Docket #0482 Date Filed: 06/17/2026

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' MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE SETTLEMENT AGREEMENT BETWEEN THE DEBTORS AND THE UNITED STATES OF AMERICA, (II) AUTHORIZING IMPLEMENTATION OF THE SETTLEMENT AGREEMENT, AND (III) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), by and through their undersigned counsel, hereby submit this motion (the "Motion") for entry of an order (the "Proposed Order") granting the relief requested below. In support hereof, the Debtors respectfully represent as follows:

Relief Requested

1. The Debtors seek entry of the Proposed Order, in substantially the form attached hereto, (i) authorizing the Debtors to enter into that certain settlement agreement (the "Settlement Agreement," attached hereto as **Exhibit A**),[2] by and among (a) Ascend Elements, Inc. and (b) the United States of America ("USA"), acting through the United States Department of Justice, and on behalf of the United States Department of Energy, (ii) approving the terms of the Settlement Agreement and authorizing the Debtors and the USA to take any and all actions necessary to effectuate the terms thereof, including, but not limited to, granting

[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 such terms in the Settlement Agreement.

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relief from the automatic stay to permit the USA to setoff the Settlement Amount (if not recouped by the USA).

2. In support of the Motion, the Debtors rely on the *Declaration of Linh Austin in Support of the Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 11] (the "First Day Declaration"), the *Declaration of Adam Titus in Support of Entry of an Order (I) Approving the Settlement Agreement Between the Debtors and the United States of America, (II) Authorizing Implementation of the Settlement Agreement, and (III) Granting Related Relief* (the "Titus Settlement Declaration") filed contemporaneously herewith, and all previous filings by the Debtors in these cases.

Jurisdiction and Venue

3. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue for the Chapter 11 Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105, 362, and 363(b) of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rule 9019, Local Rules 2002-1, 4001-1, 4002-1, and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules"), and the Procedures for Complex Cases in the Southern District of Texas (the "Complex Case Procedures").

Preliminary Statement

6. The Debtors commenced these Chapter 11 Cases in response to severe liquidity pressures, mounting construction costs, and disputes with certain contractors involved in the development of the Debtors' facilities – specifically, the Debtors' Apex 1 Facility, an industrial-scale battery precursor production facility located in Hopkinsville, Kentucky.

7. The U.S. Department of Energy (the "DOE") provided funding for the construction and commissioning of the Apex 1 Facility pursuant to Assistance Agreement DE-MS0000002 (the "Grant Agreement"), under which the Debtors submitted reimbursement requests for eligible project costs. On information voluntarily disclosed by a former employer of a subcontractor, the Debtors conducted a fulsome investigation and audit of the charges submitted by the subcontractor, via the main contractor, and identified concerns regarding certain contractor and subcontractor charges that had been paid by the Debtors and then submitted for partial reimbursement to DOE. Specifically, between September 18, 2023 and February 18, 2025, the Debtors paid, and then submitted reimbursement requests to DOE that included, charges for inflated subcontractor labor hours, excessive tool purchases, unnecessary equipment rentals, and other costs that the Debtors later contended were excessive, duplicative, or otherwise improper. DOE ultimately reimbursed at least $5,316,145 of such charges.

8. On February 18, 2025, the Debtors voluntarily disclosed these issues to the USA and thereafter cooperated extensively with DOE and the Department of Justice in connection with their review of the matter. The Debtors faced a potential liability of $15,948,453. Following the Debtors' disclosure, investigation, and remediation efforts, the parties engaged in extensive, arm's-length negotiations and ultimately reached the Settlement Agreement, which is the subject of this Motion.[3]

[3] The Settlement Agreement is neither an admission of liability by the Debtors nor a concession by the USA that any claims are not well founded.

9. The Settlement Agreement provides for a payment of $7,497,555.65 (the "Settlement Amount"), of which $5,316,145.00 is payment in restitution. In exchange, the USA will agree to release the Debtors from any civil claim the USA has under the False Claims Act,[4] the Program Fraud Civil Remedies Act,[5] and the Contract Disputes Act,[6] as well as for common law theories sounding in breach of contract, payment by mistake, unjust enrichment, and fraud. The Settlement Agreement also resolves any outstanding issue with the Grant Agreement closeout audit. The Settlement Amount will be satisfied by setoff against, or recoupment of, amounts invoiced to the DOE by the Debtors which remain unpaid.

10. The Debtors have carefully evaluated the Settlement Agreement and, as an exercise of their sound business judgment, have determined that it represents a fair, reasonable, and efficient resolution of the disputes and claims asserted by the USA.

11. The Settlement Agreement eliminates substantial litigation risk, avoids the expense and delay associated with further disputes, and provides certainty regarding the parties' respective rights and obligations. Accordingly, by this Motion, the Debtors seek approval of the Settlement Agreement and authorization to enter into and implement the Settlement Agreement pursuant to Bankruptcy Rule 9019.

Background

I. Overview

12. The Debtors are in the business of recovering critical minerals from used lithium-ion batteries to create Black Mass – a valuable intermediate generated during the battery recycling process – and then using it to produce other materials, namely high-performance precursor cathode active material (pCAM) and lithium carbonate, both of which

[4] 31 U.S.C. §§ 3729-3733.

[5] 31 U.S.C. §§ 3801-3812.

[6] 41 U.S.C. §§ 7101-7109.

are crucial to the fast-growing battery industry. A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors' Chapter 11 Cases, is set forth in the First Day Declaration, filed on April 9, 2026 (the "Petition Date").

13. As part of the development of its business, Ascend acquired property in Hopkinsville, Kentucky and commenced construction of the Apex 1 Facility in October 2022. Apex 1 was intended to serve as an industrial-scale battery precursor production facility and represented a significant component of the Debtors' growth strategy. Construction continued until late October 2024, when the Debtors suspended work due to ongoing disputes with certain contractors and subcontractors involved in the project. Construction has remained suspended since that time, and the Apex 1 Facility is currently approximately 60% complete.

14. The Apex 1 project was funded through a combination of private capital and federal grant funding. In connection with the project, the DOE awarded Ascend a federal grant in the potential aggregate amount of approximately $316 million and, on September 18, 2023, entered into the Grant Agreement with Ascend to support the development of Apex 1. Prior to the Petition Date, Ascend received reimbursements of approximately $206 million under the Grant Agreement and separately invested approximately $337 million of its own capital into the project.

15. In November 2022, the Debtors engaged Turner-Kokosing Joint Venture ("TKJV") as the design-build contractor for the Apex 1 project. Pursuant to the TKJV Agreement, the project was performed on a cost-plus basis without a guaranteed maximum price. Over time, the Debtors became concerned about escalating project costs and certain contractor and subcontractor billings associated with the project.

16. The Debtors subsequently undertook a detailed review of contractor and subcontractor charges associated with Apex 1. As described in greater detail in the Credit Bid Motion, that review, together with a subsequent audit, identified substantial concerns regarding

certain charges billed in connection with the project, including charges attributed to RMF Nooter, LLC.[7] Among other things, the audit indicated that RMF Nooter overbilled the Debtors by at least $16 million, including nearly $6 million in excess or duplicative labor costs. The review also identified substantial excessive or duplicative equipment and tool charges, questionable crane-related costs, large-tool purchases and transfers that were not properly credited to the Apex 1 project, and other wasteful or unnecessary expenses.

17. Because a portion of these costs had been submitted to DOE for reimbursement under the Grant Agreement, the Debtors voluntarily disclosed the commencement of their review to DOE in February 2025 and thereafter cooperated extensively with DOE and the Department of Justice in connection with their investigation. As recognized in the Settlement Agreement, the Debtors received cooperation credit under the Department of Justice's guidelines governing False Claims Act matters. Among other things, the Debtors made a timely voluntary self-disclosure, conducted a thorough internal investigation, proactively provided relevant information to the USA, assisted in the determination of potential damages, identified parties involved in the conduct at issue, and implemented remedial measures designed to prevent similar issues from recurring. Following extensive negotiations, the Debtors, DOE, and the Department of Justice reached the Settlement Agreement, which is the subject of this Motion.

II. The Settlement Agreement

18. Following the Debtors' disclosure of the issues identified during their review of Apex 1 project costs, the Debtors, DOE, and the Department of Justice engaged in discussions regarding a consensual resolution of the parties' respective claims and disputes. Those discussions ultimately resulted in the Settlement Agreement, which resolves the USA's

[7] *See Emergency Motion for Entry of an Order Denying or Limiting the Credit Bid Rights of Turner-Kokosing Joint Venture, RMF Nooter LLC, and United Electric Company, Inc., and Granting Related Relief* [Docket No. 208] (the "Credit Bid Motion").

potential civil claims arising from the Covered Conduct (as defined in Exhibit A, ¶ B) and establishes a framework for the final reconciliation of amounts owed in connection with the Grant Agreement.

19. The Debtors believe that the Settlement Agreement provides a substantial benefit to their estates and creditors. Among other things, the Settlement Agreement eliminates significant litigation risk and expense, resolves potential claims that otherwise could give rise to substantial unsecured liabilities, and provides certainty regarding the parties' respective rights and obligations. The Settlement Agreement is also expected to facilitate the Debtors' efforts to monetize the Apex 1 Facility and the related Hopkinsville real property by eliminating uncertainty associated with the DOE reimbursement claims, final project audit, and potential False Claims Act liabilities. Absent the Settlement Agreement, the Debtors could face protracted and costly disputes with the USA, which would consume limited estate resources and potentially impair value available for creditors. The material terms of the Settlement Agreement are summarized below:

Settlement Term	Description
Parties	Ascend Elements, Inc. and the United States of America, acting through the Department of Justice and on behalf of the Department of Energy.
Settlement Amount	$7,497,555.65, of which $5,316,145 constitutes restitution.
Method of Payment	The Settlement Amount will be satisfied through the USA's setoff or recoupment of Department of Energy funds owed to Ascend in connection with the closeout audit of Assistance Agreement DE-MS0000002. No cash payment will be required from the Debtors' estates.
Release by United States	Upon satisfaction of the Settlement Amount, the USA will release Ascend from certain civil claims as specified in Exhibit A.
Release by Ascend	Ascend releases the USA and its agencies from claims relating to the Covered Conduct, the USA's investigation and resolution of such matters, and the final audit/closeout of the Grant Agreement.
Rescission Trigger	If the Settlement Agreement is not approved, the authorized setoff is not permitted, the settlement payment or any portion thereof is later avoided or recovered, or the chapter 11 cases are converted or dismissed before settlement

	approval, the USA may rescind the settlement releases and assert an allowed claim in the amount of $15,948,453, plus applicable penalties and less any amounts paid and not avoided.
Effectiveness	The Settlement Agreement becomes effective upon the later of execution by all parties and Bankruptcy Court approval.

Argument

20. Section 363(b) of the Bankruptcy Code empowers the Court to allow a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363 (b); *see also, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389,394 n.2 (3d Cir. 1996) ("Section 363 of the Code is the substantive provision requiring a hearing and court approval; Bankruptcy Rule 9019 sets forth the procedure for approving an agreement to settle a controversy."). A trustee may use, sell, or lease estate property outside the ordinary course of business under this provision if there is a good business reason for doing so. *See, e.g., The Cadle Co. v. Mims (In re Moore),* 608 F.3d 253, 263 (5th Cir. 2010) (explaining that the relevant inquiry is whether the use of estate property is "supported by an articulated business justification, good business judgment, or sound business reasons"); *Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re Continental Air Lines, Inc.),* 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors, and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.") (citations omitted).

21. Bankruptcy Rule 9019(a) provides, in relevant part, that "[o]n the trustee's motion and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). Settlements are generally considered a "normal part of the process of reorganization" and a "desirable and wise method[] of bringing to a close proceedings otherwise lengthy, complicated, and costly." *Rivercity v. Herpel (In re Jackson Brewing Co.)*,

624 F.2d 599, 602–03 (5th Cir. 1980) (citing *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968)).

22. Ultimately, approval of a settlement is within the discretion of the bankruptcy court, whose role is not to decide the issues in dispute but to determine whether the settlement as a whole is fair and equitable. *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Watts v. Williams*, 154 B.R. 56, 59 (S.D. Tex. 1993).

23. The Fifth Circuit has provided three factors for courts to consider when analyzing proposed settlements: "(1) the probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise." *In re Age Refin. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Under the third factor, the court should also consider "the paramount interest of creditors with proper deference to their reasonable views" and the extent to which the settlement is "truly a product of arms-length bargaining, and not of fraud or collusion." *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortg. Corp.)*, 68 F.3d 914, 917–18 (5th Cir. 1995).

24. In furtherance of Bankruptcy Rule 9019's goal of encouraging compromises and providing certainty to parties in interest in chapter 11 proceedings, the Debtors respectfully submit that entry into the Settlement Agreement satisfies each of these factors and falls well above the lowest point in the range of reasonableness.

25. The Settlement Agreement represents a reasonable and prudent exercise of the Debtors' business judgment and satisfies the standards under Bankruptcy Rule 9019. It resolves potential claims asserted by the USA arising from reimbursement requests submitted under the Grant Agreement, both with respect to the False Claims Act investigation and the prosecution of the final audit, and avoids the uncertainty, expense, and delay associated with litigating those

issues. When viewed in light of the facts and circumstances of these chapter 11 cases, the Settlement Agreement falls comfortably above the lowest point in the range of reasonableness and is in the best interests of the Debtors' estates and creditors.

26. The first two factors identified by the Fifth Circuit—the probability of success in litigation and the complexity, expense, and likely duration of such litigation—weigh heavily in favor of approval. The issues underlying the dispute involve a substantial factual record relating to the construction of the Apex 1 facility and reimbursement claims submitted to DOE. During its review of project costs, the Debtors identified significant concerns regarding certain contractor and subcontractor charges and voluntarily disclosed those issues to DOE. The Debtors' investigation and subsequent audit work indicated, among other things, that RMF Nooter, LLC overbilled the Debtors by at least approximately $16 million, including nearly $6 million in excessive or duplicative labor charges. The review also identified substantial concerns regarding equipment and tool charges, crane-related costs, tax accruals, insurance expenses, and other project costs.

27. Although the Debtors believe they have substantial factual and legal arguments available to them, litigation with the USA regarding these issues would be highly complex, expensive, and uncertain. Resolution of the dispute would likely require extensive document discovery, expert analysis, forensic accounting, and potentially lengthy litigation concerning liability, damages, and the parties' respective rights under the Grant Agreement. Such litigation could continue for months, if not longer, and would consume resources that would otherwise be available to administer these estates and maximize value for creditors. The settlement will also allow closeout of the project audit, thereby further avoiding resource consumption by the Debtors that can be made available to the estate.

28. The Settlement Agreement eliminates that uncertainty and provides the estates with immediate and tangible benefits. Through the Settlement Agreement, the Debtors resolve

all disputes relating to the Covered Conduct and obtain a release of the USA's civil claims arising from those matters. Equally important, the Settlement does not require the estates to make any out-of-pocket payment. Rather, the agreed Settlement Amount will be satisfied through the USA's setoff or recoupment of funds the DOE owes to Ascend in connection with the closeout audit process under the Grant Agreement. As a result, the Settlement Agreement provides finality regarding a significant potential liability while preserving estate resources and avoiding the substantial costs associated with continued litigation and audit.

29. The remaining factors likewise support approval. The Settlement Agreement is the product of extensive, arm's-length negotiations between sophisticated parties represented by experienced counsel. There is no evidence of fraud, collusion, or any improper conduct in connection with the negotiations. To the contrary, the Settlement Agreement reflects the culmination of a cooperative process between the Debtors and the USA following the Debtors' voluntary disclosure of the underlying issues.

30. Most importantly, the Settlement Agreement serves the paramount interests of creditors. Since the commencement of these chapter 11 cases, the Debtors have focused on maximizing value through an expedited sale process and the orderly wind down of their operations. As a result of those efforts, the Debtors have limited remaining liquidity and finite estate resources available to administer these cases and pursue distributions to creditors.

31. It would not be a prudent use of estate assets to engage in protracted and costly litigation with the USA regarding disputed reimbursement claims. Such litigation would likely require significant additional expenditures on professionals, experts, and discovery, while offering no certainty of a more favorable outcome. Moreover, the costs and delays associated with continued litigation could substantially diminish, if not entirely consume, the limited funds otherwise available for distribution to creditors.

32. The Settlement Agreement avoids those risks and provides a practical, value-maximizing resolution. By resolving these issues now, the Debtors eliminate a significant source of uncertainty, avoid further administrative and litigation expenses, and facilitate the efficient administration and conclusion of these chapter 11 cases. Accordingly, the Settlement Agreement preserves value for creditors, represents a sound exercise of the Debtors' business judgment and is in the best interests of the Debtors' estates and stakeholders.

Waiver of Bankruptcy Rule 4001(a)(3)

33. Bankruptcy Rule 4001(a)(3) provides that an "order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Debtors request that the Court waive any such stay, so that the Settlement Agreement may be implemented without delay, including to permit the DOE to effectuate the contemplated setoff (if the settlement amount is not recouped).[8]

34. Accordingly, ample cause exists to justify waiver of the 14-day stay imposed by Bankruptcy Rule 4001(a)(3), and the Debtors request that the Court order that the Proposed Order is immediately effective and enforceable upon entry.

Waiver of Bankruptcy Rule 6004(h)

35. To the extent Bankruptcy Rule 6004(h) applies, the Debtors request that the Court find that the Debtors have established cause to exclude the relief granted in the Proposed Order from any fourteen-day stay period.

Reservation of Rights

36. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission by the Debtors as to the amount of, basis

[8] Recoupment is not affected by the automatic stay, and no stay relief is required for the USA to recoup funds. *See In re Gasmark Ltd.*, 193 F.3d 371 (5th Cir. 1999); *Folger Adam Sec., Inc. v. N. Am. Reinsurance Corp.*, 209 F.3d 252 (3d. Cir. 2000); *Conoco, Inc. v. Styler*, 82 F.3d 956 (10th Cir. 1996).

for, or validity of any claim against any Debtor under the Bankruptcy Code or other applicable law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; or (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code.

37. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

Notice

38. The Debtors have provided notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee; (b) counsel to the Committee; (c) the state attorneys general for states in which the Debtors conduct business; (d) all creditors; and (e) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, and grant such other relief as the Court deems appropriate under the circumstances.

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Houston, Texas
Dated: June 17, 2026

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

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Counsel to the Debtors and Debtors in Possession

Certificate of Service

I certify that on June 17, 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.

/s/ Ryan Manns
Ryan E. Manns

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice (DOJ) and on behalf of the United States Department of Energy (DOE) (collectively the "United States") and Ascend Elements, Inc. (Ascend) (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Ascend, headquartered in Westborough, MA, is a manufacturer focused on creating a domestic supply chain for lithium-ion battery materials. On September 18, 2023, DOE awarded Assistance Agreement DE-MS000002 to Ascend, in order to establish an industrial-scale battery precursor production facility, known as Apex-1, in Hopkinsville, Kentucky.

B. The United States contends that it has certain civil claims against Ascend, including for violations of the False Claims Act, 31 U.S.C. § 3729, *et seq.*, stemming from the following conduct (the "Covered Conduct"):

i. Between September 18, 2023 and February 18, 2025, Ascend billed DOE claiming reimbursement for goods and services paid-for by Ascend (provided by and through Ascend's general contractor, and subcontractor). Those goods and services included inflated hours, excessive purchase of tools, rental of unnecessary equipment, and other wasteful or unnecessary expenses.

ii. DOE paid at least $5,316,145 for these inflated claims for goods and services.

C. On February 18, 2025, Ascend disclosed the Covered Conduct to the government. Ascend does not dispute the facts regarding the Covered Conduct insofar as they are described above in Paragraph B. However, with respect to the possibility of False Claims Act liability arising from these matters, this Agreement is neither an admission of liability by Ascend nor a concession by the United States that its claims are not well founded.

D. Ascend has been credited in this settlement under the DOJ's guidelines for taking disclosure, cooperation, and remediation into account in FCA cases under Justice Manual § 4-4.112. The cooperation that Ascend provided demonstrated candor and business integrity and included: making a timely voluntary self-disclosure; conducting a thorough internal investigation; responding to requests of the United States to provide information related to the investigation; proactively disclosing relevant facts and material not known to the government but relevant to its investigation; assisting the government in determining potential damages; identifying the entities responsible for or involved in the misconduct to ensure the misconduct would not be repeated; and taking voluntary remedial measures.

E. In consultation with DOJ and DOE, Ascend has agreed to pay the United States $7,497,555.65 via setoff or recoupment of the entire amount in conjunction with the closeout audit of Assistance Agreement DE-MS000002.

F. On April 9, 2026, Ascend filed a bankruptcy petition (Bankruptcy Case) under chapter 11 of Title 11 of the United States Code (Bankruptcy Code) in the U.S. Bankruptcy Court for the Southern District of Texas (Bankruptcy Court).

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations

of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Ascend shall pay to the United States $7,497,555.65 (Settlement Amount), of which $5,316,145 is restitution. As set forth in Recital E, the Settlement Amount shall be satisfied by Ascend through DOE's setoff or recoupment of the Settlement Amount as part of the final closeout audit of Assistance Agreement DE-MS000002. Ascend agrees that all closeout costs have been reconciled pursuant to this Agreement and that $7,497,555.65 is the final amount that DOE owes Ascend through the closeout audit. Ascend waives any and all claims and rights arising out of the closeout process, including, but not limited to, seeking further reimbursements or costs from DOE with respect to Assistance Agreement DE-MS000002.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) and Paragraph 4 (concerning bankruptcy) below, and conditioned upon the United States' receipt of the Settlement Amount, the United States releases Ascend from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Contract Disputes Act, 41 U.S.C. §§ 7101 – 7109; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon obligations created by this Agreement;

f. Any liability of individuals;

g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

h. Any liability for failure to deliver goods or services due; and

i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. In exchange for valuable consideration provided in this Agreement, Ascend acknowledges the following:

a. Ascend shall seek appropriate relief from the Bankruptcy Court to obtain permission to enter into the Agreement and to permit DOE to setoff the Settlement Amount to satisfy its claim (if not recouped), including drafting any motion or other documents. Ascend shall provide DOJ with a reasonable opportunity to review and comment on any such documents (provided that DOJ's review and comments shall not be construed as approval and shall not limit Ascend's obligations to comply with applicable bankruptcy law

and Bankruptcy Court procedures). Ascend shall use its commercially reasonable best efforts to obtain this relief.

b. If: (1) Ascend fails to obtain relief from the Bankruptcy Court to enter into the Agreement and permit DOE to setoff the Settlement Amount (if not recouped); (2) Ascend obtains relief to enter into the Agreement and permit DOE to setoff the Settlement Amount (if not recouped) but thereafter the Settlement Amount is disgorged or avoided by any party, including any creditor, any committee appointed by the Bankruptcy Court, a Chapter 11 trustee or examiner, a Chapter 7 trustee or any trustee appointed under a Chapter 11 plan; or (3) the Bankruptcy Case is converted to one under Chapter 7 of the Bankruptcy Code or dismissed before Ascend obtains relief from the Bankruptcy Court to enter into the Agreement and permit DOE to setoff the Settlement Amount (if not recouped) (each of conditions (1), (2), and (3), a "Rescission Trigger"), then:

(A) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Ascend for the claims that would otherwise be covered by the releases provided in Paragraph 2 above; and

(B) the United States has an undisputed, noncontingent, and liquidated allowed claim, which shall not be subordinated or reclassified, against Ascend in the

amount of $15,948,453, secured by any amounts available for setoff, plus penalties, less any payments received pursuant to Paragraph 1 of this Agreement; provided, however, that such payments are not disgorged or otherwise avoided and recovered from the United States by any party, including, but not limited to, any creditor, committee, trustee, custodian, or similar official.

c. Ascend agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 4.b is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. Ascend shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Ascend waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to Ascend that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the Effective Date of this Agreement.

5. Ascend waives and shall not assert any defenses Ascend may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be

based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

6. Ascend fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Ascend has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. Unallowable Costs Defined: The following costs incurred by or on behalf of Ascend or its present or former officers, directors, employees, shareholders, and agents are unallowable costs for government contracting purposes (as defined in 48 C.F.R. § 31.205-47) ("Unallowable Costs"): (1) costs related to the matters covered by this Agreement; (2) costs related to any audit or civil investigation by the United States of those matters; (3) costs of Ascend's investigation, defense, and corrective actions, including attorneys' fees, undertaken in response to such audit or investigation; (4) costs of negotiating and performing this Agreement; and (5) the payment made by Ascend to the United States pursuant to this Agreement.

a. Future Treatment of Unallowable Costs: Ascend shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

b. Treatment of Unallowable Costs Previously Submitted for Payment: Ascend agrees that the United States, at a minimum,

shall be entitled to recoup from Ascend any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or DOE reserves its rights to audit, examine, or re-examine Ascend's books and records and to disagree with any calculations submitted by Ascend or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Ascend, or the effect of any such Unallowable Costs on the amount of such payments. The United States' audit and re-examination rights under this Paragraph are limited to matters relating to the Covered Conduct and shall expire upon the completion of the closeout audit of Assistance Agreement DE-MS000002.

8. Ascend agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Ascend shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Ascend further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf. Notwithstanding

the foregoing, Ascend's obligations under this Paragraph shall be subject to the following limitations:

a. Ascend's obligations under this Paragraph shall terminate and be of no further force or effect upon the date on which Ascend is dissolved or its bankruptcy case is formally closed pursuant to an order of the Bankruptcy Court.

b. Ascend's obligation to furnish documents, records, and materials under this Paragraph is expressly limited to those documents and records that remain in the actual possession, custody, or control of the Ascend bankruptcy estate at the time the request is made. Ascend shall have no obligation to recreate, reconstruct, or obtain documents or records that are no longer in the possession, custody, or control of the estate as of the date of the request.

c. Ascend's obligation to use its "best efforts" to make available former directors, officers, and employees shall not require Ascend to incur costs beyond those reasonably available to the estate in the ordinary course of wind-down, and shall not require Ascend to compel or coerce the participation of any former employee or officer who declines to cooperate voluntarily.

9. This Agreement is intended to be for the benefit of the Parties only.

10. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

11. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

12. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Western District of Kentucky. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

13. This Agreement constitutes the complete agreement between the Parties.

14. This Agreement may not be amended except by written consent of the Parties.

15. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

16. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

17. This Agreement is binding on Ascend's successors, transferees, heirs, and assigns, as well as any Chapter 11 or 7 trustee or any trustee appointed pursuant to a bankruptcy plan.

18. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

19. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement) or the date the Bankruptcy Court approves Ascend's entry into the Agreement, whichever is later. Facsimiles and Emails of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: May 28, 2026 BY: Jessica Malloy

JESSICA R. C. MALLOY
Assistant United States Attorney
Western District of Kentucky

ASCEND ELEMENTS INC.

DATED: 28 May 2026 BY: Deacon Powell
Deacon Powell (May 28, 2026 15:41:46 EDT)

DEACON POWELL
General Counsel
Ascend Elements, Inc.

DATED: 28 May 2026 BY: Andrey Spektor

ANDREY SPEKTOR
MARYCLAIRE KENNEDY
Norton Rose Fulbright
Counsel for Ascend

Ascend SA-doj-5.28.26 (002)

Final Audit Report 2026-05-28

Created:	2026-05-28
By:	Mary Kennedy (maryclaire.kennedy@nortonrosefulbright.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAJuh_7UUvH6L47RQj5lPDsn-_wLm6kHEO

"Ascend SA-doj-5.28.26 (002)" History

Document created by Mary Kennedy (maryclaire.kennedy@nortonrosefulbright.com)
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Document emailed to Deacon Powell (dpowell@ascendelements.com) for signature
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Agreement completed.
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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)

ORDER (I) APPROVING SETTLEMENT AGREEMENT BETWEEN THE DEBTORS AND THE UNITED STATES OF AMERICA, (II) AUTHORIZING IMPLEMENTATION OF THE SETTLEMENT AGREEMENT, AND (III) GRANTING RELATED RELIEF

Upon the Debtors' Motion for Entry of an *Order (I) Approving Settlement Agreement Between the Debtors and the United States of America, (II) Authorizing Implementation Of the Settlement Agreement, and (III) Granting Related Relief* (the "Motion"); and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that notice of the Motion was adequate and appropriate under the circumstances; and this Court having reviewed the Motion, the Settlement Agreement, and all pleadings related thereto; and this Court having found that the Settlement Agreement is fair and equitable, represents a sound exercise of the Debtors' business judgment, is in the best interests of the Debtors' estates and creditors, and falls above the lowest point in the range of reasonableness; and this Court having found that the Settlement Agreement is the product of good-faith, arm's-length negotiations; and after due deliberation and sufficient cause appearing therefor,

[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.

1. The Motion is granted. The Settlement Agreement, attached as **Exhibit A** to the Motion, and all transactions contemplated thereby, are approved pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019.

2. Pursuant to the terms of the Settlement Agreement, the United States of America is authorized to exercise its setoff and recoupment rights to effectuate the payment contemplated by the Settlement Agreement in connection with the closeout audit process under Assistance Agreement DE-MS0000002.

3. To the extent necessary to implement the Settlement Agreement and the transactions contemplated thereby, including any setoff authorized herein, the automatic stay imposed by section 362 of the Bankruptcy Code is modified solely for such purpose and no other purpose.

4. The Debtors and the United States of America are authorized to take all actions necessary and appropriate to effectuate the terms of the Settlement Agreement and this Order.

5. This Order shall be binding on the Debtors' successors, including, but not limited to, any chapter 11 trustee, chapter 7 trustee or trustee appointed pursuant to a chapter 11 plan,

6. This Order shall continue to be effective despite any dismissal or conversion of this bankruptcy case.

7. Nothing in the Settlement Agreement or this Order shall waive or impair the United States of America's rights of setoff, recoupment or any other rights or defenses it possessed prior to execution of the Settlement Agreement.

8. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), or any other applicable rule, this Order shall be immediately effective and enforceable upon its entry.

9. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order and the Settlement Agreement.