IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: WEST MARINE, INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 26-10794 (KBO) (Jointly Administered) **Re: Docket Nos. 13, 71** **Hearing Date: June 18, 2026, at 1:00 p.m. (ET)** **Objection Deadline: June 12, 2026, at 4:00 p.m. (ET)[2]**

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' MOTION FOR ENTRY OF A FINAL ORDER AUTHORIZING THE USE OF CASH COLLATERAL

The Official Committee of Unsecured Creditors (the "Committee") of West Marine, Inc., *et al.*, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), by and through its proposed undersigned counsel, hereby files this objection (the "Objection") to the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Use Cash Collateral, and (B) Grant Liens and Provide Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "Cash Collateral Motion").[3] In support of this Objection, the Committee respectfully states as follows:

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1 The Debtors in these chapter 11 cases are: West Marine, Inc.; Marine One Holdco, LLC; Marine One Parent, Inc.; Rising Tide Holdings Inc.; Rising Tide Parent Inc.; Seascapes, Inc.; W Marine Management Company, Inc.; and West Marine Products, Inc.

2 Extended for the Committee by consent of the Debtors.

3 Docket No. 13. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms, as applicable, in the Cash Collateral Motion or the *Interim Order (I) Authorizing the Debtors to (A) Use Cash Collateral, and (B) Grant Liens and Provide Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "Interim Order"). Docket No. 71.

PRELIMINARY STATEMENT

1. As set forth in the Committee's bid procedures objection[4] and disclosure statement objection filed contemporaneously herewith, the Debtors entered bankruptcy with a RSA with their Prepetition Lenders to pursue an expedited plan process that will hand ownership of the company to their Term Lenders, reinstate substantial existing debt, and provide general unsecured creditors owed more than $120 million only $250,000. As the Debtors are projected to generate substantial operating cash flow over the first 13 weeks of these chapter 11 cases, the expedited case timeline is not the product of necessity. Instead, the RSA milestones unnecessarily curtail the Committee's ability to conduct an investigation into the events that led a once profitable, debt-free company to amass hundreds of millions of dollars of debt and whether there is actionable conduct on the part of lenders or insiders that give rise to claims that could generate value for unsecured creditors.

2. It is against this backdrop that the Cash Collateral Motion must be assessed. Notwithstanding the Debtors' assertion of operational challenges, the Debtors entered bankruptcy with $21.5 million of cash and are projected to generate $90 million of operating cash flow over the initial 13 weeks of these cases. The Debtors, therefore, have no need for DIP financing. Instead, they only seek the consensual use of cash collateral to continue operations, thereby preserving value for the Prepetition Lenders. In negotiating the RSA, the Prepetition Lenders are not unwilling participants dragged into bankruptcy against their will and prevented from exercising prepetition remedies. They purposely availed themselves of the benefits of chapter 11, which will only serve to enhance the value of the business.

[4] Docket No. 168.

3. The starting point for considering whether adequate protection is necessary or sufficient in these cases should be what would have been necessary if cash collateral use was sought on a non-consensual basis. The Bankruptcy Code creates limits on the adequate protection afforded secured creditors with respect to their interests in prepetition collateral. Such creditors are only entitled to adequate protection to the extent that the postpetition use of prepetition collateral, or the imposition of the automatic stay, is likely to result in a decrease in the value of their interests in prepetition collateral. Given the facts and circumstances of these chapter 11 cases, and the events giving rise to the filing, the likelihood of such decrease is minimal. As a result, equity dictates that the form and breadth of adequate protection provided to the Prepetition Lenders should be narrowly tailored to preserve their interests, not enhance their position.

4. Instead, the Prepetition Lenders seek a suite of protections designed to enhance their position, shift risk of administrative insolvency to trade creditors and landlords, and curtail the rights of the Committee. These protections include (i) broad stipulations and releases; (ii) weekly pay downs of debt totaling over $72 million; (iii) payment of professional fees; (iv) continued payment and accrual of interest; (v) liens on previously unencumbered assets; (vi) predeterminations as to diminution in value; (vii) advance waiver of 506(c) surcharge rights; (viii) advance waiver of the equities of the case exception in section 552(b); and (ix) advance waiver of the equitable doctrine of marshaling. In addition, the Prepetition Lenders seek to unnecessarily truncate the Committee's challenge period and limit it to $50,000 to conduct its investigation into three sets of complex lending transactions.

5. While the Committee recognizes that some level of adequate protection is warranted to protect against the remote threat of diminution in value, the price the Debtors have agreed to pay the Prepetition Lenders—who pre-negotiated the RSA and a plan of reorganization for their own benefit—goes too far. The adequate protection provided must be proportionate to the realities of these cases. The Debtors fail to establish why anything more than replacement liens to protect against a decline in value is necessary to adequately protect the Prepetition Lenders in these cases.

6. In addition to providing the Committee sufficient time and resources to conduct its investigation into potential challenges, the final cash collateral order must be modified to protect the interests of creditors. To the extent the Court is inclined to authorize substantial payments to the Prepetition Lenders, all such payments should be subject to disgorgement in the event of a successful challenge. No 506(c) surcharge waiver should be permitted unless the Prepetition Lenders authorize the prompt payment of, or reserve for, legitimate administrative stub rent and 503(b)(9) claims. Vendors and landlords who are providing the means for the Debtors' ongoing operations and generation of substantial postpetition cash flow that is going into the Prepetition Lenders' pockets should not run the risk of future nonpayment. And the advance waiver of the section 552(b) equities of the case exception and marshaling should not be allowed where the Committee has only just commenced an investigation. In a case where unsecured creditors are being offered only $250,000, substantial value is being generated from the postpetition operation of the business, and there is minimal risk of diminution in value of the Prepetition Lenders' interests in collateral, these rights should be preserved for the benefit of all other creditors.

7. The Committee does not oppose the use of cash collateral, subject to reasonable modifications to the proposed order detailed in this Objection. However, absent appropriate modification, the Cash Collateral Motion should be denied on a final basis.

BACKGROUND

A. Procedural Background

8. On May 17, 2026 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with this Court. Since the Petition Date, the Debtors have remained in possession of their assets and have continued to operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

9. On May 29, 2026, the Office of the United States Trustee for Region 3 appointed a seven-member Committee consisting of: (i) Realty Income Corporation; (ii) Facility Solutions Group, Inc.; (iii) Modern Recreational Technologies, Inc.; (iv) East Penn Manufacturing Co.; (v) Virtual Supply, Inc.; (vi) Lippert Components, Inc.; and (vii) Garmin USA, Inc.[5]

10. On June 1, 2026, the Committee selected Kelley Drye & Warren LLP as its lead counsel and, on June 2, selected Ice Miller LLP as its Delaware co-counsel and Province, Inc. as its financial advisor.

11. On June 4, the Committee requested the Debtors and their special committee of independent directors (the "Special Committee") produce documents relevant to (a) a potential challenge to the Prepetition Lenders' liens and claims; and (b) the events and transactions that precipitated the Debtors' chapter 11 cases since the Debtors became a private

[5] Docket No. 103.

company in 2017. To date, the Debtors and the Special Committee have produced limited documents, although production is ongoing. The Committee intends to conduct a fulsome investigation into these matters but, for purposes of this Objection, has limited the factual background below to publicly available information.

B. Factual Background

12. The Debtors are a leading marine retailer founded in 1968 that provides direct-to-consumer and wholesale boating, fishing, sailing, and paddling products.[6] Since 1978, the company expanded from a small ropes business into a premier retailer through targeted acquisitions, growth of its retail operations and store footprint, and the launch and expansion of its eCommerce platform over the past four decades.[7]

13. Based on publicly available filings, in 2016 the Debtors' business generated approximately $703.4 million in net revenue, had no material outstanding secured debt and generated over $34 million of EBITDA.[8]

14. In September 2017, private equity firm Monomoy Capital Partners ("Monomoy") acquired the company in a take private leveraged buyout.[9] The transaction value was approximately $338 million and resulted in debt being incurred by the Debtors to fund the LBO.

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6 *See Declaration of Paulee Day, Chief Executive Officer of West Marine, Inc., in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration"), Docket No. 15, ¶¶ 24–25.

7 *Id.* ¶¶ 24–28.

8 West Marine, Inc., Annual Report (Form 10-K) (2017), for the fiscal year ended December 31, 2016, at 19, 25.

9 First Day Declaration, ¶ 29; GlobeNewswire, *West Marine Inc. to be Acquired by Monomoy Capital Partners for $12.97 Per Share* (June 29, 2017), https://www.globenewswire.com/news-release/2017/06/29/1035237/0/en/west-marine-inc-to-be-acquired-by-monomoy-capital-partners-for-12-97-per-share.html.

15. In April 2021, Monomoy sold the company to private equity firm L Catterton.[10] Upon information and belief, the transaction substantially increased the company's secured debt, which ultimately ballooned to more than $800 million.[11]

16. In March 2023, West Marine completed the first of two liability management transactions with L Catterton and existing lenders that restructured its debt into multiple new super-senior and junior tranches ("March LMT").[12] Only six months later, West Marine completed the second LMT in which approximately $660 million of funded debt was exchanged for equity (the "September LMT" and, together with the March LMT, the "2023 LMTs").[13] Although the 2023 LMTs purportedly stabilized operations and improved the company's balance sheet, they neither provided the Debtors sufficient liquidity nor reduced overall debt to a level to which the company could sustain.[14]

C. The Debtors' Prepetition Debt

17. While the Committee is investigating the genesis of the Debtors' existing secured debt, as of the Petition Date, the Debtors had approximately $429 million in secured debt.[15] This debt consists of (i) $118.9 million under a May 1, 2024, asset-based lending facility (the "ABL Facility"), with Eclipse Business Capital LLC ("Eclipse") as agent and the lenders party thereto (the "ABL Lenders"); (ii) $59.2 million under a May 1, 2024, "first in, last out" term loan facility (the "FILO Facility") with Eclipse as agent and the lenders party thereto

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10 Monomoy Capital Partners, *Monomoy Capital Partners Agrees to Sell West Marine, Inc.* (Apr. 14, 2021), https://www.mcpfunds.com/news/monomoy-capital-partners-agrees-to-sell-west-marine-inc/.

11 First Day Declaration, ¶ 58.

12 *Id.* ¶ 56; BoatBlurb, *West Marine Files for Chapter 11 Bankruptcy Protection* (May 19, 2026), https://www.boatblurb.com/post/west-marine-files-for-chapter-11-bankruptcy-protection.

13 First Day Declaration, ¶¶ 58–59.

14 *Id.* ¶ 60.

15 Cash Collateral Motion, ¶ 19.

(the "FILO Lenders"); and (iii) $251.2 million under a September 26, 2024, term loan facility (the "Term Loan Facility," and collectively with the ABL Facility and FILO Facility, the "Prepetition Facilities") with Wilmington Savings Fund Sociate, FSB, as agent and the lenders party thereto (the "Term Lenders," and collectively with the ABL Lenders and FILO Lenders, the "Prepetition Lenders").[16]

18. The ABL and FILO Facilities are purportedly secured by senior priority security interests in substantially all of Debtor Rising Tide Holdings Inc.'s assets (collectively, the "ABL Priority Collateral").[17] The Term Loan Facility is purportedly secured by a senior priority security interest in substantially all of the assets of Debtor Rising Tide Holdings Inc. that are not ABL Priority Collateral (the "Term Loan Priority Collateral," and collectively with the ABL Priority Collateral, the "Prepetition Collateral").[18]

19. The Committee is continuing to investigate who the Prepetition Lenders are, their interests, and what, if any, control they may have exerted on the Debtors. However, it is clear that certain FILO and Term Lenders have equity interests in the Debtors, including Oaktree Capital and Evolution Credit Partners.[19]

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16 *Id*. ¶¶ 19, 20, and 26.

17 *Id.* ¶ 23.

18 *Id.* ¶ 28. The Committee reserves all rights regarding the extent of the purported blanket liens on the Prepetition Collateral and the impact of the Debtors' bankruptcy on such liens as they related to the Debtors' postpetition business.

19 *See* Docket No. 98.

D. The RSA and Plan

20. By early 2026, the Debtors' secured debt had become unsustainable and the Debtors retained financial advisors and restructuring counsel.[20] On May 17, the Debtors and a majority of their Prepetition Lenders and equity holders (the "Consenting Stakeholders") executed the RSA, which was incorporated into the *Joint Plan of Reorganization of West Marine, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan").[21]

21. The RSA and Plan provide for the Debtors' reorganization pursuant to which: (i) the Term Loan Facility claims will be exchanged for 100% of the reorganized company's equity (subject to dilution from a MIP), (ii) the ABL and FILO Facility claims will either be paid in full or converted into exit debt; and (iii) general unsecured creditors holding more than $120 million in the aggregate will receive a pro rata share of $250,000 – representing an approximate 0.2% recovery – provided the class votes to accept the Plan.[22]

E. The Cash Collateral Request

22. The Debtors entered bankruptcy with $21.5 million of cash. Based on the Debtors' budget attached as Schedule 1 to the Interim Order (the "Initial Budget"), during the initial 13 weeks of these cases, the Debtors will generate more than $90 million of operating cash flow.[23] As a result, the Debtors have no need for incremental DIP funding.

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20 First Day Declaration, ¶ 11.

21 Docket No. 46.

22 First Day Declaration, Ex. A (the RSA).

23 *See* Interim Order, Schedule 1.

23. Instead, the Debtors seek the consensual use of cash collateral, for which they are only required to provide the Prepetition Lenders with adequate protection under section 361 of the Bankruptcy Code. Notwithstanding the limited scope of the cash collateral request, the Prepetition Lenders seek a laundry list of protections designed to advance their own interests at the expense of the Debtors' trade creditors and landlords that are providing the infrastructure and inventory to generate the Debtors' operating cash flow. The proposed adequate protection includes:

- $72 million of paydowns of the ABL Facility;[24]
- Cash payments and continued accrual of payment-in-kind post-petition interest;[25]
- Broad Debtor stipulations regarding the validity and extent of the Prepetition Lenders' liens and claims despite an ongoing investigation by the Special Committee;[26]
- Broad releases of the Prepetition Lenders with respect to conduct arising out of or related to the Debtors;[27]
- Predetermination of diminution in value of the Prepetition Lenders' collateral for the sale, lease or use of Prepetition Collateral and the imposition of the automatic stay without the need to prove such diminution;[28]
- Adequate protection liens on all previously unencumbered assets, including on the proceeds of avoidance actions (such as claims against the Prepetition Lenders themselves);[29]
- Adequate protection superpriority administrative claims with recourse to all previously unencumbered assets, including the proceeds of avoidance actions;[30]

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24 Interim Order, ¶ 3(a) and Schedule 1.

25 *Id*. ¶¶ 3(g), (h).

26 *Id.* ¶¶ G(i)–(xii).

27 *Id.* ¶ G(xii).

28 *Id.* ¶ 3.

29 *Id.* ¶¶ 3(a), 3(c).

- Advance waivers of section 506(c) surcharge rights, the equities of the case exception in section 552(b), and the equitable doctrine of marshaling;[31] and
- Cash payments of Prepetition Lenders' professional fees and expenses.[32]

24. While seeking advance waivers of substantial estate rights, the Initial Budget provides no detail regarding the timing, payment of, or reserve for administrative claims such as stub rent or 503(b)(9) claims. In addition, the Initial Order seeks to restrict the Committee's rights through (i) an insufficient $50,000 budget to investigate three Prepetition Lender groups and three complex Prepetition Facilities;[33] (ii) a truncated Challenge Period based solely on artificial RSA milestones which fails to comply with the challenge period prescribed by *Local Rules of the United States Bankruptcy Court for the District of Delaware* (the "Local Rules") and with no tolling if the Committee files a standing motion in advance of the deadline;[34] and (iii) limitations on the Committee's ability to function with the threat of nonpayment if the Committee takes actions that interfere with the Prepetition Lenders' rights.[35]

OBJECTION

25. The Debtors provide scant legal support for the broad lender protections sought to be imposed under the Interim Order and yet to-be-filed final order.[36] Cognizant that the Prepetition Lenders are providing no new money, the Debtors seek to justify their broad request based solely on the proposed use of cash collateral and the impact of the imposition of

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30 *Id.* ¶¶ 3(b), 3(d).

31 *Id.* ¶¶ 10, 11.

32 *Id.* ¶¶ 3(e), 3(f).

33 *Id.* ¶ 17.

34 *Id.* ¶ 16; *see* Local Rule 4001-2(a)(i)(Q).

35 Interim Order, ¶ 17.

36 *See* Cash Collateral Motion, ¶¶ 31–33.

the automatic stay.[37] The Debtors, however, ignore that the imposition of the automatic stay in these chapter 11 cases is consensual. The Prepetition Lenders are not involuntary bystanders in these cases. Instead, the Prepetition Lenders pre-negotiated an expedited chapter 11 process to confirm a plan that will pay off, or reinstate, substantial prepetition debt and will turn over control of the Debtors to the Term Lenders, while providing unsecured creditors only $250,000. The Debtors similarly ignore the fact that while the Debtors entered bankruptcy with $21.5 million of cash, their postpetition operations will generate $90 million of operating cash flow during the 13-week Initial Budget period.

26. Both sections 362(d)(1) and 363(e) of the Bankruptcy Code provide for the possibility of adequate protection to protect a secured creditor's interests in property.[38] The purpose of adequate protection is to "insure that the creditor receives the value for which he bargained prebankruptcy" by "provid[ing] the pre-petition secured creditor with the same level of protection it would have had if there had not been post-petition" use of cash collateral.[39] Although adequate protection functions to preserve a secured creditor's position postpetition, it is not intended to enhance its position.[40]

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37 *Id.* ¶¶ 31–32.

38 11 U.S.C. §§ 362(d)(1), 363(e).

39 *In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994).

40 *See In re Energy Future Holdings Corp.*, 546 B.R. 566, 581 (Bankr. D. Del. 2016) ("[I]t is now established that 'adequate protection' is meant only to assure that a secured creditor does not suffer a decline in the value of its interest in the estate's property, rather than to compensate the creditor for the bankruptcy-imposed delay in enforcing its rights in that property.") (quoting *In re Addison Properties Ltd. P'ship*, 185 B.R. 766, 769–70 (Bankr. N.D. Ill. 1995)); *see also In re Pine Lake Village Apartment Co.*, 19 B.R. 819, 824 (Bankr. S.D.N.Y. 1982) ("Neither the legislative history nor the [Bankruptcy] Code indicate that Congress intended the concept of adequate protection to go beyond the scope of protecting the secured claim holder from a diminution in the value of the collateral securing the debt.").

27. Section 361 of the Bankruptcy Code addresses adequate protection to the extent appropriate under sections 362 or 363, providing that such adequate protection may be provided by:

> (1) requiring cash payments to the extent the stay under section 362, or the use, sale, or lease of property under section 363, **results in a decrease in the value of an entity's interest in such property**;
>
> (2) providing an additional or replacement lien to the extent such stay, or the use, sale or lease of property, **results in a decrease in the value of an entity's interest in such property**; or
>
> (3) granting such other relief as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.[41]

28. As the Debtors correctly note, section 361 is neither exhaustive nor mandatory.[42] Instead, in assessing adequate protection for the use of cash collateral, a court must decide what, if anything, constitutes sufficient protection on a case-by-case basis.[43] As a result, the focus of adequate protection is "to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use by the debtor."[44]

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41 11 U.S.C. § 361 (emphasis added).

42 Cash Collateral Motion, ¶ 32.

43 *In re Swedeland*, 16 F.3d at 564.

44 *See In re Satcon Tech. Corp.*, 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012) (citing *In re Swedeland*, 16 F.3d at 564); *see also United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.,* 484 U.S. 365, 368 (1988); *In re Energy Future Holdings Corp.*, 546 B.R. at 581 ("Adequate Protection Payments are not a payment of collateral–rather, adequate protection is designed to protect secured creditors against diminution in value of their collateral."); *In re Cont'l Airlines, Inc*., 146 B.R. 536, 539 (Bankr. D. Del. 1992) ("Post-*Timbers* courts have uniformly required a movant seeking adequate protection to show a decline in value of its collateral.").

29. To be entitled to any form of adequate protection, the secured creditor bears the initial burden to demonstrate that adequate protection is necessary, such as by showing a likelihood of diminution in collateral value or some other basis for relief.[45] Even if a secured lender is able to satisfy this initial burden, it is then the debtor's burden to show that the adequate protection package is appropriate.[46] As the Debtors acknowledge, adequate protection can take many forms and "must be determined based upon equitable considerations arising from the particular facts of each proceeding."[47] The appropriate level of adequate protection must be determined by the court "on a case-by-case basis."[48] In their evaluation, courts are careful to not approve adequate protection that exceeds a secured creditor's pre-bankruptcy rights.[49]

30. As discussed below, the Debtors and Prepetition Lenders have failed to meet their burden in either instance. Neither has submitted factual support to demonstrate a likelihood of diminution or justifying that the suite of protections requested are appropriate and necessary under the circumstances of these cases, which involve a sale and plan process desired and agreed to by the Prepetition Lenders for the benefit of the Prepetition Lenders.

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45 *See In re Gunnison Ctr. Apartments, LP*, 320 B.R. 391, 396 (Bankr. D. Colo. 2005); *see also Zink v. Vanmiddlesworth,* 300 B.R. 394, 402–03 (N.D.N.Y. 2003) ("[T]he initial burden is typically on the creditor to show that adequate protection is necessary because of the likelihood that the value of the collateral is declining or for some other reason."). *See, e.g.*, 11 U.S.C. § 363(p)(2) ("[T]he entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.").

46 *See In re Cont'l Airlines, Inc.*, 146 B.R. at 539; *In re Hari Ram, Inc.*, 507 B.R. 114, 120 (Bankr. M.D. Pa. 2014). *See, e.g.*, 11 U.S.C. § 363(p)(1) (providing "the trustee has the burden of proof on the issue of adequate protection").

47 *See* Cash Collateral Motion, ¶ 32 (citing *In re Dynamo Corp*., 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01 [1] at 361-66 (15th ed. 1993)).

48 *In re Satcon Tech. Corp.*, 2012 WL 6091160, at *6.

49 *See e.g.*, *In re Blehm Land & Cattle Co*., 859 F.2d 137, 141 (10th Cir. 1988) (noting that adequate protection provided must not substantially exceed that to which the secured creditor is entitled); *Matter of James Wilson Assocs*., 965 F.2d 160, 171 (7th Cir. 1992) (noting that a secured creditor may not "paralyze the debtor and gratuitously thwart the other creditors by demanding superfluous security"); *In re Nordyke*, 43 B.R. 856, 860 (Bankr. D. Or. 1984) (rejecting overreaching adequate protection stipulation and stating that "a creditor should not be rewarded for carelessness, much less greed, in negotiating a stipulation for adequate protection that overstates entitlement").

A. The Debtors and Prepetition Lenders Have Failed To Demonstrate a Likelihood of Diminution

31. In support of their first day pleadings, the Debtors filed several declarations. The First Day Declaration only mentions the Cash Collateral Motion in passing and provides no evidentiary support for the adequate protection proposed.[50] The Debtors also submitted the *Declaration of Amir Agam In Support of Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Use Cash Collateral, and (B) Grant Liens and Provide Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "Agam Declaration").[51]

32. The Agam Declaration provides no facts that would show a likelihood of diminution in the Prepetition Lenders' Prepetition Collateral value. Instead, Mr. Agam, the Interim Vice President of each of the Debtors and co-lead of FTI Consulting, Inc.'s restructuring practice for the Western United States, generally discusses over 9 paragraphs the Debtors' need to use cash collateral, development of the Initial Budget, and a summary of the adequate protection package.[52] Mr. Agam only references in passing the provision of adequate protection to "protect against the postpetition diminution in the value of [the Prepetition Lenders'] Prepetition Collateral, by agreeing to operate according to the Initial Budget and any other Approved Budget . . . ."[53]

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50 First Day Declaration, ¶ 85.

51 Docket No. 14.

52 Agam Declaration, ¶¶ 6–14.

53 *Id.* ¶ 11.

33. Mr. Agam fails to explain how or why the postpetition operation of the Debtors' business according to the Initial Budget is likely to result in the diminution in the value of the Prepetition Lenders' interest in the cash collateral the Debtors' seek to use. Had there been a prepetition default under any of the Prepetition Facilities, which neither the Debtors nor the Prepetition Lenders have asserted, the Prepetition Lenders would have been free to exercise remedies and foreclose on their Prepetition Collateral. The Prepetition Lenders did not do so. Instead, these chapter 11 cases are the result of a negotiated agreement amongst the Debtors and the Prepetition Lenders to continue to operate the Debtors' business in the ordinary course through the use of cash – just as it was prior to the Petition Date. The only difference is that the Debtors and the Prepetition Lenders will use the chapter 11 process to enhance the value of the Debtors' business—thereby enhancing the value of the Prepetition Collateral—by, among other things, rejecting leases, store closing sales, and pursuing a Plan designed to shed unsecured liabilities. Far from causing a likely diminution in value, the undisputed facts support a presumption that these cases are maintaining the value of Prepetition Collateral and enhancing the Debtors' business operations through the tools afforded the Debtors in chapter 11.

34. Therefore, the Debtors and Prepetition Lenders have failed to meet their initial burden of demonstrating a "likelihood" of diminution of value.[54] On the contrary, the value of their Prepetition Collateral is likely to increase. As the Debtors only seek to use cash collateral, the likelihood of diminution of such cash collateral in light of projected operations is minimal.

[54] To the extent the Debtors or Prepetition Lenders seek to supplement the record through supplemental declarations or additional evidence, the Committee reserves all rights to conduct depositions or additional related discovery.

B. The Debtors Have Failed to Meet Their Burden of Demonstrating The Adequate Protection Package is Appropriate

35. The Debtors fail to establish a sufficient evidentiary record demonstrating the proposed adequate protection package is appropriate under the circumstances of these cases. The Agam Declaration provides minimal to no support, simply stating Mr. Agam's belief that the package was the product of arms'-length, good faith negotiations, represents the best available option and is fair, reasonable and appropriate "under the circumstances."[55] Mr. Agam, however, fails to explain what those circumstances are. Similarly, Mr. Agam states his belief that "this Adequate Protection Package, taken as a whole, is on market terms and consistent with the terms of adequate protection granted in other similar cases."[56] Mr. Agam fails to explain how he determined what is market or the other similar cases to which he compared this package.

36. Mr. Agam also fails to discuss any of the equitable considerations arising from the particular facts of these cases that warrant or justify the expansive adequate protection package being proposed. The only justification provided is the Debtors' need for access to cash collateral, which as of the Petition Date was $21.5 million. However, what the Debtors fail to consider is (i) the pre-negotiated structure of these cases as reflected in the RSA; (ii) the substantial benefits flowing to the Prepetition Lenders under the pre-negotiated Plan; (iii) how the postpetition operation of the Debtors' business will serve to preserve and enhance rather than diminish the Prepetition Lenders' interests in cash collateral; (iv) the substantial postpetition value the Debtors will realize as a result of being able to utilize the tools afforded under chapter 11; and (v) the potential goodwill enhancement resulting from the chapter 11 process.

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55 Agam Declaration, ¶ 11.

56 *Id.* ¶ 13.

37. The Debtors also do not tie any of the proposed postpetition adequate protection to the Prepetition Lenders' prepetition rights. The law of adequate protection in the context of the use of cash collateral is clear: its purpose is to ensure that a prepetition lender receives the same level of protection it would have had had the bankruptcy not occurred.[57] It is not designed to either enhance a lender's protections or to disadvantage administrative and unsecured creditors or a committee seeking to represent the interests of unsecured creditors. And while the Committee is not opposed to some measure of adequate protection for the Prepetition Lenders to protect them against the threat of a potential diminution – no matter how remote such threat is – the protections proposed here go well beyond what is either fair or appropriate. Instead, to the extent the Court approves adequate protection on a final basis, such adequate protection should be narrowly tailored based on the facts and circumstances of these cases.

i. Paydown of ABL Facility

38. As reflected in the Initial Budget, the Debtors propose to pay down the ABL Facility from $119 million to $46.6 million over the 13-week budget period. The Debtors, however, provide no argument or evidence as to why such payments are necessary to provide adequate protection to the Prepetition Lenders for the Debtors' use of cash collateral which, as of the Petition Date, was only $21.5 million. There is similarly no argument as to why replacement liens are not sufficient, in and of themselves, to protect the Prepetition Lenders' interest in cash collateral. To the extent the Court were inclined to permit such payments, the Debtors fail to make any argument as to why such payments are not in and of themselves sufficient to maintain the status quo for the Prepetition Lenders and why further adequate protection is warranted. In

[57] *In re Swedeland*, 16 F.3d at 564.

any case, to the extent such payments are approved by the Court, they should be subject to disgorgement in the event of a successful Challenge by the Committee.

ii. Payment of Fees, Expenses and Postpetition Interest

39. The Prepetition Lenders seek (i) payment of their professionals' fees and expenses during these cases; and (ii) the continued payment and accrual of postpetition interest under the credit facilities. **Such payments, however, are only warranted if the Prepetition Lenders are oversecured.** Pursuant to section 506(b) of the Bankruptcy Code, "[t]o the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim, there shall be allowed to the holder us such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement . . . ."[58] Considering the terms of the Plan, which proposes only $250,000 for unsecured creditors, it appears the Prepetition Lenders' starting position is that the value of the Debtors' assets are not sufficient to fully satisfy the obligations under the Prepetition Facilities. This begs the question as to why any such fees, expenses or postpetition interest should be approved now. However, to the extent the Court approves such payments, they should be subject to recharacterization or disgorgement to the extent the Prepetition Lenders are ultimately determined to be undersecured.[59]

iii. Predetermination of Diminution In Value

40. The Prepetition Lenders seek an inappropriate predetermination as to their rights to adequate protection on account of the Debtors' use of cash collateral and the imposition of the automatic stay.[60] Paragraph 3 of the Interim Order concludes that the Prepetition Lenders

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58 11 U.S.C. § 506(b).

59 *Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. at 372–73, 382 (holding that an undersecured creditor is not entitled to post-petition interest as adequate protection).

60 Interim Order, at ¶ 3.

are entitled to adequate protection for diminution resulting from the sale, lease, or use of Prepetition Collateral, the payment of any amounts under the Carve Out, and the imposition of the Automatic Stay.[61] As noted above, the Prepetition Lenders bear the initial burden of establishing the likelihood of diminution and the ultimate burden of demonstrating that diminution has occurred and by how much. Section 361 of the Bankruptcy Code allows for adequate protection if there is a decline in the value of a lender's collateral, but the Prepetition Lenders must "prove this decline in value—or the threat of a decline—in order to establish a *prima facie* case."[62]

41. Whether such decline ultimately occurs is for another day. In order to ensure there is no prejudgment as to what does or does not result in such a decline, the final order should be simplified to provide that adequate protection is being provided "solely to the extent of any proven diminution in value of their respective interest in the Prepetition Collateral (including cash collateral) from and after the Petition Date for any reason provided under the Bankruptcy Code." Such language maintains the status quo and preserves all parties' rights to the extent any Prepetition Lender asserts a diminution claim.[63]

iv. Adequate Protection Liens and Claims

42. The Prepetition Lenders seek adequate protection liens on, and a superpriority claim against, previously unencumbered assets.[64] While the Committee has no objection to the provision of such liens and claims solely to the extent of any proven diminution

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61 *Id.*

62 *In re Gunnison Ctr. Apts., LP*, 320 B.R. at 396; *In re Elmira Litho, Inc.*, 174 B.R. 892, 902 (Bankr. S.D.N.Y. 1994).

63 The Committee further requests that the reference to section 364(d)(1) be deleted as there is no proposed additional credit or incurrence of debt secured by a lien senior or equal to the prepetition liens.

64 Interim Order, ¶¶ 3(a)–(d).

in value, the liens on, and claims against, proceeds of avoidance actions should be limited.[65] Here, the proposed lien on the proceeds of avoidance actions goes too far. Notably, the lien would extend to proceeds of avoidance actions brought against the Prepetition Lenders themselves. This is particularly troublesome given that the Committee has not yet had the opportunity to investigate whether avoidance claims exist against any of the Prepetition Lenders (some of whom are insiders of the Debtors). Such parties should not be allowed to use the final cash collateral order to extinguish their potential liability for any such claims through a round-tripping of value. The final order, therefore, should be revised to preserve avoidance actions for the benefit of unsecured creditors and exclude any actions against the Prepetition Lenders or insiders.

v. The Advance Waiver of 506(c) Surcharge Rights

43. The Debtors seek an advance waiver of surcharge rights under section 506(c) of the Bankruptcy Code.[66] Section 506(c) allows a party to charge the costs of preserving or disposing of a secured lender's collateral against the collateral itself.[67] This provision ensures that the cost of liquidating or preserving a secured lender's collateral is not

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65 *See Buncher Co. v. Official Comm. of Unsecured Creditors of GenFarm Ltd. Partnership IV*, 229 F.3d 245, 250 (3d Cir. 2000) (stating "when recovery is sought under section 544(b) of the Bankruptcy Code, any recovery is for the benefit of all unsecured creditors"); *Mellon Bank, N.A. v. Glick (In re Integrated Testing Prods. Corp.)*, 69 B.R. 901, 904 (D.N.J. 1987) (finding that only the trustee, acting on behalf of all creditors, has a right to recover payments made as preferences).

66 Interim Order, at ¶ 10.

67 *See* 11 U.S.C. § 506(c).

paid from other creditor's recoveries.[68] Furthermore, there is a long-standing practice in this Court to not grant such waivers over unsecured creditors' committee opposition.[69]

44. A waiver by the Debtors would be binding on all interested parties, an outcome which should only be granted for compelling reasons.[70] The right to assess in the future value to be extracted by the Prepetition Lenders must be preserved so that the costs of operating as a going concern, paying rent, running a sale process and all other administrative costs of these cases – which preserve the value of the Prepetition Lenders' Prepetition Collateral – will not be borne by the estates and the unsecured creditors.[71]

45. Given the meager proposed recovery for unsecured creditors, these cases are being run for the primary, if not sole, purpose of preserving and/or enhancing the Prepetition

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68 *See, e.g.*, *Precision Steel Shearing v. Fremont Fin. Corp. (In re Visual Indus., Inc.)*, 57 F.3d 321, 325 (3d Cir. 1995) (noting that section 506(c) "is designed to prevent a windfall to the secured creditor"); *Kivitz v. CIT Group/Sales Fin., Inc.*, 272 B.R. 332, 334 (D. Md. 2000) ("[T]he reason for [section 506(c)] is that unsecured creditors should not be required to bear the cost of protecting property that is not theirs.").

69 *See, e.g.*, *In re Mortgage Lenders Network, USA, Inc.*, Case No. 07-10146 (PJW), Hr'g Tr. [Docket No. 346], at 21:7-13 (Bankr. D. Del. March 20, 2007) (noting that without the committee's prior approval, the section 506(c) waiver may not be approved); *In re NEC Holdings Corp., et al*, Case No. 10-11890 (PJW), Hr'g Tr. [Docket No. 224] at 101:7-13 (Bankr. D. Del. July 13, 2010) (Judge Sontchi acknowledging that "this is a position I inherited from Judge Walsh years ago, and I agree with it, which is basically you don't give a 506 waiver over an objection by the committee. And if necessary, we'll have a . . . hearing on 506(c) . . . ."); *In re AIO US, Inc. et al.*, Case No. 24-11836 (CTG), Hr'g Tr. [Docket No. 237] at 238:7-17 (Bankr. D. Del. September 26, 2024) (Judge Goldblatt addressing a request for a waiver over committee objection: ". . . the custom in this Court, from Judges who have been on it longer than me, is that that is the kind of thing that we typically do not provide for without the consent of the committee."); *In re Casa Systems, Inc., et al.*, Case No. 24-10695 (KBO), Hr'g Tr. [Docket No. 290], at 36:6-10 (Bankr. D. Del. May 3, 2024) ("With respect to the waivers, there, I don't believe, has been a case -- and it starts with Judge Walsh's statement, long, long ago, that he will never approve waivers over a Committee objection, and I don't think we deviate as a collective Court here from that position."). Transcripts are not attached hereto but can be provided to the Court or parties in interest upon request.

70 *See, e.g.*, *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 11–12 (2000) (in the context of considering the use of 506(c), positing that a trustee "is obliged to seek recovery . . . whenever his fiduciary duties so require").

71 *See In re Domistyle, Inc.*, 811 F.3d 691, 696 (5th Cir. 2015) (emphasizing the "unfairness" which "can be avoided by a surcharge"); *In re Codesco, Inc.*, 18 B.R. 225, 230 (Bankr. S.D.N.Y. 1982) ("The underlying rationale for charging a lienholder with the costs and expenses of preserving or disposing of the secured collateral is that the general estate and unsecured creditors should not be required to bear the cost of protecting what is not theirs.").

Lenders' Prepetition Collateral. And it is being run on the backs of vendors and landlords. Yet, the Prepetition Lenders are unwilling to commit to paying stub rent and section 503(b)(9) claims promptly. Instead, they seek to defer stub rent and section 503(b)(9) payments to the very end of these cases while significant payments are made to the Prepetition Lenders, placing the risk that the Plan is not confirmed squarely on administrative and priority creditors without any protections.

46. This is particularly offensive, where, as here, the Debtors are using the landlords' premises, and the vendors' goods, to sell inventory during these cases for the Prepetition Lenders' benefit. This result is nonsensical given the proposed $72 million of pay downs to the ABL Lenders while vendors and suppliers are left waiting for inevitable requests for concessions and deferred payments.

47. Judge Walrath addressed these concerns in *In re Sports Authority Holding*, where this Court denied the advance waiver of section 506(c).[72] In that case, the debtors requested approval of financing that (i) proposed to pay off the prepetition lenders immediately upon an expedited sale; (ii) granted the lenders a surcharge waiver; and (iii) failed to adequately fund administrative and priority claims, including stub-rent and 503(b)(9) claims. In denying the surcharge waiver, Judge Walrath ruled:

> But in a case where the landlords and other administrative claims are clearly not budgeted or being paid while the . . . secured lenders' collateral is being liquidated and their secured claim is being paid, I have a serious problem with that. And I think the fix is no 506(c) waiver for anybody. And to the extent that administrative claims are not paid at the end of this case, there will be a claim against the lenders for those costs under 506(c) to

[72] Case No. 16-10527 (MFW), Hr'g Tr. [Docket No. 1415] (Bankr. D. Del. Apr. 26, 2016). An excerpt from the transcript is attached hereto as **Exhibit A**.

> the extent they were necessary for the preservation or realization of their collateral.[73]

48. The result should be no different here. The Debtors and Prepetition Lenders should agree to promptly pay stub rent – which is a mere fraction of the $72 million the ABL Lenders are slated to receive – and the Debtors should be required to establish an appropriate reserve for projected 503(b)(9) claims. If they refuse to do so, the advance waiver of section 506(c) surcharge rights should be denied.

vi. The Advance Waiver of the Equities of the Case Exception

49. The Debtors should not be allowed to waive the "equities of the case" exception under section 552(b) of the Bankruptcy Code at this premature juncture of the case. The "equities of the case" exception allows a debtor, committee or other party-in-interest to exclude from a secured creditor's collateral, on equitable grounds, after-acquired property traceable to prepetition collateral. "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."[74]

50. The Committee has only started its investigation into the circumstances leading up to the commencement of these cases and intends to assess whether there is any actionable misconduct that could give rise to claims against the Prepetition Lenders or insiders, which are overlapping in these cases. The Committee also believes that given the facts and circumstances that exist, the Committee will have strong arguments that the chapter 11 cases are

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[73] *Id.* at 195:6-16.

[74] *In re Muma Servs.*, 322 B.R. 541, 558–59 (Bankr. D. Del. 2005) (quotations omitted).

inherently generating substantial value that is not subject to the prepetition liens of the Prepetition Lenders and should instead provide a source of recovery for unsecured creditors.

51. Regardless, the Court should not permit a waiver before the "equities of the case" can even be assessed.[75] Given the substantial operating cash flow being generated in these cases, the Committee should have the time to assess whether such enhanced value is being independently derived by the postpetition estates free of the prepetition liens or whether the equity of the case should create an exception to the extension of the Prepetition Lenders' prepetition liens to postpetition value.[76] Thus, the Committee requests that complex issues about extending liens, tracing proceeds and the origins of value not be prejudged or waived at this early stage. Any determination of whether there has been diminution in value or enhancement in value as a result of these cases should not be determined at this early stage and the rights of all parties concerning these issues should be reserved.

vii. The Advance Waiver of Marshaling Rights

52. The proposed final order would provide that the Prepetition Lenders are not subject to the equitable doctrine of marshaling. Marshaling requires a secured creditor to first seek recovery from assets against which other creditors do not have a claim before looking to common assets.[77] It "prevent[s] the arbitrary action of a senior lienor from destroying the

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[75] *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 and scope of equities exception broad).

[76] *See Official Comm. of Unsecured Creditors v. UMB Bank, N.A. (In re Residential Capital)*, 501 B.R. 549, 612 (Bankr. S.D.N.Y. 2013).

[77] *See Meyer v. United States*, 375 U.S. 233, 236 (1963) ("[T]he equitable doctrine of marshaling (sic) rests upon the principle that a creditor having two funds to satisfy his debt may not, by his application of them to his demand, defeat another creditor, who may resort to only one of the funds.") (citation omitted); *see also In re Tampa Chain Co.*, 53 B.R. 772, 777 (Bankr. S.D.N.Y. 1985) (citing 2 J. Story, *Commentaries on Equity Jurisprudence* 230 (1884)); *Cannon v. Hudson*, 5 Del Ch. 112, 116 (Del. Ch. 1876).

rights of a junior lienor or a creditor having less security."[78] It is well settled that bankruptcy courts can marshal a debtor's assets to effectuate an equitable distribution to creditors.[79]

53. The Committee's right to invoke the doctrine of marshaling must be preserved.[80] At this early stage in these cases there is no basis to waive this important doctrine. Given the economic realities of these cases, previously unencumbered assets, including avoidance actions, may be an important source of unsecured creditor recoveries. The waiver of marhsalling could singificantly harm unsecured creditors. Conversely, the Prepetition Lenders are not burdened by having to first look to their existing Prepetition Collateral. 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 Lenders 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.

viii. Releases

54. The Debtors' releases are overbroad because the "Released Claims" are defined to include all claims "arising out of or related to (as applicable) *the Debtors*, the [Prepetition Facilities], the obligations owing and the financial obligations made thereunder, the negotiation thereof and of the transactions and agreements reflected thereby, and the obligations and financial obligations made thereunder . . . ."[81] In its current form, the release is essentially a chapter 11 plan release in that it covers any and all claims relating to the Debtors rather than

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78 *See Meyer*, 375 U.S. at 237.

79 *See Tampa Chain Co*., 53 B.R. at 777.

80 *See In re America's Hobby Center, Inc.*, 223 B.R. 275 (Bankr. S.D.N.Y. 1998) (creditors' committee permitted to seek to assert marshaling defense against secured creditor on behalf of the debtor's estate).

81 Interim Order, ¶ G(xii) (emphasis added).

being limited to claims relating to the Prepetition Facilities. Accordingly, the Committee submits that if approved, the releases should be limited solely to claims arising in connection with the Prepetition Facilities.

C. The Cash Collateral Order Should Not Impair the Committee's Rights

55. The Debtors seek to improperly shorten the Challenge Period to less than the 75 days required under the Local Rules. However, there are no exigent circumstances that require such result. The Debtors are not the proverbial melting ice cube. They have more than sufficient operating cash flow to provide the Committee a full 75 days to conduct its investigation and to assert a challenge. Contemporaneously with the filing of this Objection, the Committee has filed an objection to the Debtors' solicitation motion requesting that the confirmation hearing be set for the middle of August. This request would still fit within the effective date milestones artificially set by the Consenting Stakeholders and would give the Committee a 75-day Challenge Period.

56. The Committee must be given an opportunity to fulfill its statutory obligation to investigate and potentially bring a Challenge to: (i) the validity and extent of liens and claims against three sets of Prepetition Lenders; (ii) stipulations that there are no challenges – including recharacterization and subordination – against the Prepetition Lenders and any affiliates; (iii) stipulations that the Debtors have no claims against such parties with respect to the Prepetition Facilities, the obligations thereunder, the prepetition liens, or otherwise; and (iv) a release of the Prepetition Lenders and numerous related parties, including affiliates from any liability arising out or relating to the Prepetition Facilities or the Debtors.

57. The Challenge Period is further truncated because it is not tolled in the event the Committee files a motion seeking standing to assert a Challenge. Without additional time, the Prepetition Lenders will be granted releases despite little to no investigation into their role in the company's prepetition transactions, its substantial increase debt in the years leading the bankruptcy, or the potentially conflicted role of Prepetition Lenders. This Court routinely allows for tolling of a challenge period in the face of the filing of a standing motion or complaint because it is rarely feasible to both investigate and prosecute to judgment a standing motion and complaint in the 75 days statutorily provided under the Local Rules. This is a standard accommodation in this District and others designed to promote judicial efficiency and to permit the Committee to actually obtain the benefit of the full investigation period.[82] The Challenge Period should be set for August 3, subject to further extension by the Court and tolling in the event the Committee files a standing motion or complaint within the Challenge Period.

58. The proposed $50,000 investigation budget is also designed to curtail the Committee's rights. The Committee must investigate three Prepetition Facilities as well as potential claims for recharacterization and subordination. This investigation is further complicated by the overlapping roles of the Prepetition Lenders as equity holders. Moreover, this is simply the use of cash collateral, not new postpetition financing. In order to ensure the

[82] *See, e.g.*, *In re GST, Inc.*, No. 25-12188 (KBO) (Bankr. D. Del. Dec. 23, 2025) ¶ 17 [Docket No. 31]; *In re Virgin Orbit Holdings, Inc.*, No. 23-10405 (KBO) (Bankr. D. Del. May 1, 2023) ¶ 21 [Docket No. 202]; *In re Ryze Renewables II, LLC*, No. 23-10289 (BLS) (Bankr. D. Del. April 11, 2023) ¶ 37(a) [Docket No. 96]; *In re Starry Grp. Holdings, Inc.*, No. 23-10219 (KBO) (Bankr. D. Del. Mar. 31, 2023) ¶ 11 [Docket No. 263]; *In re Indep. Pet Partners Holdings*, *LLC*, No. 23-10153 (LSS) (Bankr. D. Del. Mar. 3, 2023) ¶ 12 [Docket No. 242]; *In re EYP Grp. Holdings*, *Inc.*, No. 22-10367 (MFW) (Bankr. D. Del. May 25, 2022) ¶ 38(iii) [Docket No. 149].

Committee has the resources to fulfill its fiduciary obligations to unsecured creditors, the proposed investigation budget should be increased to $500,000.[83]

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court (i) deny final approval of the Cash Collateral Motion unless modified as set forth herein; and (ii) grant such other and further relief as the Court deems just and proper.

Dated: June 12, 2026
Wilmington, Delaware

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Proposed Counsel to the Official Committee of Unsecured Creditors of West Marine, Inc., et al.

[83] The Committee further seeks clarification of paragraph 17(b) of the Interim Order that the Committee's day-to-day efforts, and positions it may take in these cases through pleadings or advocacy, are not potentially considered an "attempt to prevent, hinder, or otherwise delay or interfere with" the Prepetition Lenders' rights.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	Case No. 16-10527 (MFW)
SPORTS AUTHORITY HOLDINGS, INC., et al,	.	Courtroom No. 4
	.	824 Market Street
	.	Wilmington, Delaware 19801
Debtors.	.	
	.	Tuesday, April 26, 2016

. . . . . .

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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Thank you.

THE COURT: All right. Well, let me tell you what my problems are with the proposed DIP.

While I agree with the debtor we can't use hindsight to decide that the debtor should have only sought use of cash collateral. I accept that the debtor did not have much leverage. I -- without any other DIP loans available. I do think this DIP is -- I won't use the word "outrageous." But it really does not fall within the zone of reasonable DIPs.

And first and foremost, both from day one and certainly it's been proven today, it's clear that while they said that they were providing new money based on the formula, there was no real ability for new money unless they were paid down. And it's clear that what has now occurred is that this is a sale case. And it's clear, I think, in all my prior rulings, that if a case is being run for the benefit of the lenders in order to foreclose upon their collateral, the lenders are going to have to pay the cost of that. And that includes all administrative. It includes the rent. It includes professional fees. Whether or not the debtor is correct, and I don't think the debtor is, there is no commitment right now under the carveout language or otherwise to pay accrued fees that accrue after May 28th.

There is no commitment to pay the stub rent. There's a commitment to escrow $8 million, a fraction of the stub rent

for the GOB leases. But there's no commitment to allow that payment to be made. And I assume that the lenders are going to retain a security interest in that cash escrow agreement. Even if they don't, that's clearly insufficient.

The debtor is correct under Montgomery Ward, you don't have to pay the stub rent on the first day of the case. But in a case where the landlords and other administrative claims are clearly not budgeted or being paid while the landlord -- excuse me, while the secured lenders' collateral is being liquidated and their secured claim is being paid, I have a serious problem with that.

I think the fix is no 506(c) waiver for anybody. And to the extent that administrative claims are not paid at the end of this case, there will be a claim against the lenders for those costs under 506(c) to the extent they were necessary for the preservation or realization of their collateral.

With respect to the DIP fees and interest, I accept the debtors' testimony that the interest and other fees are simply what were otherwise due to the lenders under the pre-petition claims with the exception of the one six-million-dollar fee. I am not as outraged by that as the committee is, and I don't think that that was unreasonable because I can't look at it in hindsight. I have to look at it from the debtors' perspective at the day they entered into this DIP loan, and given the terms and the amount, I'm not -- my

CERTIFICATE OF SERVICE

I, Sarah R. Gladieux, do hereby certify that on June 12, 2026, a copy of the foregoing **Objection of the Official Committee of Unsecured Creditors to the Debtors' Motion for Entry of a Final Order Authorizing the Use of Cash Collateral** was served on the parties listed on the attached service list via email.

/s/ Sarah R. Gladieux
Sarah R. Gladieux (No. 7404)

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