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)

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' MOTION FOR ENTRY OF AN ORDER (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

[Relates to Docket No. 18]

The Official Committee of Unsecured Creditors (the "Committee") appointed in the chapter 11 cases of Ascend Elements, Inc. and its debtor affiliate (collectively, the "Debtors"), by and through its undersigned proposed counsel, hereby submits this objection (the "Objection")[2] to 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] (the "Cash Collateral Motion"). In support of the Objection, the Committee respectfully states as follows:

[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 otherwise defined herein shall have the meanings ascribed to them in the Cash Collateral Motion.

PRELIMINARY STATEMENT

1. The Cash Collateral Motion is far from standard. Among countless objectional provisions, it contains expansive protections for the Prepetition Secured Parties that are more akin to the protections typically afforded to lenders providing a new money postpetition financing facility, not an undersecured prepetition lender providing access to a relatively small amount of cash collateral that does not meaningfully expand the runway of these cases that the Debtors need.

2. The Debtors have proposed to use Cash Collateral as a "bridge" to a debtor-in-possession financing facility and sale process, and with it they have agreed to a panoply of generous terms in favor of the Prepetition Secured Parties at the expense of the Debtors' general unsecured claimsholders. However, this so-called bridge is illusory, as the Debtors are now seeking approval of $30 million in new money, postpetition financing on the same timeline as the Cash Collateral Motion.[3] Meanwhile, the Debtors' proposed sale process is already set on a hyper-accelerated path, with a deadline for entry of the Sale Order set for May 21, 2026, a mere twenty-five days after the Committee was appointed. This timeline—paired with the above-market protections given to the Prepetition Secured Parties in the Interim Order—will deprive the estates, their fiduciaries, and parties in interest of the time necessary to conduct a fulsome and creditable marketing process or meaningfully assess strategic alternatives.

3. To make matters worse, the Cash Collateral Motion is premised on the notion that the Senior Secured Holders' claims are secured. While the Committee's lien investigation is in its initial stages, the Committee has already discovered potential infirmities in the Senior Secured

[3] On May 6, the Debtors file the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Superpriority Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 196] (the "DIP Motion"). The DIP Motion is set to be heard at the same hearing during which the Court will consider final approval of the Cash Collateral Motion.

Holders' purported liens. Upon a routine lien search, the Committee found that the Senior Secured Holders filed a financing statement in connection with the Senior Notes Agreement on April 2, 2026 (i.e., just one week before the Petition Date and clearly within the preference period). The Committee is continuing to review these issues. However, it is premature to grant the Senior Secured Holders such expansive adequate protection and other rights afforded to them in the Interim Order.

4. Furthermore, the Cash Collateral Motion seeks to grant the Prepetition Secured Parties an array of excessive protections. These protections include the following:

a. ***Inappropriate Granting of Adequate Protection***. The Interim Order would grant expansive Adequate Protection Liens, including on the proceeds of Avoidance Actions and other claims that may ultimately serve as the sole source of recovery of unsecured claimsholders. In light of the expedited timeline for these cases and the Debtors' liquidity issues, any Adequate Protection Liens should be narrowly tailored and limited to only the value of the Debtors' cash on hand on the Petition Date.

b. ***Excessive Payment of the Prepetition Secured Parties' Advisors***. The Cash Collateral Motion proposes that Adequate Protection Payments will include uncapped payment of the professional fees of the Senior Secured Holder Advisors[4] and Collateral Agent, in addition to any other currently unnamed or unknown advisors that the Prepetition Secured Parties decide to retain. These terms are wholly inappropriate in these cases and the Adequate Protection Payments should be stricken in their entirety.[5]

c. ***Overly Broad Releases and Indemnification Provisions***. The release provisions are overly broad, premature, unwarranted, and improper, and the Debtors have not made an adequate showing regarding the necessity of such releases nor demonstrated any value provided in exchange for such releases. The release and indemnification provisions should (i) be limited to the Prepetition Secured Parties, solely in their capacities as such and to the extent related to their conduct in negotiating and consenting to the use of Cash Collateral and (ii) exclude actions or inactions determined in a final, non-appealable judgment of a court of competent

[4] The Senior Secured Holder Advisors include Weil, Gotshal & Manges LLP, Uzzi & Lall, Goodwin Proctor LLP, and Gray Reed & McGraw LLP.

[5] Even if the Court declines to strike the Adequate Protection Payments, the Debtors should not be liable for unlimited professional fees of unnamed additional advisors, who could be retained at the whim of the Prepetition Secured Parties

jurisdiction to have resulted primarily (not solely) from such parties' actual fraud, gross negligence, criminal acts, or willful misconduct.

d. ***Inappropriate Waiver of Rights under Sections 506(c) and 552(b) of the Bankruptcy Code and the Marshaling Doctrine***. The estates' waiver of their right(s) (i) to surcharge the Prepetition Secured Parties for protection of their collateral, (ii) respecting after-acquired property, and (iii) to the equitable doctrine of marshaling is inappropriate, particularly given that the net effect of the waivers would eliminate a further avenue of recovery for the Debtors' estates and virtually guarantee that the costs of liquidating the secured lenders' collateral would be borne by unsecured creditors.

e. ***Overly Aggressive Sale Order Milestone***. The milestone for entry of a Sale Order on May 21, 2026 is overly aggressive and should be adjusted to allow a fulsome marketing process in accordance with the Debtors' duty to maximize value for the benefit of their estates.

5. Additionally, the Cash Collateral Motion should require the Debtors to provide sufficient budgeted amounts and time for the Committee's professionals to investigate prepetition transactions and other estate claims that may provide additional opportunities to recover distributable value to unsecured creditors. Simply put, the Committee cannot perform its duties if its professionals are given insufficient time to conduct a fulsome investigation of the purported liens on the Debtors' assets and other potential causes of action that may provide valuable recoveries to unsecured creditors.

6. Accordingly, the Committee requests the Court deny the Cash Collateral Motion unless and until the Final Order has been modified substantially to ensure that the terms of the Debtors' use of cash collateral are aligned to appropriate economic terms and do not unduly prejudice the Committee, the Debtors' unsecured creditors, and the other parties in interest.

BACKGROUND

7. On April 9, 2026 (the "Petition Date"), the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). These chapter 11 cases (the "Chapter 11 Cases") are being jointly

administered for procedural purposes only, pursuant to Rule 1015 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 1015-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the "Local Rules"). The Debtors continue to operate their businesses and manage their properties as debtors in possession, and no trustee or examiner has been appointed.

8. On April 10, 2025, the Debtors filed the Cash Collateral Motion. On April 13, 2026, the Court entered the *Interim Order (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* [Docket No. 74] (the "Interim Order").

9. On April 26, 2026, the United States Trustee for the Southern District of Texas (the "U.S. Trustee") appointed the Committee pursuant to section 1102(a) of the Bankruptcy Code.[6]

10. On April 29, 2026 the Committee selected McDermott Will & Schulte LLP as its counsel, and Province, LLC as its financial advisor (both subject to Court approval). Since being appointed, the Committee and its advisors have been working diligently to get up to speed regarding the Debtors' business affairs, the sale process, as well as numerous other issues that have presented themselves in connection with these Chapter 11 Cases.

11. On May 6, 2026, the Debtors filed the DIP Motion. The DIP Motion seeks approval of a new money, postpetition financing facility in the amount of $30 million, all of which will be available upon entry of the interim order. The DIP Motion is set to be heard on May 12, 2026, at

[6] *See Notice of Appointment of Creditors' Committee* [Docket No. 139].

the same hearing during which the Court will consider final approval of the Cash Collateral Motion.

OBJECTION

I. The Senior Secured Holders Are Not Entitled to Adequate Protection Because They May Be Unsecured.

12. Section 363(c)(2) provides that a trustee may not use a party's cash collateral unless the party consents or the court authorizes such use. 11 U.S.C. § 363(c)(2). Section 363(e) conditions the use of cash collateral on the trustee providing adequate protection to all parties with an interest in such cash collateral. Section 361 of the Bankruptcy Code provides the framework for the granting of postpetition adequate protection to prepetition secured lenders. No provision of the Bankruptcy Code authorizes a chapter 11 debtor to grant its secured lender, who is not providing new funding, with an adequate protection lien against assets in which that lender had no prepetition security interest.

13. Adequate protection is intended to *preserve* the value of a secured creditor's proprietary interest following the commencement of a bankruptcy case, not to *enhance* that creditor's position. *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996). It is well established that a secured party is not entitled to adequate protection absent a showing that its collateral is declining in value. *See, e.g.*, *Zink v. Vanmiddlesworth*, 300 B.R. 394, 402-03 (N.D.N.Y. 2003) ("[T]he initial burden of showing the need for adequate protection [is] upon the creditor having an interest in the property being used by the debtor . . . [and] a likelihood that the collateral will decrease in value").

14. At this stage, it is unclear if the Senior Secured Holders have valid prepetition security interests. As noted above, the Committee is investigating the purported liens held by the Prepetition Secured Parties and has identified potential issues with those liens that may render

them avoidable. Furthermore, the Debtors have failed to produce any deposit account control agreements that would show the Senior Secured Holders hold perfected security interests in the Debtors' cash accounts. Simply put, the Senior Secured Holders should not receive adequate protection at this stage because there are potentially significant issues with their alleged prepetition security interests.

II. Adequate Protection Payments Should be Stricken Because the Facts Indicate that the Senior Secured Holders May Be Unsecured.

15. Paragraph 4(c) of the Interim Order seeks authorization to grant the Senior Secured Holders an oversized adequate protection payment package that includes payment of all prepetition and postpetition professional fees and expenses incurred by the Senior Holder Advisors and Collateral Agent.

16. Section 506(b) of the Bankruptcy Code allows payment of postpetition interest, fees, and costs *only to the extent a secured claim is oversecured. See United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assoc.*, Ltd., 484 U.S. 365, 382 (1988) (denying postpetition interest sought as adequate protection by an undersecured creditor). As set forth above, it is possible that Senior Secured Holders are unsecured. And, even if they held unavoidable security interests, paying professional fees as adequate protection is inappropriate in these cases. The Debtors' liquidity is severely strained and requiring the Debtors to fund multiple sets of professionals would deplete the Debtors' already limited resources. Accordingly, the proposed Adequate Protection Payments do not meet the applicable standard under section 506, are not justified in light of the Debtors' precarious financial situation, and should be denied.

III. Adequate Protection Should Not Include Liens on the Proceeds of Avoidance Actions, Commercial Tort Claims, and Claims Against the Prepetition Secured Parties.

17. Avoidance Actions, other causes of action, and previously unencumbered property may comprise the sole source of value for unsecured creditors. The Interim Order provides for

Adequate Protection Liens on, among other things, all Avoidance Actions, commercial tort claims, estate causes of action against the Prepetition Secured Parties, the proceeds of the foregoing, and all the Debtors' previously unencumbered property. *See* Interim Order at ¶4(a). Such a broad grant of security is inappropriate and should be denied, particularly in situations such as this where there is a strong likelihood of avoidance action claims against the Prepetition Secured Parties.

18. Courts recognize that Avoidance Actions and the proceeds thereof are designed to ensure equitable distribution to creditors. *See, e.g., Gaudet v. Babin (In re Zedda)*, 103 F.3d 1195, 1203 (5th Cir. 1997) ("A trustee's avoidance powers are intended to benefit the debtor's creditors, as such powers facilitate a trustee's recovery of as much property as possible for distribution to the [unsecured] creditors."); *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 244 (3d Cir. 2000) (finding that avoidance actions do not constitute property of the estate, but are essentially rights held by the estate for benefit of unsecured creditors).

19. Granting liens on the proceeds of Avoidance Actions is fundamentally at odds with the unique purposes served by Avoidance Actions. Avoidance Actions are distinct creatures of bankruptcy law designed to benefit and ensure equality of distribution among general unsecured creditors. *See Cybergenics*, 226 F.3d at 244 (identifying underlying intent of avoidance powers to recover valuable assets for estate's benefit); *Gaudet*, 103 F.3d 1195, 1203 (5th Cir. 1997). Further, to allow the Debtors, as fiduciaries, to effectively assign the benefits of avoidance actions to a lender rather than preserve them for the benefit of unsecured creditors turns bankruptcy law on its head. *See Cullen Ctr. Bank & Tr. v. Hensley (In re Criswell)*, 102 F.3d 1411, 1414 (5th Cir. 1997) (noting that avoidance powers under the Bankruptcy Code were created to "facilitate[e] the prime bankruptcy policy of equality of distribution among creditors of the debtor").

20. This reasoning extends to "proceeds" of Avoidance Actions and other causes of action, which many courts exempt from the reach of secured creditors. *McFarland v. Leyh (In re Tex. Gen. Petrol. Corp.)*, 52 F.3d 1330, 1335–36 (5th Cir. 1995) ("[T]he proceeds recovered in an avoidance action satisfy the claims of priority and general unsecured creditors before the debtor benefits."); *In re Pinstripes Holdings, Inc.,* No. 25-11677 (KBO) (Bankr. D. Del. October 6, 2025) (excluding avoidance actions and proceeds thereof from the secured lender's adequate protection package).

21. In light of the foregoing and where these Chapter 11 Cases currently stand, the Prepetition Secured Parties should not be permitted to capture this value at the expense of unsecured creditors. Thus, first, the Final Order should exclude the Avoidance Actions, all commercial tort claims, any claims or causes of action against the Prepetition Secured Parties, and the proceeds of the foregoing from the Adequate Protection Collateral. Second, the Final Order should make clear that the Adequate Protection Liens and Adequate Protection Superpriority Claims shall be reduced to the extent that any of the Prepetition Liens are successfully challenged. Third, as to the Adequate Protection Liens on previously unencumbered assets, the Final Order should provide that Prepetition Secured Parties must first recover from existing prepetition collateral before reaching into any assets that were unencumbered on the Petition Date. Finally, the Final Order should reserve all rights of the Committee and other parties in interest to dispute requests for additional adequate protection.

IV. The Releases Are Premature and Inappropriate.

22. At this early stage of these cases, the potential reach and ramifications of the Debtors' proposed releases is unknowable due to the lack of information and the nascent nature of the Committee's investigation.

23. The Interim Order contains release provisions that are overly broad, unwarranted, and improper, and the Debtors have not made an adequate showing regarding the necessity of such releases nor demonstrated any value provided in exchange for such releases. Furthermore, both the release and indemnification provisions in the Interim Order should (a) be limited to the Prepetition Secured Parties, solely in their capacities as such and limited to their conduct in connection with negotiating and consenting to the use of Cash Collateral, (b) exclude actions or inactions determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily (not solely) from such parties' actual fraud, gross negligence, criminal acts, or willful misconduct, and (c) be expressly subject to the Committee's Challenge rights.

24. In addition to the broad releases, the Interim Order includes an indemnification that requires the Debtors to indemnify the Prepetition Secured Parties for "all costs, expenses (including but not limited to reasonable and documented legal fees and expenses), and liabilities arising out of or relating to the transactions, procedures, and/or relief contemplated by [the Interim Order]," with the only exception being for the extent a Prepetition Secured Party is "found in a final non-appealable judgment by a court of competent jurisdiction to have acted with fraud, with willful misconduct, or in bad faith." Interim Order, ¶ 25(c). This relief is overbroad and should be expressly subject to the Committee's Challenge rights and not be approved unless or until the Committee has had an opportunity to investigate the Prepetition Secured Parties' liens and actions as they relate to the Debtors.

V. The Milestone for Entry of the Sale Order is Unreasonable and Must be Modified.

25. Through the Cash Collateral Motion, the Debtors seek approval of an extremely aggressive sale timeline, including a milestone for entry of the Sale Order on May 21, 2026.

26. The Committee was formed less than two weeks ago, and since that time, has been faced with an onslaught of information related to the Debtors' business operations and the

numerous motions filed by the Debtors seeking affirmative relief from this Court, all on an extremely truncated timeframe. Given the infancy of the Committee, the unnecessarily aggressive Sale Order milestone restricts the Committee's ability to meaningfully participate in these Chapter 11 Cases. *See, e.g., In re Energy Future Holdings Corp.*, No. 14-10979 (CSS) (Bankr. D. Del. Nov. 3, 2014), Nov. 3, 2014 Hr'g Tr. at 20:16–20 ("[T]he proposed timelines must be stretched . . . to allow for sufficient time for any interested party to develop an alternative transaction . . . and the . . . committee to . . . get up to speed.").

27. In addition, under the Interim Order, in the event the Debtors fail to comply with any of the milestones, the Debtors' ability to use Cash Collateral may be terminated by the Prepetition Secured Parties who, after the Remedies Notice Period, would be entitled to exercise remedies in the Final Order and the Prepetition SSN Documents.[7] Under the circumstances, such relief is unwarranted and should be removed from the Final Order.

VI. The Committee Must be Allowed to Fulfill its Fiduciary and Statutory Duties.

28. Unsecured creditors' committees have a fiduciary duty to maximize unsecured creditor recoveries for a debtor's estate. *See In re Venturelink Holdings, Inc.*, 299 B.R. 420, 423 (Bankr. N.D. Tex. 2003) ("[A] committee member owes a fiduciary duty to all creditors represented by the committee."); Collier on Bankruptcy ¶ 1103.05[1][a] (16th Ed. 2023) (explaining that the "primary purpose of a committee . . . is to maximize the return to the constituency represented by the committee and all actions undertaken by the committee should be with that goal in mind."); *see also* 11 U.S.C. § 1103(c) (committee may "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's

[7] *See* Interim Order ¶ 8(b).

business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan").

29. As set forth in detail below, absent significant revisions to the current form of Interim Order, the Committee will be severely hamstrung in its efforts to fulfil its statutory mandate under the Bankruptcy Code.

A. The Initial Challenge Period Should be Extended.

30. Through the Cash Collateral Motion, the Debtors stipulate to the validity, priority, and extent of the claims and liens of each of the Prepetition Secured Parties.[8] These stipulations and waivers became effective as to the Debtors upon the entry of the Interim Cash Collateral Order, and will bind all other parties in interest unless they are challenged on or before the conclusion of the Challenge Period.[9] The Challenge Period under the Interim Order for the Committee is sixty (60) days from its appointment.[10]

31. As noted above, since its formation on April 26, 2026, the Committee has, in accordance with its statutory duties, been working diligently to get up to speed on the relief requested by the Debtors. Even in that short period of time, the Committee has already identified potential infirmities in the Debtors' prepetition liens that could materially impact the course of these cases. As a matter of fundamental fairness and due process, the Committee should have a reasonable opportunity to investigate the liens of the Prepetition Secured Parties, which requires a Challenge Period that is *at least* 90 days from the date of its appointment.

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8 *See id.*, at ¶ E.

9 *See id*., at ¶18.

10 *See id.,* at ¶18(a).

B. The Committee Investigation Budget Should be Increased.

32. The budget for the Committee to investigate a Challenge under the Interim Order is a paltry $50,000,[11] which, for obvious reasons, is wholly unacceptable, as it provides scant funds for a thorough investigation of the liens of the Prepetition Secured Parties.

33. Moreover, the size of the Committee Investigation Budget is far less than the budgets typically approved in cases of this size and complexity. *See, e.g., In re LifeScan Global Corporation,* No. 25-90259 (ARP) (Bankr. S.D.Tex. 2025) [Docket No. 208] (authorizing a budget of $300,000); *In re Saks Global Enterprises LLC,* No. 26-90103 (ARP) (Bankr. S.D.Tex. 2026) [Docket No. 919] (authorizing a budget of $100,000); *In re Castex Energy 2005 HoldCo, LLC*, No. 21-30710 (MI) (Bankr. S.D.Tex. 2021) [Docket No. 149] (same); *In re CEC Entertainment, Inc.* No. 20-33163 (MI) (Bankr. S.D.Tex. 2020) [Docket No. 1118] (authorizing a budget of $150,000); *In re Yellow Corporation*, No. 23-11069 (CTG) (Bankr. D. Del. 2023) [Docket No. 571] (authorizing a budget of $350,000); *In re Molycorp, Inc.*, No. 15-11357 (CSS) (Bankr. D. Del. 2015) [Docket No. 278] (authorizing a budget of $250,000); *In re McClatchy Co.*, No. 20-10418 (MEW) (Bankr. S.D.N.Y. 2020) [Docket No. 233] (authorizing a budget of $750,000); *In re Rite Aid Corp*., No. 23-18993 (MBK) (Bankr. D. N.J. 2023) [Docket No. 428] (authorizing a budget of $500,000).

34. Based on the information currently available to the Committee, the Final Order should increase the Committee's investigation budget to reflect an aggregate amount of not less than $100,000, should reflect the Committee's ability to seek a further increase in the budget for cause shown following notice and a hearing, and should provide that the Committee may use the budget to investigate *and* prosecute claims.

[11] *See id.*, at ¶ 19.

C. The Final Order Should Provide that the Committee Has Standing to Bring a Challenge.

35. As noted above, these Chapter 11 Cases are progressing at a breakneck pace, requiring the Committee to triage, among other things, a postpetition financing facility and a sale transaction within the span of a few short weeks. Under these circumstances, and in consideration of the length of the Challenge Period and the complexity of the lien issues in these Chapter 11 Cases, the Committee should not be required to expend the time or expense filing and prosecuting a motion to obtain standing to bring a Challenge. Accordingly, the Final Order should provide that the Committee has standing to bring a Challenge without the need to take affirmative steps to secure same.

36. In addition, given the aforementioned circumstances, the success of the Committee's investigation will hinge on the timely provision of information and the provision of access to relevant documents by the Debtors and the Prepetition Secured Parties. As such, the Final Order should provide the Committee with authority to serve discovery requests under Bankruptcy Rule 2004 relating to the validity, priority, and extent of the liens of the Prepetition Secured Parties, as well as all claims and causes of action the Debtors have waived pursuant to the Interim Order. The provision of such relief will enable the Committee to continue to pursue informal due diligence and provide a safety net should the Committee encounter difficulties in obtaining the necessary materials as the Challenge Deadline approaches. Along these same lines, the Final Order also should provide for that, to the extent the Debtors and/or the Prepetition Secured Parties do not comply with any requests issued by the Committee pursuant to Bankruptcy Rule 2004, the Challenge Period shall be tolled day-for-day until such time as the Debtors and/or the Prepetition Secured Parties comply, or for such other period of time the Court orders.

VII. The Final Order Must Reflect Additional Revisions from the Interim Order.

37. In addition to those provisions discussed above, the Interim Order contains a number of other objectionable provisions that must be modified in, or eliminated under, the Final Order, including, without limitation, as indicated below:

Issue	**Proposed Resolution**
The Budget is subject to the consent of only the Senior Secured Holders and there is no winddown budget or assurance that these Chapter 11 Cases will not become administratively insolvent. (Interim Order, ¶¶3(b), 3(e)).	The Final Order should provide that the Committee will have consultation rights over any modifications that reduce Committee professional fees or administrative expense funding. In addition, the Final Order should require a winddown budget sufficient to cover all administrative expenses to ensure that the Chapter 11 Cases do not become administratively insolvent.
The Committee should receive all reporting and access to information provided to the Senior Secured Advisors and Senior Secured Parties. (Interim Order, ¶¶3(c), 3(e), 4(d), 6).	The Final Order should provide that the Committee will be given simultaneous reporting and access to information in all respects in connection with the use of Cash Collateral, any prepetition facility, professional fee reports, variance reports, budget reports, and all other reports provided to the Senior Secured Advisors, Senior Secured Holders, and the Prepetition Secured Parties. In addition, the Committee should receive advance notice of all amendments or modifications to the Approved Budget or the Final Order, including consent rights over any decrease in the Committee's professional fee budget.
The Permitted Variance is no more than 110%. (Interim Order, ¶3(d)).	The Permitted Variance should be increased to at least 115%.

Issue	**Proposed Resolution**
The Senior Secured Holders are entitled to overreaching consent rights over whether the Debtors can sell assets or reject contracts. (Interim Order, ¶4(e)).	Given the possibility that the Senior Secured Holders are unsecured, these consent rights should be stricken. In addition, the Final Order should provide that the Debtors may reject contracts in consultation with the Committee. Further, to the extent the Senior Secured Lenders are secured, they have indicated an intention to credit bid, and as a bidder they should not be involved in consulting on issues relating to the sale or assignment of assets.
The Interim Order provides access to the Debtors' books and records and other information to the Senior Secured Holders only. (Interim Order, ¶6).	The Final Order should provide that the Committee has the same access to the Debtors' information as the Senior Secured Holders and the Senior Secured Holder Advisors.
The Interim Order provides for various termination events, including upon any relief under sections 506(c) and 552 of the Bankruptcy Code, and in the event the Debtors seek approval of a sale, bidding procedures, or a stalking horse without the consent of the Senior Secured Holders. (Interim Order, ¶7(a), 7(c), 7(f), 7(m)).	The Final Order should be revised as follows: • Provide for termination upon entry of an order modifying the Final Order, solely to the extent such modification is materially adverse to the rights of the Prepetition Secured Parties. Interim Order, ¶7(c). • Strike any provision for termination upon the granting of any relief under 506(c) or 552 of the Bankruptcy Code. • Strike any provision for termination upon the Debtors' seeking approval of a sale, bidding procedures, or a stalking horse without the consent of the Senior Secured Holders.
Only the Debtors or U.S. Trustee may extend the Remedies Notice Period. (Interim Order, ¶8(a)).	The Committee should also be able to extend the Remedies Notice Period.
The Interim Order provides for certain Stipulations that are binding on the Debtors. (Interim Order, ¶18(a)).	The Stipulations should not be binding on the Debtors if the Prepetition Secured Parties terminate the use of Cash Collateral.

VIII. The Estates' Waivers Should not be Permitted

38. The Court should not approve any waiver of the estates' rights under sections 506(c) and 552(b), of the Bankruptcy Code or the waiver of the equitable doctrine of marshaling.

39. Section 506(c) ensures that the cost of liquidating a secured lender's collateral is not paid from unsecured recoveries, providing that an estate "may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit" to the secured creditor. 11 U.S.C. § 506(c). "The general concept underlying this requirement is the prevention of a windfall to the secured creditor; a secured creditor should not reap the benefit of actions taken to preserve the secured creditor's collateral without shouldering the cost." 4 Collier on Bankruptcy ¶ 506.05 (16th Ed. 2020); *see also Southwest Sec., FSB v. Segner (In re Domistyle, Inc.)*, 811 F.3d 691, 696 (5th Cir. 2015).

40. Here, by having waived the estates' section 506(c) rights (subject to entry of the Final Order), the Debtors agreed to pay for any and all expenses associated with the preservation and disposition of the collateral of the Prepetition Secured Parties and, therefore, precluded any possibility of recovery of costs imposed on the estates for the exclusive benefit of those parties. But "the general estate and unsecured creditors should not be required to bear the cost of protecting what is not theirs." *In re Codesco Inc.*, 18 B.R. 225, 230 (Bankr. S.D.N.Y. 1982).

41. Several courts have held that the statutory mandate embodied in 506(c) is not properly subject to waiver. As one court aptly stated, "[t]he debtor and secured creditor do not constitute a legislature. Thus, they have no right to implement a private agreement that effectively changes the bankruptcy law with regard to the statutory rights of third parties." *In re Colad Grp., Inc.*, 324 B.R. 208, 224 (Bankr. W.D.N.Y. 2005); *accord, e.g., Hartford Fire Ins. Co. v. Norwest Bank Minn. (In re Lockwood Corp.)*, 223 B.R. 170, 176 (B.A.P. 8th Cir. 1998) (provision in financing order purporting to immunize postpetition lender from section 506(c) surcharges unenforceable); *McAlpine v. Comerica Bank-Detroit (In re Brown Bros., Inc.)*, 136 B.R. 470, 474

(W.D. Mich. 1991) (waiver of section 506(c) surcharge rights "not enforceable in light of the congressional mandate that a trustee have the authority to use a portion of secured collateral for its preservation or proper disposal").

42. Moreover, a 506(c) waiver is wholly inappropriate absent the payment of all administrative expenses. There can be no assurance at this early juncture that the administrative expenses of these cases will be paid in full. Until such time as it becomes clear that all costs of administering these chapter 11 cases have been adequately provided or reserved for, the Debtors should not be permitted to waive their section 506(c) surcharge rights. As such, the proposed 506(c) waiver is premature and should not be included in a Final Order.

43. The Interim Order also waives, subject to entry of the Final Order, the "equities of the case" exception under Bankruptcy Code section 552(b), which would otherwise allow the Debtors, the Committee, or other parties in interest to assert that equitable considerations warrant the exclusion of post-petition proceeds from the collateral securing the Debtors' prepetition debt. "The purpose of the equity exception is to prevent a secured creditor from reaping benefits from collateral that has appreciated in value as a result of the trustee's/debtor-in-possession's use of other assets of the estate (which normally would go to general creditors) to cause the appreciated value." *In re Muma Servs.*, 322 B.R. 541, 558-59 (Bankr. D. Del. 2005) (*quoting Delbridge v. Prod. Credit Ass'n & Fed. Land Bank*, 104 B.R. 824,826 (E.D. Mich. 1989)); *see also In re Cafeteria Operators, L.P.,* 299 B.R. 400, 409–10 (Bankr. N.D. Tex. 2003) (section 552(b) "is intended to prevent secured creditors from receiving windfalls and to allow bankruptcy courts broad discretion in balancing the interests of secured creditors against the general policy of the Bankruptcy Code, which favors giving debtors a 'fresh start.'"); *Matter of Vill. Props., Ltd.,* 723 F.2d 441, 444 (5th Cir. 1984) (reasoning the legislative history of section 552 "indicates its

purpose was to cover cases where an expenditure of the estate's funds increases the value of the collateral . . . [A]s an example the situation where raw materials are converted into inventory at the expense of the estate (which would thus deplete the fund available for general unsecured creditors)").

44. Courts have "decline[d] to waive prospectively an argument that other parties in interest may make" as to the equities of the case, and have retained "discretion" to determine whether an exception to liens over postpetition proceeds is warranted. *See In re Metaldyne Corp.*, No. 09-13412 (MG), 2009 Bankr. LEXIS 1533, at *20 (Bankr. S.D.N.Y. June 23, 2009) ("If, in the event, the Committee or any other party [in] interest argues that the equities of the case exception should apply to curtail a particular lenders' rights, the Court will consider it."); *see also In re Chemtura Corp.*, No. 09-11233 (REG) (Bankr. S.D.N.Y. Apr. 29, 2009) [Docket No. 281] (no waiver of the "equities of the case" exception).

45. The Court cannot possibly ascertain the "equities of the case" at this early stage. *See Sprint Nextel Corp. v. U.S. Bank Nat'l Ass'n (In re TerreStar Networks, Inc.)*, 457 B.R. 254, 272-73 (Bankr. S.D.N.Y. 2011) (request for 552(b) waiver was premature because factual record not fully developed). Thus, the Committee requests that the status quo be preserved, and that issues about extending liens over proceeds not be prejudged at this early stage. All parties should retain all rights concerning these issues, and the Court should retain discretion to determine what relief, if any, should be granted under section 552(b).

46. Finally, the Interim Order also provides that the Prepetition Secured Parties will not be subject to the equitable doctrine of marshaling. Marshaling requires a "senior lien creditor with a right to proceed against more than one asset of a debt must, in fairness, attempt to satisfy his claim(s) from assets that are not encumbered by junior liens." *In re San Jacinto Glass Indus., Inc.*,

93 B.R. 934, 937 (Bankr. S.D. Tex. 1988). Marshaling "prevent[s] the arbitrary action of a senior lienor from destroying the rights of a junior lienor or a creditor having less security." *Meyer v. United States*, 375 U.S. 233, 236 (1963). Marshaling can be pursued by Committees for the benefit of unsecured creditors. *See e.g., In re America's Hobby Ctr., Inc.*, 223 B.R. 275, 287 (Bankr. S.D.N.Y. 1998) ("Because a debtor in possession has all the rights and powers of a trustee . . . [the Committee] standing in the shoes of the debtor in possession . . . can assert this [marshaling] claim.").

47. Through the Cash Collateral Motion, the Debtors seek to limit the Court's ability to apply marshaling. The Prepetition Secured Parties purport to have liens on a diverse pool of assets, and at this early stage in the case there is no basis to waive this important doctrine. At minimum, however, to the extent that the Court determines to approve the grant of liens on previously unencumbered property, the Court should require the Prepetition Secured Parties to satisfy their claims or adequate protection claims, if any, from the proceeds of assets subject to their Prepetition Liens before they can look to the proceeds of assets on which they did not have liens prepetition.

RESERVATION OF RIGHTS

48. The Committee and its professionals reserve the right to further object to the Cash Collateral Motion and any other ancillary issues on any grounds and to respond to any reply of the Debtors, the Prepetition Secured Parties, or any other party in interest, either by further submission to this Court, at oral argument or by testimony to be presented at the Final Hearing or any other hearing.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court deny the Cash Collateral Motion in its current form. If the Court determines to grant the relief requested in the Cash Collateral Motion on a final basis, the Committee respectfully requests that the objections raised herein be addressed and incorporated into a revised proposed final order that is acceptable to the Committee. The Committee further requests that the Court grant such other and further relief as the Court deems just and proper.

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Dated: May 8, 2026
Dallas, TX

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Proposed Counsel to the Official Committee of Unsecured Creditors

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing was served by the Court's CM/ECF system on all counsel of record registered in this case through CM/ECF.

/s/ Charles R. Gibbs
Charles R. Gibbs