UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In Re: FRANCESCA'S ACQUISITION, LLC, et al.,[1] Debtors.	Chapter 11 Case No. 26-11312-MEH (Jointly Administered) Judge: Hon. Mark E. Hall

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363(c) OF THE BANKRUPTCY CODE; (II) GRANTING ADEQUATE PROTECTION, LIENS AND SUPERPRIORITY CLAIMS TO THE SECURED LENDERS FOR THE USE THEREOF; (III) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001 AS TO THE USE OF CASH COLLATERAL; AND (IV) GRANTING RELATED RELIEF

[1] The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity's federal tax identification number, are: Francesca's Acquisition, LLC (3616); Francesca's Operations, Inc. (6872); Francesca's Administrative Management, Inc. (5788); and Francesca's IP Company, Inc. (9588). The Debtors' service address is 8760 Clay Road, Suite 100, Houston, TX 77080.

The Official Committee of Unsecured Creditors (the "Committee") for Francesca's Acquisition, LLC, and its affiliated debtors and debtors-in-possession (the "Debtors"), by and through its counsel, Fox Rothschild LLP, submits this objection (the "Objection") to the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Use of Cash Collateral Pursuant to Section 363(c) of the Bankruptcy Code; (II) Granting Adequate Protection, Liens and Superpriority Claims to the Secured Lenders for the Use Thereof; (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001 as to the Use of Cash Collateral, and (IV) Granting Related Relief* (the "Cash Collateral Motion") [D.I. 2].[2] In support of this Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. Courts have routinely held that chapter 11 cases are not to be run for the exclusive benefit of secured creditors. Here, however, for months (if not longer) pre-petition, and now post-petition, the Prepetition Secured Lenders (defined below) and the Debtors have orchestrated these Chapter 11 Cases to be run for the benefit of the Prepetition Secured Lenders, bleeding the company dry while leaving a wake of financial harm to various other stakeholders. As detailed in this Objection, the Prepetition Secured Lenders' conduct is egregious and should not be countenanced.

2. While the Committee recognizes the Debtors' need to use cash collateral during the pendency of these Chapter 11 Cases, the terms of the proposed final order on the Cash Collateral Motion provide the Prepetition Secured Lenders with sweeping protections that are neither warranted nor appropriate under the circumstances, particularly given the Prepetition Secured

[2] Any terms capitalized but not otherwise defined herein shall of the definitions assigned to them in the Cash Collateral Motion.

Lenders' conduct, that the Prepetition Secured Lenders are not providing any new debtor-in-possession financing, and have already received post-petition payments of approximately [redacted], largely on the backs of other stakeholders.[3] Further, based on the budget attached to the Cash Collateral Motion as Exhibit A (the "Initial Budget") [redacted], it is unclear if the Budget as constructed will provide sufficient funding in these cases to pay administrative expenses even as the Prepetition Secured Lenders have already siphoned substantial funds away from the estates. The administrative costs in these estates have been greatly exacerbated by the Prepetition Secured Lenders reticence to address stub rent,[4] despite making millions from GOB Sales (defined below) at the landlords' locations, and through inconsistent and shifting positions, including with respect to the Budget, that have made it difficult to resolve cash collateral and more global issues in these cases.

3. While the Committee continues to investigate the Prepetition Secured Lenders' conduct and dealings with the Debtors, the Committee has already uncovered evidence of serious

[3] As discussed below, [redacted] of these payments were made after the March 13, 2026 end of the five-week Initial Budget, including on account of Tranche B of the Prepetition Revolving Loans, which the Committee believes is an unenforceable make-whole premium. Notably, paragraph 3(a) of the Interim Cash Collateral Order required that subsequent Budgets be shared with the Committee and the U.S. Trustee and filed with the Court. While several draft iterations of an extended Budget have been circulated to the Committee, these Budgets have varied wildly, and upon information and belief, were not shared with the U.S. Trustee or filed with the Court. This is of particular concern because in a good faith attempt to maintain the status quo, the Committee agreed to delay filing this Objection as well as an adversary proceeding complaint against the Prepetition Secured Lenders pending the completion of mediation of cash collateral and more global issues in these Chapter 11 Cases. Mediation, which was first suggested by counsel for the Prepetition Secured Lenders, was held with the Hon. Vincent F. Papalia, U.S.B.J., on May 13, 2026, but did not result in a resolution. The fact that the Prepetition Secured Lenders continued to receive payments in the absence of a formal Budget filed with the Court and while knowing the Committee agreed to hold off on filing this Objection and an adversary proceeding complaint, speaks volumes about the Prepetition Secured Lenders' motivations, as they have raced to abscond with as much money as possible before being held to account.

[4] Pursuant to the *Stipulation and Agreed Order Regarding Stub Rent Reserve* [D.I. 330] that was entered on March 26, 2026, the Prepetition Secured Lenders established a stub rent reserve in the amount $2,832,751.51. It took an extensive negotiation to reach the stipulation. The Prepetition Secured Lenders eventually agreed to release half of the stub rent reserve to landlords, but only after the suggestion was made by the Court during a status conference on April 10, 2026. The Prepetition Secured Lenders have refused to release the balance of the stub rent reserve pending resolution of cash collateral issues.

prepetition issues that render the broad releases and waivers outlined in the Cash Collateral Motion—[redacted]t—even more concerning. .

4. [redacted].[7] As such, at all relevant times it appears that the Prepetition Secured Lenders (directly or through their affiliates) occupied dual and inherently conflicting positions as both owners and secured creditors of the Debtors.

[5] The Statement of Financial Affairs for Debtor Francesca's Operations, Inc. [D.I. 11, case no. 26-11310], also reflects that nearly $86 million was paid to the Prepetition Secured Lenders during the 90 days prior to the Petition Date.

[redacted]

[7] Further illustrating the influence that these parties have asserted over the Debtors, Tiger Capital and SB360 Capital also benefited in their role as "Consultant" in overseeing the Debtors' GOB Sales.

5. [redacted]. The Committee's professionals have conducted an initial detailed solvency analysis of the Debtors' financials from February 2021 through January 2026 (the "Insolvency Analysis").[8] Based on these preliminary findings, it is clear that the Debtors were insolvent or rendered insolvent in [redacted], 2023, 2024, 2025, and up until the Petition Date.

6. [redacted]

[8] While the Committee has conducted its own analysis of the Debtors' records, the Debtors' systemic financial issues have been well documented for years preceding the commencement of these Chapter 11 Cases, including public knowledge that the Debtors were unable to pay their debts as they became due over 2023 and 2024. *See* Nicholas Morine, *What Went Wrong for Francesca's?*, RETAILWIRE, https://retailwire.com/discussion/what-went-wrong-francescas/ ("By January 2024, word surfaced in the marketplace that Francesca's wasn't paying its bills. Vendor sources at the time said they hadn't been paid for months, although they were still getting orders and the retailer expressed expectations for timely deliveries,").

7. Moreover, in the months leading up to bankruptcy, the Debtors and Prepetition Secured Lenders structured the Debtors' liquidation in order to maximize the return for the Prepetition Secured Lenders, while causing undue financial harm to a variety of stakeholders. The examples include, but are not limited to: (i) being paid almost $86 million during the 90 days prior to the Petition Date,[9] with payments exceeding loan draws during that time by [redacted]; (ii) squeezing vendors (who are now creditors) to sell inventory to Tiger Capital at cents on the dollar, only to turn around and sell the merchandise in the Debtors' stores at substantial profit; (iii) upon information and belief, failing to conduct a robust marketing process to determine if the Debtors might have going-concern value that could provide a return to parties beyond the Prepetition Secured Lenders, including preserving jobs for the Debtors' 3,000 employees and preserving leases rather than burden the estate with potentially tens of millions in rejection damages claim; (iv) instituting liquidation sales weeks (if not months) before the Petition Date, which likely undermined any potential going-concern value; and (v) failure to take precautions (including by exploring a potential go-forward sale) to minimize potential WARN Act claims, any potential liability from which would now fall to the estate.[10]

8. These discoveries raise a number of concerns regarding the Prepetition Secured Lenders' pre-petition conduct and potential motivations in these cases, including if through the liens and potential releases proposed in the Cash Collateral Motion they are seeking to insulate themselves and other parties from claims by burying avoidance and pre-petition tort actions that otherwise could provide a source of recovery for unsecured creditors.[11]

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[9] *See* Statement of Financial Affairs for Francesca's Operations, Inc. Case No. 26-11310 [D.I. 11]. The amount alone raises red flags given the proximity to the Debtors' bankruptcy filings.

[10] *See* adversary proceeding number 26-01134.

[11] The Committee's investigation is still in its early stages and includes exploring possible state law claims beyond the two-year look back period set out in section 548(a)(1) of the Bankruptcy Code. *See* N.J.S.A. 25:2-31 (stating that a

9. Avoidance actions are therefore of paramount importance to the Debtors' estates and to the potential recovery of unsecured creditors. [redacted] Granting the Prepetition Secured Lenders liens on avoidance action proceeds and unencumbered assets under these circumstances would effectively strip unsecured creditors of their primary avenue of recovery.

10. Additionally, the Committee has serious concerns about the risk of administrative insolvency. The Budget as currently proposed does not provide sufficient funding for the administration of these cases, including payment of administrative claims, professional fees, wind-down costs, and other administrative expenses that will inevitably be incurred in these cases. As noted, the Prepetition Secured Lenders' conduct, including the gamesmanship with stub rent and shifting positions on the Budget, has led to significant administrative expenses in these cases that could have been minimized. Concerns about administrative insolvency may also be exacerbated by the aforementioned pending WARN Act claim.

11. As previously stated, these Chapter 11 Cases should not be run for the exclusive benefit of the Prepetition Secured Lenders. However, thus far, these cases appear to have been designed and orchestrated strictly for the benefit of the Prepetition Secured Lenders, who have reaped significant financial benefit on the backs of other creditors, including, but not limited to trade creditors and landlords. The Prepetition Secured Lenders must "pay the freight" if they wish

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claim for relief under the New Jersey Uniform Voidable Transactions Act must generally be brought "not later than four years after the transfer was made or the obligation was incurred"); *See also In re G-I Holdings, Inc.*, 313 B.R. 612, 634 (Bankr. D.N.J. 2004) (holding that pursuant to section 544 of the Bankruptcy Code, an official statutory committee could "step into the shoes" of a government creditor to assert a fraudulent transfer claim which had a ten-year statute of limitations under state law).

to enjoy the benefits of the chapter 11 process, and key recovery tools, such as those under sections 506(c) and 552(b), as well as marshaling, should not be waived, particularly given the Prepetition Secured Lenders' conduct.

12. The Cash Collateral Motion should not be approved on a final basis without (i) a Budget that demonstrates the Debtors have sufficient cash to pay all administrative expenses and fund the costs of confirming a chapter 11 plan; (ii) maintaining certain mechanisms designed to preserve and recover value for the estates (e.g. avoidance actions, unencumbered assets, rights under sections 506(c) and 552(b) of the Bankruptcy Code, etc.); and (iii) appropriately limiting releases at this early stage of these Chapter 11 Cases.

BACKGROUND

A. Procedural History and General Background

13. On February 5, 2026 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of New Jersey (the "Court"). No trustee or examiner has been appointed in the Debtors' jointly administered cases, and the Debtors continue to operate their businesses as debtors-in-possession, pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

14. On the Petition Date, among other first-day motions, the Debtors filed the Cash Collateral Motion.

15. Also on the Petition Date, the Debtors filed the *Declaration of Curt Kroll, Chief Financial Officer of Francesca's Acquisition LLC in Support of Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declaration") [D.I. 4], which provides a description of the

Debtors' business and operations, capital structure, and the events leading to the commencement of these Chapter 11 Cases.

16. According to the First Day Declaration, the Debtors had approximately $30.1 million in secured debt on the Petition Date, consisting of (a) a two-tranche revolving credit facility with $26.1 million outstanding, and (b) a term loan facility with $4 million outstanding.[12] *See* First Day Declaration, ¶ 12. The Prepetition Secured Lenders purportedly have "a first priority lien on substantially all of the Debtors' assets, including, among other things, all accounts, goods, equipment, inventory, fixtures, and tangible assets including intellectual property." *Id.* at ¶ 12.

17. On February 9, 2026, the Court entered the *Amended Interim Order (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "Interim Cash Collateral Order") [Docket Nos. 51, 52]. Attached as Exhibit A to the Interim Cash Collateral Order is the Debtors' Initial Budget covering the period from the petition date through the week ending March 13, 2026. The Interim Cash Collateral Order provided that each Budget subsequent to the Initial Budget "once approved by the Prepetition Agents, shall be delivered by the Debtors simultaneously to the counsel for a Committee (if appointed) and the U.S. Trustee and filed with the Court." Interim Cash Collateral Order, ¶ 3(a)

18. Among other things, in exchange for the Debtors' use of cash collateral on an interim basis, the Interim Cash Collateral Order provides the Prepetition Secured Lenders with various protections, including but not limited to, (i) the provision of certain protection liens and superiority administrative-expense claims with respect to the diminution in value of the Prepetition

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[12] Pursuant to the Debtors' stipulations in the Interim Cash Collateral Order, the aggregate principal amount outstanding under the Prepetition Loan Facilities was not less than approximately $28,191,343.84. *See* Interim Cash Collateral Oder, ¶ F.(iii).

Secured Lenders' interests in the Prepetition Collateral (as defined in the Interim Cash Collateral Order), including liens on proceeds on any avoidance actions (collectively, the "Avoidance Actions") and unencumbered assets; (ii) the ability to collect monthly interest payments from the Debtors at the default rate under the Prepetition Credit Agreement until the Prepetition Loan Obligations are paid in full; (iii) the payment of weekly cash management fees, in the amount of $12,500.00, by the Debtors to the Prepetition Secured Lenders; (iv) the immediate payment, within one (1) business day of receipt, of any net proceeds received by the Debtors in exchange for the sale of any collateral outside the ordinary course of business under 11 U.S.C. § 363 until the Prepetition Loan Obligations are paid in full; (v) waivers with respect to the "equities of the case" exception under 11 U.S.C. § 552(b) and claims under 11 U.S.C. § 506(c), as well as the doctrine of marshaling; and (vi) releases for the Prepetition Secured Lenders and back door releases for their "Related Parties"[13] for, among other things, any claims, liabilities, or causes of action[14] that

[13] "Related Parties" is defined as the Prepetition Secured Parties' (as defined in the Interim Cash Collateral Order) "affiliates or any of their and their affiliates' respective successors, assigns, subsidiaries, parents, officers, shareholders, equity holders (direct or indirect), directors, employees, agents, and advisors (including attorneys, accountants and experts), past, present and future, and their respective heirs, predecessors, successors and assigns." *See* Interim Cash Collateral Order ¶ F(v).

[14] *See* Interim Cash Collateral Order ¶ F.(vi) (releasing the Prepetition Secured Lenders and their Related Parties "from any and all "claims" (as defined in the Bankruptcy Code), counterclaims, demands, debts, accounts, contracts, liabilities, causes of action (including causes of action in the nature of "lender liability"), defenses, setoff, recoupment, other offset rights and other rights of disgorgement or recovery of any kind, nature or description, whether known or unknown, foreseen or unforeseen or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or otherwise (collectively, the "Released Claims") against any and all of the Lender Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with the Prepetition Liens, the Prepetition Loan Obligations, the Prepetition Loan Documents, or the debtor-creditor relationship between any of the Prepetition Secured Parties, on the one hand, and the Debtors, on the other hand, including, without limitation, (1) any recharacterization, subordination, avoidance, disallowance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state law, federal law, municipal law or foreign law and (2) any right or basis to challenge or object to the amount, validity, priority or enforceability of the Prepetition Loan Obligations or any payments or other transfers made on account of the Prepetition Loan Obligations, or the validity, enforceability, priority, or non-avoidability of the Prepetition Liens securing the Prepetition Loan Obligations, including any right or basis to seek any disgorgement or recovery of payments of cash or any other distributions or transfers previously received by any of the Lender Releasees, in each case, that any of the Debtor Releasors at any time had, now have or may have, against any of the Lender Releasees for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Interim Order, whether such Released Claims are matured or unmatured or known or unknown.").

may be brought against such parties related to the prepetition loans or related obligations. *See* Interim Cash Collateral Order, ¶¶ 3, 7, 14-15. Notably, as of this filing, the Prepetition Secured Lenders are not providing, nor have the Debtors sought authorization for, any debtor-in-possession financing.

19. Additionally, the Initial Budget provides only $25,000 to the Committee to pursue Challenges (as defined therein) with respect to the validity, extent, priority, or perfection of the Prepetition Secured Lenders' purported Prepetition Liens. *See Id.* at ¶¶ 16-17. Further, the Initial Budget provides only $8,333.00 in weekly UCC Costs, an amount that is four and five times less than those budgeted for Restructuring Counsel and Lender Counsel respectively. *See* Initial Budget.[15] The amounts budgeted for the Committee are wholly unrealistic given the scope of the Committee's duties, the complexity of these Chapter 11 Cases, and [redacted]. The Interim Cash Collateral Order also provides the Committee with a period of sixty (60) days from the formation of the Committee (the "Challenge Period") to bring forth any Challenges against the Prepetition Liens (the "Challenge Deadline").[16] *Id.* at ¶ 17.

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[15] [redacted] On April 24, 2026, the Committee filed an omnibus objection to the March 2026 monthly fee statements of the Debtors' attorneys and financial advisor requesting that given concerns about administrative insolvency absent a resolution at mediation and the massively disproportionate amount budgeted for the Debtors' professionals compared to the Committee's professionals, that no disbursements be made to professionals pending mediation. On May 1, 2026, the Debtors filed a limited objection [D.I. 410] to the February and March fee statement for the Committee's attorneys arguing that the Committee's professional fees are constrained by the initial budget annexed to the Interim Cash Collateral Order. That position, however, ignores that the Committee has the right to object to the budget and cash collateral, and agreed to refrain from filing its objection pending mediation

[16] Pursuant to paragraph 18 of the Sale Order (defined below), paragraph 17(c) of the Interim Cash Collateral Order was amended to confer the Committee with standing to pursue any Challenge (as defined in the Interim Cash Collateral

20. The Debtors also filed on the Petition Date the *Debtors' Motion for Entry of Interim and Final Orders (I) Approving and Authorizing the Debtors to Assume and Perform Under Store Closing Consulting Agreement, (II) Approving Procedures for Store Closing Sales, (III) Approving Modification to Certain Customer Programs, and (IV) Granting Related Relief* (the "Store Closing Motion") [D.I. 3]. On February 11, 2026, the Court entered an order approving the Store Closing Motion on an interim basis (the "Interim Store Closing Order") [D.I. 87].

21. Among other things, the Interim Store Closing Order, on an interim basis, approved procedures for the Debtors to conduct going out of business sales ("GOB Sales") at their locations, and authorized the Debtors to enter into a Consulting Agreement[17] with SB360 Capital and Tiger Capital (collectively with SB360 Capital, the "Consultant") to oversee the GOB Sales. The GOB Sales were scheduled to conclude by April 30, 2026, but the Committee understands that they largely (if not entirely) ended by March 31, 2026. [redacted]

22. Beginning on February 26, 2026, certain of the Debtors' landlords (the "Objecting Landlords")[18] filed consolidated objections or informal objections (collectively, the "Consolidated

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Order) against the Prepetition Secured Lenders. The Committee's deadline to bring a Challenge is presently the later of May 27, 2026 or fourteen (14) days after the date of conclusion of mediation. *See Stipulation and Agreed Order Extending Challenge Deadline* at D.I. 395.

[17] A copy of the Consulting Agreement is attached as Exhibit 1 to the Interim Store Closing Order.

[18] The Objecting Landlords are: GGP Retail LLC, Jones Lang Lasalle Americas, Inc., Kite Realty Group, PC Group Retail, LLC, and Turnberry Associates; CBL & Associates Management, Inc.; Simon Property Group, L.P.; GMV (Mall) Owner LLC, Eden Prairie Center, LLC, and REEP-RTL NPM GA LLC; Tanger Properties Limited Partnership,

Landlord Objections") [Docket Nos. 210, 217, 219, 242, 250, 258, 272] to both the Cash Collateral Motion and the Store Closing Motion. The Consolidated Landlord Objections sought payment of stub rent for February 2026, a period encompassing most of the month in light of the February 5 Petition Date, and oppose the Debtors' attempt to waive the estates' rights under sections 506(c) and 552(b) of the Bankruptcy Code.

23. On February 23, 2026, the Office of the United States Trustee appointed seven (7) members to the Committee, pursuant to section 1102(a) of the Bankruptcy Code [D.I. 163]. The members of the Committee are: (i) Arc Textiles Inc., (ii) Esung New York LLC, (iii) GGP Retail LLP, (iv) MTO Jewelry LLC, (v) Roxberi LLC, (vi) Simon Property Group L.P., and (vii) Star Style Apparel LLC. The Committee selected its counsel, Fox Rothschild LLP on February 25, 2026, and its financial advisor, Emerald Capital Advisors Corp., on February 27, 2026.

24. On March 2, 2026, the Committee filed its *Initial Response and Reservation of Rights of the Official Committee of Unsecured Creditors to Debtors' Motions (A) Authorizing Use of Cash Collateral and (B) Approving Store Closing Procedures* (the "Initial Response") [D.I. 224]. The Initial Response articulated the Committee's concern over the failure to budget for stub rent, 503(b)(9) claims, and other administrative expenses, and that these Chapter 11 Cases appear to be designed for the Prepetition Secured Lenders' exclusive benefit. The Initial Response

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FSH Associates, LP, Galveston Outlets, LLC, Outlet Mall of Georgia, LLC, COROC/Rehobath III, LLC, TOCU XIV LLC, TWMB Associates, LLC, WLD Legends Owner VI, Tanger Huntsville, Charolette Outlets, LLC, Tanger Outlets Deer Park, LLC, COROC/Riviera L.L.C., Tanger Grand Rapids, Inc., Tanger Outlets at Foxwoods, LLC, Tanger Fort Worth, LLC, Coumbus Outlets, LLC and Ashville Outlets; Atlanta Outlet Shoppes, LLC, Bluegrass Outlet Shoppes II, LLC, Brixmor LaCenterra LLC, Horizon Group Properties, Inc., SVAP IV Stone Oak, LLC, and Westfield, LLC; and VORH Associates, LLC and District at Green Valley, LLC; Belden Mall LLC, Bridgewater Commons Mall II, LLC; Centennial Real Estate Company, LLC; Meridian Centercal Owner, L.L.C.; CR Lakeside Village, LLC; CR Mount Pleasant, LLC; Crosspoint Realty Services, Inc.; RREEF America REIT II Corp.; Federal Realty OP LP; Poag Shopping Centers LLC; Sustenhorn RE CTC, LLC; The Macerich Company; GTM Denton, Ltd.; Freeport Village Station Capital LLC; and YTC Mall Owner LLC.

included a reservation of rights, enumerating a number of issues with respect to the Cash Collateral Motion. *See* Initial Response at ¶ 25.

25. On March 12, 2026, the Court entered an *Order (I) Authorizing and Approving the Sale of Certain Acquired Assets Free and Clear of All Liens, Claims, and Encumbrances, (II) Approving the Purchase Agreement and Authorizing the Debtors to Perform Their Obligations Thereunder, (III) Authorizing and Approving the Assumption and Assignment of Certain Executory Contracts and (IV) Granting Related Relief* (the "Sale Order") [D.I. 295].[19] The Sale Order approved the sale of the Debtors' intellectual property assets for $7 million (the "IP Sale"), which proceeds were paid to the Prepetition Secured Lenders, though subject to potential disgorgement or other remedy in the event a successful Challenge is brought. The IP Sale closed on or about March 17, 2026.

26. On March 18, 2026, the Court entered the *Stipulation and Agreed Order regarding Stub Rent Reserve* (the "Stub Rent Stipulation") [D.I. 330] addressing certain of the issues raised in the Consolidated Landlord Objections and the Initial Response. As described in the Stub Rent Stipulation, the Prepetition Agents have established a cash reserve from Cash Collateral (as defined in the Interim Cash Collateral Order) in the aggregate amount of $2,837,665.03 (the "Stub Rent Reserve"), which is the amount the Debtors have reported to be owed on account of the Debtors' total obligations in respect of Stub Rent according to their records. Despite reaping the benefits of the GOB Sales at the landlords' locations, the Prepetition Agents have to date agreed to release only 50% of the Stub Rent Reserve to landlords.

[19] The underlying motion was filed on February 9, 2026 [D.I. 45] and a prior order approving bidding procedures, authorizing the Debtors to enter into a stalking horse agreement, and granting related relief, was entered on February 12, 2026 [D.I. 96].

27. Following a series of adjournments, a final hearing on the Cash Collateral Motion is presently scheduled for a date to be determined.

B. Prepetition Secured Debt and Organizational Structure

28. The Debtors' current capital and organizational structure can be traced back to January 21, 2021, when the assets of the Debtors' predecessor, Francesca's Holdings Corporation ("Holdings"), were acquired through Holdings' chapter 11 proceeding (Case No. 20-13076, Bankr. D. Del. Dec. 3, 2020) by a consortium led by TerraMar Capital and Tiger Capital.[20]

29. As more fully set forth in the First Day Declaration and the Cash Collateral Motion, on February 21, 2024, the Debtors, as borrowers, later entered into that certain Revolving Credit Agreement, as amended by that certain First Amendment to Revolving Credit Agreement dated May 2, 2024, and that certain Waiver, Consent and Second Amendment to Credit Agreement dated September 6, 2024 (as may have been further amended, restated, modified, or supplemented from time to time, the "Prepetition Credit Agreement") with Tiger Finance as Administrative Agent and Collateral Agent, Second Avenue as Funding Agent, and the Lenders party thereto (collectively, with Tiger Finance and Second Avenue, the "Prepetition Secured Lenders").

30. Pursuant to the Prepetition Credit Agreement, the Prepetition Secured Lenders extended to the Debtors a revolving, asset-based facility in the aggregate amount of up to $40,000,000 (the "Prepetition Revolving Loans") and a term facility in the amount of $4,500,000 (the "Prepetition Term Loan," together with the Prepetition Revolving Loans, the "Prepetition Loans"). *See* Cash Collateral Motion, ¶ 10. As noted, the Prepetition Revolving Loans consist of

[20] *See* the Consulting Agreement annexed as Exhibit 1 to the Store Closing Order, which states at ¶ 12.11 that pursuant that certain Amended and Restated Asset Purchase Agreement, dated January 19, 2021, TerraMar Capital became the majority equity owner of Debtor Francesca's Acquisition, LLC, while an affiliate of Tiger Capital and SB360 Capital became minority equity owners.

two tranches – Tranche A and Tranche B. Curiously, Tranche B, which had a balance of approximately $4.6 million on the Petition Date, is comprised of a contractual make-whole premium calculated as the present value of future interest that would have accrued over a fourteen-month period. Such make-whole provisions in a revolver loan are uncommon.[21]

31. The obligations under the Prepetition Loan Documents are allegedly secured by an asserted first priority lien on substantially all of the Debtors' assets including, without limitation, all accounts, goods, equipment, inventory, fixtures, documents, instruments, chattel paper, investment property, intellectual property, general intangibles, deposit accounts, money, cash and cash equivalents, owned real property, and all other personal property (the "Prepetition Collateral"). *See* Cash Collateral Motion, ¶ 13. Pursuant to the Debtors' stipulations in the Interim Cash Collateral Order, the aggregate principal amount outstanding under the Prepetition Loan Facilities was not less than approximately $28,191,343.84. *See* Interim Cash Collateral Order, ¶ F.(iii).

32. Under the Prepetition Credit Agreement, interest on the Prepetition Revolving Loans is set at a rate per annum equal to Adjusted Term SOFR, plus six and one-quarter percent (6.25%), and the Debtors are obligated to pay additional interest at the applicable PIK Interest Rate. Currently, the Prepetition Revolving Loans are accruing interest at the Default Rate, which is equal to the then-applicable rate, plus five percent (5.00%). *See* Cash Collateral Motion, ¶¶ 11-12.

[21] The Committee believes Tranche B is subject to disallowance under section 502(b)(2) of the Bankruptcy Code and reserves all rights with respect to same. *See In re Hertz Corporation*, 120 F. 4th 1181, 1190 (3d Cir. 2024) (finding that make-whole premiums must be disallowed as unmatured interest under § 502(b)(2) when they fit the dictionary definition of interest or its economic equivalent).

33. The following non-Debtor guarantors (collectively, the "Guarantors") were also parties to the Prepetition Credit Agreement: (i) Carla Ridge LLC (the "Carla Ridge Guarantor"), (ii) Simon Barlava (the "Barlava Guarantor"),[22] and (iii) 2209 S. Santa Fe, LLC (the "Santa Fe Guarantor"). *See* Interim Cash Collateral Order, ¶ F(ii).

34. The Carla Ridge Guarantor executed a limited recourse guarantee, dated December 20, 2024, in favor of Tiger Finance (the "Carla Ridge Guarantee"), pursuant to which the Carla Ridge Guarantor agreed to guarantee all the obligations due under the Prepetition Credit Agreement. As further security under the Carla Ridge Guarantee, the Carla Ridge Guarantor pledged as collateral certain real property located at 10490 Wilshire Blvd., Unit 1004, Los Angeles, CA 90024 (the "Carla Ridge Collateral"). The Committee believes the Prepetition Secured Lenders hold a first priority mortgage lien on the Carla Ridge Collateral, which is now being marketed at approximately $2.9 million.[23]

35. The Barlava Guarantor executed a personal limited recourse guarantee, dated February 14, 2025, in favor of Tiger Finance (the "Barlava Guarantee"), pursuant to which the Barlava Guarantor agreed to guarantee the full and prompt funding and delivery of certain installments of cash collateral, payable under the Credit Support Cash Collateral Agreement (as defined in the Barlava Guarantee). Under the Barlava Guarantee, the Barlava Guarantor agreed to guarantee up to $3,000,000 (the "Barlava Guaranteed Amount").

36. The Santa Fe Guarantor executed a limited recourse guarantee, dated December 19, 2025, in favor of Tiger Finance (the "Santa Fe Guarantee", together with the Carla Ridge Guarantee and the Barlava Guarantee, the "Guarantees"), pursuant to which the Santa Fe

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[22] Mr. Barlava signed the Debtors' petitions as Manager and a Director.

[23] *See* listing at https://www.bhhs.com/homes-for-sale/ca/10490-wilshire-boulevard-unit-1004-los-angeles-90024/pid-429287660

Guarantor agreed to guarantee certain Guaranteed Obligations (as defined in the Santa Fe Guarantee). As further security under the Santa Fe Guarantee, the Santa Fe Guarantor pledged as collateral certain real property located at 2209-2211 South Santa Fe Avenue, Los Angeles, CA 90058 (the "Santa Fe Collateral", together with the Carla Ridge Collateral, the "Guarantee Collateral"). Upon information and belief, the Prepetition Secured Lenders hold a second priority mortgage lien on the Santa Fe Collateral, which is now being marketed at approximately $14.5 million.[24] The Committee believes the alleged first priority mortgage with respect to the Santa Fe Collateral is only approximately $11 million, meaning that there is approximately $3.5 million in residual value that the Prepetition Secured Lenders could foreclose on.

37. In total, the Prepetition Secured Lenders can look to recover potentially millions from the Guarantee Collateral. [redacted]

C. The Cash Collateral Motion

38. The Cash Collateral Motion was among several first-day motions filed by the Debtors on the Petition Date. The Cash Collateral Motion sought, among other relief, authorization for (i) the Debtors to use cash collateral, (ii) the granting of protection liens and superpriority administrative expense claims to the Prepetition Secured Lenders, (iii) certain waivers of the Debtors' rights under sections 506(c) and 552(b) of the Bankruptcy Code, and (iv) related relief.

[24] *See* listing at https://www.loopnet.com/Listing/2209-2211-Santa-Fe-Ave-Los-Angeles-CA/39309863/

The salient terms of the Cash Collateral Motion and the Interim Cash Collateral Order are described herein.

39. As protection, the Prepetition Secured Lenders were granted liens on a broad set of collateral under the Interim Cash Collateral Order. Subject to entry of a final order, these liens extend to the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents, as well as all Prepetition Collateral that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date, including prepetition commercial tort claims. *See* Interim Cash Collateral Order, ¶ 7(a).

40. In addition to adequate protection liens, the Interim Cash Collateral Order provided the Prepetition Secured Lenders with an allowed superpriority administrative expense claim pursuant to sections 503 and 507(b) of the Bankruptcy Code for the diminution in value of their interests in the Prepetition Collateral. This claim is subordinate to the Carve Out but otherwise takes priority over all administrative expense claims and unsecured claims against each Debtor and each Estate. *See* Interim Cash Collateral Order, ¶ 7(b).

41. Subject to entry of a final order, the Interim Cash Collateral Order further provides that (i) no costs or expenses of administration shall be charged against the Prepetition Agents, their claims, or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code, (ii) the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Agents with respect to proceeds, products, offspring, or profits of any of the Prepetition Collateral, and (iii) the Prepetition Secured Lenders shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine. *See* Interim Cash Collateral Order, ¶¶ 7(f), 14-15.

42. Additionally, the Interim Cash Collateral Order provides that the Debtors will release any and all claims counterclaims, demands, debts, accounts, contracts, liabilities, causes of action (including causes of action in the nature of "lender liability"), defenses, setoff, recoupment, other offset rights and other rights of disgorgement or recovery of any kind, nature or description, whether known or unknown, foreseen or unforeseen or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or otherwise against the Prepetition Secured Lenders and all of their Related Parties. *See Id* ¶ F(vi).

43. With respect to the Committee's investigative rights, as noted, the Interim Cash Collateral Order established a sixty (60) day Challenge Period running from the formation of the Committee, during which the Committee or any other party in interest, if granted standing by the Court, may investigate and assert challenges to the validity, extent, priority, or perfection of the Prepetition Liens. *See* Interim Cash Collateral Order, ¶¶ 16-17. The Challenge Period has been extended to the later of May 27, 2026 or fourteen (14) days after the date of conclusion of mediation.[25] *See Stipulation and Agreed Order Extending Challenge Deadline* at D.I. 395. The Interim Cash Collateral Order further provides that up to $25,000 of the proceeds of the Prepetition Collateral (including Cash Collateral) or the Carve Out may be used by the Committee during the Challenge Period to investigate, but not to prosecute or challenge, the claims and liens of the Prepetition Agents. *See id*. Although the Interim Cash Collateral Order did not provide the Committee with standing to bring a Challenge, the Sale Order conferred the Committee with automatic standing to bring Challenges. *See* Sale Order at ¶ 18.

[25] The parties engaged in mediation with the Hon. Vincent F. Papalia, U.S.B.J., on May 13, 2026.

44. As additional protection, the Debtors are required to pay a weekly cash management fee of $12,500 to the Prepetition Secured Lenders. *See* Interim Cash Collateral Order, ¶ 7(d).

45. The Interim Cash Collateral Order also establishes a Carve Out from the Prepetition Secured Lenders' liens and claims to cover, among other things, allowed professional fees and a Post-Carve Out Reserve in the amount of $125,000 to fund the combined fees of professionals retained by the Debtors and the Committee following delivery of a Carve Out Trigger Notice. *See* Interim Cash Collateral Order, ¶ 4.

46. Certain operational milestones are also imposed on the Debtors, including a deadline to sell intellectual property by April 10, 2026, and a requirement that all unexpired leases for the Debtors' retail store locations be assumed and assigned or rejected no later than ninety (90) days after the Petition Date. *See* Interim Cash Collateral Order, ¶ 6.

47. Finally, upon payment in full of all outstanding Prepetition Loan Obligations, the Debtors are authorized and directed to pay to the Prepetition Agents the sum of $250,000 to be held as an indemnity reserve (the "Lender Indemnity Reserve") to secure contingent indemnification, reimbursement, or similar continuing obligations arising under or related to the Prepetition Loan Documents. *See* Interim Cash Collateral Order, ¶ 7(i).

D. Prepetition [redacted] to Equity Holders and Insolvency

48. The Committee's investigation thus far reflects that, from 2021 through 2023, the Debtors transferred approximately [redacted] notwithstanding persistent or impending insolvency and without any reasonably equivalent value in return to the estates. [redacted]

[redacted]

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]	[redacted]

[redacted]

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

49. [redacted]

50. [redacted]

26 [redacted]

51. [redacted]

52. [redacted] the recipients were insiders who simultaneously occupied conflicted roles across the Debtors' capital structure, including as majority and minority equity holders and,[27] later, as Prepetition Secured Lenders or affiliates under the Prepetition Loans.

53. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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27 [redacted]

54. Moreover, the Statement of Financial Affairs filed on behalf of Debtor Francesca's Operations, Inc. [D.I. 11, case no. 26-11310], reflect that during the 90-days prior to the Petition Date "Tiger Capital Group LLC & Second Avenue Capital Partners LLC" received an astonishing $83,346,869.14 in "loan payments," as well as an additional $2,452,676.08 in transfers during the same period for purported "Supplier or Vendors" payments (collectively, the "90-Day Transfers"). While the Debtors were drawing on the Prepetition Revolving Loans during this time, payments made by the Debtors exceeded the draws by approximately [redacted]. The Prepetition Secured Lenders clearly extracted as much as they could from the Debtors as the Debtors teetered towards bankruptcy, [redacted].

55. The Committee submits that the Prepetition Secured Lenders and their affiliates were initial transferees and direct beneficiaries of the distributions, that the Debtors received no reasonably equivalent value in exchange, and that the transfers either occurred when the Debtors were insolvent or rendered them insolvent. This analysis informs the Committee's position that a final order under the Cash Collateral Motion should not provide protections insulating the Prepetition Secured Lenders and related parties from actionable conduct and avoid entrenching benefits obtained through the very conduct at issue.[28]

E. Mediation

56. While the parties have engaged in negotiations to resolve cash collateral and global issues in these Chapter 11 Cases since shortly after the Committee's appointment, the discussions have been frustrated by the Prepetition Secured Lenders' shifting positions on the Budget (which

[28] The Committee also believes this conduct provides the basis to bring claims against the Prepetition Secured Lenders to recharacterize and/or equitably subordinate debt (and ultimately, if successful, to disgorge proceeds they have received from the GOB Sales and IP Sale). The Committee reserves its rights to bring these and other claims.

has varied wildly), retrenchment on certain positions, and refusal to substantively discuss the potential claims against them and their potential defenses.

57. The parties engaged in mediation before the Hon. Vincent F. Papalia on May 13, 2026. Mediation was originally suggested by counsel for the Prepetition Secured Lenders after negotiations reached an impasse in early April 2026. Unfortunately, mediation was not successful. As noted, as a gesture of good faith and in order to preserve the status quo, the Committee agreed to refrain from filing this Objection and an adversary proceeding complaint against the Prepetition Secured Lenders, both of which otherwise would have been filed several weeks ago. Unfortunately, the Prepetition Secured Lenders, took advantage of the additional time to extract an additional [redacted] from the Debtors since the end of the Initial Budget, despite the lack of a continuing formal budget. As has been the pattern, the Prepetition Secured Lenders have exploited the Debtors' situation (both pre- and post-petition) to race to extract as much money as possible before being held to account. Moreover, the Prepetition Secured Lenders and Debtors have threatened to move to convert these cases if an agreement is not reached. This threat underscores that the chief motivation in these cases is to benefit the Prepetition Secured Lenders at any cost at the expense of all other stakeholders.

OBJECTION

A. **The Prepetition Secured Lenders Need to Pay the Freight to Ensure Administrative Solvency**

58. In accordance with longstanding case law, chapter 11 cases shall not be run for the exclusive benefit of secured creditors at the expense of other creditors. *See In re Encore Healthcare Assocs.*, 312 B.R. 52, 54–56 (Bankr. E.D. Pa. 2004) (denying debtor's bidding procedures motion where the "sole purpose of which was to liquidate assets for the benefit of the secured creditor," and which would render the estate administratively insolvent); *see also In re Ames Dep't Stores,*

Inc., 115 B.R. 34, 37–39 (Bankr. S.D.N.Y. 1990) (holding that "proposed financing will not be approved where it is apparent that the purpose of the financing is to benefit a creditor rather than the estate"); *In re Aqua Assocs.*, 123 B.R. 192, 195–98 (Bankr. E.D. Pa. 1991) ("[C]redit should not be approved when it is sought for the primary benefit of a party other than the debtor."); *In re 1121 Pier Village LLC*, 635 B.R. 127 (Bankr. E.D. Pa. 2022) (observing that "the bankruptcy court does not serve as an expedited foreclosure court for the sole benefit of secured creditors"); *In re FCX, Inc.*, 54 B.R. 833, 838 (Bankr. E.D.N.C. 1985) (noting that the Court should not ignore the basic injustice of an agreement in which the debtor, acting out of desperation, has compromised the rights of unsecured creditors); *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992) (prohibiting "terms in financing arrangements that convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition lender").

59. The Prepetition Secured Lenders must ensure that the Debtors' estates are administratively solvent. The Prepetition Secured Lenders should not be permitted to use the chapter 11 process to liquidate their collateral for their sole benefit without ensuring all administrative expense claims are paid. As courts have recognized, a secured lender cannot enjoy the benefits of the chapter 11 process without being willing to "pay the freight." *See, e.g.*, *In re Golden Cnty. Foods, Inc.*, No. 15-11062 (KG) (Bankr. D. Del. June 22, 2015), ECF No. 175 (final DIP financing order required that sale proceeds in excess of postpetition financing obligations be available to pay administrative expense claims); *In re NEC Holdings Corp.*, Case No. 10-11890 (KG) (Bankr. D. Del. July 13, 2010, Hr'g Tr. at 100:17-20) (secured creditors have "got to pay the freight, and . . . the freight is certainly an administratively solvent estate").

60. Here, the evidence strongly indicates that these cases are being run largely for the benefit of the Prepetition Secured Lenders, who are effectively wearing multiple hats, with Tiger Finance and Second Avenue acting as secured lender and agents, and their respective affiliates, Tiger Capital and SB360 Capital, both former minority equity owners, acting as liquidator through their role as Consultant for the GOB Sales. [redacted].

61. Meanwhile, landlords, whose properties hosted the GOB Sales, still have not been fully paid stub rent for most of February, and various stakeholders in these Chapter 11 Cases, including other administrative claimants, have no certainty regarding when or whether they would be paid. [redacted]. Although the Stub Rent Stipulation established a Stub Rent Reserve of $2,837,665.03, the Stub Rent Reserve does not constitute a cap on the Debtors' liability for Stub Rent. *See* Stub Rent Stipulation, ¶ 2.

62. The Committee has serious concerns regarding the sufficiency of the Budget to fund the administration of these Chapter 11 Cases and believes that the Budget does not adequately provide for payment of administrative claims, including section 503(b)(9) claims, professional fees, and U.S. Trustee statutory fees.[29] The Budget must extend through the projected effective

[29] The Committee is also concerned about potential liability related to the pending WARN Act claim.

date of a chapter 11 plan or the conclusion of these Chapter 11 Cases. Any final Budget must account for trailing administrative expenses that need to be paid after the end of the budget period, including a priority claim reserve sufficient to cover anticipated priority claims. The Budget must be revised to specifically account for and fund these obligations.

63. Additionally, the amounts budgeted for the Committee's professionals and investigation costs are woefully insufficient. The Committee's ability to investigate potential claims and fulfill its statutory duties is a cornerstone of the chapter 11 process. *See In re Tenney Vill. Co., Inc.*, 104 B.R. 562, 568 (Bankr. D.N.H. 1989) (finding a cap on fees unacceptably limited the right of debtor's counsel to payment for bringing actions against the DIP lenders, creating an economic incentive to avoid bringing such actions in disregard of its fiduciary duties, and therefore refusing to approve the postpetition financing). The limited investigation budget may be an attempt to force the Committee's professionals to underinvest in matters critical to the estates and thus harm the adversarial system characteristic of the chapter 11 process, which is particularly concerning in these cases given the emerging details about the Prepetition Secured Lenders' conduct. *Id*. It is also noteworthy that while the Initial Budget is deficient with respect to administrative claims and Committee resources, the Interim Cash Collateral Order nonetheless provides for the payment of the Prepetition Secured Lenders' professional fees and expenses, demonstrating that the Budget is structured to prioritize the Prepetition Secured Lenders' interests over the legitimate needs of the estates and their unsecured creditors. Any final resolution must either include a guaranteed amount of cash or a significant waiver of secured debt to ensure administrative solvency and a meaningful recovery for unsecured creditors.

64. Accordingly, the Debtors and the Prepetition Secured Lenders must set forth a Budget that establishes that the Debtors have sufficient cash to: (i) pay all administrative expenses

of these chapter 11 estates, including stub rent, section 503(b)(9) claims, other administrative claims that have accrued since the Petition Date, and professional fees (including providing a reasonable allocation of professional fees among the Debtors' and the Committee's respective professionals); (ii) fund wind-down costs associated with confirming a chapter 11 plan; and (iii) provide a pathway for recovery for unsecured creditors. In addition, the Prepetition Secured Lenders and their Related Parties and affiliates should not receive blanket and back door releases. Without such assurances, the Cash Collateral Motion should not be approved on a final basis.

B. <u>The Debtors' Proposed Waivers under §§ 506(c) and 552(b) are Inappropriate</u>

65. The Cash Collateral Motion and the proposed final order seek to waive the Debtors' (and any successors') right to surcharge the Prepetition Secured Lenders under section 506(c) of the Bankruptcy Code. Section 506(c) provides that a debtor "may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim . . . ." 11 U.S.C. § 506(c).

66. The cost of a debtor's restructuring should not be borne by the unsecured creditors. *See 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 . . . The rule understandably shifts to the secured party . . . the costs of preserving and disposing of the secured party's collateral, which costs might otherwise be paid from the unencumbered assets of the bankruptcy case . . . ."); *see also Kivitz v. CIT Grp./Sales Fin., Inc.*, 272 B.R. 332, 334 (D. Md. 2000) (observing that the purpose of § 506(c) is to protect unsecured creditors from "bear[ing] the cost of protecting property that is not theirs").

67. The United States Supreme Court has made clear that such waivers, since they are binding on all parties in interest, should not be lightly granted, nor may a debtor-in-possession

concede this right absent compelling reasons. *See Hartford Underwriters Ins. v. Union Planters Bank (In re Hen House Interstate Inc.)*, 530 U.S. 1, 12 (2000) (noting that a debtor's decision to waive section 506(c) rights must be made in a manner consistent with its obligations "to seek recovery under the section whenever his fiduciary duties so require"). Immunizing agreements that waive surcharge rights under section 506(c) have been found unenforceable because they "operate as a windfall to the secured creditor at the expense of administrative claimants." *Hartford Fire Ins. Co. v. Norwest Bank Minn., N.A. (In re Lockwood Corp.)*, 223 B.R. 170 (B.A.P. 8th Cir. 1998).

68. The section 506(c) waiver is particularly inappropriate in these cases given: (i) the Budget does not adequately provide for payment of all administrative claims; (ii) the Prepetition Secured Lenders are not providing any new debtor-in-possession financing; (iii) [redacted]; (iv) the substantial [redacted] received by the Prepetition Secured Lenders while the Debtor was insolvent or on the verge of insolvency, precipitated the bankruptcy filing, and (v) Tiger Finance and Second Avenue and their respective affiliates, Tiger Capital and SB360 Capital are effectively wearing multiple hats in these cases (in addition to Tiger Capital and SB360 Capital being former minority equity owners). Consequently, the Debtors' (and any successors') right to surcharge the Prepetition Secured Lenders' collateral under section 506(c) should be preserved.

69. Similarly, the Cash Collateral Motion seeks to waive the Debtors' right to assert the "equities of the case" exception under section 552(b) of the Bankruptcy Code. The "equities of the case" exception allows for the exclusion of postpetition proceeds from prepetition collateral

on equitable grounds. *See In re Muma Servs.*, 322 B.R. 541, 558–59 (Bankr. D. Del. 2005) (quoting *Delbridge v. Prod. Credit Ass'n & Fed. Land Bank*, 104 B.R. 824, 826 (E.D. Mich. 1989) ("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 [debtor-in-possession's] use of other assets of the estate (which normally would go to general creditors) to cause the appreciated value.")). These rights should also be preserved.

C. <u>The Debtors' Proposed Releases for the Prepetition Secured Lenders are Inappropriate</u>

70. As stated above, the Committee's professionals have uncovered evidence that the Debtors were insolvent and / or rendered insolvent [redacted] through 2024. During these periods, the Debtors transferred approximately [redacted]

71. The Committee believes that there are viable fraudulent transfer claims under sections 544 and 548 of the Bankruptcy Code with respect to the [redacted] made while the Debtors were insolvent and/or rendered insolvent, as well as potential breach of fiduciary duty claims. The Committee believes there may also be viable preference claims under section 547 of the Bankruptcy Code with respect to the 90-Day Transfers. These claims represent a significant source of recovery for unsecured creditors. The Committee also believes that Tranche B of the Prepetition Revolving Loans, which consists of a make-whole premium atypical for revolving loans, is subject to disallowance under section 502(b)(2) of the Bankruptcy Code.

72. Additionally, the Committee believes that the definition of Related Parties covered by the proposed releases is extremely overbroad, especially considering the early stage of these Chapter 11 Cases and the self-dealing conduct uncovered thus far. The Committee believes that

the questionable nature of the prepetition structure [redacted] reviewed thus far justify the estates retaining causes of actions against former Directors and Officers of the Debtors and support no releases for the Prepetition Secured Lenders and their "Related Parties" as a result.

73. The proposed back door releases in the Interim Cash Collateral Order are premature and inappropriate. The Debtors have not yet provided sufficient information to the Committee regarding its investigation of potential claims they may have against the Prepetition Secured Lenders and their affiliates, the value of such claims, or why releasing such claims is appropriate in the context of the proposed Cash Collateral order. The Committee's investigation is on-going. Accordingly, the proposed releases should be stricken from the final order, or at minimum, the final order should clearly reserve the rights of the Committee to later raise claims regarding any self-dealing, fiduciary breaches, or conflicts of interest associated with the Prepetition Secured Lenders and their affiliates. Further, any releases set forth in the proposed final order should not be effective until the expiration of the Challenge Period, to avoid any argument that claims against the Prepetition Secured Lenders cannot be asserted on a derivative basis.

D. <u>Preservation of Equitable Subordination and Recharacterization Claims</u>

74. In addition to preserving challenges to the validity of the Prepetition Liens and potential fraudulent transfer claims, the final order must also preserve the Committee's right to pursue equitable subordination of the Prepetition Secured Lenders' claims under section 510(c) of the Bankruptcy Code and to seek recharacterization of the Prepetition Secured Lenders' purported debt as equity. These remedies provide additional mechanisms through which unsecured creditors may obtain a meaningful recovery.

75. Section 510(c) of the Bankruptcy Code provides that, after notice and a hearing, the Court may subordinate for purposes of distribution all or part of an allowed claim to all or part of

another allowed claim or order that any lien securing such a subordinated claim be transferred to the estate. Courts have consistently held that the type of conduct alleged here, where insiders exploit their dual roles as equity holders and creditors to the detriment of other creditors, warrants equitable subordination under Section 510(c). The seminal test for equitable subordination requires three elements: (1) the claimant must have engaged in some type of inequitable conduct, (2) the misconduct must have resulted in injury to creditors or conferred an unfair advantage on the claimant, and (3) equitable subordination must not be inconsistent with the provisions of the Bankruptcy Code. *See Citicorp Venture Capital, Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 986–87 (3d Cir.1998). Critically, where the claimant is an insider of the debtor, as the Prepetition Secured Lenders are here by virtue of their affiliates' equity ownership and their exercise of control over the Debtors, the plaintiff need only prove "inequitable conduct." *In re Toy King Distributors*, *Inc.*, 256 B.R. 1, 198 (Bankr. M.D. Fla. 2000). Courts have recognized three categories of misconduct that constitute inequitable conduct for insiders: (1) fraud, illegality, breach of fiduciary duties; (2) undercapitalization; and (3) claimant's use of the debtor as a mere instrumentality or alter ego. *See In re Exide Techs., Inc.*, 299 B.R. 732, 744 (Bankr. D. Del. 2003) (citations omitted).

76. Here, the Prepetition Secured Lenders' conduct implicates each of these categories: they permitted or caused the Debtors to make massive [redacted] while the Debtors were insolvent, which is precisely the type of self-dealing that courts have found to constitute inequitable conduct. *See, e.g., In re Toy King Distributors, Inc.*, 256 B.R. at 202 (subordinating claims of insiders who used their control over an undercapitalized debtor to extract value for their own benefit); *In re Exide Techs., Inc.,* 299 B.R. 732 at 745 (denying motion to dismiss where insider lenders leveraged dual roles as equity holders and creditors to obtain preferential

treatment). More particularly, the Committee's preliminary investigation has uncovered substantial evidence of inequitable conduct by the Prepetition Secured Lenders and their affiliates, including: (i) causing or permitting the Debtors to make approximately [redacted] at a time when the Debtors were insolvent or were rendered insolvent by such [redacted] (ii) using their control over the Debtors to extract value for their own benefit while allowing obligations to unsecured creditors to remain unpaid; (iii) [redacted]; (iv) deepening the insolvency of the Debtors; and (v) occupying conflicted positions as both equity holders and secured creditors, and leveraging these dual roles to obtain benefits not available to other creditors, including through the protections sought in the Cash Collateral Motion. This conduct has resulted in injury to the Debtors' unsecured creditors, and equitable subordination of the Prepetition Secured Lenders' claims may be warranted under the circumstances, and at the very least, requires further investigation.

77. Similarly, the Committee must preserve its right to seek recharacterization of the Prepetition Secured Lenders' purported secured debt as equity contributions. The Prepetition Secured Lenders, or their affiliates, simultaneously served as the Debtors' equity holders and lenders, creating an inherent conflict of interest. [redacted]. The Debtors were severely undercapitalized at the time the Prepetition Credit Agreement was executed and were insolvent on a [redacted] and cash flow basis for 2024. These circumstances, together with the self-dealing and absence of arm's-length terms described above, support a finding that the purported secured debt was in

substance an equity contribution and should be recharacterized accordingly, placing the Prepetition Secured Lenders' claims behind all claims of general unsecured creditors.

78. Courts apply a multi-factor test to determine whether recharacterization is warranted, examining, among other things, the adequacy of capitalization, the identity of interest between creditor and stockholder, the source of repayments, and the ability to obtain outside financing, to determine whether a purported loan is, in substance, an equity contribution. *See In re Autostyle Plastics, Inc.*, 269 F.3d 726, 750-53 (6th Cir. 2001); *In re Exide Techs., Inc.,* 299 B.R. at 741 (Bankr. D. Del. 2003).

79. Here, the most significant factors weigh decisively in favor of recharacterization. First, the Debtors were severely undercapitalized at the time the Prepetition Credit Agreement was executed, having been insolvent on a [redacted] and cash flow basis throughout 2024, a circumstance courts have recognized as a strong indicator that purported loans are, in reality, equity contributions. *See In re Phase-I Molecular Toxicology, Inc.*, 287 B.R. 571, 578 (Bankr. D.N.M. 2002); *In re Exide Techs., Inc.*, 299 B.R. at 741. Second, there is a substantial identity of interest between the Prepetition Secured Lenders and the Debtors' equity holders: as described previously, affiliates of Tiger Finance and Second Avenue held substantial equity interests at or around the time the Prepetition Credit Agreement was entered into, meaning the lenders' affiliates stood on both sides of the transaction. Third, the source of repayment depended entirely on the success of the Debtors' business, and the Debtors were unable to obtain financing from disinterested outside lenders, both hallmarks of an equity investment rather than a true loan. *See Autostyle*, 269 F.3d at 750-51. Courts have held that when insiders advance funds as loans rather than equity contributions to an insolvent debtor, such conduct constitutes "more than adequate evidence of inequitable conduct" and supports recharacterization. *See In re Herby's Foods, Inc.*, 2 F.3d 128,

133 (5th Cir. 1993); *In re Toy King Distributors, Inc.*, 256 B.R. at 198. Under the totality of the circumstances, including the Debtors' insolvency, the identity of interest between the lenders' affiliates and the Debtors' equity holders, and the absence of arm's-length terms, the purported secured debt should be recharacterized as equity, thereby placing the Prepetition Secured Lenders' claims behind those of all general unsecured creditors.

80. Accordingly, the final order on the Cash Collateral Motion must expressly preserve the Committee's right to pursue equitable subordination under section 510(c) and recharacterization of the Prepetition Secured Lenders' claims. Any releases or waivers contained in the proposed final order that could be construed to bar or impair these claims should be stricken or narrowed to ensure these remedies remain available to the Committee for the benefit of unsecured creditors.

E. <u>Adequate Protection Liens Should Not Extend to Avoidance Actions and Unencumbered Assets</u>

81. The Interim Cash Collateral Order grants the Prepetition Secured Lenders protection liens on a broad set of collateral, including the proceeds of Avoidance Actions and previously unencumbered assets, including pre-petition commercial tort claims. The Committee objects to the extension of such liens to previously unencumbered assets, and in particular to Avoidance Actions.

82. Avoidance actions are an important tool for providing recovery to unsecured creditors. *See Buncher Co. v. Official Comm. of Unsecured Creditors of GenFarm Ltd. P'ship IV*, 229 F.3d 245, 250 (3d Cir. 2000) ("[W]hen recovery is sought under section 544(b) of the Bankruptcy Code, any recovery is for the benefit of all unsecured creditors."); *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 243–45 (3d Cir. 2000) (finding that a fraudulent transfer claim is not an asset of the debtor); *Mellon*

Bank, N.A. v. Glick (In re Integrated Testing Prods. Corp.), 69 B.R. 901, 904 (D.N.J. 1987) (observing that avoidance actions should be pursued for the benefit of all unsecured creditors); *In re Roblin Indus.*, 52 B.R. 241, 243 (Bankr. W.D.N.Y. 1985) (debtor-in-possession financing denied where debtors were required to waive avoidance actions as a condition of the loan); *see also Official Comm. of Unsecured Creditors v. Gold Elecs. Corp. (In re Gold Elecs. Corp.)*, 1993 WL 408366, at *3–4 (N.D. Ill. Sept. 22, 1993) (vacating lien on preference actions).

83. The significance of avoidance actions in these cases cannot be overstated. As described above, the Debtors' Statement of Financial Affairs and the Committee's preliminary investigation have identified approximately [redacted] plus nearly $86 million constituting the 90-Day Transfers. These payments may constitute avoidable transfers under sections 544, 547, and 548 of the Bankruptcy Code. Avoidance actions are uniquely designed for the benefit of unsecured creditors as they are statutory rights intended to ensure equitable distributions of the debtor's estate. *See Cullen Ctr. Bank & Tr. v. Hensley*, 102 F.3d 1411, 1414 (5th Cir. 1997) (noting that avoidance powers under the Bankruptcy Code were created to "facilitate the prime bankruptcy policy of equality of distribution among creditors of the debtor").

84. The necessity for unencumbered assets,[30] including the proceeds of avoidance actions, to be preserved for the benefit of unsecured creditors is therefore critical in these cases to ensure that unsecured creditors have a full complement of recovery sources. The Prepetition Secured Lenders assert a first priority lien on substantially all of the Debtors' assets, have received

[30] Unencumbered assets are believed to include commercial tort claims, class action claims against Discover Card and Google, as well as potential tariff refunds.

substantial payments during the course of these cases, and can look to non-estate assets of value for further recovery. They should not be provided with additional benefits at the exclusion of unsecured creditors, particularly in the form of liens on avoidance actions or the proceeds thereof, which are specifically designed to benefit unsecured creditors.

85. Accordingly, the protection liens should be limited to the extent of the Prepetition Secured Lenders' prepetition collateral, and avoidance actions (including claims under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code) and proceeds and property recovered therefrom should be expressly excluded from the definition of collateral subject to adequate protection liens in the final order.

F. <u>The Committee's Challenge Period and Investigation Budget Must be Expanded</u>

86. The Committee is unduly constrained by certain of the Challenge parameters set forth in the Interim Cash Collateral Order. The brevity of the Challenge Period (even as extended) and minute $25,000 investigation budget is complicated by the depth of the inequitable conduct uncovered which will continue to require significant attention from the Committee and its professionals to safeguard the interests of unsecured creditors.

87. The limited investigation budget is a blatant attempt to prevent the Committee from exercising its statutory and fiduciary duties. The allocation of funds to be used by the Committee to conduct independent investigations into relevant matters and in furtherance of its duties to the Debtors' estates should not be capped or dictated by the secured lenders who may themselves be the subject of investigation. *See In re Tenney Vill. Co., Inc.*, 104 B.R. 562, 568 (Bankr. D.N.H. 1989).

88. The investigation budget should be increased to no less than $75,000.00 to ensure that the Committee has sufficient resources to investigate and, if appropriate, assert a Challenge.

The need for an expanded investigation budget is particularly acute in light of the [redacted] that constitute avoidable transfers, in addition to the nearly $86 million the Prepetition Secured Lenders received during the 90 days leading up to the Debtors' bankruptcy filing. Additional investigation is needed to fully evaluate these claims and determine the appropriate course of action for the estates.

89. Additionally, the Committee's rights to seek to extend the Challenge Deadline for cause should be expressly reserved.

G. <u>The Estates' Equitable Marshaling Rights Should be Preserved</u>

90. The Interim Cash Collateral Order provides that the Prepetition Secured Lenders shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to the Prepetition Collateral. The Committee objects to this waiver.

91. Equitable marshaling can be an important tool for safeguarding value for an estate, as it was "developed to prevent injustice to junior creditors and to foster fair dealing, justice, and common honesty." *Official Comm. v. Hudson United Bank (In re America's Hobby Ctr., Inc.)*, 223 B.R. 275, 287 (Bankr. S.D.N.Y. 1998). Marshaling "prevent[s] the arbitrary action of a senior lienor from destroying the rights of a junior lienor or a creditor having less security." *Meyer v. United States*, 375 U.S. 233, 236 (1963). Marshaling "requires the senior secured creditor to first collect its debt against the collateral other than that in which the junior secured creditor holds an interest, thereby leaving that collateral for the junior secured creditor's benefit." *Simon & Schuster, Inc. v. Adv. Mktg. Servs., Inc. (In re Adv. Mktg. Servs., Inc.)*, 360 B.R. 421, 427 n.8 (Bankr. D. Del. 2007).

92. The Debtors have standing to assert marshaling rights pursuant to section 544(a) of the Bankruptcy Code. *See, e.g.*, *United States v. Houghton (In re Szwyd)*, 408 B.R. 547, 550 (D. Mass. 2009); *Kittay v. Atl. Bank of N.Y. (In re Global Serv. Grp. LLC)*, 316 B.R. 451, 463 (Bankr. S.D.N.Y. 2004); *Official Comm. of Unsecured Creditors v. Lozinski (In re High Strength Steel, Inc.)*, 269 B.R. 560, 573–74 (Bankr. D. Del. 2001); *In re America's Hobby Ctr., Inc.*, 223 B.R. at 287 ("Because a debtor in possession has all the rights and powers of a trustee, 11 U.S.C. § 1107(a), under the Tampa Chain rationale, standing in the shoes of the debtor in possession, the Committee can assert this [marshalling] claim.").

93. The proposed waiver of marshaling in these cases could eliminate the Debtors' ability to secure a meaningful recovery for unsecured creditors. Where the Prepetition Secured Lenders hold liens on substantially all of the Debtors' assets, the doctrine of marshaling may serve as a critical mechanism to direct the Prepetition Secured Lenders to satisfy their claims from collateral that would not otherwise be available for distribution to unsecured creditors. Preserving marshaling rights is particularly important here, where the Prepetition Secured Lenders have millions of dollars of additional value available to them in the form of the Guarantee Collateral. The Carla Ridge Guarantee, the Barlava Guarantee, and the Santa Fe Guarantee each remain valid and binding, and nothing precludes the Prepetition Secured Lenders from pursuing recovery against the Guarantee Collateral and the Barlava Guaranteed Amount. Indeed, given how much they have already been paid from the proceeds of the GOB Sales and the IP Sales, the value of the Guarantee Collateral and Barlava Guaranteed Amount provide the Prepetition Secured Creditors with an opportunity to be satisfied, while preserving other assets for the estates. Accordingly, the Debtors' marshaling rights should be preserved.

RESERVATION OF RIGHTS

94. The Committee reserves all rights with respect to the Cash Collateral Motion and expressly reserves and preserves all rights to file a supplemental objection (particularly as the Committee's investigation is ongoing) and raise any additional objections to the relief requested by the Debtors before any final hearing. Nothing herein shall constitute a waiver of any objections or arguments that the Committee may have with respect to the Cash Collateral Motion, the Interim Cash Collateral Order, or any proposed final order on the Cash Collateral Motion. Further, nothing herein shall be construed as the Committee consenting to any of the relief sought in the Cash Collateral Motion on a final basis.

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CONCLUSION

Based on the foregoing, the Committee respectfully requests that the Court (i) deny the Cash Collateral Motion on a continued interim or final basis; and (ii) grant such further relief as is just and proper.

Dated: May 15, 2026
Morristown, New Jersey

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EXHIBIT A

FILED UNDER SEALED