Docket #0107 Date Filed: 04/16/2026

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

In re:	)	Chapter 11
ASCEND ELEMENTS, INC. *et al.*,[1]	)	Case No. 26-90440 (CML)
Debtors.	)	(Jointly Administered)

DEBTORS' REPLY IN SUPPORT OF MOTION FOR ENTRY OF ORDERS (I)(A) APPROVING BID PROCEDURES, (B) AUTHORIZING DESIGNATION OF A STALKING HORSE BIDDER, (C) SCHEDULING AN AUCTION, RELATED DEADLINES, AND A SALE HEARING, AND (D) GRANTING RELATED RELIEF; AND (II)(A) APPROVING THE SALE OF THE DEBTORS' ASSETS, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS, AND (C) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors") file this reply (the "Reply") in support of the *Debtors' Motion for Entry of Orders (I)(A) Approving Bid Procedures, (B) Authorizing Designation of a Stalking Horse Bidder, (C) Scheduling an Auction, Related Deadlines, and a Sale Hearing, and (D) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets, (B) Approving the Assumption and Assignment of Certain Contracts, and (C) Granting Related Relief*, [Docket No. 50] (the "Bid Procedures Motion")[2] and the order, substantially in the form attached thereto, [Docket No. 50-1] (the "Bid Procedures Order") authorizing and approving (among other things) the proposed bid procedures substantially in the form attached as Exhibit 1 to the Bid Procedures Order (the "Bid Procedures"), and the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection for the Use of Cash Collateral, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief*, [Docket No. 18] ("Cash Collateral Motion") and in response to:

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The location of the Debtors' service address is: 133 Flanders Road, Westborough, MA 01581.

[2] Capitalized terms used but not defined herein shall have the meaning ascribed in the Bid Procedures Motion.

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1) *Turner-Kokosing Joint Venture's Objection to Debtors' Motion for Entry of Final Cash Collateral Order and Proposed Bid Procedures* [Docket No. 79] filed by the Turner-Kokosing Joint Venture, a Turner Construction Company and Kokosing Industrial, Inc. joint venture ("TKJV");

2) *RMF Nooter, Inc.'s Joinder To Turner-Kokosing Joint Venture's Objection To Motion For Entry Of Cash Collateral And Proposed Bid Procedures* [Docket No. 85] filed by RMF Nooter, Inc. ("Nooter");

3) *Amcon Industrial's Joinder And Objection To Debtors' Proposed Bid Procedures* [Docket No. 92] filed by AMCON Industrial ("Amcon"); and

4) *United Electric Company, Inc.'s Joinder And Objection To Debtors' Emergency Motion For Entry Of Orders (I)(A) Approving Bid Procedures, (B) Authorizing Designation Of A Stalking Horse Bidder, (C) Scheduling An Auction, Related Deadlines, And A Sale Hearing, And (D) Granting Related Relief; And (II)(A) Approving The Sale Of The Debtors' Assets, (B) Approving The Assumption And Assignment Of Certain Contracts, And (C) Granting Related Relief* [Docket No. 93] filed by United Electric Company, Inc. ("United Electric").

In support of this Reply, the Debtors submit the following:

Preliminary Statement

1. As a sound exercise of their business judgment, the Debtors' proposed Bid Procedures seek to implement their plan to preserve the value of their assets as a going concern while implementing an accelerated process to pursue a value maximizing transaction. As supported by the O'Hara Declaration,[3] given the Debtors' limited liquidity, the proposed cadence for the sale process and the mechanics of the proposed Bid Procedures are both reasonable and necessary under the circumstances.

2. As referenced in the First Day Declaration, the Debtors dispute TKJV's claims and relatedly, the claims of the subcontractors including Nooter, Amcon, and United Electric (collectively, the "Subcontractors").[4] Nevertheless, the Debtors have worked constructively

[3] *Declaration Of Michael O'Hara Of Jefferies LLC In Support Of The Debtors' Emergency Motion For Entry Of Order (I)(A) Approving Bid Procedures, (B) Authorizing Designation Of A Stalking Horse Bidder, (C) Scheduling An Auction, Related Deadlines, And A Sale Hearing, And (D) Granting Related Relief; And (II)(A) Approving The Sale Of The Debtors' Assets, (B) Approving The Assumption And Assignment Of Certain Contracts, And (C) Granting Related Relief*, Docket No. 88 ("O'Hara Declaration").

[4] The Debtors submit that TKJV's mechanic's lien overstates the amounts owed to TKJV with respect to Apex-1, and TKJV's objection paints a misleading picture of TKJV's entitlement to relief. First, TKJV has failed to amend its mechanic's lien to reflect the settlement of tens of millions of dollars of subcontractor claims underlying TKJV's claim, despite TKJV having unquestioned knowledge of these settlements. The Debtors

with counsel for TKJV and the Subcontractors to address their concerns. TKJV and the Subcontractor's objections address their issues with the Cash Collateral Order and separately the Bid Procedures Motion. The Debtors submit that the Bid Procedures-related objections—to the extent not already addressed in the Bid Procedures—have been addressed by the revised Bid Procedures Order (the "Revised Order") or the O'Hara Declaration. Separately, objections related to the Cash Collateral Motion should be addressed in connection with the hearing on that motion, with the parties reserving their collective rights on those issues in the interim.

REPLY

A. The Bid Procedures Motion is a Proper Exercise of the Debtors' Business Judgment

3. A debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling the assets of a debtor's estate. *See, e.g., The Inst'l Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc., et al. (In re Continental Air Lines, Inc.),* 780 F.2d 1223, 1226 (5th Cir. 1986). The Debtors believe that the proposed Bid Procedures are fair and appropriate under the circumstances and consistent with the Debtors' goals in the marketing and sale process (the "Sale Process"). The Debtors submit that TKJV's and the Subcontractor's purported deficiencies with the Bid Procedures and Sale Process have been addressed with the Revised Order and the O'Hara Declaration.

4. Specifically, TKJV alleges that the Bid Procedures Motion does not sufficiently describe the Debtors' pre-petition marketing processes. They have also criticized the level of detail associated with the post-petition marketing process. These alleged infirmities have been cured by the O'Hara Declaration, which outlines that the Debtors commenced a pre-petition marketing process with Jefferies in the Fall of 2025 to review the

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have contested TKJV's entitlement to significant portions of the remaining claimed amount due to observed overcharging, waste, and abuse, with TKJV having notice of such allegations for many months, including via Debtors' counterclaim filed in the arbitration between Ascend and TKJV. Put simply, TKJV's mechanic's lien is materially flawed and has been, and will continue to be, the focus of significant scrutiny.

Debtors' strategic sale and restructuring alternatives. O'Hara Declaration, ¶ 11. This included contacting approximately 120 potentially interested parties. *Id*. at ¶ 12. Moving forward, the Debtors, with the assistance of Jefferies, intend to build upon this pre-petition marketing process via the Bid Procedures. Likewise, United Electric argues the Bid Procedures unnecessarily contemplates an expedited timeline and invites the Court to, instead, consider conversion to chapter 7. But, as discussed in the O'Hara Declaration, the timeline is dictated by the Debtors' limited liquidity and necessary and appropriate under the circumstances. O'Hara Declaration, ¶ 14. Further, as provided in the Titus Declaration,[5] in the Debtors' business judgment, liquidation is not a value-maximizing alternative. Titus Declaration, ¶ 14.

5. TKJV also alleges that the Debtors must disclose that all holders of allowed secured claims have the right to credit bid their secured claims. Contrary to their objection, the Bid Procedures Order and the Bid Procedures do, in fact, permit a secured creditor to submit a credit bid for assets subject to its lien up to the amount of its allowed claim. Revised Order, ¶ 12; *see also In re The Free Lance-Star Publ'g Co. of Fredericksburg, VA*, 512 B.R. 798, 808 (Bankr. E.D. Va. 2014) (lienholder may only submit credit bid for assets subject to its lien). The Debtors do, however, reserve the right to review any claim filed by TKJV and the Subcontractors and, if warranted, object to those claims. A claim is only deemed allowed unless a party in interest objects, 11 U.S.C. § 502(a); and the burden to establish the validity, priority and extent of a lien is squarely on the creditor seeking to credit bid its "allowed claim."[6] 11 U.S.C. § 363(p); *see also Sec. & Exch. Comm'n v. Cap. Cove*

[5] *Declaration Of Adam Titus In Support Of Debtors' Emergency Motion For Entry Of Interim And Final Orders (I) Authorizing The Debtors To Use Cash Collateral, (II) Granting Adequate Protection For The Use Of Cash Collateral, (III) Scheduling A Final Hearing, And (IV) Granting Related Relief* [Docket No. 19] ("Titus Declaration").

[6] To be sure, the Debtors do not concede the validity, priority, or extent of liens asserted by TKJV. *See* First Day Declaration, ¶ 35 & n. 2 ("The descriptions in this Declaration of the Company's debt and other secured obligations, including any security in respect of such debt, are provided for the convenience of the Court and parties in interest. In certain cases, amounts stated are approximate. The descriptions are not intended to be

Bancorp LLC, No. SACV-15-980-JLS (JCX), 2015 WL 9701154, at *9 (C.D. Cal. Oct. 13, 2015) (denying right to credit bid where a bona fide dispute existed as to liens against the properties at issue). Regardless, the revised form of Bid Procedures Order provides additional language concerning parties' credit bid rights. *See id*.

6. TKJV and the Subcontractors also assert objections to the Bid Procedures, all of which have either been addressed by the Revised Order, already existed in the Bid Procedures, or are unfounded:

TKJV Objections	
Objection	**Response/Revised Order**
TKJV: Prepetition Secured Parties should have limited consultation privileges should they submit a bid on the Debtors' assets.	Revised Order ¶¶ 3 (requiring indications of interest to include intention to credit bid); 14 (providing an unsecured creditors committee consultation rights regarding any Stalking Horse Bidder or Bid Protections); Bid Procedures pg. 16 (upon submitting an indication of interest, party shall no longer be a consultation party).
TKJV: an official committee of unsecured creditors appointed in this case should have similar consulting rights to the Prepetition Secured Parties.	Revised Order, ¶ 14 (providing an unsecured creditors committee consultation rights regarding any Stalking Horse Bidder or Bid Protections); *see also* ¶¶ 13 (granting unsecured creditors committee standing to object to sale, including on the basis of invalid credit bids); 18 (naming any unsecured creditors committee an assumption and assignment notice party); 19 (naming any unsecured creditors committee sale objection notice party).
TKJV: questions whether the Bid Procedures Overbids requirement would be required for partial lots.	Bid Procedures, pg. 10–11, ¶ C(iv). The Bid Procedures provide sufficient leeway that should the Debtors determine, in their business judgment, that overbids on all or some of the Debtors' assets should be reduced, the Debtors have the ability to do so.
Nooter Objections	
Objection	**Response/Revised Order**

comprehensive nor should they be construed as an admission with respect to terms, amount, validity or enforceability of any debt, any lien or security, or any other right or obligation. These descriptions are qualified in their entirety by the operative relevant debt and related documents. The Debtors and their advisors are continuing to review their debt obligations and related matters and expressly reserve all rights relating thereto.").

No party may assert section 363(k) credit-bid rights in a manner that would impair, prime, or displace [liens on real property] absent full satisfaction of section 363(f) as to those liens.	The Revised Order contemplates and preserves any objections to a sale pursuant to section 363(f) of the Bankruptcy Code. Revised Order, ¶ 19 ("All objections to the sale of the Assets (each, a "Sale Objection"), including (a) any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to the Stalking Horse Bidder, a Successful Bidder, and/or a Backup Bidder (as applicable) . . .").
United Electric Objections	
Objection	**Response/Revised Order**
The Bid Procedures fail to address the Debtors' intellectual property portfolio.	The Bid Procedures as constructed provides for the sale of substantially all of the Debtors' assets (to include the intellectual property) and allows for parties to submit and for the Debtors to consider bids for all or some of the assets. Bid Procedures, pg. 2.
The Senior Secured Holders' consent rights are overbroad and create a conflict of interest.	Revised Order ¶¶ 3 (requiring indications of interest to include intention to credit bid); 14 (providing an unsecured creditors committee consultation rights regarding any Stalking Horse Bidder or Bid Protections); Bid Procedures pg. 16 (upon submitting an indication of interest, party shall no longer be a consultation party).
Court must address ability of particular parties to credit bid including risk that credit bids will chill bidding.	Credit bids are inherently limited both by a secured party's allowed claim and limited to the collateral securing that claim. The Debtors and parties in interest maintain the right to object pursuant to Bankruptcy Code section 363(k) or otherwise to a secured party's right to credit bid where appropriate "for cause."
The M&A Transaction Fee payable to Jeffries must be disclosed and subject to Court approval.	Objections to the M&A Transaction Fee are premature, as Jefferies' retention by the Debtors and fees for their services will be subject to approval by the Court and all parties in interest will have visibility into the economics of their engagement.
Bid Procedures should be flexible and contemplate multiple auctions for different assets.	The Bid Procedures as constructed provide for the sale of substantially all of the Debtors' assets (to include the intellectual property) and allows for parties to submit and for the Debtors to consider bids for all or some of the assets. Bid Procedures, pg. 2.
There should not be a waiver of Rule 6004(h).	As discussed in the O'Hara Declaration, the proposed timeline is necessary under the circumstances, O'Hara Declaration, ¶ 14, and the Debtors, in their business judgment, have explained why the waiver of Rule 6004(4)(h) is appropriate.

Assumption and assignment procedures must preserve all M&M lien rights.	This objection is premature. The Debtors reserve all rights in connection with the assumption and or assignment of any contract as may be required in an eventual Sale Transaction, including those rights under section 365 of the Bankruptcy Code to assume and assign a contract free and clear of interests.
There is no reason to require $500,000 overbids.	The Bid Procedures provide sufficient leeway that should the Debtors determine, in their business judgment, that overbids on all or some of the Debtors' assets should be reduced, the Debtors have the ability to do so. Bid Procedures, pg. 10–11, ¶ C(iv).

B. The Debtors reserve their rights to address objections to the Cash Collateral Objection and their entitlement to adequate protection

7. In their objections, TKJV and certain Subcontractors further argue that as a secured creditor, they are entitled to adequate protection to the extent that its interest in property is affected by the automatic stay; the use, sale, or lease of the property; or the granting of a lien under the Bankruptcy Code. The objections do not identify what interests are harmed or suffer diminution by the Debtors' Cash Collateral Motion.

8. These issues are not before the Court at this time and the Debtors reserve all rights to address them on or before the scheduled final hearing on the Cash Collateral Motion. For the avoidance of doubt, neither TKJV nor any Subcontractor has a security interest in the Debtors' cash or cash collateral. In addition, the Debtors are not currently operating at the Hopkinsville site, and construction is paused pending disputes with contractors. *See* First Day Declaration at ¶ 26. The Court entered the Critical Vendor Order,[7] the Insurance Order,[8] and the Taxes Order,[9] which (at least in part) serves to protect and preserve the value of the

[7] *Interim Order (I) Authorizing The Debtors To Pay Certain Prepetition Claims Of Critical Vendors, And (II) Granting Related Relief*, Docket No. 44 ("Critical Vendor Order").

[8] *Order (I) Authorizing The Debtors To (A) Continue Their Prepetition Insurance Program, Surety Bond Program And Letters Of Credit And Satisfy Prepetition Obligations Related Thereto, (B) Renew, Supplement, And Enter Into New Insurance Policies, Surety Bonds And Letters Of Credit, (C) Honor The Terms Of The Premium Financing Agreements And Pay Premiums Thereunder, And (D) Enter Into New Premium Financing Agreements In The Ordinary Course Of Business, And (II) Granting Related Relief*, Docket No. 41 ("Insurance Order").

[9] *Order (I) Authorizing The Payment Of Certain Taxes And Fees, And (II) Granting Related Relief*, Docket No. 42 ("Taxes Order").

Apex-1 facility. Moreover, the replacement liens sought by the Debtors in the Cash Collateral Motion and granted to the Senior Secured Noteholders in the Interim and proposed Final Order are subject to "Permitted Liens," which include certain statutory liens. Cash Collateral Motion Interim Order ¶ E.1.(c).; ¶ 3.

9. The Debtors reserve the right to supplement the arguments set forth herein, including in any reply to an objection filed in advance of the final hearing to consider the Debtors' use of cash collateral.

[Signature Page to Follow]

Dated: April 16, 2026

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

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Proposed Counsel to the Debtors and Debtors in Possession

CERTIFICATE OF SERVICE

I certify that on April 16, 2026, I caused a 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. Additionally, the foregoing document will be served as set forth in a forthcoming affidavit filed by the Debtors' proposed claims agent.

/s/ Ryan Manns
Ryan E. Manns