

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS - HOUSTON DIVISION**

<i>In re</i> <b>WESCO AIRCRAFT HOLDINGS, INC., et al.,</b> <sup>1</sup> Debtors.	Case No. 23-90611 (MI) Chapter 11 (Jointly Administered)
<b>WESCO AIRCRAFT HOLDINGS, INC., et al.,</b> Plaintiffs, v. <b>SSD INVESTMENTS LTD., et al.,</b> Defendants.	Adv. Pro. No. 23-03091 (MI)
<b>SSD INVESTMENTS LTD., et al.,</b> Counterclaim Plaintiffs, v. <b>WESCO AIRCRAFT HOLDINGS, INC., et al.,</b> Counterclaim Defendants.	
<b>LANGUR MAIZE, L.L.C.,</b> Crossclaim Plaintiff, v. <b>PLATINUM EQUITY ADVISORS, LLC, et al.,</b> Crossclaim Defendants.	
<b>LANGUR MAIZE, L.L.C.,</b> Third-Party Plaintiff, v. <b>UNNAMED PLATINUM FUNDS c/o PLATINUM EQUITY ADVISORS, LLC, et al.,</b> Third-Party Defendants.	
<b>LANGUR MAIZE, L.L.C.,</b> Counterclaim Plaintiff, v. <b>WESCO AIRCRAFT HOLDINGS, INC., et al.,</b> Counterclaim Defendants.	

**PIMCO NOTEHOLDERS' OPPOSITION  
TO THE 2024/2026 HOLDERS' EMERGENCY MOTION TO STRIKE PORTIONS OF  
PIMCO'S BRIEF RESPONDING TO THE COURT'S FEBRUARY 29, 2024 REQUEST  
AND TO EXCLUDE THE DECLARATION OF SCOTT SCHWARMANN**

<sup>1</sup> The Debtors operate under the trade name Incora and have previously used the trade names Wesco, Pattonair, Haas, and Adams Aviation. A complete list of the Debtors in these chapter 11 cases, with each one's federal tax identification number and the address of its principal office, is available on the website of the Debtors' noticing agent at <http://www.kccllc.net/Incora/>. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.



1. The PIMCO Noteholders hereby submit this opposition in response to the 2024/2026 Holders' Emergency Motion to Strike Portions of PIMCO's Brief Responding to the Court's February 29, 2024 Request and to Exclude the Declaration of Scott Schwarmann (the "Motion"). ECF No. 1349.

### **PRELIMINARY STATEMENT**

2. During the testimony of a PIMCO Noteholder witness, Mr. Samuel Dostart, the Court raised questions regarding the federal recordkeeping regulations that apply to PIMCO. The inquiry arose out of PIMCO's internal use of a proxy securities identifier ("CUSIP") and description information to record its purchase of the Additional 2026 Notes in its internal systems. In response, the PIMCO Noteholders submitted a brief (the "Responding Brief"), ECF No. 1266, and supporting declaration (the "Declaration"), ECF No. 1266-1, which the PIMCO Noteholders included to ensure the Court had a full and complete answer to its inquiry.

3. The 2024/2026 Holders' Motion is a transparent attempt to distract the Court and avoid the considerable contemporaneous record concerning the closing of the 2022 Transaction. The Responding Brief and Declaration are entirely consistent with that evidentiary record and the Motion should be denied.

### **ARGUMENT**

#### **I. The Brief and Declaration Were Not Improperly Filed and Were An Appropriate Response to the Court's Inquiry**

4. The 2024/2026 Holders argue that the Court should exercise its "inherent power to control. . . its docket" to strike the materials, citing to three cases, none of which support the relief sought by the Motion.<sup>2</sup> *See Vicks v. Packnett*, 2020 WL 2616398, at \*1 (M.D. La. May 22, 2020)

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<sup>2</sup> The 2024/2026 Holders presumably make this argument because they do not meet the strictures of Rule 12(f), which permits a court to strike from a **pleading** "an insufficient defense or any redundant, immaterial, impertinent,

(striking a reply that was improperly filed and concerned unnamed defendants and different claims than those at issue; motion to strike was unopposed and “there [was] no prejudice to Plaintiff in striking a document that clearly does not relate to any claim or defense in this case”); *Darden v. Vines*, 2022 WL 11388606, at \*2 (W.D. La. Oct. 19, 2022) (excluding from consideration an affidavit on a motion to dismiss pursuant to court’s authority under Rule 12(b)(6) to exclude from consideration matters that are not pleadings); *Powell v. Dallas Morning News L.P.*, 776 F. Supp. 2d 240, 246 (N.D. Tex. 2011) (striking plaintiffs’ untimely supplemental expert declaration, filed without leave of court and in violation of local rules).

5. The Responding Brief and Declaration were not improperly filed—they are a direct response to the Court’s February 29, 2024 request for further information. During Mr. Dostart’s testimony, Mr. Dostart testified on cross- and redirect-examination regarding PIMCO’s trading reports and the use of a proxy CUSIP. At the end of the testimony, the Court posed its question regarding the federal recordkeeping regulations that apply to PIMCO. ECF No. 969, 2/29/2024 Trial Tr. 162:10-163:2; *see also* 163:16-164:13.

6. In submitting the Brief and Declaration, the PIMCO Noteholders sought to respond to the Court’s inquiry by explaining PIMCO’s recordkeeping obligations under federal securities law (Responding Brief, Section I) and providing information about how PIMCO complies with those regulations in the ordinary course of business (Sections II and III), which the PIMCO Noteholders also understood the Court to be inquiring about. That included background information which Mr. Dostart, who is not a member of PIMCO’s operation’s team, did not have.

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or scandalous matter”. *See* Fed. R. Civ. P. 12(f), 7(a) (defining “pleading”). “[M]otions, affidavits, briefs, and other documents outside of the pleadings are not subject to Rule 12(f).” *West v. ABM Indus., Inc.*, 2020 WL 13860155, at \*1 (N.D. Tex. Apr. 20, 2020); *cf. Walsh v. Freeman Sec. Servs., Inc.*, 2022 WL 445501, at \*4 (M.D. Fla. Feb. 14, 2022) (denying “procedurally improper” motion to strike exhibits attached to supplemental brief as exhibits are “not a pleading”); *In re Adams*, 516 B.R. 361, 377 (Bankr. S.D. Miss. 2014) (similar).

For this reason, PIMCO provided the Declaration of Mr. Schwarmann. The Declaration is limited purely to an explanation of PIMCO's recordkeeping systems and practices and does not address the 2022 Transaction. The Brief also explained how the evidence *already* in the record demonstrated that PIMCO had complied with the applicable regulations in connection with the Additional 2026 Notes, ECF No. 1266 at 4-7. The filing was thus entirely proper.

## **II. The 2024/2026 Holders Are Not Prejudiced by the Brief or Declaration**

7. Further, there is no prejudice to the 2024/2026 Holders from the Responding Brief or Declaration. On any motion to strike, prejudice to the parties is a key consideration. *Cf. Am. S. Ins. Co. v. Buckley*, 748 F. Supp. 2d 610, 626 (E.D. Tex. 2010) (“Although motions to strike are disfavored and infrequently granted”, relief may be appropriate where “allegations. . .may cause prejudice to one of the parties”); *Vicks*, 2020 WL 2616398, at \*1; *Walsh v. Freeman Sec. Servs., Inc.*, 2022 WL 445501, at \*4 (M.D. Fla. Feb. 14 2022) (denying motion to strike exhibits to ordered supplemental brief on grounds of hearsay and non-responsiveness where “Defendants have not adequately explained how they may have been prejudiced by these exhibits”). Here, the 2024/2026 Holders seek to manufacture a claim of prejudice by suggesting that the PIMCO Noteholders are using the Court's inquiry to try to plug some evidentiary “hole” in the contemporaneous record of the 2022 Transaction.

8. The PIMCO Noteholders agree that contemporaneous records are the best evidence of what was purchased and exchanged in the 2022 Transaction. *See* Motion ¶ 6. But contrary to the 2024/2026 Holders' selective recitation, the contemporaneous records of the 2022 Transaction show clearly that the parties, including the PIMCO Noteholders, purchased, voted, and subsequently exchanged \$250 million Additional 2026 Notes for New 1L Notes. *See generally* Debtors' and Non-Debtor Counterclaim Defendants' Post-Trial Brief. That record—all of which the 2024/2026 Holders have had the chance to explore at trial—includes evidence that:

9. On March 28, 2022, the PIMCO Noteholders purchased Additional 2026 Notes and received scanned copies “for your records” of the Notes issued in “certificated form.” ECF No. 905-6 at 7 (March 8-9, 2022 email exchange); ECF No. 710-43 at 2 (March 28, 2022, 15:01 email); *see also* ECF Nos. 710-44 to -47 (Scanned copies of the Additional 2026 Notes); ECF No. 969 at 161:20-22 (“Q On March 28th, 2022 did PIMCO funds purchase additional 2026 notes? A Yes.).

10. The purchase of Additional 2026 Notes was standalone, separate and apart from any exchange that was later hoped to take place. *See* ECF No. 710-43 at 3 (“PIMCO team, . . . Unless the definitive Additional 2026 Notes are exchanged into a global note issued under the New 1<sup>st</sup> Lien Indenture by EOD today, we will deliver the definitive Additional 2026 Notes by FedEx to your custodian”).

11. After receiving the Additional 2026 Notes, the PIMCO Noteholders then voted to approve the Additional 2026 Notes to vote in favor of the execution of the Fourth Supplemental Indenture. ECF No. 710-43 at 2 (“[A]pproved to vote the securities to permit the execution of the fourth supplemental indenture in accordance with the consent letter previously circulated”); ECF No. 603-10 (PIMCO, Silver Point, Citadel – Consent Letters to Fourth Supplemental Indenture for 2026 Notes).

12. And, following the execution of the Fourth Supplemental Indenture, records show that the PIMCO Noteholders participated in an exchange of the Additional 2026 Notes for New 1L Notes. ECF No. 1150-23 (3/28/2022 email from Milbank to counsel for the transaction parties noting “[t]he exchange of the new 1L and 1.25L notes for the existing notes is now complete in accordance with the Exchange Agreement”); ECF Nos. 726-19 and 726-20 (scanned copies of certain of the cancelled Additional 2026 Notes).

13. Indeed, there have been multiple trial days devoted nearly entirely to the steps undertaken by the parties to purchase Additional 2026 Notes and subsequently exchange them for New 1L Notes. *See generally* ECF No. 1184, Testimony of A. Osornio, 4/18/2024 Trial Tr.; ECF No. 1350, Testimony of P. Healy, 6/3/2024 Trial Tr. Simply put, there is no “gap” in the evidence that the Declaration is necessary to fill or even attempts to fill.

14. Rather, it is the 2024/2026 Holders that are attempting to generate evidence that does not exist out of the trading report by claiming that it shows that PIMCO actually purchased New 1L Notes and not Additional 2026 Notes. *Cf.* Motion, ¶¶ 6, 16, 19. To the contrary, along with the *admitted* testimony of Mr. Dostart,<sup>3</sup> the trading report shows that PIMCO made a purchase, withdrawal, and subsequent exchange of Incora Notes on March 28, 2022. *See, e.g.*, ECF No. 727-3 at 30; ECF No. 969 at 109:5-19 (explaining that, on March 28, 2022, the trading report docketed at ECF No. 727-3 reflects a purchase of Additional 2026 Notes, a withdrawal of those notes in the same amount, and an exchange of the amount withdrawn into New 1L Notes).

15. Admitted evidence also explains that PIMCO’s operations team often creates internally what is described as a “trade ticket” using a proxy CUSIP for pre-compliance purposes. ECF No. 905-6 at 3 (March 17, 2022 email describing trade ticket compliance process); ECF No. 969 at 93:14-94:4 (explaining ECF No. 905-6 at 3 and trade ticket compliance process). That ticket was used in the purchase of Additional 2026 Notes, rather than updating PIMCO’s internal database to reflect the assigned CUSIP and internal description for the Additional 2026 Notes. ECF No. 969 at 96:17-25, 109:7-10. Mr. Dostart understood this was done to make things

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<sup>3</sup> While the Court sustained objections to certain questions posed to Mr. Dostart, other questions were posed and answered without objection. Mr. Dostart also clarified his deposition testimony, during which he expressed some confusion and uncertainty, *cf.* ECF No. 725-37 at 208:24-211:12, 213:9-214:8, by confirming that the trade ticket ultimately used to internally record the purchase of Additional 2026 Notes contained the proxy CUSIP, *see* ECF No. 969 at 59:24-62:16, 112:12-113:25.

“administratively easier” for PIMCO’s operations team. *Id.* at 98:7. The exchange of the Additional 2026 Notes into the 1L Notes was then separately recorded using the official CUSIP. *Id.* at 109:15-19. Accordingly, even if the proxy CUSIP and description was viewed as an internal “inaccuracy”, it does not disprove contemporaneous evidence in PIMCO’s files that the PIMCO Noteholders intended to and did in fact purchase the Additional 2026 Notes.<sup>4</sup> *Cf.* ECF Nos. 1155-1 through 1155-7 (3/28/2022 Milbank email to Pryor Cashman (WSFS) and Davis Polk (PIMCO and Silver Point) attaching execution versions of the \$250 million Additional 2026 Notes).

16. Much of this record evidence is referred to throughout Sections II and III of the Responding Brief. Thus, the Responding Brief and Schwarmann Declaration do not contradict or alter the trial record, but rather provide additional context for the Court in response to its request.<sup>5</sup> That material is entirely proper for consideration in a bench trial and the motion should be denied. *Cf. Ensco Offshore Co. v. Salazar*, 2011 WL 13203201, at \*1-2 (E.D. La. Feb. 15 2011) (denying motion to strike affidavit filed in response to order for supplemental briefing where affidavit “addresse[d] concerns raised by the Court”, as well as a contrary claim made by the opposing party, and “was natural and expected in light of” Court’s order for supplemental briefing); *Walsh*,

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<sup>4</sup> PIMCO’s Amended Responses and Objections to the 2024/2026 Holders’ Interrogatories Nos. 15 & 16, ECF No. 906, do nothing to support the 2024/2026 Holders’ arguments. The amended responses and objections make clear that the referenced trading report was an internal record and include objections both that the requests are “duplicative and cumulative of information” already produced in discovery (which would include copies of the actual Notes purchased) and disproportionate to the extent they seek “all Documents and information”. *See id.* at 15 (objections to Interrogatory 15), 16 (objections to Interrogatory 16); *see also id.*, ¶ 5 (general objection to Interrogatories “to the extent they seek identification of ‘every’ piece of information of a described type, or similar requests”).

<sup>5</sup> As the 2024/2026 Holders well know, a fund’s internal trading records may require additional information and explanation. Indeed, Golden Gate’s trading log included as settled failed trades that were not denoted as failed trades. ECF No. 1062, Testimony of W. Wang, 3/27/2024 Trial Tr. 52:3-54:12 (Admitting that Golden Gate’s trading log included trades that were not actually settled due to internal recordkeeping systems); *see also* 138:24-139:20 (Admitting Golden Gate’s records of its holdings, as represented in the Cooperation Agreement, included failed trades); ECF No. 1008, Testimony of G. Seketa, 3/13/2024 Trial Tr. 117:18-118:24 (Seketa was unable to explain a \$15 million difference between the number he was provided internally as to J.P. Morgan’s holdings in Incora and the number reported in J.P. Morgan’s 2019 Statement).

2022 WL 445501, at \*4 (denying motion to strike exhibits attached to court-ordered supplemental brief). But even if the Court should decide to strike the Declaration, it does not follow that Sections II and III of the Brief must be struck as well, given those Sections are also supported by the trial record.

**CONCLUSION**

17. For the foregoing reasons, the PIMCO Noteholders respectfully request that the Court deny the relief sought by the Motion.



Dated: June 17, 2024  
New York, New York

/s/ Benjamin F. Heidlage

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**CERTIFICATE OF SERVICE**

I certify that, on June 17, 2024, a true and correct copy of the foregoing document was served through the Electronic Case Filing system of the United States Bankruptcy Court for the Southern District of Texas.

*/s/ John F. Higgins*

John F. Higgins