IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	:	Chapter 11
MODIVCARE INC., *et al.*,	:	Case No. 25- 25-90309 (ARP)
Debtors. [1]	:	(Jointly Administered)

REPLY OF DIP AGENT, DIP LENDERS AND CONSENTING CREDITORS IN SUPPORT OF THE EMERGENCY MOTION OF THE DEBTORS FOR ENTRY OF A FINAL ORDER (A) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (B) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (C) AUTHORIZING THE USE OF CASH COLLATERAL, (D) MODIFYING THE AUTOMATIC STAY, (E) SCHEDULING A FINAL HEARING, AND (F) GRANTING RELATED RELIEF

Wilmington Trust, National Association, in its capacity as DIP Agent,[2] along with requisite supporting DIP Lenders (the "***DIP Lenders***, and together with the DIP Agent, the "***DIP Lender Parties***") and the Consenting Creditors under the RSA (as defined below), by and through their counsel, respectfully submit this reply (this "***Reply***") to the objection [Docket No. 346] (the "***Objection***") of the Official Committee of Unsecured Creditors (the "***Official Committee***"), and in further support of the *Emergency Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (C) Authorizing the Use of Cash Collateral, (D)*

[1] A complete list of each of the Debtors in these chapter 11 cases (the "***Chapter 11 Cases***") and the last four digits of each Debtor's taxpayer identification number (if applicable) may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.veritaglobal.net/ModivCare. Debtor ModivCare Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.

[2] Capitalized terms used but not defined herein have the meanings given to them in the DIP Loan Documents or the Interim DIP Order, as applicable.

Modifying the Automatic Stay, (E) Scheduling a Final Hearing, and (F) Granting Related Relief [Docket No. 4] (the "***DIP Motion***") of ModivCare Inc. and its debtor affiliates in the above-captioned cases, as debtors and debtors in possession (collectively, the "***Debtors***"), respectfully state as follows:

PRELIMINARY STATEMENT

1. After facing months of operational challenges, including the loss of key customer contracts, the Debtors informed the Prepetition First Lien Lenders in mid-July 2025 (less than five weeks prior to the Petition Date) that they needed to undergo a restructuring and required significant additional financing to continue operations. This funding request came less than seven (7) months after an even more urgent request from the Debtors for financing in late-2024, which needed to close in a matter of weeks. Because the Debtors were unable to find any source of sufficient junior capital, the December request resulted in the Prepetition First Lien Lenders providing $75 million of emergency *pari passu* loans[3] in January 2025. Painfully, the December financing request came less than six (6) months after the issuance of the Term Loans in July 2024.

2. At the time of the mid-July 2025 financing request, the Debtors were dealing with (i) the termination of customer contracts and failure to secure new contracts through RFP participation purportedly due to the amount of debt on the Debtors' balance sheet, (ii) negative changes to the regulatory operating environment since January 2025, (iii) increasing collateralization demands by surety bond providers that were further straining the Debtors' liquidity, and (iv) the deeply discounted market value of the Debtors' unsecured notes and equity, and the decline of the trading price of the loans under the Prepetition First Lien Facility (the

[3] Loans senior to the Prepetition First Lien Loans would require the consent of 100% of the Prepetition First Lien Lenders other than in connection with a DIP Financing pursuant to the terms of the Prepetition First Lien Credit Agreement.

"***Prepetition First Lien Loans***"), *including* the abovementioned $75 million of emergency *pari passu* loans from January of this year, to approximately 50%. In the wake of these facts, a subset of the Prepetition First Lien Lenders holding more than a majority of all of the Prepetition First Lien Loans concluded that they could only lend new money to the Debtors in connection with a comprehensive restructuring through a chapter 11 process. While the Prepetition First Lien Lenders realized the risks that a bankruptcy process could cause to the Debtors' ongoing operations and their ability to retain and bid for additional customer contracts in the non-emergency transport ("***NEMT***") business line, the Prepetition First Lien Lenders and the Debtors nevertheless determined that if the bankruptcy case was adequately funded and could proceed quickly, the risks could be mitigated. Accordingly, a subset of the Prepetition First Lien Lenders and Prepetition Second Lien Noteholders[4] negotiated the terms of the Debtors' plan of reorganization and agreed to backstop the DIP financing necessary to stabilize the Debtors' operations, preserve going concern value, finance the chapter 11 process and bridge to an exit.[5]

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[4] The Official Committee baselessly describes the Prepetition Second Lien Obligations as "so-called second lien debt" and suggests the Prepetition Second Lien Obligations "benefitted the Prepetition First Lien Lenders and was predicated on a valuation far exceed the valuation underlying the Debtors' proposed plan" as of March 2025. While not an issue for the Final Hearing, these statements are inaccurate and misleading. As an initial matter, the incremental $30 million investment in exchange for Prepetition Second Lien Obligations that closed in Mach 2025 was pursuant to a binding and committed agreement executed on January 9, 2025. The delay in closing on this incremental $30 million was on account of a condition precedent that required approval during a special meeting of stockholders of the investment pursuant to Section 203 of the Delaware General Corporate Law because the investment was made by an insider of the Debtors. The investment was approved by the Debtors' shareholders on March 3, 2025. The remainder of the Prepetition Second Lien Obligations were issued to a subset of the Prepetition First Lien Lenders that funded a portion of the $75 million of emergency *pari passu* loans in January 2025.

[5] Contrary to the Official Committee's assertions, the Debtors made it very clear to the DIP Lenders that the DIP Loans were absolutely necessary to prevent a dramatic erosion of value resulting from the destabilization of the Debtors' operations. In particular, the Debtors informed the DIP Lenders that the chapter 11 proceedings posed real risks to the ability of the Debtors to retain existing NEMT contracts and to bid and win new NEMT customer contracts. Given the nature of the Debtors' business, specifically NEMT's reliance on state contracts where solvency concerns loom very large, the longer the Debtors remain in chapter 11, the more damage will be done to the Debtors' operations and their going concern value.

3. The DIP Facility is overwhelmingly supported by the Debtors' fulcrum secured creditors (as shown in the Debtors' valuation analysis filed at [Docket No. 350] which sets valuation between $750 million and $925 million – well within the outstanding Prepetition First Lien Obligations). Indeed, holders of over 90% of the Prepetition First Lien Obligations and 70% of the Prepetition Second Lien Obligations are party to the Restructuring Support Agreement.[6] As noted above, the risk of continued contract losses and negative business impacts are degrading value in real time, and the only party objecting to the DIP Facility is the Official Committee. While the Official Committee has a job to do, the economic reality of this case is that unsecured creditors are out of the money and entitled to no recovery. Unfortunately, the Official Committee's response has been to take a "nothing to lose" extreme litigation approach that is leading to ballooning professional fees and includes threats of process manipulation and arbitrary demands for case delaying these Chapter 11 Cases that will cause real damage to the Debtors' businesses, which hurts employees, customers, suppliers and, ultimately, patient care.

4. As an example of the Official Committee's extreme approach, it asserts the need for two unprecedented financial requests, an unlimited overall fee budget and a $3 million budget to investigate and prosecute purported claims against the Prepetition First Lien Lenders and Prepetition Second Lien Noteholders (together, the "***Prepetition Secured Lenders***"). Both of these requests are abnormal and designed simply to create pressure on the Debtors and Prepetition Secured Lenders to provide a recovery to unsecured creditors or suffer the impact of limitless

[6] Nearly all of the Prepetition Second Lien Obligations not party to the Restructuring Support Agreement are held by a single institution which is the largest shareholder of the Debtors, an insider that formerly held numerous board seats on the board of ModivCare, Inc. and committed to participate in January 2025 to funding $30 million of new Prepetition Second Lien Obligations pending receipt of requisite shareholder approvals required under Delaware law. This same institution, at the time represented by proposed counsel to the Official Committee, submitted the alternative DIP financing proposal noted below but did not object to the DIP Motion at the Interim Hearing and has filed no objection to the DIP Motion.

professional fee burn, which is a wholly inappropriate and damaging strategy for these cases. The Official Committee also alleges that the case timeline must be extended, despite having more than 74 days to conduct its investigation and prepare for confirmation and it does so on the back of patently false allegations that the Debtors have not cooperated in connection with discovery requests. The Official Committee has plenty of time to do its work and if there is a legitimate reason for an adjournment request between now and confirmation, the Official Committee can make it when those facts arise.[7] The Official Committee also chooses to completely ignore that more than $62 million in DIP Financing has already been provided to the Debtors when alleging that the need for the DIP was manufactured, which is yet another unsubstantiated allegation.

5. Indeed, continuing with its fantastical narrative, the Official Committee asserts that the DIP Lenders and Consenting Creditors are the cause of these Chapter 11 Cases, that the cases are being run solely for their benefit, and that the cases are a disguised "foreclosure" with excessive control over them having been granted to the DIP Lenders and Consenting Creditors. As demonstrated above, these assertions have no basis in fact and are simply reckless. In reality, the Debtors and the Consenting Creditors were able—in the face of contract terminations and threats of non-renewals and dwindling liquidity—to negotiate the transactions contemplated by the RSA

[7] That the Official Committee would even allege "[t]he Debtors cannot credibly argue that any more time would put an undue financial strain on the business" (Objection at ¶ 6), is simply inexplicable, as is the implied statement that the cases won't need any additional liquidity until March 2026. These statements completely ignore the reality of the extremely harmful impacts that could occur during that period, the fact that the Debtors only have sufficient liquidity *because of* the DIP Facility and that such extension to the end of the Debtors' projected liquidity runway would mean the reorganized Debtors exit with less cash on hand (creating even further risk to the Debtors emergence or requiring further subordination of the DIP Facility to additional new money funding). The Debtors have, and will, present credible evidence that they simply cannot afford that kind of time. In addition to the pre-petition contract terminations, the Debtors have continued to face serious concerns from existing contract counterparties. The Debtors have also had to work around the clock to convince states where they have contracts up for renewal or where they are bidding for new contracts that the chapter 11 cases will be swift, with a stronger company set for emergence before year-end. These contracts are the lifeblood of the Debtors' business, and a prolonged stay in bankruptcy creates real jeopardy for the Debtors. As noted, it is critical that these Chapter 11 Cases proceed on the existing timeline proposed by the Debtors to avoid further business disruption and value destruction, a timeline that was carefully crafted to comply with the Bankruptcy Code and Local Rules.

Term Sheet [Docket No. 14], which are expected to reduce the Debtors' funded debt obligations by over $1 billion and save over $60 million in annual interest payments. This dramatic reduction in debt and debt service costs will make the Debtors more competitive and more stable, and will position them for growth as a more competitive player in the multiple sectors in which they provide services. The net result of this restructuring will be a stronger company that is able to provide better care to millions of patients spread across the country and able to be a more sound counterparty for thousands of vendors.

6. While the DIP Lenders had hoped to find a way to achieve consensus with the Official Committee on the terms of the final DIP order, Docket No. 377-1 (as proposed, the "***Final DIP Order***"), the unrealistic objections raised by the Official Committee to standard-issue new money DIP financing terms and ordinary course adequate protection terms have made that goal impossible.[8] The terms of the Final DIP Order are an integrated package negotiated by the Debtors in the sound exercise of their business judgment and the Official Committee cannot simply argue that terms it dislikes be excised while otherwise preserving the benefits of funding and the consensual use of cash collateral so that it can investigate and prosecute claims without guardrails for an "out of the money" constituency.

7. The Official Committee also cannot ignore the binding impact of the Court's final approval of the fees associated with the DIP Financing, including the Backstop Premium in the

[8] For example, the Official Committee's claim that the Prepetition Secured Parties are not entitled to adequate protection liens and claims on the proceeds of avoidance actions and unencumbered property runs contrary to established principles under the Bankruptcy Code and the weight of the precedent in this district, and, as discussed further below, its contention that such adequate protection liens are a "double dip" is inaccurate and misleading. Similarly, the contention that waivers of section 506(c) and section 552(b) are unwarranted because the case is being run for the benefit of secured parties utterly fails to acknowledge the substantial financial support that the DIP Lenders and Prepetition Secured Parties have provided the Debtors to date. The Final DIP Order through the new money DIP and the consensual use of cash collateral confers value not only on the DIP Lenders who will continue to transact with the Debtors, but also on other unsecured creditors, who will benefit from the use of cash generated by the Debtors' businesses to fund the administration of these Chapter 11 Cases.

interim DIP order [Docket No. 106] (the "***Interim DIP Order***"). Without such final approval of DIP financing fees, lenders simply would not provide financing on an interim basis to bankrupt companies and the same was true here. Importantly, the Backstop Premium is also a one-way cashless option for the Debtors to "pay" equity under a confirmed plan acceptable to the DIP Lenders and Prepetition Secured Parties and, as such, is completely inoffensive and unprecedented in the Debtors' favor. Given that the Backstop Premium is payable from the reorganized company's equity that would otherwise go to the Prepetition Secured Parties, it is also simply a reallocation of value among the Prepetition Secured Parties who overwhelmingly support confirmation of the Debtors' plan via their execution of the RSA.

8. In the end, the terms of the Final DIP Order are inoffensive and beneficial to the Debtors and include: (i) a pre-agreement that the DIP Loans would not be repaid in, but instead be converted into exit loans ***junior*** in priority to a new money $250 million exit revolving credit facility, (ii) no "roll-up" of any Prepetition First Lien Loans into the DIP Facility, (iii) no cash adequate protection payments on account of the Prepetition First Lien Loans, (iv) in the event the secured loans are repaid in full, no consideration whatsoever to be paid on account of the Backstop Premium, and (v) an investigation budget that is five times the initial proposed budget and no challenge period (and no challenge period deadline) on the Official Committee's investigation of the Prepetition Secured Lenders and no Debtor waivers or stipulations with respect to the Prepetition Secured Parties so the Debtors can also conduct a full investigation of the Prepetition Secured Lenders.

9. Notwithstanding these realities, the DIP Lender Parties have agreed to certain changes to the Final DIP Order in the spirit of compromise that address certain of the Official Committee's concerns, including, (w) revising the Debtors' stipulation as to cash collateral, (x)

providing the Committee the right to seek expedited hearings if the DIP Lenders seek to exercise remedies, (y) removing the Prepetition First Lien Secured Parties' unqualified right to credit bid, and (z) providing the Official Committee of advance notice and an opportunity to object to amendments to the DIP Facility. Accordingly, for the reasons set forth in the DIP Motion and herein, this Court should overrule the Official Committee Objection and enter the Final DIP Order as proposed.

ARGUMENT

I. ENTRY INTO THE DIP FACILITY AND ITS COMPONENTS IS WITHIN THE DEBTORS' BUSINESS JUDGMENT

10. The Bankruptcy Code authorizes debtors to obtain secured financing (including secured by priming liens and liens on unencumbered assets) and seek usage of cash collateral as a means to fund its businesses during chapter 11, with flexibility on the terms and manner.[9] Courts grant considerable deference to a debtor's business judgment in obtaining post-petition secured credit and "defer to the management's views in applying the business judgment test."[10] Courts have also established that "it is not appropriate to substitute the judgment of . . . objecting creditors, for the business judgment of a debtor"[11] so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code.[12] Indeed, courts will

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[9] *See* 11 U.S.C. §§ 364(c)(2), 365(d).

[10] *In re Mirant Corp.*, 348 B.R. 725, 744 (Bankr. N.D. Tex. 2006), *aff'd sub nom. Objecting Class 3 Claimholders v. New Mirant Entities*, No. 4:06-CV-744-A, 2006 WL 3780884 (N.D. Tex. Dec. 26, 2006) (citations omitted).

[11] *In re Spansion, Inc.*, 426 B.R. 114, 140 (Bankr. D. Del. 2010); *see also*, *In re Mirant Corp.*, 348 B.R. 725, 744 (Bankr. N.D. Tex. 2006) ("Only if a proposed transaction—here disposition of a contract—does not serve business purposes may the court substitute its judgment for that of management."); *In re Xtreme Power Inc.*, 563 B.R. 614, 642 (Bankr. W.D. Tex. 2016) ("If a plaintiff fails to satisfy [the burden of pleading facts sufficient to rebut the presumption that the board acted in the best interests of a corporation], a court should decline to substitute its judgment for the decision of the board, provided the board's decision can be attributed to any rational business purpose.").

[12] *See, e.g.*, *In re N. Bay Gen. Hosp., Inc.*, No. 08-20368 (Bankr. S.D. Tex. July 11, 2008) (order approving postpetition financing on an interim basis as exercise of debtors' business judgment*); In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *In re Latam Airlines Group S.A.*, 620 B.R. 722, 768 (Bankr. S.D.N.Y. 2020)

uphold the board's decisions unless they are "manifestly unreasonable."[13] Courts consider the terms in light of the relative circumstances of both the debtor and the potential lenders.[14] Accordingly, when the terms of the financing and/or cash collateral order have been negotiated in good faith and at arm's length, courts defer to the negotiated result between a debtor and its secured creditors.[15]

11. The Official Committee's assertions that approval of the Backstop Premium (notwithstanding that such Backstop Premium has already been approved which is addressed further below) is "premature and unsupportable"[16] and that the DIP milestones are "unrealistic"[17] are nothing more than improper attempts to second-guess the Debtors' business judgment by cherry-picking provisions of the DIP Facility that the Committee dislikes while trying to retain the remainder of the DIP Facility and compel funding thereunder.

12. In seeking approval of the Backstop Premium, the Debtors and DIP Lenders were focused on cash conservation to preserve the ongoing value of the Debtors' businesses and permit

("Generally, in evaluating the merits of proposed post-petition financing, courts will defer to a debtor's business judgment provided that the financing does not unduly benefit a party in interest at the expense of the estate."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.").

[13] *In re 9 Houston LLC*, 578 B.R. 600, 619 (Bankr. S.D. Tex. 2017) ("On the issue of the exercise of a debtor-in-possession's business decision and judgment, a debtor-in-possession's business decision … should be approved by the court unless it is shown to be so manifestly unreasonable that it could not be based upon sound business judgment, but only on bad faith, or whim or caprice.").

[14] *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co.* (*In re Elingsen McLean Oil Co., Inc.*), 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard bargain[s]" to acquire funds for its reorganization).

[15] *See, e.g.*, *In re PNG Ventures, Inc.*, 2009 WL 7226389, at *5 (Bankr. D. Del. Oct. 21, 2009) (approving a cash collateral order supported by reasonably equivalent value and fair consideration, as part of negotiations conducted in good faith and at arm's length within the meaning of Section 364(e)).

[16] Objection at ¶ 2.

[17] Objection at ¶ 5.

continued go-forward operations. As discussed, the Backstop Premium is payable only in shares of the reorganized Debtors' pro forma equity subject to dilution by the Equity Rights Offering, the New Warrants and the MIP as is consistent with similar transactions approved by this Court and others.[18] Here, the Backstop Premium was a material and required component of the DIP Facility without which the DIP Lenders would not have provided the DIP Loans or consented to cash collateral usage.[19] The Backstop Premium "was required to induce the DIP Lenders to backstop the full amount of the DIP Loans at a pivotal and urgent point in the prepetition restructuring process, before the impact of the chapter 11 filing was known."[20] Prior to the Petition Date, the Debtors, with the assistance of their advisors, attempted to find alternative funding sources for the Debtors, yet none of these parties were able to put forth an actionable financing proposal.[21] In fact, the only proposal received was from an insider of the Debtors that was, at the time, represented by proposed counsel to the Official Committee – and that financing contemplated priming the Prepetition First Lien Lenders, a 10% backstop premium payable in the reorganized company equity of its own, and no path out of these Chapter 11 Cases. Given the alternative, a likely disorderly liquidation, the Debtors acted as any prudent and rational party would by seeking of approval of the DIP Facility with the Backstop Premium.

13. The Backstop Premium is comparable to other backstop premiums included in similarly structured financing facilities, with the critical distinction and added benefit of having no

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[18] *See e.g.*, *In re Diebold Holding Company*, LLC, No. 23-90602 (Bankr. S.D. Tex. 2023) (approving 13.5% backstop premium payable in new common stock); *In re PHI, Inc.*, No. 19-30923 (Bankr. N.D. Tex. 2019) (approving 20% backstop fee payable in common stock).

[19] Jamal Decl. at ¶ 32.

[20] *Id*.

[21] *See* Jamal Decl. at ¶¶ 15-16.

cash fee component.[22] And, equally if not more critically, for a DIP Financing that will be converted into a five-year junior exit term loan pursuant to the terms of the RSA. As the Court determined in its Interim DIP Order, the Debtors were unable to obtain financing on more favorable terms from sources other than the DIP Secured Parties under the DIP Loan Documents, and it was within their reasonable business judgment to seek approval of the DIP Facility with the Backstop Premium as an integral component.[23]

14. The Objection also asserts that approval of the Backstop Premium is "premature." This is simply not the case. The Debtors' agreement to seek approval—approval which was already obtained—of the Backstop Premium in connection with the Interim DIP Order is consistent with similar transactions that have been approved by this Court and others.[24] However, even apart from this precedent, the circumstances of these Chapter 11 Cases provide the Debtors with ample justification in seeking approval of the Backstop Premium concurrent with the DIP Lenders' initial funding of $62.5 million of DIP Loans in reliance on the Interim DIP Order and its approval of the

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[22] *See e.g.*, *In re H-Food Holdings, LLC*, No. 24-90586 (Bankr. S.D. Tex. 2024) (approving equity rights offering backstop premium equal to 10% of the equity rights offering amount payable in reorganized equity); *In re Talen Energy Supply, LLC*, No. 22-90054 (Bankr. S.D. Tex 2022) (approving a backstop premium equal to 20% of the amount offered under the Company's equity rights offering (and allocating a portion of the rights offering to backstop parties), plus an additional monthly premium payable in cash or equity); *In re Chesapeake Energy*, No. 20-33239 (Bankr. S.D. Tex. 2021) (approving put option premium equal to 10% of the amount offered under the Company's equity rights offering (and allocating a portion of the rights offering to backstop parties)); *In re Samson Resources Corp.*, No. 15-11934 (Bankr. D. Del. 2017) (approving a backstop grant equal to 5% of the new common stock payable in new stock); *In re CHC Group*, No. 16-31854 (Bankr. S.D. Tex. 2016) (approving a put option premium equal to approximately 10.3% of new notes payable in additional notes); *In re J.C. Penney Co., Inc.*, Case No. 20-20182 (DRJ) (Bankr. S.D. Tex. June 5, 2020) (approving a DIP facility with commitment and upfront premiums equal to 10% of the new money DIP and repayment premium equal to 3% of the repaid loans); I*n re Neiman Marcus Grp. Ltd LLC*, Case No. 20-32519 (DRJ) (Bankr. S.D. Tex. June 16, 2020) (approving a DIP facility with total upfront, exit, and backstop fees equal to ~13.8% of the new money DIP, an extension fee equal to 2% of the aggregate amount of outstanding term loans and outstanding commitments, and a ticking fee calculated on a daily basis).

[23] Interim Order at ¶ 14.

[24] *See e.g.*, *In re J.C. Penney Co., Inc.*, No. 20 20182 (DRJ) (Bankr. S.D. Tex. June 5, 2020), ECF No. 566 (authorizing entry into a DIP-to-exit facility 21 days after the petition date, including payment of fees equivalent to approximately 2% of the exit facility that were paid prior to emergence).

Backstop Premium, well over half of the full DIP Facility and the Debtors' critical funding needs during these Chapter 11 Cases.

15. The Objection also challenges the Debtors' case timeline, reflected in the DIP milestones, presenting an alternative reality whereby these cases must continue an additional three months solely because the Debtors' currently project enough liquidity to operate during such period and the Official Committee's immediate conclusion after its appointment that it did not have time to challenge the Plan within the 74 days from its appointment to the date of the confirmation hearing for the already-filed Plan. The Official Committee has presented no valid reason for this lengthy timeline, and have not been able to provide concrete reasoning for why the Debtors' proposed timeline—which complies with the Bankruptcy Rules and Local Rules—means it cannot meet its fiduciary obligations and why the Debtors' ability to continue as a going concern should be risked. No rushed or emergency approval of the transactions contemplated under the RSA is being sought, and the Official Committee cannot credibly argue that the Bankruptcy Code does not permit sufficient time for it to investigate the Debtors' and Prepetition Secured Lenders' actions, particularly when it has already received substantial discovery and is taking depositions of key Debtor advisors prior to the final DIP hearing. The right time for an adjournment request by the Official Committee will be at a future point in these cases in the event that the Official Committee cannot complete its work by virtue of some other party's delay or interference, not at the outset of these cases with plenty of time and an already-cooperating Debtor.

16. More importantly, the milestones are imperative here where the Debtors have suffered what they believe was an illegal termination based on the chapter 11 filing (and are working around the clock to prevent additional losses and to remain competitive for pending and new bids for the NEMT business). The longer the case timeline is extended, the more counterparty

insecurity may amplify, leading to a snowball effect with significant degradation to the Debtors' underlying businesses and potential inability to access funds to pay unsecured trade and vendor claims in the ordinary course.

17. Without the support and structure provided by the DIP Facility, the Debtors faced the very real possibility of a winddown or value-destructive chapter 7 liquidation to the detriment of all stakeholders, but particularly to unsecured creditors. For these and the other reasons stated herein, the Debtors' entry into the DIP Facility is a valid exercise of their business judgment and the Final DIP Order should be entered.

II. THE COMMITTEE SHOULD BE COLLATERALLY ESTOPPED FROM RELITIGATING THE APPROVAL OF THE BACKSTOP PREMIUM

18. The Committee attempts, through its Objection, to usurp the Debtors' business judgment and challenge the Court's findings of fact and conclusions of law in its Interim DIP Order approving the Backstop Premium (which approval was not subject to entry of the Final DIP Order). The Official Committee's challenge of the Backstop Premium is a thinly veiled attempt to gain leverage for non-ripe Plan issues by challenging an already approved court order. The Committee's arguments should be collaterally estopped and the Court's findings should preclude the relitigation of these issues that were previously considered and decided by this Court and found to be within the Debtors' business judgment.[25] The elements of collateral estoppel under federal law are: "(1) the issue under consideration is identical to that litigated in the prior action; (2) the issue was fully and vigorously litigated in the prior action; (3) the issue was necessary to support

[25] *Copeland v. Merrill Lynch & Co.*, 47 F.3d 1415, 1422 (5th Cir. 1995).

the judgment in the prior case; and (4) there is no special circumstance that would make it unfair to apply the doctrine."[26]

19. In issuing its Interim DIP Order, the Court made several findings of fact and conclusions of law the Committee now challenges, including:

> a. The immediate need to obtain the DIP Facility and use Cash Collateral to permit the continuation of the operation of the Debtors' businesses;
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> b. The Debtors' access to the DIP Facility being vital to their successful reorganization and the preservation of the Debtors' estates;
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> c. The immediate and irreparable harm that would result if immediate financing was not obtained in accordance with the terms of the Interim DIP Order and the DIP Loan Documents;
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> d. That the Debtors have met the requirements of section 503(b)(1) and sections under sections 364(c)(1), 364(c)(2), or 364(c)(3) of the Bankruptcy Code concerning their efforts to obtain more favorable financing and established the unavailability of financing available on more favorable terms from sources other than the DIP Secured Parties under the DIP Loan Documents (in accordance with section 364(d)(1)); and
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> e. That the terms and conditions of the DIP Facility and the DIP Backstop Commitment Letters as set forth in the DIP Loan Documents, and the DIP Backstop Commitment Letters and the Interim DIP Order, and the fees, expenses, and other charges paid and to be paid thereunder, including without limitation the Backstop Premium, are fair, reasonable, and the best available under the circumstances and the Debtors' agreement to the terms and conditions of the DIP Loan Documents and to the payment of such fees reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration.[27]

20. The issues the Committee raises, specifically regarding whether the terms of the DIP Facility (including the Backstop Premium) are fair and reasonable are the identical issues the Court considered in issuing its Interim DIP Order. The issues were carefully considered and supported by evidence on the record, including at the interim hearing and in the Declaration of Zul

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[26] *In re MMA L. Firm, PLLC*, No. 24-3127, 2025 WL 2319838, at *14 (Bankr. S.D. Tex. Aug. 12, 2025); *Copeland v. Merrill Lynch & Co.*, 47 F.3d 1415, 1422 (5th Cir. 1995).

[27] Interim Order at ¶¶ 18-19.

Jamal.[28] Approval of the Backstop Premium was a crucial component of the DIP Facility that the DIP Lenders would not have consented to otherwise. It was impossible for the Court to issue its Interim DIP Order without considering these issues and no special circumstance exists that would necessitate ignoring the doctrine of collateral estoppel.

21. Indeed, there is no unfairness to the Court's prior approval of the Backstop Premium as the Official Committee's constituents are not impacted by the value allocation set forth in the Backstop Premium (particularly considering there is no cash component). As noted above, it is a reallocation of equity amongst Prepetition Secured Lenders *only* that will never be due in cash (including if the Prepetition Secured Lenders are ultimately paid in full in cash) or if the proposed Plan is not confirmed in a manner that results in Prepetition Secured Lenders receiving equity. The Official Committee will have plenty of opportunity during the pendency of these cases to litigate Plan issues, but it should not be unjustly permitted to reopen decided issues that do not impact its constituents. To the contrary, if the Backstop Premium were to be avoided, the DIP Lenders would not be willing to continue consensual use of their cash collateral or further funding under the DIP Facility, which could result in a value destructive conversion or winddown of these Chapter 11 Cases.

22. In addition, approval of fee packages for DIP financing on a final basis in an interim order is not only commonplace in chapter 11, it is critical to a functioning market for DIP financing. Without the comfort of knowing that approval of DIP financing fees will be final, DIP financing would be far harder to obtain or the fees will be switched to cash fees, will dramatically increase in price and will be required to be paid on interim approval, resulting in larger DIP loans. The Backstop Premium is no different than an ordinary DIP financing fee, except that it is less

[28] Jamal Decl. at ¶ 37.

detrimental to the Debtors and all other parties in interest in this case than a large cash commitment fee. For these reasons, the Committee estopped from raising these decided issues.

III. THE COMMITTEE'S REMAINING OBJECTIONS ARE WITHOUT MERIT

A. The Scope of the Adequate Protection Is Customary and Appropriate

23. The Official Committee's assertion that the Prepetition First Lien Lenders should have no recourse to unencumbered assets, including avoidance action proceeds, is unsupported by law or logic. Section 364 of the Bankruptcy Code provides that liens on unencumbered assets may only be granted if a grant of liens on unencumbered assets is insufficient to obtain the needed credit. Accordingly, unencumbered assets should be the first category of assets used to secured post-petition financing, not the last, because secured creditors have property rights in their collateral and unsecured creditors have no such rights in unencumbered assets. Section 361 further expressly provides that "adequate protection may be provided by providing to such entity an additional or replacement lien to the extent that such stay, use, lease, or grant results in a decrease in the value of such entity's interest in such property." Recourse to unencumbered property is specifically contemplated by the Bankruptcy Code rather than discouraged, for the obvious reason that an "adequate protection" lien on existing collateral offers the primed secured creditor no compensation or protection against the harm of being primed at all. Indeed, courts in this district routinely approve the grant of liens on unencumbered property, such as avoidance action proceeds, to secured post-petition financing and adequate protection claims.

24. The Official Committee's assertion that these unencumbered assets and adequate protections liens are a "double dip" that give the Prepetition First Lien Lenders $2 for each of its $1 of claim is simply incorrect and intentionally misleading. The Prepetition First Lien Lenders are agreeing to allow the new-money DIP Loans secured by the DIP Liens to prime the Prepetition First Liens (it is irrelevant that those DIP Liens are to a subset of Prepetition First Lien Lenders

that are also DIP Lenders, as that DIP Facility is real funded money that is secured by that DIP Liens). To the extent allowing priming DIP Liens in front of the Prepetition First Liens leads to an actual diminution in value (including as a result of the Debtors' contract losses), the Prepetition First Lien Lenders have lost $1 in value that they would not be paid back on so they are entitled to $1 in adequate protection claim to protect against that loss pursuant to the Bankruptcy Code. On the flip side, to the extent the Prepetition First Lien Lenders are paid in full, there is no diminution or loss and therefore there would be no adequate protection claim. There is no "double dip" that would allow them to receive more than they are entitled to by way of their secured claim. It is $1 of new money and $1 of lost value (totaling $2) for $2 of claim.

B. The Official Committee Should Not Be Granted Automatic Standing to Pursue Causes of Action

25. The Official Committee argues it should be granted automatic standing to pursue certain causes of action. A court's determination whether to grant a committee standing, however, must be detailed and claim-specific.[29] The Official Committee has not set forth any claims it seeks to pursue, and so, of course, the Court cannot assess whether any such claims are colorable or frivolous such that their prosecution would be a waste of estate resources. The Official Committee offers no support for its demand for carte blanche standing and it should be rejected.

C. The Investigation Budget and Scope are Customary and Appropriate

26. The Official Committee argues that its proposed budget and $50,000 Investigation Budget are insufficient and seeks, without facts besides an unsupported assertion that "[t]here may also be potential flaws in the Prepetition First Lien Lenders' security package",[30] an unlimited

[29] *In re STN Enters.*, 779 F.2d 901, 904-06 (2d Cir. 1985); *Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 252–53 (5th Cir. 1988) (court may grant the committee standing on a specific claim where the debtor in-possession has unjustifiably refused to bring it and the committee has "outlined a colorable claim").

[30] Objection at ¶ 5.

budget and up to $3 million to challenge the Prepetition First Lien Lenders' and Second Lien Noteholders' liens and claims out of the secured parties' own pocket. The DIP Lenders have already made significant concessions in the Final DIP Order by agreeing to an upsized $250,000 Investigation Budget, putting the proposed Investigation Budget even above the range of recent precedent approved in this district.[31] The's proposed Investigation Budget is unjustifiable and should be overruled.

D. The Proposed Waivers of Section 506(c), 552(b), "Equities of the Case" Exception and Marshalling Waivers Are Appropriate Under the Circumstances.

27. The Committee objects to the Debtors' waiver of their section 506(c) surcharge rights, section 552(b) "equities of the case" exception, and rights to seek marshaling again without providing a rationale. The Committee's arguments lack merit and ignore the practical commercial realities justifying these provisions.

1. The 506(c) Waiver Is Reasonable and Appropriate.

28. Section 506(c) of the Bankruptcy Code provides a debtor the right to "recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of" such property.[32] Section 506(c) of the Bankruptcy Code claims are available to, and are an asset of, the Debtors, and not any other party in interest.[33] Exercise of the

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[31] *In re Hornbeck Offshore Services, Inc.*, No. 20-32679 (DRJ) (Bankr. S.D. Tex. June 15, 2020) (approving investigation budget of $50,000); *In re Stage Stores, Inc.*, No. 20-32564 (DRJ) (Bankr. S.D. Tex. June 10, 2020) (approving investigation budget of $100,000); *In re McDermott Int'l, Inc.*, No. 20-30336 (DRJ) (Bankr. S.D. Tex. February 24, 2020) (approving investigation budget of $50,000); *In re Sheridan Holding Company II, LLC*, No. 19-35198 (MI) (Bankr. S.D. Tex. Oct. 21, 2019) (approving investigation budget of $50,000).

[32] 11 U.S.C. §506(c).

[33] *See In re Smart World Techs., LLC*, 423 F.3d 166, 181–82 (2d Cir. 2005) ("Section 506(c) . . . allows only the 'trustee,' or debtor-in-possession, to take advantage of this exception . . . § 1109(b) does not entitle parties in interest, such as [the debtor]'s creditors, to usurp the debtor-in-possession's role as legal representative of the estate."); *In re River Ctr. Holdings, LLC*, 394 B.R. 704, 717 (Bankr. S.D.N.Y. 2008) ("The Supreme Court has made clear that only the trustee has the power, under the plain language of the [Bankruptcy Code], to assert a section 506(c) claim.") (citing *Hartford Underwriters Ins. Co. v. Planters Bank N.A.,* 530 U.S. 1 (2000)); *Hartford Underwriters*, 530 U.S. at 6 ("[T]he trustee is the only party empowered to invoke" section 506(c)); *In re Cooper*,

Debtors' section 506(c) rights are limited and subject to a high evidentiary standard.[34] As a result, the circumstances in which the Debtors would be able to exercise such surcharge rights are limited.

29. A waiver of section 506(c) of the Bankruptcy Code is particularly appropriate where a secured creditor has agreed to pay, *from its collateral*, estate administrative costs and subordinate its liens to the carve out for professional fees and other administrative expenses, as the DIP Lenders have done here.[35] Further, it is well-established that the right to waive the 506(c) surcharge is within a debtor's discretion. *See Hartford Underwriters* 530 U.S. at 6 (only a trustee or a debtor in possession may seek recovery under section 506(c)). The DIP Lenders would not consent to the Debtors' continued operations and commit to the DIP Facility without a section 506(c) waiver, and the Debtors determined that such a waiver was reasonable in light of the considerable benefits arising from the DIP Facility and consensual use of cash collateral.

30. Finally, section 506(c) claims are standard with respect to post-petition financings between sophisticated parties, and this Court and other courts have approved final orders providing for such waivers where the parties have negotiated an appropriate carve out and the secured parties have agreed to subordinate their claims to that carve out.

2. The 552(b) Waiver Is Reasonable and Appropriate.

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405 B.R. 801, 807 (Bankr. N.D. Tex. 2009) ("only the trustee (or debtor-in-possession in Chapter 11) has independent standing to pursue chapter 5 avoidance actions and other estate causes of action," providing an example under 506(c)).

[34] *See, e.g.*, *In re Grimland, Inc.*, 243 F.3d 228, 233 (5th Cir. 2001) ("The default rule in bankruptcy is . . . that administrative expenses are paid out of the estate and not by the secured creditors of the debtor."); *In re Delta Towers, Ltd.*, 924 F.2d 74, 76 (5th Cir. 1991) (observing that section 506(c) of the Bankruptcy Code "furnishes an exception to the general rule" only when the claimant can show the expenses were necessary, reasonable, and for the primary benefit of the secured creditor); *In re Domistyle, Inc.*, 811 F.3d 691, 701 (5th Cir. 2015) ("put another way, "a determination of whether expenses meet the requirements of [Section] 506(c) depends upon the facts of the particular case") (quoting *In re Delta Towers, Ltd.*, 924 F.2d 74 at 77).

[35] *See, e.g.*, *In re Mineral Park, Inc.*, No. 14-11996 (KJC) (Bankr. D. Del.), Hr'g Tr. 43:10–12, Sept. 23, 2014 (overruling the committee's objection and stating "given what [the secured lenders are] funding, I think [they've] paid for a 506(c) waiver and I would be willing to grant it"); *In re MPM Silicones, LLC*, No. 14-22503 (RDD) (Bankr. S.D.N.Y.), Hr'g Tr. 58:11–12; 93:12–20, May 23, 2014 (where a carve-out is provided, a 506(c) waiver is often an "acceptable trade-off").

31. The Committee argues that the waiver of the "equities of the case" exception under section 552(b) of the Bankruptcy Code should also be removed. However, such waiver is reasonable and appropriate in light of the circumstances.

32. Section 552(b) of the Bankruptcy Code generally ensures that an entity's prepetition security interest in the proceeds of collateral extends to such proceeds acquired post-petition, subject to a limited exception from this general rule to the extent that the "equities of the case" so require.[36] The 552(b) waiver is appropriate where, as here, the Prepetition Secured Lenders have agreed to a carve out from their collateral to fund the Debtors' operations and fees and expenses of other parties, such as U.S. Trustee fees and the Official Committee's professional fees.[37] Indeed, the Debtors' ability to continue operating and continuing to bid for new contracts is solely because of the Prepetition First Lien Lenders agreeing to the priming DIP Loans.

33. This Court and other courts have approved final DIP orders providing for such a waiver where the parties have negotiated an appropriate carve out and the DIP secured parties and other secured parties have agreed to subordinate their claims to that carve out.

3. The Committee Lacks Standing to Contest Waiver of "Marshaling" or Any Similar Doctrines.

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[36] *See* 11 U.S.C. § 552(b)(1).

[37] *See, e.g.*, *In re Hostess Brands, Inc.*, No. 12-22052 (Bankr. S.D.N.Y.), Hr'g Tr. 58–59, Feb. 2, 2012 (secured creditors' "willingness to provide for a carve-out upfront as opposed to letting the professionals hang on that point" was a sufficient "tradeoff" to justify section 552(b) waiver); *In re AbitibiBowater, Inc.*, No. 09-11296 (Bankr. D. Del.), Hr'g Tr. 35:5–18, Jun. 4, 2009 (finding that such waivers are usually granted "in cases in which it looks like . . . the lenders are doing the right thing in terms of . . . providing for payment of administrative expenses."); *see also In re Stacy's, Inc.*, 508 B.R. 370, 380–81 (Bankr. D.S.C. 2014) (declining to apply "equities of the case" exception where secured lender had already agreed to carve-out and estate was only able to continue operating through the use of the lender's cash collateral); *In re Am. Media, Inc.*, 2010 WL 5141244, at *4 (Bankr. S.D.N.Y. Dec. 6, 2010) ("In light of the Prepetition Agent's and Prepetition Lenders' agreement to subordinate their liens and superpriority claims to the Carve Out . . . and to permit the use of their Cash Collateral as set forth herein, the Prepetition Agent and Prepetition Lenders are entitled to (a) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code and (b) a waiver of the provisions of section 506(c) of the Bankruptcy Code.").

34. The Committee objects to the Debtors' agreement to waive marshaling and language in the proposed Final DIP Order. These objections belie a fundamental misunderstanding of the marshaling doctrine.

35. Marshaling is a right of a senior creditor "to proceed against more than one asset of a debtor [to], in fairness, attempt to satisfy his claim(s) from assets that are not encumbered with junior liens."[38] The no-marshaling provision is a common element of a negotiated post-petition financing facility between a debtor and its secured lenders. In fact, courts recognize it as one of the bargaining chips debtors may use to reach an agreement with their secured lenders.[39] To that end, it is unsurprising that final DIP and cash collateral orders containing no-marshaling provisions are considered customary and are regularly approved by courts in this district.

36. In light of the foregoing, the Debtors submit that the section 506(c), section 522(b), and marshaling waivers are appropriate as proposed, and that the Official Committee's Objection to these terms should be overruled.

CONCLUSION

37. For the foregoing reasons, and those set forth by the Debtors in the Motion, the DIP Lender Parties respectfully request that the Court overrule the Objection and enter the Final DIP Order as proposed.

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[38] *See In re San Jacinto Glass Indus., Inc.*, 93 B.R. 934, 937 (Bankr. S.D. Tex. 1988); *see also In re Glob. Serv. Grp., LLC*, 316 B.R. 451, 463 (Bankr. S.D.N.Y. 2004) ("Marshaling is an equitable principle designed to protect the rights of a junior creditor by compelling a senior creditor to attempt to collect its claim first from another source unavailable to the junior creditor.").

[39] *See MPM Silicones, LLC*, Hr'g Tr. 92–93 (approving a no-marshaling provision in a cash collateral order and commenting that "[g]enerally speaking, this is the debtor's right to negotiate or secured creditors' right to insist on").

RESERVATION OF RIGHTS

38. The DIP Lender Parties reserve their rights to amend, modify, or supplement this Reply to the extent that additional issues, or issues which the DIP Lender Parties currently believe to be resolved, are raised in connection with the Objection.

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Dated: September 29, 2025
Chicago, Illinois

Respectfully submitted,

/s/ Matthew L. Warren

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CERTIFICATE OF SERVICE

I certify that on September 29, 2025, I caused a true and correct copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Matthew L. Warren
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