



## NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re:

MUSCLE IMPROVEMENT, INC., et al.,

Debtors.

MUSCLE IMPROVEMENT, INC., et al.,

Plaintiffs,

v.

ALL POINTS CAPITAL CORP., et al.,

Defendants.

Case No. 2:10-bk-12736-PC

Adversary No. 2:11-ap-02984-PC

Chapter 11

### MEMORANDUM DECISION

Date: November 6, 2012

Time: 9:30 a.m.

Place: United States Bankruptcy Court  
Courtroom # 1468  
255 East Temple Street  
Los Angeles, CA 90012

Before the court is the motion for a partial summary judgment filed by Plaintiffs, Muscle Improvement, Inc. ("MI"), Muscle Improvement – Hawthorne, Inc. ("MIH"), and Muscle Improvement – Commerce, Inc. ("MIC") in the above referenced adversary proceeding. MI, MIH and MIC seek a summary judgment granting the relief requested in their First, Second, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Claims for Relief set forth in Debtors'

1 Complaint to Determine the Extent, Priority and Validity of Liens and For Claims Objections  
2 (“Complaint”). The court, having considered the pleadings, evidentiary record,<sup>1</sup> and arguments  
3 of counsel, makes the following findings of fact and conclusions of law pursuant to F.R.Civ.P.  
4 52(a)(1),<sup>2</sup> as incorporated into FRBP 7052 and applied to adversary proceedings in bankruptcy  
5 cases.

## 6 I. STATEMENT OF FACTS

7 MI, MIH, and MIC filed voluntary petitions under chapter 11 of the Code on January 26,  
8 2010. An order authorizing a joint administration of their respective bankruptcy estates was  
9 entered on October 4, 2010. At a hearing on October 31, 2012, the court confirmed the First  
10 Amended Consolidated Plans of Reorganization of Certain Jointly Administered Debtors  
11 (Modified) (“Plan”).<sup>3</sup>

12 All Points Capital Corp. (“All Points”), as an assignee of West Star Capital, LLC (“West  
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14 <sup>1</sup> The court sustains the objections raised in Defendant’s Objection to the Declaration of Abram  
15 Tavera in Support of Plaintiffs’ Motion for Order Granting Partial Summary Judgment  
16 Regarding Plaintiffs’ Claims for Relief against Defendant All Points Capital Corp. (“Tavera  
17 Objection”) to paragraphs 7, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20 and 21 to the extent the  
18 witness’s statements in each of those paragraphs amounts to a legal conclusion. The balance of  
19 the objections raised in the Tavera Objection are overruled. The court overrules both the  
20 objections raised in Defendant’s Objection to the Declaration of Debra R. Brand in Support of  
21 Plaintiffs’ Motion for Order Granting Partial Summary Judgment Regarding Plaintiffs’ Claims  
for Relief against Defendant All Points Capital Corp. and the Evidentiary Objections to  
Declaration of Catherine Wilinski in Support of Opposition to Debtors in Possession/Plaintiffs  
[sic] for Partial Summary Judgment Regarding Plaintiffs’ Claims for Relief Against Defendant  
All Points Capital Corp.

22 <sup>2</sup> Unless otherwise indicated, all “Code,” “chapter” and “section” references are to the  
23 Bankruptcy Code, 11 U.S.C. §§ 101-1330 after its amendment by the Bankruptcy Abuse  
24 Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (2005). “Rule”  
25 references are to the Federal Rules of Bankruptcy Procedure (“FRBP.”), which make applicable  
26 certain Federal Rules of Civil Procedure (“F.R.Civ.P.”). “LBR” references are to the Local  
27 Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California  
 (“LBR”).

<sup>3</sup> However, an order confirming the Plan has not yet been entered in the case.

Star”), is a creditor of MI, MIH and MIC. All Points asserts secured and unsecured nonpriority claims against the jointly administered bankruptcy estates based, in part, upon the following proofs of claim:

Claim # 37 – Proof of Claim filed by All Points against MI on September 13, 2011, in the amount of \$79,744.21, for “money lent.” Secured: \$79,744.21.

Claim # 38 – Proof of Claim filed by All Points against MI on September 13, 2011, in the amount of \$55,088.77 based upon a guaranty. Unsecured: \$55,088.77.

Claim # 39 – Proof of Claim filed by All Points against MI on September 13, 2011, in the amount of \$117,931.00, based upon a guaranty. Secured: \$16,464.48. Unsecured: \$101,466.52.

Claim # 24 – Proof of Claim filed by All Points against MIH on September 13, 2011, in the amount of \$55,088.77 for “money loaned.” Secured: \$55,088.77.

Claim # 26 – Proof of Claim filed by All Points against MIH on September 13, 2011, in the amount of \$117,931.00 based upon a guaranty. Secured: \$64,511.23. Unsecured: \$6,955.28.

Claim # 16 – Proof of Claim filed by All Points against MIC on September 13, 2011, in the amount of \$117,931.00 for “money loaned.” Secured: \$30,000.00. Unsecured: \$6,955.29.

Claim # 17 – Proof of Claim filed by All Points against MIC on September 13, 2011, in the amount of \$91,644.07 for “money loaned.” Secured: \$31,900.00. Unsecured: \$59,744.07.

On November 1, 2011, MI, MIH and MIC filed their Complaint objecting to each of the above claims and seeking a declaratory judgment concerning the validity and extent of the liens claimed to secure the balance due to All Points on its claims.

On September 25, 2012, MI, MIH and MIC moved for a partial summary judgment on their First, Second, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Claims for Relief. All Points filed written opposition to the motion on October 16, 2012. MI, MIH and MIC filed timely filed their reply on October 23, 2012.<sup>4</sup> After a hearing on November 6, 2012, the matter

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<sup>4</sup> On October 31, 2012, All Points filed a document entitled “Defendant’s Supplemental Opposition to the Debtors and Debtors in Possession/Plaintiffs’ [sic] For Partial Summary Judgment Regarding Plaintiffs’ Claims for Relief Against Defendant All Points Capital Corp” (“Supplemental Opposition”). The evidentiary record having closed upon the timely filing of plaintiffs’ reply, the Supplemental Opposition is stricken as untimely and not authorized by the

1 was continued to January 8, 2013, pending a continued status conference and a decision on the  
2 merits.

## 3 II. DISCUSSION

4 Rule 56(a) authorizes a party to “move for summary judgment, identifying each claim or  
5 defense – or the part of each claim or defense – on which summary judgment is sought.”

6 F.R.Civ.P. 56(a). Summary judgment must be granted “if the movant shows that there is no  
7 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of  
8 law.” Id. In determining whether a genuine factual issue exists, “a trial judge must bear in mind  
9 the actual quantum and quality of proof necessary to support liability . . . .” Anderson v. Liberty  
10 Lobby, Inc., 477 U.S. 242, 254 (1986). “[T]he judge’s function is not himself to weigh the  
11 evidence and determine the truth of the matter but to determine whether there is a genuine issue  
12 for trial . . . . If the evidence is merely colorable, or is not significantly probative, . . . summary  
13 judgment may be granted. Id. at 249–250. However, the court’s function on a motion for  
14 summary judgment is “issue-finding, not issue-resolution.” United States v. One Tintoretto  
15 Painting Entitled “The Holy Catholic Family With Saint Catherine and Honored Donor, 691 F.2d  
16 603, 606 (2d Cir. 1982). Rule 56 does not permit “trial on affidavits. Credibility determinations,  
17 the weighing of the evidence, and the drawing of legitimate inferences from the facts are [fact  
18 finder] functions . . . .” Anderson, 477 U.S. at 255.

19 Rule 56(c), which identifies the procedures the court and parties must follow in  
20 conjunction with motions for summary judgment, states:

21 **(1) Supporting Factual Positions.** A party asserting that a fact cannot be or is genuinely  
22 disputed must support the assertion by:

23 (A) citing to particular parts of materials in the record, including depositions,  
24 documents, electronically stored information, affidavits or declarations,  
25 stipulations (including those made for purposes of the motion only), admissions,  
interrogatory answers, or other materials; or

26 LBRs. The court also strikes as untimely Defendant’s Statement of Genuine Issues lodged  
27 without a proof of service on November 5, 2012 – 1 day before the hearing.

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

**(2) Objection That a Fact Is Not Supported by Admissible Evidence.** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

**(3) Materials Not Cited.** The court need consider only the cited materials, but it may consider other materials in the record.

**(4) Affidavits or Declarations.** An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

F.R.Civ.P. 56(c) The court may grant summary judgment “[i]f a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c).” See F.R.Civ.P. 56(e)(3).

A. Facts Either Admitted or Uncontroverted By Significantly Probative Evidence:

1. On January 10, 2010, MI, MIH and MIC filed voluntary petitions under chapter 11 of the Code.
2. MI, MIH and MIC are California corporations each organized and existing under the laws of the state of California. MI, MIH and MIC were operating as debtors in possession under chapter 11 upon the filing of the complaint in this adversary proceeding.
3. All Points and West Star are corporations each organized and existing under the laws of the state of New York.
4. October 18, 2005 Agreement
  - a. On October 18, 2005, West Star, as Lessor, and MIH, as Lessee, executed an Equipment Financing Agreement for the purchase of certain equipment for the sum of \$153,846.01, payable in 60 monthly installments of \$3,341.00 each (“October 18, 2005 Agreement”).
  - b. Pursuant to the October 18, 2005 Agreement, MIH granted West Star “a first priority interest in the personal property described above and in any schedule signed by the parties and made a part hereof, including all proceeds and products thereof, all proceeds of insurance thereon, all substitutions therefor and all additions thereto (said property, proceeds, products substitutions and additional

being herein called “Equipment”) . . . .”

- c. The Description of Equipment contained in the October 18, 2005 Agreement states: “Various Gym Equipment, See Schedule A.”
- d. Attached to the October 18, 2005 Agreement is a document entitled “Equipment Schedule A” which refers to the October 18, 2005 Agreement, identifies specific equipment, and bears a signature of lessor and lessee.<sup>5</sup>
- e. On October 18, 2005, MI guaranteed payment of the balance due under the October 18, 2005 Agreement by Corporate Guaranty (“MI Guaranty”) executed by MI to West Star dated October 18, 2005.
- f. On October 27, 2005, the October 18, 2005 Agreement and MI Guaranty were assigned by West Star to All Points.
- g. On November 7, 2005, a UCC-1 Financing Statement was filed with the California Secretary of State listing MI, as debtor, and All Points, as Secured Party, and covering the following collateral: “Carian Strength – Shoulder Press, Lat Raise, Incline Press, Pec Fly, Tricep Dip, Calf, Leg Curl, Leg Extension, Back Extension, Chin Dip, Tricep Curl, Row Cybex Strength – Multi Hip Rotary Calf, Squat, Dual Axis Chest, Lat Pulldown All personal property and fixtures whether now or hereafter existing or now owned or thereafter acquired and wherever located including, but not limited to all inventory and equipment, accounts, insturments [sic], documents, chattel paper and general intangibles and all additions and accessions thereto.” No schedule is attached to the financing statement.
- h. On November 8, 2005, a UCC-1 Financing Statement was filed with the California Secretary of State listing MIH, as debtor, and All Points, as Secured Party, and covering the following collateral: “All personal property and fixtures whether now or hereafter existing or now owned or thereafter acquired and wherever located including but not limited to all inventory and equipment, accounts, insturments [sic], documents, chattel paper and general intangibles and all additions and accessions thereto.” Attached to the financing statement is a copy of Equipment Schedule A to the October 18, 2005 Agreement.
- i. MI was not a party to the October 18, 2005 Agreement nor did the October 18, 2005 Agreement grant a security interest and lien to West Star in assets of MI.
- j. The MI Guaranty did not grant a security interest and lien to West Star in the

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<sup>5</sup> For purposes of adjudicating the motion, the court has considered the Equipment Schedule A appended to the copy of the October 18, 2005 Agreement attached as Exhibit A to the Declaration of Catherine Wilinski in Support of Opposition to the Debtors and Debtors in Possession/Plaintiffs [sic] for Partial Summary Judgment Regarding Plaintiffs’ Claims for Relief Against All Points Capital Corp., without prejudice to the rights of MI, MIH and MIC at or before trial to seek relief for the alleged non-disclosure of the document during discovery pursuant to F.R.Civ.P. 37(c).

- 1 assets of MI.
- 2 k. On May 11, 2010, All Points filed a Notice of Continuation of the UCC-1
- 3 Financing Statement filed on November 7, 2005.
- 4 l. On May 14, 2010, All Points filed a Notice of Continuation of the UCC-1
- 5 Financing Statement filed on November 8, 2005.
- 6 m. On June 5, 2009, MIH defaulted on the payments due under the October 18, 2005
- 7 Agreement.
- 8 n. Claim # 24 – Proof of Claim filed by All Points against MIH on September 13,
- 9 2011, in the amount of \$55,088.77 for the balance due by MIH under the October
- 10 18, 2005 Agreement.
- 11 o. The value of the collateral listed in Equipment Schedule A to the October 18,
- 12 2005 Agreement is \$19,600. Order Re Motion to Value Secured Claims of All
- 13 Points Capital Corp. Under 11 U.S.C. § 506(a) and (d) (“Valuation Order”), 2:10-
- 14 13.
- 15 5. June 15, 2006 Agreement
- 16 a. On June 15, 2006, West Star, as Creditor, and MI, as Obligor, executed an
- 17 Equipment Financing Agreement for the purchase of certain equipment for the
- 18 sum of \$161,135.98, payable in 60 monthly installments of \$3,500.00 each (“June
- 19 15, 2006 Agreement”).
- 20 b. Pursuant to the June 15, 2006 Agreement, MI granted West Star “a first priority
- 21 interest in the personal property described above and in any schedule signed by
- 22 the parties and made a part hereof, including all proceeds and products thereof, all
- 23 proceeds of insurance thereon, all substitutions therefor and all additions thereto
- 24 (said property, proceeds, products substitutions and additional being herein called
- 25 “Equipment”) . . . .”
- 26 c. The Description of Equipment contained in the June 15, 2006 Agreement states:
- 27 “Various Gym Equipment, See Schedule A.”
- d. Attached to the June 15, 2006 Agreement is a document entitled “Equipment
- Schedule A” which refers to the June 15, 2006 Agreement, identifies specific
- equipment, and bears a signature of lessor and lessee.
- e. On June 30, 2006, a UCC-1 Financing Statement was filed with the California
- Secretary of State listing MI, as debtor, and All Points, as Secured Party, and
- covering the following collateral: “Equipment (as more fully described on
- Schedule A attached hereto) between West Star Capital, LLC as Creditor and
- Muscle Improvement, Inc., as Obligor, the Chattel Mortgage, insurance thereon
- and all proceeds of any nature thereof.” Attached to the financing statement is a
- copy of Equipment Schedule A to the June 15, 2006 Agreement.
- f. On June 15, 2006, MIH guaranteed payment of the balance due under the June 15,
- 2006 Agreement by Corporate Guaranty (“MIH Guaranty”) executed by MIH to
- West Star dated June 15, 2006.

- 1
- 2 g. On June 15, 2006, the June 15, 2006 Agreement and MIH Guaranty were assigned by West Star to All Points.
- 3 h. MIH was not a party to the June 15, 2006 Agreement nor did the June 15, 2006 Agreement grant a security interest and lien to West Star in assets of MIH.
- 4 i. The MIH Guaranty did not grant a security interest and lien to West Star in the assets of MIH.
- 5
- 6 j. On June 5, 2009, MI defaulted on the payments due under the June 15, 2006 Agreement.
- 7
- 8 k. Claim # 37 – Proof of Claim filed by All Points against MI on September 13, 2011, in the amount of \$79,744.21, for the balance due by MI under the June 15, 2006 Agreement.
- 9
- 10 l. The value of the collateral listed in Equipment Schedule A to the June 15, 2006 Agreement is \$1,600. Valuation Order, 2:14-17.

11 6. June 26, 2007 Agreement

- 12 a. On June 26, 2007, West Star, as Creditor, and MIC, as Obligor, executed an Equipment Financing Agreement for the purchase of certain equipment for the sum of \$164,477.00, payable in 60 monthly installments of \$3,536.00 each (“June 26, 2007 Agreement”).
- 13
- 14 b. Pursuant to the June 26, 2007 Agreement, MIC granted West Star “a first priority interest in the personal property described above and in any schedule signed by the parties and made a part hereof, including all proceeds and products thereof, all proceeds of insurance thereon, all substitutions therefor and all additions thereto (said property, proceeds, products substitutions and additional being herein called “Equipment”) . . . .”
- 15
- 16
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- 18 c. The Description of Equipment contained in the June 26, 2007 Agreement states: “Various Gym Equipment, See Schedule A.”
- 19
- 20 d. Attached to the June 26, 2007 Agreement is a document entitled “Equipment Schedule A” which refers to the June 26, 2007 Agreement, identifies specific equipment, and bears a signature of lessor and lessee.
- 21
- 22 e. On June 26, 2007, MI guaranteed payment of the balance due under the June 26, 2007 Agreement by Corporate Guaranty (“MI Guaranty”) executed by MI to West Star dated June 26, 2007.
- 23
- 24 f. On June 26, 2007, MIH guaranteed payment of the balance due under the June 26, 2007 Agreement by Corporate Guaranty (“MIH Guaranty”) executed by MIH to West Star dated June 26, 2007.
- 25
- 26 g. Neither MI nor MIH were a party to the June 26, 2007 Agreement nor did the June 26, 2007 Agreement grant a security interest and lien to West Star in assets of either MI or MIH.
- 27



- h. The MI Guaranty did not grant a security interest and lien to West Star in the assets of MI to secure payment of the June 26, 2007 Agreement, nor did the MIH Guaranty grant a security interest and lien to West Star in the assets of MIH to secure payment of the June 26, 2007 Agreement.
- i. On June 26, 2007, the June 26, 2007 Agreement, MI Guaranty and MIH Guaranty were assigned by West Star to All Points.
- j. On July 13, 2007, a UCC-1 Financing Statement was filed with the California Secretary of State listing MIC, as debtor, and All Points, as Secured Party, and covering the following collateral: "All personal property and fixtures whether now or hereafter existing or now owned or thereafter acquired and wherever located including but not limited to all inventory and equipment, accounts, instruments [sic], documents, chattel paper and general intangibles [sic] and all additions and accessions thereto." No schedule is attached to the financing statement.
- k. On July 18, 2007, a UCC-1 Financing Statement was filed with the California Secretary of State listing MIC, as debtor, and All Points, as Secured Party, and covering the following collateral: "Equipment (as more fully described on Schedule A attached hereto) mortgaged by Debtor pursuant to a Chattel Mortgage dated June 26, 2007 (the "Chattel Mortgage") between West Star Capital, LLC as Creditor, and Muscle Improvement – Commerce, Inc. as Obligor, the Chattel Mortgage, insurance thereon and all proceeds of any nature thereof." Attached to the financing statement is a copy of Equipment Schedule A to the June 26, 2007 Agreement.
- l. On February 1, 2012, All Points filed a Notice of Continuation of the UCC-1 Financing Statement filed on July 13, 2007.
- m. On February 1, 2012, All Points filed a Notice of Continuation of the UCC-1 Financing Statement filed on July 18, 2007.
- n. On June 20, 2009, MIC defaulted on the payments due under the June 26, 2007 Agreement.
- o. Claim # 16 – Proof of Claim filed by All Points against MIC on September 13, 2011, in the amount of \$117,931.00 for the balance due by MIC under the June 26, 2007 Agreement.
- p. Claim # 39 – Proof of Claim filed by All Points against MI on September 13, 2011, in the amount of \$117,931.00, based upon a guaranty of the June 26, 2007 Agreement.
- q. Claim # 26 – Proof of Claim filed by All Points against MIH on September 13, 2011, in the amount of \$117,931.00 based upon a guaranty of the June 26, 2007 Agreement.
- r. The value of the collateral pledged as security for the June 26, 2007 Agreement is \$17,200. Valuation Order, 2:18-21.

7. August 2, 2007 Agreement

- a. On August 2, 2007, West Star, as Creditor, and MIC, as Obligor, executed an Equipment Financing Agreement for the purchase of certain equipment for the sum of \$124,654.20, payable in 60 monthly installments of \$2,680.00 each ("August 2, 2007 Agreement").
- b. Pursuant to the August 2, 2007 Agreement, MIC granted West Star "a first priority interest in the personal property described above and in any schedule signed by the parties and made a part hereof, including all proceeds and products thereof, all proceeds of insurance thereon, all substitutions therefor and all additions thereto (said property, proceeds, products substitutions and additional being herein called "Equipment") . . . ."
- c. The Description of Equipment contained in the August 2, 2007 Agreement states: "Various Gym Equipment, See Schedule A."
- d. Attached to the August 2, 2007 Agreement is a document entitled "Equipment Schedule A" which refers to the August 2, 2007 Agreement, identifies specific equipment, and bears a signature of lessor and lessee.
- e. On August 2, 2007, MIH guaranteed payment of the balance due under the August 2, 2007 Agreement by Corporate Guaranty ("MI Guaranty") executed by MIH to West Star dated August 2, 2007.
- f. On August 2, 2007, MI guaranteed payment of the balance due under the August 2, 2007 Agreement by Corporate Guaranty ("MI Guaranty") executed by MI to West Star dated August 2, 2007.
- g. Neither MIH nor MI were a party to the August 2, 2007 Agreement nor did the August 2, 2007 Agreement grant a security interest and lien to West Star in assets of either MIH or MI.
- h. The MIH Guaranty did not grant a security interest and lien to West Star in the assets of MIH to secure payment of the August 2, 2007 Agreement, nor did the MI Guaranty grant a security interest and lien to West Star in the assets of MI to secure payment of the August 2, 2007 Agreement.
- i. On August 2, 2007, the August 2, 2007 Agreement, MIH Guaranty, and MI Guaranty were assigned by West Star to All Points.
- j. On February 22, 2008, a UCC-1 Financing Statement was filed with the California Secretary of State listing MIC, as debtor, and All Points, as Secured Party, and covering the following collateral: "Equipment (as more fully described on Schedule A attached hereto) mortgaged by Debtor pursuant to a Chattel Mortgage dated August 2, 2008 (the "Chattel Mortgage") between West Star Capital, LLC as Creditor and Muscle Improvement – Commerce, Inc., as Obligor, the Chattel Mortgage, insurance thereon and all proceeds of any nature thereof; including, but not limited to: All personal property and fixtures whether now or hereafter existing or now owned or thereafter acquired and wherever located including, but not limited to all inventory and equipment, accounts, instruments [sic], documents, chattel paper and general intangibles [sic] and all additions and

accessions thereto.” Attached to the financing statement is a copy of Equipment Schedule A to the August 2, 2007 Agreement.

k. On June 20, 2009, MIC defaulted on the payments due under the August 2, 2007 Agreement.

l. Claim # 17 – Proof of Claim filed by All Points against MIC on September 13, 2011, in the amount of \$91,644.07 for the balance due by MIC under the August 2, 2007 Agreement.

m. The value of the collateral pledged as security for the August 2, 2007 Agreement is \$14,700. Valuation Order, 2:22-26.

8. Cross-Collateral and Cross-Default Agreements

a. On June 26, 2007, MI, MIH and MIC executed a Cross-Collateral and Cross-Default Agreement to West Star (“June Cross-Collateral Agreement”) which provides, in pertinent part: “All presently existing and hereafter acquired Collateral in which you have or shall have a security interest shall secure the payment and performance of all of our liabilities and obligations to you of every kind and character, whether joint or several, direct or indirect, absolute or contingent, due or to become due, and whether under presently existing or hereafter created Accounts or agreements, or otherwise.”

b. The June Cross-Collateral Agreement does not grant a security interest in the assets of MI, MIH or MIC beyond the security interests originally granted by either MI, MIH or MIC to West Star nor did it grant a security interest to West Star in any other assets of MI, MIH or MIC.

c. On August 2, 2007, MI, MIH and MIC executed a Cross-Collateral and Cross-Default Agreement to West Star (“August Cross-Collateral Agreement”) which provides, in pertinent part: “All presently existing and hereafter acquired Collateral in which you have or shall have a security interest shall secure the payment and performance of all of our liabilities and obligations to you of every kind and character, whether joint or several, direct or indirect, absolute or contingent, due or to become due, and whether under presently existing or hereafter created Accounts or agreements, or otherwise.”

d. The August Cross-Collateral Agreement does not grant a security interest in the assets of MI, MIH or MIC beyond the security interests originally granted by either MI, MIH or MIC to West Star nor did it grant a security interest to West Star in any other assets of MI, MIH or MIC.

9. Blanket Liens

a. There is no significantly probative evidence of a security agreement in which MI granted either West Star or All Points a “blanket lien” on all of the assets of MI.

b. There is no significantly probative evidence of a security agreement in which MIH granted either West Star or All Points a “blanket lien” on all of the assets of MIH.

c. There is no significantly probative evidence of a security agreement in which MIC

1 granted either West Star or All Points a “blanket lien” on all of the assets of MIC.

2 B. Conclusions of Law.

- 3 1. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§  
4 157(b) and 1334(b).
- 5 2. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (K) and (O).
- 6 3. Venue is appropriate in this court. 28 U.S.C. § 1409(a).
- 7 4. A security agreement defines the nature and extent of the collateral securing a debt. A  
8 financing statement defines the collateral described in the security agreement upon which  
9 the lien is perfected. A broad financing statement will not serve to expand the scope of  
10 the collateral described in the security agreement. See N.W. Acceptance Corp. v.  
11 Lynnwood Equip., Inc., 841 F.2d 918, 922 (9th Cir. 1988) (“The description of collateral  
12 in the security agreement defines the extent of the security interest; the description of the  
13 collateral in the financing statement only serves to warn subsequent third party creditors  
14 of the prior interest.”).
- 15 5. “The description of collateral in the financing statement does not function to identify the  
16 collateral and define the property which the creditor may claim, but rather to warn other  
17 subsequent creditors of the prior interest.” Thorp Commercial Corp. v. Northgate Indus.,  
18 Inc., 654 F.2d 1245, 1248 (8th Cir. 1981).
- 19 6. All Points has not established a triable issue of fact on MIH’s First and Second Claims  
20 for Relief.
- 21 7. All Points’ lien securing payment by MIH of the balance due by MIH under the October  
22 18, 2005 Agreement is limited to the value of the collateral described in the Equipment  
23 Schedule A attached to the October 18, 2005 Agreement which identifies specific  
24 equipment and bears a signature of lessor and lessee.
- 25 8. Claim # 24 is allowed in the following amounts: Secured: \$19,600. Unsecured non-  
26 priority: \$35,488.77.

- 1 9. All Points has not established a triable issue of fact on MI's Fourth Claim for Relief.
- 2 10. Claim # 37 is allowed in the following amounts: Secured: \$1,600. Unsecured non-
- 3 priority: \$78,144.21.
- 4 11. All Points has not established a triable issue of fact on MIC's Sixth Claim for Relief.
- 5 12. All Points' lien securing payment by MIC of the balance due by MIC under the June 26,
- 6 2007 Agreement is limited to the value of the collateral described in the Equipment
- 7 Schedule A attached to the June 26, 2007 Agreement which identifies specific equipment
- 8 and bears a signature of lessor and lessee.
- 9 13. All Points has established a triable issue of fact on MIC's Seventh Claim for Relief.
- 10 14. Claim # 16 is allowed as a secured claim in the amount of \$17,200.
- 11 15. There is a genuine issue of material fact regarding the allowed amount, if any, of All
- 12 Points' unsecured non-priority claim attributable to Claim # 16.
- 13 16. All Points has established a triable issue of fact as to MI's Eighth Claim for Relief
- 14 17. Claim # 39 is disallowed to the extent that it asserts a secured claim against MI.
- 15 18. There is a genuine issue of material fact regarding the allowed amount, if any, of All
- 16 Points' unsecured non-priority claim attributable to Claim # 39 based upon MI's guaranty
- 17 of the balance due under the June 26, 2007 Agreement.
- 18 19. All Points has established a triable issue of fact as to MIH's Ninth Claim for Relief.
- 19 20. Claim # 26 is disallowed to the extent that it asserts a secured claim against MIH.
- 20 21. There is a genuine issue of material fact regarding the allowed amount, if any, of All
- 21 Points' unsecured non-priority claim attributable to Claim # 26 based upon MIH's
- 22 guaranty of the balance due under the June 26, 2007 Agreement.
- 23 22. All Points' has not established a triable issue of fact as to MIC's Tenth and Eleventh
- 24 Claims for Relief.
- 25 23. All Points' lien securing payment by MIC of the balance due by MIC under the August 2,
- 26 2007 Agreement is limited to the value of the collateral described in the Equipment
- 27

Schedule A attached to the August 2, 2007 Agreement which identifies specific equipment and bears a signature of lessor and lessee.

24. Claim # 17 is allowed in the following amounts: Secured: \$14,700. Unsecured non-priority: \$76,944.07.

### III. CONCLUSION

For the reasons stated, MI, MIH and MIC are entitled to a partial summary judgment against All Points granting the relief requested in the First, Second, Fourth, Sixth, Tenth and Eleventh Claims for Relief set forth in their Complaint. MI, MIH and MIC are entitled to a partial summary judgment on their Seventh Claim for Relief, as follows: Claim # 16 is allowed as a secured claim in the amount of \$17,200; but there is a genuine issue of material fact regarding the allowed amount, if any, of All Points' unsecured non-priority claim attributable to Claim # 16. MI, MIH and MIC are entitled to a partial summary judgment on their Eighth Claim for Relief, as follows: Claim # 39 is disallowed to the extent that it asserts a secured claim against MI, but there is a genuine issue of material fact regarding the allowed amount, if any, of All Points' unsecured non-priority claim attributable to Claim # 39 based upon MI's guaranty of the balance due under the June 26, 2007 Agreement. Finally, MI, MIH and MIC are entitled to a partial summary judgment on their Ninth Claim for Relief, as follows: Claim # 26 is disallowed to the extent that it asserts a secured claim against MIH, but there is a genuine issue of material fact regarding the allowed amount, if any, of All Points' unsecured non-priority claim attributable to Claim # 26 based upon MIH's guaranty of the balance due under the June 26, 2007 Agreement.

A separate order will be entered consistent with this opinion.

Dated: December 11, 2012

/s/  
PETER H. CARROLL  
Chief Bankruptcy Judge

## NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*): MEMORANDUM DECISION was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner stated below:

**1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)** – Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of (*date*) 12-11-12, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

- Amanda N Ferns    [aferns@fernslaw.com](mailto:aferns@fernslaw.com)
- United States Trustee (LA)    [ustpreion16.la.ecf@usdoj.gov](mailto:ustpreion16.la.ecf@usdoj.gov)
- Robert M Yaspan    [court@yaspanlaw.com](mailto:court@yaspanlaw.com), [tmenachian@yaspanlaw.com](mailto:tmenachian@yaspanlaw.com)

☐ Service information continued on attached page

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

West Star Capital LLC  
Registered Agent  
4059 MAYWOOD DRIVE  
SEAFORD, NY 11783

☐ Service information continued on attached page

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

☐ Service information continued on attached page