

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

CONN'S, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 24-33357 (ARP)

(Jointly Administered)

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS FOR ENTRY OF AN ORDER GRANTING STANDING
AND AUTHORIZING THE PROSECUTION OF CERTAIN
CHALLENGE CLAIMS ON BEHALF OF THE BANKRUPTCY ESTATES**

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

The Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby moves this Court for entry of an order authorizing the Committee to prosecute certain lien challenge claims against the Prepetition Secured Parties (as defined below) on behalf of the bankruptcy estates and granting related relief (this “Motion”). In support of this Motion, the Committee respectfully states as follows:

¹ The Debtors in this chapter 11 case, together with the last four digits of the Debtors’ federal tax identification number, are: Conn’s, Inc. (2840), Conn Appliances, Inc. (0706), CAI Holding, LLC (2675), Conn Lending, LLC (9857), Conn Credit I, LP (0545), Conn Credit Corporation, Inc. (9273), CAI Credit Insurance Agency, Inc. (5846), New RTO, LLC (6400), W.S. Badcock LLC (2010), W.S. Badcock Credit LLC (5990), and W.S. Badcock Credit I LLC (6422). The Debtors’ service address is 2445 Technology Forest Blvd., Suite 800, The Woodlands, TX 77381.

PRELIMINARY STATEMENT

1. The Committee seeks standing to pursue, prosecute, and resolve, on behalf of the Debtors' estates, the following claims set forth in the complaint attached hereto as **Exhibit 1** (as it may be amended) (the "Proposed Complaint"): (i) declaratory judgment that certain property of the Debtors is not subject to the liens and security interests granted to the Prepetition Secured Parties (as defined below); (ii) avoidance of certain unperfected liens and security interests asserted by the Prepetition Secured Parties against certain property of the Debtors; and (iii) an order reversing (or otherwise reserving for further investigation) certain of the other acknowledgements and agreements of the Debtors set forth in the Final DIP Order (as defined below).²

2. This Motion is filed consistent with paragraph 21 of the Final DIP Order.³ The filing of this Motion tolls the Challenge Period pending a resolution hereof under paragraph 21 of the Final DIP Order. The Proposed Complaint also constitutes an objection, pursuant to section 502 of title 11 of the U.S. Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the liens and claims asserted by the Prepetition Secured Parties against the Debtors to the extent set forth herein.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Final DIP Order.

³ The Committee is continuing to investigate potential additional challenges with respect to the Prepetition 2L Secured Parties, and has entered into that certain *Stipulation Extending Challenge Period* [Docket No. 778], which continues the Challenge Period with respect to the Prepetition 2L Parties through and including October 14, 2024.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action under 28 U.S.C. § 1334. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this adversary proceeding is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief requested herein are sections 105(a), 1103(c), and 1109(b) of the Bankruptcy Code and Bankruptcy Rules 3007 and 7001. This Motion is also filed pursuant to paragraph 21 of the Final DIP Order.

BACKGROUND

A. General Background

4. On July 23, 2024 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (this “Court”), thereby commencing these chapter 11 cases (the “Cases”). The Debtors continue in possession of their property and are operating and managing their businesses as debtors in possession pursuant to the provisions of 11 U.S.C. §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

5. On August 5, 2024, the Office of the United States Trustee appointed the Committee pursuant to section 1102 of the Bankruptcy Code.

B. The Debtors’ Prepetition Relationship with the Prepetition Secured Parties

1. The Prepetition Facilities

6. ***Prepetition ABL Facility.*** Pursuant to that certain *Fifth Amended and Restated Loan and Security Agreement*, dated as of March 29, 2021 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the “Prepetition ABL Credit Agreement” and, collectively with the other Loan

Documents (as defined in the Prepetition ABL Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the Petition Date, the “Prepetition ABL Credit Documents” and the credit facilities evidenced thereby, collectively the “Prepetition ABL Facility”) among (a) the borrowers thereunder (the “Prepetition ABL Borrowers”), (b) the guarantors party thereto (the “Prepetition ABL Guarantors”), (c) JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (solely in such capacity, the “Prepetition ABL Agent”), and (d) the lenders from time to time party thereto (the “Prepetition ABL Lenders,” and collectively with the Prepetition ABL Agent, and all other holders of Prepetition ABL Debt (as defined below), the “Prepetition ABL Secured Parties” and, together with the Prepetition 2L Secured Parties and Prepetition 3L Secured Parties (each as defined herein), the “Prepetition Secured Parties”), the Prepetition ABL Lenders provided revolving credit and other financial accommodations to the Prepetition ABL Borrowers pursuant to the Prepetition ABL Credit Documents, and the Prepetition ABL Guarantors guaranteed on a joint and several basis the “Obligations” (as defined in the Prepetition ABL Credit Agreement, the “Prepetition ABL Obligations”) under the Prepetition ABL Credit Agreement and the other Prepetition ABL Credit Documents.

7. ***Prepetition 2L Facility.*** Pursuant to that certain *Term Loan and Security Agreement*, dated as of December 18, 2023 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the “Prepetition 2L Credit Agreement” and, collectively with the other Loan Documents (as defined in the Prepetition 2L Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated,

supplemented, waived or otherwise modified prior to the Petition Date, the “Prepetition 2L Credit Documents” and the credit facilities evidenced thereby, collectively the “Prepetition 2L Facility”) among (a) the borrowers thereunder (the “Prepetition 2L Borrowers”), (b) the guarantors party thereto (the “Prepetition 2L Guarantors”), (c) BRF FINANCE CO., LLC, as administrative agent and collateral agent (solely in such capacity, the “Prepetition 2L Agent”), and (d) the lenders from time to time party thereto (the “Prepetition 2L Lenders,” and collectively with the Prepetition 2L Agent, and all other holders of Prepetition 2L Debt (as defined below), the “Prepetition 2L Secured Parties”), the Prepetition 2L Lenders provided term loans and other financial accommodations to the Prepetition 2L Borrowers pursuant to the Prepetition 2L Credit Documents, and the Prepetition 2L Guarantors guaranteed on a joint and several basis the “Obligations” (as defined in the Prepetition 2L Credit Agreement, the “Prepetition 2L Obligations”) under the Prepetition 2L Credit Agreement and the other Prepetition ABL Credit Documents.

8. ***Prepetition 3L Facility.*** Pursuant to that certain *Delayed Draw Term Loan and Security Agreement*, dated as of July 31, 2023 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the “Prepetition 3L Credit Agreement” and, collectively with the other Loan Documents (as defined in the Prepetition 3L Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the Petition Date, the “Prepetition 3L Credit Documents” and the credit facilities evidenced thereby, collectively the “Prepetition 3L Facility”) among (a) the borrowers thereunder (the “Prepetition 3L Borrowers”), (b) the guarantors party thereto (the “Prepetition 3L Guarantors”), (c) Stephens Investments Holdings

LLC, as administrative agent and collateral agent (solely in such capacity, the “Prepetition 3L Agent” and, collectively with the Prepetition ABL Agent and Prepetition 2L Agent, the “Prepetition Agents”), and (d) the lenders from time to time party thereto (the “Prepetition 3L Lenders,” and collectively with the Prepetition 3L Agent, and all other holders of Prepetition 3L Debt (as defined below), the “Prepetition 3L Secured Parties”), the Prepetition 3L Lenders provided a delayed draw term loan credit facility and other financial accommodations to the Prepetition 3L Borrowers pursuant to the Prepetition 3L Credit Documents, and the Prepetition 3L Guarantors guaranteed on a joint and several basis the “Obligations” (as defined in the Prepetition 3L Credit Agreement, the “Prepetition 3L Obligations” and, collectively with the Prepetition ABL Obligations and Prepetition 2L Obligations, the “Prepetition Obligations”) under the Prepetition 3L Credit Agreement and the other Prepetition 3L Credit Documents.

2. **Intercreditor Agreements**

9. ***Prepetition ABL Intercreditor Agreement.*** Pursuant to and to the extent set forth in that certain *Intercreditor Agreement*, dated as of December 18, 2023 (the “Prepetition ABL Intercreditor Agreement”), by and among the Prepetition ABL Agent, the Prepetition 2L Agent, the Company, each Borrower, and each of the Company’s Subsidiaries which are signatories thereto (as referred to therein), as from time to time party thereto, the parties thereto agreed, among other things, that the Prepetition ABL Liens (as defined herein) on the Prepetition Collateral are senior to the Prepetition 2L Liens (as defined herein) on the same collateral.

10. ***Prepetition 3L Intercreditor Agreement.*** Pursuant to and to the extent set forth in that certain *Amended and Restated Third Lien Intercreditor Agreement*, dated as of December 18, 2023 (the “Prepetition 3L Intercreditor Agreement” and together with Prepetition ABL Credit Documents, the Prepetition 2L Credit Documents, the Prepetition 3L Credit

Documents, and the Prepetition ABL Intercreditor Agreement, the “Prepetition Credit Documents”), by and among the Prepetition ABL Agent, the Prepetition 2L Agent, the Prepetition 3L Agent, the Company, each Borrower, and each of the Parent’s Subsidiaries which are signatories thereto (as referred to therein), as from time to time party thereto, the parties thereto agreed, among other things: (a) that the Prepetition ABL Liens (as defined herein) on the Prepetition Collateral are senior to the Prepetition 2L Liens (as defined herein) on the Prepetition Collateral, and (b) that the Prepetition 2L Liens on the Prepetition Collateral are senior to the Prepetition 3L Liens (as defined herein) on the Prepetition Collateral.

3. Stipulations

11. ***Stipulations Regarding Prepetition ABL Debt.*** The Debtors have stipulated that, the Prepetition ABL Borrowers and the Prepetition ABL Guarantors were, as of the Petition Date, justly and lawfully indebted and liable to the Prepetition ABL Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for not less than **\$386,756,411.99** in outstanding principal amount of Revolver Loans (as defined in the Prepetition ABL Credit Agreement, the “Prepetition ABL Loans”) plus interest, premiums and fees thereon, plus **\$27,787,684.36** of the aggregate stated principal amount available for drawing under all outstanding letters of credit and all unpaid reimbursement obligations with respect to drawn letters of credit (the “Prepetition Letters of Credit”), which loans and outstanding letters of credit were made or issued by the Prepetition ABL Lenders pursuant to, and in accordance with the terms of, the Prepetition ABL Credit Documents, plus, to the extent not otherwise included, all other Obligations (as defined in the Prepetition ABL Credit Agreement), and any accrued and unpaid interest thereon and fees, expenses (including any attorneys’, accountants’, appraisers’, and financial advisors’ fees and expenses, in each case, that are chargeable or

reimbursable under the Prepetition ABL Credit Documents), costs, charges, indemnities, and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as provided in the Prepetition ABL Credit Documents (collectively, the “Prepetition ABL Debt”).

12. The Debtors have further stipulated that, as of the Petition Date, pursuant to and in connection with the Prepetition ABL Credit Documents, the Company, the Prepetition ABL Borrowers, and the other Prepetition ABL Guarantors granted to the Prepetition ABL Agent, for the benefit of itself and the other Prepetition ABL Secured Parties, a senior, first priority, security interest in and continuing lien on (the “Prepetition ABL Liens”) substantially all of their assets and property, including a valid, binding, properly perfected, enforceable, first priority security interest in and continuing lien on the Collateral (as defined in the Prepetition ABL Credit Agreement) (which, for the avoidance of doubt, includes but is not limited to (a) certain Cash Collateral and (b) certain Real Estate encumbered pursuant to that certain Amendment No. 4 to Fifth Amended and Restated Loan and Security Agreement dated as of July 8, 2024 between the Borrowers party thereto, the Guarantors party thereto, the Prepetition ABL Agent and the Prepetition ABL Lenders party thereto, which security interest is held by the Prepetition ABL Agent for the benefit of the Prepetition Secured Parties pursuant and subject to the priorities set forth in the Intercreditor Agreements) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the “Prepetition Collateral”), which Prepetition ABL Liens are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset, crossclaim, defense or Claim under the Bankruptcy Code or applicable non-

bankruptcy law, subject and subordinate only to certain other liens permitted by the Prepetition ABL Credit Documents, solely to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition ABL Liens as of the Petition Date (the “Prepetition ABL Permitted Senior Liens”).

13. ***Stipulations Regarding Prepetition 2L Debt.*** The Debtors have stipulated that the Prepetition 2L Borrowers and the Prepetition 2L Guarantors were, as of the Petition Date, justly and lawfully indebted and liable to the Prepetition 2L Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for not less than **\$93,000,000** in outstanding principal amount of Term Loans (as defined in the Prepetition 2L Credit Agreement) plus interest, premiums and fees thereon, which loans were made or issued by the Prepetition 2L Lenders pursuant to, and in accordance with the terms of, the Prepetition 2L Credit Documents, plus, to the extent not otherwise included, all other Obligations (as defined in the Prepetition 2L Credit Agreement), and any accrued and unpaid interest thereon and fees, expenses (including any attorneys’, accountants’, appraisers’, and financial advisors’ fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition 2L Credit Documents), costs, charges, indemnities, and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as provided in the Prepetition 2L Credit Documents (collectively, the “Prepetition 2L Debt”) which Prepetition 2L Debt has been guaranteed on a joint and several basis by each of the Prepetition 2L Guarantors.

14. The Debtors have further stipulated that, as of the Petition Date, pursuant to and in connection with the Prepetition 2L Credit Documents, the Company, the Prepetition 2L Borrowers, and the Prepetition 2L Guarantors granted to the Prepetition 2L Agent, for the benefit of itself and the other Prepetition 2L Secured Parties, a junior, second priority, security interest in

and continuing lien on (the “Prepetition 2L Liens”) the Prepetition Collateral, which Prepetition 2L Liens are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset, crossclaim, defense or Claim under the Bankruptcy Code or applicable non-bankruptcy law, subject and subordinate only to certain other liens permitted by the Prepetition 2L Credit Documents, solely to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition 2L Liens as of the Petition Date (the “Prepetition 2L Permitted Senior Liens”).

15. ***Stipulations Regarding Prepetition 3L Debt.*** The Debtors have stipulated that, as of the Petition Date, the Prepetition 3L Borrowers and the Prepetition 3L Guarantors were justly and lawfully indebted and liable to the Prepetition 3L Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for not less than **\$50,000,000** in outstanding principal amount of Delayed Draw Term Loans (as defined in the Prepetition 3L Credit Agreement) plus interest, premiums and fees thereon, which loans were made or issued by the Prepetition 3L Lenders pursuant to, and in accordance with the terms of, the Prepetition 3L Credit Documents, plus, to the extent not otherwise included, all other Obligations (as defined in the Prepetition 3L Credit Agreement), and any accrued and unpaid interest thereon and fees, expenses (including any attorneys’, accountants’, appraisers’, and financial advisors’ fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition 3L Credit Documents), costs, charges, indemnities, and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as provided in the Prepetition 3L Credit Documents (collectively, the “Prepetition 3L Debt” and, together with the

Prepetition ABL Debt and the Prepetition 2L Debt, the “Prepetition Secured Debt”) which Prepetition 3L Debt has been guaranteed on a joint and several basis by each of the Prepetition 3L Guarantors.

16. The Debtors have further stipulated that, as of the Petition Date, pursuant to and in connection with the Prepetition 3L Credit Documents, the Company, the Prepetition 3L Borrowers, and the Prepetition 3L Guarantors granted to the Prepetition 3L Agent, for the benefit of itself and the other Prepetition 3L Secured Parties, a junior, third priority, security interest in and continuing lien (the “Prepetition 3L Liens”) on the Prepetition Collateral, which Prepetition 3L Liens are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset, crossclaim, defense or Claim under the Bankruptcy Code or applicable non-bankruptcy law, subject and subordinate only to certain other liens permitted by the Prepetition 3L Credit Documents, solely to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition 3L Liens as of the Petition Date (the “Prepetition 3L Permitted Senior Liens” and, together with the Prepetition ABL Permitted Senior Liens and the Prepetition 2L Permitted Senior Liens, the “Prepetition Permitted Senior Liens”).

17. ***Stipulations Regarding All Prepetition Secured Parties.*** The Debtors have further stipulated that no claims or causes of action held by the Debtors or their estates exist against, or with respect to, the Prepetition Secured Parties and each of their respective Representatives (as defined herein) (in each case, in their capacity as such) under or relating to any agreements by and among the Debtors and any Prepetition Secured Party that is in existence as of the Petition Date.

C. The Final DIP Order, Challenge Deadline, and Unencumbered Assets

18. On September 4, 2024, the Court entered the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Provide Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [Docket No. 482] (the “Final DIP Order”). The Final DIP Order, among other things, set a Challenge Deadline of the later of (x) October 7, 2024, or (y) thirty days after the appointment of the Committee, by which the Committee could assert a Challenge with respect to the Debtors’ various stipulations, waivers, and admissions in favor of the Prepetition Secured Parties under the Final DIP Order.

19. Based on the Committee’s investigation to date, the Prepetition Collateral securing the Prepetition Obligations does not include, and/or the Prepetition Secured Parties do not have a perfected or otherwise enforceable security interest in, the following assets of the applicable Debtors⁴ or the proceeds thereof, as of the Petition Date: (a) any leased real estate or any fixtures located thereon; (b) any owned real estate or any fixtures located thereon that are not subject to valid, enforceable, non-avoidable and timely-filed mortgages or deeds of trust;⁵ (c) any money or currency, *provided that*, the Prepetition Collateral does include money or currency that constitutes the identifiable proceeds of other Prepetition Collateral; (d) any deposit accounts at any bank or financial institution that are not subject to a valid and enforceable control agreement in favor of the Prepetition Notes Secured Parties, *provided that*, the Prepetition Collateral does

⁴ Debtors W.S. Badcock Credit LLC and W.S. Badcock Credit I LLC are not obligors or pledgors with respect to the Prepetition Obligations.

⁵ Two (2) of the owned real estate properties of Debtor W.S. Badcock LLC are covered by mortgages filed by the Prepetition ABL Agent on July 17, 2024, within the 90 days prior to the Petition Date. Such mortgages are avoidable if not made contemporaneously in exchange for new value given to such Debtor.

include funds in deposit accounts that constitute the identifiable proceeds of other Prepetition Collateral; (e) any commercial tort claims; (f) any insurance policies relating to director & officer or management liability; (g) any liquor licenses or other governmental licenses or permits that cannot be pledged under applicable non-bankruptcy law or regulation; and (h) any Excluded Collateral (as defined in the Prepetition Credit Documents). The foregoing assets described in subparagraphs (a) through (h) are the “Unencumbered Assets.”

20. The Committee hereby asserts a Challenge as to those items identified as the Unencumbered Assets above. The Committee submits that there is no evidentiary basis for a finding that the Prepetition Secured Parties have a valid, perfected lien, claim, or interest in any of the Unencumbered Assets and any inconsistent finding should be stricken from the Final DIP Order.

D. Reserved Matters

21. In addition, the Committee reserves rights to contest the following matters (together, the “Reserved Matters”): (i) the allowance of any interest (or default rate interest) paid or accrued under the Prepetition Credit Documents; (ii) the accuracy of the calculation of the amount of any principal, interest, fees, costs or charges paid or accrued under the Prepetition Credit Documents; (iii) the reasonableness pursuant to section 506(b) of the Bankruptcy Code of the amounts of any fees, costs or charges to the extent provided for under the Prepetition Credit Documents, and (iv) any adequate protection or diminution claim that may be asserted by the Prepetition Secured Parties.

22. The Committee further submits that none of the Debtors’ various acknowledgments, waivers, and stipulations in the Final DIP Order at paragraph G should have any impact on any rights, claims, defenses, offsets, or causes of action that the Committee or any

of the Debtors' estates may have against the Prepetition Agents on behalf of the Prepetition Secured Parties with respect to the Reserved Matters or otherwise unrelated to the Prepetition Credit Documents and the obligations thereunder.

23. The Committee objects to the liens and claims asserted by the Prepetition Agents on behalf of the Prepetition Secured Parties to the extent inconsistent with the foregoing. The Committee therefore files this Motion, and seeks standing to file the Proposed Complaint (as it may be amended), in order to preserve its rights under the Final DIP Order.

RELIEF REQUESTED

15. By this Motion, pursuant to sections 105(a), 1103(c), and 1109 of the Bankruptcy Code, the Committee seeks entry of an order (attached hereto as **Exhibit 2**) authorizing it to prosecute the causes of action set forth in the Proposed Complaint and granting related relief. No prior request for the relief sought in this Motion has been made to this Court.

BASIS FOR RELIEF

A. Legal Standard to Establish Standing

16. The Bankruptcy Code provides that a committee may "perform such . . . services as are in the interest of those represented." 11 U.S.C. § 1103(c)(5). The Bankruptcy Code also allows a party in interest, including a creditors' committee, to be heard on any issue in a chapter 11 case. *See* 11 U.S.C. § 1109(b). Moreover, section 105(a) empowers the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. *See* 11 U.S.C. § 105(a).

17. The Fifth Circuit, in common with the majority of circuits reaching the issue, has held that derivative standing is available to a creditors' committee to pursue estate claims when it shows that the claims are colorable, the debtor has unjustifiably refused to pursue the claims, and the committee has received leave to sue from the bankruptcy court. *Louisiana*

World Exposition v. Federal Ins. Co. (In re Louisiana World Exposition, Inc.), 858 F. 2d 233, 247 (5th Cir. 1988) (dismissal of committee complaint against officers and directors reversed; recognizing standing of creditors' committee to pursue claims under sections 1103(c)(5), 1109(b), and applicable law); *see also Louisiana World Exposition, Inc. v. Federal Ins. Co. (In re Louisiana World Exposition, Inc.)*, 832 F. 2d 1391, 1397-98 (5th Cir. 1987) (creditors' committee may sue on behalf of trustee or debtor in possession under specified circumstances); *accord Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548 (3d Cir. 2003) (*en banc*) (derivative standing appropriate if the debtor unreasonably refuses to pursue a fraudulent transfer action).

18. As explained by the bankruptcy court in *Reed v. The Cadle Co. (In re Cooper)*, 405 B.R. 801 (Bankr. N.D. Tex. 2009), in a chapter 11 case, there is both a textual and equitable rationale for granting a creditor or committee standing to pursue claims that the debtor refuses to pursue. The textual bases for granting standing to a committee upon request include Bankruptcy Code sections 1103(c)(5) (powers and duties of committees), 1109(b) (right to be heard), and 1123(b)(3)(B) (chapter 11 plan may provide for the retention and enforcement of claims by a representative of the estate). *Id.* at 809. The equitable basis for granting standing to a committee derives from the fact that the debtor-in-possession often faces a conflict of interest with respect to the avoidance of liens or transfers that the debtor itself initiated. *Id.* (“[T]he metaphor of the ‘fox guarding the hen house’ is often apropos. *Louisiana World* is the leading case from the Fifth Circuit describing this situation and articulating when a creditors committee may be permitted standing to pursue estate causes of action.”).

19. While the Fifth Circuit has stated that there is no “formalistic checklist” for granting standing to a committee, courts generally require: (1) the proposed claim must be

colorable, (2) the debtor-in-possession has refused unjustifiably to pursue the claim, and (3) the committee has received leave to sue from the bankruptcy court. *Louisiana World Exposition*, 858 F. 2d at 247; *see also Official Employment-Related Issues Comm. v. Lavorato (In re Enron Corp.)*, 319 B.R. 128, 131-32 (Bankr. S.D. Tex. 2004) (citing recognized factors).

20. As set forth below, the Committee satisfies each of the foregoing elements.

B. The Proposed Claims Are Colorable

21. The Fifth Circuit does not specifically define the legal standard for a “colorable” claim sufficient to warrant derivative standing, but it is not a stringent standard. *See Louisiana World Exposition*, 858 F. 2d at 247n. 15 (“In short, the Committee demonstrated the existence of a potential cause of action.”); *In re Enron Corp.*, 319 B.R. at 132 (“The defendants received transfers within days of the Enron bankruptcy cases. That in and of itself makes the avoidance claims colorable.”).

22. Notwithstanding the Debtors’ acknowledgments, waivers, and stipulations in the Final DIP Order, the Committee has investigated and concluded that the Prepetition Collateral under the Prepetition Credit Agreements and the ancillary documents thereto does not include, and/or the Prepetition Agents on behalf of the Prepetition Secured Parties has failed to perfect its asserted liens, claims, and interests in, the Unencumbered Assets. As demonstrated by the Proposed Complaint, the Committee seeks declaratory relief regarding, and the avoidance of, the Prepetition Secured Parties’ asserted liens and security interests against the Unencumbered Assets. The Committee also seeks declaratory relief preserving rights as to certain Reserved Matters. The Committee believes that each of these claims is viable and would survive a motion to dismiss. These colorable claims are asserted after substantial time and resources have been devoted by the Committee and its professionals on due diligence.

C. The Debtors Unjustifiably Refuse to Pursue the Claims

23. The issue of whether the debtor “unjustifiably refused” to bring a lawsuit against its officers and directors was at issue in *Louisiana World Exposition*, 858 F. 2d at 248.

The Fifth Circuit explained:

A creditor’s interests in a Chapter 11 context are not protected where the debtor-in-possession fails to fulfill its obligation to collect property of the estate. If a valid – and potentially profitable – cause of action exists under state law which the debtor-in-possession may assert on behalf of the corporation, *all* creditors are harmed when the debtor-in-possession refuses to pursue it. The value of the estate is not maximized and the ultimate recovery of all creditors is diminished.

Id. at 249-50 (finding that debtor would not act to maximize value of the estate) and at 253 (where debtor-in-possession is unable or unwilling to fulfill its obligations and interests of an estate are impaired, refusal is unjustified).

24. Here, pursuant to the Final DIP Order, the Debtors stipulated that, among other matters, the Prepetition Agents on behalf of the Prepetition Secured Parties have liens on, or security interests in, some or all of the Unencumbered Assets. The Committee disputes these stipulations and should be permitted to assert a proper challenge with respect thereto because the Debtors are unable or unwilling to do so as discussed by *Louisiana World Exposition*. Moreover, the Final DIP Order specifically contemplates that an objection to the liens and claims of the Prepetition Agents on behalf of the Prepetition Secured Parties may be asserted prior to the Challenge Deadline. The Committee is therefore fulfilling its statutory duties consistent with the Bankruptcy Code and the Final DIP Order by investigating and pursuing the declaratory relief and avoidance claims encompassed in the Proposed Complaint.

25. In *Louisiana World Exposition*, the Fifth Circuit observed that whether a debtor's refusal to pursue a cause of action is "unjustified" effectively requires a cost-benefit analysis. Thus, the court stated:

It is clear from reviewing our decisions in *Coral Petroleum* and *Fuel Oil Supply* that in determining whether a debtor-in-possession's refusal was unjustified, we must look to whether the interests of creditors were left unprotected as a result. See *Coral Petroleum*, 797 F.2d at 1363; *Fuel Oil Supply*, 762 F.2d at 1287. As the interests of creditors are imperiled where valid and profitable state law causes of action are neglected by the debtor-in-possession, **the unjustified refusal calculus will generally amount to little more than a cost-benefit analysis.**

In re Louisiana World Exposition, 858 F. 2d at often 253 n. 20 (emphasis added).

26. The Committee proposes declaratory relief and avoidance claims that preserve substantial assets for the benefit of the estates. Derivative standing is warranted because the Debtors have relinquished their ability to assert the claims proposed herein, leaving the interests of creditors unprotected.

27. The potential of preserving the Unencumbered Assets for the benefit of unsecured creditors outweighs any possible prejudice or delay to the Prepetition Agents. Accordingly, the Committee's proposed action satisfies the Fifth Circuit's unjustified refusal calculus and the Committee should be granted derivative standing.

D. The Committee Seeks Court Authority for Derivative Standing

28. Under *Louisiana World Exposition*, derivative standing is conditioned upon the bankruptcy court's permission based on its assessment of the debtor's refusal or unwillingness to pursue colorable claims and consistent with Bankruptcy Code sections 1105(c)(5) and 1103(b). *In re Louisiana World Exposition*, 858 F. 2d at 247.

29. The Committee brings this Motion to request permission from the Court to pursue colorable claims for the benefit of the estates.

CONCLUSION

30. Based upon the foregoing, the Committee should be granted standing to file and prosecute the claims set forth in the Proposed Complaint.

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WHEREFORE, the Committee respectfully requests that this Court: (i) enter an order authorizing the Committee to prosecute the causes of action set forth in the Proposed Complaint; and (ii) grant such other and further relief to the Committee as the Court may deem proper.

Dated: October 7, 2024
Houston, Texas

Respectfully submitted,

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Theodore S. Heckel

Michael D. Warner (TX Bar No. 00792304)
Maxim B. Litvak (TX Bar No. 24002482)
Theodore S. Heckel (TX Bar No. 24133488)
700 Louisiana Street, Suite 4500
Houston, TX 77002
Telephone: (713) 691-9385
Facsimile: (713) 691-9407
Email: mwarner@pszjlaw.com
theckel@pszjlaw.com

-and-

Bradford J. Sandler (admitted *pro hac vice*)
Robert J. Feinstein (admitted *pro hac vice*)
780 Third Avenue, 34th Floor
New York, NY 10017
Telephone: (212) 561-7700
Facsimile: (212) 561-7777
Email: bsandler@pszjlaw.com
rfeinstein@pszjlaw.com

*Counsel to the Official Committee
of Unsecured Creditors*

Certificate of Service

I hereby certify that on this 7th day of October, 2024, a true and correct copy of the above and foregoing was caused to be served on all parties that are registered to receive electronic transmission through this Court's CM/ECF filing system in this case.

/s/ Theodore S. Heckel

Theodore S. Heckel

Exhibit 1

Proposed Complaint

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

CONN'S, INC., *et al.*¹

Debtors.

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF CONN'S, INC., *et al.*,

Plaintiff,

-against-

JPMORGAN CHASE, N.A., as administrative and collateral agent on behalf of itself and the Prepetition ABL Lenders, BRF FINANCE CO., LLC, as administrative and collateral agent on behalf of itself and the Prepetition 2L Lenders, and STEPHENS INVESTMENTS HOLDINGS LLC, as administrative agent and collateral agent on behalf of itself and the Prepetition 3L Lenders,

Defendants.

Chapter 11

Case No. 24-33357 (ARP)

(Jointly Administered)

Adv. Pro.

**COMPLAINT FOR DECLARATORY JUDGMENT AND AVOIDANCE
WITH RESPECT TO CERTAIN REPRESENTATIONS, COVENANTS, AND
WAIVERS IN FAVOR OF THE PREPETITION SECURED PARTIES PURSUANT
TO FINAL ORDER AND OBJECTION TO THE LIENS AND CLAIMS ASSERTED
BY THE PREPETITION AGENTS AGAINST THE DEBTORS**

The Official Committee of Unsecured Creditors (the “Committee” or “Plaintiff”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), derivatively on behalf of the Debtors, hereby alleges upon knowledge of its own acts and upon information and belief as to all other matters, as follows:

¹ The Debtors in this chapter 11 case, together with the last four digits of the Debtors’ federal tax identification number, are: Conn’s, Inc. (2840), Conn Appliances, Inc. (0706), CAI Holding, LLC (2675), Conn Lending, LLC (9857), Conn Credit I, LP (0545), Conn Credit Corporation, Inc. (9273), CAI Credit Insurance Agency, Inc. (5846), New RTO, LLC (6400), W.S. Badcock LLC (2010), W.S. Badcock Credit LLC (5990), and W.S. Badcock Credit I LLC (6422). The Debtors’ service address is 2445 Technology Forest Blvd., Suite 800, The Woodlands, TX 77381.

NATURE OF THE ACTION

1. This adversary proceeding seeks (i) a declaratory judgment that certain property of the Debtors is not subject to the liens and security interests asserted by the Defendants on behalf of the respective Prepetition Secured Parties (defined below) as described in paragraph G of the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Provide Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [Docket No. 482] (the “Final DIP Order”);² (ii) a judgment avoiding any unperfected liens and security interests asserted by the Prepetition Secured Parties on certain property of the Debtors; and (iii) an order reversing certain other acknowledgements and agreements of the Debtors set forth in paragraph G of the Final Order and preserving certain of the Committee’s rights to dispute the amounts owed to the Prepetition Secured Parties.

2. This adversary proceeding is filed consistent with paragraph 50(a) of the Final Order and also constitutes an objection, pursuant to section 502 of the Bankruptcy Code and Bankruptcy Rules 3007 and 7001, to the liens and claims asserted by the Prepetition Secured Parties against the Debtors.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action under 28 U.S.C. § 1334. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this adversary proceeding is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

² Each capitalized term not defined herein shall have the meaning ascribed to such term in the Final DIP Order.

4. The statutory predicates for the relief requested herein are sections 502, 544, 550, and 551 of the Bankruptcy Code and Bankruptcy Rules 3007 and 7001. This adversary proceeding is also filed pursuant to paragraph 50(a) of the Final Order.

THE PARTIES

5. Plaintiff was appointed by the Office of the United States Trustee for the Southern District of Texas pursuant to section 1102 of the Bankruptcy Code on August 5, 2024. Plaintiff is vested with, among other things, the powers described in section 1103 of the Bankruptcy Code, including the power to investigate the acts, conduct, assets, liabilities, and financial condition of the Debtors.

6. Plaintiff brings this action on behalf of the estates of each of the Debtors pursuant to this Court's *Order Granting Standing and Authorizing the Prosecution of Certain Lien Challenge Claims on Behalf of the Bankruptcy Estates* entered on _____, 2024 [Docket No. ____].

7. Defendant JPMorgan Chase, N.A., is the administrative agent (the "Prepetition ABL Agent"), on behalf of itself and the lender parties to that certain *Fifth Amended and Restated Loan and Security Agreement*, dated as of March 29, 2021 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the "Prepetition ABL Credit Agreement"), by and among certain of the Debtors as borrowers or guarantors and the lenders party thereto.

8. Defendant BRF Finance Co., LLC, is the administrative agent (the "Prepetition 2L Agent"), on behalf of itself and the lender parties to that certain *Term Loan and Security Agreement*, dated as of December 18, 2023 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the

“Prepetition 2L Credit Agreement”), by and among certain of the Debtors as borrowers or guarantors and the lenders party thereto.

9. Defendant Stephens Investments Holdings LLC, is the administrative agent (the “Prepetition 3L Agent”), on behalf of itself and the lender parties to that certain *Delayed Draw Term Loan and Security Agreement*, dated as of July 31, 2023 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the “Prepetition 3L Credit Agreement”), by and among certain of the Debtors as borrowers or guarantors and the lenders party thereto.

10. The Prepetition ABL Agent, the Prepetition 2L Agent, and the Prepetition 3L Agent are referred to herein as the “Prepetition Agents” or “Defendants.” The lenders under the Prepetition ABL Credit Agreement, Prepetition 2L Credit Agreement, and Prepetition 3L Credit Agreement, along with the Defendants where applicable, are collectively referred to herein as the “Prepetition Secured Parties.”

STATEMENT OF FACTS

A. General Background

11. On July 23, 2024 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (this “Court”), thereby commencing these chapter 11 cases (the “Cases”). The Debtors continue in possession of their property and are operating and managing their businesses as debtors in possession pursuant to the provisions of 11 U.S.C. §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

B. The Debtors' Prepetition Relationship with the Prepetition Secured Parties

1. The Prepetition Facilities

12. ***Prepetition ABL Facility.*** Pursuant to the Prepetition ABL Credit Agreement (collectively with the other Loan Documents (as defined in the Prepetition ABL Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the Petition Date, the “Prepetition ABL Credit Documents” and the credit facilities evidenced thereby, collectively the “Prepetition ABL Facility”) among (a) the borrowers thereunder (the “Prepetition ABL Borrowers”), (b) the guarantors party thereto (the “Prepetition ABL Guarantors”), (c) Prepetition ABL Agent, and (d) the lenders from time to time party thereto (the “Prepetition ABL Lenders,” and collectively with the Prepetition ABL Agent, and all other holders of Prepetition ABL Debt (as defined below), the “Prepetition ABL Secured Parties” and, together with the Prepetition 2L Secured Parties and Prepetition 3L Secured Parties (each as defined herein), the “Prepetition Secured Parties”), the Prepetition ABL Lenders provided revolving credit and other financial accommodations to the Prepetition ABL Borrowers pursuant to the Prepetition ABL Credit Documents, and the Prepetition ABL Guarantors guaranteed on a joint and several basis the “Obligations” (as defined in the Prepetition ABL Credit Agreement, the “Prepetition ABL Obligations”) under the Prepetition ABL Credit Agreement and the other Prepetition ABL Credit Documents.

13. ***Prepetition 2L Facility.*** Pursuant to Prepetition 2L Credit Agreement (collectively with the other Loan Documents (as defined in the Prepetition 2L Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived or otherwise modified

prior to the Petition Date, the “Prepetition 2L Credit Documents” and the credit facilities evidenced thereby, collectively the “Prepetition 2L Facility”) among (a) the borrowers thereunder (the “Prepetition 2L Borrowers”), (b) the guarantors party thereto (the “Prepetition 2L Guarantors”), (c) the Prepetition 2L Agent and (d) the lenders from time to time party thereto (the “Prepetition 2L Lenders,” and collectively with the Prepetition 2L Agent, and all other holders of Prepetition 2L Debt (as defined below), the “Prepetition 2L Secured Parties”), the Prepetition 2L Lenders provided term loans and other financial accommodations to the Prepetition 2L Borrowers pursuant to the Prepetition 2L Credit Documents, and the Prepetition 2L Guarantors guaranteed on a joint and several basis the “Obligations” (as defined in the Prepetition 2L Credit Agreement, the “Prepetition 2L Obligations”) under the Prepetition 2L Credit Agreement and the other Prepetition ABL Credit Documents.

14. ***Prepetition 3L Facility.*** Pursuant to the Prepetition 3L Credit Agreement (collectively with the other Loan Documents (as defined in the Prepetition 3L Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the Petition Date, the “Prepetition 3L Credit Documents” and the credit facilities evidenced thereby, collectively the “Prepetition 3L Facility”) among (a) the borrowers thereunder (the “Prepetition 3L Borrowers”), (b) the guarantors party thereto (the “Prepetition 3L Guarantors”), (c) Stephens Investments Holdings LLC, as administrative agent and collateral agent (solely in such capacity, the “Prepetition 3L Agent” and, collectively with the Prepetition ABL Agent and Prepetition 2L Agent, the “Prepetition Agents”), and (d) the lenders from time to time party thereto (the “Prepetition 3L Lenders,” and collectively with the Prepetition 3L Agent, and all other holders of Prepetition 3L Debt (as defined below), the “Prepetition 3L Secured

Parties”), the Prepetition 3L Lenders provided a delayed draw term loan credit facility and other financial accommodations to the Prepetition 3L Borrowers pursuant to the Prepetition 3L Credit Documents, and the Prepetition 3L Guarantors guaranteed on a joint and several basis the “Obligations” (as defined in the Prepetition 3L Credit Agreement, the “Prepetition 3L Obligations” and, collectively with the Prepetition ABL Obligations and Prepetition 2L Obligations, the “Prepetition Obligations”) under the Prepetition 3L Credit Agreement and the other Prepetition 3L Credit Documents.

2. Intercreditor Agreements

15. ***Prepetition ABL Intercreditor Agreement.*** Pursuant to and to the extent set forth in that certain *Intercreditor Agreement*, dated as of December 18, 2023 (the “Prepetition ABL Intercreditor Agreement”), by and among the Prepetition ABL Agent, the Prepetition 2L Agent, the Company, each Borrower, and each of the Company’s Subsidiaries which are signatories thereto (as referred to therein), as from time to time party thereto, the parties thereto agreed, among other things, that the Prepetition ABL Liens (as defined herein) on the Prepetition Collateral are senior to the Prepetition 2L Liens (as defined herein) on the same collateral.

16. ***Prepetition 3L Intercreditor Agreement.*** Pursuant to and to the extent set forth in that certain *Amended and Restated Third Lien Intercreditor Agreement*, dated as of December 18, 2023 (the “Prepetition 3L Intercreditor Agreement” and together with Prepetition ABL Credit Documents, the Prepetition 2L Credit Documents, the Prepetition 3L Credit Documents, and the Prepetition ABL Intercreditor Agreement, the “Prepetition Credit Documents”), by and among the Prepetition ABL Agent, the Prepetition 2L Agent, the Prepetition 3L Agent, the Company, each Borrower, and each of the Parent’s Subsidiaries which are signatories thereto (as referred to therein), as from time to time party thereto, the parties

thereto agreed, among other things: (a) that the Prepetition ABL Liens (as defined herein) on the Prepetition Collateral are senior to the Prepetition 2L Liens (as defined herein) on the Prepetition Collateral, and (b) that the Prepetition 2L Liens on the Prepetition Collateral are senior to the Prepetition 3L Liens (as defined herein) on the Prepetition Collateral.

3. Stipulations

17. *Stipulations Regarding Prepetition ABL Debt.* The Debtors have stipulated that, the Prepetition ABL Borrowers and the Prepetition ABL Guarantors were, as of the Petition Date, justly and lawfully indebted and liable to the Prepetition ABL Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for not less than \$386,756,411.99 in outstanding principal amount of Revolver Loans (as defined in the Prepetition ABL Credit Agreement, the “Prepetition ABL Loans”) plus interest, premiums and fees thereon, plus \$27,787,684.36 of the aggregate stated principal amount available for drawing under all outstanding letters of credit and all unpaid reimbursement obligations with respect to drawn letters of credit (the “Prepetition Letters of Credit”), which loans and outstanding letters of credit were made or issued by the Prepetition ABL Lenders pursuant to, and in accordance with the terms of, the Prepetition ABL Credit Documents, plus, to the extent not otherwise included, all other Obligations (as defined in the Prepetition ABL Credit Agreement), and any accrued and unpaid interest thereon and fees, expenses (including any attorneys’, accountants’, appraisers’, and financial advisors’ fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition ABL Credit Documents), costs, charges, indemnities, and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as provided in the Prepetition ABL Credit Documents (collectively, the “Prepetition ABL Debt”).

18. The Debtors have further stipulated that, as of the Petition Date, pursuant to and in connection with the Prepetition ABL Credit Documents, the Company, the Prepetition ABL Borrowers, and the other Prepetition ABL Guarantors granted to the Prepetition ABL Agent, for the benefit of itself and the other Prepetition ABL Secured Parties, a senior, first priority, security interest in and continuing lien on (the “Prepetition ABL Liens”) substantially all of their assets and property, including a valid, binding, properly perfected, enforceable, first priority security interest in and continuing lien on the Collateral (as defined in the Prepetition ABL Credit Agreement) (which, for the avoidance of doubt, includes but is not limited to (a) certain Cash Collateral and (b) certain Real Estate encumbered pursuant to that certain Amendment No. 4 to Fifth Amended and Restated Loan and Security Agreement dated as of July 8, 2024 between the Borrowers party thereto, the Guarantors party thereto, the Prepetition ABL Agent and the Prepetition ABL Lenders party thereto, which security interest is held by the Prepetition ABL Agent for the benefit of the Prepetition Secured Parties pursuant and subject to the priorities set forth in the Intercreditor Agreements) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the “Prepetition Collateral”), which Prepetition ABL Liens are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset, crossclaim, defense or Claim under the Bankruptcy Code or applicable non-bankruptcy law, subject and subordinate only to certain other liens permitted by the Prepetition ABL Credit Documents, solely to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition ABL Liens as of the Petition Date (the “Prepetition ABL Permitted Senior Liens”).

3. Stipulations

19. ***Stipulations Regarding Prepetition 2L Debt.*** The Debtors have stipulated that the Prepetition 2L Borrowers and the Prepetition 2L Guarantors were, as of the Petition Date, justly and lawfully indebted and liable to the Prepetition 2L Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for not less than \$93,000,000 in outstanding principal amount of Term Loans (as defined in the Prepetition 2L Credit Agreement) plus interest, premiums and fees thereon, which loans were made or issued by the Prepetition 2L Lenders pursuant to, and in accordance with the terms of, the Prepetition 2L Credit Documents, plus, to the extent not otherwise included, all other Obligations (as defined in the Prepetition 2L Credit Agreement), and any accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers', and financial advisors' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition 2L Credit Documents), costs, charges, indemnities, and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as provided in the Prepetition 2L Credit Documents (collectively, the "Prepetition 2L Debt") which Prepetition 2L Debt has been guaranteed on a joint and several basis by each of the Prepetition 2L Guarantors.

20. The Debtors have further stipulated that, as of the Petition Date, pursuant to and in connection with the Prepetition 2L Credit Documents, the Company, the Prepetition 2L Borrowers, and the Prepetition 2L Guarantors granted to the Prepetition 2L Agent, for the benefit of itself and the other Prepetition 2L Secured Parties, a junior, second priority, security interest in and continuing lien on (the "Prepetition 2L Liens") the Prepetition Collateral, which Prepetition 2L Liens are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), recovery, attack, disgorgement, effect, rejection, reduction,

disallowance, impairment, counterclaim, offset, crossclaim, defense or Claim under the Bankruptcy Code or applicable non-bankruptcy law, subject and subordinate only to certain other liens permitted by the Prepetition 2L Credit Documents, solely to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition 2L Liens as of the Petition Date (the “Prepetition 2L Permitted Senior Liens”).

21. ***Stipulations Regarding Prepetition 3L Debt.*** The Debtors have stipulated that, as of the Petition Date, the Prepetition 3L Borrowers and the Prepetition 3L Guarantors were justly and lawfully indebted and liable to the Prepetition 3L Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for not less than \$50,000,000 in outstanding principal amount of Delayed Draw Term Loans (as defined in the Prepetition 3L Credit Agreement) plus interest, premiums and fees thereon, which loans were made or issued by the Prepetition 3L Lenders pursuant to, and in accordance with the terms of, the Prepetition 3L Credit Documents, plus, to the extent not otherwise included, all other Obligations (as defined in the Prepetition 3L Credit Agreement), and any accrued and unpaid interest thereon and fees, expenses (including any attorneys’, accountants’, appraisers’, and financial advisors’ fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition 3L Credit Documents), costs, charges, indemnities, and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as provided in the Prepetition 3L Credit Documents (collectively, the “Prepetition 3L Debt” and, together with the Prepetition ABL Debt and the Prepetition 2L Debt, the “Prepetition Secured Debt”) which Prepetition 3L Debt has been guaranteed on a joint and several basis by each of the Prepetition 3L Guarantors.

22. The Debtors have further stipulated that, as of the Petition Date, pursuant to and in connection with the Prepetition 3L Credit Documents, the Company, the Prepetition 3L Borrowers, and the Prepetition 3L Guarantors granted to the Prepetition 3L Agent, for the benefit of itself and the other Prepetition 3L Secured Parties, a junior, third priority, security interest in and continuing lien (the “Prepetition 3L Liens”) on the Prepetition Collateral, which Prepetition 3L Liens are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset, crossclaim, defense or Claim under the Bankruptcy Code or applicable non-bankruptcy law, subject and subordinate only to certain other liens permitted by the Prepetition 3L Credit Documents, solely to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition 3L Liens as of the Petition Date (the “Prepetition 3L Permitted Senior Liens” and, together with the Prepetition ABL Permitted Senior Liens and the Prepetition 2L Permitted Senior Liens, the “Prepetition Permitted Senior Liens”).

23. ***Stipulations Regarding All Prepetition Secured Parties.*** The Debtors have further stipulated that no claims or causes of action held by the Debtors or their estates exist against, or with respect to, the Prepetition Secured Parties and each of their respective Representatives (as defined herein) (in each case, in their capacity as such) under or relating to any agreements by and among the Debtors and any Prepetition Secured Party that is in existence as of the Petition Date.

C. The Final DIP Order, Challenge Deadline, and Unencumbered Assets

24. On September 4, 2024, the Court entered the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens*

and Provide Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay, and (IV) Granting Related Relief [Docket No. 482] (the “Final DIP Order”). The Final DIP Order, among other things, set a Challenge Deadline of the later of (x) October 7, 2024, or (y) thirty days after the appointment of the Committee, by which the Committee could assert a Challenge with respect to the Debtors’ various stipulations, waivers, and admissions in favor of the Prepetition Secured Parties under the Final DIP Order

25. Specifically, based on the Committee’s investigation to date, the Prepetition Collateral securing the Prepetition Obligations does not include, and/or the Prepetition Secured Parties do not have a perfected or otherwise enforceable security interest in, the following assets of the applicable Debtors³ or the proceeds thereof, as of the Petition Date: (a) any leased real estate or any fixtures located thereon; (b) any owned real estate or any fixtures located thereon that are not subject to valid, enforceable, non-avoidable and timely-filed mortgages or deeds of trust;⁴ (c) any money or currency, *provided that*, the Prepetition Collateral does include money or currency that constitutes the identifiable proceeds of other Prepetition Collateral; (d) any deposit accounts at any bank or financial institution that are not subject to a valid and enforceable control agreement in favor of the Prepetition Notes Secured Parties, *provided that*, the Prepetition Collateral does include funds in deposit accounts that constitute the identifiable proceeds of other Prepetition Collateral; (e) any commercial tort claims; (f) any insurance policies relating to director & officer or management liability; (g) any liquor licenses

³ Debtors W.S. Badcock Credit LLC and W.S. Badcock Credit I LLC are not obligors or pledgors with respect to the Prepetition Obligations.

⁴ Two (2) of the owned real estate properties of Debtor W.S. Badcock LLC are covered by mortgages filed by the Prepetition ABL Agent on July 17, 2024, within the 90 days prior to the Petition Date. Such mortgages are avoidable if not made contemporaneously in exchange for new value given to such Debtor.

or other governmental licenses or permits that cannot be pledged under applicable non-bankruptcy law or regulation; and (h) any Excluded Collateral (as defined in the Prepetition Credit Documents). The foregoing assets described in subparagraphs (a) through (h) are the “Unencumbered Assets.”

26. Plaintiff hereby asserts this Challenge as to those items identified as Unencumbered Assets above and submits that there is no evidentiary basis for a finding that the Prepetition Agents on behalf of the Prepetition Secured Parties has a valid, perfected lien, claim, or interest in any of the Unencumbered Assets, and any inconsistent finding should be stricken from the Final Order.

D. Reserved Matters

27. In addition, Plaintiff seeks a declaration that its rights to contest the following matters are fully reserved (together, the “Reserved Matters”): (i) the allowance of any interest (or default rate interest) paid or accrued under the Prepetition Credit Documents; (ii) the accuracy of the calculation of the amount of any principal, interest, fees, costs or charges paid or accrued under the Prepetition Term Credit Agreement; (iii) the reasonableness pursuant to section 506(b) of the Bankruptcy Code of the amounts of any fees, costs or charges to the extent provided for under the Prepetition Term Credit Agreement, and (iv) any adequate protection or diminution claim that may be asserted by the Prepetition Agents or any individual lender against the Debtors’ estates.

28. Plaintiff submits that none of the Debtors’ various acknowledgments, waivers, and stipulations in the Final Order at paragraph G should have any impact on any rights, claims, defenses, offsets, or causes of action that Plaintiff or any of the Debtors’ estates may have against the Prepetition Agents on behalf of the Prepetition Secured Parties with respect to

the Reserved Matters or otherwise unrelated to the Prepetition Credit Documents and the obligations thereunder.

29. Plaintiff objects to the liens and claims asserted by the Prepetition Agents on behalf of the Prepetition Secured Parties to the extent inconsistent with the foregoing. Plaintiff files this adversary proceeding in order to timely assert a Challenge and also to preserve its rights on behalf of the Debtors' general unsecured creditors under the Final Order.

CAUSES OF ACTION

COUNT 1

Declaratory Judgment Concerning Unencumbered Assets and Reserved Matters U.S.C. §§ 2201 and 2202

30. Plaintiff repeats and realleges the allegations contained in each preceding paragraph of the Complaint as though fully set forth herein.

31. The Prepetition Collateral under the Prepetition Credit Documents and the ancillary documents thereto does not include, and/or the Defendants on behalf of the Prepetition Secured Parties have failed to perfect their asserted liens, claims, and interests in, the Unencumbered Assets.

32. Pursuant to the Final Order, the Debtors stipulated that the Defendants on behalf of the Prepetition Secured Parties have liens on, or security interests in, some or all of the Unencumbered Assets. Plaintiff disputes these stipulations as they relate to the Unencumbered Assets.

33. Plaintiff further submits that none of the Debtors' various acknowledgments, waivers, and stipulations in the Final Order, including findings set forth in paragraph G thereof, should have any impact on any rights, claims, defenses, offsets, or causes of action that Plaintiff or any of the Debtors' estates may have against the Defendants on behalf of

the Prepetition Secured Parties with respect to the Reserved Matters or otherwise unrelated to the Prepetition Credit Documents and the obligations thereunder.

34. Plaintiff objects to the liens and claims asserted by the Defendants on behalf of the Prepetition Secured Parties against the Debtors or their estates to the extent inconsistent with the foregoing.

35. Accordingly, an actual, substantial, and justiciable controversy exists between Plaintiff, on the one hand, and the Defendants on behalf of the Prepetition Secured Parties, on the other hand, concerning the validity, priority, or extent of the Defendants' liens, claims and interests.

36. Such a controversy is sufficient to warrant the issuance of a declaratory judgment consistent with Plaintiff's allegations herein that (i) the Defendants on behalf of the Prepetition Secured Parties have no valid or enforceable lien or security interest in the Unencumbered Assets, and (ii) Plaintiff's rights and remedies are reserved under applicable law to dispute, challenge, contest, and litigate the Reserved Matters, and anything inconsistent therewith is stricken from the Final Order.

COUNT 2

Avoidance of Liens With Respect to Unencumbered Assets 11 U.S.C. §§ 544, 550, and 551

37. Plaintiff repeats and realleges the allegations contained in each preceding paragraph of the Complaint as though fully set forth herein.

38. Pursuant to sections 544(a)(1) and (2) of the Bankruptcy Code, Plaintiff (acting on behalf of the Debtors' estates), as of the Petition Date, and without regard to any knowledge of the Debtors or any creditors, has the rights and powers of, or may avoid any transfer of property of the Debtors or any obligation incurred by the Debtors that is voidable by:

A creditor that extends credit to a debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists; or

A creditor that extends credit to a debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against a Debtor that is returned unsatisfied at such time, whether or not such a creditor exists.

39. In this case, the Prepetition Collateral under the Prepetition Credit Documents and the ancillary documents thereto does not include, and/or the Defendants on behalf of the Prepetition Secured Parties have failed to perfect their asserted liens, claims, and interests in, the Unencumbered Assets.

40. Because the Defendants do not have properly perfected liens on, or security interests in, the Unencumbered Assets, any and all liens on and security interests in the Unencumbered Assets should be avoided pursuant to section 544(a) of the Bankruptcy Code, and such property or the value of such property, if previously transferred, should be recovered by the Debtors' estates pursuant to section 550(a) of the Bankruptcy Code and/or automatically preserved for the benefit of the Debtors' estates pursuant to section 551 of the Bankruptcy Code.

COUNT 3

Objection to Claims 11 U.S.C. § 502 and Bankruptcy Rules 3007 and 7001

41. Plaintiff repeats and realleges the allegations contained in each preceding paragraph of the Complaint as though fully set forth herein.

42. The Prepetition Collateral under the Prepetition Credit Documents and the ancillary documents thereto does not include, and/or the Defendants on behalf of the Prepetition

Secured Parties have failed to perfect their asserted liens, claims, and interests in, the Unencumbered Assets.

43. Pursuant to the Final Order, the Debtors stipulated that the Defendants on behalf of the Prepetition Secured Parties have liens on, or security interests in, some or all of the Unencumbered Assets. Plaintiff disputes these stipulations as they relate to the Unencumbered Assets.

44. Plaintiff further submits that none of the Debtors' various acknowledgments, waivers, and stipulations in the Final Order, including findings set forth in paragraph G thereof, should have any impact on any rights, claims, defenses, offsets, or causes of action that Plaintiff or any of the Debtors' estates may have against the Defendants on behalf of the Prepetition Secured Parties with respect to the Reserved Matters or otherwise unrelated to the Prepetition Credit Documents and the obligations thereunder.

45. Plaintiff objects to the liens and claims of the Defendants on behalf of the Prepetition Secured Parties against the Debtors or their estates to the extent inconsistent with the foregoing.

46. Pursuant to the applicable provisions of the Bankruptcy Code, including without limitation section 502 and Bankruptcy Rules 3007 and 7001, each of the claims of the Defendants on behalf of the Prepetition Secured Parties should be disallowed to the extent set forth herein.

WHEREFORE, by reason of the foregoing, Plaintiff requests that the Court enter an order and judgment:

- (1) declaring that certain property of the Debtors is not subject to liens or security interests asserted by the Defendants on behalf of the Prepetition Secured Parties;

- (2) avoiding the liens or security interests asserted by the Defendants on certain property of the Debtors as invalid or unperfected;
- (3) reversing certain of the other acknowledgements and agreements of the Debtors in favor of the Defendants and the Prepetition Secured Parties under the Final Order, including those set forth in paragraph G thereof, and preserving certain of the Committee's rights to dispute the amounts owed to the Prepetition Secured Parties; and
- (4) granting Plaintiff such other and further relief as the Court deems just, proper, and equitable, including the costs and expenses of this action.

Dated: October 7, 2024
Houston, Texas

Respectfully submitted,

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Theodore S. Heckel

Michael D. Warner (TX Bar No. 00792304)
Maxim B. Litvak (TX Bar No. 24002482)
Theodore S. Heckel (TX Bar No. 24133488)
700 Louisiana Street, Suite 4500
Houston, TX 77002
Telephone: (713) 691-9385
Facsimile: (713) 691-9407
Email: mwarner@pszjlaw.com
theckel@pszjlaw.com

-and-

Bradford J. Sandler (admitted *pro hac vice*)
Robert J. Feinstein (admitted *pro hac vice*)
780 Third Avenue, 34th Floor
New York, NY 10017
Telephone: (212) 561-7700
Facsimile: (212) 561-7777
Email: bsandler@pszjlaw.com
rfeinstein@pszjlaw.com

*Counsel to the Official Committee
of Unsecured Creditors*

Exhibit 2

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

CONN'S, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 24- 33357 (ARP)

(Jointly Administered)

**ORDER GRANTING COMMITTEE STANDING AND
AUTHORIZING THE PROSECUTION OF CERTAIN LIEN CHALLENGE
CLAIMS ON BEHALF OF THE BANKRUPTCY ESTATES**

Upon the motion (the “Motion”)² of the Official Committee of Unsecured Creditors (the “Committee”) of the above-referenced debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order granting standing and authorizing the Committee to prosecute certain lien challenge claims on behalf of the bankruptcy estates and granting related relief; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the

¹ The Debtors in this chapter 11 case, together with the last four digits of the Debtors’ federal tax identification number, are: Conn’s, Inc. (2840), Conn Appliances, Inc. (0706), CAI Holding, LLC (2675), Conn Lending, LLC (9857), Conn Credit I, LP (0545), Conn Credit Corporation, Inc. (9273), CAI Credit Insurance Agency, Inc. (5846), New RTO, LLC (6400), W.S. Badcock LLC (2010), W.S. Badcock Credit LLC (5990), and W.S. Badcock Credit I LLC (6422). The Debtors’ service address is 2445 Technology Forest Blvd., Suite 800, The Woodlands, TX 77381.

² Each capitalized term not defined herein shall have the meaning ascribed to such term in the Motion.

relief requested therein; and all objections, if any, to the Motion having been withdrawn, resolved or overruled; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Committee is granted standing and authorized, on behalf of the Debtors' estates, to pursue, prosecute, and/or resolve the causes of action set forth in the Proposed Complaint (as it may be amended) attached as Exhibit 1 to the Motion.

2. The Challenge Period is deemed tolled through the date of filing of the Proposed Complaint so long as such complaint is filed within five (5) business days from the date of entry of this Order.

3. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

4. The Committee is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

5. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation and enforcement of this Order.

Dated: _____, 2024

ALFREDO R. PÉREZ
United States Bankruptcy Judge