IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
US MAGNESIUM LLC,[1]	Case No. 25-11696 (BLS)
Debtor.	**Re: D.I. 999**

FORGEN, LLC'S RESERVATION OF RIGHTS AND LIMITED OBJECTION TO THAT CERTAIN NOTICE OF DE MINIMIS ASSET SALE

Forgen, LLC ("Forgen"), a creditor, party-in-interest, and lienholder in the above-captioned case (the "Chapter 11 Case") of the above-captioned debtor (the "Debtor"), by and through its undersigned counsel, files this reservation of rights and limited objection ("Objection"), in accordance with the De Minimis Asset Sale Procedures, to the *Notice of De Minimis Asset Sale* [D.I. 999] (the "June 19 Notice") and the allocation of proceeds from the sale of "Bus Bar in Magnesium Building One" (the "Bus Bar") which, under applicable law, may be a fixture subject to Forgen's priority interest.

PRELIMINARY STATEMENT

1. As stated more fully in prior filings,[2] Forgen holds a priority construction lien (the "Construction Lien") that attaches to the real property, machinery and fixtures located at

[1] The last four digits of the Debtor's federal tax identification number are 5446. The Debtor's address is 238 N. 2200 W, Salt Lake City, Utah, 84116.

[2] The prior filings include (i) *Forgen LLC's Limited Objection and Reservation of Rights to Debtor's Notice of Potential Contract Assumption and Assignment* [D.I. 450] (the "Cure Objection"); (ii) *Forgen, LLC's Omnibus Objection to the Debtor's Motion for Interim and Final Orders (I) Authorizing the Debtor to (A) Obtain Postpetition Financing, (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims and (C) Utilize Cash Collateral; (II) Granting Adequate Protection; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief, and to the Debtor's Motion for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtor's Assets, (B) Approving the Form and Manner of Notice Thereof, (C) Scheduling an Auction and Sale Hearing, (D) Approving Procedures for the Assumption and Assignment of Contracts and (A) Approving the Stalking Horse APA Between the Debtor and the Stalking Horse Bidder or the Successful Bidder of Substantially All of the Debtor's Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (C) Authorizing the Assumption and Assignment of Contracts and Leases, and (D) Granting Related Relief* [D.I.

the Debtor's former facility in Rowley, Utah, which is now owned by the Utah Division of Forestry, Fire & State Lands ("FFSL"). Forgen has previously negotiated for certain protections of its rights in the *Order (I) Authorizing the Debtor to Obtain Postpetition Financing, (II) Authorizing the Lender to Make DIP Liquidation Advances to the Debtor to Liquidate the Lender's Pre-Petition Collateral; (III) Authorize the Debtor to Repay the DIP Liquidation Advances from the Net Cash Proceeds of the Sale of the Prepetition Collateral; (IV) Modifying the Automatic Stay and (V) Granting Related Relief* [D.I. 751] (the "Liquidation Financing Order") and the *Order Authorizing and Approving Procedures for the Sale, Transfer, or Abandonment of De Minimis Assets* [D.I. 793] (the "De Minimis Asset Sale Order").

2. Paragraph 3 of the De Minimis Asset Sale Order established procedures for the sale of De Minimis Assets (as defined therein, the "De Minimis Asset Sale Procedures"), pursuant to which Forgen, as a De Minimis Asset Notice Party, is entitled to noticing and objection rights, certain of which are specific to the sale of fixtures.

3. Based on the limited available information provided in the June 19 Notice, as detailed below, Forgen has reason to believe that the Bus Bar listed in the June 19 Notice is a fixture under applicable law, which, pursuant to the De Minimis Asset Sale Procedures, would make the proceeds of the sale of the Bus Bar subject to Forgen's Construction Lien. Until a

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120] (the "Sale Objection"); (iii) *Forgen, LLC's Reservation of Rights to Debtor's Successful Bidder and Next-Highest Bidder* [D.I. 525] "Bid Objection"); (iv) *Forgen, LLC's Omnibus Limited Objection to the Debtor's (I) Application for Appointment of Focus Management Group USA Inc. as Liquidation Project Manager Nunc Pro Tunc to February 11, 2026; and (II) Motion for Entry of an Order (A) Enforcing Sale Order, (B) Directing Turnover of Estate Assets, (C) Enforcing the Automatic Stay, and (D) Granting Related Relief* [D.I. 676] (the "Omnibus Objection"); (v) and *Forgen, LLC's Objection to the Debtor's Motion for an Order (I) Authorizing the Debtor to Obtain Postpetition Financing, (II) Authorizing the Lender to Make DIP Liquidation Advances to the Debtor to Liquidate the Lender's Prepetition Collateral; (III) Authorize the Debtor to Repay the DIP Liquidation Advances from the Net Cash Proceeds of the Sale of the Prepetition Collateral; (IV) Modifying the Automatic Stay and (V) Granting Related Relief* [D.I. 691] (the "Liquidation Objection"), which are incorporated herein by reference. Capitalized terms not defined herein have the meanings ascribed to them in the De Minimis Asset Sale Order, Cure Objection, Sale Objection, Bid Objection, Omnibus Objection, or the Liquidation Objection, respectively.

definitive answer on the status of the Bus Bar is established, Forgen brings this Objection to protect its interests.

RELEVANT BACKGROUND

4. On September 10, 2025, (the "Petition Date"), the Debtor commenced the Chapter 11 Case by filing 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 this Court.

5. Pursuant to its contract with the Debtor, Forgen is owed no less than $7,142,376.74, plus attorneys' fees and costs, in connection with work it performed at the Subject Property.

6. On March 26, 2026, the Court entered the Liquidation Financing Order. Pursuant to paragraph 10 of the Liquidation Financing Order, the Debtor obtained additional secured financing from Wells Fargo to liquidate certain of its assets without priming Forgen's Construction Lien on certain fixtures and equipment, and the Debtor and Wells Fargo agreed to provide Forgen with reports on the sale of any such property:

> **Forgen. The security interests and liens provided for in the Order shall not prime any Permitted Lien held by Forgen secured by real property and fixtures in Tooele County**. Notwithstanding any other provision of this Order or the DIP Financing Agreements or any other agreement, any removal of fixtures from the property or sale of fixtures (including equipment that constitutes fixtures per applicable law) ("Sales of Fixtures"), as well as the Debtor's disposition of proceeds from any Sale of Fixtures, shall be subject to further approval by the Court (which approval may be pursuant to any sale procedures for de minimis assets as may be approved by the Court). **With respect to any Sales of Fixtures and related disposition of proceeds from Sales of Fixtures, the rights of Forgen and all other parties are fully preserved**. For the avoidance of doubt, the following assets do not constitute fixtures: (a) lithium carbonate; (b) magnesium metal; (c) liquid brine; (d) sodium chloride (i.e., rock salt or halite); (e) scrap metals which are not affixed to real property; (f) equipment listed in lines 4-9, 13-15 and 17-18 of Exhibit A to the Declaration of Ron Thayer filed at D.I. 653; and (g) other goods or assets not affixed to real property. **The Debtor shall provide Forgen with any reporting provided**

> **to Lender regarding the sale of personal property of the Debtor, including any equipment or fixtures.**

(emphasis added).

7. On April 10, 2026, the Court entered the De Minimis Assets Sale Order. Paragraph 3(iv) of the De Minimis Asset Sale Order includes Forgen as one of the De Minimis Asset Notice Parties, who are entitled to receive notice of any sale of De Minimis Assets with an aggregate selling price equal to or less than $1,500,000. Paragraph 3(v) of the De Minimis Asset Sale Order establishes the requirements for the contents of the June 19 Notice:

> The contents of the De Minimis Asset Sale Notice shall consist of (i) **reasonably specific identification of the proposed De Minimis Assets being sold or transferred with sufficient information to permit a determination of whether the De Minimis Asset is a fixture;** (ii) identification of the proposed De Minimis Asset Purchaser and their relationship (if any) to the Debtor; (iii) the proposed selling price; and (iv) the material terms of the sale or transfer agreement, including, but not limited to, any payments to be made by the Debtor on account of commissions or other fees to agents, brokers, auctioneers, and liquidators.

(emphasis added).

8. Furthermore, paragraph 3(vii) of the De Minimis Asset Sale Order requires that a party-in-interest asserting that a De Minimis Asset is a fixture "shall file an objection setting forth its position as to why such De Minimis Asset constitutes a fixture."

9. Pursuant to paragraph 4 of the De Minimis Asset Sale Order, if a fixture is sold pursuant to the De Minimis Asset Sale Procedures, the proceeds will be subject to existing liens:

> Pursuant to section 363(f) of the Bankruptcy Code, any property sold pursuant to the De Minimis Asset Sale Procedures shall be sold free and clear of any and all liens, mortgages, security interests, conditional sales or title retention agreements, pledges, hypothecations, consensual liens, judicial liens, statutory liens, judgments, encumbrances, or claims of any kind or nature (including, without limitation, any and all "claims" as defined in section 101(5) of the Bankruptcy Code) (collectively, "Liens and Claims"), provided that: (a) with respect to the sale of any asset that does not constitute a fixture, Wells Fargo's Liens shall attach to the proceeds of the sale, and such sale proceeds shall be paid to Wells Fargo on account of

> its security interest as soon as practicable after the Receipt Date, and in any event, no later than three (3) business days after the Receipt Date; and **(b) with respect to any sale of fixtures, Liens (if any) shall attach to the proceeds of the sale with the same validity, extent, and priority as had attached to fixtures immediately prior to such sale or transfer, and with the disposition of such proceeds from the sale of fixtures to be subject to further order of the Court.**

(emphasis added).

10. On May 15, 2026, FFSL filed *Utah Division of Forestry, Fire and State Lands' Limited Objection to the Debtor's Motion for Entry of an Order Authorizing the Debtor to (I) Enter Into and Perform its Obligations Under an Asset Monetization Agreement in Connection With the Sale of the Debtor's Remaining M&E and Scrap Assets Free and Clear of All Liens, Claims, and Encumbrances of Any Nature; (II) Retain the Services of SB360 Capital Partners, LLC as its Liquidation Consultants in Connection Therewith; and (III) Granting Related Relief* [D.I. 883] (the "FFSL Objection"). Paragraphs 13, 14, 15, and 16 of the FFSL Objection state that bus bar constituting fixtures is "incorporated and affixed" in "approximately four buildings on the premises." Attached as Exhibit B to the FFSL Objection are multiple pictures of the referenced bus bar installed in buildings (the "Bus Bar Pictures").[3] The Bus Bar Pictures are also attached as **Exhibit A**. Based on the vague description in the June 19 Notice, Forgen cannot determine whether the bus bar sought to be sold in the June 19 Notice is a fixture.

11. Prior to the filing of this Objection, Forgen sought more information from counsel to the Debtor over whether the bus bar would constitute a fixture under Utah law, but Debtor's counsel did not provide any additional information leaving Forgen with no choice but to file this Objection.

[3] The FFSL Objection does categorize certain bus bar as "easily movable and not affixed to a building." Forgen understands that this category of bus bar was the "Bus Bar in Outdoor Stores Area" sold in the Debtor's prior *Notice of De Minimis Asset Sale* [D.I. 947]. Forgen did not object to that sale, as it was understood such bus bar was unlikely a fixture.

OBJECTION

12. Forgen has two objections to the June 19 Notice: first, contrary to the De Minimis Asset Sale Procedures the June 19 Notice fails to provide sufficient information to determine whether the Bus Bar is a fixture. Second, if the Bus Bar is installed, affixed, or incorporated into "Magnesium Building One" in a manner like that shown in the Bus Bar Pictures, then it is a fixture, and the proceeds of the sale of the Bus Bar are subject to Forgen's Construction Lien.[4]

I. The June 19 Notice does not comply with the De Minimis Asset Sale Procedures.

13. The De Minimis Asset Sale Procedures require that a notice contain a "reasonably specific identification of the proposed De Minimis Assets being sold or transferred with sufficient information to permit a determination of whether the De Minimis Asset is a fixture." As discussed below, whether the Bus Bar is installed, affixed, or incorporated into a building is crucial to determining if the Bus Bar is a fixture. The description given in the June 19 Notice, "Bus Bar in Magnesium One Building[,]" is insufficient to make this determination and Forgen sought further information from Debtor's counsel to avoid having to file this Objection, but Debtor's counsel failed to provide it.

II. If the Bus Bar is as depicted in the Bus Bar Pictures, it is a Fixture.

14. As an initial point, "bus bar," "bus ducting," or "bus ducts" generally refers to a "permanently installed electrical system" consisting of long, linear pieces of metal conduit secured to a building with bolts and screws. *See generally, Fernwood Realty, LLC v. AeroCision,*

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[4] Forgen understands that the Bus Bar is P1020 aluminum, which, if sold in accordance with the information provided in the June 19 Notice, would result in proceeds of approximately $1.05 to $1.2 million dollars.

LLC, 166 Conn. App. 345, 354, n.16 (2016); *In re Motors Liquidation Co.*, 576 B.R. 325, 376 (Bankr. S.D.N.Y. 2017); *GTR Land Co. v. Wilson Cabinet Co.*, No. 386, 1988 WL 142305, at *6 (Ohio Ct. App. Dec. 30, 1988); *Marion T LLC v. Formall Inc.*, No. 1:12-CV-00456-SLC, 2018 WL 1531786, at *12 (N.D. Ind. Mar. 29, 2018); *Barnes v. Westinghouse Elec. Corp.*, 962 F.2d 513, 514 (5th Cir. 1992).

15. Under the Utah Commercial Code: "'Fixtures' means goods that have become so related to particular real property that an interest in them arises under real property law." Utah Code Ann. § 70A-9a-102 (West).

16. Forgen, has not identified case law expressly determining where bus bar or bust ducting constitute fixtures under Utah law. However, case law from other jurisdictions generally hold that such systems are fixtures. *See e.g.*, *Fernwood Realty*, 166 Conn. App. at 361, n.16 (affirming lower court's decision that bus ducts were fixtures); *Darcey v. Atlas Hobbing & Tool Co*., No. CV0175889S, 2002 WL 31002123, at *3 (Conn. Super. Ct. Aug. 1, 2002) (finding that a bus duct was a fixture); *Motors Liquidation Co.*, 576 B.R. 325, 376, 417 (finding that an installed bus duct system over 10,000 feet long and attached to the building's roof trusses was a fixture); *Gen. Motors Corp. v. City of Linden*, 20 N.J. Tax 242, 303 (2002) (finding that an electrical distribution system with rigid conduit, including bus ducts, that could not be easily removed, was intended to be permanently affixed and was taxable as part of the real property).

17. Although there is not Utah precedent specifically on the matter of whether bus bar is a fixture, the Utah Supreme Court has adopted a three-part common law test to determine whether an item is a fixture, consisting of the following considerations:

a. manner in which the item is attached or annexed to realty;

b. whether the item is adaptable to the particular use of the realty; and

c. the intention of the annexor to make an item a permanent part of the realty.

See State By & Through Rd. Comm'n v. Papanikolas, 19 Utah 2d 153, 155 (1967) ("The machines and the building were designed for the sole purpose for which they were used. The machines were all bolted to the floor or the walls of the building and were integrated with each other in a particular use and were intended to be a part and parcel of the plant. The trial judge found that they all were fixtures, and we agree with that finding."); *see also Heiselt Const. Co. v. Garff*, 119 Utah 164, 167 (1950) ("Photographs of these items were in evidence, and there was testimony that they were in fact a part of the building and annexed to the realty. The building housing the boiler was built around the boiler, after it had been installed. The boiler was bulky and weighed some 3,000 pounds. There was no way of removing it except by tearing out part of a wall. The compressor was connected to the boiler and also bolted to a cement block set in the floor. The overhead crane runs the length of the shop, and appears as an integral part of the building itself. Each item is particularly adapted to the use for which the entire building was intended and used. Removal of any or all of these items would injure what remained . . . .There is no error in the court's findings that these items were fixtures.").

18. Much like the fixtures identified in *State By & Through*, and *Heiselt Const.*, bus bar attached to the Debtor's former buildings is related to the real property such that it should be considered a fixture under Utah Law. Paragraphs 14, 15, and 16 of the FFSL Objection describe the bus bar installed in the buildings as "four massive U shaped pieces of metal, approximately ninety feet long and twenty feet high[,]" and that "[t]here are hundreds of feet of bus bars built into

the buildings. The removal of the bus bars would render the buildings useless as it relates to their intended purpose."

19. Based on the sparse information available to Forgen, if the Bus Bar identified in the June 19 Notice is the same bus bar identified in the Bus Bar Pictures and FFSL Objection or, even if not the same bus bar, is affixed to the building or real property, it is a fixture under Utah Law and subject to Forgen's liens

RESERVATION OF RIGHTS

20. Although the June 19 Notice was required to do so, Forgen has not been provided with sufficient information to fully determine whether the Bus Bar identified in the June 19 Notice is a fixture. Due to the nature of the De Minimis Asset Sale Procedures, Forgen has not had time to conduct proper discovery, and instead must rely on the information available in the FFSL Objection for the purposes of this Objection.

21. Forgen reserves any and all rights under law and equity related to the June 19 Notice, the Bus Bar, the De Minimis Asset Sale Order, the Construction Lien, the Rowley, Utah, property, and any agreement between the Debtor and any party concerning property or assets subject to Forgen's Construction Lien. Forgen further reserves its rights to raise objections, supplement, or modify this Objection as circumstances may require. Nothing in this Objection constitutes a waiver by Forgen of its rights under the Bankruptcy Code and Rules, or applicable non-bankruptcy law, or any of Forgen's procedural, substantive, or other rights, privileges, and remedies in connection with this chapter 11 case and any associated proceedings, and any other court with competent jurisdiction, all of which are reserved and preserved.

Dated: June 26, 2026
Wilmington, Delaware

/s/ Casey B. Sawyer

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EXHIBIT A


NOTICE
ASSUME THAT
ALL CELL TOOLS
ARE COLD


ABB


278-14
Genie
Westinghouse

CERTIFICATE OF SERVICE

I, Casey B. Sawyer, certify that I am not less than 18 years of age, and that service of the foregoing was caused to be made on June 26, 2026, via CM/ECF upon those parties registered to receive such electronic notifications.

Dated: June 26, 2026
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Casey B. Sawyer
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