

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

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In re:	Chapter 11
STEIN MART, INC. ¹	Case No. 3:20-bk-2387
STEIN MART BUYING CORP.	Jointly Administered with
STEIN MART HOLDING CORP.,	Case No. 3:20-bk-2388
Debtors.	Case No. 3:20-bk-2389

**NOTICE OF SUCCESSFUL BIDDER AND BACKUP BIDDER WITH
RESPECT TO THE SALE OF THE DEBTORS INTELLECTUAL PROPERTY**

PLEASE TAKE NOTICE that after an auction held on November 18, 2020, commencing at 10:00 a.m. (ET) in accordance with the *Debtors' Motion For Entry of an Order, Pursuant to Sections 105 and 363 of the Bankruptcy Code, (I) Authorizing the Sale of Certain Intellectual Property Free and Clear of Liens, Claims, Encumbrances, and Other Interests, and (II) Granting Related Relief* [Docket No. 651] (the "**Sale Motion**")² and upon consideration of all Qualified Bids submitted to the above-captioned debtors and debtors in possession (collectively, the "**Debtors**"), the Debtors, in consultation with the Consultation Parties, have selected the following Successful Bidder and Backup Bidder with respect to the sale of certain of the Debtors' assets:

Successful Bidder: Stein Mart Online, Inc. (which was the original Stalking Horse Bidder) at \$6,021,854.00.³

Backup Bidder: ZG Apparel Group, LLC at \$5,921,854.00

¹ The tax identification numbers of the Debtors are as follows: Stein Mart, Inc. 6198; Stein Mart Buying Corp. 1114; and Stein Mart Holding Corp. 0492. The address of the Debtors' principal offices: 1200 Riverplace Blvd., Jacksonville, FL 32207. The Debtors' claims agent maintains a website, <https://cases.stretto.com/SteinMart>, which provides copies of the Debtors' first day pleadings and other information related to the case.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion.

³ Pursuant to Section 16(d)(iii) of the Sale Motion and section 6.2(g)(ii) of the Purchase Agreement, the Stalking Horse Bidder is entitled to a credit in the amount of the Break-Up Fee (\$120,054) against the purchase price, resulting in a purchase price of \$5,901,800.00.

PLEASE TAKE FURTHER NOTICE that the Intellectual Property Asset Purchase Agreement dated as of October 29, 2020, among the Debtors and Successful Bidder (the “**Purchase Agreement**”) attached as Exhibit B to the Sale Motion, will be amended to add the following to Schedule 1.1(b)(1) (Permitted Encumbrances):

“Bohan is an advertising and digital marketing firm which provided Stein Mart with content for Instagram, Facebook and other social media platforms. Bohan produced the content and posted it on the platforms for Stein Mart. Bohan's agreement with Stein Mart provided that Stein Mart only obtained ownership of the copyright to the content once Stein Mart paid Bohan for the services. As a result of the financial distress caused by Covid 19, Stein Mart did not pay Bohan for content between March 1, 2020 and the petition date. Therefore, Stein Mart does not own, and cannot convey, the content on the social media platforms posted on March 1, 2020 and thereafter. Stein Mart intends to remove all such content before the sale. The content posted prior to March 1, 2020 will remain on the platforms at the time of the sale.

In connection with the production of the content, Bohan entered into agreements with the actors or models which granted Stein Mart a limited license to use the pictures of the actors. This license was usually six months. Following the expiration of the license, Stein Mart could not re-post or re-publish the content. For example, an advertisement posted on social media that was subject to one of these 6 month restrictions on December 1, 2019 could not be reposted on social media on July 1, 2020. However, the original post from December 1, 2019 could remain on social media. Bohan advises that the reposting of this content by the buyer will violate the talent's intellectual property rights and would subject both the buyer and Bohan to potential liability.

Synchrony Bank issued a co-branded credit card with Stein Mart for use by Stein Mart customers in the Stein Mart stores. The customer's right to use the credit card terminated when the last store closed. Synchrony Bank cannot issue any more credit cards. Pursuant to the agreement with Synchrony Bank to terminate the relationship, Stein Mart has agreed (and the Bankruptcy Court has approved) a limited grant of authority to Synchrony Bank to continue to use the Stein Mart name and logo for the purpose of collecting the credit card account balances, per the *Order Pursuant to Fed. R. Bankr. P. 9019 on Amended Motion to Approve Stipulation by and between Debtors and Synchrony Bank* [Docket No. 729]. Synchrony Bank's right to use the Stein Mart logo will continue following the sale of the IP.”

PLEASE TAKE FURTHER NOTICE that the parties have agreed to add the following to the proposed *Order Granting and Approving Debtors’ Motion for Entry of an Order Pursuant to Sections 105 and 363 of the Bankruptcy Code, (I) Authorizing the Sale of Certain Intellectual Property Free and Clear of Liens, Claims, Encumbrances, and Other Interests, and (II) Granting Related Relief* (the “**Sale Order**”) (the full text of the Sale Order is attached hereto as **Exhibit A**):

“Synchrony Bank shall retain its rights under its license under the Amended and Restated Co-Brand and Private Label Credit Card Consumer Program Agreement dated as of February 24, 2016, as amended, to use the Debtors’ intellectual property to engage in collection activities and to communicate with cardholders as provided for in the Program Agreement and pursuant to section 365(n) of the Bankruptcy Code and other applicable

law, notwithstanding anything to the contrary in this order and notwithstanding the sale of the Debtors' property.

Restriction of Use of The Bohan Agency, Inc.'s Intellectual Property. All content prepared and/or produced by The Bohan Agency, Inc. ("Bohan") for the Debtors between March 1, 2020 and the Petition Date (collectively, the "Bohan IP"), including, without limitation, (i) social media posts on the Debtors' Instagram, Facebook, Pinterest, and Twitter accounts and (ii) plans, layouts, concepts, designs, and related documents and information related to television commercials and advertisements, is Bohan's property. For the avoidance of doubt, the Bohan IP is not property of the Debtors' estates under section 541 of the Bankruptcy Code. Notwithstanding anything to the contrary in the Motion and Purchase Agreement: (i) the Bohan IP shall not be included in the Sale; and (ii) the Debtors shall return or destroy, as applicable after consultation with Bohan, any Bohan IP that is currently in the physical possession of the Debtors. Additionally, to the extent any content prepared by Bohan for the Debtors before March 1, 2020, that is property of the Debtors' estates, is re-posted by Buyer on social media or otherwise re-published by Buyer, Buyer shall abide by any limited IP licenses and other third-party agreements entered into in connection with Bohan's production of such content, relating to restrictions on reuse or republishing of such content, and shall defend, indemnify, and hold Bohan and its respective shareholders, members, partners, directors, managers, officers, agents, representatives, and employees harmless from any and all claims, demands, damages, liabilities, loss, costs, or deficiencies of any nature (including, but not limited to, reasonable attorneys' and expert witness' fees and other costs and expenses incident to proceedings or investigations or defense of any claim) suffered as a result of Buyer's breach of such third-party agreement."

Consistent with the Notice of Hearing dated October 30, 2020 [Docket No. 652], the Debtors will present the Successful Bid submitted by the Successful Bidder (including the Purchase Agreement, as amended in accordance with this Notice of Successful Auction) and Backup Bid submitted by the Backup Bidder to the Bankruptcy Court for approval at the Sale Hearing scheduled on November 23, 2020 at 10:00 a.m. (ET), or at such time thereafter as counsel may be heard, before the Honorable Jerry A. Funk, United States Bankruptcy Judge, in Courtroom 4D, Bryan Simpson United States Courthouse, 300 North Hogan Street, Jacksonville, Florida 32202.

Individuals and counsel representing entities may make a telephonic appearance through Court Call on its website at www.courtcall.com or by telephone at 866-582- 6878. Parties wishing to use CourtCall must register individually with CourtCall prior to the hearing and provide a payment method for the CourtCall charge, which varies. Generally, registration must be completed by 5:00 p.m. (prevailing Eastern Time) the day before the hearing

Dated: Jacksonville, Florida
November 19, 2020

Respectfully submitted,
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EXHIBIT A

Sale Order

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:	Chapter 11
STEIN MART, INC. ¹	Case No. 3:20-bk-2387
	Jointly Administered with
STEIN MART BUYING CORP.	Case No. 3:20-bk-2388
STEIN MART HOLDING CORP.,	Case No. 3:20-bk-2389
Debtors.	

**ORDER GRANTING AND APPROVING DEBTORS' MOTION FOR ENTRY OF
AN ORDER, PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE,
(I) AUTHORIZING THE SALE OF CERTAIN INTELLECTUAL
PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,
AND OTHER INTERESTS, AND (II) GRANTING RELATED RELIEF**

This matter came for hearing upon the DEBTORS' MOTION FOR ENTRY OF AN ORDER, PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE, (I) AUTHORIZING THE SALE OF CERTAIN INTELLECTUAL PROPERTY FREE AND

¹ The tax identification numbers of the Debtors are as follows: Stein Mart, Inc. 6198; Stein Mart Buying Corp. 1114; and Stein Mart Holding Corp. 0492. The address of the Debtors' principal offices: 1200 Riverplace Blvd., Jacksonville, FL 32207. The Debtors' claims agent maintains a website, <https://cases.stretto.com/SteinMart>, which provides copies of the Debtors' first day pleadings and other information related to the case.

CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND (II) GRANTING RELATED RELIEF (the “Motion”)² (Docket No. 651) filed by the above-captioned debtors and debtors and possession (collectively, the “Debtors”) for entry of an order, pursuant to pursuant to 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing the Sale of the Acquired Assets, including the Intellectual Property, on an “as is, where is” basis, free and clear of all liens, claims, encumbrances, and interests, to Stein Mart Online, Inc. (the “Buyer”) as set forth in the Intellectual Property Asset Purchase Agreement, dated as of October 29, 2020, annexed as Exhibit B to the Motion (the “Purchase Agreement”) (ii) granting related relief; and this Court having determined that the relief set forth in this Order is in the best interests of the Debtors, their estates, creditors, and other parties in interest; and due and adequate notice of the Motion having been given under the circumstances; and upon the entire record in these Chapter 11 Cases; and after due deliberation thereon, and good and sufficient cause appearing therefor, it is hereby³

FOUND AND DETERMINED THAT:

A. Findings of Fact and Conclusions. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

² Capitalized terms not defined herein shall have the meanings provided to them in the Motion or the Purchase Agreement, as applicable.

³ Unless otherwise indicated, capitalized terms used but not defined herein have the meanings assigned to them in the Motion or the Purchase Agreement, as applicable; to the extent there is a conflict between a capitalized term in the Motion and a capitalized term in the Purchase Agreement, the meaning ascribed to such term in the Purchase Agreement shall control and govern.

B. Jurisdiction and Venue. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157 and the *General Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the Middle District of Florida. This is a core matter pursuant to 28 U.S.C. § 157(b)(2), and this Court may enter a final order consistent with Article III of the United States Constitution. Venue of the Chapter 11 Cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Statutory and Legal Predicates. The statutory predicates for the relief sought in the Motion are Bankruptcy Code sections 105 and 363 and Bankruptcy Rules 2002, 6004, and 9014.

D. Notice. Due and adequate notice of the Motion, the proposed Sale, the Sale Hearing, and the subject matter thereof has been provided to all parties in interest herein, and no other or further notice is necessary. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities.

E. Interests Property of the Estate. The Acquired Assets sought to be transferred by Seller to the Buyer pursuant to the Purchase Agreement are property of the Debtors' estates and title thereto is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. Each Seller is the sole and rightful owner of such Assets with all right, title and interest to transfer and convey the Acquired Assets to the Buyer, and no other person has any ownership right, title, or interests therein.

F. Sufficiency of Marketing. (i) The Debtors and their advisors engaged in a robust and extensive marketing and sale process for Acquired Assets through their postpetition sale process in accordance with the Sale Procedures as set forth in the Motion and such testimony presented at the Sale Hearing; (ii) the Debtors and their advisors conducted a fair and open sale

process; (iii) the sale process, the Sale Procedures and the Auction and the actions of the Debtors and the Buyer in connection therewith were non-collusive, duly noticed and provided a full, fair and reasonable opportunity for any entity to make an offer to purchase Acquired Assets; and (iv) the process conducted by the Debtors and the Sale Procedures afforded a full and fair opportunity for any entity to make a higher or otherwise better offer to purchase Acquired Assets; (v) the process conducted by the Debtors pursuant to the Sale Procedures obtained the highest or otherwise best value for Acquired Assets for the Seller and the Debtors' estates, and any other transaction would not have yielded as favorable an economic result. No other person or entity or group of persons or entities has offered to purchase Acquired Assets for an amount that would give equal or greater economic value to the Debtors than the value being provided by the Buyer pursuant to the Purchase Agreement. Among other things, the sale of the Acquired Assets pursuant to the Purchase Agreement (the "Sale") is the best alternative available to the Debtors to maximize the return to their creditors. The terms and conditions of the Purchase Agreement, including the Break-Up Fee, are fair and reasonable. Approval of the Motion, the Purchase Agreement, and the transactions contemplated thereby, including the Sale, is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

G. Financial Wherewithal of Buyer. The Buyer has demonstrated its financial wherewithal to satisfy its obligations under the Purchase Agreement, including its payment of the Purchase Price and otherwise provided adequate assurance of future performance of this Purchase Agreement.

H. Corporate Authority. Each Seller: (i) has full requisite corporate or other organizational power and authority to execute, deliver, and perform the Purchase Agreement and all other documents contemplated thereby, and the Transactions (defined below) have been duly

and validly authorized by all necessary corporate action of each of the Debtors; and (ii) has taken all requisite corporate or other organizational actions and formalities necessary to authorize and approve the execution, delivery and performance of the Purchase Agreement and to consummate the transactions contemplated by the Purchase Agreement (including the Sale) (collectively, the “Transactions”), including as required by their respective organizational documents, and, upon execution thereof, the Purchase Agreement and the related documents will be duly and validly executed and delivered by such Seller and enforceable against such Seller in accordance with its terms and, assuming due authorization, execution, and delivery thereof by the other parties thereto, will constitute a valid and binding obligation of each such Seller. No government, regulatory, or other consents or approvals are required for the execution, delivery, and performance by the Seller of the Purchase Agreement and the consummation of the Transactions (including the Sale) contemplated thereby.

I. Compliance with Sale Procedures. As demonstrated by the testimony and other evidence proffered or adduced at the Sale Hearing and the representations of counsel made on the record at the Sale Hearing, the Debtors have adequately marketed the Acquired Assets and conducted the sale process in compliance with the Sale Procedures, and the bidding process was duly noticed and conducted in a non-collusive, fair, and good faith manner. As set forth in the Motion, the Debtors designated the Buyer as the Stalking Horse Bidder for the Acquired Assets and executed the Purchase Agreement, including the Break-Up Fee. The Debtors and their professionals conducted the sale process in compliance with the Sale Procedures and have afforded potential buyers a full and fair opportunity to participate in the bidding process for the Acquired Assets and make higher or better offers. In accordance with the Sale Procedures, the Purchase Agreement was deemed a Qualified Bid and the Buyer was a Qualified Bidder eligible to

participate at the Auction. The Buyer acted in compliance with the Sale Procedures and conducted itself in a non-collusive, fair, and good faith manner. In accordance with the Sale Procedures, the Debtors determined that the bid submitted by the Buyer and memorialized by the Purchase Agreement is the Successful Bid.

J. Arms-Length and Buyer's Good Faith. The Purchase Agreement and each of the Transactions contemplated therein were negotiated, proposed and are undertaken by the Debtors, their management, independent boards of directors or equivalent governing bodies, officers, directors, employees, agents, members, managers and representatives and the Buyer and its management, board of directors or equivalent governing body, officers, directors, employees, agents, members, managers and representatives, from arm's-length bargaining positions without collusion or fraud, and in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Buyer has proceeded in good faith, including by: (i) recognizing that the Debtors were free to deal with any other party interested in acquiring the Acquired Assets; (ii) complying with the applicable Sale Procedures in all respects, including the provisions prohibiting collusion with other prospective bidders; (iii) willingly subjecting its bid to the competitive Sale Procedures; (iv) negotiating and entering into the Purchase Agreement and all Related Agreements without collusion, without fraud, and from arm's length bargaining positions; and (v) guaranteeing the absence of common identity of directors, incorporators or any controlling shareholders between the Buyer and any of the Debtors. The Debtors and the Buyer have not engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the Sale to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code. All payments to be made by the Buyer and other agreements or arrangements entered into by the Buyer in connection with the Sale have been disclosed, neither the Buyer, nor the Debtors have violated

section 363(n) of the Bankruptcy Code by any action or inaction. As a result of the foregoing, in the absence of a stay pending appeal, the Buyer will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing and consummating the Sale at any time after the entry of this Sale Order, and, accordingly, such closing and consummation in the face of an appeal will not deprive the Buyer of their status as good faith purchasers. Without limiting the generality of the foregoing, the reversal or modification on appeal of the authorization provided herein to consummate the Sale or any portion thereof, shall not affect the validity of the Sale. The Buyer and the Debtors are entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

K. Highest or Best Offer. The total consideration provided by the Buyer for the Acquired Assets as reflected in the Purchase Agreement is the highest or otherwise best offer received by the Debtors for the Acquired Assets. Following the Auction, the Debtors determined that the Purchase Agreement constituted the highest or otherwise best offer for the Acquired Assets in accordance with the process set forth in the Sale Procedures and selected the Purchase Agreement as the Successful Bid. The Debtors' determination that the Purchase Agreement constitutes the highest or otherwise best offer and the Debtors' selection of the Purchase Agreement as the Successful Bid each constitute a valid and sound exercise of the Debtors' business judgment, and the Seller's decision to enter into the Purchase Agreement and the Transactions constitutes a proper exercise of the fiduciary duties of the Debtors and their officers and managers. The offer of the Buyer, upon the terms and conditions set forth in the Purchase Agreement, including the total consideration to be realized by the Debtors thereunder, (i) is the highest or otherwise best offer received by the Debtors after extensive marketing, including through the Sale Procedures and (ii) is in the best interests of the Debtors, their creditors, their estates and other parties in interest. The Purchase Agreement and Transactions will present the

best opportunity to realize the value of the Acquired Assets and avoid decline and devaluation of the Acquired Assets. Unless the Sale and all of the other Transactions contemplated by the Purchase Agreement are concluded expeditiously, as provided for in the Motion and pursuant to the Purchase Agreement, recoveries to creditors may be diminished. Taking into consideration all relevant factors and circumstances, no other entity has offered to purchase the Acquired Assets for greater economic value to the Debtors or their estates than that provided by the Purchase Agreement.

L. No Fraudulent Purpose. The Purchase Agreement was not entered into, and neither the Seller nor the Buyer have entered into the Purchase Agreement, or propose to consummate the Sale, for the purpose of hindering, delaying or defrauding the Debtors' present or future creditors. Neither the Seller nor the Buyer have entered into the Purchase Agreement, or are proposing to consummate the Sale, fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or the laws of the United States, any state, territory, possession thereof, the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

M. No Successor or Other Liability. The Buyer is not a mere continuation of the Debtors, the Seller, or their estates, and there is no continuity of enterprise or common identity between the Buyer and the Debtors or the Seller. The Buyer is not holding itself out to the public as a continuation of the Debtors, the Seller, or their estates. The transfer of the Acquired Assets to the Buyer, and the assumption of any assumed liabilities by the Buyer under the Purchase Agreement, if any, does not, and will not, subject the Buyer to any liability whatsoever, with respect to the Debtors, the Seller or the operation or winding down of their businesses prior to the Closing or by reason of such transfer including under the laws of the United States, any state,

territory, or possession thereof, or the District of Columbia, or any foreign jurisdiction, based, in whole or in part, directly or indirectly, on any, or any theory of, successor liability, vicarious liability, antitrust liability, environmental liability, revenue, pension liability, ERISA liability, tax liability, labor (including any WARN Act) liability, employment or benefits liability, merger or de facto merger, business continuation, substantial continuity, alter ego liability, derivative liability, transferee liability, veil piercing, escheat, continuity of enterprise, mere continuation, product line liability, or products liability or law, or other applicable law, rule, or regulation (including filing requirements under any such law, rule, or regulation), or theory of liability, whether legal, equitable, or otherwise (collectively, the “Successor or Other Liabilities”). Pursuant to the Purchase Agreement, the Buyer is not purchasing all of the Debtors’ or Seller’s assets in that the Buyer is not purchasing any of the Designated Assets or assets of the Seller other than the Acquired Assets, or assuming any liabilities except as set forth in the Purchase Agreement, and shall have no liability for any liabilities except as set forth in the Purchase Agreement. The Buyer asserts that it will not consummate the Transactions contemplated by the Purchase Agreement unless such agreement specifically provides, and the Court specifically orders, that neither the Buyer nor their affiliates, members or shareholders or the Acquired Assets be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any liability, other than as set forth in the Purchase Agreement.

N. Sale Free and Clear. Except as expressly provided for in the Purchase Agreement or any Related Agreement, or this Sale Order, if at all, the Buyer is not acquiring or assuming any liability, warranty or other obligation of the Debtors, including without limitation the Excluded Liabilities and the Encumbrances (except Permitted Encumbrances). The transfer of the Acquired Assets to the Buyer will not subject the Buyer to any liability whatsoever with respect to the

operation of the Debtors' businesses prior to the Closing, including, without limitation, any liability arising from the Excluded Liabilities and the Encumbrances (except Permitted Encumbrances), including without limitation any of the following: (a) amounts due to employees, independent contractors, consultants or advisors of the Seller, including the Employee Obligations; (b) any obligations that arise from the Employee Retirement Income Security Act of 1974, as amended, the Fair Labor Standard Act, Title VII of the Civil rights Act of 1964, the Age Discrimination and Employment Act of 1967, as amended, the Federal Rehabilitation Act of 1973, the National Labor Relations Act; (c) any Taxes of any Seller for any taxable period; (d) Transfer Taxes; (e) all environmental liabilities of the Seller; (f) all accounts payable, trade debt and loan obligations of the Seller; (g) all Liabilities of the Seller to any owner or former owner of capital stock or warrants, holder of indebtedness for borrowed money, or current or former officer or director of Seller; (h) all Liabilities of the Seller under any futures contracts, options on futures, swap agreements or forward sale agreements; (i) drafts or checks of the Seller outstanding at the Closing; (j) all workers' compensation claims and occupational health claims related to the Acquired Assets, including and with respect to the Seller's employees and former employees of the Seller who worked or who were employed at the Acquired Assets, in each case arising out of acts prior to the Closing, even if the claims are instituted after the Closing; (k) all Liabilities with respect to the Seller's employees, or the Seller's former employees, or both (or their representatives or beneficiaries, contractors or consultants of the Seller, and employees, contractors or consultants of any ERISA Affiliate, for any action or inaction of either Seller (or any predecessor of either Seller)) occurring prior to or on the Closing, including with respect to vacation, payroll, sick leave, unemployment benefits, retirement benefits, pension benefits, employee stock option, equity compensation, employee stock purchase or profit sharing plans, health care and other welfare

plans, policies, programs, agreements, arrangements, practices or benefits (including COBRA or the Coal Act), WARN or any other employee plans, policies, programs, practices, agreements, arrangements or benefits or other compensation of any kind to any employee, including under any benefit of any subsidiary or ERISA Affiliate, to the extent arising or accruing prior to or on the Closing; (l) any and all Liabilities of the Seller accruing, arising out of, or relating to any federal, state or local investigations of, or claims or actions against, the Seller, to the extent arising out of (i) actions taken prior to the Closing, and (ii) notices of such claims delivered to the Seller prior to the Closing; (m) any and all Liabilities for the Seller's costs and expenses incurred or owed in connection with (i) the administration of the Bankruptcy Case, and (ii) the negotiation, execution and consummation of the transactions contemplated hereby, in each case, except as otherwise set forth herein; and (n) all Liabilities of the Seller arising from the Excluded Assets.

O. Sale as an Exercise of Business Judgment. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for approval of and entry into the Sale, the Purchase Agreement, and any related agreements (the "Related Agreements"). The Seller's entry into and performance under the Purchase Agreement and any Related Agreements and the consummation of the Transactions contemplated thereby, including the Sale, constitutes sound business judgment and such acts are in the best interests of each Debtor, its estate, and all parties in interest. The Court finds that each Debtor has articulated good and sufficient reasons justifying the Transactions. Such reasons include, but are not limited to, the following: (i) are a result of due deliberation by the Debtors and constitute a sound and reasonable exercise of the Debtors' business judgment consistent with their fiduciary duties; (ii) provide value to and are beneficial to the Debtors' estates, and are in the best interests of the Debtors and their estates, creditors and other parties in interest; and (iii) are reasonable and appropriate under the circumstances. Business

justifications for the Sale include, but are not limited to, the following: (x) the Purchase Price set forth in the Purchase Agreement constitutes the highest or otherwise best offer received for the Acquired Assets; (y) the Purchase Agreement and the Transactions contemplated thereby present the best opportunity to maximize the value of the Acquired Assets; and (z) the value of the Debtors' estates will be maximized through the sale of the Acquired Assets pursuant to the Purchase Agreement.

P. Compelling Reasons for an Immediate Sale. The sale of the Acquired Assets must be approved and consummated promptly in order to preserve the value of the Acquired Assets. Therefore, time is of the essence in consummating the Transactions, and the Debtors and the Buyer intend to close the Transactions as soon as reasonably practicable. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Transactions contemplated by the Purchase Agreement outside: (a) the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code; and (b) a plan of reorganization or liquidation (as the case may be), in that, among other things, the immediate consummation of the Sale to the Buyer is necessary and appropriate to preserve and to maximize the value of the Debtors' estates. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rules 6004 and 6006 with respect to the transactions contemplated by this Sale Order.

Q. No Sub Rosa Plan. The Purchase Agreement and the Sale do not constitute a sub rosa chapter 11 plan for which approval has been sought without the protection that a disclosure statement would afford. Neither the Purchase Agreement nor the Sale impermissibly restructures the rights of the Debtors' creditors, nor impermissibly dictates the terms of a chapter 11 plan for the Debtors.

S. Final Order. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, waives any stay, and expressly directs entry of judgment as set forth herein. The Debtors have demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for the immediate approval and consummation of the Sale as contemplated by the Purchase Agreement. Buyer, being a good faith Buyer under section 363(m) of the Bankruptcy Code, may close the Sale contemplated by the Purchase Agreement at any time after entry of this Sale Order.

IT IS HEREBY ORDERED THAT:

1. Motion Granted. The Motion is GRANTED as set forth herein.
2. Objections Overruled. All objections to the Motion or relief provided herein that have not been withdrawn, waived, or settled are hereby overruled and denied on the merits.
3. Notice. Notice of the Motion, Sale Procedures, Sale (and the Transactions and Purchase Agreement contemplated in connection therewith), Sale Hearing, and all deadlines related thereto was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.
4. Approval. The Debtors are authorized to enter into the Purchase Agreement, the Sale, any Related Agreements, and the other Transactions (including any amendments, supplements and modifications thereto, and all of the terms and conditions therein). Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors are authorized and directed to consummate the Sale, including, without limitation, the sale and transfer of the Acquired Assets

to the Buyer in accordance with, and subject to, the terms and conditions of the Purchase Agreement, and to transfer and assign all right, title and interest (including common law rights) to all property, licenses and rights to be conveyed free and clear of all Excluded Liabilities (except Permitted Encumbrances), liens, claims, interests and encumbrances to the extent set forth in, and in accordance with and subject to, the terms and conditions of the Purchase Agreement. The Debtors, Seller, and the Buyer are each hereby authorized and directed to take any and all actions necessary or appropriate to: (a) consummate the Sale of the Acquired Assets to the Buyer and the Closing of the Sale and the Transactions pursuant to the Purchase Agreement and this Sale Order and (b) perform, consummate, implement and close fully the Purchase Agreement together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement. The Debtors and Seller are hereby authorized and directed to perform each of their respective covenants and undertakings as provided in the Purchase Agreement prior to or after the Closing of the Sale without further order of the Court. The failure to specifically include any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement (including, but not limited to, all ancillary agreements and Related Agreements contemplated thereby) be authorized and approved in its entirety. All Persons are prohibited from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Acquired Assets to the Buyer in accordance with the Purchase Agreement and this Sale Order. The Acquired Assets, including the Intellectual Property, sold pursuant to the Purchase Agreement to the Buyer is being sold "AS IS-WHERE IS," without any representations or warranties from the Debtors as to the quality or fitness of such assets for either their intended or any other purposes.

5. Fair Purchase Price. The consideration provided by the Buyer under the Purchase Agreement is fair and reasonable and constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Voidable Transactions Act (f/k/a Uniform Fraudulent Transfer Act), (ii) fair consideration under the Uniform Fraudulent Conveyance Act, and (iii) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession or the District of Columbia.

6. Amendments to Purchase Agreement; No Plan Modifications. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, supplemented, waived or restated by the parties thereto in a writing signed by such parties and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment, supplement, waiver or restatement does not have a material adverse effect on the Debtors' estates. The Purchase Agreement, any Related Agreement and the Debtors' obligations therein shall not be altered, amended, rejected, discharged or otherwise affected by any chapter 11 plan proposed or confirmed in the Chapter 11 Cases without the prior written consent of the Buyer. The provisions of this Sale Order and any actions taken pursuant hereto shall survive the entry of any order which may be entered confirming any plan of reorganization for the Debtors or converting the Debtors' cases, or any of them, from chapter 11 to a case under chapter 7 of the Bankruptcy Code.

7. Transfer Free and Clear. One or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Acquired Assets are transferred by the Debtors to the Buyer free and clear of the Excluded Liabilities, Encumbrances (except Permitted Encumbrances), any lien (statutory or otherwise), hypothecation, encumbrance, security interest, mortgage, pledge, restriction, charge,

instrument, license, preference, priority, security agreement, easement, covenant, encroachment, option, or other interest in the subject property, including, without limitation, any right of recovery, tax (including foreign, federal, state, and local tax), order of any governmental authority, or other claim with respect thereto, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, and (iii) any claims based on any theory that the Buyer is a successor, transferee or continuation of the Debtors, the Seller, or the Acquired Assets, or that a de facto merger resulted from the transfer of the Acquired Assets, and (iv) any leasehold interest, license or other right, in favor of a person other than the Buyer, to use any portion of the Acquired Assets), whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or noncontingent, material or nonmaterial, known or unknown (collectively, “Interests”, and individually, an “Interest”). Each holder of any Interest against the Debtors, the Seller, or any of them, their estates, or any of the Acquired Assets: (i) has, subject to the terms and conditions of this Sale Order, consented to the Sale or is deemed to have consented to the Sale; (ii) could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such Interest; or (iii) otherwise falls within the provisions of 11 U.S.C. § 363(f). Those holders of Interests who did not object, or who withdrew their objections, to the Motion and the Sale are deemed, subject to the terms of this Sale Order, to have consented pursuant to 11 U.S.C. § 363(f)(2). All holders of Interests are adequately protected by having their Interests attach to the proceeds ultimately attributable to the Acquired Assets against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force and effect, and in the same order of priority, that such Interests had prior the Sale, subject to any rights, claims and defenses the Debtors or their

estates, as applicable, may possess with respect thereto. The Debtors are authorized and directed to transfer the Acquired Assets to the Buyer in accordance with the terms of the Purchase Agreement and this Sale Order. Upon the Closing, such transfer shall: (i) be valid, legal, binding and effective; (ii) vest the Buyer with all right, title and interest of the Debtors and the Seller in the Acquired Assets; and (iii) be free and clear of all Interests, Encumbrances (except for the Permitted Encumbrances), Excluded Liabilities and any other claims and interests in accordance with section 363(f) of the Bankruptcy Code. All Persons having claims or interests of any kind or nature whatsoever against the Debtors or the Acquired Assets, including without limitation Interests, Encumbrances (except for the Permitted Encumbrances), or Excluded Liabilities, shall be forever barred, estopped and permanently enjoined from creating, perfecting, pursuing, enforcing, attaching, collecting, recovering, or asserting such claims or interests against the Buyer or any of its assets, property, affiliates, successors, assigns, or the Acquired Assets. Synchrony Bank shall retain its rights under its license under the Amended and Restated Co-Brand and Private Label Credit Card Consumer Program Agreement dated as of February 24, 2016, as amended (the “Program Agreement”), to use the Debtors’ intellectual property to engage in collection activities and to communicate with cardholders as provided for in the Program Agreement and pursuant to section 365(n) of the Bankruptcy Code and other applicable law, notwithstanding anything to the contrary in this order and notwithstanding the sale of the Debtors’ property

8. Restriction of Use of The Bohan Agency, Inc.’s Intellectual Property. All content prepared and/or produced by The Bohan Agency, Inc. (“Bohan”) for the Debtors between March 1, 2020 and the Petition Date (collectively, the “Bohan IP”), including, without limitation, (i) social media posts on the Debtors’ Instagram, Facebook, Pinterest, and Twitter accounts and (ii) plans, layouts, concepts, designs, and related documents and information related to television

commercials and advertisements, is Bohan's property. For the avoidance of doubt, the Bohan IP is not property of the Debtors' estates under section 541 of the Bankruptcy Code. Notwithstanding anything to the contrary in the Motion and Purchase Agreement: (i) the Bohan IP shall not be included in the Sale; and (ii) the Debtors shall return or destroy, as applicable after consultation with Bohan, any Bohan IP that is currently in the physical possession of the Debtors. Additionally, to the extent any content prepared by Bohan for the Debtors before March 1, 2020, that is property of the Debtors' estates, is re-posted by Buyer on social media or otherwise re-published by Buyer, Buyer shall abide by any limited IP licenses and other third-party agreements entered into in connection with Bohan's production of such content, relating to restrictions on reuse or republishing of such content, and shall defend, indemnify, and hold Bohan and its respective shareholders, members, partners, directors, managers, officers, agents, representatives, and employees harmless from any and all claims, demands, damages, liabilities, loss, costs, or deficiencies of any nature (including, but not limited to, reasonable attorneys' and expert witness' fees and other costs and expenses incident to proceedings or investigations or defense of any claim) suffered as a result of Buyer's breach of such third-party agreement

9. Proceeds of the Sale. The proceeds of the sale of the Acquired Assets shall be subject to the *Final Order (I) Authorizing Use of Cash Collateral and Affording Adequate Protection; (II) Modifying Automatic Stay; and (III) Granting Related Relief* [Docket No. 407]

10. Surrender of Possession. Except as otherwise provided in the Purchase Agreement, any Acquired Assets in the possession or control of any person or entity, including any vendor, supplier, attorney or employee of the Debtors, shall be delivered to the Buyer free and clear of all Interests, including without limitation free and clear of the Encumbrances (except for Permitted

Encumbrances) and the Excluded Liabilities, and deemed delivered at the time of Closing (or such other time as provided in the Purchase Agreement).

11. Vesting of Assets in the Buyer. Effective upon the Closing, the transfer to the Buyer of the Acquired Assets pursuant to the Purchase Agreement shall be, and hereby is deemed to be, a legal, valid and effective transfer of the Acquired Assets, and vests with or will vest in the Buyer all the Acquired Assets free and clear of Interests, including without limitation free and clear of Encumbrances (except for the Permitted Encumbrances) and Excluded Liabilities.

12. Injunction. Except as expressly provided in the Purchase Agreement or by this Sale Order, effective upon the Closing all persons and entities, including, but not limited to, all debt holders, equity security holders, governmental, tax and regulatory authorities, lenders, vendors, suppliers, employees, trade creditors, litigation claimants and other persons holding Excluded Liabilities or Encumbrances (except Permitted Encumbrances) on the Acquired Assets shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Excluded Liabilities or Encumbrances (except Permitted Encumbrances). All persons are hereby enjoined from taking any action that would interfere with or adversely affect the ability of the Seller to transfer the Acquired Assets in accordance with the terms of the Purchase Agreement and this Sale Order.

13. Direction to Creditors and Parties in Interest. On the Closing, but subject to the Purchase Agreement, each of the Debtors' creditors and the holders of any claims are authorized and directed to execute such documents and take all other actions as may be necessary to terminate, discharge or release their Encumbrances against the Acquired Assets, if any, as such Encumbrances may otherwise exist.

14. Direction to Government Agencies. Each and every filing agent, filing officer, title agent, recording agency, governmental department, secretary of state, federal, state and local official, and any other person and entity who may be required by operation of law, the duties of its office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Acquired Assets, is hereby authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the Sale and any other Transactions contemplated by the Purchase Agreement and approved by this Sale Order.

15. Good Faith Buyer. The Buyer is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code, and the Buyer has proceeded in good faith in all respects in connection with the Sale.

16. Consummation of Sale. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Debtors, as well as their officers, employees and agents, are authorized to enter into, execute, deliver and perform their obligations under and comply with the terms of the Purchase Agreement and the Related Agreements and to close and consummate the Sale, including by taking any and all actions as may be reasonably necessary or desirable to implement the Sale and each of the Transactions contemplated thereby pursuant to and in accordance with the terms and conditions of the Purchase Agreement, the Related Agreements, and this Sale Order.

17. Transfer of Marketable Title. Upon the Closing, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Acquired Assets or a bill of sale transferring good and marketable title in the Acquired Assets to the Buyer at the Closing pursuant to the terms of the Purchase Agreement, free and clear of all Encumbrances (except for the Permitted Encumbrances) and Excluded Liabilities.

18. No Successor Liability. By virtue of the Sale, the Buyer and its affiliates, successors and assigns shall not be deemed or considered to: (i) be a legal successor, or otherwise be deemed a successor to any of the Debtors or the Seller; (ii) have, *de facto* or otherwise, merged with or into any or all Debtors or Seller; (iii) be a consolidation with the Debtors, Seller or their estates; or (iv) be an alter ego or a continuation or substantial continuation, or be holding itself out as a mere continuation, of any of the Debtors, Seller, or their respective estates, businesses or operations, or any enterprise of the Debtors or Seller, in each case by any law or equity.

19. Approval to Release Encumbrances. If any person or entity that has filed financing statements or other documents or agreements evidencing Encumbrances on the Acquired Assets shall not have delivered to the Debtors before the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens, and any other documents necessary for the purpose of documenting the release of all Encumbrances that the person or entity has or may assert with respect to the Acquired Assets, the Debtors and the Buyer are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets. The Buyer is hereby authorized to file, register or otherwise record a certified copy of this Sale Order.

20. Inconsistencies with Prior Orders, Pleadings or Agreements. To the extent this Sale Order is inconsistent with any prior order or pleading with respect to the Motion in these Chapter 11 Cases, the terms of this Sale Order shall govern. To the extent there is any inconsistency between the terms of this Sale Order and the terms of the Purchase Agreement (including all ancillary documents executed in connection therewith), the terms of this Sale Order shall govern;

provided, nothing herein shall modify, abrogate or otherwise limit the provisions of Section 7.6 of the Purchase Agreement and the rights conferred thereunder.

21. Subsequent Orders and Plan Provisions. Unless otherwise agreed to by the Debtors and the Buyer, this Sale Order shall not be modified by any chapter 11 plan confirmed in these Chapter 11 Cases or any subsequent order(s) of this Court.

22. Binding Effect of Sale Order. This Sale Order and the Purchase Agreement shall be binding in all respects upon the Debtors, their estates, all creditors of, and holders of equity interests in, the Debtors, any holders of liens on the Acquired Assets (whether known or unknown), the Buyer and all successors and assigns of the Buyer, notwithstanding the dismissal of any of the Debtors' cases or any subsequent appointment of any trustees, examiners, "responsible persons" or other fiduciaries in the Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code, and the Purchase Agreement shall not be subject to rejection or avoidance under any circumstances.

23. No Avoidance of Purchase Agreement. Neither the Debtors nor the Buyer have engaged in any conduct that would cause or permit the Purchase Agreement to be avoided or costs or damages to be imposed under section 363(n) of the Bankruptcy Code. Accordingly, the Purchase Agreement and the Sale shall not be avoidable under section 363(n), chapter 5 of the Bankruptcy Code, or under any other applicable laws of the United States, any state, territory or possession or the District of Columbia, and no party shall be entitled to any damages or other recovery pursuant to section 363(n) of the Bankruptcy Code in respect of the Purchase Agreement or the Sale.

24. Entire Purchase Agreement Approved. The failure to specifically include any particular provisions of the Purchase Agreement or any related agreements in this Sale Order shall

not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtors and the Buyer that the Purchase Agreement and any Related Agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Sale Order.

25. Nonseverable. The provisions of this Sale Order are nonseverable and mutually dependent.

26. Immediate Effect. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, the terms of this Order shall be immediately effective and enforceable upon its entry and not subject to any stay, notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d) or otherwise.

27. Satisfaction of Conditions Precedent. Neither the Buyer nor the Seller shall have an obligation to close the Transactions until all conditions precedent in the Purchase Agreement to each of their respective obligations to close the Transactions have been met, satisfied, or waived in accordance with the terms of the Purchase Agreement.

28. Bulk Sales; Taxes. No bulk sales law, bulk transfer law or similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the Purchase Agreement, the Sale Motion or this Sale Order. Except as otherwise expressly provided in the Purchase Agreement, all obligations of the Debtors relating to taxes, whether arising under any law, by the Purchase Agreement, or otherwise, shall be the obligation of and fulfilled and paid by the Debtors.

29. Automatic Stay. The Buyer shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the

Purchase Agreement, and any Related Agreements, documents or other instruments. The automatic stay imposed by section 362 of the Bankruptcy Code is modified to the extent necessary to implement the provisions of the Purchase Agreement, any Related Agreement, and this Sale Order.

30. Retention of Jurisdiction. The Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order, the Purchase Agreement, all amendments thereto, and the Related Agreement in connection with any disputes involving the Debtors, and to adjudicate, if necessary, any and all disputes concerning the Debtors and related in any way to the Sale; provided, however, that in the event the Court abstains from exercising or declines to exercise jurisdiction or is without jurisdiction, such abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

Debtors' counsel is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within three days of entry of this order.