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

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In re:

ASCEND ELEMENTS, INC. et al.,

Debtors.

Case No.: 26-90440(CML)
Jointly Administered

Chapter 11

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**RMF NOOTER, LLC'S SUPPLEMENTAL OBJECTION TO MOTION FOR ENTRY OF FINAL CASH COLLATERAL ORDER**

RMF Nooter, LLC ("Nooter"), files this Supplemental Objection to the Debtors' Motion for Entry of Final Cash Collateral Order, and states:

**Introduction**

1. Nooter's $39 million claim arises from labor and materials furnished at the Debtors' Hopkinsville, Kentucky facility known as "Apex 1." Nooter respectfully objects to entry of the proposed Final Cash Collateral Order. Key provisions impermissibly elevate and insulate the Prepetition Secured Parties at the expense of other stakeholders, particularly the Kentucky construction lienholders asserting statutory claims well in excess of $100 million. The Interim Order already includes sweeping waivers of sections 506(c) and 552(b); broad replacement liens on all assets, including real property and (subject to final order) Avoidance Proceeds; expansive stipulations and releases; a de minimis investigation budget; and milestones and consent rights that use cash-collateral dominance to compel an artificially accelerated sale. The Debtors' own banker concedes that the sale timeline derives from milestones the Prepetition Secured Parties imposed as a condition to their consent. The Final Order Claimants and entered absent material modifications that remove the extraordinary waivers and entitlements, preserve statutory rights for the Apex 1



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Statutory Lien Claimants, and eliminate embedded sale-process coercion by the lenders whose conduct produced the Debtors' liquidity crisis.

**Relevant Factual Background**

2. The Debtors sought interim and final authority to use Cash Collateral to bridge to a section 363 sale on milestones requiring entry of the Bid Procedures Order by April 16, 2026; indications of interest by May 1, 2026; bids by May 9, 2026; an auction on May 12, 2026; and a sale hearing by May 17, 2026, all subject to the consent and consultation rights of the Senior Secured Holders. The Interim Order keys Termination Events and remedies to those milestones: any effort to seek bid procedures or designate a stalking horse without the Senior Secured Holders' "prior written consent" triggers default and termination of consensual Cash Collateral use. The Interim Order also grants Adequate Protection Liens on all Prepetition Collateral and on all real and personal property of the Debtors (subject to the Carve Out and Prepetition Permitted Liens), expanding into previously unencumbered assets and, subject to a final order, the proceeds of Avoidance Actions. It further waives any section 506(c) surcharge right and the section 552(b) "equities of the case" exception (again, subject to final order); bars use of collateral for most investigations or challenges; and caps any committee's investigation funding at $50,000. As to Apex 1, the Debtors disclose more than $145 million in asserted statutory lien claims by contractors, subcontractors, and suppliers for work and materials furnished to the Apex 0 and Apex 1 facilities, with a particular concentration at Apex 1. Notably, construction at Apex 1 was suspended by the Debtors in November 2024. The Debtors subsequently entered financing transactions totaling nearly $190,000,000, but none of the eligible funds were used to pay the Apex 1 creditors who were building the facility.

3. The Bid Procedures Order directed the Debtors, the M&M Lienholders (including Nooter), and the Mortgagees to work cooperatively through April 27, 2026 to resolve the validity,

extent, priority, and amount of the asserted liens, and, if unresolved, to seek an expedited determination from this Court so as not to disrupt the Auction and sale process. The Bid Procedures Order also expressly preserves mechanics' and materialmen's lien rights under applicable non-bankruptcy law. Despite Nooter's efforts to engage in the prescribed resolution process, the Debtors have refused to do so.

4. Nooter's mechanics' and materialmen's lien claims arise from improvements to Apex 1, giving Nooter a direct interest in ensuring that Cash Collateral use and any "replacement" lien scheme do not improperly alter lien priorities, waive estate surcharge and equities-of-the-case protections, or facilitate a rushed sale that chills bidding and disadvantages statutory lienholders. The Debtors' own filings confirm that statutory lien claims relating to Apex 0 and Apex 1 exceed approximately $145 million, demonstrating the size of the constituency directly affected by any final cash-collateral and sale-process terms. The Bid Procedures Order's recognition of cooperative resolution with the M&M Lienholders, and its express non-impairment of mechanics' lien rights, confirm that those claims must be preserved, not diluted by overbroad adequate-protection grants, waivers, or releases.

**Legal Standard**

5. Section 363(c) of the Bankruptcy Code permits use of cash collateral only with consent or court approval, and only upon adequate protection of the secured party's interest; section 363(e) directs the court to condition such use as necessary to provide that protection. Adequate protection may include replacement liens and section 507(b) superpriority claims to the extent of any postpetition diminution in value, and its form is determined case by case based on the nature of the creditor's interest, the potential harm, and the protective measures proposed. Courts routinely approve appropriate adequate protection, but extraordinary provisions, such as waivers of statutory surcharge rights, elimination of the section 552(b) equities exception, liens on

previously unencumbered assets and avoidance proceeds, sweeping releases, and de minimis investigation budgets, are disfavored at the interim stage and warrant strict scrutiny at the final stage as well.

**Objection and Argument**

i. Removal of Inequitable Waivers and Releases.

6. The Interim Order waives the Prepetition Secured Parties' exposure to section 506(c) surcharge and to the section 552(b) "equities of the case" exception, both subject to final order. Those waivers strip the estate of two essential statutory safeguards that often protect unsecured and statutory lien constituencies, particularly where postpetition efforts preserve, maintain, or enhance collateral, or where equities counsel limiting the sweep of after-acquired proceeds. The Interim Order also grants Adequate Protection Liens on all Prepetition Collateral and on all now-owned and after-acquired real and personal property, including previously unencumbered assets and, subject to entry of a final order, Avoidance Proceeds. This is particularly important in this case because the Prepetition Secured Parties include insiders that were allegedly granted broad sweeping liens within a year of the Petition Dates. That conferral of new collateral and priorities risks distorting relative priorities among lienholders at Apex 1. These provisions immunize the Prepetition Secured Parties from estate surcharge and equities-based reallocation while sweeping in proceeds Congress reserved for creditor recoveries, and they layer replacement liens across the Debtors' real property notwithstanding the asserted Kentucky mechanics' and materialmen's liens tied to the value of Apex 1 improvements. Because the Bid Procedures Order itself recognizes and preserves mechanics' lien rights, the Final Order should be conformed to that principle by removing or deferring those waivers and excluding Avoidance Proceeds and

previously unencumbered real property from the Adequate Protection Collateral, so that the Apex 1 Lien Claimants' statutory positions are not diluted or leapfrogged.

ii. Investigation Budget is Inadequate.

7. The Interim Order bars the use of Cash Collateral and Adequate Protection Collateral to investigate or challenge the Prepetition Secured Parties, except for an aggregate $50,000 cap on any committee's investigation before the challenge deadline. The same order imposes strict challenge periods and standing requirements; failure to meet them will render the Debtors' sweeping stipulations and releases binding on the estates and all parties in interest, converting interim stipulations into final determinations by default. Given the magnitude and complexity of the asserted lien landscape at Apex 1 and the inter-creditor dynamics, $50,000 is facially inadequate to fund the diligence and legal work needed to test the validity, extent, and priority of the Prepetition Secured Parties' liens and claims and their interplay with the Kentucky mechanics' liens. The Final Order should, at a minimum, increase the investigation budget to a level commensurate with the issues at stake and ensure that a representative fiduciary with proper standing can pursue challenges without being foreclosed by artificially constrained resources or timelines.

iii. Prepetition Secured Parties Control Over Sales Process Through Cash-Collateral Leverage Chills Bidding and Harms Estates.

8. The Interim Order's "milestones" require the Debtors to obtain bid procedures and sale approval on a compressed schedule, and they designate as a Termination Event any attempt to seek sale procedures or designate a stalking horse without the Senior Secured Holders' prior written consent, effectively giving the Prepetition Secured Parties veto power over both timing and structure. The Jefferies declaration concedes that the sale timeline is "structured around the milestones required by the Prepetition Secured Parties" as a condition to their consent to Cash

Collateral use and acknowledges that the Debtors lack DIP financing and have limited liquidity, factors that magnify the coercive effect of those milestones and consent rights. The Debtors rely upon the Declaration of its Chief Restructuring Officer ("CRO") in support of the Cash Collateral Motion and proposed Final Order. However, on April 30, 2026, it was disclosed that the CRO is being paid $225,000 a month by the Debtor, plus additional hourly rates for other employees (fees approved by the Prepetition Secured Parties) and the CRO's firm simultaneously represents the Collateral Agent for the Prepetition Secured Parties. See Dkt. 158[1]. Further, as part of the Cash Collateral Budget, the Debtors have agreed to pay the monthly legal fees of the Prepetition Secured Parties without any court oversight (even though they may be significantly undersecured). The risk that conflicts of interest have jeopardized the process exist, and such relationships and connections need to be investigated to preserve the integrity of the bankruptcy process and this Court.

9. The Bid Procedures further embed consultation and consent rights in favor of the Senior Secured Holders, require their consent for changes to key dates, and obligate the Debtors to share bids while permitting them to credit bid up to the full amount of their claims, including any Adequate Protection Superpriority Claims. The CLN Investors candidly acknowledge this leverage, observing that any successful bid will practically require their consent and citing the Interim Order's termination trigger if the Debtors seek bid procedures or designate a stalking horse without the Senior Secured Holders' prior written consent. See Dkt. 106, at 2. Together, these milestones, consent rights, and credit-bid positioning push toward a rapid, insider-favored transaction at the expense of a broader marketing effort and meaningful resolution of the Apex 1 mechanics' lien issues, which the Bid Procedures Order strains to address within days but which

[1] This potential conflict of interest is compounded by the filings under seal of the Applications to Employ the Debtors' counsel, financial advisors, and investment bankers. The secret relationships should be disclosed to all creditors and stakeholders, not just a group of insiders.

the Debtors have refused to engage. The Final Order should remove the consent-default tied to the sale procedures and stalking-horse designation and extend the milestones to permit a commercially reasonable process consistent with this Court's value-maximization jurisprudence.

iv. Proposed Adequate Protection is Overbroad and Releases Should Not be Approved.

10. Adequate protection compensates for postpetition diminution in value of collateral; it is not a vehicle to improve a secured creditor's position or to annex new collateral and priority absent evidence of need. Yet the Debtors concede the Court has not determined whether any diminution has occurred, while the Interim Order grants broad replacement liens on all assets and superpriority claims, and layers in rights to credit bid using any superpriority claims. Stacked together, these protections overcompensate and chill third-party bidding by advantaging an insider credit bid able to roll up non-cash entitlements. The Final Order should condition any continued adequate protection on a showing of actual diminution; confine replacement liens to the scope and value of the prepetition collateral interests; exclude previously unencumbered real property and Avoidance Proceeds from the Adequate Protection Collateral; and preclude the use of any Adequate Protection Superpriority Claim as credit-bid currency.

11. The Interim Order then makes the Debtors' extensive stipulations and releases of the Prepetition Secured Parties binding on the estates and all parties in interest unless challenged within tight deadlines, with limited funding and standing. The Final Order should either defer final approval of those releases and stipulations pending adjudication or consensual resolution of the Apex 1 mechanics' lien issues or, at a minimum, include a carve-out preserving all rights of the Apex 1 Lien Claimants as to the validity, priority, and extent of their liens and against any attempt to bootstrap the stipulations into binding determinations adverse to their interests.

v. Credit Bidding Scrutiny and Denial of 363(m) Findings.

12. If the Prepetition Secured Parties elect to credit bid for substantially all of the Debtors' assets, they should not receive good-faith-purchaser protections under section 363(m). The Jefferies declaration acknowledges that Cash Collateral use was conditioned on sale milestones dictated by the Prepetition Secured Parties. Tethering Cash Collateral use to a process that magnifies insider bargaining leverage raises good-faith questions this Court must address. The Debtors' own authorities, including ASARCO and Bigler, recognize that bid procedures should enhance, not depress, competition and value, and they confirm that this insider-driven, milestone-bound process is suspect. Here, the Prepetition Secured Parties' milestones and truncated sale process drives down value.

13. Moreover, based on the Debtors' description of their prepetition capital structure, the Senior Secured Noteholders advanced less than 50% of the principal commitment under the Senior Secured Convertible Notes in late December 2025, and the Junior Secured Noteholders advanced less than 56% of the Junior Secured Convertible Notes in June 2025. Now, in a rushed proceeding driven by a liquidity crisis those same Prepetition Secured Parties created, they seek a windfall through overreaching releases and unwarranted control of the process. Had they advanced the committed funds, the Debtors would have ready access to over $81 million and would face no liquidity crisis. A significant dispute exists whether the Debtors received reasonably equivalent value for the broad security interests granted to the Prepetition Secured Parties, and whether the Prepetition Secured Parties acted in good faith. Accordingly, the Unsecured Creditors Committee must be permitted to conduct a robust investigation of transactions benefitting insiders that appear to be largely a sham that shifted all the risk onto the Debtors' trade creditors, and away from the equity holders (such as Blackrock, Tamasek and Fifth Wall).

**Reservation of Rights**

14. Nooter reserves all rights to supplement or amend this Supplemental Objection; to be heard at any hearing on the Cash Collateral Motion or the Sale Hearing; to object to any proposed final cash collateral order or sale order that does not incorporate the protections set forth above; and to seek any additional or alternative relief necessary to protect Nooter's rights, including relief concerning section 552(b) equities or section 506(c) surcharge waivers as they may be asserted against the Hopkinsville real property or its proceeds. See Dkt. 74 ¶¶ 2(c)–(d).

**Prayer**

For the foregoing reasons, RMF Nooter, LLC respectfully requests that the Court deny entry of the Final Cash Collateral Order as proposed; require the modifications described herein; preserve all rights of RMF Nooter, LLC and similarly situated Apex 1 mechanics' lienholders with respect to lien validity, extent, and priority and to any allocation or escrow of sale proceeds relating to the Hopkinsville property and improvements; and grant such other and further relief as is just and proper.

Dated: May 1, 2026
Houston, Texas

*/s/ T. Josh Judd*

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 1, 2026, I electronically filed the foregoing documents with the Clerk of the U.S. Bankruptcy Court for the Southern District of Texas, using the CM/ECF system. The ECF system will send a "Notice of Electronic Filing" to all counsel of record who have consented in writing to accept service of this document by electronic means.

*/s/ T. Josh Judd*
T. Josh Judd