mediation with K&N before Judge Clarkson resulted in offer to sell that has substantial
28 benefit to the Estate. As set forth in the Notice of the Motion, the creditors will have been

1 provided with sufficient notice of the sale. The Purchaser is not an insider and is not otherwise
2 related to the Debtor. Moreover, in this case, there is no evidence whatsoever of any fraud or
3 collusion in connection with the proposed sale to Purchaser. The Debtor will ensure that the
4 Agreement does not constitute an avoidable transaction pursuant to section 363(n) of the
5 Bankruptcy Code, and, as a result, the Purchaser or other Successful Bidder should receive the
6 protections afforded good faith purchasers by section 363(m) of the Bankruptcy Code.
7 Accordingly, the Debtor requests that the Court make a finding at the sale hearing that the
8 Purchaser is a good faith purchaser, the sale is in good faith and both the purchaser and the
9 proposed sale should be entitled to the full protections of Bankruptcy Code Section 363(m).

10 **F. Upon Approval by the Court, the Debtor May Compromise a Claim of the**
11 **Estate.**

12 The power of the Court to review and approve settlements is expressly recognized in
13 Federal Rule of Bankruptcy Procedure, Rule 9019(a), which provides:

14 On motion by the trustee and after notice and a hearing, the court may approve a
15 compromise or settlement. Notice shall be given to creditors, the United States trustee, the
16 debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may
17 direct.

18 Thus, upon notice to the creditors, the United States Trustee, and indenture trustees, the
19 Debtor may compromise a claim of the Estate. The approval of a compromise is a core
20 proceeding under 28 U.S.C. §157(b)(2)(A) and (O). *In re Carla Leather, Inc.*, 50 B.R. 764, 775
21 (S.D.N.Y. 1985).

22 **G. The Proposed Sale Should be Allowed Free and Clear of Liens, Claims and**
23 **Interests**

24 Bankruptcy Code Section 363(f) allows a debtor to sell property of the bankruptcy estate
25 free and clear of liens, claims, interests and encumbrances, if any one of the following five
26 conditions is met:

27 (1) applicable non-bankruptcy law permits a sale of such property free and clear of
28 such interest;

- 1 (2) such entity consents;
- 2 (3) such interest is a lien and the price at which such property is to be sold is greater
- 3 than the aggregate value of all liens on such property;
- 4 (4) such interest is in bona fide dispute; or
- 5 (5) such entity could be compelled, in a legal or equitable proceeding, to accept
- 6 money satisfaction of such interest.

7 11 U.S.C. § 363(f). This provision is supplemented by section 105(a) of the Bankruptcy
8 Code, which provides that “[t]he Court may issue any order, process or judgment that is
9 necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C.
10 § 105(a).

11 Section 363(f) is written in the disjunctive and thus only one of the enumerated
12 conditions needs to be satisfied for Court approval to be appropriate.

13 **1. Section 363(f)(2)**

14 The sale of the Purchased Assets is proper pursuant to Section 363(f)(2). The Debtor
15 believes that Comerica Bank, the holder of liens on substantially all of the Debtor’s assets will
16 consent to the sale as Comerica Bank will be paid in full.

17 Courts have approved sales under Bankruptcy Code Section 363(f) even where the sale
18 price did not exceed the value of the liens asserted on the property so long as the sale is for fair
19 market value. *In re Terrace Gardens Park Partnership*, 96 B.R. 707 (Bankr. W.D. Tex. 1989);
20 *In re Beker Indus. Corp.*, 63 B.R. 474, 477 (Bankr. S.D.N.Y. 1986).

21 Further, the Debtor desires to close on the transaction as quickly as possible to stop
22 expenses associated with litigation of disputes with K&N and delays that could result from
23 having to first resolve any disputes related to secured claims that may negatively impact the
24 benefits of the sale. As such, pursuant to Bankruptcy Code Sections 363(b) (1) and (f) the Debtor
25 seeks authority to sell the Purchased Assets free and clear of any and all liens, claims,
26 encumbrances and interests, with any liens or encumbrances not released, resolved or satisfied
27 through the sale to attach to the sale proceeds in the same validity and priority as prior to the
28 Petition Date pending agreement with the creditor or further order of the Court.

1 Thus, approval for the sale of the free and clear of liens, claims, encumbrances and
2 interests in the manner provided herein is appropriate.

3 2. Section 363(f)(4) – Bona Fide Dispute

4 Out of an abundance of caution, the Debtor seeks Court approval of the sale free and
5 clear of any and all disputed liens and encumbrances, with all disputed liens and encumbrances,
6 if any, to be unconditionally released, discharged and terminated, and with any liens and
7 encumbrances not satisfied through the sale to attach only to the proceeds of the transaction with
8 the same priority, validity, force and effect as they existed with respect to the Purchased Assets
9 before the closing of the sale pending further Court order or agreement with the parties. The
10 Debtor does not believe it is prudent or necessary to resolve the disputes with holders of any
11 disputed liens and encumbrances by Court order or judgment prior to the sale. The unresolved
12 disputed liens and encumbrances, if any, would be subject to a bona fide dispute and the
13 Bankruptcy Code provides for a means to sell free and clear of such interests. If the Estate is
14 forced to wait for resolution of the disputes, the costs of such delay will dilute the amount of
15 funds available for the Estate. By selling the Purchased Assets as soon as possible, the Debtor
16 will also avoid losing the current favorable offer from the Purchaser and having to expend time
17 and costs to find another buyer for the Purchased Assets, if one can be found in the current
18 market. Thus, the Debtor needs immediate Court approval of the sale.

19 Any claim that holders of the disputed liens and encumbrances may have against the
20 Estate related to the Purchased Assets are anticipated to be the subject of bona fide disputes and
21 therefore the sale may go forward free and clear of such claims pursuant to Section 363(f)(4). A
22 bona fide dispute has been defined by *In re Atwood*, 124 B.R. 402 (Bankr. S.D. Ga. 1991) as a
23 “genuine issue of material fact that bears upon the debtor’s liability, or meritorious contention as
24 to the application of law to undisputed facts.” *Id.* at 407. In *In re Milford Group, Inc.*, 150 B.R.
25 904 (Bankr. M.D. Pa. 1992), the court stated it need not resolve a bona fide dispute, but must
26 determine whether the issues presented are genuine as to the existence of a bona fide dispute. In
27 doing so, the Milford Court found that the debtor had met its burden to establish cause for the
28 Court to allow for the sale of the property, free and clear of liens.

1 In the instant case, the proposed sale of the Purchased Assets conforms to the
2 requirements of Section 363(f)(4) in that the Debtor has established the existence of bona fide
3 disputes with the holders of disputed liens and encumbrances, if any.

4 The policy behind allowing assets to be sold free and clear of disputed interests provides
5 that the disputes do not bog down the swift and orderly liquidation of bankruptcy estate assets for
6 the highest possible value. In this case, more than any other, where the Estate has received a cash
7 buyer, delaying the sale pending resolution of secured claim disputes would be detrimental. It is
8 absolutely essential for the Debtor to be able to quickly liquidate Purchased Assets for their
9 maximum possible value. By demonstrating the existence of the bona fide disputes, section
10 363(f) allows the Purchased Assets to be sold free and clear of any lien that is subject to a
11 dispute so that at a minimum, proceeds can be generated for distribution to parties. If every sale
12 were subject to resolution of disputes that were in existence, expense and time associated with
13 litigation would significantly impact values that could be obtained by estate fiduciaries for the
14 benefit of creditors. Resolution of the issues with regard to the claims of the holders of disputed
15 liens and encumbrances may likely take substantial time, effort and expense by the parties. That
16 process should not hinder, delay or in any way inhibit the Debtor's efforts to maximize the value
17 of the sale of Purchased Assets.

18 Thus, approval for the sale transaction free and clear of disputed liens and encumbrances
19 pursuant to Bankruptcy Code Section 363(f)(4) in the manner provided herein is appropriate.

20 **H. The Purchased Assets and Assumed Contracts Should Be Sold Free and**
21 **Clear of Successor Liability**

22 Under the terms of the Agreement, the Purchaser or other Successful Bidder should not
23 be liable for any of the Debtor's liabilities as a successor to the Debtor's businesses or otherwise,
24 unless expressly assumed. Extensive case law exists providing that claims against a winning
25 bidder are directed to the proceeds of a free and clear sale of property and may not subsequently
26 be asserted against a buyer. Although section 363(f) of the Bankruptcy Code provides for the
27 sale of assets "free and clear of any interests," the term "any interest" is not defined anywhere in
28 the Bankruptcy Code. *Folger Adam Sec. v. DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d

1 Cir. 2000). In the case of *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-89 (3d Cir. 2003),
2 the Third Circuit specifically addressed the scope of the term “any interest.” The Third Circuit
3 observed that while some courts have “narrowly interpreted that phrase to mean only in rem
4 interests in property,” the trend in modern cases is towards “a more expansive reading of
5 ‘interests in property’ which ‘encompasses other obligations that may flow from ownership of
6 the property.’” *Id.* at 289 (citing 3 Collier on Bankruptcy 363.06[1]); *see also Folger*, 209 F.3d
7 at 258. As determined by the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, 99 F.3d 573,
8 581-82 (4th Cir. 1996), a case cited approvingly and extensively by the Third Circuit in *Folger*,
9 the scope of section 363(f) is not limited to in rem interests. Thus, the Third Circuit in *Folger*
10 stated that *Leckie* held that the debtors “could sell their assets under § 363(f) free and clear of
11 successor liability that otherwise would have arisen under federal statute.” *Folger*, 209 F.3d at
12 258; *see also C.H.E.G., Inc. v. Millenium Bank*, 121 Cal. Rptr. 2d 443, 511 (Cal Ct. App. 2002)
13 (citing *Folger* for the proposition that “any interest” is to be interpreted broadly and holding sale
14 order extinguished counterparty’s right to a commission under the lease).

15 Courts have consistently held that a buyer of a debtor’s assets pursuant to a section 363
16 sale takes free from successor liability resulting from pre-existing claims. *See, e.g., Myers v.*
17 *U.S.*, 297 B.R. 774, 782 (S.D. Cal. 2003) (holding “Bankruptcy Code preempts any common law
18 theory of successor liability as applied to purchasers of assets from a bankruptcy estate); *see also*
19 *The Ninth Ave. Remedial Grp. v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind.
20 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest
21 that could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Co. v.*
22 *Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93-94 (2d Cir. 1988)
23 (channeling of claims to proceeds consistent with intent of sale free and clear under section
24 363(f) of the Bankruptcy Code); *In re New England Fish Co.*, 19 B.R. 323, 329 (Bankr. W.D.
25 Wash. 1982) (transfer of property in free and clear sale included free and clear of Title VII
26 employment discrimination and civil rights claims of debtor’s employees); *In re Hoffman*, 53
27 B.R. 874, 876 (Bankr. D.R.I. 1985) (transfer of liquor license free and clear of any interest
28 permissible even though the estate had unpaid taxes); *American Living Sys. v. Bonapfel (In re All*

1 *Am. of Ashburn, Inc.*, 56 B.R. 186, 190 (Bankr. N.D. Ga. 1986) (product liability claims
2 precluded on successor doctrine in a sale of assets free and clear); *WBQ P'ship v. Va. Dept. of*
3 *Med. Assistance Servs. (In re WBQ P'ship)*, 189 B.R. 97, 104-05 (Bankr. E.D. Va. 1995)
4 (Commonwealth of Virginia's right to recapture depreciation is an "interest" as used in section
5 363(f)).

6 The purpose of an order purporting to authorize the transfer of the Purchased Assets
7 would be frustrated if claimants thereafter could use the transfer as a basis to assert claims
8 against the Purchaser or other Successful Bidder. Under section 363(f) of the Bankruptcy Code,
9 the Purchaser or other Successful Bidder is entitled to know that the Purchased Assets are not
10 infected with latent claims that will be asserted against it after the proposed transaction is
11 completed. Accordingly, consistent with the above-cited case law, the order approving the sale
12 of the Purchased Assets (as proposed and attached as Exhibit 2 (the "Sale Order")) should state
13 that the Purchaser or other Successful Bidder is not liable as a successor under any theory of
14 successor liability, for Interests (as defined in the Sale Order) that encumber or relate to the
15 Purchased Assets.

16 **I. The Court has the Authority to Waive the Fourteen-Day Stay of Sale**

17 Federal Rule of Bankruptcy Procedure 6004(h) provides that "[a]n order authorizing the
18 use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days
19 after entry of the order, unless the Court orders otherwise." Fed. Rule Bankr. P. 6004(h).

20 The Debtor desires to close the sale as soon as practicable after entry of an order
21 approving the Motion. Accordingly, the Debtor requests that the Court, in the discretion provided
22 it under Federal Rule of Bankruptcy Procedure 6004(h), waive the fourteen-day stay
23 requirement.

24 **J. Purchaser's Credit Bidding Should Be Authorized under Section 363(k) of**
25 **the Bankruptcy Code.**

26 A secured creditor is allowed to "credit bid" the amount of its claim in a sale. Section
27 363(k) of the Bankruptcy Code provides, in relevant part, that unless the court for cause orders
28 otherwise, the holder of a claim secured by property that is the subject of the sale "may bid at

1 such sale, and, if the holder of such claim purchases such property, such holder may offset such
2 claim against the purchase price of such property.” 11 U.S.C. § 363(k). Even if a secured
3 creditor is undersecured as determined in accordance with section 506(a) of the Bankruptcy
4 Code, section 363(k) allows such secured creditor to bid the total face value of its claim and does
5 not limit the credit bid to the claim’s economic value. *See Cohen v. KB Mezzanine Fund II, LP*
6 *(In re Submicron Sys. Corp.)*, 432 F.3d 448, 459-60 (3d Cir. 2006) (explaining that “[i]t is well
7 settled among district court and bankruptcy courts that creditors can bid the full face value of
8 their secured claims under section 363(k)”). The Agreement contemplates settlement of the
9 disputes between K&N and the Debtor and as part of that proposed settlement, the Debtor has
10 agreed that Purchaser can credit bid the full amount of the Final K&N Judgment throughout the
11 Auction. Notwithstanding the foregoing, however, in the event that Purchaser is not the ultimate
12 purchaser of the assets which are the subject of this Motion, then Debtor shall retain all rights
13 and claims to dispute the nature, extent, amount and validity of Purchaser’s claim in this
14 Chapter 11 case, and the action currently pending between Purchaser and Debtor. Because the
15 K&N Judgment purports to be secured by the Judgment Lien and the Exam Order and the Debtor
16 is resolving its disputes on any issues relating to such security interests by virtue of the
17 settlement with K&N, Purchaser should be allowed to credit bid the face value of the
18 approximately \$9.5 million Final K&N Judgment in order to effectuate the transactions under the
19 Agreement.

20 **K. The Court has the Authority to Approve the Bidding Procedures**

21 Implementation of the Bidding Procedures is an action outside of the ordinary course of
22 the business. Bankruptcy Code Section 363(b)(1) provides that a trustee “after notice and
23 hearing, may use, sell or lease, other than in the ordinary course of business, property of the
24 estate.” 11 U.S.C. § 363(b)(1). Furthermore, under Bankruptcy Code Section 105(a), “[t]he court
25 may issue any order, process, or judgment that is necessary or appropriate to carry out the
26 provisions of this title.” 11 U.S.C. § 105(a). Thus, pursuant to Bankruptcy Code sections
27 363(b)(1) and 105(a), this Court may authorize the implementation of overbidding procedures.

28 The Ninth Circuit, in a case under the Bankruptcy Act, recognized the power of a

1 bankruptcy court to issue orders determining the terms and conditions for overbids with respect
2 to a sale of estate assets. *In re Crown Corporation*, 679 F.2d 774 (9th Cir. 1982). The Crown
3 Corporation court entered an order specifying the minimum consideration required for an
4 overbid as well as the particular contractual terms required to be offered by overbidders. *Id.* at
5 777. The Crown Corporation decision also approves an order requiring and setting the amount of
6 potential overbidder's deposits and authorized courts to determine the disposition of such
7 deposits. *Id.* While the discussion is not extensive, the Crown Corporation decision recognizes
8 the authority of bankruptcy courts to order the implementation of bidding procedures such as
9 those proposed in the present case.

10 1. The Overbid Procedures are Untainted by Self-Dealing

11 The Bidding Procedures have been proposed in good faith and have been negotiated on
12 an "arms length" basis. Therefore, there is no prospective taint in dealings between Debtor and
13 any potential bidders.

14 2. The Overbid Procedures Encourage Bidding and are Fair in Amount

15 The Bidding Procedures are designed to encourage, not hamper bidding and are
16 reasonable under the circumstances. The Bidding Procedures are intended to provide potential
17 overbidders with adequate information to make an informed decision as to the amount of their
18 bid and the validity of their bid.

19 3. The Overbid Procedures are Fair, Reasonable and Serve the Best Interests
20 of the Estate

21 The proposed Bidding Procedures serve the Estate in several ways. First, the Bidding
22 Procedures themselves are fair, reasonable and productive; they will permit the Debtor to
23 conduct an orderly sale and obtain the best possible price on the best possible terms for the
24 Purchased Assets.

25 The Bidding Procedures will ensure that all bids will be comparable. The Debtor will
26 determine which bid is the highest and best for the Estate. The comparability requirement of the
27 Bidding Procedures will make it possible to accomplish this task.

28 The Bidding Procedures will help the Debtor to obtain the highest and best possible price

1 for the Purchased Assets. The Bidding Procedures institutes minimum overbid increments which
2 the Debtor believes are reasonable. Thus, Debtor will be able to obtain substantial benefit for this
3 Estate from the sale of the Purchased Assets from competing bids.

4 The Bidding Procedures require that potential bidders demonstrate their capacity to
5 complete the transaction. It would be a serious loss to the Estate if it surrendered its opportunity
6 to sell Purchased Assets to one buyer in favor of a competing bidder only to discover the
7 successful bidder incapable of consummating the transaction. Thus, requiring bidders to qualify
8 as qualified bidders will protect the Estate from such a loss.

9 The most important benefit of the Bidding Procedures to the Estate is that their
10 implementation will enable the consummation of the proposed sale. The proposed sale will be
11 best way to obtain the maximum and most expedient recovery for creditors of this Estate.
12 Implementation of the Bidding Procedures is an essential component of consummating the sale
13 of the Purchased Assets and maximizing the value of the Purchased Assets for the Estate and
14 creditors.

15 The Bidding Procedures to be utilized are fair and provide for a “level playing field” for
16 all prospective bidders with respect to the Purchased Assets. The proposed Bidding Procedures
17 establish a reasonable but expeditious timeline for allowing the Debtor to give notice of the
18 proposed sale and qualified bidders to conduct reasonable due diligence and submit competing
19 offers for the Purchased Assets, thereby potentially generating additional value for the Purchased
20 Assets. Furthermore, the notice and publication that the Debtor proposes to provide to creditors
21 and parties in interest in connection with the bidding procedures and Motion is designed to
22 attract the most interest in the acquisition of the Purchased Assets and is sufficient under the
23 circumstances of this case. Thus, approval of the Bidding Procedures would serve the best
24 interests of the Estate and its creditors.

25 **L. The Bankruptcy Court May Approve a Compromise Which is Fair and**
26 **Equitable.**

27 The purpose of a compromise agreement between a debtor and a creditor is to allow the
28 parties to avoid the expenses and burdens associated with litigation. *Martin v. Kale (In re A & C*

1 *Properties*), 784 F.2d 1377, 1380-81 (9th Cir. 1986), *cert. denied sub nom, Martin v. Robinson*,
2 479 U.S. 854 (1986). The bankruptcy court has great latitude in approving compromise
3 agreements as long as it finds that the compromise is fair and equitable. *Id.* at 1382; *see also*,
4 *Woodson v. Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988).
5 Generally, the benchmark in determining the propriety of a settlement is whether the settlement
6 is in the best interests of the estate and its creditors. *In re Energy Cooperative, Inc.*, 886 F.2d
7 921, 927 (7th Cir. 1989). To be approved, the settlement need not represent the highest possible
8 return to the estate, but merely must fall within the "range of reasonableness." *In re Walsh*
9 *Construction, Inc.*, 669 F.2d 1325, 1328 (9th Cir. 1992). In making this determination, the
10 bankruptcy court need not conduct a trial or even a "mini trial" on the merits. *Id.*

11 In determining the fairness, reasonableness and adequacy of a proposed settlement
12 agreement, the Court must consider the following factors:

13 (a) The probability of success in the litigation; (b) the difficulties, if any, to be
14 encountered in the matter of collection; (c) the complexity of the litigation involved, and the
15 expense, inconvenience, and delay necessarily attending it; (d) the paramount interests of the
16 creditors and a proper deference to their reasonable views in the premises. *A & C Properties*,
17 784 F.2d at 1381; *Woodson*, 839 F.2d at 620.

18 In other words, the Court must weigh certain factors in order to determine whether the
19 compromise is in the best interests of the bankrupt estate. *A & C Properties*, 784 F.2d at 1382.

20 The Debtor believes the proposed Settlement Agreement is in the best interest of the
21 Estate and under the four factors of *A&C Properties*, it should be approved as doing so is the
22 most expedient and cost effective method for resolving the disputes with K&N including the
23 K&N Action and the Final K&N Judgment.

24 **1. Probability of Success in Litigation.**

25 Litigating the disputes with K&N would not only require the Debtor to prevail on the
26 pending appeal of the K&N Judgment, but to respond to all defenses and counter claims that are
27 raised in connection with appeal including K&N's threatened cross-appeal. The litigation
28 between the parties in both the K&N Action and this Chapter 11 case is complex, is time

1 consuming and has been and will continue to be expensive if the settlement is not approved.
2 Such litigation includes likely objections to the claims filed by K&N, a potential complaint to
3 determine the extent, priority or validity of K&N's lien, numerous contested plan confirmation
4 issues, and disputed over plan exclusivity and Debtor's request for sanctions. All such matters
5 will be expensive, time consuming, and pose a risk of loss for the Debtor.

6 Even if fully successful on its pending appeal, the Debtor may have to respond to further
7 appeals by K&N. If the Debtor is partially successful on its appeal, it may need to engage in the
8 expensive process of a retrial. The Debtor understands that litigation matters have inherent risks
9 including not prevailing on the appeal of the K&N Judgment. The settlement, however, avoids
10 these costly and risky activities and results in substantial benefit to the Estate.

11 Furthermore, the settlement will allow the Debtor to cease litigation costs associated with
12 the disputes that are the subject of the K&N Action and the K&N Judgment. The expenses to be
13 incurred for continuing the disputes among the parties would most likely exceed any additional
14 benefit that might be achieved.

15 Based on the above, the Debtor believes that this factor weighs in favor of approving the
16 Agreement with Purchaser and settling with K&N.

17 **2. Difficulties, if any, to be Encountered in the Matter of Collections.**

18 The consideration of the difficulties to be encountered in collection are not applicable to
19 the Debtor's settlement of disputes with K&N.

20 **3. The Complexity of the Litigation Involved, and the Expense,
21 Inconvenience, and Delay Necessarily Attending it.**

22 If the settlement is not approved, the Debtor would have to expend resources on costly
23 litigation with K&N and the appeal of the K&N Judgment. Such litigation would be complicated
24 and time consuming. One of the impediments to the Debtor's success before the bankruptcy
25 filing was the legal bills and time commitments associated with the defense, prosecution of
26 counter-claims, and trial in the K&N Action. The settlement will end these time commitments
27 and costly use of resources.

28 Furthermore, the litigation is risky and would substantially delay the Debtor's

1 reorganization and distribution to creditors. In the event that Debtor prevails on appeal of the
2 K&N Judgment, the Debtor would likely have to respond to further appeals and/or a retrial,
3 thereby increasing the litigation costs. However, the proposed settlement provides finality and
4 provides for substantial value to the Estate through the sale of the Purchase Assets and release of
5 claims with K&N. Thus, rather than delay the matter and incur substantial litigation costs that
6 may deplete the Estate, the Debtor has determined that the settlement reached is fair and
7 reasonable.

8 After consideration of the complexity of the litigation and the expenses that would be
9 incurred as well as the delay to the Debtor's case and its creditors that would result, the Debtor
10 believes the proposed settlement with K&N is the most expedient and cost effective method for
11 the Debtor's disputed with K&N including the K&N Action and the K&N Judgment.

12 4. The Paramount Interest of the Creditors and the Proper Deference to the
13 Reasonable Views.

14 The settlement of disputes with K&N that are incorporated into the Agreement should be
15 approved as a means of preserving assets and enhancing the value of the Estate. The settlement
16 avoids costly and risky activities related to continued litigation of the disputes with no guarantee
17 of a beneficial outcome for the Estate. Settlement results in certainty and substantial benefit to
18 the Estate in that:

19 • The Estate will receive cash payment of \$8,000,000 that will be used for payment
20 in full of the Debtor's obligations to secured lender Comerica Bank and substantial cash for
21 funding the Debtor's contemplated liquidating plan of reorganization. In addition, the settlement
22 resolves claims against the Estate by K&N that exceed \$9,500,000.

23 • The expenses incurred for litigation of the disputes will stop. Litigating the
24 disputes would most likely exceed any additional benefit that might be achieved. The settlement
25 reached provides certainty and ceases the accrual of unnecessary expenses.

26 • Approval of the settlement will aid the Debtor in preserving assets of the Estate
27 and at the same time enhance the value of the Estate.

28 In summary, the settlement is based on the Debtor's good business judgment that will

1 benefit the Estate and creditors and therefore approval of the settlement is proper.

2 **M. Assumption and Assignment of the Assumed Contracts is Authorized by**
3 **Section 365 of the Bankruptcy Code.**

4 Sections 365(a) of the Bankruptcy Code authorize a debtor in possession to assume,
5 subject to the court's approval, executory contracts or unexpired leases of the debtor. 11 U.S.C.
6 § 365(a). Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for
7 assuming an unexpired lease or executory contract of a debtor, providing that:

8 (b)(1) If there has been a default in an executory contract or unexpired lease of
9 the debtor, the trustee may not assume such contract or lease unless, at the time of
10 assumption of such contract or lease, the trustee —

11 (A) cures or provides adequate assurance that the trustee will promptly
12 cure, such default . . .;

13 (B) compensates, or provides adequate assurance that the trustee will
14 promptly compensate, a party other than the debtor to such contract or lease, for
15 any actual pecuniary loss to such party resulting from such default; and

16 (C) provide adequate assurance of future performance under such
17 contract or lease.

18 11 U.S.C. § 365(b)(1).

19 The standard applied by the Ninth Circuit in determining whether an executory contract
20 or unexpired lease should be assumed is the “business judgment” test, which requires a debtor to
21 determine that the requested assumption or rejection would be beneficial to its estate. Courts
22 generally will not second-guess a debtor's business judgment concerning the assumption or
23 rejection of an executory contract. *See In re Ponom Valley Med. Grp., Inc.*, 476 F.3d 665, 669
24 (9th Cir. 2007) (“[A] bankruptcy court need engage in ‘only a cursory review of a debtor's
25 decision to reject the contract. Specifically, a bankruptcy court applies the business judgment
26 rule to the debtor's rejection decision’); *In re Chi-Feng Huang*, 23 B.R. 798, 800 (9th Cir. B.A.P.
27 1982) (“[T]he business judgment rule is the standard which controls the court's right to
28 disapprove the [debtor's] decision to reject an executor contract; *see also Phar Mor, Inc. v.*

1 *Strouss Bldg., Assocs.*, 204 B.R. 948, 952 (N.D. Ohio 1997) (“Courts should generally defer to a
2 debtor’s decision whether to reject an executory contract.”) (citation omitted). In the present
3 case, the Debtor’s assumption and assignment of the Assumed Contracts to Purchaser or the
4 Successful Bidder will meet the business judgment standard and satisfies the requirements of
5 section 365 of the Bankruptcy Code. As discussed above, the transactions contemplated by the
6 Agreement will provide significant benefits to the Estate. Because the Debtor cannot obtain the
7 benefits of the Agreement without the assumption of the Assumed Contracts, the assumption of
8 such Contracts is undoubtedly a sound exercise of the Debtor’s business judgment.

9 Further, a debtor in possession may assign an executory contract or an unexpired lease of
10 the debtor if it assumes the agreement in accordance with section 365(a) of the Bankruptcy Code,
11 and provides adequate assurance of future performance by the assignee, whether or not there has
12 been a default under the agreement. *See* 11 U.S.C. § 365(f)(2). Significantly, among other
13 things, adequate assurance may be provided by demonstrating the assignee’s financial health and
14 experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*,
15 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future
16 performance is present when the prospective assignee of a lease from the debtor has financial
17 resources and has expressed willingness to devote sufficient funding to the business in order to
18 give it a strong likelihood of succeeding); *In re Pacific Gas & Elec. Co.*, 271 B.R. 626, 645
19 (N.D. Cal. 2002) (holding that assets, generating capacity, forecasts for supply and demand in
20 the service area, and the fact that the debtor stood to benefit from performance of the agreement,
21 provided more than adequate assurance of future performance).

22 Pursuant to the Bidding Procedures, the Debtor will require potential bidders to provide
23 evidence constituting adequate assurance of future performance. Moreover, counterparties to
24 Assumed Contracts will have the opportunity to object to adequate assurance of future
25 performance by Purchaser or any of the other bidders. Accordingly, the Debtor submits that the
26 assumption and assignment of the Assumed Contracts as set forth herein should be approved.

27 In addition, the Debtor requests authority to assume and assign as directed by Purchaser
28 within 30 days following the sale closing the Designation Right Contracts. To assist in the

1 assumption, assignment and sale of the Assumed Contracts, the Debtor also requests that the Sale
2 Order provide that anti-assignment provisions in the Assumed Contracts shall not restrict, limit
3 or prohibit the assumption, assignment and sale of the Assumed Contracts and are deemed and
4 found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the
5 Bankruptcy Code. Section 365(f)(1) of the Bankruptcy Code permits a debtor to assign
6 unexpired leases and contracts free from such anti-assignment restrictions, providing, in
7 pertinent part, that:

8 [N]otwithstanding a provision in an executory contract or unexpired lease
9 of the debtor, or in applicable law, that prohibits, restricts, or conditions the
10 assignment of such contract or lease, the trustee may assign such contract or lease
11 under paragraph (2) of this subsection

12 11 U.S.C. § 365(f)(1).

13 Section 365(f)(1) of the Bankruptcy Code, by operation of law, invalidates provisions that
14 prohibit, restrict, or condition assignment of an executory contract or unexpired lease. *See, e.g.,*
15 *Coleman Oil Co., Inc. v. The Circle K Corp. (In re The Circle K Corp.)*, 127 F. 3d 904, 910-11
16 (9th Cir. 1997) (“no principle of bankruptcy or contract law precludes us from permitting the
17 Debtors here to extend their leases in a manner contrary to the leases’ terms, when to do so will
18 effectuate the purposes of section 365”) cert. denied, 522 U.S. 1148 (1998). Section 365(f)(3) of
19 the Bankruptcy Code goes beyond the scope of section 365(f)(1) of the Bankruptcy Code by
20 prohibiting enforcement of any clause creating a right to modify or terminate the contract or
21 lease upon a proposed assumption or assignment thereof. *See, e.g., In re Peaches Records &*
22 *Tapes, Inc.*, 51 B.R. 583, 590 (9th Cir. B.A.P. 1985) (holding that a provision that granted lessor
23 the right to cancel the lease if the debtor ceased to do business on the premises, “to the extent
24 that [such provision] would ... prevent [the debtor] from assigning its lease to another party,
25 pursuant to a sale of its business, w believe that it would be unenforceable, as a defacto
26 nonassignment clause.”); *In re Jamesway Corp.*, 201 B.R. 73 (Bankr. S.D.N.Y. 1996) (section
27 365(f)(3) of the Bankruptcy Code prohibits enforcement of any lease clause creating right to
28 terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by

1 debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to
2 court's scrutiny regarding anti-assignment effect). Thus, the Debtor requests that any anti-
3 assignment provisions be deemed not to restrict, limit or prohibit the assumption, assignment and
4 sale of the Assumed Contracts and be deemed and found to be unenforceable anti-assignment
5 provisions within the meaning of section 365(f) of the Bankruptcy Code

6 IV. CONCLUSION

7 Based on the foregoing, the Debtor respectfully requests the Court enter an order as
8 follows:

- 9 1. Granting the Motion.
- 10 2. Approving the Bidding Procedures set forth above for the sale of the Purchased
11 Assets.
- 12 3. Authorizing the Debtor to sell the Purchased Assets and assign the Assumed
13 Liabilities (as defined in the Agreement) to Purchaser (or Successful Bidder) pursuant to the
14 terms and conditions as set forth in the Agreement attached as Exhibit 1 to the Rosenbaum
15 Declaration.
- 16 4. Authorizing the sale of the Purchased Assets Claims (as defined in the proposed
17 Sale Order), with liens and other such Claims not satisfied through the sale to attach to the sale
18 proceeds in the same validity and priority as prior to the closing of the sale.
- 19 5. Authorizing the assumption and assignment of the Assumed Contracts (including
20 Designation Rights Contracts) pursuant to Bankruptcy Code Section 365.
- 21 6. A determination by the Court that Purchaser (or the Successful Bidder) is in good
22 faith pursuant to Bankruptcy Code Section 363(m).
- 23 7. Waiving the fourteen day stay of the order approving this Motion and the sale of
24 the Purchased Assets under Federal Rules of Bankruptcy Procedure 6004(h).
- 25 8. Approving the settlement with K&N as set forth in the release, Exhibit 1 to the
26 Agreement.
- 27 9. Authorizing the Debtor to execute any necessary documents to carry out the
28 provisions as contemplated in the Agreement and the exhibits annexed thereto.

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10. And for such other and further relief as the Court deems just and proper.

SHULMAN HODGES & BASTIAN LLP

Dated: November 9, 2012

By: /s/ Mark Bradshaw
Mark Bradshaw
Attorneys for Spectre Performance, a
California corporation, the Debtor and
Debtor in Possession

DECLARATION OF AMIR ROSENBAUM

I, Amir Rosenbaum, declare:

1. I am the President of Spectre Performance, a California corporation, the debtor and debtor-in-possession herein (“Debtor”). I have personal knowledge of the facts set forth herein and could, if called as a witness, competently testify thereto. I am also personally familiar with, and am custodian of, the records of the Debtor as they pertain to the financial records set forth herein. The records of the Debtor are made by agents of the Debtor who report to me and who have a business duty to enter the records of the Debtor accurately and at or near the time of the event which they record.

2. I make this Declaration in support of the Debtor’s Motion for Order: (1) Approving the Sale of Assets to K&N Engineering, Inc., Pursuant to Bankruptcy Code Section 363(b)(1), Subject to Overbids, Combined With Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; (2) Approving Settlement and Compromise of Disputes With K&N Engineering, Inc. Under Rule 9019; (3) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases Pursuant to Bankruptcy Code Section 365; (4) Approving the Ancillary Agreement Between the Debtor and K&N Engineering, Inc.; and (5) Granting Related Relief (“Motion”).

3. Unless otherwise noted, capitalized terms herein have the meaning as set forth in the Motion.

4. The Debtor filed a voluntary petition for relief under Chapter 11 of United States Bankruptcy Code on May 14, 2012 (“Petition Date”).

5. The Debtor was formed in 1983. The Debtor is a family company which, through our trust, is owned entirely by myself and my wife Dusanka Rosenbaum. I am the Debtor’s president and Dusanka is the vice president. The Debtor has approximately 25 employees.

6. The Debtor designs, manufactures and distributes quality, high performance aftermarket automotive products. Although the Debtor’s primary product lines are air filters and air intake kits, the Debtor also offers a wide assortment of performance automobile products. The Debtor’s products are sold at most major automotive chain stores (e.g. AutoZone), by major

1 performance parts warehouses, and online.

2 7. One of the impediments to the Debtor's success before the bankruptcy filing was
3 the legal bills and time commitments associated with the defense, prosecution of counter-claims,
4 and trial in the lawsuit styled K&N Engineering, Inc. v. Spectre Performance, pending in the
5 United States District Court, Central District of California, Case No. 5:09-cv-01900-VAP-DTB
6 ("K&N Action") filed by. K&N is a competitor in the Debtor's industry.

7 8. Briefly, the K&N Action involves claims of a competitor in the industry (K&N)
8 for alleged false advertising and unfair competition by the Debtor. The jury awarded K&N more
9 than \$7.3 million on the claims brought against the Debtor related to alleged false advertising in
10 connection with the labeling and sale of its performance automotive air filters and air intake
11 systems. The jury also returned a defense verdict in favor of K&N on the Debtor's counterclaims
12 against K&N for false advertising. A purportedly Final Judgment and Permanent Injunction after
13 jury verdict was entered by the District Court on December 8, 2011 in the amount of \$7,337,196
14 ("K&N Judgment"). The K&N Judgment reserved the right to assess attorneys' fees and
15 statutory enhancement award to the K&N Judgment.

16 9. On December 20, 2011, K&N filed a motion for statutory enhancement of the
17 K&N Judgment seeking to double the amount of judgment and for approximately \$1.6 million in
18 attorneys' fees and costs. The District Court awarded K&N an enhancement payment of
19 \$750,159.68 and attorneys' fees of \$1,352,730.22 in its Minute Order Granting Motion for
20 Attorneys' Fees, in Part filed May 1, 2012.

21 10. On May 7, 2012, K&N filed a Notice of Lodging of [Proposed] Amended Final
22 Judgment and Permanent Injunction. Thereafter, on June 4, 2012 (entered post-petition), the
23 District Court entered the "Amended and Final Judgment and Permanent Injunction" ("Final
24 K&N Judgment") which included the language from the rulings on December 8, 2011 and May
25 1, 2012. While the Final K&N Judgment was entered post-petition, the Bankruptcy Court entered
26 an order annulling the relief from stay such that the Final K&N Judgment was not void as a
27 result of the automatic stay violation.

28 11. Because the K&N Judgment did not resolve all damages issues and specifically

1 reserved the possibility of amending the judgment to address enhanced damages, the Debtor
2 believes that the K&N Judgment was not the requisite one final judgment or the “judgment”
3 within the meaning of the Federal Rules of Civil Procedure or the Federal Rules of Appellate
4 Procedure and that no such “judgment” was entered until June 4, 2012.

5 12. The Debtor filed a Notice of Appeal from the K&N Judgment with the United
6 States Court of Appeals for the Ninth Circuit and separately filed a Notice of Appeal from the
7 K&N Post Judgment Award. The Debtor intends to file a Notice of Appeal from the Final K&N
8 Judgment. The Debtor understands that K&N intends to appeal from the Final K&N Judgment to
9 the extent that K&N did not receive all of the enhanced damages and attorney’s fees which it
10 requested.

11 13. K&N sought \$1,647,120.43 total attorneys’ fees and the District Court awarded
12 \$1,352,730.22. As such, the additional amount at issue would appear to be approximately
13 \$238,717.11. K&N also sought \$7,337,196 in enhanced damages (double damages). (Dk 317-1
14 at 3, 21.) The district court awarded \$750,159.68. Thus, presumably, K&N will presumptively
15 seek the difference, \$6,587,036.32, in its cross-appeal. The standard for such an appeal is an
16 abuse of discretion by the District Court.

17 14. The Debtor intends to consolidate all appeals into one proceeding before the
18 United States Court of Appeals for the Ninth Circuit. The Ninth Circuit has vacated the existing
19 briefing schedule pending the additional appeals and consolidation.

20 15. On December 27, 2011, K&N filed a Notice of Judgment Lien (“Judgment Lien”)
21 with the California Secretary of State based on the K&N Judgment. On January 23, 2012, the
22 District Court in the K&N Action entered an order, granting, among other things, K&N’s
23 January 16, 2012 application to take the examination of the Debtor relative to enforcement of the
24 K&N Judgment (“Exam Order”). On January 26, 2012, K&N served the Exam Order on the
25 Debtor. K&N asserts that its Claim related to the K&N Judgment is partially secured on account
26 of filing of the Judgment Lien and the service of the Exam Order.

27 16. After entry of the K&N Judgment, the Debtor explored with Gryphon Investors
28 (K&N’s majority owner) a possible transaction in the form of a transfer of ownership, merger,

1 exchange or sale of all or a portion of its assets that may have resolved the K&N Judgment and
2 all related issues. The discussions for the acquisition of Debtor's assets along with various
3 incentives and consideration to the shareholders of the Debtor continued for more than three
4 months. Before ninety days elapsed on the seasoning of K&N's Judgment Lien, an agreement
5 was entered with K&N to toll and suspend the running of all statutes of limitation with respect to
6 any adversary proceeding or cause of action that may be asserted by the Debtor against K&N for
7 avoidance and recovery of any liens created by the Judgment Lien or the Exam Order, including
8 but not limited to any cause of action under claims arising under any of Sections 542, 543, 544,
9 545, 546, 547, 548, 549 and 550 of the Bankruptcy Code, any actions based on applicable
10 nonbankruptcy law that may be incorporated or brought under the foregoing sections of the
11 Bankruptcy Code, or any other similar action or proceeding filed to recover property for or on
12 behalf of the Estate or to avoid a lien or transfer (collectively the "Avoidance Claims"). This
13 tolling of the statute of limitation for bringing the Avoidance Claims was extended from time to
14 time until around April 19, 2012 when K&N declined to further extend the deadline. The Debtor,
15 after consulting with its counsel and its broker for the sale of assets to K&N, and after
16 considering an agreement by K&N to forbear from collection on the K&N Judgment for a period
17 of time, decided to proceed with the sale transaction negotiations and not file a Chapter 11
18 notwithstanding that any liens arising from the Judgment Lien and/or Exam Order might no
19 longer be avoided. In essence, the Debtor decided that the prospects of a successful asset
20 purchase negotiation with Gryphon Investors outweighed the benefits of an immediate Chapter
21 11 filing. Discussions with Gryphon Investors regarding the proposed transaction continued all
22 the way up to days before the Chapter 11 filing. However, when the talks with Gryphon
23 Investors appeared that they were not going to result in a definitive agreement, the Debtor made
24 the decision to go forward with the Chapter 11 filing despite the fact that the time for bringing
25 Avoidance Claims against the Judgment Lien may have expired.

26 17. Given that K&N is a creditor of the Debtor, the Debtor does not want to disclose
27 any legal strategy that would impair its chances with the appeal. Nevertheless, the Debtor has
28 retained specialized appellate counsel that is actively reviewing the record and formulating the

1 precise arguments to be made. Such counsel advises that it expects that arguments may well
2 address legal, instructional, and evidentiary errors as well as an absence of supporting evidence,
3 a grossly excessive damage award and equitable and legal damages constraints that will be
4 subject to a variety of appellate standards of review, including standards that involve de novo
5 review and construing the evidence in the light most favorable to Spectre, in addition to abuse of
6 discretion and substantial evidence standards of review. The Debtor believes the standard of
7 review on K&N's presumed cross appeal issues would be an abuse of discretion by the District
8 Court. The Debtor fully expects K&N to oppose most of the forgoing arguments.

9 18. If successful on appeal, the Court of Appeals could either i) overturn the K&N
10 Final Judgment and order a retrial at the District Court; ii) reduce the K&N Final Judgment and
11 affirm such Judgment in all other respects, including the injunctive relief contained therein; or
12 iii) remand the matter to the District Court with specific instructs to retry specific issues,
13 including, for example, appropriate damages.

14 19. K&N has also asserted an intention to file a cross-appeal of the K&N Final
15 Judgment for the portion of attorneys' fees and statutory enhancement penalties that were denied
16 by the District Court.

17 20. It is estimated that the total cost of the appeal will be approximately \$500,000. In
18 addition, if the Court of Appeals ordered a retrial of some or all of the issues, the Debtor could
19 incur significant additional litigation costs.

20 21. Seven days after the Petition Date, on May 21, 2012, the Debtor filed its original
21 proposed disclosure statement and Chapter 11 reorganization plan (the disclosure statement and
22 Chapter 11 reorganization plan, and all amendments thereto, are collectively referred to herein as
23 the "Disclosure Statement" and "Plan").

24 22. On July 23, 2012, K&N filed its Motion for Reduction of Exclusive Period Under
25 §1121(d)(1) ("Termination of Exclusivity Motion") seeking to terminate the Debtor's exclusivity
26 period for confirming its Plan.

27 23. The Debtor's Disclosure Statement (as was amended from time to time) was
28 approved at a hearing held on July 31, 2012 and a hearing on confirmation of the Plan was

1 scheduled.

2 24. On August 17, 2012, the Debtor filed its Motion For Order to Show Cause Why
3 Disputed Creditor K&N Engineering, Inc. Should Not be Sanctioned for Violating Anti
4 Solicitation Provisions of Bankruptcy Code Section 1125(b) (“Sanction Motion”) and a proposed
5 Order to Show Cause. The Debtor believed that the Sanction Motion was necessary because
6 K&N publically filed and served detailed plan term sheet (which it called a competing plan) and
7 attached it in support of its Termination of Exclusivity Motion. The Debtor further asserted that
8 K&N disseminated its “plan” before the Debtor’s Disclosure Statement was approved and
9 following publication of the competing “plan” the Debtor spent more time talking with creditors
10 and the Committee about K&N’s plan than about the Debtor’s own Plan. K&N has filed its
11 opposition to the Sanction Motion

12 25. At a hearing held on August 21, 2012, the Court continued the hearings on
13 K&N’s Termination of Exclusivity Motion and the Debtor’s Sanction Motion and also ordered
14 the Debtor and K&N to participate at a mediation conference before the Honorable Scott C.
15 Clarkson on September 10, 2012. The Court also tentatively re-scheduled the hearing on
16 confirmation of the Plan and set a briefing schedule with respect to supporting and opposition
17 briefs. The mediation before Judge Clarkson encompassed two full days, September 10 and
18 September 11, 2012 and contemplated a payment of \$6,000,000 to the Debtor for the sale of the
19 air filtration business and a payment by K&N to me and my spouse of the sum of \$2,000,000 for
20 a four-year non competition agreement with us.

21 26. The Agreement that is the subject of this Motion is the result of the two full days
22 of mediation and subsequent extensive written and oral communications between the Debtor and
23 K&N to document the sale and settlement and now involves the sale of substantially all of the
24 Debtor’s assets, including the “chrome” business for the sum of \$8,000,000 to the Debtor. Aside
25 from the increase in assets, and the amount of compensation paid to Debtor, the terms of the
26 purchase are otherwise consistent with those which were agreed to between the parties during the
27 mediation before Judge Clarkson. In addition, in the event K&N is the successful purchaser, I
28 have agreed to enter into a three-year written employment agreement to be negotiated and agreed

1 between me and K&N, under which I would be paid at the rate of \$250,000 per year, plus
2 standard company benefits and eligibility for an incentive bonus, in accordance with the Term
3 Sheet which is attached to the Agreement submitted herewith. The Debtor and K&N have
4 documented a proposed sale of the Purchased Assets and release of disputes between the parties,
5 including the K&N Judgment and the claims that are the subject of the K&N Action. A true and
6 correct copy of the Agreement is attached hereto as Exhibit 1. Attached as Exhibit Schedule 1.5
7 to the Agreement is the mutual release of claims between the Debtor and K&N.

8 27. The Debtor and K&N considered it desirable to resolve their disputes through the
9 terms of the sale transaction so that they may avoid further expense, inconvenience, and
10 interference with their respective ongoing business operations and to dispose of burdensome
11 litigation between the parties.

12 28. The Debtor has determined that it would benefit the Estate to permit all interested
13 parties to receive information and bid for the Purchased Assets instead of selling the Purchased
14 Assets to K&N on an exclusive basis. Accordingly, in order to obtain the highest and best offer
15 for the benefit of the creditors of this Estate, the Debtor also seeks Court approval of the Bidding
16 Procedures described in the Motion.

17 29. Before agreeing to enter into the Agreement which includes a resolution of the
18 disputes between the Debtor and K&N, the Debtor consulted with counsel about the risks and
19 benefits of continuing with litigation of the disputes with K&N. On the Debtor's behalf I have
20 consulted with counsel about the benefits to the Estate which would result from the sale and
21 settlement. For the reasons stated in the Motion and the accompanying Points and Authorities,
22 and based on my business experience, as well as my consultation with the Debtor's attorneys, I
23 believe it is in the best interest of the Estate for the Debtor to enter into the Agreement.

24 I declare under penalty of perjury, in accordance with the laws of the State of California,
25 the foregoing is true and correct and that this declaration was executed on November 9, 2012 at
26 Ontario, California.

27 /s/ Amir Rosenbaum
28 Amir Rosenbaum

EXHIBIT “1”

ASSET PURCHASE AND SETTLEMENT AGREEMENT

THIS ASSET PURCHASE AND SETTLEMENT AGREEMENT (this “Agreement”) is made and entered into as of the 3rd day of November, 2012 (the “Effective Date”), by and among K&N Engineering, Inc., a California corporation (“Buyer”), Spectre Performance, a California corporation as debtor in possession (“Seller”), Amir Rosenbaum (“Amir”), Dusanka Rosenbaum (“Dusanka”) Amir Rosenbaum and Dusanka Rosenbaum, as Trustees of the Rosenbaum Living Trust U/D/T April 5, 1994, formally known as The Amir and Dusanka Rosenbaum 1994 Revocable Trust (“Trust”) (Amir, Dusanka and the Trust are collectively referred to as the “Rosenbaum Parties”).

RECITALS:

A. On or about May 14, 2012 (“Petition Date”), Seller filed a voluntary petition for relief under Chapter 11 (the “Chapter 11 Case”) of the United States Bankruptcy Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Central District of California, Riverside Division (the “Bankruptcy Court”).

B. Seller is engaged in developing, manufacturing, distributing, marketing and selling of (i) washable/reusable automotive air filters for cars, trucks and sports utility vehicles, modular air intake kits, air delivery intake systems for cars and light trucks, open element engine breather products, air filter cleaners, air filter oil, air filter recharging products and/or kits, air filter service treatments, and all related or connected parts, components and sub-assemblies necessary for the operation of the foregoing (collectively, the “Air Filtration Business”), and (ii) engine components and accessories, valve covers, valve cover accessories, oil and transmission pans and dip sticks, pulleys, brackets, fasteners, gaskets, springs, shrouds, supports, latches, panels, covers, cables, braided and corrugated hoses, hose sleeving, hose end fittings, adapters, panels, hold-downs, caps, tabs, bars, shields, looms, tanks, battery boxes, wings, spoilers, door panels and armrests, shifters, shift boots, throttle body spacers, water necks, fuel: lines, filters, regulators, pumps, and pressure gauges, block off plates, air fresheners, badges, decals, hood pins, exhaust tips, exhaust adapters, hitch covers, pipe plugs, wire covers, engine hoist plates (collectively, the “Chrome Business”, together with the Air Filtration Business, the “Purchased Business”).

C. On or about December 9, 2011, an order entitled “Final Judgment and Permanent Injunction” was entered against Seller in the action entitled the K&N ENGINEERING, INC v. SPECTRE PERFORMANCE, United States District Court, Central District of California, Case No. EDCV 09-01900-VAP (the “Action”) and on or about June 8, 2012 an order entitled “Amended Final Judgment and Permanent Injunction” was entered in the Action whereby Buyer was awarded the sum of \$7,337,196.00 which together with attorneys’ fees and costs total \$9,440,085.00 (collectively, the “Judgment”). The Judgment is subject to an appeal filed by Seller styled K&N Engineering, Inc., Plaintiff-counter-defendant - Appellee v. Spectre Performance, a California corporation, Defendant-counter-claimant – Appellant, pending in the United States Court of Appeals for the Ninth Circuit, Appellate Case No. 12-55027 (the “Judgment Appeal”).

D. In the Chapter 11 Case Buyer has filed a claim in the sum of \$6,825,753.00

(“K&N Bankruptcy Claim”)

E. Seller desires to sell, assign, transfer and deliver to Buyer, and Buyer desires to purchase from Seller all of the Debtors’ rights, title and interest in substantially all of the assets associated with the Purchased Business, which assets are more fully described in Article I of this Agreement, and to settle and release all claims the Buyer, Rosenbaum Parties and Seller have or may have against each other including, but not limited to, the K&N Bankruptcy Claim, the Judgment and the Judgment Appeal on the terms and subject to the conditions hereinafter contained;

In consideration of the mutual covenants, promises, agreements, representations and warranties contained in this Agreement, the parties hereto do hereby covenant, promise, agree, represent and warrant as follows:

ARTICLE I -- SETTLEMENT, PURCHASE AND SALE

1.1 Purchase and Sale of Assets. Except for the Excluded Assets (defined below), on the Closing Date, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from the Seller, all of Seller’s rights, title and interest in and to all properties, rights, contracts, interests, claims and other assets of any nature whatsoever of Seller, wherever located, whether tangible or intangible and owned, used or held by Seller in the operation of the Purchased Business, including without limitation the following (collectively, the “Purchased Assets”):

(a) all patents and trademarks, including applications pending with respect thereto;

(b) Seller’s rights, to the extent assignable or transferable, to all licenses, permits, approvals, certificates of exemption, franchises, accreditations and registrations and other governmental licenses, permits or approvals issued to Seller;

(c) Seller’s interest, to the extent assignable or transferable, in and to all personal property leases;

(d) Furniture, fixtures and equipment used in the operation of the Purchased Business;

(e) Seller’s interest, to the extent assignable or transferable, in and to all contracts and agreements (including, but not limited to, purchase orders), subject to Section 1.2 (the “Assumed Contracts”);

(f) all inventory of any kind or nature, whether or not prepaid, and wherever located, held or owned by Seller and relating to the Purchased Business including all raw materials, work in process, semi-finished and finished products, replacement and spare parts, packaging materials, operating supplies and other and similar or related items (“Inventory”);

(g) all accounts receivable of Seller and other rights to payment from customers, and all claims, rights, interests and proceeds related to the foregoing (“Accounts Receivable”);

(h) all documents, records, correspondence, work papers and other documents relating to the Inventory and Accounts Receivable;

(i) all goodwill;

(j) all of Seller’s rights and interests in inventory of advertising, sales and customer materials, forms, labels, promotional materials, manuals and supplies; and

(k) copies of Seller’s books and records relating to the Purchased Business (including, without limitation, accounting and financial books and records, customer lists and records pertaining to customers and accounts, personnel records, all lists and records pertaining to suppliers and agents, and all other books, ledgers, files and business records of every kind); provided Buyer shall bear the cost of making copies of the foregoing, if applicable.

All of the Purchased Assets shall be sold, assigned, transferred, conveyed and delivered to Buyer free and clear of all liens pursuant to Section 363(f) of the Bankruptcy Code, whether arising prior to or subsequent to the Petition Date.

1.2 Right to Reject and Add Selected Purchased Assets.

(a) Buyer shall have the right to not purchase any of the above listed Purchased Assets, other than those listed on Schedule 1.2(a), by providing written notice of such election to Seller within thirty (30) days after the Effective Date. There shall be no Purchase Price adjustment for returned products or rejection of any Purchased Assets as contemplated by this Section 1.2(a).

(b) After the Closing, with respect to any agreement, contract, commitment or other binding arrangement or understanding (each a “Contract”) which is not an Assumed Contract and provided such Contract has not been rejected by Seller pursuant to Section 365 of the Bankruptcy Code, upon written notice(s) from Buyer, as soon as practicable, Seller shall take all actions reasonably necessary to assign to Buyer pursuant to Section 365 of the Bankruptcy Code any Contract(s) set forth in Buyer's notice(s). Seller shall disclose to Buyer the applicable cure costs for such Contract(s), if any, and such applicable cure costs shall be satisfied by Buyer at its own cost and expense. Seller shall be responsible for any applicable cure cost for such Contract(s) that is not disclosed by Seller. Seller agrees and acknowledges that (i) it shall provide Buyer with reasonable advance notice of any motion(s) to reject any Contract and (ii) the covenant set forth in this Section 1.2(b) shall survive the Closing for a period of 30 days. Notwithstanding anything in this Agreement to the contrary, on the date any Contract is assumed and assigned to Buyer pursuant to this Section 1.2(b), such Contract shall be deemed an Assumed Contract for all purposes under this Agreement. For purposes of this Agreement, “cure costs” shall mean, with respect to a given date, delinquent amounts, but shall not include amounts currently due or payable or which become due or payable in the future. Such excluded amounts shall be paid by Buyer. “Cure cost” shall not include any amounts that are payable as a

result of Seller's failure to procure the Contract counterparty's consent prior to assignment of the Contract.

1.3 Excluded Assets. The assets set forth on Schedule 1.3 (collectively the "Excluded Assets"), are expressly excluded from the purchase and sale contemplated hereby and are not included in the Purchased Assets.

1.4 Assumed Liabilities and Contracts. On the terms and subject to the conditions set forth in this Agreement and the Sale Order, on the Closing Date, Buyer will assume and discharge on a due and timely basis (i) all obligations under the Assumed Contracts first arising after the Closing on an occurrence basis (but excluding liabilities for breaches of such Contracts occurring prior to the Closing Date), and (ii) those liabilities specifically described on Schedule 1.4 hereof ((i) and (ii) collectively, the "Assumed Liabilities"). Buyer shall perform, indemnify, defend and hold Seller harmless against all Assumed Liabilities and all suits, expenses, losses, claims, obligations, damages and/or liabilities arising solely from or solely related thereto.

1.5 Release of Claims. On the terms and subject to the conditions set forth in this Agreement, on the Closing Date and subject to the consummation of Closing, (i) the Buyer, Seller and Rosenbaum Parties shall each enter into full mutual release in the form set forth on Schedule 1.5 hereof; (ii) Buyer shall take such actions as are necessary to vacate the Judgment and dismiss with prejudice the Action, each party to bear their own attorneys' fees and costs; (iii) Buyer shall release and discharge all liens asserted by it by virtue of the Judgment including but not limited to filing and/or recording such documents as are necessary to remove the Judgment and any liens arising thereunder; (iv) Buyer shall cause the withdrawal of the K&N Bankruptcy Claim; and (v) Seller shall dismiss the Judgment Appeal. The foregoing shall collectively be referred to as the "Release of Claims".

1.6 Purchase Price.

(a) Subject to adjustment in accordance with Section 1.7 the consideration for the Purchased Assets shall be the sum of: (i) Eight Million Dollars (\$8,000,000.00) (the "Purchase Price"), plus (ii) the Release of Claims as set forth in Section 1.5 hereof, plus (iii) the assumption of the Assumed Liabilities. The Purchase Price shall be paid as hereinafter provided.

(b) On the Closing Date, Buyer shall pay the Purchase Price by wire transfer of immediately available good funds (funds delivered in this manner are referred to herein as "Good Funds") to Shulman Hodges & Bastian LLP ("Shulman"), on behalf of Seller, to an account specified in writing by Shulman. Shulman's receipt of such funds (the "Escrowed Funds") shall be subject to the terms and conditions set forth in Section 9.3.

1.7 Adjustments to Purchase Price.

(a) For purposes of this Agreement the value of the Inventory at cost as reflected on Seller's books and records is deemed to be Two Million Four Hundred Thousand Dollars (\$2,400,000.00) and the value of the Accounts Receivable is deemed to be Three Million Dollars (\$3,000,000.00) as determined in accordance with the methodologies set forth on Schedule 1.7(b) and used by Seller as of the Closing Date (the "Agreed Accounting Principles") (the values of the Inventory and the Accounts Receivable collectively referred to as the

“Estimated Values”). Any variance either positive or negative from the Estimated Values of up to Seven and One Half percent (7.5%) shall NOT result in any adjustment to the Purchase Price. In the event the variance exceeds Seven and One Half percent (7.5%) then there shall be a dollar for dollar adjustment either positive or negative to the Purchase Price for the variance in excess of Seven and One Half percent (7.5%). All claims for such adjustments shall be made in writing within thirty (30) days of Closing or shall otherwise be deemed to be waived. For the avoidance of doubt, there shall be no Purchase Price adjustment for products returned by Buyer or rejection of any Purchased Assets as contemplated by Section 1.2 hereof. In calculating the value of the Inventory and the Accounts Receivable for purposes of determining whether any adjustments are appropriate, Seller and Buyer shall utilize and apply the Agreed Accounting Principles.

(b) Subject to Section 1.7(c), in the event that there is an aggregate upward adjustment to the Purchase Price in accordance with this Section 1.7, Buyer shall pay such amount to Shulman, on behalf of Seller, to an account specified in writing by Shulman and such funds shall be subject to Section 9.3. Subject to Section 1.7(c), in the event that there is an aggregate downward adjustment to the Purchase Price in accordance with this Section 1.7, Shulman shall pay Buyer such amount out of the Escrowed Funds. Subject to Sections 1.7(c), 6.1 and 9.3, any amounts to be paid pursuant to this Section 1.7 shall be paid in good funds by wire transfer within two (2) business days following the final determination of such amounts. Buyer and Seller agree that, subject to court approval, upon expiration of the 30 day escrow period and subject to Sections 1.7(c) and 9.3, Seller shall be entitled to distribute any Escrowed Funds held by Shulman in excess of any amounts claimed by Buyer as a negative adjustment to the Purchase Price.

(c) Within 15 days of receipt of a written notice of an adjustment by a party, the other party shall respond in writing that it either agrees or disagrees with the adjustment. Any disputed amounts shall be held and undisputed amounts paid in accordance with Section 9.3. Any disputes which may arise between Buyer and Seller with respect to an adjustment (including any components thereof) shall be submitted to one of PricewaterhouseCoopers or KPMG, provided that neither Buyer nor Seller shall have had any pre-existing relationship with the selected firm, or to another independent public accountant reasonably agreeable to Buyer and Seller (the “Independent Accountants”) for review and resolution of such matters. Seller and Buyer shall instruct the Independent Accountants to make a final determination of any such matters in accordance with the guidelines and procedures set forth in this Agreement (including the Agreed Accounting Principles). If any issues are so submitted to the Independent Accountants, Buyer and Seller shall cooperate in good faith with any requests from such Independent Accountants and furnish or cause to be furnished such work papers and other documents and information related to the disputed issues as the Independent accountants may request. Notwithstanding the foregoing, Buyer and Seller shall instruct the Independent Accountants to not assign a value to any item in dispute greater than the greatest value for such item assigned by Buyer, on the one hand, or Seller, on the other hand, or less than the smallest value for such item assigned by Buyer, on the one hand, or Seller on the other hand. Buyer and Seller shall also instruct the Independent Accountants to make the final determination based solely on the Agreed Accounting Principles and presentations by Buyer and Seller to the extent they are in accordance with the guidelines and procedures set forth in this Agreement (i.e., not on the basis of an independent review). The determinations of the Independent Accountants shall become final and binding on the parties on the date the Independent Accountants deliver their

final determination in writing to Buyer and Seller, which shall be requested by Buyer and Seller to be delivered not more than 30 days following submission of such disputed matters. The fees and expenses of the Independent Accountants shall be allocated to the parties as determined (and set forth in the final determination) by the Independent Accountants based upon the relative success (in terms of percentages) of each party's claim. For example, if the final determination reflects a 60-40 compromise of the parties' claims, the Independent Accountants would allocate expenses 40% to the party whose claim was determined to be 60% successful and 60% to the party whose claim was determined to be 40% successful.

1.8 Sales Tax Obligations. All federal, state, local or foreign sales, use, transfer or similar taxes payable in connection with the sale of the Purchased Assets to Buyer, if any, shall be promptly paid by Buyer up to a maximum amount of Forty Thousand Dollars (\$40,000) in the aggregate. Any amounts due for such taxes greater than such maximum amount shall be paid by Seller.

1.9 Employment Agreement. Buyer agrees to employ Amir post-Closing on the terms set forth on Schedule 1.9, which are hereby incorporated into this Agreement and made a part hereof.

ARTICLE II -- CLOSING

2.1 Time, Date and Place. The closing of the purchase and sale of the Purchased Assets and the other transactions contemplated by this Agreement (referred to throughout this Agreement as the "Closing") shall take place at the offices of Shulman, 8105 Irvine Center Drive, Suite 600, Irvine, California 92618. The Closing shall be held promptly after the Bankruptcy Court order approving the sale of the Purchased Assets becomes a final and non-appealable order or such other date as Buyer and Seller mutually agree (referred to throughout this Agreement as the "Closing Date").

2.2 Expenses. Buyer shall pay its costs and expenses, including without limitation, the fees and expenses of its counsel, financial advisors and broker or finder. Seller shall pay the costs and expenses incurred by Seller, including without limitation, the fees and expenses of the legal, accounting and financial advisors of Seller, as well as any brokers' fees for any brokers engaged by Seller in connection with the transactions contemplated hereby.

2.3 Letter Announcing Transaction; Other Public Announcements. After the execution of this Agreement, Seller may, at its option, send a letter announcing the existence of this Agreement, in the form set forth on Schedule 2.3, to Seller's customers, vendors, employees, representatives and other parties with whom Seller has an established relationship. Except as required by law or in connection with the Chapter 11 Case or as contemplated by the immediately preceding sentence or Section 11.5, neither Seller nor any Rosenbaum Party on the one hand, nor Buyer on the other hand, shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other parties hereto relating to the contents and manner of presentation and publication thereof, which approval will not be unreasonably withheld, delayed or conditioned. Prior to making any public disclosure required by applicable law, the disclosing

parties shall give the other party a copy of the proposed disclosure and reasonable opportunity to comment on the same.

ARTICLE III -- DELIVERIES AT THE CLOSING

3.1 Deliveries by Sellers. At the Closing on the Closing Date, subject to satisfaction of the conditions precedent set forth in Section 7.1 of this Agreement, Seller shall deliver to Buyer the documents listed on Schedule 3.1 (collectively, the "Closing Documents").

3.2 Deliveries by Buyer. At the Closing on the Closing Date, subject to satisfaction of the conditions precedent set forth in Section 7.2 of this Agreement, Buyer shall deliver, or cause to be delivered, an amount in cash equal to the Purchase Price by wire transfer of immediately available funds in accordance with Section 1.6(b).

ARTICLE IV -- REPRESENTATIONS AND WARRANTIES OF SELLER

4.1 Representations and Warranties. Seller represents and warrants, except as set forth on the corresponding section of the disclosure schedule attached hereto and made a part hereof (the "Disclosure Schedule"), to Buyer as of the date hereof and, except as otherwise provided below, as of the Closing Date each of the following:

(a) Organization, Good Standing, and Corporate Power. Seller is duly organized, validly existing, and in good standing under the laws of the State of California. Seller has the corporate power to enter into, execute and deliver this Agreement and to consummate the transactions contemplated hereby.

(b) Authorization of Agreement. The execution and delivery of this Agreement and the performance by Seller of its obligations and agreements under this Agreement have been duly and validly authorized. Seller has taken all other actions required on its part by law in order to consummate the transactions contemplated hereby.

(c) Execution, Delivery and Performance. This Agreement has been duly executed and delivered by Seller and constitutes the valid and binding obligation of the Seller and, is enforceable against the Seller in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application which may affect the enforcement of creditors rights generally and by general equitable principles.

(d) Effect of Agreement. The execution and delivery by Seller of this Agreement, and the performance by Seller of its obligations pursuant to the terms of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not, with or without the giving of notice or lapse of time, or both: (a) violate or conflict with any term of the articles of incorporation or other organizational documents of Seller; (b) violate any provision of law, statute, rule, regulation or executive order to which Seller or any of its assets or properties is subject which could have a material adverse effect on Seller; (c) violate any judgment, order, writ or decree of any court or administrative body applicable to Seller or any of its assets or properties; or (d) subject to procuring the third party consents set forth on Section

4.1(e) of the Disclosure Schedule, breach any material agreement, instrument or writing of any nature to which Seller is a party or by which Seller or its assets or properties may be bound.

(e) Title to Purchased Assets. Seller has good and marketable title to, or a valid license or leasehold interest in, all of the Purchased Assets. Subject to the approval of the United States Bankruptcy Court for the Central District of California and except as set forth on Section 4.1(e) of the Disclosure Schedule, Seller has the power and the authority to sell, assign and transfer to Buyer, and upon consummation of the transactions contemplated by this Agreement, Buyer will acquire valid title to the Purchased Assets, free and clear of all liens, encumbrances, or security interests, other than Comerica Bank's liens which shall be released in connection with the Closing. The Purchased Assets (together with the Excluded Assets) constitute all of the assets (tangible or intangible, real, personal or mixed) required to operate the Purchased Business by Seller.

(f) Inventory; Accounts Receivable. (i) The Inventory consists of a quantity and quality as sold by Seller in the ordinary course of business.

(ii) The Accounts Receivable have arisen in bona fide arm's-length transactions in the ordinary and usual course of business consistent with past custom and practice.

(g) Litigation. Except as set forth on Section 4.1(g) of the Disclosure Schedule, as of the date hereof, there is no litigation filed and pending, or to Seller's knowledge, threatened against Seller other than the Avery Case and the Moreno Case (each defined in Schedule 1.4).

(h) Contracts; Cure Costs. Section 4.1(h) of the Disclosure Schedule sets forth a list of all Contracts which are subject to cure costs required to be paid in order for Seller to assume and assign each such Contract under Section 365 of the Bankruptcy Code (such cure costs set forth opposite the applicable Contract on Section 4.1(h) of the Disclosure Schedule.

(i) Customers. As of the date hereof, no Significant Customer has informed Seller of its intent to terminate its business relationship with Seller. For purposes of this Agreement, "Significant Customer" means any of the top five customers of Seller measured in terms of amounts billed to such customers for the six months ending June 30, 2012.

ARTICLE V -- REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER

5.1 Buyer represents and warrants to Seller as of the date hereof and as of the Closing Date each of the following:

(a) Organization, Good Standing, and Corporate Power. Buyer is duly organized, validly existing, and in good standing under the laws of the State of its formation. Buyer shall have the right to assign this Agreement to one or more business entities affiliated with Buyer pursuant to Section 12.1, (subject to providing Seller with satisfactory evidence, in Seller's reasonable discretion, of such transferee's ability to close this transaction) and each such business entity shall be duly organized, validly existing and in good standing under the laws of the State of its formation, with all requisite corporate power and authority to own the Purchased

Assets. Buyer has the corporate power to enter into, execute and deliver this Agreement and to consummate the transactions contemplated hereby.

(b) Authorization of Agreement. The execution and delivery of this Agreement and the performance by Buyer of its obligations and agreements under this Agreement have been duly and validly authorized. Buyer has taken all other actions required on its part by law in order to consummate the transactions contemplated hereby.

(c) Execution, Delivery and Performance. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of the Buyer and, is enforceable against the Buyer in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application which may affect the enforcement of creditors rights generally and by general equitable principles.

(d) Effect of Agreement. The execution and delivery by Buyer of this Agreement, the purchase by Buyer of the Purchased Assets, the performance by Buyer of its obligations pursuant to the terms of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not, with or without the giving of notice or lapse of time, or both: (a) violate or conflict with any term of the articles of incorporation or other organizational documents of Buyer; (b) violate any provision of law, statute, rule, regulation or executive order to which Buyer or any of its assets or properties is subject which could have a material adverse effect on Buyer; (c) violate any judgment, order, writ or decree of any court or administrative body applicable to Buyer or any of its assets or properties; or (d) breach any material agreement, instrument or writing of any nature to which Buyer is a party or by which Buyer or its assets or properties may be bound.

(e) Buyer's Closing Funds. On or before the Closing Date, Buyer shall have the necessary funds immediately available to consummate the transaction contemplated by this Agreement and there is no financing contingency with respect to Buyer's obligations in connection with this transaction.

(f) Litigation. There is no litigation, nor any order, decree or judgment, in progress or pending, or, to the knowledge of Buyer, threatened, against or relating to Buyer and, to Buyer's knowledge, no facts or circumstances exist which would reasonably be expected to give rise to litigation which would prevent, restrain or affect Buyer's ability to perform the transaction contemplated by this Agreement.

(g) Judgment. Buyer has not heretofore, encumbered, pledged, assigned or transferred, or purported to assign or transfer, to any other person or entity the Judgment, the K&N Bankruptcy Claim, or any interest in the foregoing.

(h) Disclaimer of Warranties; "AS-IS AND WHERE-IS" Conveyance. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY OF THE CLOSING DOCUMENTS, BUYER ACKNOWLEDGES AND AGREES WITH SELLER THAT BUYER IS PURCHASING THE PURCHASED ASSETS IN AN "AS-IS AND WHERE-IS" CONDITION WITH ALL FAULTS AND SPECIFICALLY AND EXPRESSLY

WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OF OR ON BEHALF OF SELLER. Seller acknowledges that, except as expressly set forth in this Agreement or any of Closing Documents, Buyer has not relied and is not relying upon any information, document, sales brochure, due diligence, information package or other literature, map or sketch, projection, pro forma statement, representation, guarantee or warranty (whether express or implied, or oral or written, material or immaterial) that may have been given by or made by or on behalf of or omitted by the Seller, its agents, representatives, consultants and/or attorneys with respect to the quality, nature, adequacy or physical condition of the Purchased Assets. Buyer acknowledges that it is Buyer's responsibility to make such legal, factual and other inquiries and investigations as Buyer deems necessary, desirable or appropriate with respect to the Purchased Assets. Such inquiries and investigations may include, but shall not be limited to, the physical components of all portions of the Purchased Assets and the condition of the Purchased Assets. BUYER ACKNOWLEDGES TO, AND AGREES WITH SELLER THAT WITH RESPECT TO THE PURCHASED ASSETS, EXCEPT AS EXPRESSLY SET FORTH IN THE THIS AGREEMENT OR ANY OF THE CLOSING DOCUMENTS, SELLER HAS NOT AND DOES NOT AND WILL NOT MAKE ANY WARRANTIES OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR USE OR WITH RESPECT TO THE VALUE, PROFITABILITY OR MARKETABILITY OF THE PURCHASED ASSETS OR WITH RESPECT TO COMPLIANCE OF THE PURCHASED ASSETS WITH ANY ENVIRONMENTAL PROTECTION LAW, RULE OR REGULATION, ORDER OR REQUIREMENT INCLUDING, BUT NOT LIMITED TO, THOSE PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS WASTE OR SUBSTANCE. Without in any way limiting the generality of the foregoing, and except for claims arising under this Agreement and/or any of the ancillary agreements contemplated hereunder, Buyer specifically acknowledges and agrees that Buyer hereby waives, releases and forever discharges any claim it has, might have in the future, had or may have against the Seller and/or Seller's agents with respect to the condition of the Purchased Assets, either patent or latent, except for claims under this Agreement or any of the Closing Documents. Buyer does hereby release, and forever discharge Seller, its employees, representatives, agents, sub-agents, successors, assigns and attorneys from any and all claims for damages and other causes of action at law or equity for injury, destruction, loss or damage of any kind or character, to the person or property of Buyer and Buyer's employees, agents and representatives arising out of or in any way relating to the Purchased Assets, except for claims under this Agreement or any of the Closing Documents. This Section 5.1(h) shall survive Closing.

(i) No Disclosure. Except as contemplated herein, no disclosure of this Agreement, the terms of the transaction contemplated hereby, or the contemplation of the transaction itself has been made except to Buyer's management, its attorneys, financial advisors and/or lenders and that prior to so advising them Buyer made them aware of the confidential nature thereof and secured their agreement not to disclose same. Buyer agrees and acknowledges that any such violation or threatened violation of this paragraph shall cause irreparable injury to the Seller and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Seller shall be entitled (a) to obtain injunctive relief against the

threatened breach of this paragraph or the continuation of any such breach by Buyer, without the necessity of proving actual damages, and (b) to be indemnified by the Buyer from any loss or harm, including but not limited to attorney's fees, arising out of or in connection with any breach of or enforcement costs of the Buyer's obligations under this paragraph or the unauthorized use or disclosure.

ARTICLE VI -- INDEMNIFICATION

6.1 Seller Indemnification. Seller agrees to indemnify and hold Buyer harmless following the Closing with respect to any loss, damage, expense, suit, action, claim, liability or obligation (including without limitation, reasonable attorneys' fees) (collectively, "Damages") arising out of or in connection with a breach of the representations and warranties of Seller made in this Agreement, provided that Buyer must notify Seller in writing of any such breach on or prior to the date that is 30 days following the Closing Date. Any amounts payable to Buyer under this Section 6.1 shall be paid out of the Escrowed Funds, and Seller shall direct Shulman to make such payments promptly upon the final determination thereof.

6.2 Buyer Indemnification. Buyer agrees to indemnify and hold Seller harmless following the Closing with respect to any Damages arising out of or in connection with a breach of the representations and warranties of Buyer made in this Agreement, provided that Seller must notify Buyer in writing of any such breach on or prior to the date that is 30 days following the Closing.

ARTICLE VII -- CLOSING CONDITIONS

7.1 Seller's Conditions to Close. Seller's obligation to close the transactions contemplated hereby at the Closing shall be subject to the complete satisfaction and fulfillment of all of the following conditions precedent, any or all of which may be waived in whole or in part by Seller (but no such waiver of any such condition precedent shall be or constitute a waiver of any covenant, promise, agreement, representation or warranty made by Buyer in this Agreement):

(a) All representations and warranties made by Buyer in this Agreement shall be complete and accurate at and as of the Closing on the Closing Date;

(b) All covenants, promises and agreements made by Buyer in this Agreement and all other actions required to be performed or complied with by Buyer under this Agreement prior to or at the Closing shall have been fully performed or complied with by Buyer;

(c) Buyer shall deliver to Seller the Purchase Price in Good Funds as set forth in Section 1.6 of this Agreement;

(d) Buyer shall have delivered to Seller appropriate evidence of all necessary corporate action by Buyer in connection with the transactions contemplated hereby, including, without limitation: (i) certified copies of resolutions duly adopted by Buyer's directors approving the transactions contemplated herein and authorizing the execution, delivery, and performance

by Buyer of this Agreement, and (ii) a certificate as to the incumbency of officers of Buyer executing this Agreement and any instrument or other document delivered in connection with the transactions contemplated herein; and

(e) Buyer shall have delivered to Seller each Closing Document listed on Schedule 3.2.

7.2 Buyer's Conditions to Close. Buyer's obligation to close the transactions contemplated hereby at the Closing shall be subject to the complete satisfaction and fulfillment of all of the following conditions precedent, any or all of which may be waived in whole or in part by Buyer (but no such waiver of any such condition precedent shall be or constitute a waiver of any covenant, promise, agreement, representation or warranty made by Seller in this Agreement):

(a) All representations and warranties made by Seller in this Agreement shall be complete and accurate at and as of the Closing on the Closing Date (unless made as of an earlier date, in which case, as of such date);

(b) All covenants, promises and agreements made by Seller in this Agreement and all other actions required to be performed or complied with by Seller under this Agreement prior to or at the Closing shall have been fully performed or complied with by Seller as applicable; and

(c) Seller shall have delivered to Buyer each Closing Document listed on Schedule 3.1.

7.3 Mutual Conditions to Close. The obligations of both Buyer and Seller to close the transactions contemplated hereby at the Closing shall be subject to the complete satisfaction and fulfillment of all of the following condition precedent: the Bankruptcy Court shall have entered the Sale Approval Order as contemplated by and defined in Section 9.1 below and the Sale Approval Order shall not have been stayed nor shall any appeal therefrom have been filed as of the expiration of the time limit for filing such appeal or be subject to a motion for stay as of the Closing Date.

ARTICLE VIII -- POST-CLOSING COVENANTS AND AGREEMENTS

8.1 Possession. Buyer shall, with the cooperation of Seller, take possession of the Purchased Assets as promptly as practical following the Closing. Buyer and Seller shall cooperate in good faith to effectuate the foregoing and any costs and expenses associated therewith shall be paid by Buyer.

8.2 Post-Closing Cooperation. The parties to this Agreement shall cooperate to give effect to this Agreement and shall execute such additional documents after the Closing as any party may reasonably require to complete or document the transactions contemplated hereby, provided that neither party will be required to incur third party expenses associated therewith. The parties to this Agreement may enter into a transition services agreement or arrangement to provide transition services to Buyer to be paid by Buyer at the cost incurred by Seller for such services, subject to mutual agreement between such parties. Seller and the Rosenbaum Parties

shall have the right to possess and use, at no cost to Seller, the computers and computer servers that are being transferred to Buyer hereunder for as long as reasonably necessary as determined by Seller. Buyer hereby grants to Seller a limited royalty-free non-transferable license to use the name Spectre Performance and any other trademarks associated with the Purchased Business solely for the purpose of winding down Seller's affairs for a period not to exceed six months. A change of control of Seller (either directly or indirectly) will constitute a non-permissible transfer.

8.3 Noncompetition; Nonsolicitation; Confidentiality.

(a) Noncompetition. For a period of four (4) years from the Closing Date, Seller shall not, anywhere in the United States of America, develop, manufacture, distribute, market, sell or source products or accessories, or provide any services related thereto, either directly for itself, or indirectly through another person or entity, own, operate, manage, control, engage in, participate in, invest in, permit its name to be used by, act as consultant or advisor to, render services for (alone or in association with any person or entity) or otherwise assist in any manner, with respect to any Purchased Business. Nothing herein shall prohibit Seller from being a passive owner of not more than two percent (2%) of the outstanding stock of any class of securities of a publicly-traded corporation engaged in all or any of the Purchased Business, so long as Seller has no participation in the business of such corporation other than the passive ownership of such stock.

(b) Nonsolicitation. For a period of four (4) years from the Closing Date, Seller shall not, either directly for itself or indirectly through another person or entity, (i) hire or induce or attempt to induce or encourage any Material Employee of the Buyer to leave the employ of the Buyer, or in any way interfere with the relationship between the Buyer, on the one hand, and any Material Employee thereof, on the other, or (ii) induce any such customer, supplier, licensee, licensor, franchisee or other business relation to cease doing business, or materially reduce the amount of business such person or entity does, with Buyer. For purposes of this Agreement, "Material Employee" shall mean any Buyer employee who is (a) a member of senior management, (b) substantially and/or significantly involved in the design and/or creation of Buyer products, (c) a senior sales representative, and/or (d) an individual whose departure from Buyer would reasonably be expected to result in a material adverse effect to the Buyer.

(c) Confidentiality. Seller shall hold in confidence all knowledge and information of a secret or confidential nature with respect to Buyer and the Purchased Business and shall not disclose, publish or make use of the same without the written consent of Buyer, except to the extent that such information (i) shall have become public knowledge other than by breach of this Agreement by Seller, including without limitation information that is generally known and not considered confidential in the industry, (ii) is also the knowledge and information of a secret or confidential nature with respect to any business that is not Buyer or the Purchased Business, and/or (iii) is disclosed by Seller to its attorneys, accountants, financial advisors, experts and consultants (who are bound to hold such information in confidence). If Seller is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any such information, Seller shall, to the extent permitted by applicable law, notify Buyer promptly of the request or requirement so that Buyer may seek an appropriate protective order or

waive compliance with the provisions of this paragraph 8.3(c); provided that Seller shall not be required to file any objection thereto but shall reasonably cooperate with Buyer if Buyer determines to seek in good faith such a protective order and, if Seller agrees to file such an objection, it shall be filed at the sole cost and expense of Buyer including any attorneys' fees and costs awarded against Seller in connection therewith. If, in the absence of a protective order or the receipt of a waiver hereunder, Seller is compelled to disclose any such information, Seller may disclose such information to the extent required. Seller agrees that the remedy at law for any breach of this paragraph 8.3(c) would be inadequate and that Buyer shall be entitled to injunctive relief in addition to any other remedy it may have upon breach of any provision of this paragraph 8.3(c).

ARTICLE IX -- BANKRUPTCY COVENANTS

9.1 Entry of Sale Approval Order. No later than five (5) days after execution of this Agreement by the parties hereto, Seller shall file a motion substantially in the form attached hereto as Schedule 9.1 (the "Sale Motion") with the Bankruptcy Court seeking entry of an order in the form attached hereto as Schedule 9.1, which shall contain, without limitation, the following provisions (the "Sale Approval Order"):

(a) approving the terms and conditions of this Agreement and the sale of the Purchased Assets to Buyer, including the assumption and assignment by the Seller of the Assumed Contracts;

(b) holding that the sale of the Purchased Assets to Buyer shall be free and clear of all Liens, claims, interests, and encumbrances, pursuant to 11 U.S.C. §363;

(c) finding that the Purchase Price constitutes a fair value for the Purchased Assets;

(d) finding that there is sound business purpose for the transactions contemplated under the Agreement;

(e) holding that Buyer shall have no liabilities other than the Assumed Liabilities and no successor liability with respect to claims or administrative expenses arising or accruing prior to or on the Closing Date, and shall not be deemed a successor of Seller within the meaning of any revenue, pension, ERISA, COBRA, tax, labor or environmental law, rule or regulation or any products liability;

(f) finding that notice of the transactions contemplated hereby and of the terms of this Agreement was good and sufficient and was provided timely to all creditors and parties-in-interest, including, without limitation, any and all creditors holding liens or encumbrances on the Purchased Assets;

(g) authorizing and directing Seller to consummate the transactions contemplated by this Agreement and to comply in all respects with the terms of this Agreement;

(h) finding that this Agreement and the transactions contemplated herein were negotiated at arm's length, that Buyer acted in good faith in all respects, and that Buyer is entitled to the protections of Section 363(m) of the Bankruptcy Code; and

(i) finding that the sale process conducted by Seller and/or their agent was non-collusive, fair and reasonable and was conducted in good faith.

9.2 Substantial Contribution. Seller shall use its best efforts to cause the Bankruptcy Court to enter the Sale Approval Order. There shall be no break up fee associated with this transaction. Neither Buyer, nor any of its agents shall seek compensation from Seller under Bankruptcy Code Section 503(b) or otherwise, for making a substantial contribution in the Bankruptcy Case.

9.3 Distribution of Proceeds. At the Closing, a portion of the Purchase Price will be distributed by Shulman to Comerica Bank to pay in full all amounts owed to Comerica Bank ("Comerica") which are secured by Seller's assets, such principal amount estimated to be approximately Three Million Five Hundred Thousand Dollars (\$3,500,000.00), and to pay all debt incurred by Seller following the commencement of the bankruptcy proceedings including, but not limited to, taxes, rent, employee compensation, insurance and trade credit, and to pay normal business operating expenses as they become due, excluding attorney fees and expenses. The balance of the Purchase Price will be retained in Shulman's client trust account until thirty (30) days following the Closing Date (such date, the "Escrow Release Date"); provided, however, that if either Buyer or Seller disputes the adjustments to Purchase Price in accordance with Section 1.7(c), there is an indemnification claim pursuant to Section 6.1, or there is any amount of prepaid inventory included in the Inventory valuation pursuant to the Agreed Accounting Principles (in each case, an "Unresolved Claim"), until final determination of all Unresolved Claims, that portion of the Escrow Funds equal to the aggregate amount of the Unresolved Claims shall be set aside and continue to be held in escrow pending final resolution of such Unresolved Claims. On the Escrow Release Date (or, if applicable, such later date on which all Unresolved Claims are resolved), any remaining Escrowed Funds will be distributed by Shulman in accordance with the order(s) of the United States Bankruptcy Court, Central District of California Riverside Division Case No. 6:12-bk-21890-MH. Notwithstanding the foregoing, in the event of an Unresolved Claim regarding amounts held in escrow for prepaid inventory, such escrowed funds shall be released to Seller upon Buyer's receipt of such Inventory in amounts equal to the Inventory received or Buyer's receipt of a credit from the applicable vendor against the post-Closing obligations owed by Buyer to such vendor in amounts equal to the credit(s) received; provided that in the event such amounts for prepaid Inventory are held in escrow on the date that is six months from the Closing Date, such amounts shall be released to Buyer.

ARTICLE X -- TERMINATION

10.1 The parties may terminate this Agreement as provided below:

(a) Buyer may terminate this Agreement by giving written notice to Seller at any time prior to the Closing in the event Seller is in breach of any representation, warranty, or covenant contained in this Agreement (other than those in Sections 4.1(f) and 4.1(h)) in any

material respect or are otherwise unable to fulfill their conditions to the Closing, and Seller may terminate this Agreement by giving written notice to Buyer at any time prior to the Closing in the event the Buyer is in breach of any representation, warranty or covenant contained in this Agreement in any material respect or is otherwise unable to fulfill its conditions to the Closing, it being understood and agreed that TIME SHALL BE OF THE ESSENCE with respect to the performance of Buyer's and Seller's obligations hereunder; provided that, any such breach by a party shall trigger an obligation by the non-breaching party to provide prompt written notice to the breaching party of the alleged breach (to the extent that the non-breaching party is aware thereof and to the extent that any such alleged breach is curable), including a detailed description of the facts and circumstances giving rise to such alleged breach, and the breaching party shall have a period of fifteen (15) days following receipt of such notice (which may be delivered by overnight courier) to cure the alleged breach (but in any event to have been completed no later than the day preceding the Closing Date); provided, however, that with respect to breaches of Section 11.5(c), (i) the breaching party shall have a period of five (5) business days following receipt of such notice (which may be delivered by overnight courier) to cure the alleged breach and (ii) in the event Seller has used commercially reasonable efforts to comply with Section 11.5(c) but is unable to do so, then no breach will be deemed to have occurred if Seller complies with such obligation in Section 11.5(c) as promptly as reasonably possible thereafter;

(b) This Agreement may be terminated: (i) by Buyer or Seller if the Bankruptcy Court enters an order disapproving the acquisition transaction with Buyer contemplated under this Agreement, (ii) by Buyer if the Sale Approval Order has not been entered on or before December 31, 2012 (the "Outside Date"), or (iii) by Buyer or Seller if such order remains stayed or has been modified or reversed on appeal as of February 1, 2013; and

(c) Buyer or Seller may terminate this Agreement if the Bankruptcy Court enters an order approving any Acquisition Proposal. For purposes of this Agreement, "Acquisition Proposal" means a proposal (other than by Buyer or its affiliates) relating to (i) any merger, consolidation, business combination, sale or other disposition of 35% or more of the Purchased Assets pursuant to one or more transactions, (ii) the sale of 20% or more of the outstanding shares of capital stock or equity interests of Seller (including, without limitation, by way of a tender offer, foreclosure or plan of reorganization (including a plan of reorganization proposed or advanced by Seller), merger or liquidation), or (iii) a similar transaction or business combination involving one or more third parties, on the one hand, and Seller or any of the Rosenbaum Parties or any of their affiliates, on the other hand); and

10.2 If any party terminates this Agreement pursuant to Section 10.1, this Agreement shall be of no further force or effect and no party shall have any liability to any other party hereunder, provided however, that (i) Section 2.2 (Expenses) hereof, this Section 10.2, and Section 11.3 (Confidentiality) hereof shall survive any such termination and continue in full force and effect and (ii) nothing herein shall relieve any party hereto from any liability resulting from any breach of this Agreement prior to such termination.

ARTICLE XI -- SPECIAL COVENANTS AND CONDITIONS

11.1 Bulk Sales Law. Buyer waives any and all rights to require compliance with the provisions of the Uniform Commercial Code as adopted by the State of California, including but

not limited to, Article 6 of the California Commercial Code, related to bulk transfers in connection with the transactions contemplated hereunder, if any.

11.2 Assumed Contract Cure. The cure costs of each Assumed Contract, if any, is set forth on Schedule 4.1(h) hereto. For each Assumed Contract for which cure costs are set forth on Schedule 4.1(h), Buyer shall (i) pay such cure costs, and (ii) provide evidence of adequate assurance of future performance such Assumed Contract at or before the sale hearing.

11.3 Confidentiality.

(a) Until the date that the Sale Motion is filed and subject to Section 2.3, Section 11.5 and as otherwise contemplated in this Agreement, each of the parties hereto agrees that such party shall not disclose this Agreement or the existence of this Agreement, the terms of the transaction contemplated hereby, or the contemplation of the transaction itself except to such party's management, attorneys, and/or financial advisors and that prior to so advising them such party made them aware of the confidential nature thereof and secured their agreement not to disclose same, except to the extent that disclosure may be required by law. If the disclosure of is required by law, the applicable Party agrees to give the other Parties reasonable notice prior to disclosure so that it has an opportunity to obtain a protective order and shall disclose only such of information which he or it is required to disclose by law.

(b) Each of the parties acknowledges and agrees that a violation of Section 11.3(a) could cause irreparable harm to the other party, which could not be quantified or adequately compensated through monetary relief. Accordingly, in the event of any violation or threatened violation of this Agreement, each party agrees that the other party, in addition to all other monetary and other rights and remedies available to it under this Agreement, shall be entitled to receive, without bond, injunctive and other equitable relief from a court of competent jurisdiction restraining and enjoining it, from any violation or threatened violation of this Agreement.

11.4 Inventory. Buyer shall conduct a physical inventory of all of the Purchased Assets on the Closing Date or as soon as practicable thereafter. Such inventory shall be conducted at Buyer's sole cost and expense by an independent third party mutually approved by Buyer and Seller, which approval shall not be unreasonably withheld or delayed. Seller shall reasonably cooperate with such inventory.

11.5 Business Operations. During the period between the Effective Date and the Closing Date, Seller shall:

- (a) continue the Purchased Business in the ordinary course;
- (b) not purchase inventory with respect to the Purchased Business in excess of \$350,000 per week, without Buyer's prior consent;
- (c) (i) subject to Comerica's consent, for fiscal years 2011 and year to date 2012, provide Buyer the month end borrowing base certificates, and commencing the second business day after obtaining Comerica's consent, the daily borrowing base certificates, in each case provided to Comerica together with the backup materials provided to Comerica therewith,

(ii) make available Seller's information technology staff to identify and address potential transition issues with respect to records electronically maintained and the identification of hardware and software used in the operation of the Purchased Business, (iii) upon reasonable notice and during business hours, arrange for a guided tour of Seller's facilities, (iv) provide information reasonably requested with respect to Seller's employees, such as employee name, job title and function, hire date, compensation and benefits, and (v) provide those items set forth on Schedule 11.5(c); and

(d) coordinate an agreed upon communication to the top seven customers and top two suppliers of Seller; provided that Seller shall have reasonable prior notice of such communication and shall have the opportunity to participate in all such communications, although such participation shall not be required.

11.6 Purchase Price Allocation. Prior to the Closing, Buyer and Seller shall agree on a schedule allocating the Purchase Price among the Purchased Assets (such schedule, the "Allocation"). Buyer and Seller shall report and file all tax returns (including amended tax returns and claims for refund) consistent with the Allocation, and shall take no position contrary thereto or inconsistent therewith (including, without limitation, in any audits or examinations by any governmental authority or any other proceeding). Buyer and Seller shall cooperate in the filing of any forms (including Form 8594 under Section 1060 of the Code) with respect to such Allocation, including any amendments to such forms required pursuant to this Agreement with respect to any adjustment to the Purchase Price.

11.7 Release from Personal Guarantees. Buyer shall use commercially reasonable efforts to cause the release of Amir and/or Dusanka from any personal guaranty delivered by them in connection with the Purchased Business; provided that Buyer shall not be required to incur more than \$10,000 in costs in connection therewith. To the extent such releases are not obtained, Buyer shall indemnify, defend and hold Amir and Dusanka harmless with respect to any Damages arising out of or in connection with such guarantees.

ARTICLE XII -- MISCELLANEOUS

12.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Except as herein provided, no party may assign any of its rights, or delegate any of its duties or obligations (by operation of law or otherwise), under this Agreement without the prior written consent of the other party (which consent shall not be unreasonable withheld or delayed), and any such purported assignment or delegation shall be void *ab initio*; provided, however, that Buyer may assign to one or more affiliated entities (to be formed prior to Closing) all or any portion of its rights to purchase the Purchased Assets under this Agreement, without the prior consent of Seller or any other person; however, such an assignment will not negate or invalidate the Buyer's obligations and duties under this Agreement. Nothing herein shall limit Seller's rights to sell, transfer or otherwise deal with property which is not included in the Purchased Assets.

12.2 All notices, demands and other communications (collectively, "Notices") given or made pursuant to this Agreement shall be in writing and shall be deemed to have been duly given if sent by registered or certified mail, return receipt requested, postage and fees prepaid, by

overnight service with a nationally recognized “next day” delivery company, or otherwise actually delivered to the addresses set forth below for Buyer and Sellers with proof of receipt thereof. Any Notice shall be deemed duly given when received by the addressee thereof, provided that any Notice sent by registered or certified mail shall be deemed to have been duly given two (2) business days after the date of deposit in the United States mail, unless sooner received. Any of the parties to this Agreement may from time to time change its address for receiving Notices by giving written notice thereof in the manner set forth above.

If to Buyer:

K&N Engineering, Inc.
Attn: Steven J. Rogers
1455 Citrus St.
Riverside, CA 92507

with copies (which shall not constitute notice) to:

Best Best & Krieger LLP
Attn: Frank Adams, Esq.
P.O. Box 1028
Riverside, CA 92502

Gryphon Investors
One Market Plaza
Steuart Tower, 24th Floor
San Francisco, CA 94105
Attention: R. David Andrews; Keith Stimson

Kirkland & Ellis LLP
555 California Street
San Francisco, California 94104
Attention: David A. Breach

If to Seller:

Spectre Performance
Attention: Amir Rosenbaum
10560 Blandor Way
Los Altos Hills, CA 94024

with a copy (which shall not constitute notice) to:

Shulman Hodges & Bastian LLP
Attn: Leonard M. Shulman, Esq.
8105 Irvine Center Dr., Suite 600
Irvine, CA 92618

If to the Rosenbaum Parties:

Amir and Dusanka Rosenbaum
1720 South Carlos Avenue
Ontario, CA 91761

with a copy (which shall not constitute notice) to:

Buchalter Nemer
Attn: Peter Bertrand, Esq.
55 Second Street, Suite 1700
San Francisco, CA 94105

12.3 No provision of this Agreement may be waived unless in writing signed by all of the parties to this Agreement, and the waiver of any one provision of this Agreement shall not be deemed to be a waiver of any other provision. This Agreement may be amended only by a written agreement executed by all of the parties to this Agreement.

12.4 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by e-mail in .pdf format shall be treated as if they were originals.

12.5 The section and subsection headings contained in this Agreement are included for convenience only and form no part of the agreement between the parties.

12.6 Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be or become prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement. This Section 12.6 shall not affect Section 12.8 or otherwise limit the authority of the Honorable Judge Scott Clarkson as therein provided.

12.7 This Agreement, including the other agreements and schedules to be entered into in connection with the transactions contemplated by this Agreement, constitutes and embodies the entire understanding and agreement of the parties hereto relating to the subject matter hereof and there are no other agreements or understandings, written or oral, in effect between the parties relating to such subject matter except as expressly referred to herein.

12.8 This Agreement shall be construed and enforced in accordance with the laws of the State of California, notwithstanding any state's choice-of-law rules to the contrary. Each of the undersigned agrees that any legal action relating to this Agreement, including any action for equitable relief such as injunctions, shall be commenced and maintained exclusively before the Honorable Scott C. Clarkson, the Federal Bankruptcy Court Judge for the United States Bankruptcy Court of the Central District of California located in Santa Ana, California. If Judge

Clarkson is unavailable, such legal action shall be settled on an expedited basis by binding arbitration in either Los Angeles or San Francisco County, California, before a single arbitrator mutually agreeable to the parties, and if no agreement is reached, before a single arbitrator from the Judicial Arbitration Mediation Service (J.A.M.S.) selected in accordance with the Rules of J.A.M.S. then in effect, which arbitration shall be conducted in accordance with such Rules, and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of controversy. Pursuant to the California Code of Civil Procedure 1283.1(b), the provisions of CCP § 1283.05 are hereby incorporated into this Agreement and any arbitration proceeding conducted pursuant hereto.

12.9 Nothing in this Agreement shall confer any rights upon any person or entity other than the parties hereto (except any permitted successors or assigns).

12.10 The covenants and agreements herein that are contemplated by this Agreement to be performed after the Closing shall survive the Closing.

ARTICLE XIII -- BUYER DUE DILIGENCE COMPLETED


13.1 The parties to this Agreement acknowledge and agree that the Closing is in no way conditioned or contingent upon Buyer's conducting or completing its due diligence, or the results thereof.

[The remainder of this page is intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, this Asset Purchase and Settlement Agreement has been executed as of the Effective Date.

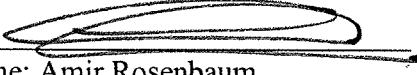
BUYER:

K&N Engineering, Inc.


By: 
Name: Steve Rogers
Title: President and Chief Executive Officer

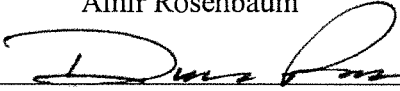
SELLER:

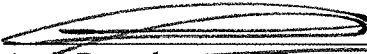
Spectre Performance,
a debtor-in-possession

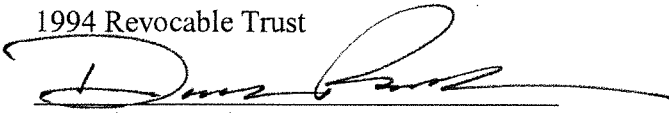
By: 
Name: Amir Rosenbaum
Title: President and Chief Executive Officer

ROSENBAUM PARTIES


Amir Rosenbaum


Dusanka Rosenbaum


Amir Rosenbaum, as Trustee of the
Rosenbaum Living Trust U/D/T
April 5, 1994, formally known as
The Amir and Dusanka Rosenbaum
1994 Revocable Trust


Dusanka Rosenbaum, as Trustee of the
Rosenbaum Living Trust U/D/T
April 5, 1994, formally known as
The Amir and Dusanka Rosenbaum
1994 Revocable Trust

SCHEDULE 1.2(a)

Purchased Assets Not Subject to Rejection

1. Lease Agreement dated October 11, 2011 between Seller and Intech Funding Corp for the lease of 1.1989 Amada FBD-80 Hydraulic Press Brake.
2. MailFinance Lease Agreement dated March 11, 2010 between Hasler and Seller.
3. Master Lease dated August 12, 2009 between Stratasys Inc. and Seller.
4. Purchase orders outstanding as of the Closing Date.

SCHEDULE 1.3

Excluded Assets

All vehicles, including all related vehicle modifications, including without limitation the following:

- Ferrari F-40
- Motorhome
- 1999 Ford F250
- 1970 Camaro
- 2001 Camaro
- 1968 Cadillac
- 1971 Camaro
- 2004 Chevy S-10
- 2004 Chevy Silverado 3500
- 1987 Ford Saleen Mustang
- Honda Civic
- 1968 Merc. Cougar
- 1970 Chevy El Camino
- 2004 Volvo V70R
- 2005 Pontiac GTO
- 1970 Ford Mustang Mach 1
- 1969 Dodge Dart
- Bonneville streamliner
- 1971 Datsun 510
- 2006 Dodge Ram 2500
- Carson trailer
- Chevy C150 (carb test) 06
- Big Rig Truck (includes Freightliner Toterhome and trailer)
- 2009 VOLVO Big Rig Truck
- 2010 Spectour Trailer (Perf Trlr)
- 2010 Spectour Trailer (misc accts)
- Ford Maverick
- 2007 Ford Mustang GT500

All litigation and rights to litigation including but not limited to Avoidance Actions.

All claims and causes of action which constitute property of the Estate arising under any of Sections 542, 543, 544, 545, 546, 547, 548, 549 and 550 of the Bankruptcy Code, any actions based on applicable non-bankruptcy law that may be incorporated or brought under the foregoing sections of the Bankruptcy Code, or any other similar action or proceeding filed to recover property for or on behalf of the Estate or to avoid a lien or transfer.

All Seller bank accounts

All cash

Real estate leases and interests of Seller therein, including without limitation, leasehold improvements.

Landlord security deposits.

Insurance policies.

Prepaid insurance premiums.

Deferred tax assets.

Prepaid expenses as mutually agreed.

Vehicle Lease Agreement dated May 9, 2012 between Carlsen Volvo and Seller for the lease of a 2012 Volvo.

Vehicle lease agreement for a Cadillac.

Dealer license number 68494

Mach. & Equip.

Sentra Scale
Curtis 5HP 3PH Vert Compressor
Spot Welder
Floor Scale w/Approach Ramp
Compressor, Air 7.5 HP
Segway Transporter
Edward & Sons parking lift
Edwards & Sons parking lift
Bob Johnson Equipment
T Shirt Printing Machine
Chicago Straight Brake (Rohnert)
Ice Machine

Office Equip

Video Camera Digital
Digital Camera
Konica 720 Copier
Xerox (leased)
Prism Printer Susquehanna)
Desktop 3D Scanner
Verizon equipment lease
VIP Color Technologies

Furnitures & fixtures

Conference table

Schedule 1.3

2

Computer hardware

Intel Pentium 4600 Series

Dell laptop (R.Casllas)

Apple G-5 Computer

Dell laptop - D. Ramirez

Dell laptop - Roger C.

Dell laptop - Kathryn G.

Dell laptop - Mike I.

Creative Suite 2.0 upgrade for Mac

Apple Mac - Graphics Dept.

Mac laptop - Amir (rplcmt -now Simons))

Various

Various

Various

Amirs new Mac Computer

SCHEDULE 1.4

Other Assumed Liabilities

1. Providing replacement parts under any warranty claims for products of Seller (but no other monetary or other compensation) including those sold by Seller prior to the Closing Date, including replacement parts to be provided pursuant to the terms of settlement of the following cases:
 - (a) the Anthony and Zina Avery v. Spectre Performance and Autozone Parts, Inc. (“Avery Case”), pending in the United States District Court for the Central District of California, Case No. CV 10-09802 GHK, and the related settlement agreement which is subject to Bankruptcy Court approval, entered into by and between the Debtor and Auto Zone, Inc., on the one hand, and Plaintiffs Anthony Avery and Zina Avery, on behalf of themselves and on behalf of each person who qualifies as Avery Action Class Members and thus eligible to participate in the settlement, on the other hand; and
 - (b) the Philip Moreno v. Spectre Performance (“Moreno Case”), pending in the United States District Court for the Central District of California, Case No. 12-cv-00901-PSG-SP, filed by Philip Moreno, Brian Prestowitz and Shawn Paulley purportedly acting on behalf of a punitive class, and the related settlement agreement which is subject to Bankruptcy Court approval, entered into by and between the Debtor on the one hand, and Plaintiff Philip Moreno, on behalf of themselves and on behalf of each person who qualifies as Moreno Action Class Members and thus eligible to participate in the settlement, on the other hand.
2. The payment obligation for Inventory in transit as of the Closing when (and if) received after the Closing.
3. Sales representatives’ compensation with respect to Accounts Receivables collected post-Closing, which does not exceed 2% of the Accounts Receivables delivered at Closing.

SCHEDULE 1.5

Form of Mutual Release

(See attached)

RELEASE AGREEMENT

THIS RELEASE AGREEMENT (this “Release”) is made and entered into as of November 3, 2012, by and among K&N Engineering, Inc., a California corporation (“Buyer”) on the one hand and Spectre Performance, a California corporation (“Company”), Amir Rosenbaum, Dusanka Rosenbaum and The Rosenbaum Living Trust U/D/T April 5, 1994 (f/k/a The Amir and Dusanka Rosenbaum 1994 Revocable Trust) (collectively, the “Rosenbaum Parties”) on the other hand.

Recitals

WHEREAS, Buyer, the Company and the Rosenbaum Parties are parties to that certain Asset Purchase and Settlement Agreement dated as of November 3, 2012 (the “Purchase Agreement”), pursuant to which Buyer is acquiring substantially all of the assets, and assuming certain liabilities of Company (the “Acquisition”);

WHEREAS, on or about December 9, 2011, an order entitled “Final Judgment and Permanent Injunction” was entered against Seller in the action entitled the *K&N Engineering, Inc. v. Spectre Performance*, United States District Court, Central District of California, Case No. EDCV 09-01900-VAP (the “Action”) and on or about June 8, 2012 an order entitled “Amended Final Judgment and Permanent Injunction” was entered in the Action whereby Buyer was awarded the sum of \$7,337,196.00 which together with attorneys’ fees and costs total \$9,440,085.00 (collectively, the “Judgment”). The Judgment is subject to an appeal filed by Seller styled *K&N Engineering, Inc., Plaintiff-counter-defendant - Appellee v. Spectre Performance, a California corporation, Defendant-counter-claimant – Appellant*, pending in the United States Court of Appeals for the Ninth Circuit, Appellate Case No. 12-55027 (the “Judgment Appeal”).

WHEREAS, each of the undersigned, on behalf of themselves and their respective affiliates, successors, heirs and representatives (collectively, the “Releasors” and each a “Releasor”) acknowledges and agrees that such Releasor’s execution and delivery of this Release has been a material inducement to the Company, the Rosenbaum Parties and Buyer to consummate the transactions contemplated by the Purchase Agreement and the agreements contemplated thereby and that the Company, the Rosenbaum Parties and Buyer have relied upon this Release in consummating such transactions;

WHEREAS, each Releasor acknowledges and agrees that it will derive substantial direct and indirect benefits from the transactions contemplated by the Purchase Agreement and the agreements contemplated thereby, including without limitation the release of all claims by the Company, the Rosenbaum Parties or Buyer, as applicable;

NOW, THEREFORE, in consideration of the mutual promises, agreements and covenants contained herein, and for other valuable consideration, receipt of which is hereby acknowledged, each Releasor agrees as follows:

1. The “Effective Date” of this Release is the date and time concurrent with the closing of the Acquisition.

2. Excepting only the obligations set forth in (i) the Purchase Agreement; (ii) the Agreements between the Parties hereto related to the Acquisition; and (iii) this Release Agreement, the Company and the Rosenbaum Parties and each of their respective affiliates, successors, assigns, heirs and representatives, on the one hand, and the Buyer and its respective affiliates, successors, assigns and representatives, on the other hand, on behalf of themselves, and each of their equityholders, respective affiliates, officers, directors, employees, agents, advisors, heirs, legal representatives, successors and assigns hereby unconditionally, irrevocably and completely release, waive, acquit and forever discharge, to the fullest extent permitted by law, each of the Company and the Rosenbaum Parties and their affiliates, successors, heirs and representatives (the “Spectre Related Release Parties”), on the one hand, and the Buyer and its affiliates, successors and representatives (the “K&N Released Parties”), on the other hand, as applicable, and their respective affiliates, current and former equityholders, officers, directors, employees, attorneys, agents, advisors, successors and assigns (collectively, the “Released Parties”) from any and all claims, demands, damages, judgments, losses, liabilities, suits, actions, debts, or rights, whether fixed or contingent, suspected or claimed, known or unknown, matured or unmatured, arising contemporaneously with or prior to the Effective Date or on account of or arising out of or relating in any way to any matter, cause or event occurring contemporaneously with or prior to the Effective Date, including but not limited to, any claims asserted in connection with the Action, the Judgment, and/or the Judgment Appeals related thereto (collectively, the “Released Claims”). Each Releasor further agrees that he/she/it shall not, and, to the extent within his/her/its control, shall not cause or permit his/her/its equityholders or any of their respective affiliates, employees, agents, advisors, heirs, legal representatives, successors and assigns to, assert any claims against the Released Parties in respect of the Released Claims and will not assist or aid any other party in doing so.

3. Each Releasor acknowledges that the releases contained in Section 2 hereof includes releases of any claims of which such Releasor is presently unaware of or which such Releasor does not presently suspect to exist and such Releasor hereby specifically waives the provisions of California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR”

The releases granted herein further include releases of unknown claims pursuant to the provisions of any similar laws of any other state or country to California Civil Code § 1542. Each Releasor (i) acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown and unsuspected, and (ii) that the waivers and releases herein have been negotiated and agreed upon in light of that realization. Such Releasor nevertheless releases, discharges and acquits the other Released Parties from any such unknown cause of action, claims, demands, debts, controversies, damages, costs, losses and expenses arising out of or with respect to the Released Claims. Each Releasor acknowledges that the inclusion of unknown and unsuspected claims with respect to the Released Claims was

separately bargained for and was a key element of this Release.

4. This Release contains the entire agreement amongst the parties hereto and constitutes the complete, final and exclusive embodiment of their agreement with respect to the subject matter hereof. The terms of this Release are contractual and not mere recitals. This Release is executed without reliance upon any promise, warranty or representation by any Released Party or any representative thereof, and each Releasor has carefully read this Release, has been advised of its meaning and consequences by such Releasor's attorney, and signs the same of such Releasor's own free will. Each Releasor is fully informed of the nature and contents of this Release and has entered into this Release freely and without any threat or coercion whatsoever.

5. Each Releasor represents and warrants that such Releasor is empowered and authorized to execute and deliver this Release and to release the Released Claims.

6. Each Releasor represents and warrants that it has not assigned, transferred or conveyed to any third party rights to any Released Claims. Each Releasor shall indemnify, defend and hold the others harmless from any claims, demands or actions which have been assigned, transferred or conveyed, or purported to have been assigned, transferred or conveyed, in violation of the foregoing representation and warranty.

7. This Release is binding on each Releasor and its respective members, partners and equityholders and their respective affiliates, employees, agents, advisors, heirs and legal representatives. This Release shall bind the heirs, personal representatives, successors and assigns of each Releasor and inure to the benefit of each Company, the Rosenbaum Parties and Buyer, as applicable, and its predecessors, successors, assigns, shareholders, directors, officers employees and agents, all of whom shall be considered express intended third party beneficiaries hereunder.

8. This Agreement shall be construed and enforced in accordance with the laws of the State of California, notwithstanding any state's choice-of-law rules to the contrary. Each of the undersigned agrees that any legal action relating to this Agreement shall be commenced and maintained exclusively before the Honorable Scott C. Clarkson, the Federal Bankruptcy Court Judge for the United States Bankruptcy Court of the Central District of California located in Santa Ana, California. If Judge Clarkson is unavailable, such legal action shall be decided on an expedited basis by binding arbitration in either Los Angeles or San Francisco County, California, before a single arbitrator mutually agreeable to the parties, and if no agreement is reached, before a single arbitrator from the Judicial Arbitration Mediation Service (J.A.M.S.) selected in accordance with the Rules of J.A.M.S. then in effect, which arbitration shall be conducted in accordance with such Rules, and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of controversy. Pursuant to the California Code of Civil Procedure 1283.1(b), the provisions of CCP § 1283.05 are hereby incorporated into this Agreement and any arbitration proceeding conducted pursuant hereto.

9. If any provisions of this Release, or the application thereof to any person or circumstance, is invalid or unenforceable in any jurisdiction: (i) a substitute and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and

enforceable in such jurisdiction, the intent and purpose of the invalid or unenforceable provision; and (ii) the remainder of this Release and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability of such provision affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

10. In the event that any dispute between the parties hereto should result in legal action, the prevailing party in such dispute will be entitled to recover from the other party reasonable attorneys' fees and costs of suit, including any fees and costs incurred in preparation of such suit.

11. This Release shall not be modified or waived except in a writing signed by each of the parties affected by such modification or waiver.

12. The drafting and negotiation of this Release have been participated in by each of the parties, and for all purposes the Release shall be deemed to have been drafted jointly by each Releasor.

13. This Release may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures presented by facsimile transmission or e-mail in .pdf format shall be deemed effective.

14. Notwithstanding the foregoing, nothing contained in this Release shall be construed as an admission by any party of any liability of any kind to any other party. Each party acknowledges that the other parties expressly deny that he/she/it is in any way obligated to any other party, other than pursuant to this Release itself or to any other agreement contemplated to survive the Acquisition and to which such Releasor are parties.

* * * * *

WHEREUPON the undersigned have affixed their signatures and approval of this Release as of the date first written above.

RELEASORS:

K&N ENGINEERING, INC.

By: _____
Stephen Rogers
Its: President and Chief Executive Officer

SPECTRE PERFORMANCE

By: _____
Amir Rosenbaum
Its: President and Chief Executive Officer

ROSENBAUM PARTIES

Amir Rosenbaum, an individual

Dusanka Rosenbaum, an individual

Amir Rosenbaum, as Trustee of the
Rosenbaum Living Trust U/D/T
April 5, 1994, formally known as
The Amir and Dusanka Rosenbaum
1994 Revocable Trust

Dusanka Rosenbaum, as Trustee of the
Rosenbaum Living Trust U/D/T
April 5, 1994, formally known as
The Amir and Dusanka Rosenbaum
1994 Revocable Trust

SCHEDULE 1.7(b)

Agreed Accounting Principles

Accounts Receivable Methodology:

Accounts Receivable means the sum of (i) the issued and unpaid outstanding sales invoices of the Purchased Business, plus (ii) the outstanding debit memos of the Purchased Business, minus (iii) the outstanding credit memos of the Purchased Business (in each case, only to the extent such general categories reflected in clauses (i), (ii) or (iii) were taken into account in determining the Estimated Values). In addition, Accounts Receivable will not be reduced to reflect any reduction for allowances for doubtful accounts receivable and AR Reserve Allowance (to the extent no such reductions were taken into account in determining the Estimated Values). Invoices are valued based on the net amount due considering all allowances and discounts identified on the invoice (to the same extent as taken into account in determining the Estimated Values). All invoices, debit memos and/or credit memos will be supported by the necessary documentary evidence of the validity of the item. Documentary evidence includes, but is not limited to, electronic and/or physical customer agreements, customer purchase orders, invoices and proof of delivery.

Inventory Methodology:

Inventory represents a listing of all part numbers, descriptions and quantities in existence as of the Closing. The inventory listing will be valued at the sum of (i) the invoice cost paid for the inventory (weighted average cost), plus (ii) prepaid inventory representing the enforceable right to receive future inventory at no further cost (to the extent taken into account in determining the Estimated Values). Inventory value shall not be increased for any overhead or burden added to such cost and without any reserve for slow moving or obsolete inventory (in each case to the extent no such reduction was applied with respect to the Estimated Values).

SCHEDULE 1.9

Employment Term Sheet

(See attached)

SUMMARY OF CERTAIN KEY TERMS OF EMPLOYMENT AGREEMENT

K&N Engineering, Inc. (the “Company”)

Amir Rosenbaum (“Executive”)

November 3, 2012

EMPLOYMENT	
Duties	<p>Executive shall be employed by the Company, shall report to the Chief Executive Officer of the Company (and/or such other officer(s) of the Company as determined by the Company’s Chief Executive Officer in consultation with Executive), and will carry out his duties, responsibilities and functions to the best of his abilities. Executive shall devote his full business time and attention to the business and affairs of the Company (except for permitted vacation periods and reasonable periods of illness or other incapacity) and shall be required to travel on a regular basis to the Company’s headquarters in Riverside, CA and otherwise, in order to perform his duties and responsibilities. Executive shall be permitted to perform his duties from a location other than (x) Executive’s principal place of employment at the Company’s headquarters in Riverside, CA and (y) such other locations as are determined by the Company’s Chief Executive Officer (or such other officer of the Company to whom Executive reports) not more than three days per week. Executive shall also comply with the Company’s policies and procedures.</p> <p>Executive’s duties shall initially focus on the following functions: sales and marketing; business development; merchandising of goods; and customer relations.</p>
Term of Employment	<p>The term of Executive’s employment with the Company will commence as of the closing (the “<u>Closing</u>”) of the acquisition transaction contemplated by that certain Asset Purchase and Settlement Agreement, dated as of the date hereof (the “<u>APA</u>”), by and among the Company, Executive and the other parties thereto and shall terminate on the third anniversary thereof (the “<u>Term</u>”). It is agreed that if the Closing is not consummated for any reason, then the provisions contained in this term sheet (other than this sentence) will be of no effect.</p>
COMPENSATION & BENEFITS	
Salary	<p>\$250,000 per year, subject to applicable deductions and withholdings, and to be paid in equal bi-weekly installments in</p>

	accordance with the Company’s payroll practices and procedures. The salary shall not be lowered.
Bonus and/or Other Incentives	Additional incentive bonus or other incentive program shall be provided by the Company to Executive, the terms of which shall be discussed and mutually agreed between the Company and Executive and set forth in the definitive Employment Agreement to be entered into between Executive and the Company at the Closing.
Expenses	Executive shall be reimbursed consistent with the Company’s policies and procedures for all reasonable out-of-pocket business expenses, including reasonable travel (including travel to and from Company’s headquarters in Riverside, California) and entertainment expenses, incurred by him in the performance of his duties for the Company.
Benefits	Executive shall be entitled to participate in the Company’s employee medical and benefit programs for which all executive employees of the Company are generally eligible.
Vacation	Four (4) weeks annually.
TERMINATION	
	<p>Each of the Company and Executive may terminate Executive’s employment for any reason (or for no reason).</p> <p>In the event the Company terminates Executive’s employment without Cause or the Executive terminates his employment for Good Reason, then, in consideration of Executive’s non-competition obligations as described below under the section entitled “Non-competition; Non-solicitation”, the Company shall (i) pay Executive an amount equal to his annual base salary (subject to applicable deductions and withholdings, and payable in equal bi-weekly installments in accordance with the Company’s payroll practices and procedures) for the remainder of the Term, (ii) if such termination of employment occurs following the first 180 days of a fiscal year, the Company shall pay Executive a prorated bonus for the fiscal year in which such termination occurs (based on the number of days Executive was employed during such fiscal year) if such bonus would have been earned for such fiscal year and if, as of the time of such termination, Executive was otherwise “on track” to achieving (and had theretofore achieved) applicable milestones to earn such bonus at the end of such fiscal year (the amount under this clause (ii) to be payable at such time as such bonus would have otherwise been paid if earned) and (iii) the Company shall provide Executive with the continuation of medical benefits (whether through COBRA or otherwise, but, in any event, at the Company’s expense) until the earlier of (x) the end of the</p>

	<p>Term and (y) such time that Executive is employed by another person or entity (it being agreed that if the Company is not able to provide Executive with the aforementioned continuation of benefits, it shall in lieu thereof reimburse Executive for the cash equivalent value of the portion of the health care insurance premiums paid by the Company on behalf of Executive and his immediate family immediately prior to such termination). It is agreed that if Executive violates any of his obligations as described below under the section entitled “Non-competition; Non-solicitation” or “Confidentiality and Proprietary Information”, the obligation of the Company to pay any amounts, or provide any benefits, under this paragraph shall immediately cease.</p> <p>In the event Executive’s employment with the Company is terminated (whether by Executive, the Company or otherwise) for any other reason, the Company shall have no obligation to pay Executive any amounts other than (i) Executive’s accrued and unpaid annual base salary as of the date of termination and (ii) reasonable out-of-pocket business expenses incurred by Executive prior to the date of termination that have not been reimbursed as of such time.</p> <p>“Cause” shall mean:</p> <ol style="list-style-type: none">(1) the conviction or plea of guilty or nolo contendere with respect to a felony (other than a DUI), or the commission of a crime involving moral turpitude, or the commission of any other act or omission involving misappropriation, embezzlement, dishonesty or fraud with respect to the Company or any of its subsidiaries or any of their customers or suppliers;(2) substantial and repeated failure to perform his duties consistent with his employment agreement as reasonably directed in writing by the Company’s Chief Executive Officer or Board of Directors with reasonable specificity continuing beyond 15 days’ after receipt of prior written notice of such failure (which notice shall set forth in reasonable detail the facts or circumstances constituting such failure);(3) breach of fiduciary duty, gross negligence or willful misconduct with respect to the Company; and/or(4) any other material breach by Executive of his employment agreement or any other agreement between Executive and the Company or its affiliates which is not cured (to the extent curable) to the reasonable satisfaction of the Company’s Board of Directors within 15 days after written notice thereof to Executive (which notice shall set forth in reasonable specificity the facts or circumstances constituting or giving rise to such breach).
--	--

	<p>“Good Reason” shall mean the occurrence of one or more of the following without Executive’s prior written consent:</p> <ol style="list-style-type: none"> (1) a material diminution in Executive’s title or the assignment of duties materially inconsistent with his position, in each case, as the same are set forth in the definitive Employment Agreement to be agreed and entered into between Executive and the Company at the Closing; (2) a relocation of Executive’s principal place of employment (which is currently Riverside, CA), as a result of which Executive’s commute to such principal place of employment from Executive’s principal residence as of the date hereof increases by more than 25 miles; and/or (3) Any material breach by the Company of the Employment Agreement; provided a written notice must be delivered to the Company (which notice shall set forth in reasonable specificity the facts or circumstances constituting or giving rise to such breach) and the Company shall have 15 days after the receipt of such notice during which the Company may cure the occurrence giving rise to the claim for Good Reason termination.
<p>NON-COMPETITION; NON-SOLICITATION</p>	<p>Executive will be subject to non-competition and employee and customer non-solicitation obligations for the duration of the Term. Such provisions will be substantially similar to the provisions contained in the Non-Competition Agreement by and among Executive, the Company and the other parties thereto, dated as of the date hereof.</p>
<p>CONFIDENTIALITY AND PROPRIETARY INFORMATION</p>	<p>Customary restrictions on the use of confidential and proprietary information.</p>
<p>GOVERNING LAW</p>	<p>California.</p>
<p>OTHER</p>	<p>Any dispute arising under the Employment Agreement or this term sheet shall be settled on an expedited basis by binding arbitration in either Los Angeles or San Francisco County, California, before a single arbitrator mutually agreeable to the parties, and if no agreement is reached, before a single arbitrator from the Judicial Arbitration Mediation Service (J.A.M.S.) selected in accordance with the Rules of J.A.M.S. then in effect, which arbitration shall be conducted in accordance with such Rules, and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of controversy. Pursuant to the California</p>

	<p>Code of Civil Procedure 1283.1(b), the provisions of CCP § 1283.05 are hereby incorporated into this Agreement and any arbitration proceeding conducted pursuant hereto.</p> <p>In the event of any dispute between the Company and Executive under this term sheet or under the Employment Agreement, the prevailing party in such dispute will be entitled to recover from the other party reasonable attorneys' fees and costs of suit.</p> <p>Effective upon the consummation of the Closing, the terms and conditions of this term sheet will be binding on the Company and Executive and, in the event an Employment Agreement between the parties is not executed and delivered, the terms of this term sheet shall be binding and enforceable at such time.</p>
--	--

Employment Term Sheet
Signature Page

BN 12607642

EXHIBIT "1"

SCHEDULE 2.3

Notice Letter

Dear Customer,

Good News!

Spectre Performance has entered into an agreement to sell its assets and business to K&N Engineering, Inc. [subject to the approval of the Chapter 11 reorganization process].

I'm very excited about this tremendous opportunity to work together with K&N – continuing to manage the Spectre product lines with K&N's support.

Combining the resources, capabilities and infrastructure of K&N with the growth opportunities available to the Spectre brand will be a significant enhancement to Spectre and will allow us to expand our Filtration and Performance business.

Thank You. We Appreciate Your Business!

Press release:

Spectre Performance, Inc. ("Spectre") and K&N Engineering, Inc. ("K&N") have entered into a definitive agreement for K&N to acquire the assets and business of Spectre subject to the approval of the Chapter 11 reorganization process. Spectre CEO, Amir Rosenbaum, will continue to manage the Spectre brand as an employee of K&N. Steven Rogers, CEO of K&N stated that "this is a great opportunity for K&N, to work with Amir and take full advantage of the opportunities available to grow both the K&N and Spectre brands. We believe Amir's industry experience and creative leadership will add a new positive dimension to our business." The companies anticipate a smooth and orderly transition in support of their mutual objective. [INSERT QUOTE from Amir Rosenbaum]. [Insert background information on Spectre and K&N]

SCHEDULE 3.1

Seller Closing Documents

1. Executed Bill of Sale, in the form set forth on Schedule 3.1A (the "Bill of Sale").
2. Executed Assignment and Assumption Agreement, in the form set forth on Schedule 3.1B (the "Assignment and Assumption Agreement").
3. A copy of the Final Court Order approving the sale of the Purchased Assets.
4. Executed Mutual Release in the form set forth on Schedule 1.5 (the "Release").
5. Noncompetition Agreement executed by Amir, Dusanka and The Rosenbaum Living Trust U/D/T April 5, 1994 in the form set forth on Schedule 6.2(d) (the "Noncompetition Agreement").
6. Executed letter(s) to be addressed to customers, creditors, vendors, sales representatives, employees and creditors, in the form set forth on Schedule 2.3 (the "Notification Letter").
7. A dismissal with prejudice, fully executed by Seller, of the Judgment Appeal.
8. Executed employment agreement between Buyer and Amir incorporating the terms set forth on Schedule 1.9.

SCHEDULE 3.1A

Bill of Sale

(See attached)

FORM OF BILL OF SALE

THIS BILL OF SALE (this “Bill of Sale”), dated as of [_____], 2012, is entered into between Spectre Performance, a California corporation (“Seller”), and K&N Engineering, Inc., a California corporation (“Buyer”).

For good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, Seller does give, grant, bargain, sell, transfer, assign, convey and deliver to Buyer, all of the Purchased Assets. All capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the Asset Purchase and Settlement Agreement dated as of November 3, 2012 between, inter alia, Seller and Buyer.

Seller hereby covenants that it will, upon reasonable written request therefor and at Buyer’s sole cost and expense, execute and deliver such other documents; and do such other acts and things, all as Buyer, its nominees, successors and/or assigns may reasonably request in order to fully assign and transfer to and vest in Buyer, its nominees, successors and/or assigns, and protect its or their rights, title and interest in and enjoyment of, all of the assets of such Seller intended to be transferred and assigned hereby.

All references to “Seller” and “Buyer” herein shall be deemed to include their respective designees, nominees, successors and/or assigns, where the context permits.

This Bill of Sale is governed by the laws of the State of California without regard to its conflicts of law principles that would cause the application of the laws of another jurisdiction.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale as of the date first written above.

SELLER:

SPECTRE PERFORMANCE,
a California corporation

By _____
Name: Amir Rosenbaum
Title: President and Chief Executive Officer

BUYER:

[K&N ENGINEERING, INC.],¹
a California corporation

By: _____
Name: Steve Rogers
Title: President and Chief Executive Officer

¹ or its designee

[Signature page to Bill of Sale]

SCHEDULE 3.1B

Assignment and Assumption Agreement

(See attached)

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment and Assumption”) is dated as of [_____], 2012 (the “Closing Date”), by and between Spectre Performance, a California corporation (“Assignor”), and K&N Engineering, Inc., a California corporation (“Assignee”), pursuant to that certain Asset Purchase and Settlement Agreement dated as of November 3, 2012 (the “Purchase Agreement”), by and between, inter alia, Assignor and Assignee pursuant to which Assignor agreed to assign certain assets to Assignee and Assignee agrees to assume certain liabilities as set forth therein. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Purchase Agreement.

Assignor and Assignee hereby agree as follows:

(1) Assignment. Subject to the terms and conditions of the Purchase Agreement, Assignor, for itself and its successors and assigns forever, does hereby, as of the Closing Date, assign, grant, transfer, convey, and set over unto Assignee all of Assignor’s rights, title and interest in and to the Purchased Assets, together with such other rights, causes of action and remedies as may arise by operation of law, in law or equity, in connection with any of such Purchased Assets.

(2) Assumption. Subject to the terms of the Purchase Agreement, Assignee, for itself and its successors and assigns forever, hereby undertakes, assumes the due and punctual performance and observation of, and agrees to perform, pay or discharge and observe when and as due the Assumed Liabilities.

(3) Binding Effect. This Assignment and Assumption shall be binding upon and shall inure to the benefit of the parties thereto and their respective successors and assigns.

(4) Additional Rights and Obligations; Conflicts. Assignor and Assignee hereby agree and acknowledge that this Assignment and Assumption is being entered into pursuant to and subject to the terms and conditions set forth in the Purchase Agreement and that additional rights and obligations of the parties are expressly provided for therein, and that the execution and delivery of this Assignment and Assumption shall not impair or diminish any of the rights or obligations of any of the parties to the Purchase Agreement, as set forth therein. To the extent there is a conflict between the terms and provisions of this Assignment and Assumption and the Purchase Agreement, the terms and provisions of the Purchase Agreement will govern.

(5) Governing Law. This Assignment and Assumption shall be governed by and interpreted in accordance with the laws of the State of California without regard to conflicts-of-laws principles that would cause the application of the laws of another jurisdiction.

(6) Reasonable Efforts; Cooperation. Assignors and Assignee shall take all such necessary actions as may be reasonably requested by any other party, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary, proper or advisable to consummate and make effective as promptly as practicable the provisions contained herein and to cooperate with each other in connection with the foregoing.

(7) Headings. The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Assignment and Assumption.

(8) Amendments. This Assignment and Assumption cannot be amended, supplemented or modified except by an agreement in writing which makes specific reference to this Assignment and Assumption, and which is signed by the party against which enforcement of any such amendment, supplement or modification is sought.

(9) Counterparts. This Assignment and Assumption may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by e-mail in .pdf format shall be treated as if they were originals.

[Signature page follows]

This Assignment and Assumption Agreement is executed as of the date first written above.

ASSIGNOR:

SPECTRE PERFORMANCE

By: _____

Name: Amir Rosenbaum

Title: President and Chief Executive Officer

ASSIGNEE:

[K&N ENGINEERING, INC.]¹

By: _____

Name: Steve Rogers

Title: President and Chief Executive Officer

¹ or its designee

SCHEDULE 3.2

Buyer Closing Documents

1. Executed Bill of Sale.
2. Executed Assignment and Assumption Agreement.
3. Executed Noncompetition Agreement.
4. Executed Release.
5. Executed Notification Letter.
6. A dismissal with prejudice, fully executed by Buyer, of the Action.
7. Executed employment agreement between Buyer and Amir incorporating the terms set forth on Schedule 1.9.

Spectre Performance Disclosure Schedule

This disclosure schedule (the "Schedule") has been prepared in connection with the Asset Purchase and Settlement Agreement dated as of November 3, 2012 (the "Purchase Agreement"), among K&N Engineering, Inc., a California corporation, Spectre Performance, a California corporation as debtor-in-possession ("Seller"), Amir Rosenbaum, Dusanka Rosenbaum, and the Rosenbaum Living Trust U/D/T April 5, 1994, formally known as The Amir and Dusanka Rosenbaum 1994 Revocable Trust. Capitalized terms used in this Schedule and not otherwise defined in the Schedule shall have the meanings assigned to such terms in the Purchase Agreement.

The inclusion of any item in any section of the Schedule shall not be deemed to constitute an admission or indication or otherwise imply that any item so included is material for purposes of the Purchase Agreement. The inclusion of, or reference to, any item in any section of the Schedule that is an exception to any representation and warranty does not constitute an admission or indication that such item meets any or all of the criteria set forth in the Purchase Agreement for inclusion in such section of the Schedule. No disclosure in the Schedule relating to any possible breach or violation of any agreement, law or regulation shall be construed as an admission or indication that any such breach or violation exists or has actually occurred.

Any item that is disclosed in any section of the Schedule with sufficient specificity so that it is apparent on the face of such Schedule that such disclosure is also applicable to one or more other sections of the Schedule shall also be deemed disclosed for purposes of such other parts of the Schedule to which such disclosure is applicable.

Matters reflected in the Schedule are not necessarily limited to matters required by the Purchase Agreement to be reflected in the Schedule. Any such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar nature. In no event shall the listing of any such matters in the Schedule be deemed or interpreted to expand the scope of any representations and warranties contained in the Purchase Agreement. The section headings contained herein are for reference purposes only and do not broaden or otherwise affect any of the provisions of the Purchase Agreement.

All attachments to the Schedule are hereby incorporated by reference into the Schedule section in which they are directly referenced.

Section 4.1(e)

Title to Purchased Assets

The following agreements require the counterparty's prior written consent:

1. Lease Agreement dated October 11, 2011 between Seller and Intech Funding Corp for the lease of 1.1989 Amada FBD-80 Hydraulic Press Brake.
2. MailFinance Lease Agreement dated March 11, 2010 between Hasler and Seller.
3. 2010 – 2012 Hot Rod Magazine Power Tour Official Product Sponsorship Agreement dated December 2010 between Seller and The Promotion Company, as amended by that certain Addendum dated May, 2012.
4. Receivables Purchase Agreement dated as of February 24, 2005 among Seller and JPMorgan Chase Bank, N.A.
5. Supplier Agreement dated as of October 29, 2008 between Seller and Suntrust Bank.
6. Supplier Agreement dated 2009 (month and day blank) between Seller and Wachovia Bank, National Association.
7. Master Lease dated August 12, 2009 between Stratasys Inc. and Seller.
8. License Agreement dated as of December 2009 between Source Interlink Magazines, LLC and Seller.
9. Equipment Lease and Schedule dated November 19, 2009 between Seller and Verizon Credit Inc.
10. Bank of America Supply Chain Agreement.
11. JP Morgan Chase Bank NA Supply Chain Agreement.
12. Intercreditor Agreement dated June 3, 2009 among Seller, Wachovia Bank, National Association, and Comerica Bank regarding receivables of AutoZone Inc.
13. Consent Agreement dated as of November 18, 2008 among Comerica Bank, Seller and SunTrust Bank regarding receivables of AutoZone Inc.

The Purchased Assets are subject to the liens set forth on the UCC lien summary attached hereto.



CORPORATION SERVICE COMPANY

UCC Summary Report

801 Adlai Stevenson Drive
Springfield, IL 62703-4261

Ph: (800) 858-5294
Fx: (800) 345-6059

Order Number: 69937949
Search Date: 9/21/2012
Account Number: 309250

Subject: Spectre Performance
Criteria: Spe Per

Billing Ref: R5609-0002

Total Records Found: 38

Results for California UCC Search By Company Name - Lapsed Current as of: 9/13/2012
Search results in this jurisdiction include UCC records,
Judgment Liens, Federal Tax Liens and State Tax Liens.

GroupID	Filing Number	Category	Filing Date	Exp Date	Debtor Name	Secured Party
0001.001	93116068	UCC1	6/7/1993	6/9/2013	SPECTRE INDUSTRIES INC 193 TOPAZ ST MILPITAS, CA 95035	COMERICA BANK 75 E. TRIMBLE ROAD, MC 4770 SAN JOSE,, CA 95131
		UCC1	6/7/1993	6/9/2013	SPECTRE INDUSTRIES INC 193 TOPAZ ST MILPITAS, CA 95035	COMERICA BANK-CALIFORNIA 333 W SANTA CLARA ST SAN JOSE, CA 95113
		UCC1	6/7/1993	6/9/2013	SPECTRE PERFORMANCE 10560 BLANDOR WAY LOS ALTOS, CA 94024	COMERICA BANK 75 E. TRIMBLE ROAD, MC 4770 SAN JOSE,, CA 95131
		UCC1	6/7/1993	6/9/2013	SPECTRE PERFORMANCE 10560 BLANDOR WAY LOS ALTOS, CA 94024	COMERICA BANK-CALIFORNIA 333 W SANTA CLARA ST SAN JOSE, CA 95113
0001.002	95005C0181	AMD	12/29/1994	6/9/2013		
0001.003	95138C0296	AMD	5/15/1995	6/9/2013		
0001.004	98036C0068	CON	2/3/1998	6/9/2013		
0001.005	02186C0362	AMD	7/3/2002	6/9/2013		
0001.006	02360C0549	CON	12/23/2002	6/9/2013		

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Results for California UCC Search By Company Name - Lapsed

Subject: Spectre Performance
Search Criteria: Spe Per

GroupID	Filing Number	Category	Filing Date	Exp Date	Debtor Name	Secured Party
0001.007	0771071301	AMD	3/21/2007	6/9/2013		
0001.008	0771071303	AMD	3/21/2007	6/9/2013		
0001.009	0771400872	CON	12/13/2007	6/9/2013		
0002.001	057017961288	UCC1	3/4/2005	3/4/2015	SPECTRE INDUSTRIES, INC. 1720 S. CARLOS AVENUE 4TH FLOOR ONTARIO, CA 91761	JPMORGAN CHASE BANK, NATIONAL ASSOCIATION P.O.BOX 2558 1111 FANNIN HOUSTON, TX 77252-2558
		UCC1	3/4/2005	3/4/2015	SPECTRE PERFORMANCE 1720 S. CARLOS AVENUE 4TH FLOOR ONTARIO, CA 91761	JPMORGAN CHASE BANK, NATIONAL ASSOCIATION P.O.BOX 2558 1111 FANNIN HOUSTON, TX 77252-2558
0002.002	0771354077	AMD	11/2/2007	3/4/2015		
0002.003	0871761513	AMD	10/23/2008	3/4/2015		
0002.004	0972079250	CON	9/10/2009	3/4/2015		
0003.001	087165310445	UCC1	7/16/2008	7/16/2013	SPECTRE PERFORMANCE 1720 S. CARLOS AVENUE ONTARIO, CA 91761	JPMORGAN CHASE BANK, N.A. 300 S. RIVERSIDE PLAZA MAILCODE IL1-0199 CHICAGO, IL 60670-0199
0003.002	0972162220	TRM	12/7/2009	7/16/2013		
0004.001	087170684081	UCC1	9/3/2008	9/3/2013	SPECTRE PERFORMANCE 1720 SOUTH CARLOS AVENUE ONTARIO, CA 91761	COMERICA BANK 75 E. TRIMBLE ROAD, MAIL CODE 4770 SAN JOSE, CA 95131
0004.002	1072382831	AMD	7/14/2010	9/3/2013		
0004.003	1172590432	COR	1/24/2011	9/3/2013		
0005.001	087176897073	UCC1	10/29/2008	10/29/2013	SPECTRE PERFORMANCE 1720 SOUTH CARLOS AVENUE ONTARIO, CA 91761	SUNTRUST BANK 303 PEACHTREE STREET NE MC GA-ATL-0128 ATLANTA, GA 30308
0006.001	087178683159	UCC1	11/10/2008	11/10/2013	SPECTRE PERFORMANCE 1720 S. CARLOS AVE. ONTARIO, CA 91761	STRATASYS, INC. 7665 COMMERCE WAY EDEN PRAIRIE, MN 55344
0006.002	0972074580	TRM	9/2/2009	11/10/2013		
0007.001	087179165963	UCC1	11/18/2008	11/18/2013	SPECTRE PERFORMANCE 1720 S. CARLOS AVENUE ONTARIO, CA 91761	ORBAN FINANCIAL SERVICES II, LLC 200 CONNECTICUT AVENUE NORWALK, CT 06854
0007.002	0971982393	TRM	6/2/2009	11/18/2013		
0008.001	087179693575	UCC1	11/24/2008	11/24/2013	SPECTRE PERFORMANCE 1720 S. CARLOS AVENUE ONTARIO, CA 91761	ORBAN FINANCIAL SERVICES II, LLC 200 CONNECTICUT AVENUE NORWALK, CT 06854
0009.001	097205141110	UCC1	8/7/2009	8/7/2014	SPECTRE PERFORMANCE 1720 SOUTH CARLOS AVENUE ONTARIO, CA 91761	WACHOVIA BANK, NATIONAL ASSOCIATION 301 SOUTH COLLEGE ST.-9TH FL. -MAIL CODE NC0748 CHARLOTTE, NC 28202

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Results for California UCC Search By Company Name - Lapsed

Subject: Spectre Performance
Search Criteria: Spe Per

GroupID	Filing Number	Category	Filing Date	Exp Date	Debtor Name	Secured Party
0010.001	097205226497	UCC1	8/11/2009	8/11/2014	SPECTRE PERFORMANCE 1720 S CARLOS AVE ONTARIO, CA 91761	BANK OF AMERICA, NA 70 BATTERSON PARK RD FARMINGTON, CT 06032
0010.002	1172616224	AMD	2/24/2011	8/11/2014		
0011.001	097207299267	UCC1	9/1/2009	9/1/2014	SPECTRE PERFORMANCE 1720 S. CARLOS AVENUE ONTARIO, CA 91761	STRATASYS, INC. 7665 COMMERCE WAY EDEN PRAIRIE, MN 55344
0012.001	107233923333	UCC1	6/4/2010	6/4/2015	SPECTRE PERFORMANCE 1720 S. CARLOS AVE. ONTARIO, CA 91761	BANK OF AMERICA, N.A. 101 N. TRYON ST. ONE INDEPENDENCE CENTER CHARLOTTE, NC 28255-0001
0013.001	117282068065	UCC1	8/24/2011	8/24/2016	SPECTRE PERFORMANCE 10560 BLANDOR WAY LOS ALTOS, CA 94024	MANHEIM AUTOMOTIVE FINANCIAL SERVICES, INC. 6205 PEACHTREE DUNWOODY ROAD ATLANTA, GA 30328
0013.002	1172911806	TRM	11/16/2011	8/24/2016		
0014.001	117287734272	UCC1	10/13/2011	10/13/2016	SPECTRE PERFORMANCE 1720 S. CARLOS AVE. ONTARIO, CA 91761	INTECH FUNDING CORP. 1310 MADRID ST, STE 101 MARSHALL, MN 56258
0015.001	117288422348	UCC1	10/19/2011	10/19/2016	SPECTRE PERFORMANCE 1720 S CARLOS AVE ONTARIO, CA 91761	U.S. BANCORP EQUIPMENT FINANCE, INC. 1310 MADRID STREET, SUITE 106 MARSHALL, MN 56258
0016.001	117295283280	JGL	12/27/2011	12/27/2016	SPECTRE PERFORMANCE, A CALIFORNIA CORPORATION 1720 SOUTH CARLOS AVENUE ONTARIO, CA 91761	K&N ENGINEERING, INC., A CALIFORNIA CORPORATION 1455 CITRUS STREET RIVERSIDE, CA 92507

End of Report

Section 4.1(g)

Litigation

1. The Action; and
2. In a mediation with Buyer, Buyer stated that it was communicating with third parties with respect to a class action lawsuit against Seller. The identity of such third parties and the alleged basis of any such claim is unknown to Seller.

Section 4.1(h)

Cure Costs

None.

SCHEDULE 6.2(d)

NON COMPETE AGREEMENT

(See attached)

NONCOMPETITION AGREEMENT

THIS NONCOMPETITION AGREEMENT (this “Agreement”) is made and entered into as of November 3rd, 2012, by and between K&N Engineering, Inc., a California corporation (the “Company”), Amir Rosenbaum, an individual (“Amir Rosenbaum”), Dusanka Rosenbaum, an individual (“Dusanka Rosenbaum”), and The Rosenbaum Living Trust U/D/T April 5, 1994 (f/k/a The Amir and Dusanka Rosenbaum 1994 Revocable Trust) (the “Trust”). Each of Amir Rosenbaum, Dusanka Rosenbaum and the Trust is referred to herein individually as a “Rosenbaum Party” and collectively as the “Rosenbaum Parties”. Capitalized terms used herein without definition shall have the respective meanings ascribed to such terms in the Purchase Agreement (as defined below).

WHEREAS, Spectre Performance (“Spectre”) is in the business of developing, manufacturing, distributing, marketing and selling of (i) washable/reusable automotive air filters for cars, trucks and sports utility vehicles, modular air intake kits, air delivery intake systems for cars and light trucks, open element engine breather products, air filter cleaners, air filter oil, air filter recharging products and/or kits, air filter service treatments, and all related or connected parts, components and sub-assemblies necessary for the operation of the foregoing (collectively, the “Air Filtration Business”), and (ii) engine components and accessories, valve covers, valve cover accessories, oil and transmission pans and dip sticks, pulleys, brackets, fasteners, gaskets, springs, shrouds, supports, latches, panels, covers, cables, braided and corrugated hoses, hose sleeving, hose end fittings, adapters, panels, hold-downs, caps, tabs, bars, shields, looms, tanks, battery boxes, wings, spoilers, door panels and armrests, shifters, shift boots, throttle body spacers, water necks, fuel: lines, filters, regulators, pumps, and pressure gauges, block off plates, air fresheners, badges, decals, hood pins, exhaust tips, exhaust adapters, hitch covers, pipe plugs, wire covers, engine hoist plates (collectively, the “Chrome Business”, together with the Air Filtration Business, the “Restricted Business”);

WHEREAS, the Company has agreed to acquire substantially all of the assets of Spectre (the “Acquired Business”), subject to the terms and conditions set forth in that certain Asset Purchase and Settlement Agreement, dated as of the date hereof (the “Purchase Agreement”), by and among the Company, Spectre, and the Rosenbaum Parties for the consideration specified therein and the execution and delivery of the Release Agreement referred to therein (together with the other transactions contemplated by the Purchase Agreement, the “Transactions”);

WHEREAS, each Rosenbaum Party understands and agrees that the transactions contemplated by the Purchase Agreement will result in an immediate and direct benefit to such Rosenbaum Party;

WHEREAS, each Rosenbaum Party acknowledges and agrees that if the knowledge and proprietary information regarding the Restricted Business possessed by such Rosenbaum Party were disclosed or made available to the Company’s competitors or used for such Rosenbaum Party’s own account, the Company would suffer severe adverse effects;

WHEREAS, in order to induce the Company to consummate the transactions contemplated by the Purchase Agreement, each Rosenbaum Party is executing and delivering this Agreement for the purpose of preserving for the Company the benefit of the goodwill and

business opportunities of the Acquired Business;

WHEREAS, this Agreement shall automatically and immediately become effective on, and not before, the date that is the closing date of the transactions contemplated by the Purchase Agreement (such date, the "Effective Date"), provided that the One Million Four Hundred Thousand Dollars (\$1,400,000) with respect to the Air Filtration Business and the Six Hundred Thousand Dollars (\$600,000) with respect to the Chrome Business, to be paid by the Company pursuant to Section 1 below, is paid to Buchalter Nemer ("Buchalter"), on behalf of the Rosenbaum Parties, to an account specified in writing by Buchalter no later than two (2) Business Days prior to the Effective Date, it being agreed that if the Purchase Agreement is terminated or the transactions pursuant thereto are not consummated for any reason, this Agreement shall not become effective, shall have no force or effect, and shall be null and void; and

WHEREAS, it is acknowledged and agreed that the Company would not consummate the transactions contemplated by the Purchase Agreement absent each Rosenbaum Party's execution and delivery of this Agreement, and this Agreement being in full force and effect and valid, binding and enforceable against each Rosenbaum Party as of the Effective Date and thereafter.

NOW, THEREFORE, the parties hereto agree as follows:

1. Non-Competition. In order to protect the value of the Acquired Business, and in consideration for an aggregate payment of (a) One Million Four Hundred Thousand Dollars (\$1,400,000) in consideration of the non-competition covenants herein with respect to the Air Filtration Business, and (b) Six Hundred Thousand Dollars (\$600,000) in consideration of the non-competition covenants herein with respect to the Chrome Business, to Buchalter, on behalf of the Rosenbaum Parties, to be paid in immediately available funds (which shall be made by or on behalf of the Company on the Effective Date to such account as is designated in writing by Buchalter to the Company no later than two (2) Business Days prior to the Effective Date) and the other benefits to the Rosenbaum Parties resulting from the transactions contemplated by the Purchase Agreement, for a period of four (4) years from the Effective Date (the "Non-Competition Period"), no Rosenbaum Party shall, anywhere in the United States of America develop, manufacture, distribute, market, sell or source products or accessories, or provide any services related thereto, either directly for himself or herself, or indirectly through another Person, own, operate, manage, control, engage in, participate in, invest in, permit his, her or its name to be used by, act as consultant or advisor to, render services for (alone or in association with any Person) or otherwise assist in any manner, with respect to any Restricted Business. Nothing herein shall prohibit a Rosenbaum Party from being a passive owner of not more than two percent (2%) of the outstanding stock of any class of securities of a publicly-traded corporation engaged in a Restricted Business, so long as such Rosenbaum Party has no participation in the business of such corporation other than the passive ownership of such stock.

2. Material Employee and Customer Non-Solicit. During the Non-Competition Period, no Rosenbaum Party shall either directly for himself or herself or indirectly through another Person (i) hire or induce or attempt to induce or encourage any Material Employee of the Company to leave the employ of the Company, as applicable, or in any way interfere with the relationship between the Company, on the one hand, and any Material Employee thereof, on the

other, or (ii) induce any such customer, supplier, licensee, licensor, franchisee or other business relation to cease doing business, or materially reduce the amount of business such Person does, with the Company. For purposes of this Agreement, “Material Employee” shall mean any Company employee who is (a) a member of senior management, (b) substantially and/or significantly involved in the design and/or creation of Buyer’s products, (c) a senior sales representative, and/or (d) an individual whose departure from the Company would reasonably be expected to result in a material adverse effect to the Company.

3. Intentionally Omitted.

4. Reformation. If, at the time of enforcement of this Agreement, a court shall hold that the duration, scope, geographic area or other restrictions stated herein are unreasonable under circumstances then existing, the parties agree that the maximum duration, scope, geographic area or other restrictions deemed reasonable under such circumstances by such court shall be substituted for the stated duration, scope, geographic area or other restrictions.

5. Confidentiality. Each Rosenbaum Party shall hold in confidence all knowledge and information of a secret or confidential nature with respect to the Company and the Acquired Business and shall not disclose, publish or make use of the same without the written consent of the Company, except to the extent that such information (i) shall have become public knowledge other than by breach of this Agreement by a Rosenbaum Party, including without limitation information that is generally known and not considered confidential in the industry, (ii) is also the knowledge and information of a secret or confidential nature with respect to any business that is not the Company, Acquired Business or any Restricted Business, and/or (iii) is disclosed by a Rosenbaum Party to his/her/its attorneys, accountants, financial advisors, experts and consultants (who are bound to hold such information in confidence). If a Rosenbaum Party is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any such information, such Rosenbaum Party shall, to the extent permitted by applicable law, notify the Company promptly of the request or requirement so that the Company may seek an appropriate protective order or waive compliance with the provisions of this paragraph 5; provided that no Rosenbaum Party shall be required to file any objection thereto but shall reasonably cooperate with the Company if the Company determines to seek in good faith such a protective order and, if a Rosenbaum Party agrees to file such an objection, it shall be filed at the sole cost and expense of the Company including any attorneys’ fees and costs awarded against a Rosenbaum Party in connection therewith. If, in the absence of a protective order or the receipt of a waiver hereunder, a Rosenbaum Party is compelled to disclose any such information, such Rosenbaum Party may disclose such information to the extent required. Each Rosenbaum Party agrees that the remedy at law for any breach of this paragraph 5 would be inadequate and that the Company shall be entitled to injunctive relief in addition to any other remedy it may have upon breach of any provision of this paragraph 5.

6. Representations and Warranties. Each Rosenbaum Party hereby represents and warrants to the Company the following:

(a) such Rosenbaum Party has the requisite power and authority and has full legal capacity necessary to execute, deliver and perform such Rosenbaum Party's obligations under this Agreement and to consummate the transactions contemplated hereby;

(b) such Rosenbaum Party has had an opportunity to ask questions and receive answers concerning the terms and conditions of this Agreement and has had full access to such other information concerning the Company as such Rosenbaum Party has requested;

(c) this Agreement has been duly and validly executed and delivered to the Company by such Rosenbaum Party, and constitutes a valid and binding obligation of such Rosenbaum Party, enforceable against such Rosenbaum Party in accordance with its terms;

(d) such Rosenbaum Party acknowledges that the geographical restriction contained in paragraph 1 is reasonable in all respects and necessary to protect the goodwill of the businesses of the Company and its Subsidiaries and Affiliates and that, without such protection, the Company's and each of its Subsidiaries' and Affiliates' customer, distributor and supplier relations and competitive advantage would be adversely affected; and

(e) such Rosenbaum Party has consulted with independent legal counsel regarding such Rosenbaum Party's rights and obligations under this Agreement and that such Rosenbaum Party fully understands the terms and conditions contained herein and that such Rosenbaum Party knowingly and voluntarily entered into this Agreement.

7. Notices. All notices, demands and other communications to be given or delivered to the Company or a Rosenbaum Party under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given when personally delivered, sent by reputable overnight courier, to the addresses indicated below (unless another address is so specified in writing):

Notice to the Rosenbaum Parties:

c/o Amir Rosenbaum
10560 Blandor Way
Los Altos Hills, CA 94024

with a copy to (which shall not constitute notice):

Buchalter Nemer
55 Second Street, Suite 1700
San Francisco, CA 94105-3493
Attention: Peter Bertrand, Esq.
Facsimile: (415) 227-3513

Notice to the Company:

c/o K & N Engineering, Inc.
1455 Citrus St.
Riverside, CA 92507
Attention: Steven J. Rogers

with copies to:

c/o Gryphon Investors
One Market Plaza
Steuart Tower, 24th Floor
San Francisco, California 94105
Attention: R. David Andrews; Keith Stimson

and to:

Kirkland & Ellis LLP
555 California Street, 27th Floor
San Francisco, California 94104
Attention: David A. Breach

8. Severability. If any term or provision of this Agreement shall, in any jurisdiction, be invalid or unenforceable, such term or provision shall be ineffective as to such jurisdiction to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable such term or provision in any other jurisdiction, or affecting any other provision of this Agreement. Upon such determination that any term or other provision is invalid or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

9. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. Facsimile signatures or signatures sent by e-mail in .pdf format shall be treated as if they were originals.

10. Successors and Assigns; Parties in Interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. The Company may assign this Agreement, or its rights, obligations and duties hereunder, to an Affiliate thereof or to a successor in interest of the Company as a result of a merger or consolidation of the Company or the sale of all or substantially all of the assets of the Company. No Rosenbaum Party may assign such Rosenbaum Party's obligations hereunder.

11. Choice of Law and Forum for Disputes. This Agreement shall be construed and enforced in accordance with the laws of the State of California, notwithstanding any state's choice-of-law rules to the contrary. Each of the undersigned agrees that any legal action relating

to this Agreement, including any action for equitable relief such as injunctions, shall be commenced and maintained exclusively before the Honorable Scott C. Clarkson, the Federal Bankruptcy Court Judge for the United States Bankruptcy Court of the Central District of California located in Santa Ana, California. If Judge Clarkson is unavailable, such legal action shall be settled on an expedited basis by binding arbitration in either Los Angeles or San Francisco County, California, before a single arbitrator mutually agreeable to the parties, and if no agreement is reached, before a single arbitrator from the Judicial Arbitration Mediation Service (J.A.M.S.) selected in accordance with the Rules of J.A.M.S. then in effect, which arbitration shall be conducted in accordance with such Rules, and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of controversy. Pursuant to the California Code of Civil Procedure 1283.1(b), the provisions of CCP § 1283.05 are hereby incorporated into this Agreement and any arbitration proceeding conducted pursuant hereto.

12. Amendment and Waiver. Any waiver of any term or condition of this Agreement, or any amendment or supplementation of this Agreement, shall be effective only if in writing and signed by the parties hereto. A waiver of any breach or failure to enforce any of the terms or conditions of this Agreement shall not in any way affect, limit or waive a party's rights hereunder at any time to enforce strict compliance thereafter with every term or condition of this Agreement.

13. Attorneys' Fees. In the event that any dispute between the parties hereto should result in legal action, the prevailing party in such dispute will be entitled to recover from the other party reasonable attorneys' fees and costs of suit, including any fees and costs incurred in preparation of such suit.

14. Enforcement of Covenants. Each Rosenbaum Party recognizes and affirms that in the event of breach by such Rosenbaum Party of any of the provisions of this Agreement, money damages would be inadequate and the Company would have no adequate remedy at law. Accordingly, each Rosenbaum Party agrees that the Company shall have the right, in addition to any other rights and remedies existing in its favor, to enforce its rights and each of such Rosenbaum Party's obligations under this Agreement not only by an action or actions for damages, but also by an action or actions for specific performance, injunctive and/or other equitable relief (without posting a bond or other security) in order to enforce or prevent any violations (whether anticipatory, continuing or future) of the provisions of this Agreement (including, without limitation, the extension of the Non-Competition Period by a period equal to (i) the length of the violation of paragraph 1 or 2 (as applicable) of this Agreement plus (ii) the length of any proceedings necessary to stop such violation). In the event of a breach or violation by a Rosenbaum Party of any of the provisions of paragraph 1 or 2 of this Agreement, the running of the Non-Competition Period with respect to paragraph 1 or 2 (as applicable) (but not of any Rosenbaum Party's obligations under paragraph 1 of this Agreement) shall be tolled during the continuance of any actual breach or violation.

15. Recitals. The recitals to this Agreement are an integral part of this Agreement and shall be deemed to be part of the text of this Agreement as if fully set forth herein.

* * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Noncompetition Agreement as of the date first written above.

K&N ENGINEERING, INC.

By: _____

Name: Steve Rogers

Title: President and Chief Executive Officer

AMIR ROSENBAUM

DUSANKA ROSENBAUM

**THE ROSENBAUM LIVING TRUST
U/D/T APRIL 5, 1994**

By: _____

Name: Amir Rosenbaum

Its: Trustee

By: _____

Name: Dusanka Rosenbaum

Its: Trustee

SCHEDULE 9.1

Sale Motion and Sale Approval Order

(See attached)

SCHEDULE 11.5(c)

Reporting Requirements

Historical Information one time only:

1. Monthly gross sales report by customer for calendar year 2011 and YTD 2012.
2. Key vendor contact info, existing contracts to the extent they exist together with summary of any material disputes between Seller and Vendor.
3. List of current purchase orders outstanding in excess of \$10,000.
4. Listing of Patents, trademarks, and licenses of Seller.

Information as of October 31, 2012 and between execution and closing:

1. Monthly operating reports filed in the bankruptcy.
2. Seller Dashboard Report for top four (4) customers and combined category for all other customers.
3. Weekly Credit Memo Report commencing on November 9, 2012.
4. Weekly Purchasing Order Summary by vendor (commencing November 9, 2012).
5. Redacted summary A/R aging by invoice date.
6. Redacted inventory listing of all finished goods, raw materials and component inventory by SKU and quantity.
7. Monthly trial balances for calendar year 2011 and 2012 YTD, updated at each month end.
8. Monthly vendor purchase history for calendar year 2011 and YTD 2012, updating at each month end.

EXHIBIT “2”

1 Leonard M. Shulman - Bar No. 126349
Mark Bradshaw - Bar No. 192540
2 Robert E. Huttenhoff (Bar No. 21447)
SHULMAN HODGES & BASTIAN LLP
3 8105 Irvine Center Drive, Suite 600
Irvine, California
4 Telephone: (949) 340-3400
Facsimile: (949) 340-3000
5 Email: Ishulman@shbllp.com; mbradshaw@shbllp.com;
rhuttenhoff@shbllp.com
6

7 Attorneys for Spectre Performance, a
California corporation, the Debtor and Debtor in Possession
8

9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION**
11

12 In re
13 **SPECTRE PERFORMANCE, a**
14 **California corporation, fka SPECTRE**
INDUSTRIES, INC.,
15 Debtor.
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Case No. 6:12-BK-21890-MH

Chapter 11

ORDER

**(1) APPROVING THE SALE OF ASSETS
TO K&N ENGINEERING, INC.,
PURSUANT TO BANKRUPTCY CODE
SECTION 363(b)(1), AND BIDDING
PROCEDURES UTILIZED;**

**(2) APPROVING THE ASSUMPTION
AND ASSIGNMENT OF THE ASSUMED
CONTRACTS;**

**(3) APPROVING SETTLEMENT AND
COMPROMISE OF DISPUTES WITH
K&N ENGINEERING, INC. UNDER
RULE 9019;**

**(4) APPROVING THE ANCILLARY
AGREEMENT BETWEEN THE
DEBTOR AND K&N ENGINEERING,
INC.; AND**

(5) GRANTING RELATED RELIEF

Date: December 18, 2012

Time: 2:00 p.m.

Ctrm.: 303

3420 Twelfth Street

Riverside, California

The Motion for Order: (1) Approving the Sale of Assets to K&N Engineering, Inc., Pursuant to Bankruptcy Code Section 363(b)(1), Subject to Overbids, Combined With Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; (2) Approving Assumption and Assignment of Assumed Contracts and the Designation Rights Contracts (to the extent any such Designation Rights Contracts become Assumed Contracts) Pursuant to Bankruptcy Code Section 365; (3) Approving Settlement and Compromise of Disputes With K&N Engineering, Inc. Under Rule 9019; (4) Approving the Ancillary Agreement Between the Debtor and K&N Engineering, Inc.; and (5) Granting Related Relief (“Motion”) (docket number ****) filed by Spectre Performance, a California corporation, the debtor and debtor in possession herein (“Debtor”) was heard on December 18, 2012, before the Honorable Mark D. Houle, United States Bankruptcy Judge.

All Capitalized Terms not otherwise defined herein or otherwise modified herein shall have the same meaning as those ascribed in the Motion.

NOW, THEREFORE, after due deliberation and consideration of all admissible evidence, and oral argument on behalf of the Debtor, the Purchaser, the Creditors Committee and such other appearances on behalf of Creditors noted on the record, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:¹

A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334.

B. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Determination of the Motion is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (M), (N), and (O). The statutory predicates for the relief requested in the Motion are sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006

¹ When appropriate herein, findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact. See Bankruptcy Rule 7052.

1 and 9014.

2 D. Proper, timely, adequate, and sufficient notice of the Motion, the hearing to
3 approve the sale of certain assets of the Debtor (the "Purchased Assets"), in accordance with that
4 certain Asset Purchase Agreement ("Agreement") attached as Exhibit 1 to the Rosenbaum
5 Declaration annexed to the Motion, and of the proposed relief otherwise described in the Motion,
6 was given by the Debtor and such notice was reasonable and appropriate under the circumstances
7 and comports in all regards with the requirements of due process, section 102(1) of the
8 Bankruptcy Code, and Bankruptcy Rules 2002, 6004, 9006 and 9007, and no other or further
9 notice is required.

10 E. The Purchased Assets constitute property of the Debtor's estate and title thereto is
11 vested in the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code. The
12 Debtor has taken commercially reasonable steps to communicate to the applicable market that the
13 Purchased Assets were available for sale and to facilitate and encourage commercially reasonable
14 expressions of interest in the Purchased Assets. As a consequence, the Debtor adequately
15 marketed the Purchased Assets and the sale process and Bidding Procedures implemented by the
16 Debtor was fair and reasonable under the circumstances..

17 F. The Debtor has approved the sale of the Purchased Assets pursuant to the
18 Agreement and the assumption of the Assumed Liabilities, each as defined in the Agreement to
19 K&N Engineering, Inc. ("K&N") ("Purchaser") on the terms and conditions as set forth in the
20 Agreement.

21 G. A reasonable opportunity to object or be heard regarding the relief requested in the
22 Motion has been afforded to all interested persons and entities.

23 H. The Cure Notices have been provided to all of the non-Debtor counterparties (the
24 "Contract Parties") to the Contracts and Leases identified on the list filed by the Debtors on
25 *****, 2012 [Dkt No. ***], all in accordance with the Bidding Procedures and subject to
26 Purchaser's right to supplement or further designate the schedule of Contracts and Leases to be
27 assumed and assigned to the Purchaser under the Agreement.

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1 I. The Debtor has all requisite corporate power and authority necessary to enter into
2 the Agreement and all other documents contemplated thereby, and the transactions provided for
3 in the Agreement have been duly and validly authorized by all necessary corporate action of the
4 Debtor. The Debtor has all the corporate power and authority necessary to consummate the
5 transactions contemplated by the Agreement and no consents or approvals other than those
6 expressly provided for in the Agreement are required for the Debtor to consummate such
7 transaction.

8 J. The execution and delivery of the Agreement by the Debtor, and the
9 consummation of the transactions contemplated thereby, including the provisions thereof with
10 respect to the conveyance and assignment of the Purchased Assets free and clear of Interests (as
11 defined below in Paragraph 4), reflect the exercise of sound business judgment by the Debtor, is a
12 proper exercise of its fiduciary duties, is fair and reasonable, and is in the best interests of the
13 Debtor, its creditors, and its estate. The total consideration to be realized by the Debtor under the
14 Agreement represents fair consideration and reasonably equivalent value in the context of any
15 state or federal law governing the rights of creditors. As a result, there exists good and sufficient
16 business justification to consummate the transactions contemplated by the Agreement pursuant to
17 sections 105, 363, and 365 of the Bankruptcy Code.

18 K. The transactions contemplated under the Agreement pursuant to section 363 of the
19 Bankruptcy Code are exempt from the purview of all state laws protecting the rights of creditors,
20 including, without limitation, state fraudulent transfer, fraudulent conveyance, preference, and
21 bulk sale laws. The conveyance and assignment of the Purchased Assets pursuant to the
22 Agreement will be a legal, valid, and effective transfer of the Purchased Assets to the Purchaser,
23 and will vest the Purchaser with all right, title and interest of the Debtor in and to the Purchased
24 Assets free and clear of all Interests. Sale of the Purchased Assets free and clear of all Interests is
25 appropriate under section 363(f) in that (a) the holders of Interests have consented (or by their
26 failure to object to the sale are deemed to have consented) to the transfer of the Purchased Assets
27 free and clear of their respective prepetition and postpetition Interests pursuant to section
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1 363(f)(2) of the Bankruptcy Code; and/or (b) such holder of a Lien could be compelled, in a legal
2 or equitable proceeding, to accept a money satisfaction of such interest and such alleged Lien will
3 attach to the proceeds of the sale of the Purchased Assets in the same right, validity and priority
4 as existed prior to the sale, thereby allowing the Purchased Assets to be sold free and clear of
5 such Lien pursuant to section 363(f)(5). As a result, all holders of any Lien shall be forever
6 barred from asserting their Lien against the Purchaser, its nominees, designees, successors and
7 assigns, and the Purchased Assets.

8 L. By consummating the sale contemplated by the Agreement, the Purchaser is not a
9 mere continuation of the Debtor or its estates and there is no continuity between the Purchaser
10 and the Debtor. The Purchaser is not holding itself out to the public as a continuation of the
11 Debtor. The Purchaser is not a successor to the Debtor or its estates and the transactions do not
12 amount to a consolidation, merger or de facto merger of the Purchaser and the Debtor.

13 M. The Purchaser has not agreed to assume and shall have no obligations with respect
14 to any liabilities of the Debtor or its subsidiaries or Affiliates other than the Assumed Liabilities
15 expressly set forth in the Agreement, and the Debtors hereby release and forever discharge the
16 Purchaser and its successors and assigns as set forth more particularly in the Release Agreement
17 executed as part of the Sale approved herein.

18 N. Except for the Assumed Liabilities, neither the transfer of the Purchased Assets
19 nor the contemplated assumption and assignment of the Assumed Liabilities, will subject the
20 Purchaser or the Purchased Assets to any debt, liability, obligation, commitment, responsibility or
21 claim whatsoever with respect to the ownership of the Purchased Assets, on or prior to the
22 Closing Date to the fullest extent allowed under applicable law, including, without limitation, any
23 Lien that any creditor, vendor, supplier, employee, lessor, customer, governmental agency or any
24 other third party has or may have against the Debtor or the Purchased Assets, or other liability,
25 incurred by the Debtor prior to the Closing Date, including, without limitation for any matter
26 relating to the Purchased Assets or the purchase of the Purchased Assets and the contemplated
27 assumption and assignment of the Assumed Liabilities under the laws of the United States, any
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1 state, territory or possession thereof, or the District of Columbia based, in whole or in part,
2 directly or indirectly, on any theory of law or equity, including without limitation, any theory of
3 merger, continuation of the Debtor or its business, or successor or transferee liability (including,
4 but not limited to, claims arising in or under ERISA, the WARN Act, OSHA, CERCLA, RCRA,
5 NLRA or any other environmental statute or regulation, employment-related claims, payroll
6 taxes, employee contracts, tax claims or environmental liability claims). Except for the Assumed
7 Liabilities, under no circumstance will the Purchaser be deemed a successor of or to the Debtor or
8 merged with or into the Debtor, with respect to any Interests (including claims of successor
9 liability, whether under the product line theory or otherwise, or transferee liability) against the
10 Debtor or the Purchased Assets and the Purchaser shall have no liability as a successor or
11 transferee of the Debtor.

12 O. The failure to sell the Purchased Assets free and clear of Interests would impact
13 adversely on the bankruptcy estate of the Debtor. Any attempt to sell the Purchased Assets other
14 than free and clear of Interests would be of substantially less benefit to the Debtor's estate.

15 P. Adequate assurance exists that the Purchaser will fully perform all future
16 obligations under the Assumed Liabilities being assumed and assigned to the Purchaser.

17 Q. The Agreement was negotiated, proposed, and entered into by the parties without
18 collusion, in good faith, and from arm's-length bargaining positions. The Purchaser is not an
19 "insider" of the Debtor within the meaning of section 101(31) of the Bankruptcy Code, and
20 Purchaser is unrelated to the Debtor in that there is no substantial similarity between or among the
21 ultimate shareholders of the Debtor and the Purchaser. As a result, upon consummation of the
22 transactions contemplated by the Agreement, the Purchaser will be a purchaser in "good faith"
23 within the meaning of section 363(m) of the Bankruptcy Code, and, as such, is entitled to the
24 protections afforded thereby. Neither the Debtor nor the Purchaser has engaged in any conduct
25 that would cause or permit the Agreement, or the transfers contemplated thereby, to be avoided
26 under Bankruptcy Code section 363(n). If the Debtor consummates the transactions contemplated
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1 by the Agreement absent a stay pending appeal of this Order, the reversal or modification on
2 appeal of this Order shall not affect the validity of the contemplated transactions.

3 R. The Purchaser asserts that it holds an allowed secured claim in the aggregate
4 amount of not less than \$9.53 million, and further asserts that its claim is not subject to
5 avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy
6 Code or applicable non-bankruptcy law, plus such additional amounts, all to the extent allowed
7 under, and pursuant to (a) that certain Amended and Final Judgment and Permanent Injunction,
8 entered by the United States District Court Central District of California, Eastern Division
9 (“District Court”), Riverside Case No. 5:09-cv-01900-VAP-DTB on June 4, 2012; (b) that certain
10 notice of judgment lien, filed with the California Secretary of State on December 27, 2011; and
11 (c) that certain ORAP Lien (the “K&N Secured Claim”). Purchaser further asserts that on
12 account of the K&N Claim Purchaser is a secured creditor of the Debtor, holding valid, binding,
13 enforceable and perfected security interests in, on and against the Debtor, their estates and
14 property of the estates and that Purchaser has exercised a valid credit bid of such K&N Claim
15 under section 363(k) of the Bankruptcy Code in connection with the Sale.

16 S. In accordance with section 365 of the Bankruptcy Code, including sections
17 365(b)(1) and 365(f)(2), the Debtor has provided evidence of the Purchaser’s wherewithal,
18 financial and otherwise, to perform all of its obligations under the Agreement and the Purchaser
19 has provided adequate assurance of future performance to the non-debtor counterparties to the
20 Assumed Contracts to be assumed by the Debtor and assigned to the Purchaser under the
21 Agreement.

22 T. All objections to the approval of the Agreement, or to the transactions
23 contemplated thereby, have been overruled.

24 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED**
25 **AS FOLLOWS**

26 1. The Motion is granted.
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1 2. The terms and conditions of, and the transactions contemplated by, the Agreement
2 between the Debtor and the Purchaser are hereby authorized and approved in all respects; and,
3 pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Debtor hereby is fully
4 authorized and empowered to (a) execute, deliver, perform under, consummate, and implement
5 the Agreement, (b) execute all additional instruments and documents that may be reasonably
6 necessary or desirable to implement the Agreement and the transactions contemplated thereby, (c)
7 take all further actions as may be necessary or appropriate for the purpose of assigning,
8 transferring, granting or conveying its interest in the Purchased Assets to the Purchaser, and
9 assuming and assigning the Assumed Contract, all as contemplated by the Agreement, and (d)
10 take such other and further steps as are contemplated thereby to fulfill their obligations thereunder
11 or as may be necessary to effectuate the terms of this Order.

12 3. The purchase by and sale to Purchaser of the Purchased Assets, the assumption by
13 and assignment to Purchaser of the Assigned Contracts, and the assumption by Purchaser of the
14 Assumed Liabilities, in each case in accordance with the terms and conditions of the Agreement
15 are hereby authorized and approved.

16 4. Pursuant to sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy
17 Code, and Bankruptcy Rule 6004, upon the closing of the Agreement, the Purchased Assets shall
18 be sold, transferred, and assigned to the Purchaser free and clear of all liens (including Liens as
19 that term is defined in the Agreement and including, without limitation, mechanics',
20 materialmen's and other consensual and non-consensual liens and statutory liens), claims (as that
21 term is defined in the Bankruptcy Code), encumbrances, interests, causes of action and liabilities
22 (including Excluded Liabilities (as defined in the Agreement), including, without limitation,
23 mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments,
24 collective bargaining agreements, leases, licenses, options, deeds of trust, security interests, other
25 interests, conditional sale or other title retention agreements, pledges, judgments, demands, rights
26 of first refusal, offsets, contracts, recoupment, rights of recovery, claims for reimbursement,
27 contribution, indemnity, exoneration, products liability, alter-ego, environmental, or tax, decrees
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1 of any court or foreign or domestic governmental entity, or charges of any kind or nature, if any,
2 including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other
3 exercise of any attributes of ownership, debts arising in any way in connection with any
4 agreements, acts, or failures to act, including, but not limited to, any pension liabilities, retiree
5 medical benefit liabilities, liabilities related to the Employee Retirement Income Security Act,
6 liabilities related to the Internal Revenue Code, or any other liability relating to Debtor's current
7 and former employees, including any withdrawal liabilities, of the Debtor or any of the Debtor's
8 predecessors or Affiliates, claims (as that term is defined in the Bankruptcy Code), whether
9 known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or
10 unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or
11 non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material,
12 disputed or undisputed, whether arising prior to or subsequent to the commencement of these
13 bankruptcy cases, and whether imposed by agreement, understanding, law, equity or otherwise,
14 including claims otherwise arising under doctrines of successor liability (collectively, the
15 "Interests"), with all such Interests to attach to the cash proceeds of the transaction in the order of
16 their priority, with the same validity, force and effect which they now have as against the
17 Purchased Assets, subject to any claims and defenses the Debtor may possess with respect
18 thereto.

19 5. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, and Bankruptcy
20 Rule 6004 and 6006, and in accordance with the Agreement, the Debtor is hereby authorized at
21 Closing to sell, transfer and assign to Purchaser the Assumed Contracts, which, to the extent
22 practicable, are set forth on Exhibit 1 attached to the Motion.

23 6. Effective as of the Closing Date, and upon Purchaser's and/or Debtor's² payment
24 of the cure amounts in accordance with the terms of the Purchase Agreement, the Assumed
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26 ² Note: whether the Purchaser or Debtor will pay the cure amounts will reflect the final agreement between the
27 parties on this point. The final version of the APA will also provide a mechanism for Purchaser to make the
28 payments for Assumed Contracts assigned at Closing. A different mechanism may be needed for cure payments
on any Assumed Contracts added during the 30-day post-closing designation period.

1 Contracts shall be, and are (a) in full force and effect, with no defaults thereunder that need to be
2 cured in connection with any assumption and assignment by the Debtor, and (b) valid, binding,
3 and enforceable in accordance with their terms upon assignment to the Purchaser,
4 notwithstanding any provision in any such Assumed Contract (including those of the type
5 described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts or
6 conditions such assignment or transfer.

7 7. Any provision in any Assumed Contract that prohibits or conditions the
8 assignment of such Assumed Contract, or allow the non-debtor Contract Party to such Assumed
9 Contract to terminate, declare a breach or default, recapture, impose any penalty, condition any
10 renewal or extension, or modify any term or condition, as a result of a change of control in
11 respect of the Debtor, or upon the assignment of such Assumed Contract, constitute
12 unenforceable anti-assignment provisions and are void and of no force and effect as against the
13 Debtor in connection with the assumption and assignment of the Assumed Contract.

14 8. Upon the Closing and payment of the relevant cure amounts, if any, the Purchaser
15 shall be deemed to be substituted for the Debtor as a party to the applicable Assumed Contract
16 and the Debtor shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any
17 further liability under the Assumed Contracts, including any liability for any breach thereof
18 occurring after such assignment.

19 9. Upon the payment of the applicable cure amount, if any, the Assumed Contracts
20 will remain in full force and effect with their terms, and no default shall exist under the Assumed
21 Contracts nor shall there exist any event or condition which, with the passage of time or giving of
22 notice, or both, would constitute such a default.

23 10. The Debtor has served all of the Contract Parties by first class mail, a Cure Notice
24 in the form of Exhibit **** hereto, the form of which is hereby approved. Each Cure Notice set
25 forth (i) the title of the Assumed Contract, (ii) the name of the non-debtor Contract Party, (iii) the
26 applicable cure amount, if any, according to the Debtor's books and records (iv) the identity of
27 Purchaser as proposed assignee, and (v) the deadline (the " Assumed Contract Objection
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1 Deadline”) by which any such Contract Party must file an objection (the “Assumed Contract
2 Objection”) to the proposed assumption and assignment to Purchaser. Under the circumstances,
3 no other or further notice is required.

4 11. If a timely Assumed Contract Objection was received by the Assumed Contract
5 Objection Deadline and such Objection has not been otherwise resolved by the parties, the
6 Bankruptcy Court may hear such Objection at a later date set by the Bankruptcy Court. The
7 pendency of a dispute relating to a particular Assumed Contract shall not, in the discretion of the
8 Purchaser, prevent or delay the assumption and assignment of any other Assumed Contract.

9 12. Any Contract Party to an Assumed Contract who has not filed an Assumed
10 Contract Objection by the Assumed Contract Objection Deadline set forth in the Cure Notice
11 shall thereafter be barred from objecting or asserting monetary or non-monetary defaults with
12 respect to such Assumed Contract, which shall be deemed assumed by the Debtor and assigned to
13 the Purchaser on the Closing Date, subject to the Purchaser’s right, prior to the Closing Date, to
14 withdraw the designation of a specific Assumed Contract or designate additional Assumed
15 Contracts to be assumed and assigned in accordance with the terms of the Agreement (such
16 additional Assumed Contracts shall be referred to hereinafter as “Designation Right Contracts”).
17 Any contract or lease subject to a timely Assumed Contract Objection that has not been resolved
18 as of the entry of this Order shall be deemed a Designation Right Contract subject to the
19 assumption and assignment requirements set forth in paragraph 14 below, unless the Purchaser
20 and the applicable Contract Party are able to resolve the Assumed Contract Objection by
21 agreement.

22 13. Purchaser shall have the right to add additional Assumed Contracts (as that term is
23 defined in the Purchase Agreement) that have not been previously provided to Debtor prior to
24 Closing subject to and in accordance with the express terms of the Purchase Agreement.

25 14. Designation Right Contracts may be assumed by the Debtor and assigned to the
26 Purchaser pursuant to the following procedures:

- 27 a. Assumption and Assignment Notice. The Debtor will file a notice (the
28 “Assumption and Assignment Notice”) to assume and assign a Designation Right
Contract, which Assumption and Assignment Notice shall set forth: (i) the

1 Designation Right Contract(s) to be assumed and assigned; (ii) the name and
2 address of the applicable Contract Party; (iii) the assignee of the Designation Right
3 Contract(s); (iv) the proposed effective date of the assumption and assignment for
4 each such Designation Right Contract(s); and (v) the deadline(s) (the
5 “Supplemental Deadline”) and procedures for filing objections to the Assumption
6 and Assignment Notice (as set forth below).

7 b. Service of the Assumption and Assignment Notice. The Debtor will serve the
8 Assumption and Assignment Notice (i) by an overnight delivery service upon the
9 Designation Right Contract counterparties affected by the Assumption and
10 Assignment Notice; and (ii) by email upon: (a) the U.S. Trustee; (b) counsel to the
11 Committee; (c) counsel to contract or lease counterparty affected by the
12 Assumption and Assignment Notice, if known; (d) counsel to the Purchaser; and
13 (e) those persons who have formally appeared -and requested service in this
14 proceeding pursuant to Bankruptcy Rule 2002.

15 c. Objection Procedures. Contract Parties, including those who have previously filed
16 a timely Assumed Contract Objection by the Assumed Contract Objection
17 Deadline objecting to a proposed assumption and assignment must file and serve a
18 written objection so that such objection is filed with the Court and is actually
19 received by the following parties by the Supplemental Deadline, which shall be at
20 least ten (10) calendar days after the date the Debtor serve the relevant Assumption
21 and Assignment Notice: (a) counsel to the Debtors, [REDACTED];
22 Attn: [REDACTED]; (b) counsel to the Purchaser,
23 [REDACTED]; Attn: [REDACTED]; (c) the U.S. Trustee,
24 [REDACTED], Attn: [REDACTED]; (d) counsel to the Committee,
25 [REDACTED]; Attn: [REDACTED]; and (e) counsel to Designated
26 Rights Contract counterparties affected by the Assumption and Assignment
27 Notice, if known.

28 d. Certificate of No Objection. If an objection to the assumption and assignment of
any Designation Right Contract(s) is/are not timely filed by the Supplemental
Deadline, the Debtor shall file with the Court a certificate of no objection with a
proposed order.

e. Unresolved Objections. If an objection to the assumption or assignment of any
Designation Rights Contract is timely filed and not withdrawn or resolved, the
Debtor or the counterparty to such Designation Rights Contract may request a
hearing to consider the objection for the Designation Right Contract to which such
objection relates.

15. Each and every federal, state and local governmental agency or department is
hereby directed to accept any and all documents and instruments necessary and appropriate to
consummate the transactions contemplated by the Agreement. A certified copy of this Order
shall be accepted by any federal, state or local recording or filing authority as evidence of the
discharge of all Interests against the Purchased Assets.

1 16. As a result of the foregoing, all persons or entities, including any Governmental
2 Unit (as defined in section 101(27) of the Bankruptcy Code), asserting any Interest against the
3 Debtor are forever barred, estopped, and permanently enjoined from asserting any such Interests
4 against the Purchaser or its successors and assigns, their property, and/or the Purchased Assets.
5 On the Closing Date, each creditor of the Debtor is authorized and directed to execute such
6 documents and take all other actions as may be necessary to release Interests on the Purchased
7 Assets, if any, as provided for herein, as such Interests may have been recorded or may otherwise
8 exist. The transactions authorized herein shall be of full force and effect, regardless of the
9 Debtor's lack of good standing in any jurisdiction in which such Debtor is formed or authorized
10 to transact business. This Court shall retain exclusive jurisdiction to enforce this Order to bar the
11 enforcement or assertion of any Interests against the Purchaser or the Purchased Assets.

12 17. On and after the Closing Date (as defined in the Agreement) and in accordance
13 with the terms of the Agreement, the holders of Interests are directed to execute such documents
14 and take all other actions as may be reasonably necessary to terminate and expunge such Interests
15 against the Purchased Assets as such Interests may have been recorded or may otherwise exist.
16 To the extent that any holder of Interests refuse to execute such documents as may be necessary
17 to terminate and expunge any Interests against the Purchased Assets, the Debtor and the
18 Purchaser are authorized to take such actions, including without limitation, filing UCC-3
19 Termination Statements to release any lien on the Purchased Assets. Any person having custody,
20 control or possession of any of the Purchased Assets as of the Closing Date shall deliver such
21 custody, control and possession of such Purchased Assets to the Purchaser.

22 18. The consideration provided by the Purchaser for the Purchased Assets under the
23 Agreement constitutes reasonably equivalent value and fair consideration under the Bankruptcy
24 Code and under the laws of the United States, any state, territory or the District of Columbia.

25 19. The failure specifically to include any particular provisions of the Agreement in
26 this Order shall not diminish or impair the efficacy of such provisions, it being the intent of the
27 Court that the Agreement be approved in its entirety.

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1 20. The Agreement and any related agreements, documents, or other instruments may
2 be modified, amended, or supplemented by the parties thereto in accordance with the terms
3 thereof without further order of the Court, provided that any such modification, amendment, or
4 supplement is not material. The Agreement, and all transactions contemplated thereby, shall be
5 binding upon any successors in interest, including without limitation any chapter 11 trustee,
6 chapter 7 trustee or other responsible officer appointed for any of the parties thereto.

7 21. Nothing contained in any Chapter 11 plan confirmed in this case or order
8 confirming any such plan shall conflict with or deviate from the provisions of the Agreement or
9 the terms of this Order. The Agreement does not constitute a sub rosa chapter 11 plan for which
10 approval has been sought without the protections that a disclosure statement would afford, and is
11 not in violation of creditors' and equity security interest holders' voting rights.

12 22. The Purchaser is hereby granted the benefits and protections of section 363(m) of
13 the Bankruptcy Code, as a good faith purchaser and assignee, in connection with Purchased
14 Assets. The transactions contemplated by the Agreement are undertaken by the Purchaser
15 without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy
16 Code, and accordingly, the reversal or modification on appeal of the authorization provided
17 herein to consummate the transactions shall not affect the validity of the transactions (including
18 the sale free and clear of all Interests), unless such authorization and consummation of such
19 transactions are duly stayed pending such appeal. No portion of the Purchased Assets to be sold
20 or assigned, or Assumed Contracts to be assumed and assigned, pursuant to the Agreement, shall
21 be severable for mootness or any other purpose from any other portion of the Purchased Assets,
22 and the sale of the Purchased Assets shall constitute but one nonseverable transaction under
23 section 363 of the Bankruptcy Code.

24 23. Effective upon the Closing Date, all entities are forever prohibited and
25 permanently enjoined from commencing or continuing in any manner any action or other
26 proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding
27 against the Purchaser, its successors and assigns, or the Purchased Assets, with respect to any
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1 (a) Interests arising under, out of, in connection with or in any way relating to the Debtor, the
2 Purchaser, the Purchased Assets, or the operation of the Business or the Purchased Assets prior to
3 the closing of the transactions, or (b) successor liability, including, without limitation, the
4 following actions: (i) commencing or continuing in any manner any action or other proceeding
5 against the Purchaser, its successors or assigns, assets or properties, (ii) enforcing, attaching,
6 collecting or recovering in any manner any judgment, award, decree or order against the
7 Purchaser, its successors, assets or properties, (iii) creating, perfecting or enforcing any Interests
8 against the Purchaser, its successors or assigns, assets or properties; (iv) asserting any setoff, right
9 of subrogation or recoupment of any kind against any obligation due the Purchaser or its
10 successors or assigns, (v) commencing or continuing any action, in any manner or place, that does
11 not comply or is inconsistent with the provisions of this Order or other orders of this Court, or the
12 agreements or actions contemplated or taken in respect thereof, or (vi) revoking, terminating or
13 failing or refusing to issue or renew any license, permit or authorization to operate any of the
14 Purchased Assets or conduct any of the businesses operated with the Purchased Assets.

15 24. Other than the Assumed Liabilities, and without limiting paragraph 14 of this
16 Order, the transfer of the Purchased Assets and the assumption and assignment of the Assumed
17 Liabilities, and any agreement contemplated thereby, shall not make Purchaser liable, obligated or
18 otherwise responsible in any way for any Interests of any creditor, vendor, supplier, employee,
19 lessor, customer, government agency or any other third party has or may have against the Debtor
20 or the Purchased Assets, or any liability incurred by the Debtor prior to the Closing Date, for any
21 matter relating to the Purchased Assets or the purchase of the Purchased Assets under the laws of
22 the United States, any state, territory or possessions thereof, or the District of Columbia based, as
23 a successor or otherwise (including with respect to successor or vicarious liabilities of any kind or
24 character), in whole or in part, directly or indirectly, on any theory of law or equity, including,
25 without limitation, any theory of antitrust, environmental successor or transferee liability, labor
26 law, de facto merger or substantial continuity, whether known or unknown as of the Closing Date,
27 now existing or hereafter raised, which may be asserted or unasserted, fixed or contingent,

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1 liquidated or unliquidated with respect to the Debtor, or any of its predecessors or Affiliates or
2 any obligations of the Debtor or its predecessors or Affiliates arising prior to the Closing Date, for
3 any liabilities, debts, commitments or obligations (whether known or unknown, disclosed or
4 undisclosed, absolute, contingent, inchoate, fixed or otherwise) in any way whatsoever relating to
5 or arising from the Purchased Assets or the Debtor's operation of its businesses or use of the
6 Purchased Assets on or prior to the Closing Date or any such liabilities, debts, commitments or
7 obligations that in any way whatsoever relate to periods on or prior to the Closing Date or are to
8 be observed, paid, discharged or performed on or prior to the Closing Date (in each case,
9 including any liabilities that result from, relate to or arise out of tort or other product liability
10 claims), or any liabilities calculable by reference to the Debtor or its assets or operations, or
11 relating to continuing conditions existing on or prior to the Closing Date, including with respect
12 to any of Debtor's predecessors or Affiliates, which liabilities, debts, commitments and
13 obligations are hereby extinguished insofar as they may give rise to successor liability, without
14 regard to whether the claimant asserting any such liabilities, debts, commitments or obligations
15 has delivered to the Purchaser a release thereof. Without limiting the generality of the foregoing,
16 by virtue of the consummation of the transactions contemplated by the Agreement, the Purchaser
17 shall not be liable or responsible, as a successor or otherwise, including with respect to successor
18 or vicarious liabilities of any kind or character, for the Debtor's liabilities, debts, commitments or
19 obligations, whether calculable by reference to the Debtor, arising on or prior to the Closing and
20 under or in connection with (i) any employment or labor agreements (including any collective
21 bargaining agreements), consulting agreements, severance arrangements, change-in-control
22 agreements or other similar agreement to which the Debtor is a party, (ii) any pension, welfare,
23 compensation or other employee benefit plans, agreements, practices and programs, including,
24 without limitation, any pension plan of the Debtor, (iii) the cessation of the Debtor's operations,
25 dismissal of employees, or termination (including rejection) of employment or labor agreements
26 (including any collective bargaining agreements) or pension, welfare, compensation or other
27 employee benefit plans, agreements, practices and programs, obligations that might otherwise
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1 arise from or pursuant to the Employee Retirement Income Security Act of 1974, as amended, the
2 Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination and
3 Employment Act of 1967, the Federal Rehabilitation Act of 1973, the National Labor Relations
4 Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, COBRA, or the Worker
5 Adjustment and Retraining Notification Act, (iv) workmen's compensation, occupational disease
6 or unemployment or temporary disability insurance claims, (v) environmental liabilities, debts,
7 claims or obligations arising from conditions first existing on or prior to Closing (including,
8 without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or
9 wastes), which may be asserted on any basis, including, without limitation, under the
10 Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et
11 seq., (vi) any bulk sales or similar law, (vii) any liabilities, debts, commitments or obligations of,
12 or required to be paid by, the Debtor for any Taxes of any kind for any period, (viii) any
13 liabilities, debts, commitments or obligations for any Taxes relating to the business of the Debtor
14 or the Purchased Assets for or applicable to the pre-closing period, (ix) any litigation, (x) any
15 products liability, other tort or similar claims, whether pursuant to any state or any federal laws or
16 otherwise including those arising from products or distribution thereof by or on behalf of the
17 Debtor, and (xi) any Excluded Liabilities (as defined in the Agreement). The Purchaser has given
18 substantial consideration under the Agreement for the benefit of the holders of any Interests. The
19 consideration given by the Purchaser shall constitute valid and valuable consideration for the
20 releases of any potential claims of successor liability of the Purchaser, which releases shall be
21 deemed to have been given in favor of the Purchaser by all holders of Interests against or interests
22 in the Debtor or any of the Purchased Assets.

23 25. This Court hereafter shall and does retain exclusive jurisdiction: (a) to interpret,
24 construe, enforce and implement the terms and provisions of the Agreement and this Order, all
25 amendments thereto, any waivers and consents thereunder, any agreements executed in
26 connection therewith, and any and all disputes that may arise under the Agreement or this Order
27 as between the Debtor and the Purchaser; (b) to hear and determine any and all disputes between
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1 the Debtor and/or the Purchaser, as the case may be, and any third parties relating to the
2 Agreement; (c) compel delivery and payment of the consideration provided for under the
3 Agreement; (d) resolve any disputes, controversies or claims arising out of or relating to the
4 Agreement; and (e) interpret, implement, and enforce the provisions of this Order; provided,
5 however, that in the event that this Court abstains from exercising or declines to exercise
6 jurisdiction with respect to any matter provided for in this clause, or is without jurisdiction, such
7 abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit
8 or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect
9 to any such matter.

10 26. This Order shall be effective immediately upon its entry, and the 14-day stay
11 provisions included in Bankruptcy Rule 6004(g) and 6006(d) are hereby waived.

12 27. The Debtor is authorized to settle and compromise any and all disputes between
13 the Debtor and K&N pursuant to the terms and conditions as set forth in the Agreement and the
14 and Release Agreement annexed to the Agreement as Schedule 1.5 (“Release”), and such
15 settlement and compromise is hereby approved pursuant to Bankruptcy Rule 9019.

16 28. The Debtor is hereby authorized, empowered, and directed to (a) perform under,
17 consummate, and implement the Agreement and the Release, (b) execute all additional
18 instruments and documents that may be reasonably necessary or desirable to implement the
19 Agreement and the Release and the transactions contemplated thereby, (c) take all further actions
20 as may be necessary or appropriate for the purposes of assigning, transferring, granting or
21 conveying the Purchased Assets as contemplated by the Agreement, and (d) take such other and
22 further steps as are contemplated by the Agreement and the Release or reasonably required to
23 fulfill the Debtor’s obligations under the Agreement and Release, all without further order of the
24 Court. The Debtor is authorized to sign any and all documents necessary or appropriate in pursuit
25 of the sale of the Purchased Assets, the assumption and assignment of the Assumed Contracts, the
26 assignment of the Assumed Liabilities and the settlement of disputes with K&N as authorized by
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1 this Order, including the Agreement, and any ancillary documents to the Agreement including the
2 Release.

3 29. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted
4 with respect to the Debtors to the extent necessary, without further order of this Court, to allow
5 the Purchaser to deliver any notice provided for in the Agreement and allow the Purchaser to take
6 any and all actions permitted under the Agreement in accordance with the terms and conditions
7 thereof.

8 30. A certified copy of this Order may be filed with the appropriate clerk and/or
9 recorded with the recorder to act to cancel any of the liens or other security interests in the
10 Purchased Assets.

11 31. The Debtors are hereby authorized to take all actions necessary to effectuate the
12 relief granted pursuant to this Order.

13 32. To the extent this Order is inconsistent with any prior order or pleading in these
14 chapter 11 cases, the terms of this Order shall govern.

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