UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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

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Attorneys for the Ad Hoc Group of Minority Secured Lenders

In Re:

Del Monte Foods Corporation II, Inc., *et al.*,

Debtors.[1]

Chapter 11

Case Number: 25-16984 (MBK)

Jointly Administered

Hearing Date: Time and Date to be set by the Court in accordance with the Order Shortening Time

Objection Deadline: Time and Date to be set by the Court in accordance with the Order Shortening Time

[1] The last four digits of Debtor Del Monte Foods Corporation II Inc.'s tax identification number are 1894. A complete list of the Debtors in these Chapter 11 Cases and their respective tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent, at https://cases.stretto.com/DelMonteFoods. The location of the Debtor Del Monte Foods Corporation II Inc.'s principal place of business and the Debtors' service address is 205 North Wiget Lane, Walnut Creek, California 94598.

NOTICE OF MOTION OF THE AD HOC GROUP OF MINORITY SECURED LENDERS' EMERGENCY MOTION TO STAY ORDER CONFIRMING DEBTORS' FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION PENDING APPEAL

PLEASE TAKE NOTICE, that the Ad Hoc Group of Minority Secured Lenders (the "Minority Ad Hoc Group"),[2] by and through its undersigned counsel, hereby submits the attached *Ad Hoc Group of Minority Secured Lenders' Emergency Motion to Stay Order Confirming Debtors' First Amended Joint Chapter 11 Plan of Reorganization Pending Appeal* (the "Motion").

PLEASE TAKE FURTHER NOTICE that concurrently with the filing of the Motion, the Minority Ad Hoc Group will be filing the *Application for Order Shortening Time for Notice of the Motion of the Ad Hoc Group of Minority Secured Lenders' Emergency Motion to Stay Order Confirming Debtors' First Amended Joint Chapter 11 Plan of Reorganization Pending Appeal* (the "Application for Shortened Time").

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion shall: (i) be in writing; (ii) state with particularity the basis of the objection; and (iii) be filed with the Clerk of the United States Bankruptcy Court in accordance with D.N.J. LBR 9013-1. If you do not want the Court to enter an order granting the relief requested in the Motion, or if you want the Court to consider your views on an objection, then you or your attorney must file with the Court a written request for a hearing or response or answer explaining your position

[2] The members of the Minority Ad Hoc Group (the "Members") are listed in the *Second Verified Statement of the Ad Hoc Group of Minority Secured Lenders, Pursuant to Bankruptcy Rule 2019* [Docket No. 1262]. The Members are lenders under the Debtors' prepetition Credit Agreement dated as of August 2, 2024 (as amended, restated, supplemented, or otherwise modified prior to the date hereof, the "Super-Senior Credit Facility").

on or before the objection deadline to be set by the Court in connection with the order on the Application for Shortened Time. You must also mail a copy of the objection to:

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PLEASE TAKE FURTHER NOTICE you must attend the hearing scheduled to be held on **the date and time established in the order on the Application for Shortened Time** before the Honorable Chief Judge Michael B. Kaplan, 402 East State Street, Trenton, New Jersey 08608, Courtroom #8 via Zoom. If you do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting the Motion.

Dated: May 27, 2026

PASHMAN STEIN WALDER HAYDEN, P.C.

By: */s/ John W. Weiss*

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In Re:

Del Monte Foods Corporation II, Inc., *et al.*,

Debtors.[1]

Chapter 11

Case Number: 25-16984 (MBK)

Jointly Administered

Re D.I. 1592

Hearing Date: Time and Date to be set by the Court in accordance with the Order Shortening Time

Objection Deadline: Time and Date to be set by the Court in accordance with the Order Shortening Time

THE AD HOC GROUP OF MINORITY SECURED LENDERS' EMERGENCY MOTION TO STAY ORDER CONFIRMING DEBTORS' FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION PENDING APPEAL

[1] The last four digits of Debtor Del Monte Foods Corporation II Inc.'s tax identification number are 1894. A complete list of the Debtors in these Chapter 11 Cases and their respective tax identification numbers may be obtained on the website of the Debtors' Claims and Noticing Agent, at https://cases.stretto.com/DelMonteFoods. The location of the Debtor Del Monte Foods Corporation II Inc.'s principal place of business and the Debtors' service address is 205 North Wiget Lane, Walnut Creek, California 94598.

TABLE OF CONTENTS

Page(s)

PRELIMINARY STATEMENT 1
BACKGROUND 5
ARGUMENT 9
I. Because the Minority Ad Hoc Group Satisfies the *Nken* Factors, the Court Should Grant a Stay Pending Appeal 9
A. The Minority Ad Hoc Group is Likely to Succeed in Demonstrating that the Plan Should Not be Confirmed 10
B. The Minority Ad Hoc Group May Be Irreparably Harmed if the Confirmation Order is Not Stayed And its Appellate Rights are Mooted 23
C. Stay of the Confirmation Order Pending Appeal Will Not Harm Other Parties 27
D. The Public Interest Favors a Stay of the Confirmation Order 27
II. In the Alternative, the Court Should Order the Debtors to Maintain a $10 Million Reserve for the 507(b) Claims, or Extend the Automatic Stay of the Confirmation Order by Seven Days. 28
CONCLUSION 29

TABLE OF AUTHORITIES

Cases **Page(s)**

In re Adelphia Commc'ns Corp.,
361 B.R. 337 (S.D.N.Y. 2007).....24

In re AIO US, Inc.,
2025 WL 2426380 (Bankr. D. Del. Aug. 21, 2025).....23

American United Mut. Life Ins. Co. v. City of Avon Park,
311 U.S. 138 (1940)..... *passim*

In re Armstrong World Indus., Inc.,
320 B.R. 523 (D. Del. 2005).....17

In re Armstrong World Indus., *Inc.*,
432 F.3d 507 (3d Cir. 2005).....16, 17, 19

In re Bed Bath & Beyond,
No. 23-13359 (Bankr. D.N.J. 2023).....13

Begier v. IRS,
496 U.S. 53 (1990).....1

In re Boy Scouts of Am.,
137 F.4th 126 (3d Cir. 2025).....27

In re Claire's Holdings LLC,
No. 25-11454 (Bankr. D. Del. 2025).....13

In re Continental Airlines,
134 F.3d 536 (3d Cir. 1998).....14

In re Country Squire Associates of Carle Place, L.P.,
203 B.R. 182 (B.A.P. 2d Cir. 1996).....24

Czyzewski v. Jevic Holding Corp.,
580 U.S. 451 (2017).....27

In re Fairfield Exec. Assocs.,
161 B.R. 595 (D.N.J. 1993).....11

In re De Laurentiis Entertainment Grp. Inc.,
963 F.2d 1269 (9th Cir. 1992).....14

In re Genesis Health Ventures,
367 B.R. 516 (Bankr. D. Del. 2007).....10

In re Genesis Health Ventures, Inc.,
266 B.R. 591 (Bankr. D. Del. 2001) 16

In re Greystone III Joint Venture,
995 F.2d 1274 (5th Cir. 1991) 12

Guardian Life Ins. Co. of Am. v. Estate of Cerniglia,
446 F. App'x 453 (3d Cir. 2011) 24, 25

Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.,
547 U.S. 651 (2006) 1, 2

Janvey v. Romero,
883 F.3d 406 (4th Cir. 2018) 28

In re JER/Jameson Mezz Borrower II, LLC,
461 B.R. 293 (Bankr. D. Del. 2011) 23

John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.,
987 F.2d 154 (3d Cir. 1993) 12, 13

In re Kmart Corp.,
359 F.3d 866 (7th Cir. 2004) 16

LCM XXII Ltd. v. Serta Simmons Bedding, LLC,
2022 U.S. Dist. LEXIS 57976 (S.D.N.Y. Mar. 29, 2022) 19

In re Miraj & Sons,
201 B.R. 23 (Bankr. D. Mass. 1996) 10

Nathanson v. N.L.R.B.,
344 U.S. 25 (1952) 1

Nken v. Holder,
556 U.S. 418 (2009) 9, 10

Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm. Co.,
290 F.3d 578 (3d Cir. 2002) 24

In re One Times Square Assocs. Ltd. P'ship,
165 B.R. 773 (S.D.N.Y. 1994) 11

In re One2One Commc'ns, LLC,
805 F.3d 428 (3d Cir. 2015) 25

In re Porter,
511 B.R. 785 (Bankr. E.D. La. 2014) 10

In re Revel AC, Inc.,
802 F.3d 558 (3d Cir. 2015).....9, 27

In re Semcrude, L.P.,
728 F.3d 314 (3d Cir. 2013).....25, 26

In re Sentry Operating Co. of Tex., Inc.,
264 B.R. 850 (Bankr. S.D. Tex. 2001) 16, 17

In re Serta Simmons Bedding, L.L.C.,
125 F.4th 555 (5th Cir. 2024) 25

In re St. Johnsbury Trucking Co.,
185 B.R. 687 (S.D.N.Y. 1995).....10

In re Syncora Guarantee Inc.,
757 F.3d 511 (6th Cir. 2014) 26

In re Tex. Equip. Co., Inc.,
283 B.R. 222 (Bankr. N.D. Tex. 2002).....10

In re Tribune Co.,
464 B.R. 126 (Bankr. D. Del. 2011) 23

In re Tribune Co.,
477 B.R. 465 (Bankr. D. Del. 2012) 24

In re Tribune Co.,
972 F.3d 228 (3d Cir. 2020).....11

In re Ultra Petroleum Corp.,
51 F.4th 138 (5th Cir. 2022) 13

In re Voluntary Purchasing Grps., Inc.,
196 F.3d 1258 (5th Cir. 1999) 26

Statutes

11 U.S.C. § 101(31) 15

11 U.S.C. § 105.....21

11 U.S.C. § 361.....21

11 U.S.C. § 362.....21

11 U.S.C. § 363.....21, 23

11 U.S.C. § 364.....21

11 U.S.C. § 506(c) 18

11 U.S.C. § 507(b) ..... *passim*

11 U.S.C. § 553 14

11 U.S.C. § 1101 25

11 U.S.C. § 1122(a) 2, 11

11 U.S.C. § 1123(a)(4) 3, 8

11 U.S.C. § 1126(g) ..... *passim*

11 U.S.C. § 1129(a)(9) 5, 19, 23

11 U.S.C. § 1129(a)(10) 8, 12

11 U.S.C. § 1129(a)(11) 11, 19, 23, 28

11 U.S.C. § 1129(b) ..... *passim*

11 U.S.C. § 1141 14

Other Authorities

Federal Rule of Bankruptcy Procedure 3020(e) 26, 29

Federal Rule of Bankruptcy Procedure 8007 9

Federal Rule of Bankruptcy Procedure 9019 27

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Appellant The Ad Hoc Group of Minority Secured Lenders (the "Minority Ad Hoc Group")[2] files this motion to stay the order [Docket No. 1592] (the "Confirmation Order") confirming the First Amended Joint Chapter 11 Plan of Reorganization [Docket No. 1592 at 70] (the "Plan") pending the outcome of its appeal (the "Appeal"). The Court should grant a stay because (1) there is a substantial likelihood that the Minority Ad Hoc Group will prevail on appeal; (2) the Minority Ad Hoc Group will be irreparably harmed if its appellate rights are impaired owing to the Debtors' efforts to invoke "equitable mootness" upon substantial consummation of the Plan; (3) no parties will be harmed by a stay; and (4) the public interest lies in the correct determination and application of the important legal principles at issue.

PRELIMINARY STATEMENT

As the Supreme Court has explained, a fundamental principle of bankruptcy law "is 'equality of distribution'…and if one claimant is to be preferred over others, the purpose should be clear from the statute." *Nathanson v. N.L.R.B.*, 344 U.S. 25, 29 (1952) (citations omitted). Subsequent decisions of the Court have reiterated and applied this foundational concept. *See, e.g., Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 655 (2006) (the "preferential treatment of a class of creditors is in order only when clearly authorized by Congress"); *Begier v. IRS*, 496 U.S. 53, 58 (1990) ("Equality of distribution among creditors is a central policy of the Bankruptcy Code. According to that policy, creditors of equal priority should receive pro rata shares of the debtor's property."). Because of the pivotal importance of the equality principle, provisions of the Code that depart from it must be construed narrowly. *See Howard Delivery*, 547

[2] The members of the Minority Ad Hoc Group are listed in the *Second Verified Statement of the Ad Hoc Group of Minority Secured Lenders Pursuant to Bankruptcy Rule 2019* [Docket No. 1262] (the "Second Rule 2019 Statement").

U.S. at 667. And to further safeguard equal treatment, a debtor cannot manipulate plan voting by including claimants within a class who have incentives to favor the plan because they are receiving benefits others in the class do not share. *See American United Mut. Life Ins. Co. v. City of Avon Park*, 311 U.S. 138, 147-48 (1940) ("if a vote is influenced by the expectation of advantage, though without any positive promise, it cannot be considered an honest and unbiased vote," and "[t]he fact that the vast majority of security holders may have approved a plan is not the test of whether that plan satisfies the statutory standard. The former is not a substitute for the latter. They are independent.") (internal citations omitted).

In this case, the Plan places the claims of the Minority Ad Hoc Group in Class 3 and provides that they are to receive nothing. In contrast, the Plan places the claims of other unsecured creditors in Class 4 and provides that they are to receive substantial sums. In an effort to prevent the Minority Ad Hoc Group from challenging this discrimination, the Plan includes in Class 3 the claims of certain other creditors—the Majority Ad Hoc Group[3]—who (1) have otherwise reaped outsized benefits from the Debtors' Chapter 11 cases, and (2) hold stakes of a sufficient size to outvote the Minority Ad Hoc Group, thus ensuring that Class 3 would vote in favor of the Plan. The question is whether the Bankruptcy Code, properly construed, authorizes such a scheme. It does not. Accordingly, the Plan should not have been confirmed.

First, section 1122 does not authorize the Plan's classification scheme. The Debtors improperly classified creditors to ensure that (1) the Minority Ad Hoc Group would have no meaningful voice in Plan acceptance and (2) could not invoke the statutory cramdown protections

[3] All capitalized terms undefined herein shall have the same meaning as in the Plan or *The Ad Hoc Group of Minority Secured Lenders' Objection to (I) Confirmation of Liquidating Plan and (II) Final Approval of the Disclosure Statement* [Docket No. 1476].

that bar unfair discrimination. In addition, the Debtors improperly separated the claims of the Minority Ad Hoc Group in Class 3 from the claims of general unsecured creditors in Class 4.

Second, the placement of the Minority Ad Hoc Group and the Majority Ad Hoc Group together in Class 3 violates section 1123(a)(4). The Majority Ad Hoc Group is receiving preferential treatment under the Plan that the Minority Ad Hoc Group is not receiving, specifically certain releases under the Plan.

Third, section 1126 does not authorize the Majority Ad Hoc Group to outvote the Minority Ad Hoc Group in Class 3. Because claimants in Class 3 will receive nothing, they are deemed to have rejected the Plan, thus triggering the cramdown standards. Further, because the Majority Ad Hoc Group has essentially received all of the Debtors' value, while the Minority Ad Hoc Group has received nothing, the votes of the Majority Ad Hoc Group "cannot be considered an honest and unbiased vote." *Avon Park*, 311 U.S. at 147-48. In addition, the votes of the Majority Ad Hoc Group cannot be considered because they are insiders.

Fourth, section 1129 does not authorize the Plan's discriminatory treatment. On the contrary, it affirmatively refutes it. As the Supreme Court has explained, a plan "would not be confirmed where one creditor was obtaining some special favor or inducement not accorded the others, whether that consideration moved from the debtor *or from another*." *Avon Park*, 311 U.S. at 147 (emphasis added). That is simply "part of the general rule of 'equality between creditors'…applicable in all bankruptcy proceedings," which "principle has been imbedded by Congress…by the express provision against unfair discrimination." *Id*.

Fifth, the evidence supports a reasonable likelihood that the members of the Minority Ad Hoc Group hold super-priority administrative claims under section 507(b) of the Bankruptcy Code

in amounts that exceed the funding available under the Plan. Thus, the Court's finding that the Plan is feasible is erroneous.

For these and other reasons,[4] the Minority Ad Hoc Group is likely to succeed on the merits of its Appeal. Moreover, the Minority Ad Hoc Group is likely to be substantially, and potentially irreparably, harmed if the Court does not grant a stay of the Confirmation Order pending appeal. Absent a stay, the Debtors will seek to consummate the Plan and make distributions as quickly as possible. They will then argue that consummation creates a Gordian knot that cannot be untied without jeopardizing the interests of third parties. On that basis, the Debtors will contend that, under the doctrine of equitable mootness, the appellate courts should abstain from exercising jurisdiction to review the Confirmation Order. Although the Minority Ad Hoc Group disagrees that the Appeal would be equitably moot, there is a substantial risk that the appellate courts might rule that it is, thereby extinguishing the Minority Ad Hoc Group's appellate rights and causing irreparable harm. Thus, the Court should preserve the status quo and stay the effectiveness of the Confirmation Order pending the outcome of the Appeal.

Moreover, there is no harm to the Debtors from granting a stay pending Appeal. Having sold substantially all of their assets, the Debtors no longer conduct any ongoing business operations. Thus, the rush to have an operating entity emerge from bankruptcy often associated with Chapter 11 reorganization cases is absent here. Rather, the Debtors now exist solely to distribute liquidation proceeds to stakeholders, which proceeds may be held in interest-bearing accounts to prevent diminution. Although a stay would cause some delay in making distributions, the Debtors and all other parties in interest would benefit from a final adjudication of the parties'

[4] The arguments raised herein regarding likelihood of success on Appeal are solely for purposes of seeking a stay pending appeal and are not intended to be comprehensive. The Minority Ad Hoc Group reserves all rights to raise any and all arguments or issues on Appeal, and the omission of any argument or issue herein is not intended as, and is not, a waiver of any such arguments or issues on Appeal.

rights to those proceeds before such distributions commence. Otherwise, if the Minority Ad Hoc Group is successful on Appeal, the Debtors may be required to claw back distributions. Because the Debtors and others would actually benefit from the stay, the balance of harms weighs in favor of granting one.

Finally, the public interest lies in the correct application of the law, and allowing those Chapter 11 plans that satisfy the requirements of the Bankruptcy Code to be confirmed and consummated. Accordingly, the Minority Ad Hoc Group has satisfied all of the factors applicable to stays pending appeal, and the Court should grant the Minority Ad Hoc Group's request.

BACKGROUND

1. The Minority Ad Hoc Group assumes the Court's familiarity with the background of these Chapter 11 Cases, and therefore incorporates paragraphs one (1) to forty-one (41) of *The Ad Hoc Group of Minority Secured Lenders' Objection to (I) Confirmation of Liquidating Plan and (II) Final Approval of the Disclosure Statement* [Docket No. 1476] (the "Min. AHG Objection") by reference as if fully set forth herein. What follows are relevant background facts with respect to the May 12, 2026 combined hearing on approval of the Disclosure Statement and confirmation of the Plan (the "Combined Hearing"), and the Court's ruling with respect thereto.

2. In the Min. AHG Objection, the Minority Ad Hoc Group set forth several reasons for denying confirmation of the Plan. First, the Minority Ad Hoc Group challenged the feasibility of the Plan, as well as its compliance with section 1129(a)(9) of the Bankruptcy Code, as it provided inadequate funds to pay the Minority Ad Hoc Group's 507(b) administrative expense claims (the "507(b) Claims"). The Minority Ad Hoc Group also argued, among other things, that the Plan improperly classified similar claims in separate classes, that Class 3 must be deemed to

reject the Plan under section 1126(g) of the Bankruptcy Code, and the Plan was required to, but could not, satisfy section 1129(b) cramdown requirements.

3. On May 10, 2026, the Minority Ad Hoc Group filed its *Request for Payment of Administrative Expense Claim Pursuant to 11 U.S.C. §§ 503(b)(1)(A) and 507(b)* [Docket No. 1538] (the "507(b) Request"). The 507(b) Request sets forth the basis for the 507(b) Claims, including that (a) the Court granted adequate protection for the Super-Senior Term Loan lenders' interest in their collateral under the Interim and Final DIP Orders in the form of Super-Senior Replacement Liens and Super-Senior 507(b) Claims; (b) the adequate protection was to compensate the Super-Senior Term Loan lenders for the diminution in value of their interests in their collateral "resulting from, among other things, the imposition of the priming DIP Liens on the First Out Collateral, the Carve Out, the Debtors' use of the First Out Collateral (including Cash Collateral), the imposition of the automatic stay, and/or any other reason permitted pursuant to the Bankruptcy Code"; and (c) the priming of the Super-Senior Term Loans by $247 million in Roll-Up Loans and the use of the Super-Senior Term Loan lenders' collateral to pay professional fees, administrative and priority claims, and wind-down costs caused a diminution of the value of the Super-Senior Term Loan lenders' interest in their collateral. The Minority Ad Hoc Group therefore asserted 507(b) Claims in the aggregate amount of no less than $25 million.

A. The Combined Hearing, Bench Ruling, and Confirmation Order.

4. On May 12, 2026, the Court held the Combined Hearing. At the hearing, the Debtors' witnesses, Jonathan Goulding and Leticia Sanchez, testified via declaration, and Mr. Goulding was cross-examined by the Minority Ad Hoc Group. Through such cross-examination, as well as exhibits admitted into evidence at the hearing, the Minority Ad Hoc Group established

that the Debtors had not met their burden of proving that the Plan met the Bankruptcy Code's requirements for confirmation.

5. Despite this, on May 18, 2026, the Court read into the record a bench ruling that the Plan would be confirmed and the Disclosure Statement approved on a final basis (the "Bench Ruling"). In doing so, the Court overruled the Minority Ad Hoc Group's objections to Plan confirmation.

6. First, even though the Minority Ad Hoc Group had asserted 507(b) Claims in the amount of no less than $25 million, and there was insufficient funding to pay claims approaching that amount, the Court found that the Plan was feasible. In doing so, the Court first indicated that the Minority Ad Hoc Group may lack standing to assert 507(b) Claims, even though the Debtors first raised this argument 19 hours prior to the Combined Hearing and the Minority Ad Hoc Group had no opportunity to brief or prepare evidence regarding the issue. The Court then found that, to defeat a finding of feasibility, the Minority Ad Hoc Group effectively had the burden to fully prove its entitlement to 507(b) Claims, but failed to do so. *See* Bench Ruling Tr. (Wolpert Certification, Ex. A) at 11:15-15:10.

7. Next, the Court held that Class 3 should not be deemed to reject the Plan under section 1126(g). According to the Court, section 1126(g) only requires a class to be deemed to reject based on what the plan provides, not on anticipated recoveries. *Id.* at 16:12-21. Despite projected recoveries of 0% and repeated assertions by the Debtors that Class 3 claims are entitled to "nothing," *see, e.g.,* Combined Hearing Tr. (Wolpert Certification, Ex. B) at 144:1-2 ("at bottom, [members of the Minority Ad Hoc Group] aren't entitled to any recovery"), the Court held that the retention of the right to any distributable proceeds under the waterfall, in addition to setoff

and recoupment rights, were sufficient to avoid the application of 1126(g). *See* Bench Ruling Tr. at 16:22-17:23.

8. As for classification, the Court held that separately classifying Super-Senior Term Loan claims in Class 3 from general unsecured claims in Class 4 was justified as the claims are "not substantially similar" because they are "governed by unique contractual agreements, possess asserted collateral rights, and are subject to separate intercreditor and adequate protection issues" while the Class 4 claims are "trade and other unsecured obligations with materially different legal rights." *Id.* at 19:13-22.

9. The Court held that, even if all unsecured claims were classified together, the Majority Ad Hoc Group votes in Class 3 would not be excluded under section 1129(a)(10) as insider claims. The Court concluded that, because the Majority Ad Hoc Group never exercised its rights to appoint a majority of the Debtors' board, or to acquire up to 25% of its equity, the Majority Ad Hoc Group did not meet the statutory or non-statutory insider standard. *Id.* at 20:9-21:5. The Court also rejected the Minority Ad Hoc Group's arguments under section 1123(a)(4), holding that the fact that the Majority Ad Hoc Group members received releases, which the Minority Ad Hoc Group members did not, did not establish disparate treatment within Class 3.

10. The Court then held that, because all impaired classes (despite two of those classes having no chance of recovery) voted to accept the Plan, no analysis as to whether the Plan satisfied cramdown under section 1129(b) was necessary. In dicta, however, the Court stated that the Plan would satisfy the cramdown standards. Holding that "Class 3 claims are by definition entirely unsecured," the Court agreed with the Debtors that any difference in treatment between Class 3 claims and Class 4 claims was not material and did not constitute unfair discrimination. *Id.* at 21:21-22:24. Relatedly, the Court held that the DIP Lenders could "gift" their claims via

"horizontal gifting" to members of Class 4 since such a gift would be a recovery that Class 3 was not entitled to anyway. *Id.* at 22:25-23:16. Further, the Court agreed that the Debtors were authorized to pay out certain administrative expenses under the asset purchase agreements approved as part of the SOTP Transactions, and therefore the best interests test was satisfied in that no creditors, except for the DIP Lenders, would do better in a Chapter 7 scenario. *Id.* at 23:17-24:1, 24:17-24.

11. On May 22, 2026, the Court entered the order confirming the Plan [Docket No. 1592] (the "Confirmation Order"). On May 27, 2026, the Minority Ad Hoc Group filed a notice of appeal of the Confirmation Order. *See* Docket No. 1601.

ARGUMENT

I. Because the Minority Ad Hoc Group Satisfies the *Nken* Factors, the Court Should Grant a Stay Pending Appeal.

12. "Under Federal Rule of Bankruptcy Procedure 8007, a party can move to stay the effect of a bankruptcy court order pending a resolution on appeal." *In re Revel AC, Inc.*, 802 F.3d 558, 567–68 (3d Cir. 2015) (citing Fed. R. Bankr. P. 8007). "The factors considered 'overlap' the familiar [*Nken* factors] courts look to in ruling on applications for preliminary injunctions." *Id.* at 568 (*citing Nken v. Holder*, 556 U.S. 418, 434 (2009)).

13. The four *Nken* factors are: (a) whether appellant has made a strong showing it is likely to succeed on the merits; (b) whether appellant will be irreparably injured absent a stay; (c) whether a stay will substantially injure other parties; and (d) where the public interest lies. *Id.* The first two factors are the "most critical." *Id.* (*quoting Nken*, 556 U.S. at 434). Each of the four factors is satisfied here.

A. The Minority Ad Hoc Group is Likely to Succeed in Demonstrating that the Plan Should Not be Confirmed.

14. To satisfy the first factor, the Third Circuit has held that an applicant must make a sufficient showing that its chances of winning on the merits are "significantly better than negligible but not [necessarily] greater than 50%." *Id*. at 571 (3d Cir. 2015). In other words, "a sufficient degree of success for a strong showing exists if there is 'a reasonable chance, or probability, of winning.'" *Id.* at 568 (*quoting Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir. 2011) (*en banc*)) (emphasis added).

15. A movant presents a "substantial case" when the appeal raises a question that involves the application of law for which there is no definitive authority. For example, the first factor is satisfied when there is no binding authority directly on point requiring the outcome the court has reached. *See In re Genesis Health Ventures,* 367 B.R. 516, 521 (Bankr. D. Del. 2007) (granting stay pending appeal where the Third Circuit had not yet decided an issue of law and where "there may be substantial grounds for a difference of opinion within that circuit"); *see also In re Tex. Equip. Co., Inc.*, 283 B.R. 222, 227 (Bankr. N.D. Tex. 2002) ("With respect to questions of law …especially questions involving the application of law, or when the law has not been definitively addressed by a higher court, the movant more easily satisfies the first element.")

16. Indeed, the first factor may be satisfied even if the law merely fails to *conclusively* establish the propriety of the court's decision, *see In re St. Johnsbury Trucking Co.,* 185 B.R. 687, 689 (S.D.N.Y. 1995), or when the court has had to rely on law that is in flux and subject to varying interpretations, *see In re Porter,* 511 B.R. 785, 811 (Bankr. E.D. La. 2014). The first factor is also satisfied when the facts are disputed and complex—which, when the law is unsettled, renders the application of law to the relevant facts difficult and uncertain. *See In re Miraj & Sons,* 201 B.R. 23, 26 (Bankr. D. Mass. 1996).

17. For several reasons, the Court should not have entered the Confirmation Order. These reasons include, without limitation, that (a) the Plan uses various impermissible classification and voting machinations to effectuate impermissible unfair discrimination and (b) the Debtors did not meet their burden of proving that the Plan is feasible under section 1129(a)(11), as the evidence did not show that there is enough funding to pay all administrative expense claims.

18. At the very least, this Appeal presents complex, disputed factual issues requiring the application of unsettled law, and the Minority Ad Hoc Group has made a substantial case for success on the merits.

19. As the Third Circuit has recognized, "many plan disputes in § 1129 begin as misclassifications under § 1122." *See In re Tribune Co.*, 972 F.3d 228, 243 (3d Cir. 2020). Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). Although section 1122(a) does not state in so many words that claims of the same priority must always be classified together, courts have consistently recognized that there are constraints on a debtor's ability to separately classify claims. Among these constraints, the "one clear rule" is that similar claims must not be classified differently "in order to gerrymander an affirmative vote on a reorganization plan." *In re Fairfield Exec. Assocs.*, 161 B.R. 595, 604 (D.N.J. 1993) (quoting *In re Greystone III Joint Venture*, 995 F.2d 1274, 1279 (5th Cir.1991), *cert. denied*, 506 U.S. 821 (1992)); *see also In re One Times Square Assocs. Ltd. P'ship*, 165 B.R. 773, 776 (S.D.N.Y. 1994), *aff'd sub nom. In re One Times Square Assocs.*, 41 F.3d 1502 (2d Cir. 1994) ("[W]hile a debtor has a certain degree of flexibility in classifying claims, its discretion is limited by the principle that classification may not be used for the sole purpose of manipulating the vote."). Similarly, the Third Circuit has held that, when similar claims are classified separately, "each class

must represent a voting interest that is sufficiently distinct and weighty to merit a separate voice in the decision whether the proposed reorganization should proceed," or else "the classification scheme would simply constitute a method for circumventing … 1129(a)(10)." *John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.*, 987 F.2d 154, 159 (3d Cir. 1993).

20. The Plan's classification scheme violates these basic principles.

21. *First*, the Court's rationale for approving the separate classification of the Super-Senior Term Loan lenders' deficiency claims from other unsecured claims of the same priority on the theory that the deficiency claims "arise from a distinct credit facility" and that general unsecured creditors have "different legal rights" conflicts with the reasoning the Third Circuit adopted in *John Hancock*. There, the Court held that, even if the holders of deficiency claims have legal rights distinct from the rights of trade creditors outside of bankruptcy, those differences do not render deficiency claims dissimilar from unsecured trade claims in bankruptcy. *Id*. at 161. In so concluding, the Third Circuit quoted with approval the Fifth Circuit's holding in *In re Greystone III Joint Venture* that "the Code has eliminated the legal distinction between non-recourse deficiency claims and other unsecured claims." *See id*. at 159 (quoting *In re Greystone III Joint Venture*, 948 F.2d 134, 139 (5th Cir. 1991), as republished at 995 F.2d 1274, 1290 (5th Cir. 1991)).

22. Further, this Court alluded to "valid business reasons" for separate classification, but the overwhelming weight of authority makes clear that business reasons can only potentially justify separate classification if the Debtors are actually reorganizing their business and there is evidence that separately classified creditors are necessary to that ongoing reorganization. Here, the Debtors are not reorganizing.[5]

[5] This violates the principle from *John Hancock* that each class must represent a "sufficiently distinct and weighty" voting interest. *See John Hancock Mut. Life Ins. Co.*, 987 F.2d at 159. There is no such distinction where the Plan is a liquidating plan.

23. *Second*, even assuming that separate classification could be approved (which it could not), the Plan does not comply with section 1126(g) of the Bankruptcy Code. Mr. Goulding testified that "[w]e don't have anything that we can think of" that would provide a recovery to Class 3 claims. Combined Hearing Tr. at 62:16-20. Thus, while the Debtors sought to maintain that recovery to Class 3 was theoretically possible, the evidence did not demonstrate that there was *any chance* of such recovery. Despite this, the Court found that because the words of the Plan provide that Class 3 is entitled to receive proceeds that may trickle down through the waterfall, it did not matter that such proceeds could never reach Class 3. Bench Ruling Tr. at 16:5-17:6. In doing so, the Court cited two cases, *In re Claire's Holdings LLC,* No. 25-11454 (Bankr. D. Del. 2025) and *In re Bed Bath & Beyond*, No. 23-13359 (Bankr. D.N.J. 2023), in which 1126(g) issues were not contested, and which involved no opinions on or analysis of such matters.

24. An acute problem with the Court's approval of the Debtors' voting scheme is that it permits an impermissible end run around the Bankruptcy Code's requirements by elevating form over substance. *See*, *e.g. In re Ultra Petroleum Corp.*, 51 F.4th 138, 146 (5th Cir. 2022) (disapproving treatment that would permit an easy end run around Bankruptcy Code restrictions). A plan that merely *says* that a class is entitled to a recovery that can never occur does not mean that the plan entitles the holders of claims or interests in such class "to receive or retain any property under the plan on account of such claims or interests" within the meaning of 1126(g).

25. The Court also found that the Plan met 1126(g) by allowing Class 3 to "retain" setoff and recoupment rights, again relying on unpublished confirmation orders with no indication that the issue was contested. As an initial matter, it is, at best, questionable whether the Super-Senior Term Loan Secured Parties' setoff and recoupment rights would have been subject to

discharge had the plan not provided that they were "retained."[6] In any event, at least with respect to the members of the Majority Ad Hoc Group, the Plan releases any and all claims that the Debtors may have against them, rendering any supposed retention of setoff and recoupment rights entirely illusory.

26. A further problem with the Court's approval of the Debtors' voting scheme is that it endorses a kind of voting manipulation the Supreme Court has explicitly condemned. In *Avon Park*, creditors voted overwhelmingly in favor of the plan, thus effectively negating the dissenting vote of an objecting creditor. The Supreme Court, however, concluded that the favorable vote was not dispositive and overturned the plan precisely for the reasons present in this matter: creditors favoring the plan received benefits that the dissenting creditors did not receive, thus rendering the vote invalid. *See Avon Park*, 311 U.S. at 147-48 ("if a vote is influenced by the expectation of advantage, though without any positive promise, it cannot be considered an honest and unbiased vote," and "[t]he fact that the vast majority of security holders may have approved a plan is not the test of whether that plan satisfies the statutory standard. The former is not a substitute for the latter. They are independent.") (internal citations omitted).

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[6] In *In re De Laurentiis Entertainment Grp. Inc.*, the Ninth Circuit found that section 553 of the Bankruptcy Code takes precedence over section 1141, and that to hold otherwise would require setoff rights to be "written into a plan of reorganization" thus making section 553 largely superfluous. 963 F.2d 1269, 1276-77 (9th Cir. 1992). Under the reasoning of *In re De Laurentiis*, since setoff rights would not be discharged under a plan, such rights would be retained regardless of what the plan provides, and therefore would not be a basis for holding that a plan provides for the retention of property within the meaning of 1126(g). In *In re Continental Airlines*, the Third Circuit distinguished *In re De Laurentiis* on the basis that, in *In re De Laurentiis*, the creditor timely filed a proof of claim preserving its setoff rights against the Debtor prior to confirmation. 134 F.3d 536, 540-41 (3d Cir. 1998), *as amended* (Mar. 23, 1998). Here, the Final DIP Order provided that filing proofs of claim with respect to the Super-Senior Term Loan Claims was not required, and failure to file a proof of claim would not "adversely affect the Prepetition Agents' or any Prepetition Secured Party's rights, remedies, powers, or privileges under any of the Prepetition Documents, the DIP Orders, or applicable law." Final DIP Order ¶ 36. As setoff and recoupment rights are rights under applicable state law, they were preserved through the Final DIP Order. Thus, the facts here are more similar to those in *In re De Laurentiis* than in *In re Continental Airlines*.

27. In conducting its analysis, the Supreme Court sharply criticized the inclusion in the same voting class of claims held by creditors with a "close identity of interests" with the debtor and claims held by creditors without such ties. *See id.* at 148-49 ("[T]here was such a close identity of interests between Crummer and the city vis-a-vis the refunding as to raise grave doubts as to the propriety of allowing those claims to vote in any event."). What the Supreme Court condemned in *Avon Park* is exactly what the Debtors are doing here. Moreover, this Court's justification for approving the scheme—that "[t]he plan enjoys overwhelming creditor support," Bench Ruling Tr. at 7:17—is exactly the rationale the Supreme Court *rejected*.

28. In addition, the Court should not have accepted the vote of the Majority Ad Hoc Group for purposes of determining whether there was unfair discrimination because they are insiders. It is undisputed that the Majority Ad Hoc Group had the right to appoint directors of the Debtors and, in fact, did so. By definition, a single director is an insider. *See* 11 U.S.C. § 101(31). By extension, so are creditors that appoint one or more directors regardless of whether the creditors appointed a majority of the board. In any event, it is irrefutable that the Debtors and the Majority Ad Hoc Group had a "close identity of interests," thus disqualifying the vote of the Majority Ad Hoc Group under the rationale adopted by the Supreme Court in *Avon Park*.[7]

29. *Third*, although the Court found that all impaired creditor classes properly voted to accept the Plan, and therefore the Debtors did not have to satisfy the cramdown standards of 1129(b), it nevertheless found that those standards were satisfied. But that does not square with

[7] The Court determined that the Majority Ad Hoc Group was not an insider because, while it had the right to control the Debtors' board and own 25% of the Debtors' equity, it did not fully exercise those rights, appointing only some of the directors. This determination is inconsistent with the non-exclusive nature of the categories listed in section 101(31), as well as case law providing that parties may be considered "non-statutory insiders" in cases of this kind.

the statutory requirement prohibiting unfair discrimination or the equality of treatment principle the Supreme Court endorsed in *Avon Park*.

30. Section 1129(b)(1) mandates that a plan must not "discriminate unfairly" against a rejecting class. 11 U.S.C. § 1129(b)(1). The Court concluded that this prohibition was not violated on the theory that "any differential and projected recoveries is minimal and insufficient to constitute unfair discrimination." Bench Ruling Tr. at 22:15-21. But given that Class 4 is receiving $8 million and Class 3 is receiving $0, the difference in percentage recovery is infinite, and thus clearly material. Moreover, the difference is exacerbated when considering that the Debtors have paid prepetition non-priority unsecured claims (which the Critical Vendor Motion states could be up to $67 million (Critical Vendor Motion at 3 (Docket No. 13)) under the Critical Vendor Order, substantially increasing the blended recovery to general unsecured trade claims while providing no distribution, and no benefit, to disfavored unsecured creditors. *See In re Kmart Corp.*, 359 F.3d 866, 872-74 (7th Cir. 2004) (without evidence of the need for the payment and a substantial benefit to disfavored creditors, paying pre-petition debts to "critical vendors" is not permitted under the Bankruptcy Code).

31. The Court's reliance on cases suggesting that a "horizontal gift" justifies unfair discrimination is likewise unsound. In *Armstrong*, the Third Circuit held that these cases, including *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 602 (Bankr. D. Del. 2001), "do not stand for the unconditional proposition that creditors are generally free to do whatever they wish with the bankruptcy dividends they receive" without adherence to section 1129(b)(2)(B)(ii). *In re Armstrong World Indus.*, *Inc.*, 432 F.3d 507, 514 (3d Cir. 2005). Although *Armstrong* held that a priority-skipping "vertical gift" is impermissible, the affirmed District Court opinion quoted with approval *In re Sentry Operating Co. of Tex., Inc.*, 264 B.R. 850, 865 (Bankr. S.D. Tex. 2001),

which involved "horizontal gifting." *In re Armstrong World Indus., Inc.*, 320 B.R. 523, 540 (D. Del. 2005). In *In re Sentry*, the court rejected the argument that the unfair discrimination standard does not apply where secured creditors carve out property from their lien and make a "horizontal gift" to preferred unsecured creditors. In doing so, the court found that "[t]o accept [the secured lender's] argument that [it] can, without any reference to fairness, decide which creditors get paid and how much those creditors get paid, is to reject the historical foundation of equity receiverships and to read the § 1129(b) requirements out of the Code…To accept that argument is simply to start down a slippery slope that does great violence to history and to positive law." *Id.* (*quoting In re Sentry*, 264 B.R. at 865). The District Court's quotation of this very language, and the Third Circuit's affirmance of the District Court decision, suggests that the Third Circuit would adopt the same rule.

32. In addition, the Plan is not "fair and equitable" because it permits the payment of lower priority claims ahead of the payment rights of the Minority Ad Hoc Group, which benefit from security interests in the Debtors' property. The evidence clearly showed that, before payment of administrative and priority claims and the GUC Cash Recovery (and assuming payment of the DIP Term Loan Claims and professional fees), at least $28 million of proceeds of the Super-Senior Term Loan Secured Parties' collateral would remain. Indeed, the Majority Ad Hoc Group demonstrated this with a chart in their response to the Minority Ad Hoc Group's objection:

	Debtors	MAHG
Proceeds, net of ABL	$402.4	$402.4
Pre-Close AR Collections	86.0	86.0
Other Excluded Assets	11.4	11.4
Beginning Cash	34.0	34.0
Available Proceeds (excl. RE)	**$533.8**	**$533.8**
Labor OpEx	(39.6)	(39.6)
Non-Labor OpEx	(11.5)	(11.5)
Pro Fees, Pre-Conf.	(48.2)	(48.2)
Pro Fees, Post-Conf.	(5.4)	(5.4)
Admin Priority Claims	(109.8)	–
GUC Settlement	(8.0)	–
Net Proceeds to DIP, excl. RE	**$311.3**	**$429.1**
Memo: DIP Claims, Post-Waiver	*$401.1*	*$401.1*
DIP Deficiency Claim	*89.8*	–
Value for Pre-Petition 1O	–	*28.0*

Docket No. 1510, at 4.

33. As this chart makes clear, lower priority claims are to be paid from the proceeds of collateral that should be paid to the Minority Ad Hoc Group because it clearly illustrates that, if the lower priority claims were not paid, there would be at least $28 million of proceeds available. This does not satisfy the standards for cramming down secured claims under section 1129(b)(2)(A), which requires that, to be considered "fair and equitable," a plan imposed on secured creditors over their objection provide those creditors with the value of their collateral or its indubitable equivalent. The Court, however, did not address section 1129(b)(2)(A).[8]

34. The Court's relevant findings are also internally inconsistent. On the one hand, the Court determined that, in a cramdown scenario, Class 3 would necessarily be entirely unsecured

[8] Elsewhere in the Bench Ruling, the Court found that "the proceeds generated through the sale process were finite and heavily constrained by administrative expenses, priority obligations, professional fees, operating expenses, and the remaining deficiencies owed on the DIP term loan claims," Bench Ruling Tr. at 23:18-21, but failed to recognize that administrative expenses, obligations, operating expenses, and professional fees *do not have priority over secured creditors with respect to their collateral*. To the extent that a Debtor wants to recover these costs from a secured creditors' collateral, it must do so either with the consent of the specific secured creditor or under section 506(c) of the Bankruptcy Code, to the extent not waived.

and that any value provided to general unsecured creditors would be a gift from the DIP lenders. Bench Ruling Tr. at 21:21-22:1, 22:25-23:11. On the other hand, the Court concluded that Class 3 would not be deemed to reject under 1126(g) because it could receive a recovery from "Other Excluded Assets" through the Plan's Waterfall after full payment of the DIP Term Loan Claims. Assuming that is the case, then the supposed "gift" to general unsecured creditors would not be from the DIP lenders' collateral, but rather from the Super-Senior Term Loan Lenders' collateral, including collateral securing the claims of the Minority Ad Hoc Group that do not consent to the "gift." In addition to being internally inconsistent, the Court's "gifting" rationale conflicts with Third Circuit precedent. *See In re Armstrong World Indus., Inc.,* 432 F.3d at 513 ("The plain language of the statute makes it clear that a plan cannot give property to junior claimants over the objection of a more senior class that is impaired.").

35. *Fourth*, the Court's holdings that the Plan complies with section 1129(a)(9), and was feasible under 1129(a)(11), depend on erroneous observations regarding the Minority Ad Hoc Group's 507(b) Claims. While the Minority Ad Hoc Group will brief and submit evidence to prove their 507(b) Claims on a timeline consistent with due process, for purposes of this Motion, the Minority Ad Hoc Group responds to the Court's observations as follows:

- Finding: "The debtors' confirmation materials and hearing presentation accurately cite authority recognizing that where the operative loan documents grant rights to the collateral agent individual lenders lack standing independently to enforce such rights against the collateral." Bench Ruling Tr. at 12:25-13:4.
    - 507(b) claims are unsecured administrative super-priority claims that arise by operation of law, not the loan documents.
    - Although 507(b) claims are measured by the diminution of the claimant's interest in collateral, they do not constitute enforcement of rights against collateral subject to collective action limitations under loan documents.
    - Collective action clauses are strictly construed, and clauses limiting "realization" of collateral refer to "conversion of noncash assets into cash assets." *See LCM XXII*

Ltd. v. Serta Simmons Bedding, LLC, 2022 U.S. Dist. LEXIS 57976, at *43-44 (S.D.N.Y. Mar. 29, 2022).

- Although the Super-Senior Credit Agreement allows the agent to file proofs of claim in bankruptcy, the agent is "entitled and empowered (*but not obligated*)" to do so. Super-Senior Credit Agreement § 9.10 [Docket No. 1057] (emphasis added). There is no language in the Super-Senior Credit Agreement or any other loan documents limiting lenders' ability to assert their own claims, including 507(b) claims, in a bankruptcy case.

- Finding: "Wilmington Savings Fund Society has filed a joinder to the objection filed by the debtors with respect to the asserted 507(b) entitlements, and such joinder takes the position that any such 507(b) claims belong exclusively to the collateral agent and are not asserted at this time." Bench Ruling Tr. at 13:5-9.

  - This is insufficient to defeat the Minority Ad Hoc Group's ability to pursue their claims.

- Finding: "The Court further notes that the final DIP order granted adequate protection rights to the collateral agent on behalf of the secured parties." Bench Ruling Tr. at 13:10-12.

  - The Final DIP Order granted adequate protection to the "Prepetition Secured Parties," including the "First-Out Secured Parties," "Second-Out Secured Parties," and "Third-Out Secured Parties," all of which terms include the individual Super-Senior Term Loan Lenders.

  - In the DIP Motion, the Debtors admitted that the "holders of Super-Senior First Out Loans" and "holders of Super-Senior Second-Out Loans and Super-Senior Third-Out Loans" were entitled to the enumerated adequate protection. DIP Motion, Docket No. 17 ¶ 15 (chart column labeled "Adequate Protection").

  - The Debtors also admitted that the Super-Senior Term Loan Lenders had interests in the collateral entitling them to adequate protection:

    - "The 'priming' liens under the DIP Facilities may be approved if either (a) the Prepetition Secured Parties have consented or (b) the *Prepetition Secured Parties' interests in collateral are adequately protected* … Moreover, the Interim Order includes customary adequate protection provisions to adequately protect the *Prepetition Secured Parties' interests in collateral.*" DIP Motion ¶¶ 40-41 (emphasis added).

    - "The Debtors are also proposing to provide a customary adequate protection package *to the Prepetition Secured Parties* to safeguard against diminution in value *of their collateral interests* during the pendency of these Chapter 11 Cases." DIP Motion ¶ 51 (emphasis added).

- The Final DIP Order confirms in various places that adequate protection was granted to the Super-Senior Term Loan Lenders:

  - "(iv) granting adequate protection *to the Prepetition Secured Parties* (as defined below) to the extent of any Diminution in Value (as defined below) of their interests in the Prepetition Collateral." Final DIP Order (Preamble listing what the Final DIP Order is granting) [Docket 359] (emphasis added).

  - "For all adequate protection purposes throughout these Cases, *each of the Prepetition Secured Parties shall be deemed to have requested relief from the automatic stay and adequate protection* for any Diminution in Value from and after the Petition Date. For the avoidance of doubt, such request will survive termination of this Final Order." Final DIP Order ¶ 14 (emphasis added).

  - "At any time any Prepetition Obligations remain outstanding, *each of the Prepetition Secured Parties are entitled*, pursuant to sections 105, 361, 362, and 363(e) of the Bankruptcy Code, *to adequate protection of their respective interests in the Prepetition Collateral,* including Cash Collateral, for the Diminution in Value (as defined below) thereof, subject only to the rights of parties in interest specifically set forth in paragraph 15 of this Final Order (and subject to the limitations thereon contained in such paragraph or otherwise in this Final Order)." Final DIP Order ¶ G(v) (emphasis added).

- The adequate protection granted to the Prepetition Secured Parties, including the Super-Senior Term Loan Lenders, took the form of replacement liens and allowed 507(b) claims granted to "the Super-Senior Agent for the benefit of itself and the Super-Senior First-Out Secured Parties." The language makes clear that this adequate protection was intended to protect the Super-Senior Term Loan Lenders' interest in their collateral:

  - "Subject only to the Carve Out in accordance with the Lien / Claim Priorities and the rights of parties in interest specifically set forth in the DIP Orders, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, *as adequate protection of their interests in the First Out Collateral* (including Cash Collateral), as applicable, to the extent of, and in any amount equal to, any "decrease in the value" (as that phrase is used in section 361 of the Bankruptcy Code) of such interests (a "Diminution in Value"), resulting from, among other things, the imposition of the priming DIP Liens on the First Out Collateral, the Carve Out, the imposition of the automatic stay, and/or any other reason permitted pursuant to the Bankruptcy Code, *the Super-Senior Agent, for the benefit of itself and the Super-Senior First-Out Secured Parties,* is hereby granted on a final basis the following

(collectively, the 'Super-Senior First-Out Adequate Protection Obligations')." Final DIP Order ¶ 8 (emphasis added).[9]

- There is no collective action language in the Final DIP Order. Members of the Minority Ad Hoc Group were granted adequate protection and were the clear, stated beneficiaries of the allowed 507(b) claim granted under the Final DIP Order, and thus have standing to enforce it.

- To the extent the Court finds that the Super-Senior Agent is the only party that can enforce the 507(b) claims specifically allowed under the Final DIP Order, and the Super-Senior Agent will not assert those claims, that is a failure of the adequate protection granted the members of the Minority Ad Hoc Group, as "Prepetition Secured Parties," under the Final DIP Order. Accordingly, the Minority Ad Hoc Group would have a claim for inadequate adequate protection under the statutory language of section 507(b). The Minority Ad Hoc Group's ability to assert this statutory claim was expressly preserved in the Final DIP Order:

  - "[N]othing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection *provided to the Prepetition Secured Parties* is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during these Cases." Final DIP Order ¶ 23 (emphasis added); *see also id.* ¶ 8(d).

- Finding: "The evidentiary record at the combined hearing does not establish any actionable diminution in the aggregate value of the group's interest in the collateral between the petition date and confirmation." Bench Ruling Tr. at 14:1-4.

  - The record established that the Minority Ad Hoc Group will receive nothing under the Plan.

  - The record established that the collateral on which the Minority Ad Hoc Group had a first lien on the Petition Date has a value of approximately $553.8 million.

  - There is no evidence in the record that such collateral had any less value on the Petition Date.

  - The record established that holders of Roll-Up Loans, which represent debt that was *pari passu* with the Super-Senior First-Out Term Loans on the Petition Date, will receive a recovery on account of the Roll-Up Loans.

[9] The use of the word "their" rather than "its" makes clear that the interest being protected was not just the interest of the Super-Senior Agent, but also the Super-Senior Term Loan Lenders.

36. The record established that the Minority Ad Hoc Group had collateral interests in all proceeds of the liquidation or collection of the Debtors' assets, and that such proceeds had been used by the Debtors to pay administrative and priority claims. The Minority Ad Hoc Group maintains that this use was not approved after closing of the SOTP Transactions, but even if it was approved, adequate protection is required for any use of cash collateral, including cash collateral that *is approved* under section 363(c) of the Bankruptcy Code. *See* DIP Motion ¶ 51 ("The proposed adequate protection package is fair and appropriate in these Chapter 11 Cases to ensure the Debtors are able to continue using the Cash Collateral, subject to the terms and conditions set forth in the DIP Orders, for the benefit of their estates and all parties in interest.").

37. In addition, the Court improperly shifted the Debtors' burden of proving that the Plan meets the requirements of section 1129(a)(9) and 1129(a)(11), requiring instead that the Minority Ad Hoc Group disprove those criteria by fully proving its 507(b) Claims.

38. *Finally*, the Court erred in finding that, even though the Plan did not provide for substantive consolidation, the Debtors' solicitation and tabulation of votes on a consolidated, rather than debtor-by-debtor, basis was proper. The text of the Bankruptcy Code requires that plans be solicited on a "per-debtor" basis, even in administratively consolidated cases. *See In re Tribune Co.*, 464 B.R. 126, 183 (Bankr. D. Del. 2011); *In re AIO US, Inc.*, 2025 WL 2426380, at *30 n.218 (Bankr. D. Del. Aug. 21, 2025); *In re JER/Jameson Mezz Borrower II, LLC,* 461 B.R. 293, 301–02 (Bankr. D. Del. 2011). Convenience does not dictate that "per-plan" voting is permissible.

B. The Minority Ad Hoc Group May Be Irreparably Harmed if the Confirmation Order is Not Stayed And its Appellate Rights are Mooted.

39. If a stay is not issued, the Minority Ad Hoc Group stands to suffer irreparable harm because the absence of a stay would allow the Plan to be 'substantially consummated,' and thus

impose on the Minority Ad Hoc Group the significant risk of having its pending appeal of the Settlement Order, as well as their appeal of the Confirmation Order, potentially subject to the doctrine of equitable mootness. Concurrently, the Plan also dissolves the Committee except for limited purposes, which also creates risk for the Debtors to argue that the Minority Ad Hoc Group's appeals are moot because no party would have standing to bring certain of the avoidance actions the Minority Ad Hoc Group would want returned to the estate via their Settlement Appeal. This potential loss of appellate rights amounts to a "potential harm which cannot be redressed by a legal or an equitable remedy following a trial" sufficient to satisfy the irreparable harm standard in the Third Circuit. *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm. Co.*, 290 F.3d 578, 595 (3d Cir. 2002).

40. Courts have concluded that parties satisfy the irreparable harm standard when their ability to vindicate their rights in a pending appeal would be vitiated absent a stay. *See In re Adelphia Commc'ns Corp.*, 361 B.R. 337, 348 (S.D.N.Y. 2007) ("[W]here the denial of a stay pending appeal risks mooting *any* appeal of *significant* claims of error, the irreparable harm requirement is satisfied," as "loss of appellate rights is a quintessential form of prejudice.") (emphasis in original); *see also In re Country Squire Associates of Carle Place, L.P.*, 203 B.R. 182, 183 (B.A.P. 2d Cir. 1996). Courts have also concluded that the irreparable harm standard is satisfied where Debtors may be able to effectuate potentially unlawful Chapter 11 plans prior to the adjudication of appeals on the merits. *See In re Tribune Co.*, 477 B.R. 465, 477 (Bankr. D. Del. 2012). As the Second and Third Circuits have both held, the irreparable harm standard is satisfied "where, but for the grant of equitable relief, there is a substantial chance that upon final resolution of the action the parties cannot be returned to the positions they previously occupied." *Guardian Life Ins. Co. of Am. v. Estate of Cerniglia*, 446 F. App'x 453, 456–57 (3d Cir. 2011)

(quoting *Brenntag Intern. Chemicals, Inc. v. Bank of India*, 175 F.3d 245, 249 (2d Cir. 1999)). Accordingly, the irreparable harm factor is satisfied where "a plaintiff demonstrates a significant risk that he or she will experience harm that cannot adequately be compensated after the fact by monetary damages." *Id.* at 456. Those circumstances are present in this case.

41. Equitable mootness is "a judge-made abstention doctrine that allows a court to avoid hearing the merits of a bankruptcy appeal because implementing the requested relief would cause havoc." *See In re Semcrude, L.P.,* 728 F.3d 314, 317 (3d Cir. 2013); *see also In re Serta Simmons Bedding, L.L.C.*, 125 F.4th 555, 585 (5th Cir. 2024), *as revised* (Jan. 21, 2025), *as revised* (Feb. 14, 2025), *cert. denied sub nom. Barings L.L.C. v. AG Ctr. St. P'ship*, 146 S. Ct. 397 (2025) (describing equitable mootness as a "judicial anomaly" and "a judge-created doctrine of pseudo-abstention that favors the finality of reorganizations and thus constrains [] appellate review of plan confirmation orders"); *In re One2One Commc'ns, LLC*, 805 F.3d 428, 438 (3d Cir. 2015) (Krause, J., concurring) (describing equitable mootness as "legally ungrounded and practically unadministrable").

42. The Third Circuit has held that equitable mootness is analyzed as a two step inquiry: "(1) whether a confirmed plan has been substantially consummated; and (2) if so, whether granting the relief requested in the appeal will (a) fatally scramble the plan and/or (b) significantly harm third parties who have justifiably relied on plan confirmation." *In re Semcrude*, 728 F.3d at 321. Substantial consummation, is, in turn, defined in section 1101 of the Bankruptcy Code to mean the "(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan." *See* 11 U.S.C. § 1101; *see also In re Semcrude*,

728 F.3d at 321. If the Plan—with its built-in implementation of releases, distribution of estate assets according to the terms of an unlawful Settlement presently on appeal, and its dissolution of the Committee except for certain limited purposes —is allowed to go into effect at the end of the Rule 3020(e) stay, then the Debtors would be aided in their efforts to argue "equitable mootness" well before any appellate review of the Settlement Order and the Confirmation Order could take place. Although the Minority Ad Hoc Group is in no way conceding that their appeals would, much less should, be deemed equitably moot, a failure to stay the plan pending the resolution of the Minority Ad Hoc Group's appeals creates considerable risk to the Minority Ad Hoc Group's appellate rights.

43. As the Sixth Circuit has noted, "[a]n orderly bankruptcy process depends on a concomitantly efficient appeals process." *In re Syncora Guarantee Inc.*, 757 F.3d 511, 517 (6th Cir. 2014). Denying a stay pending appeal is squarely contrary to the Minority Ad Hoc Group's right to participate in that efficient appeals process and provide them with a meaningful opportunity for appellate review of both the Settlement Order and the Confirmation Order. *See In re Voluntary Purchasing Grps., Inc*., 196 F.3d 1258 (5th Cir. 1999) (per curiam) (reversing the district court's decision to deny a stay, noting that in view of the doctrine of equitable mootness, "[a]bsent a stay, the [appellants'] right to contest the confirmation order could be thwarted" and finding that "the balance of hardships clearly weighed in favor of granting a stay rather than permitting a procedurally flawed, and therefore incomplete, plan to be confirmed and consummated").

C. A Stay of the Confirmation Order Pending Appeal Will Not Harm Other Parties.

44. In determining whether any party in interest will suffer "substantial" injury if a stay pending appeal is granted, a court must balance the likely harm to the movant absent a stay (the second factor) against the likely harm to stay opponents if it is granted (the third factor). *See In re Revel AC, Inc.*, 802 F.3d at 569.

45. As explained above, if a stay is not granted, the Minority Ad Hoc Group could well be deprived of its appellate rights. In contrast, the Debtors, the Majority Ad Hoc Group, and the Committee cannot point to any irreparable harm. A stay would only delay distributions, which by definition is neither significant harm nor an *irreparable* injury. Moreover, there is no urgency in this case, as the Debtors do not have an operating business, much less one that needs to quickly emerge from Chapter 11. The Debtors are already in the process of conducting liquidation activities, and a short delay of the Effective Date and the distribution of proceeds under the Plan will have little to no effect on those activities. In any event, the immaterial harm that may result from a short delay is outweighed by the harm to the Minority Ad Hoc Group from the potential inability to have a meaningful opportunity to fully appeal the Confirmation Order before the Debtors argue the Appeal is equitably moot.

D. The Public Interest Favors a Stay of the Confirmation Order.

46. In enacting the Bankruptcy Code, Congress necessarily directed the proper and consistent application of its standards for final distributions from Chapter 11 bankruptcy estates. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 464 (2017) ("The Code's priority system constitutes a basic underpinning of business bankruptcy law."); *In re Boy Scouts of Am.*, 137 F.4th 126, 156 (3d Cir. 2025) (holding that Rule 9019 settlements must be reviewed "to ensure they do not impermissibly dictate the terms of eventual reorganization plans or bypass the Code's

procedural safeguards."). Because the Minority Ad Hoc Group has made a substantial case that those standards were not properly applied to the Plan and the Settlement Order, the public interest favors the ability to seek appellate review, which may only be possible if a stay is granted.

47. Further, the issues on appeal directly concern the secured creditors' rights, and thus the terms and rates available to borrowers on the market. The public interest is best served by ensuring the robust availability of credit and the protection of secured creditors' private property rights from manipulations by Debtors in Chapter 11 restructurings. *See Janvey v. Romero*, 883 F.3d 406, 411 (4th Cir. 2018) ("[B]y ensuring that creditors receive a fair and predictable distribution of assets, the Code reduces the risks creditors face and allows creditors to account for the risk that a borrower will fail to repay. The benefit of these decreased risks is then passed on to debtors in the form of lower interest rates.").

48. Finally, the public does not stand to be negatively affected by any short delay in the implementation of the Debtors' liquidating Plan. Instead, there is a clear public interest in only allowing those chapter 11 plans that satisfy the requirements of the Bankruptcy Code to be confirmed and then to be enforced.

II. In the Alternative, the Court Should Order the Debtors to Maintain a $10 Million Reserve for the 507(b) Claims, or Extend the Automatic Stay of the Confirmation Order by Seven Days.

49. As part of its ruling, the Court determined that section 1129(a)(11) was satisfied in part due to the representations from the Debtors, and testimony from Mr. Goulding, that the Debtors had $10 million available to pay unanticipated administrative expense claims. *See* Bench Ruling Tr. at 14:14-22 ("this Court [cannot]…conclude the plan is unfeasible, especially in light of Mr. Goulding's unrebutted testimony that there would likely be upwards of $10 million available as part of the wind-down budget, if not more, to satisfy any allowed 507(b) recovery").

Due to the risk that the Debtors may dissipate those funds before the 507(b) Claims are even fully litigated, and due to the related risk that the Plan would then become demonstrably infeasible, the Minority Ad Hoc Group respectfully asks the Court, in the event it declines to stay the Confirmation Order pending the Appeal, to order the Debtors to maintain this $10 million in reserve at least and until the 507(b) Claims have been finally litigated.[10]

50. Second, if the Court denies the Motion and declines to order the Debtors to maintain a $10 million reserve, the Minority Ad Hoc Group respectfully requests that the Court extend the automatic stay of the Confirmation Order under Fed. R. Bankr. P. 3020(e) by an additional seven (7) days to give the Minority Ad Hoc Group the opportunity to request a stay from the District Court before the Confirmation Order becomes effective.

CONCLUSION

For the reasons stated, the Minority Ad Hoc Group respectfully requests that the Court issue an order staying the Effective Date of the Plan and distributions thereunder pending the outcome of their Appeal, or, in the alternative, (1) issue an order ordering that the Debtors maintain a $10 million cash reserve for the 507(b) Claims, or (2) extend the automatic stay of the Confirmation Order under Fed. R. Bankr. P. 3020(e) by an additional seven (7) days, to June 12, 2026.

[10] The Minority Ad Hoc Group reserves the right to renew or amend this request as part of ongoing litigation regarding the 507(b) Claims.

Dated: May 27, 2026

Respectfully submitted,

By: */s/ John W. Weiss*

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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

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Attorneys for the Ad Hoc Group of Minority Secured Lenders

In Re:

Del Monte Foods Corporation II, Inc., *et al.*,

Debtors.[1]

Chapter 11

Case Number: 25-16984 (MBK)

Jointly Administered

Hearing Date: Time and Date to be set by the Court in accordance with the Order Shortening Time

Objection Deadline: Time and Date to be set by the Court in accordance with the Order Shortening Time

[1] The last four digits of Debtor Del Monte Foods Corporation II Inc.'s tax identification number are 1894. A complete list of the Debtors in these Chapter 11 Cases and their respective tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent, at https://cases.stretto.com/DelMonteFoods. The location of the Debtor Del Monte Foods Corporation II Inc.'s principal place of business and the Debtors' service address is 205 North Wiget Lane, Walnut Creek, California 94598.

DECLARATION OF STEPHEN M. WOLPERT IN SUPPORT OF THE AD HOC GROUP OF MINORITY SECURED LENDERS' EMERGENCY MOTION TO STAY ORDER CONFIRMING DEBTORS' FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION PENDING APPEAL

I, Stephen M. Wolpert, hereby declare as follows:

1. I am an attorney at the law firm of Dechert LLP, and practice principally in its New York office located at Three Bryant Park, 1095 Avenue of the Americas, New York, New York. I represent the Ad Hoc Group of Minority Secured Lenders (the "Minority Ad Hoc Group")[2] in the above captioned matter and am fully knowledgeable about the facts asserted herein and in support of the *Ad Hoc Group of Minority Secured Lenders' Emergency Motion to Stay Order Confirming Debtors' First Amended Joint Chapter 11 Plan of Reorganization Pending Appeal* (the "Motion").

2. On May 18, 2026, the Court read into the record the Bench Ruling. A transcript of the Bench Ruling, as transcribed by J&J Court Transcribers, Inc., is attached hereto as **Exhibit "A"**.

3. On May 12, 2026, the Court held the Combined Hearing[3]. A transcript of the Combined Hearing, as transcribed by J&J Court Transcribers, Inc., is attached hereto as **Exhibit "B"**.

[2] The members of the Minority Ad Hoc Group (the "Members") are listed in the *Second Verified Statement of the Ad Hoc Group of Minority Secured Lenders, Pursuant to Bankruptcy Rule 2019* [Docket No. 1262].

[3] All capitalized terms undefined herein shall have the same meaning as in the Motion.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 27, 2026

/s/ *Stephen M. Wolpert*
Stephen M. Wolpert

Exhibit “A”

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 25-16984(MBK)
	.	(Jointly Administered)
	.	
DEL MONTE FOODS	.	U.S. Courthouse
CORPORATION II, INC.,	.	402 East State Street
ET AL.,	.	Trenton, NJ 08608
Debtors.	.	
	.	May 18, 2026
. . . . .	.	10:05 a.m.

TRANSCRIPT OF COURT RULINGS ON CONFIRMATION
BEFORE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Herbert Smith Freehills Kramer (US)
By: RACHAEL RINGER, ESQ.
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- - - - -

THE COURT: Okay. Good morning, everyone. This is Judge Kaplan and I'll be addressing the Del Monte Food Corporation II, Inc. matters on for today, which is the opportunity for the Court to read into the record its ruling with respect to the combined hearing on the amended disclosure statement and amended plan.

Let me just adjust my screen.

Before I address the rulings and the evidentiary dispute that was brought to the Court's attention last week, are there any matters that the parties wish to discuss on a procedural or substantive basis?

MS. RINGER: Your Honor, it's Rachael Ringer from HSF Kramer for the debtors. Nothing to address ahead of your ruling this morning, at least from the debtors' perspective, other than the evidentiary issues and obviously confirmation itself.

THE COURT: All right. Good morning.

Mr. Brilliant, anything on your end?

MR. BRILLIANT: No, Your Honor.

THE COURT: Thank you.

All right. Then let me first address, if I may, the evidentiary disputes.

The debtors objected to the admission of the Minority Group's Exhibits 80, 85, 91, 96 to 100, 105 to 107, 130, 138 to -46, 153, and 173 through -- and 174. The Court sustains the

objection.

Absent a stipulation, exhibits which are not subject of testimony or in any manner brought to the Court's attention during the hearing are not admitted, and the Court has not relied upon them as a basis for its ruling.

With respect to the disputes regarding the scope of the testimony of Mr. Goulding, such testimony which touches on, refers, or relates to the debtors' business judgment, membership on the board, funds needed to operate, or the sale process itself the Court finds to be within his personal knowledge and appropriate for admission.

The Court also admits Debtors' Exhibit 52 with respect to the wind-down into the record.

That, I believe, is the extent of the contest over the exhibits. I will proceed to read into the record my ruling.

I will forewarn everybody, it is somewhat lengthy. In light of the litigiousness of the case, I thought it was appropriate to address the many issues in a more fulsome manner. So I ask for your patience as I read through the ruling.

The Court has before it for final approval the debtors' amended disclosure statement and confirmation of the first amended joint Chapter 11 plan of Del Monte Food Corporation II, Inc. and its affiliated debtors, as modified

and supplemented. The Court has reviewed and considered the plan, the disclosure statement, the amended proposed findings of fact and conclusions of law, the confirmation brief and the declarations submitted in support of confirmation; the objections filed by the Minority Lender Group and the ultimately-resolved objections by the U.S. Trustee, the replies thereto filed on behalf of the debtor, the committee, and the Majority Ad Hoc Group; the evidentiary record developed during the Chapter 11 cases, including the extensive record, and the Court's ruling made in connection with the settlement hearing conducted earlier in these cases. The Court has also considered the testimony presented, together with all exhibits and arguments of counsel presented at the combined hearing.

The Court takes judicial notice of the docket in these Chapter 11 cases and the prior proceedings before the Court. The Court issues this bench ruling to be supplemented by the Court's findings of fact and conclusions of law to be docketed herein after.

In addition, to the extent issues raised as part of this combined hearing duplicate the issues before the Court in connection with the prior settlement hearing, the Court incorporates herein its prior ruling.

For the reasons that will be placed on the record today, the Court finds that the disclosure statement contains adequate information within the meaning of Section 1125 of the

Bankruptcy Code, that the debtors have satisfied their burden under Section 1129 of the Bankruptcy Code by a preponderance of the evidence, and that the objections asserted by the Minority Lender Group will be overruled. This ruling constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052, made applicable by Rule 9014.

The evidentiary record supporting confirmation includes, among other things, the declaration of Leticia Sanchez of Stretto regarding the solicitation and tabulation of votes, and the declaration and cross-examination testimony of Jonathan Goulding, the debtors' CRO, in support of confirmation, and the settlements embodied in the plan, together with all exhibits accepted into evidence through stipulation.

These Chapter 11 cases commenced on July 1st, 2025. Since the petition date, the debtors have operated as debtors-in-possession pursuant to Sections 1107 and 1108 of the Code. The record reflects that the debtors entered Chapter 11 facing substantial operating and liquidity pressures, significant funded debt obligations, deteriorating market conditions, and the need to implement a restructuring transaction on an expedited basis.

The debtors negotiated DIP financing, conducted an extensive and Court-approved sale process, resolved substantial

litigation through mediation and settlement with key constituencies, and ultimately consummated sale transactions designed to maximize value for stakeholders. The Court previously approved the debtors' DIP financing arrangements, bidding procedures, and the settlement embodied in the settlement order entered at Docket Number 1211 following a two-day evidentiary hearing. The Court also entered the sale orders approving the sum-of-the-parts sale of substantially all of the debtors' assets.

The plan now before the Court reflects the culmination of these efforts. The plan provides a mechanism for the orderly wind-down of the estates, implementation of the previously approved settlement, monetization and distribution of remaining assets, establishment of a plan administration structure, and distributions to creditors in accordance with the waterfall set forth in the plan.

The plan enjoys overwhelming creditor support. The voting record demonstrates that each impaired class has accepted the plan by substantial margins. Specifically, Class 3, the super-senior term loan claims class, voted to accept the plan by approximately 78.51 percent in number and 74.17 percent in amount. Class 4, the general unsecured claims class, voted to accept the plan by approximately 93.15 percent in number and 99.87 percent in amount. Class 5, the other general unsecured class claims, voted unanimously to accept the plan.

The Court finds that the solicitation process was proper, the ballots were transmitted in accordance with the disclosure statement order and applicable law, and the votes were properly tabulated.

The Sanchez declaration establishes that on March 19th, 2026 the Court entered the disclosure statement order approving the solicitation and voting procedures, the forms of ballots and notices, and related deadlines. The solicitation packages distributed to voting creditors including the disclosure statement, the plan, the disclosure statement order, and the combined hearing notice, ballots, voting instructions, and return envelopes.

The evidence further establishes that Stretto served solicitation packages on holders and the voting classes on March 26th, 2026, and thereafter effectuated supplemental service where necessary due to postal forwarding issues.

The Court further finds that the solicitation complied with the disclosure statement order and bankruptcy rules, and that creditors and parties in interest were afforded a full and fair opportunity to vote and object.

The Sanchez declaration further establishes that the voting record date was March 11, 2026, and that only holders in Classes 3, 4, and 5 were entitled to vote on a plan.

The Court also notes that the debtors closed the sum-of-the-parts transactions on or about March 19th, 2026.

The Court finds that the disclosure statement contains adequate information within the meaning of Section 1125(a) of the Bankruptcy Code and Bankruptcy Rule 3016. The disclosure statement, the plan, the ballots, the nonvoting notices, and the opt-out forms conspicuously disclosed the release, exculpation, and injunction provisions, and provided parties in interest with full and fair opportunity to evaluate and respond to the plan. The solicitation process complied with Sections 1125 and 1126 of the Code, Bankruptcy Rules 3017, 3018, and 3019, and all applicable local rules.

The Court first addresses the final approval of the disclosure statement. Section 1125 of the Bankruptcy Code requires that the disclosure statement contain adequate information sufficient to permit a hypothetical reasonable investor typical of holders of claims or interests in the relevant classes to make an informed judgment about the plan.

Having reviewed the disclosure statement, the Court finds it contains extensive information regarding the debtors' business operations, capital structure, causes of financial distress, the sale process, the settlement negotiations, the plan structure, anticipated recoveries, liquidation analysis, risk factors, releases, exculpations, injunctions, voting procedures, and the consequences of confirmation. The disclosure statement also adequately addresses and describes the treatment of claims and interests under the plan, including

the treatment afforded to holders of super-senior term loan claims and unsecured creditors.

The objections asserted by the Minority Lender Group concerning alleged inadequacies in the disclosure statement are unpersuasive. Much of the objectors' arguments rest on theories that either Mischaracterize the plan or rely upon speculative and unsupported assertions concerning purported Section 507(b) claims that had not been established and remain unproven. Additionally, the only party objecting to approval of the disclosure statement that has engaged in extensive discovery has not identified any material information to which it was denied and was afforded, but declined, the opportunity to offer supplemental information and statements to be included in the disclosure statement prior to solicitation.

The Bankruptcy Code does not require a disclosure statement to catalog every hypothetical litigation theory that an objecting creditor might later devise. The disclosure statement provided more than adequate information regarding the debtors' financial condition, anticipated recoveries, sale process, and the plan structure. Accordingly, final approval of the disclosure statement will be granted.

The Court next turn to the objections by the Minority Lender Group with respect to confirmation of the amended plan.

The Court has carefully considered the objections filed by the Minority Lender Group and the related briefing

submitted by the debtors, the committee, and the ad hoc super-senior term lender group. The Court concludes that the objections largely rest on legal theories unsupported by the Code or governing precedent and on factual assumptions that materially overstate the value available for distribution under either the plan or a hypothetical Chapter 7 liquidation.

The objections generally fall into several categories. Number one, assertions concerning purported Section 507(b) superpriority claims and feasibility; number two, voting and classification objections; number three, alleged unfair discrimination and Section 1123(a)(4) arguments; number four, best-interests objections; and, five, a series of miscellaneous objections concerning treatment and disclosure. The Court will address each category in turn.

With respect to the purported 507(b) claims, the centerpiece of the Minority Lender Group objection is the assertion that they possess allowable 507(b) superpriority administrative expense claims arising from an alleged diminution in value of their collateral. As such, the Minority Lender Group submits that the mere assertion of such claims, which if allowed would have to be satisfied in full under Section 1129(a)(9), and that renders the plan unfeasible.

At the outset, the Court wishes to emphasize that it is not at this time issuing a ruling on the merits of the 507(b) claims being asserted. Indeed, the request for payment

of the 507(b) claims was docketed only days before the scheduled combined hearing, and the Minority Lender Group vociferously opposed the request made by the debtors to have the Court address the allowance of such claims as part of the confirmation hearing.

The Court acceded to the Minority Lender Group's opposition, and indicated that the Court would limit its consideration of the 507(b) filing and the debtors' objection thereto as a supplement to the group's confirmation objection. The Court does so now and rules that the record made at the combined hearing is woefully insufficient for this Court to find that the potential 507(b) claims have sufficient legal or factual merit to require a finding that the plan is unfeasible. To be clear, the Court makes the following determinations regarding the likelihood that the Minority Lender Group can successfully establish an entitlement to relief under 507(b) for purposes of evaluating feasibility only and not for allowance purposes.

As a gating matter, the record supports the debtors' argument that the individual lenders comprising the Minority Lender Group do not themselves hold the liens or enforcement rights that would support direct assertion of such 507(b) claims. The governing credit documents, vested collateral, and enforcement rights in the super-senior agent, the Wilmington Savings Fund Society. The debtors' confirmation materials and

hearing presentation accurately cite authority recognizing that where the operative loan documents grant rights to the collateral agent individual lenders lack standing independently to enforce such rights against the collateral. Indeed, the Wilmington Savings Fund Society has filed a joinder to the objection filed by the debtors with respect to the asserted 507(b) entitlements, and such joinder takes the position that any such 507(b) claims belong exclusively to the collateral agent and are not asserted at this time.

The Court further notes that the final DIP order granted adequate protection rights to the collateral agent on behalf of the secured parties.

Although the Court need not rest its ruling solely on standing grounds, the standing issue substantially undermines the Minority Lender Group position. Even assuming arguendo that the Minority Lender Group could assert Section 507(b) claims directly, the objectors at this juncture have failed to satisfy their burden of proof. It is well established that the party asserting a Section 507(b) claim bears the burden of demonstrating entitlement to such relief, including proof that the value of its interest in the collateral diminished notwithstanding the adequate protection provided.

The authorities cited by the debtors, including the Res Capital case and this Court's own decision in In re Mary Holder Agency, correctly state what the burden is; the Minority

Lender Group did not carry that burden. The evidentiary record at the combined hearing does not establish any actionable diminution in the aggregate value of the group's interest in the collateral between the petition date and confirmation.

Pointedly, there is nothing of record which allows the Court to fix the value of the group's interest on the petition date and any diminution thereafter. The Court credits the debtors' argument that any petition date valuation necessarily must account for the distressed circumstances confronting the debtors at the commencement of the cases, including liquidity constraints, vendor pressures, and uncertainty concerning PACA-related claims and competing interests.

Quite simply, there is no evidentiary record upon which the Minority Lender Group can rely; rather, the Court heard only argument by counsel that there had to be some value given the nature and amount of the collateral. Certainly such a showing is insufficient for this Court to conclude that the plan is unfeasible, especially in light of Mr. Goulding's unrebutted testimony that there would likely be upwards of $10 million available as part of the wind-down budget, if not more, to satisfy any allowed 507(b) recovery. The objectors presented no persuasive valuation evidence demonstrating otherwise. Because the asserted 507(b) claims remain questionable, the related feasibility objections fail.

Section 1129(a)(11) requires a reasonable assurance of success, not certainty. The debtors have demonstrated that the plan provides a workable mechanism for completing the wind-down, administering remaining assets, resolving claims, and making distributions. The plan is supported by extensive settlements, completed sale transactions, and overwhelming creditor support. The feasibility analysis is not defeated by speculative and unsupported claims that may never materialize. The Court therefore overrules the Section 507(b)-related objections in their entirety.

With respect to voting and classification, the Court notes that the detailed tabulation evidence demonstrates broad-based support for the plan across the capital structure and among numerous institutional lenders. The Sanchez declaration reflects that 228 Class 3 ballots, which were the super-senior term loan claims, representing more than $623 million in claims were tabulated with accepting creditors holding approximately $462.2 million in claims were 74.17 percent by amount voting in favor of the plan. The Sanchez declaration further confirms that 73 Class 4 ballots, which were the general unsecured claims, were tabulated with approximately $98.2 million in claims, representing 93.15 percent by amount voting in favor of the plan.

The Minority Lender Group contends that Class 3 should be deemed to reject the plan, that classification was

improper, and the plan cannot satisfy Section 1129; the Court disagrees. The Minority Group contends that the plan is not confirmable because Class 3 must be deemed to reject the plan pursuant to Section 1126(g).

In brief, the Minority Group contends that although the liquidating plan provides that Class 3 may receive distributable proceeds that trickle down through the waterfall, it is clear from among other things that the disclosure statement -- including the disclosure statement -- that there will be no such proceeds and the class will receive no recovery.

This argument fails in light of the plain language of the statute and its legislative history. 1126(g) deems a class to reject a plan only when the plan itself excludes the class from participation all together; for example, when the plan provides no entitlement to receive or retain any property on account of the classes' claims. The statute focuses on what the plan provides, not on anticipated recoveries. The courts must limit the inquiry to whether the plan entitles holders to receive or retain property, not on what the projected outcome is likely to be.

Here, the plan gives Class 3 holders a right to their pro rata share of distributable proceeds through the waterfall recovery. Even if the debtors estimate the expected cash recovery at zero percent, the plan still gives the class a

contingent entitlement, which is a plan-based entitlement, and a low projected value does not itself erase the entitlement. Indeed, other courts have confirmed plans voted upon by classes whose recoveries were projected to be remarkably low, and I'll cite to the Claire's Holdings LLC and the Bed Bath & Beyond cases.

While the Minority Group focuses on Class 3's projected cash distributions, the debtor points out and the Court agrees that the plan also permits that holders in Class 3 to retain setoff and recoupment rights. The statute's disjunctive language, no entitlement to receive or retain, mandates that in order to trigger Section 1126(g) a class must neither receive distribution nor retain property rights. Although courts sometimes gloss over this language, the statute is clear that both entitlements must be absent before Section 1126(g) applies. And this Court identified ample case law demonstrating that both prongs must be satisfied before a class is deemed to have rejected a plan, and the Court will cite to In re Actitech, L.P., 2022 WL 6271936, and In re TriVascular Sales, LLC, 2020 WL 5552598.

As a corollary, regardless of the distributions it may receive, a class that keeps any plan-based property interest is not excluded under Section 1126(g).

At its core, the Minority Group attempts to substitute the statute's entitlement-based test for valuation

prediction. The Minority Group's view cannot and should not be the standard for purposes of Section 1126(g). In practice, parties who vote on plans recognize that they may ultimately receive less or more than initially projected through a disclosure statement, or that they may receive nothing at all, but the possibility of receiving nothing does not trigger Section 1126(g). The statute's plain language, which focuses on what creditors are entitled to receive or retain under the plan, cannot be interpreted to deny a class the ability to vote merely because their recovery is contingent or remote.

The legislative history of the statute further supports this conclusion. The historical notes state that any class denied participation under the plan is conclusively deemed to have rejected the plan. The notes explain that there is obviously no need to submit a plan for a vote by a class that is to receive nothing. This text clarifies that the statute does not create a freestanding anti-solicitation rule based on estimated recovery, but instead establishes administrative efficiency for classes that are denied participation in the plan all together.

In other words, Section 1126(g) exists to protect creditors who receive no entitlement under the terms of the plan. It was enacted to save creditors the hassle of casting a negative ballot when a plan does not include their participation at all, it was not enacted to disenfranchise

creditors who have entitlements under the plan and would like to vote, especially where the debtors likewise seek to solicit their votes. It makes little sense to interpret a statute in such a way as to preclude participation in the plan process where parties seek otherwise. The plan entitles Class 3 claimants to pro rata shares of distribution proceeds and permits them to retain setoff and recoupment rights. The plain language of the statute and the legislative history reveal that the Court's focus should be narrowly tailored on the entitlements afforded to the class under the plan and it has done so; that objection, thus, is overruled.

The Court further finds that the plan's classification scheme satisfies Section 1122. The plan separately classified super-senior term loan claims in Class 3 and general unsecured claims in Class 4. Those claims are not substantially similar. The super-senior term loan claims arise from a distinct credit facility, are governed by unique contractual arrangements, possess asserted collateral rights, and are subject to separate intercreditor and adequate protection issues. General unsecured creditors, by contrast, are trade and other unsecured obligations with materially different legal rights.

The Bankruptcy Code permits separate classification where claims are legally distinct and where valid business or legal reasons support separate treatment. The Court finds

ample justification here. The evidence further establishes that the classification scheme was not proposed for any improper purpose such as vote manipulation or artificial impairment. Indeed, even, as the Minority Group suggests, Classes 3 and 4 were to be combined into a single class, there would be no impact with respect to voting as such combined class would have the requisite voting majorities required under Section 1126(d).

Now, this does assume that the Class 3 votes of the Majority Ad Hoc Group are not excluded under Section 1129(a)(10) as claims held by insiders. The evidence before the Court, however, does not support the finding that any individual voting member of the Majority Ad Hoc Group, or even collectively controls the debtor or satisfies any of the statutory definitional requirements under Section 101(31). The evidence confirms that the contractual rights held by the Majority Ad Hoc Group to appoint a majority of the debtors' board or to own up to 25 percent of the debtors' equity -- I'm sorry, the evidence confirms that the contractual rights held by the Majority Ad Hoc Group to appoint a majority of the debtors' board or to own up to 25 percent of the debtors' equity were never exercised. Rather, the ad hoc group did exercise leverage and bargaining power as the majority lenders, but doing so neither establishes control as required under the statute or warrants treating the members as non-statutory

insiders. Now combining such classes would require the Minority Lender Group to share in the recovery, but as to be discussed further such recoveries would be a fraction of one percent of the claims and hardly of such significance to warrant a finding of gerrymandering or voting manipulation.

The Court likewise rejects the Minority Lender Group's arguments under Section 1123(a)(4). The plan affords equal treatment to similarly situated creditors within each class. The fact that different classes receive different treatment does not violate Section 1123(a)(4). By its plain terms, Section 1123(a)(4) requires the same treatment only for claims within the same class, not claims outside of that class. The mere fact that only certain claimants in Class 3 may receive releases does not establish disparate treatment. Here, all members of the class are receiving the same treatment on account of their claims. Some of the releases were granted pursuant to the terms of the final DIP order, other releases are to be granted by non-debtor third parties and are not tied to distributions which may be available under the plan's waterfall.

As the Court will not deem Class 3 to reject the plan, there is no need to analyze confirmation under 1129(b). Notwithstanding, for purposes of completeness, the Court does find that the plan satisfies the applicable cramdown standards. In a scenario in which cramdown is implicated, Class 3 claims

are by definition entirely unsecured.

The Court finds that there has been no unfair discrimination. The Minority Lender Group's unfair discrimination argument fails. Courts have held that a plan unfairly discriminates in violation of 1129(b) of the Code when it provides materially different treatment for creditors and interest holders with similar legal rights without a reasonable basis to do so. Notably, Section 1129(b)(1) does not prohibit all discrimination between classes but only discrimination that is unfair. The objectors' arguments ignore that the plan preserves the ability of Class 3 claimants to participate in more full recoveries if additional value materializes. The plan also implements a settlement previously approved by the Court after extensive litigation and mediation.

The record supports the debtors' contention that any differential and projected recoveries is minimal and insufficient to constitute unfair discrimination under applicable Third Circuit authority. The recovery for the Minority Lender Group under the plan is consistent with the results they would obtain outside of bankruptcy since the group is to receive nothing in liquidation. Here, as the liquidation analysis makes clear, the members of Class 3 would receive no recovery outside of bankruptcy, amply justifying their treatment under the plan.

In this regard, the Court notes that numerous courts

have found that senior creditors may indeed gift proceeds of their collateral to junior creditors so long as the purportedly disfavored class is out of the money and no class junior to the purportedly disfavored class receives a distribution under the plan. That is what is happening here with funding of the general unsecured creditor recovery reserve, which is being funded through a voluntary carveout of the proceeds of the DIP term lenders collateral. If Class 4 creditors did not receive this recovery, the surplus would revert to the DIP term loan lenders, not holders of Class 3 claims and, therefore, the distribution to Class 3 holders have not been diminished.

Since the plan is not distributing value to classes more junior to the unsecured creditor classes, there are no absolute priority issues. No class that is junior to an impaired class will receive or retain any property on account of the claims or interests in such class.

With respect to the best-interests test, the evidentiary record demonstrates that the proceeds generated through the sale process were finite and heavily constrained by administrative expenses, priority obligations, professional fees, operating expenses, and the remaining deficiencies owed on the DIP term loan claims. The Court credits the evidence that approximately $109.8 million of administrative and priority obligations must be satisfied from available proceeds before any potential recovery could flow further down the

capital structure.

The Court further finds persuasive the evidence that the Minority Lender Group's valuation and recovery theories improperly ignore these obligations and instead assume the existence of distributable value that is not actually available under the wind-down budget or the evidentiary record. The Court credits the debtors' evidence that the ability to collect and retain the approximately $86 million in pre-closing accounts receivable collections was expressly tied to the estate's obligations under the asset purchase agreements and DIP authorized payments to satisfy post-closing payables and related obligations.

The Court therefore agrees that the Minority Lender Group cannot include the receivable collections while excluding the offsetting liabilities required to generate and preserve those collections.

The Court further finds persuasive the debtors' evidence that the liquidation analysis already assumed as of the projected May 15th effective date both collection of the receivables and payment of the corresponding administrative and priority obligations. Accordingly, the Minority Lender Group, the group's attempt to re-add the receivable collections into a hypothetical Chapter 7 analysis constitutes impermissible double counting.

The Court also notes that the debtors have already

substantially paid the relevant payables and administrative obligations pursuant to the authority granted under the DIP order and sale orders. Any suggestion that the estates should have breached these court-approved obligations is neither legally persuasive nor commercially realistic. The objectors' contrary argument is speculative and relies upon assumptions inconsistent with the record. Importantly, the evidence established that the conversion to Chapter 7 likely would impose additional administrative costs, delays, and operational disruption and value disruption.

The Court further credits the debtors' evidence concerning uncertainty surrounding collateral realization, operational deterioration risks, and competing claims that could arise in a liquidation. The objectors failed to demonstrate that the holders of the super-senior term loan claims would recover more in a Chapter 7. Accordingly, the Court finds the best-interests test has been satisfied.

In general, the plan satisfies Section 1129. Having addressed the principal objections, the Court turns to the confirmation requirements. The Court finds that the plan satisfies Sections 1129(a)(1) through 1129(a)(13) of the Bankruptcy Code except where certain provisions are inapplicable. The plan was proposed in good faith following extensive arm's length negotiations and implements settlements previously approved by the Court pursuant to the settlement

order and bench ruling.

With regard to the Minority Lender Group's contention that the plan improperly consolidates the debtors for voting purposes and that the votes should be counted on a debtor-by-debtor basis, the Court overrules the objection. First, Class 3 is impaired and that would apply to all debtors. Were it otherwise, the objection would still fail. The debtors have properly tabulated the votes on the plan on a consolidated basis pursuant to the plan and disclosure statement. Admittedly, there are divergent views on this issue. Here, however, the Court finds that this framework is particularly appropriate given the nature of the debtors' consolidated corporate and capital structure, and the fact that these are liquidating cases and are operating on limited funds. More importantly, as pointed out in debtors' briefing, evaluating a plan on a per-plan basis is also consistent with long-standing practice in this district, as well as other jurisdictions.

With respect to the releases, exculpations, and injunctions, the Court finds that the debtor release, third party release, exculpation, and gatekeeping provisions and injunction provisions as modified to address the objections raised by the Office of the U.S. Trustee, including the adoption of an opt-in consent mechanism, are integral components of the plan and the global settlement framework embodied therein.

In conclusion, these Chapter 11 cases involved extensive litigation, difficult negotiations, complicated financing and sale issues, and competing stakeholder interests. The plan before the Court is not perfect, few Chapter 11 plans are, but the Bankruptcy Code does not require perfection, it requires compliance with the confirmation standards established by Congress. The Court finds that the debtors have satisfied those standards.

The record demonstrates that the plan is the product of good faith, arm's length negotiations, that it maximizes value under the circumstances, that it enjoys overwhelming creditor support, and that it provides the best available path forward for the estates and their creditors. Accordingly, final approval of the disclosure statement is granted. The objections of the Minority Lender Group are overruled in their entirety, any remaining unresolved objections are also overruled. The plan is confirmed pursuant to 1129 of the Bankruptcy Code, and the Court will enter the revised proposed confirmation order with such technical and conforming modifications as may be necessary.

Counsel for the debtors shall submit a form of order consistent with this ruling.

The parties are further directed to meet and confer regarding the scheduling of discovery, to the extent necessary and argument with regard to the allowance of the Minority

Lender Group's 507(b) claim.

That does it on my end. Does anyone need to be heard on any matters?

MS. RINGER: Your Honor --

MR. BRILLIANT: Your Honor --

MS. RINGER: Go ahead, Mr. Brilliant. I was going to just respond briefly to the point at the end about scheduling, I'm happy to do that first quickly, but understood on --

MR. BRILLIANT: Your Honor, I'd like to be heard, if I can, first on the confirmation order, and then we can talk about --

MS. RINGER: Oh, okay.

MR. BRILLIANT: -- 507(b) claims, unless Your Honor would rather --

THE COURT: No --

MR. BRILLIANT: -- so, Your Honor, with respect to the confirmation order --

THE COURT: Yes.

MR. BRILLIANT: -- you asked the debtors to submit an order. We would like to see a copy of the order to make sure it conforms with Your Honor's ruling, as well as with the settlements with the United States Trustee, we'd like an opportunity to look at that in advance of it being submitted or, alternatively, we would ask that Your Honor give us a chance to review it after they submit it but before Your Honor

enters it.

THE COURT: That's fine. I never enter the orders unless I have a comfort level that everybody agrees, or otherwise we would have a call on that.

So, Ms. Ringer, why don't you, when you forward it to the Court, forward a copy to counsel for the Minority Lender Group and everybody else, and I'll hold off until I get a sense that we're ready to go with it.

MR. BRILLIANT: Thank you, Your Honor.

MS. RINGER: Yes, Your Honor, will do.

MR. BRILLIANT: You know, Your Honor, as Your Honor knows, they withdrew the request to waive the 14-day stay, so we do have a 14-day stay. We obviously need to review Your Honor's ruling today and talk to our clients about it, but our expectation is that it's likely that we will file a notice of appeal and seek, you know, a stay pending appeal. We would like to be in a position, Your Honor, to have that ruled on in the Bankruptcy Court and, to the extent Your Honor denies it, to be able to go to either the District Court or the Third Circuit in connection with the stay issues before the 14-day period were to expire. So, we're probably going to need some kind of expedited briefing schedule. We can work with Your Honor's chambers, but given the holiday weekend and everything would expect that we would want to get, if we can, Your Honor, a quick hearing and ruling on that. Or if Your Honor is just

going to rule on the papers in connection with that given that Your Honor just ruled on the confirmation, we would ask that that occur as soon as possible.

And at this point we're not asking Your Honor for anything, but just wanted to make Your Honor aware of the fact that we'll be reaching out to chambers to try to get all that scheduled. Unless Your Honor has views in connection with that, if we want to part at this point.

THE COURT: No, I'll await a formal motion, certainly it's not unexpected, and I'll accommodate scheduling.

MR. BRILLIANT: And then with respect to the 507(b) claim, Your Honor, we are going to continue to pursue that, and we can work with counsel to try to figure out a schedule as to when that can be done. There's both legal and factual issues associated with that which obviously will be on different schedules.

MS. RINGER: Your Honor, if I could just briefly be heard on --

THE COURT: Yes, Ms. Ringer.

MS. RINGER: Thank you. Just quickly on the stay, you can imagine we are going to oppose any request for a stay, so we will respond appropriately to whatever gets filed by the Minority Group on that front. I have to imagine maybe other plan proponents would need and want to do the same. So, we will address that in due course.

On the -- I guess on the schedule for the 507(b) claim, maybe picking up from your ruling and also something that Mr. Brilliant just said, it may make the most sense to hear the legal issues first and then address any factual issues if the legal issues result in there being a possibility for a claim. Obviously, you know, I think that we can work with the Minority Group to propose a schedule on that front, but I think that that would ultimately be consistent with your ruling on confirmation and just probably the right use of estate resources given the nature of those claims.

So we are happy to meet and confer with the Minority Group on that front, but I think that that would be the debtors' perspective on that.

THE COURT: Fair enough.

Anybody else wish to weigh in on any concerns?

(No audible response)

THE COURT: All right. I do think that it might -- my inclination would be to have you all argue out simply the legal issues relative to 507(b) before you all get enmeshed in more costly and time-consuming discovery. If there are factual issues that need to be resolved, obviously that undercuts that pathway, but I'll leave it to you all to discuss it first and get back to chambers, we can have another call if need be.

All right?

MS. RINGER: Thank you, Your Honor.

MR. BRILLIANT: Yes, Your Honor. And just to make sure I understand, you're not ruling on that at this point, but that's just your initial inclination, right? So --

THE COURT: That's my gut instinct --

MR. BRILLIANT: Okay.

THE COURT: -- for whatever it's worth. All right? All right, folks, have a good holiday. Take care.

ALL: Thank you, Your Honor.

THE COURT: You're welcome.

(Proceedings concluded, 10:45 a.m.)

* * * * *

C E R T I F I C A T I O N

I, TRACEY J. WILLIAMS, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Tracey J. Williams

TRACEY J. WILLIAMS, CET-914

J&J COURT TRANSCRIBERS, INC. Date: May 19, 2026

Exhibit “B”

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 25-16984(MBK)
	.	(Jointly Administered)
	.	
DEL MONTE FOODS	.	U.S. Courthouse
CORPORATION II, INC.,	.	402 East State Street
ET AL.,	.	Trenton, NJ 08608
Debtors.	.	
	.	May 12, 2026
. . . . .	.	10:05 a.m.

TRANSCRIPT OF CONFIRMATION HEARING
BEFORE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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I N D E X

		PAGE
WITNESSES		
JONATHAN GOULDING		
Direct Examination by Mr. Hamerman		17
Cross Examination by Mr. Espana		19
Redirect Examination by Mr. Hamerman		114
Recross Examination by Mr. Espana		126
LETICIA SANCHEZ		
Direct Examination by Mr. Hamerman		129

EXHIBITS		**ID**	**EVID**
DEBTORS EXHIBITS			
D-1	Declaration of Jonathan Goulding		18
D-2	Declaration of Leticia Sanchez		130
AD HOC MINORITY GROUP EXHIBITS			
49	Order approving the asset purchase agreement		68
50	Order approving the Pacific Coast Producers asset purchase agreement		72
68	Amended Disclosure Statement		20

THE COURT: Okay. Good morning, everyone. This is Judge Kaplan and we are beginning the scheduled confirmation hearing of Del Monte Food Corporation II.

THE CLERK: Judge, do I start the video?

THE COURT: Sure.

THE CLERK: It does say your microphone is muted here.

THE COURT: Oh, wait a minute. I have plugged in here from yesterday.

Let's see. Let's try it again.

Good morning. This is Judge Kaplan and we are hearing the Del Monte Food Corporation II, Inc., scheduled confirmation hearing. The hearing is being conducted both with in-Court presence of counsel and remote capacity for those watching, I believe, and one limited witness.

We had an off-record pre-trial conference yesterday in which I hope most of the logistics were addressed. We have at the podium counsel for the debtor.

Let me have appearances, please.

MS. RINGER: Good morning, Your Honor. Rachael Ringer from HSF Kramer on behalf of the debtors.

THE COURT: All right.

Let me have appearances from counsel in the room.

MR. BRILLIANT: Your Honor, Allan Brilliant from Dechert LLP on behalf of the Minority Ad Hoc Group. I'm joined

by my partners Mauricio Espana and May Chiang, who will both be appearing in front of Your Honor, as well as my colleagues James Moser and Stephen Wolpert.

THE COURT: Great, thank you.

MR. BRILLIANT: And then, our co-counsel from the Pashman Firm will introduce themselves.

THE COURT: That's fine.

Mr. Sklar, welcome.

MR. SKLAR: Good morning, Your Honor. David Sklar from the firm Pashman Stein Walder Hayden, local counsel for the Minority Ad Hoc Group.

THE COURT: All right.

MR. MARINUZZI: Good morning, Your Honor. Lorenzo Marinuzzi, Morrison & Foerster, on behalf of the Committee, joined today by my associate, Darren Smolarski, and my co-counsel, Kristin Elliott, from Kelley Drye.

THE COURT: Great. Thank you. Welcome.

MR. GOLDSTEIN: Good morning, Your Honor. Jason Goldstein from Gibson Dunn on behalf of the Majority Ad Hoc Group. I'm joined by my colleague, Lee Wilson, and our co-counsel, Andrew Sherman, from Sills Cummis.

THE COURT: All right. Welcome all.

MR. GOLDSTEIN: Thank you.

MS. RINGER: Your Honor, in my haste to leave the podium a moment ago, I forgot to introduce all of my

colleagues.

THE COURT: The rest of the crew.

MS. RINGER: I know.

So I am joined by our full team here. I think they'll each introduce themselves as they get up, but Mr. Hamerman from HSF Kramer is going to be handling the witnesses. I'm joined by Adam Rogoff from HSF Kramer, Megan Wasson, Ashland Bernard, and Shaked Sivan. Thank you. And we're also joined by our co-counsel, Felice Yudkin, from Cole Schotz. Hopefully, I have covered everybody. Oh, and Emily Mandell from HSF Kramer, too. Apologies.

THE COURT: No problem. Thank you.

MS. RINGER: With that, I think we've covered our appearances. Sorry about that.

THE COURT: All right.

My understanding is that Mr. Sponder of the Office of the U.S. Trustee, there he is, is present and is going to participate remotely.

Mr. Sponder, welcome. I understand you're a little bit under the weather. As usual in these matters, I will look to you for your input. Certainly, I know when we get to objections, I'll hear from you.

As with anyone else appearing, I don't know if there's anyone else remotely, please just use the raise-hand function if you need to address a matter that's pending before

the Court.

All right. And with that, Ms. Ringer.

MS. RINGER: Thank you, Your Honor.

We are very pleased to be here on confirmation of the debtors' proposed plan. In accordance with our pretrial conference yesterday, we are going to skip straight to the evidence. And so, I believe that unless there are any preliminaries that Your Honor wanted to address before we get into the witnesses, I am happy to turn the podium over to Mr. Hamerman.

THE COURT: I want to just make one comment. We all know that late last week, we engaged through yesterday in mediation and settlement discussions through Court-approved mediation. Obviously, we reached an impasse and we are continuing today.

To the extent during this day, parties wish to continue discussions, Judge Gravelle has made herself available. She is here. She has a morning calendar. But while you're eating sandwiches, if the parties, as a consensus, think it's worthwhile to continue discussions, you're welcome to reach out for Judge Gravelle down the hall and we'll make accommodations.

MS. RINGER: Thank you, Your Honor. Much appreciated.

THE COURT: All right. Thank you.

MR. HAMERMAN: Good morning, Your Honor. Natan Hamerman from HSF Kramer.

THE COURT: Good morning.

MR. HAMERMAN: The debtors will call their first witness, which is Jonathan Goulding.

THE COURT: All right.

THE CLERK: Judge, we (indiscernible).

THE COURT: Just bear with us a couple of minutes. We need to set up. We're so used to having everything remote.

(Pause)

THE COURT: And while Becca is working on the technical aspects, both the Minority Group and the debtors have submitted exhibits to the Court electronically. I have access to the exhibits up here on the screen that you provided. As long as you tell me who's exhibit and the exhibit number, we'll be able to see what you're referencing.

MR. HAMERMAN: While we're setting up, we're going to ask for the admission of Mr. Goulding's declaration. I know there's going to be some discussion around that. That's ECF Number 1477. That's Debtors' Exhibit 1, Minority Ad Hoc Group Exhibit 162.

Happy to start. Or if you want to wait for the witness, happy to do that, too.

THE COURT: No, we'll have the witness verify, but let's address the objections.

MR. ESPANA: Good morning, Your Honor. Mauricio Espana from Dechert on behalf of the Minority Group.

Your Honor, as you're aware, Mr. Goulding is here proffered as a fact witness in his capacity of debtors' chief restructuring officer, and that is governed by Rule 701 of the Federal Rules. And under that, Your Honor, under that rule, his testimony is limited to facts that he obtained pursuant to his personal knowledge.

The problem we have is three buckets of proffered testimony in his declaration that we view as problematic. But first, Your Honor, there's over 70 paragraphs in Mr. Goulding's declaration where he offers legal conclusions, interprets the Bankruptcy Code, and views and conveys the views of the debtors' counsel. And I can read those paragraphs into the record, Your Honor.

THE COURT: Yes, please.

MR. ESPANA: And that is Paragraphs 13, 22, 23, 25, 26, 27, 28, 30 through 39, 40 through 49, 52, 53, 56, 59, 60, 63, 64, 76 through 78, 79 through 85, 94, 96, 97, 99 through 105, 107, 108, 109 through 114, 116, 117, 122, 126, 128 through 132, and 134.

THE COURT: Was it 128 through 132 and 1?

MR. ESPANA: 34.

THE COURT: 34.

MR. ESPANA: Yes.

THE COURT: And the objection is that they contain legal analysis?

MR. ESPANA: They contain legal conclusions, Your Honor. It's an interpretation of the Bankruptcy Code and he is conveying conversations that he's had with counsel, or the views of the debtors' counsel.

THE COURT: All right.

MR. ESPANA: The second bucket, Your Honor, is Mr. Goulding's declaration refers several instances, and that's Paragraphs 25, 26, 52, 54, 55, 78, and 120, to the voting declaration of Ms. Sanchez. And, Your Honor, that's impermissible hearsay and we object on those grounds.

THE COURT: Okay.

MR. ESPANA: And the last bucket, Your Honor, is there is at least three instances where Mr. Goulding conveys his opinion, his opinion with regards to his views on the Bankruptcy Code or other elements regarding the plan. And, as we noted, Mr. Goulding is here as a fact witness, not as an expert, and so we view those as problematic. And those are Paragraphs 94, 96, and 11.

And on that basis, Your Honor, we ask --

THE COURT: 94 through 96?

MR. ESPANA: No. 94, 96, and just 11.

THE COURT: And Paragraph 11?

MR. ESPANA: Yes.

THE COURT: So it's three buckets.

MR. ESPANA: And we ask that the Court -- and, sorry, 111, not 11.

THE COURT: Okay.

MR. ESPANA: We ask the Court to strike those paragraphs, Your Honor.

THE COURT: All right.

Counsel?

MR. HAMERMAN: Thank you, Your Honor. Obviously, the debtors disagree.

The format of Mr. Goulding's declaration follows the exact same format and the same structure and content as every other confirmation declaration that we've seen in every other single complex Chapter 11 case, including many before Your Honor that have been admitted, including from Marc Liebman, the chief restructuring officer in Rite Aid 2.0, Jeff Stein in Rite Aid 1.0, United Site Services declaration of Chris Kelly. These are all kind of following the same language.

The declaration gives testimony as to facts that are relevant to the satisfaction of Code provisions. That's perfectly normal. And I didn't have this full list beforehand, but just to go through some of them, Paragraphs 29 through 37 testify about different reasons claims are classified differently, business reasons and contractual reasons and more.

Is classification a legal issue? I'm sure that there

are elements of classification that are legal issues, but there are facts as well. What the business and contractual explanation is for classification. You could say the same thing about feasibility. Paragraphs 85 through 96 and the wind-down requirements and related matters.

Again, these are all, in part, legal issues, but they also turn on facts and those facts are within Mr. Goulding's knowledge. Same for best interests, same for liquidation analysis, same for adequate disclosure. These are all kind of blended legal and factual topics, all of which are addressed at length in Mr. Goulding's declaration.

Paragraphs that describe Mr. Goulding's understanding of Code requirements should also be perfectly okay. He doesn't need to be a lawyer to have an understanding. He is the chief restructuring officer of the debtors. And while we don't seek him as an expert, he is an expert. He could very well be a blended fact and expert witness. He's been a restructuring professional for decades and we've set out that history in his declaration.

It's part of his job to think about and make sure that companies' plans of reorganizations or liquidation or wind downs can be confirmed. That understanding is not recited as an argument about what the law is. Of course, Your Honor will decide what the law is and nobody is disputing that. It's recited because it's tied to how Mr. Goulding needs to lay out

the facts about why the Code requirements should be deemed satisfied.

Some of the paragraphs they've talked about relate to business judgment, which the Minority Group also contends is a legal issue. But Mr. Goulding is the one who exercised the business judgment in many instances or observed the exercise by the debtors of the business judgment and he is reciting how that occurred in his declaration.

I would add, of course, Your Honor, that the Court heard almost the same objections at the 9019 hearing and overruled them. And, obviously, the Minority Group can cross Mr. Goulding on these statements and Your Honor can determine exactly what weight to give when Mr. Goulding discusses his understanding of the law.

Let me keep going.

We do not think that the views of debtors' counsel are being disclosed by Mr. Goulding. If that's what's going on, we'll hear from the witness, "I can't talk about that. That comes from counsel." I don't think that that's an issue. Counsel and the witness may have paged through the Bankruptcy Code together, but it is his facts and his understanding that he will testify to.

Instances of opinion, I do not know specifically what those paragraphs are about yet. But, again, Mr. Goulding is a restructuring professional testifying about matters that were

within his individual knowledge and his ability to observe. So I don't understand how there would be any basis to deny this. As for limited opinions given his role as a chief restructuring officer and a restructuring professional for more than 20 years, I think it's perfectly acceptable. And, again, they have the opportunity to cross as to each of these matters.

And there's no surprise. They've known about his declaration and they had an opportunity to take his deposition following his declaration. And, therefore, even if he was proffered as an expert, they have all the information that they need in order to be able to attack those opinions.

I think I've covered all the different -- oh, the voting declaration. Ms. Sanchez will be here this afternoon or later this morning, hopefully, and she will be able to testify about all those matters. Again, Mr. Goulding, is testifying about his knowledge. He understands that Ms. Sanchez and Stretto are the ones who tabulated the voting and he's only testifying about what he understood from that declaration.

Unless Your Honor has questions, I'll step aside.

THE COURT: All right. Thank you.

MR. ESPANA: May I be heard briefly, Your Honor?

THE COURT: Yes, of course.

MR. ESPANA: Your Honor, Mr. Hamerman has referred to a few of the paragraphs I quoted. But, for instance, Paragraph 22 states, this is Mr. Goulding's declaration. "I

understand that Section 1125 of the Bankruptcy Code requires a disclosure statement to contain adequate information," and he rattles off what his understanding is under the Code.

Same thing with Paragraph 28, "I understand that Section 1128 of the Bankruptcy Code requires a Chapter 11 plan to comply with all actual provisions of the Bankruptcy Code, and I believe the plan satisfies Section 1129(a)(1)."

Your Honor those are clear interpretations of the Bankruptcy Code, and he's providing legal conclusions even though he's not an attorney, Your Honor.

THE COURT: Thank you.

All right. The Court, obviously, is not going to go and undertake a paragraph-by-paragraph review as to each sentence within each paragraph that's under contest. Let me be clear. When accepting the declaration into evidence, this Court will not be accepting into evidence the declarant's, per the declaration or his testimony in Court today, with respect to his legal conclusions or his understanding of what the law is. That is not admissible through this witness.

The Court will accept his testimony through the declaration and in Court as to his observations, his experience, his perceptions, and his factual knowledge. The Court will apply the law and the standards to that. I will look through each sentence and look for only the witness's statements that are supported by his personal observations, his

factual knowledge, and his understanding based on his perceptions. Again, that's with respect to bucket one characterized as legal conclusions.

With respect to those paragraphs that address the voting declaration, again, the evidence will come in and be limited solely to his personal knowledge, his observations, his perceptions. The Court will hear from Ms. Sanchez and rely primarily upon her testimony relative to the voting tabulation.

With respect to Paragraphs 94 through 96 and Paragraph 11, the Court took a quick look. Again, the Court will call out only the factual elements of the paragraphs, not the opinion, unless his opinions are based on his observations, his perceptions, or his understanding.

So I am sustaining the objections to the extent when the Court does take a sentence-by-sentence review of the declaration, which I haven't done now, and nor am I going to do it while there's testimony. But when the Court does undertake its review, the Court will sustain the objections and exclude into evidence and only rely in reaching a resolution upon the witness's factual content laid out, again, based on his observations, perceptions, and knowledge.

So, with that, let me first turn to the witness. Mr. Goulding, would you please raise your right hand?

DEBTORS' WITNESS, JONATHAN GOULDING, SWORN

THE COURT: All right.

Mr. Hamerman, do you want to have him introduce the declaration or do you want to present it?

MR. HAMERMAN: Sure.

Do you have an electronic copy? I have a hard copy.

THE COURT: I do.

MR. HAMERMAN: If it's easier, I have a few hard copies.

THE COURT: I have a hard copy as well.

So do you want to present one for the witness?

MR. HAMERMAN: Sure.

Mr. Goulding.

THE WITNESS: Thanks.

THE COURT: This is D-1, correct?

MR. HAMERMAN: Yes, Your Honor.

THE COURT: All right

DIRECT EXAMINATION

BY MR. HAMERMAN:

Q Mr. Goulding, you have in front of you what has been marked as Exhibit D-1. Can you just identify that document for the Court?

A Yeah, it's my declaration in support of the confirmation.

Q You've reviewed this document before today?

A I have.

Q If you were called to testify as to the matters factual matters therein, would you be able to do so today?

A Yes.
Q Any changes, corrections, or edits that you're aware of that need to be made to this declaration?
A Not that I'm aware of.
MR. HAMERMAN: We would offer its admission.
THE COURT: All right.
Subject, obviously, to the objections you've already put on the record, do you have any other objections?
MR. ESPANA: No, Your Honor.
THE COURT: All right.
Then the declaration comes into evidence as D-1, subject, of course, to the Court's review on a paragraph-by-paragraph basis.
And now, the witness has been tendered for cross-examination.
(Debtors Exhibit D-1 admitted to evidence)
MR. ESPANA: Your Honor, we have some hard copy documents for Mr. Goulding we understand that would be helpful.
THE COURT: Sure.
MR. ESPANA: May I approach?
THE COURT: Absolutely.
Thank you.
MR. HAMERMAN: Do you have a set for us?
THE COURT: And a copy for your adversary?
MR. ESPANA: Yes, we do.

THE COURT: And would these be in your exhibits?

MR. ESPANA: Yes, they are, Your Honor.

THE COURT: Okay. Let me turn back to that.

MR. ESPANA: Would you like a copy of the binder, as well, Your Honor?

THE COURT: Oh, I don't want the binder. Too cumbersome.

MR. ESPANA: All right, Your Honor.

THE COURT: You may proceed.

CROSS EXAMINATION

BY MR. ESPANA:

Q Good morning, Mr. Goulding.

A Good morning.

Q Good to see you again.

A Good to see you, too.

MR. ESPANA: JJ, would you pull up Minority Group's Exhibit 68, please.

BY MR. ESPANA:

Q And that's Tab 8 in your binder, Mr. Goulding.

And Minority Group's Exhibit 68 is the amended disclosure statement in this case, correct, Mr. Goulding?

A Give me a second.

Q Sure.

A That's correct.

Q And you prepared or you assisted in the preparation of

Exhibit 68, correct?

A I reviewed it, yes.

Q And you signed the disclosure statement on behalf of the debtors, correct?

A That's right.

Q And your team was responsible for putting together the liquidation analysis in connection with the plan confirmation, correct?

A Correct.

Q Okay.

MR. ESPANA: And, Your Honor, we move for the admission of Exhibit 68.

THE COURT: All right.

MR. BRILLIANT: Not for the truth of the matter asserted.

MR. ESPANA: Not for the truth of the matter asserted, Your Honor.

MR. BRILLIANT: Just the disclosure statement that was solicited.

MR. HAMERMAN: No --

THE COURT: Any objection?

MR. HAMERMAN: No objections, Your Honor.

THE COURT: Exhibit 68 is admitted.

(Exhibit 68 admitted into evidence)

BY MR. ESPANA:

Q Mr. Goulding, you personally did not review the underlying materials that went into preparing the liquidation analysis, correct?

A It depends on what you mean by that. I mean there's sort of layers of detail behind the liquidation analysis. My team prepared it. I reviewed it with them and discussed any questions that I had.

Q Did you review every single material that went into preparing the liquidation analysis?

A I mean, I'm sure there are pieces of paper somewhere that my team looked at that I didn't.

Q Okay. And did you personally prepare the liquidation analysis?

A I reviewed it.

Q Mr. Goulding, you're familiar with the debtors' corporate structure, correct?

A I am.

Q And 27 entities make up the entire corporate structure of the Del Monte entity, correct?

A I think that's right. I don't remember the exact number.

Q Okay. And it's fair to say that about 18 of those entities are debtors in these administratively consolidated cases, correct?

A I'm sorry, I don't remember the exact number of debtors, to be honest with you.

Q Okay. Does 18 sound like the right number? Or would you like me to show you a document to refresh your recollection?
A I think it's in the ballpark.
Q Okay. And three of those cases have now been dismissed, correct?
A I think that's right.
Q And the debtors engage in different lines of businesses, correct?
A They do.
Q And you're familiar with those businesses, correct?
A I am.
Q Okay. And some of them are the broth and stock businesses, correct?
A One of them is the broth and stock business, yes.
Q Okay. And one of them is the produce business, correct?
A I think, you know, there's a fruit business, a vegetable business, and a broth and stock business in terms of the way that they were sold.
Q Okay. And you're familiar with the different entities that engage in those different lines of businesses, correct?
A I am.
Q For instance, Sager Greek Vegetable Company, are you familiar with that entity?
A Sager Greek, yes.
Q Okay. And they engage in canned vegetable businesses,

correct?
A That's right. And most of the operations of the debtor are in DMFC II. A lot of those boxes don't really contain much in the way of operations.
Q And you're familiar with College Inn Foods?
A I am.
Q Okay. And they engage in the broth and stock business, correct?
A They are in the broth business, yes.
Q And, generally speaking, these different debtor subsidiaries have different employees, correct?
A No, I don't think there's any employees in any of those boxes.
Q But they previously had employees, correct?
A I don't think so. Most of them, you know -- a lot of them were set up for different purposes historically. Some of them may still hold IP, but all the employees, everything else really is centralized in DMFC II.
Q And you agree that there's different subsidiaries engaging in different lines of business. Many of them are organized or located in different parts of the world, correct?
A There are some entities that are located in other parts of the world, yes. Mostly, if outside the U.S., you have Mexico and some South America entities.
Q Okay. And some of these entities don't engage in much

business at all, correct?
A That's right.
Q For instance, the debtor entities located in Peru, Ecuador, Argentina, and Colombia don't engage in a lot of activity, correct?
A That's right.
Q And those entities that don't engage in any business wouldn't have any trade creditors, correct?
A I'm not aware of any. I haven't really done a deep dive on the ones that don't operate because in certain instances, we're maintaining a shell operation to be able to do business in those areas. So there could be things like, you know, licenses or legal fees or certain things like that that are needing to get paid in order to maintain those entities.
Q Okay. But it's fair to say you're not aware that these entities who don't engage in any business have any trade creditors, correct?
A Again, not other than what I just outlined.
Q And there's not been a substantive consolidation in this case, correct?
A That's right.
Q And these various subsidiary debtors have different creditors, correct?
A There is overlap between them. The ones that we would have spent time focusing on really are DMFC II and the Mexico

entities. We produce -- that's where we really have production facilities so those are ones that really have significant trade creditors. And there is significant overlap between those entities.

Q But there is not identical overlap among the subsidiaries, correct?

A Right. It wouldn't be identical. There are certain creditors in Mexico, for example, for things that we would produce just down there.

Q Okay. And, Mr. Goulding, I just ask that you please answer my question. Your counsel will have an opportunity to follow up if you want to share additional information. Okay.

Could you turn to Tab 7 in your binder, please?

And Tab 7 is Minority Group Exhibit 67.

A Yes.

Q Do you recognize Exhibit 67, Mr. Goulding?

A Yes, it's the plan.

Q Okay. And before it was filed, you reviewed and approved the plan, correct?

A That's right.

Q And, in fact, you signed the plan on behalf of each of the debtors, correct?

A That's right.

Q And the debtors' proposed plan, which is Minority Exhibit 67, is not a substantive consolidation plan, correct?

A That's right.
Q And, in fact, the plan constitutes being a separate plan proposed by each of the debtors, correct?
A I believe that's right.
Q So there are effectively 15 different plans that are being sought to be confirmed today, correct?
MR. HAMERMAN: Objection insofar as it calls for a legal conclusion.
THE COURT: Sustained.
BY MR. ESPANA:
Q And you agree that there is a plan being proposed today for each of the separate subsidiaries, correct?
A I think it's one plan. It's just, you know, there are guarantors, there are a number of those debtor entities that are guarantors under the DIP. So it's effectively, you know, one plan that encompasses how that's going to work.
Q Okay. The debtors did not solicit votes in favor or against the plan on a debtor-by-debtor basis, correct?
A That's right.
Q All right.
Mr. Goulding, in Exhibit 67, if you turn to Page 31, please.
Are you there?
A I am.
Q And on Page 31, if you could direct your attention to

Section Article 3, titled Classification and Treatment of Claims in Interest.

Do you see that?

A I do.

Q Sub A is Classification of Claims and Interest, correct?

A That's right.

Q And the plan states, the first sentence states, "This plan constitutes a separate plan proposed by each debtor."

Do you see that?

A I do.

Q Okay. And do you agree with that?

A I do.

Q Okay. And you agree with me that, according to the plan, which you've reviewed and approved, this plan constitutes a separate plan for each of the separate debtor subsidiaries that we discussed, correct?

A Again, I think of it as sort of one plan, but I understand what it says.

Q Okay. And you agree with me, correct, that this, according to the plan, there is going to be a -- this plan constitutes a separate plan for each of the debtor subsidiaries, correct?

A It's a plan for each debtor.

Q Okay. And I think we were talking earlier about the vote tabulation. And the debtors did not tabulate votes in favor or

against the plan on a debtor-by-debtor basis, correct?
A That's right.
Q And so when we look at the tabulation, which Ms. Sanchez, I think will discuss later today, we cannot tell whether the creditors in Class 4, for instance, for subsidiary college, which -- sorry. Strike that.
So when we're looking at the voting tabulation, we can't tell whether the creditors in Class 4 for subsidiary -- I think we talked about Sager Creek -- voted in favor of the plan, correct?
A No, I don't know. I don't have the tabulation that way.
Q And, similarly, when we look at the voting tabulation, we can't tell if the Class 4 holders voted in favor of any of the individual debtor entities, correct?
A I think you could get behind the data to figure it out based on who voted. I haven't seen that.
Q Okay. You're not aware that that is available, correct?
A I haven't done it. I don't know.
Q And sitting here today, you're not aware that that's available, correct?
A I mean, I don't know. They have all the votes by people who voted, and you would probably have to do some work to figure it out.
Q But the votes have not been tabulated in that manner, correct?

A Not that I'm aware of.
Q Okay. And, Mr. Goulding, you're not a lawyer, correct?
A I'm not a lawyer.
Q And you're not an expert on bankruptcy law, correct?
A I'm not.
Q And in preparing your declaration, you didn't review any case law, correct?
A No.
Q And the lawyers at HSF Kramer prepared the first draft of your declaration, correct?
A They did.
Q Okay. And you reviewed it with them, with the Code open, and had a conversation with them on the legal provisions that would be included, correct?
A That's right.
Q Okay. And based on your conversation with them, you agreed to your declaration and signed it, correct?
A That's right. I mean, I've done this exercise before.
Q Okay. And throughout your declaration, you refer to the debtors in your own business judgment, correct?
A That's right.
Q And when you're using the term business judgment, you're not using it in the legal context, correct?
A I'm using it in the context of my business judgment.
Q Okay. If you look at Paragraph 55 in your declaration,

Mr. Goulding, on Page 21. It's 162 in ours. I'm sorry. Yes, 162.

Let me know when you're there, Mr. Goulding.

A I'm there.

Q Okay. So in Paragraph 55 of your declaration, in the first sentence, you state that the plan has been accepted by each of the voting classes in accordance with Section 1126 of the Bankruptcy Code, correct?

A That's right.

Q And you're not aware if voting and tabulating votes for creditors on a consolidated basis is proper under the Bankruptcy Code for a non-substantive consolidated plan, correct?

A I mean, we looked at the classes and the way they voted and what it took to carry each of those classes. We looked at it on a consolidated basis.

Q Okay. My question is, you're not aware if the voting and tabulating votes on a consolidated basis is proper under the Bankruptcy Code for a non-substantive consolidated plan, correct?

A My understanding is that it's permitted in the way that it was done.

Q Excuse me?

A My understanding is that it's permitted in the way that we did it.

Q Okay. And you didn't review any case law to determine whether it's permitted under the way you did it, correct?
A I didn't.
Q Okay. And you didn't do anything to independently determine whether voting needs to be done on a debtor-by-debtor basis, correct?
A I did not do anything independently.
Q Okay. But your declaration in Paragraph 55 states that the plan has been approved by the record classes to be approved under the Bankruptcy Code even though you don't know whether it needs to be voted on a debtor-by-debtor basis, correct?
MR. HAMERMAN: Objection. Asked and answered.
THE COURT: Overruled.
You can answer.
THE WITNESS: Again, we worked with the lawyers on the formulation of the plan and the voting. And my understanding was that this was permitted.
BY MR. ESPANA:
Q Okay. So it's fair to say then this part to your declaration contained the view of counsel, correct?
A It's based on a discussion with them.
Q Okay.
Mr. Goulding, can you go to Tab 9, please?
MR. ESPANA: And it's Exhibit 75, Minority counsel.
BY MR. ESPANA:

Q And Minority Exhibit 75, do you recognize that, Mr. Goulding?
A It's the plan supplement.
Q And the plan supplement is incorporated by reference into the plan, correct?
A That's right.
Q And you were also involved in preparing certain sections of the plan supplement, correct?
A I was.
Q And that includes the wind-down budget that's included in Exhibit E, correct?
A That's right.
Q If you can turn to the wind-down budget, which is Exhibit E, and it's PDF Page 19.
A Okay.
Q Exhibit E, this is the wind-down budget that you prepared, correct?
A That's right.
Q And if you can turn to Section 3, which is on Page 22 of the PDF, which is titled budget.
A Yes.
Q All right. And you and your team also prepared this budget, correct?
A We did.
Q Okay. And in preparing the debtors' wind-down budget, you

had extensive negotiations with representatives of the Majority Ad Hoc Group, correct?

A We did.

Q And as part of those negotiations, the Majority Ad Hoc Group sought to reduce the wind-down budget so they can get a bigger recovery, correct?

A They would like the numbers to have been lower, yes.

Q And that was conveyed to you in these negotiations, correct?

A Yeah, we had a lot of back-and-forth on a lot of line items that went into the budget.

Q Okay. However, you did not solicit any input from the members of the Minority Ad Hoc Group with respect to the wind-down budget, correct?

A That's right.

Q Okay.

And if we look at the budget, according to the budget, the debtors had approximately 34 million in cash prior to the close of the sum-of-the-parts transaction, correct?

A That's right.

Q Okay. And that's reflected on the bottom left, correct, under beginning cash flow?

A Correct.

Q And if we look at the top under the receipts category, your budget reflects that the total amount of expected cash

receipts under the wind-down budget is approximately 551.8 million, correct?

A That's right.

Q And if you look under the receipt section, the first line item is transaction proceeds. Do you see that?

A I do.

MR. ESPANA: Maybe you can make it a little bigger, JJ?

BY MR. ESPANA:

Q And the amount of that line item is 402.4 million, correct?

A That's right.

Q Okay. And that line item reflects the proceeds from the sum-of-the-parts transaction net of what has been paid to the ABL lenders, correct?

A That's right.

Q Okay. And there's also, if you look under the transaction proceeds, there's another line item, pre-close AR collections. Do you see that?

A I do.

Q And that's for 86 million, correct?

A That's right.

Q And this line item reflects the AR that was not sold to the purchasers as part of the sum-of-the-parts transactions, correct?

A That's right.
Q And the 86 million that you've forecasted in your wind-down budget does not reflect any discounts, correct?
A The 86 includes a couple of estimates for potential uncollectible amounts.
Q Okay.
And the line item below it is sale of assets for 52 million?
A That's right.
Q And this line item relates to the excluded real estate assets, correct?
A That's correct.
Q And your forecasted value of that real estate asset is 52 million for purposes of the wind-down budget, correct?
A That's right.
Q And then directly below it, there's also a line item titled other excluded assets received for 11.4 million, correct?
A That's right.
Q And that line item is comprised of a few things, correct?
A That's right.
Q That includes the surety bond collateral, correct?
A Correct.
Q The tariff refund claims?
A Correct?

Q The litigation claim against Silgan, correct?
A That's right.
Q And certain assets that are in a rabbi trust, correct?
A Correct.
Q And with respect to the surety bonds collateral, you expect to recover approximately 4.2 million, correct?
A Correct.
Q And your forecast in the wind-down budget is for approximately 1.2 million for that, correct?
A No, we have the full amount of the surety bonds as being collected, I believe.
Q Okay. And the Silgan claims that are part of the other excluded assets, that relates to potential claims against a manufacturer for product defects, correct?
A That's right, for pinhole damage in some cans that we got from Silgan.
Q Okay. And in your opinion, the debtors' claim for damages against Silgan is approximately 4 to 5 million, correct?
A I think that's the right ballpark, yes.
Q And your forecast for the Silgan litigation and the wind-down budget is for approximately 2.3 million, correct?
A That's correct.
Q I got one of them right.

The rabbi trust that is included in the other excluded assets receipt is the deferred compensation that became an

asset of the debtors' estate as part of the bankruptcy, correct?

A That's right.

Q And the value of the rabbi trust assets between 3.5 and 4 million with potential market-based fluctuations, correct?

A Yeah, something like that. I think the last I saw was like 3.3 or 3.4.

Q Okay. And you're also familiar with what's referred to under the plan as the retained causes of action, correct?

A I am.

Q And the retained causes of action refer to various claims that the debtors are retaining for different purposes, correct?

A Correct.

Q And there's no recovery in your wind-down budget for the retained causes of action, correct?

A That's right.

Q And neither you or any member of your team think there's any material value to be recovered on the account of the retained causes of action, correct?

A We, you know, we don't have a valuation for anything related to those retained causes of action.

Q My question was a little bit different.

Neither you nor any member of your team, or let's just say, you don't believe there's any material value to be recovered on the account of those retained causes of action,

correct?
A I think -- we don't think that there's anything that we will likely recover under those, but if the circumstances may change, they may have value.
Q Okay. Sitting here today, you don't believe there's any material value to be recovered on those retained causes of action, correct?
A We're not ascribing any value to them. If somebody asserts a claim against us, certain of those retained causes of action would be defenses, so they may have value in the context of somebody asserting a claim. We don't think that there's affirmative recovery likely on any of those causes of action, so we haven't included a value for them, no.
Q And you're not aware of any other potential sources of cash available to the debtors that is not reflected in the receipts section of the wind-down budget, correct?
A We're not aware of any, no.
Q And besides the Silgan litigation and the retained causes of action that we've discussed, there is no other litigation that is forecasted to have a recovery in the wind-down budget, correct?
A That's right.
Q And you're not aware of any other assets that could possibly be included in the excluded assets category that we discussed, correct?

A I'm not aware of any at this time.
Q And, Mr. Goulding, you agree that under the plan, the administrative claims bar date for admin claims other than professional fee claims is 30 days after the effective date of the plan, correct?
A That's right.
Q And so that date hasn't occurred yet, correct?
A Correct.
Q And so in order to estimate potential admin claims, someone would have to investigate what those claims are, correct?
MR. HAMERMAN: Objection. Calls for speculation.
MR. ESPANA: I'll rephrase.
THE COURT: Thank you.
BY MR. ESPANA:
Q So in order to estimate the potential admin claims under the plan, someone would need to determine what are the potential admin claims that might be asserted, correct?
A Well, we know what most of the admin claims are because it would be for, you know, ordinary course of business, ongoing, you know, vendor obligations that we have that create admin claims. And we're aware of whatever else, you know, might be out there.
MR. ESPANA: Move to strike, Your Honor, as non-responsive.

MR. HAMERMAN: I disagree.

THE COURT: Overruled. Repeat, more specifically, the question that you're asking.

BY MR. ESPANA:

Q In order to estimate the potential admin claims, someone would need to investigate what those admin claims are, correct?

A Not really because we have books and records of the company, so we don't have to perform an investigation. We know what's ongoing business. We know what the admin claims are likely to be by virtue of being where we are and then discussing with folks what other admin claims might come available.

Q And in this case, you and your team were tasked with doing that analysis, correct?

A For purposes of the wind-down budget, we looked at what we anticipated to be admin claims.

Q And as part of the analysis, you and your team looked to see what had previously been asserted as admin claims, correct?

A Right. There are some claims where folks filed them on the, you know, on the claims register as admin claims that may or may not be admin claims, so we did go through those. But we generally know from the books and records what's likely to be there.

Q And prior to the filing of the plan and the disclosure statement, neither you nor your team analyzed whether the

Minority Ad Hoc Group would have an administrative claim, correct?

A We didn't.

Q And prior to the filing of the plan and the disclosure statement, you did not do anything to determine whether any members of the Minority Ad Hoc Group would have an administrative expense claim, correct?

A That's right, nobody had asserted that there was one or that one was likely.

Q And prior to your deposition, other than discussing the issue with counsel, neither you nor your team analyzed whether members of the Minority Ad Hoc Group have an admin expense claim, correct?

A Correct. We, I think, had assumed that if somebody had an admin claim that that would have been asserted or mentioned prior to a couple of days before my deposition.

Q And at that time when you were deposed, no one had asked you to do so, correct, to carry out that analysis?

A That's right.

Q And you have not identified any administrative expense claims for any parties who have not already filed a claim, correct?

A No, I don't think that's right. We included in our estimate of pre-close AP what we would think would cover, you know, for goods that are received but we don't have invoices

for yet, so sort of accrued liabilities that are not -- that we don't have the actual invoices for. So we're making estimates with respect to, you know, what else we think might come together or might come in over the course of time.

Q And when did you carry out that analysis?

A In preparation for the wind-down budget.

Q Okay.

Mr. Goulding, look at Tab 14.

Tab 14 has your deposition transcript, correct?

A Yes.

Q Okay. Let me know when you're there.

A I'm there.

THE COURT: And what exhibit?

MR. ESPANA: It is 171, Minority Group, Your Honor.

THE COURT: Thank you.

BY MR. ESPANA:

Q Okay. And you were deposed in this matter, correct, Mr. Goulding?

A I was.

Q And you testified under oath?

A I did.

Q All right. And if you look at Page 132, Line 15.

Question, I asked you, "Have you identified any administrative expense claims for any parties who have not filed a claim?"

"A I have not."

Do you see that?

A I do. I guess I --

Q I didn't ask you a question.

Do you see that?

A I do.

Q Okay. And you testified truthfully on that date, correct?

MR. HAMERMAN: Judge, the next paragraph contains --

MR. ESPANA: Your Honor --

MR. HAMERMAN: -- clarification of the answer. This is not fair.

THE COURT: You can raise that after. Let him ask his question.

MR. HAMERMAN: Sure.

BY MR. ESPANA:

Q And the question was, you testified truthfully that day, correct?

A Yes.

Q Okay.

You can put that down.

And, Mr. Goulding, in fact, your wind-down budget does not project any admin claims that will be paid after the effective date of the plan, correct?

A Right. We think we will pay all of them prior to the effective date.

Q And the wind-down budget shows that payment of admin claims after the effective date would be zero, correct?
A If you go back -- I lost which page we're on, but if you go back, I think we classified certain things in this distributions segment, this block, where it says admin priority. But there are certainly things that would, you know, constitute admin claims of the estate that are being paid in the, you know, non-labor operating expenses, for example.

So accrued and unpaid accounts payable related to the, you know, ongoing support of the business, for example, managing Modesto and Yakima for sale, those items would all be in the non-labor operating expenses. So those would be administrative expenses if they occurred prior to the effective date.
Q And what's your understanding of the value of those claims that are going to be paid?
A I don't know. I'm not following your question. What's the value?
Q The amount. The amount.
A Well, I can't -- I don't know the bifurcation between what's, like, pre-effective and post-effective from the schedule.
Q Okay.

If we look at the -- are you in the wind-down budget, Mr. Goulding?
A Yes.

Q Okay.

And you were referring to, I think, under distributions, unclassified admin priority claims?

A I was, yes.

Q Okay. Hold on.

MR. ESPANA: And, JJ, if we can bring up 75 so the Judge can see it.

BY MR. ESPANA:

Q Okay.

And in that line item for unclassified admin priority claims, you include a forecast of approximately 109.8 million, correct?

A That's right.

Q And that forecast of approximately 109 million is for post-petition payables, correct?

A Yes.

Q And you believe, Mr. Goulding, that these cases are administratively insolvent, correct?

A No.

Q Excuse me?

A No, I do not.

Q You do not?

Why not?

A Because we worked with the Majority Group to get to a wind-down budget that will pay all of the administrative

expenses.
Q Okay.
And but for that agreement with the Majority Group, these cases would be administrative insolvent, correct?
MR. HAMERMAN: Objection calls for a hypothetical.
THE COURT: Overruled.
THE WITNESS: I think in all the cases where you have, you know, significant secured debt where the debt is not fully secured or isn't going to be fully paid off, there's always a tension between secured and admin creditors to ensure getting admin creditors paid and ensure an admin solvency.
MR. ESPANA: And move to strike, Your Honor.
BY MR. ESPANA:
Q Because my question is, so but for the agreement that the debtors have with the Majority Ad Hoc Group, this would be an administratively insolvent case, correct? And I'm not talking about other cases. We're talking about this case.
A Again, I think in my experience, there's always has to be a negotiation between parties to figure out how you're going to -- how you're going to effectuate the plan and confirm the plan, which requires the payment of admin claims. So it's a sort of tension between secured and admin creditors that has to get worked out.
Q Okay.
MR. ESPANA: Move to strike, Your Honor.

THE COURT: Sustained.

Absent the agreement with the Majority, would this case be administratively insolvent absent other arrangements?

THE WITNESS: I mean, I suppose if you say the secured creditor doesn't want to confirm a plan. But I haven't -- I'm not sure why that would happen.

THE COURT: I understand the point you're making, so why don't you continue.

MR. ESPANA: Okay. Thank you.

BY MR. ESPANA:

Q And, Mr. Goulding, based on the forecast in your wind-down budget, you estimate there will be a DIP term loan claim deficiency of approximately 91.5 million, correct?

A That's right.

Q And that 91.5 million DIP deficiency is after paying the 109.8 million of admin and priority claims, correct?

A That's right.

Q And under your wind-down budget, you project to pay -- just to confirm, I think we talked about this earlier. Pursuant to your wind-down projection, you project to pay the post-petition payables prior to the effective date, correct?

A Most of those payables, right. As we talked about, some of the post-petition pre-effective date payables are likely still in the non-labor operating expense.

Q And those relate to the Yakima property that we talked

about, that you referenced earlier, correct?
A Yeah. The other properties that we're maintaining or other ongoing expenses of the estate.
Q Okay.
And you project to pay those post-petition payables with the $34 million that's cash on hand and the 86 million of AR that's reflected in the wind-down budget, correct?
A That's right.
Q Okay. And that's approximately $120 million, correct?
A Sorry, what numbers are you adding?
Q 86 and 34.
A Yes.
Q Okay.
And, in fact, you already paid most of the claims, correct?
A That's right.
Q All right. You can close that for a minute. Go back to Tab 7, Mr. Goulding, which is the plan.
MR. ESPANA: And it's Exhibit 67, Judge. It's Minority Exhibit 67, Your Honor.
BY MR. ESPANA:
Q Mr. Goulding, you're familiar with the various creditor classes that are set forth in the plan. Correct?
A I am.
Q And you're familiar with the distributions under the plan.

Correct?
A I am.
Q And the plan is what is colloquially referred to as a waterfall plan. Correct?
A I've heard that term used today. Sure.
Q And under the plan a plan administration reserve will be set up for professional fees, admin claims, and the GUCC recovery. Correct?
A That's right, those are all being set aside.
Q And they're being set aside in the plan administration reserve. Correct?
A I think that's how it works.
Q And do you agree that all of the cash available under the wind-down budget that we just talked about, after repayment of the APL, other than the 52 million for the excluded real estate assets, will be included in the bucket that the plan refers to as the distributable proceeds. Correct?
A That's right.
Q And under the plan all allowed administrative claims will be paid out of the plan administrative reserve and are not included in the waterfall. Correct?
A That's my understanding.
Q And there's no other mechanism in the plan for payment of administrative claims. Correct?
A Those are the only assets we have.

Q And, Mr. Goulding, you're familiar with the settlement that took place in this case that includes -- between the debtors and the majority ad hoc group. Correct?
A That's right.
Q If you'll look to Tab 6, please. It's Exhibit 51. Do you recognize Exhibit 51, Mr. Goulding?
A I do.
Q Okay. And this is the order approving the settlement among the parties as part of the May 19 motion. Correct?
A That's right.
Q And if you turn to Page 8 of the PDF, let me know when you're there.
A Okay.
Q And Page 8 is Exhibit A in the -- or Exhibit 1 in the order which is the settlement term sheet. Correct?
A That's right.
Q And if you look at Page 4 of there term sheet, I direct your attention to the bucket, or the little box that says, Wind down.
A Okay.
Q And if you look at the first sentence, Exhibit 51, which is the settlement order in this case, confirms that the debtors and the majority ad hoc group had agreed that the wind-down budget would contain an amount which "which amount the committee, the ad hoc group and the debtors agree would include

sufficient funds for the payment of all admin, allowed administrative and priority claims and all claims asserted under Section 503(b)(9) of the Bankruptcy Code, and post-petition trade obligations in each case necessary to confirm a plan". Correct?

A That's right.

Q And if there's not enough cash in the plan administrative reserve, the admin claims won't get paid in full. Correct?

A If there were, I mean we -- as I said, we looked at the admin claims, it's for an agreement on payment of allowed admin claims, and if there were something that arose that's different that's what in the wind-down budget, then we would need to go back to the ad hoc group and have a conversation.

Q And you would need to go back to the ad hoc group and have a conversation because there will be no cash to pay those claims. Correct?

A Well, it just depends on the size of the claims.

Q What's your understanding in terms of how much is going to be in the reserve?

A Well, I think there's a lot of different pieces that make up that reserve, I'm not sure I can summon them all up. I think maybe a better way to look at it is if you look at the wind-down budget, there's, you know, sort of at the low point about $10 million of cash. So claims -- if there's some claims that arise that are a million or 500,000, then those could

probably be satisfied. If it's some number in excess of 10 million, then depending on what happens in the other elements of the wind-down budget, you know, that might be hard to satisfy.

Q And this -- but the reserve does not include anything for a 507(b) claim for the minority had hoc group. Correct?

A That's right, we don't expect an allowed claim.

Q And if the minority ad hoc group has a claim in excess of $25 million, the plan administrative reserve will not have enough funds to pay it. Correct?

A Again, we would have to go back to the majority and figure out a way that -- to see whether there's -- what way to get that cash.

Q But, Mr. Goulding, as the plan sits right now and your wind-down budget, if the minority ad hoc group has a claim in excess of $25 million, the plan administrative reserve will not have enough funds to pay it. Correct?

A Right, we would have to go back and have a conversation.

Q And the plan also defines waterfall recovery and sets out the priority in which distributable proceeds are paid. Correct?

A That's right.

Q Okay. Going back to the plan administration reserve, if the minority ad hoc group has a claim of $5 million for their 507(b) claim, there would not be sufficient funds in the plan

administrative reserve to pay that claim. Correct?
A I think we would have 5 million based on what I said. I mean I think there's 10 million available funds in the wind down. I think we would probably -- because it's not a line item in there, we would probably have to have a conversation. But the wind-down administrator could -- would have sufficient funds to be able to pay.
Q And those $10 million are currently in the reserve?
A That's right.
Q In the plan administration reserve. Is that right?
A Again, I think about it in the context of what is going to be in the wind down entity on a go-forward basis. That's what is reflected in the forecast that we're showing in the wind-down budget.
Q Sitting here today if the minority group had a 5 million 507(b) claim, there would not be sufficient funds in the plan administrative reserve to pay that claim. Correct?
A I didn't parse it that finely, I mean the language and everything, so I'm not sure I can answer your question exactly, but the wind-down entity would have sufficient funds to pay it.
Q Do you know how much money would be left in the plan administrative reserve after paying the claims as set forth in your wind-down budget?
A I haven't looked at it that way.
Q What's the most that an admin claim could be paid under

your wind-down budget that has not already been forecasted?
A I mean based on the wind-down budget what I said is there's about 10 million at the minimum low point. So presumably, you know, if it's less than 10 million, it could be worked through. A lot of those are forecasted numbers, so it would depend on how the rest of the numbers resolved themselves. If some of those are favorable, there would be more availability.
Q So is it fair to state that 10 million is the most that would be available for an admin claim that hasn't been forecasted in your wind-down budget?
MR. HAMERMAN: Objection, the witness has already answered this sufficiently.
THE COURT: Well, the objection's sustained because that wasn't his answer to your question, so if you want to rephrase the question.
BY MR. ESPANA:
Q My initial question is, what was the -- what is the total amount available in the plan administrative reserve to pay 507(b) claims that have not been forecasted in your wind-down budget?
MR. HAMERMAN: Same objection, Your Honor, it's asked and answered. We've heard this answer already.
THE COURT: I'll give him a little leeway.
MR. HAMERMAN: Yes.

THE COURT: Can you answer it again?

THE WITNESS: Yeah, as I said, I didn't parse the language the way you were parsing the language. We did a wind-down budget that shows the remaining cash available at the wind-down entity. The low point of that cash is around $10 million. It's a forecast, I don't know how the forecast will actually materialize. We try to be conservative in that forecast. So I can't give you a bright line number of how much couldn't be absorbed.

There's also ways to move things around within the wind-down budget depending on timing of receipts, payment of any other things on a go-forward basis. So it's not a bright line test.

BY MR. ESPANA:

Q Okay. And you testified that the low number is 10 million. Correct?

A Correct.

Q Okay. What's the high number in your forecast that would be available to pay for additional 507(b) claims?

A No, sorry, the low point of cash? If you pull up the wind-down budget exhibit, you can see the forecasted low point of cash, and that number is around 10 million.

Q So 10 million in other words is the most that would be available to be paid pursuant to the forecast in your wind-down budget.

A Again, these are all forecasted numbers. To the extent that we need those numbers, or we can move stuff around from a timing perspective, it could be a bigger number than that. It isn't a bright line test.

Q I understand. But based on your forecast as you forecasted and estimated, based on the forecast in your wind-down budget, the 10 million is the most that would be available to pay for any additional administrative claims. Correct?

MR. HAMERMAN: Same objection, Your Honor.

THE COURT: Sustained. His testimony is inconsistent with that statement.

BY MR. ESPANA:

Q Going back to the plan, as we discussed earlier, the plan also defines the waterfall recovery in sets out the priority in which the distributable proceeds are paid. Correct?

A That's right.

Q And if you need it, the definition's on Page 23 of the plan, which is Exhibit 67, and it's Tab 7 in your binder.

A Sorry, which definition?

Q Waterfall recovery.

A Yeah, I see it.

Q Good. So under that definition the first recipient of distributable proceeds is the DIP term loan claims. Correct?

A That's right.

Q And now, Mr. Goulding, you testified earlier that based on

your forecast in your wind-down budget, you estimate there'll be a DIP term loan claim deficiency of approximately 91.5 million. Correct?

A Correct.

Q And so no creditor below the DIP will receive anything under the waterfall. Right?

A That's our current expectation.

Q But if the DIP is paid in full, the next class would be the allowed other secured claims. Correct?

A That's right.

Q And that's a Class 2. Correct?

A Correct.

Q And then it would be the allowed super senior term loan claims. Correct?

A That's right.

Q And those are the claims in Class 3. Correct?

A Correct.

Q And then it would be the allowed general unsecured claims. Correct?

A That's right.

Q And those were the claims in Class 4. Correct?

A Correct.

Q And then last it would be the allowed other general secured claims. Correct?

A That's right.

Q And those are claims in Class 5. Correct?
A Correct.
Q And each class must be paid in full before the waterfall reaches the nest -- the following class. Correct?
A That's right.
Q Okay. And if you look at Paragraph 54 of your declaration, which is introduced already as D-1, but it's Exhibit 162 for the minority group. It's Paragraph 54 on Page 21.
A I see it.
Q And the first sentence states, I understand that Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a plan and provides that only holders of allowed claims or interests in impaired classes that will receive or retain property on account of such claims or interests may vote to accept or reject the plan. Do you see that?
A I do.
Q And you still believe that's accurate. Correct?
A I do.
Q And holders in Class 5 are junior in the plan's waterfall to admin claims. Correct?
A That's right.
Q And they're junior to the Class 3 claims?
A That's right.
Q And they're junior to the Class 4 claims. Correct?

A Correct.
Q So Class 5 can get a recovery only if all the DIP claims, the Class 1, the Class 3 and the Class 4 claims first get a full recovery. Correct?
A That's right.
Q And yet the disclosure statement projects -- and the disclosure statement projects that Class 5 will receive no recovery. Correct?
A That's right.
Q And it doesn't provide a range, it just says, zero. Correct?
A Right.
Q And you agree there's no chance at all that holders in Class 5 will receive a recovery in this case. Correct?
A I never say no chance, but it seems unlikely.
Q All right. Mr. Goulding, if you'll go back to your testimony, Tab 14, Exhibit 171.
A Sorry, where are we?
Q Tab 14 in the binder, which is your testimony. If you'll go to Page 149. Let me know when you're there.
A I am.
Q On Page 49, Line 6, I asked you, And you agree that there's no chance at all that Class 5 will receive a recovery in this case. Correct? And you answered, I think that's right. (Indiscernible)?

A Yeah.
Q And, Mr. Goulding, despite there being no chance that holders in Class 5 will receive a recovery as you testified in your deposition, the plan allows holders in Class 5 to vote on the plan. Correct?
A Right, and my understanding is just that the classes were preserved, the waterfall was preserved, there's an unlikely chance of recovery for some of these classes, but we gave them the right to vote.
Q And Class 3 consists of the super senior term loan claims. Correct?
A That's right.
Q And the claims of the members of the minority ad hoc group are in group class -- sorry, are in Class 3. Right?
A That's right.
Q And their claims are allowed claims. Correct?
A That's right.
Q And in order for Class 3 holders in the plan to recovery any amount the debtors would need to receive additional cash proceeds other than what's reflected in the wind-down budget or saved in expenses in aggregate that would exceed the 91.5 million deficiency that you were projecting for the DIP claim. Correct?
A That's right.
Q And I think you testified earlier that in putting together

the wind-down budget you accounted for and quantified everything that you're aware of. Correct?
A That's right.
Q And the buffer cushion that you've included in the wind-down budget is not anywhere close to 91.5 million. Correct?
A We don't expect it to be, no.
Q Okay. And you're not aware of any other assets or claims or causes of action that could individually or in the aggregate potentially close the $91.5 million cap. Correct?
A As of right now we're not aware of any that we think are worth value.
Q And the disclosure statement, which you reviewed and signed, states that holders in Class 3 will receive a recovery of 0 percent. Correct?
A That's right.
Q And again, it's not a range, it affirmatively states 0 percent. Correct?
A Right. That's the expected outcome.
Q And you signed the disclosure statement. Correct?
A I did.
Q And you were aware that the parties in this case were going to rely on the information disclosed in the disclosure statement. Correct?
A Yes.
Q And you would not have signed it if you thought anything

wasn't accurate. Correct?
A I'm sorry, did you say inaccurate?
Q Yes.
A That's correct.
Q And it's your understanding, as set forth in the plan, that holders of Class 3 claims, which include the minority ad hoc group, will receive a 0 percent recovery. Correct?
A Correct.
Q And sitting here today you're not aware of anything, any event, however remote that could occur that would give rise to a no value to close so that there would be a recovery for Class 3 claims. Correct?
A I'm not aware of anything that has any degree of certainty in it that would give rise to us putting a value that would fill that hole, no.
Q And you're not aware of anything, even uncertain, that would give enough value so there will be a recovery for the Class 3 claims. Correct?
A We don't have anything that we can think of that has that value.
MR. ESPANA: Paige, you can put that down.
(Pause)
BY MR. ESPANA:
Q Mr. Goulding, do you agree that subject to the ABL and the DIP lien the pre-petition term lenders had a lien on all the

debtor's assets as collateral. Correct?
A Sorry, are you talking about a specific point in time or you're saying --
Q Pre-petition.
A Pre-petition?
Q Yes.
A Sorry, could you repeat the question?
Q Sure. Do you agree that subject to -- well, let's do it -- strike that. Today, subject to the ABL and the DIP lien the pre-petition term lenders had a lien on all the debtor's assets as collateral. Correct?
A Right behind those liens, yes.
Q Okay. And if we turn back to your wind-down budget, which Minority Group's 75, it's Tab 9. Okay. Are you there?
A Yep.
Q All the assets that you've identified in your receipts bucket -- sorry, all the items you've identified in the receipts bucket, do you see that --
A I do.
Q -- those are all assets. Correct?
A Yes.
Q And subject to the ABL and the DIP liens the first-out senior lenders had a lien on those assets. Correct?
A That's right.
Q And that includes the 86 million in pre-closed AR

collections. Correct?
A That's right.
Q And that includes the 11.4 million in other excluded assets. Correct?
A I think that's right, although I don't really exactly recall like the proceeds of litigation versus cash versus something else, but I think that's right.
Q Okay. And they would also have a lien on the 34 million that you have there in beginning cash. Correct?
A That's right.
Q And admin claims, Mr. Goulding, don't have priority over secured claims with respect to a secured creditor's collateral. Correct?
MR. HAMERMAN: Objection insofar as it calls for a legal conclusion.
BY MR. ESPANA:
Q Your understanding, Mr. Goulding.
A Again, as we talked about before, in order to confirm a plan where you have the secured creditors weren't going to recover in full, from a practical perspective we have to work out a resolution on what admin claims there are and how those get paid to confirm a plan.
Q And here, pursuant to an agreement between the debtors and the majority ad hoc group the debtors proposed to pay or they had paid the admin claims prior to paying the DIP in full.

Correct?
A That's right, we're paying -- the bulk of what you see in there is the pre-closed accounts payable related to the transactions, so those amounts are related to accounts payable that were accrued but unpaid prior to the closing date, and those have been largely paid at this point.
Q And you agree that the funds used to pay the admin claims were part of the first-out collateral. Correct?
A I mean it's cash or borrowings, yes.
Q Okay. I'm going to ask you to do a little bit of math, so I don't know if you want to grab your phone or --
A I don't have my phone.
Q Okay. Do you want a piece of paper and pen?
A I don't know what we're doing.
THE COURT: Here, I'll give him a calculator.
MR. ESPANA: Oh, there we go.
THE WITNESS: Thank you.
MR. ESPANA: Thank you, Your Honor.
THE COURT: Hopefully it works.
BY MR. ESPANA:
Q I thought you would be able to do it off the top of your head so.
A I don't know what we're doing.
Q All right. Mr. Goulding, if you add the receipts portion of your wind-down budget, with the exception of the 52 million,

there's approximately 49 -- 499 point million (sic) in the assets as of the closing date. Correct?
A That's right.
Q Okay. And if you add the 34 million in beginning cash, that adds up to approximately 533.8 million in cash available to the debtors as of the closing date. Correct?
A It's not available as of the closing date because a lot of these -- you'll see like the other assets are collected later.
Q Okay. But it's available as of the beginning -- I think that's the March period. Correct?
A No, if you look at the other excluded asset receipts, those don't come in until later on in the case, August, September, and then out in April of '27.
Q Okay. So if you add -- I understand the point if you add the 34 million in cash to the 499.8 million, that would be in the receipts section, that's 533.8 million in value available to the debtors. Correct?
A I don't know if the value is available to them at that point in time. You have to monetize -- it takes time to monetize the other items that are showing up later.
Q Okay. Putting that aside, if you add those 2 numbers, that adds up to 533.8 million. Correct?
A That's right.
Q Okay. And if you use those proceeds of 533.8 million to pay off the 501(b) -- the 401 million DIP term loan and the 104

million in disbursements in your wind-down budget, you're left with approximately $28 million. Correct?

A That's it.

Q And the 104 million is the labor, non-labor operating expenses and pre- and post-confirmation professional fees. Correct?

A That's right.

Q Okay. So my question was, if you take the 533.8 million and you pay the proceeds of the DIP term loan which is 501 (sic), and then you also pay off those expenses of 104 million, you're left with approximately $28 million. Correct?

A That's right.

Q And you agree that if the debtors had not paid the admin claims first, there would have been sufficient funds to pay the 91.5 million DIP term loan claim deficiency. Correct?

A I'm not really sure how we would do that, but your math is correct.

Q Okay. And there were also -- you also agree that if the admin claims had not been paid ahead of the secured parties, there would have been approximately 28 million left to pay the senior secured parties. Correct?

A I think you're just re-saying the same thing you just said, I don't know.

Q My first question was about the 91.5 million. So my -- this question is, do you agree that if the admin claims had not

been paid ahead of the secured parties, there would have been approximately 28 million to pay the senior secured parties.

A Right, we did the math already.

Q Okay. You can put that down.

MR. ESPANA: Paige, you can put that down.

BY MR. ESPANA:

Q Mr. Goulding, if you'd turn to Tab 5, and it's Minority Group's Exhibit 49. Let me know when you're there.

MR. ESPANA: It's Exhibit -- Minority Exhibit 49, Judge.

THE WITNESS: I'm there.

BY MR. ESPANA:

Q Okay. Do you recognize Exhibit 49?

A I do.

Q Okay. And Exhibit 49 is the order approving the asset purchase agreement with B&G Foods North America and authorizing the sale of assets, authorizing the assumptions and assignment contracts and leases, and granted relief that was filed at Docket 1209 on February 20, 2026. Correct?

A That's right.

Q Okay.

MR. ESPANA: Your Honor, we move for the admission of Exhibit 49.

MR. HAMERMAN: No objection.

THE COURT: It's admitted.

(Minority Group Exhibit 49 received into evidence.)

BY MR. ESPANA:

Q If you can please turn to Page 48 of the PDF.

A Yes.

Q Okay. Page 48 of the PDF includes as Exhibit A to the order the APA for B&G Foods North America. Correct?

A That's right.

Q And you're familiar with that APA, the asset purchase agreement?

A I am.

Q And if you turn to Page 45 of the agreement, which is PDF 96.

A Yeah.

Q Okay. And I direct your attention to Section 501, titled Conduct of the Business. Do you see that?

A I do.

Q And Section 501(a) contains the debtors' covenants to B&G Foods North America as a purchaser of some of the sum-of-the-parts transactions. Correct?

A It's the covenants of the sellers, yes.

Q Okay. And if you look at (a), and you go down 1, 2, 3, 4 -- 7 lines down, according -- pursuant to Section 501(a) these covenants apply from the date hereof until the closing date. Correct?

A That's right.

Q Okay. And the closing date has already occurred. Correct?
A That's right.
Q And the closing date is the closing of the sale. Correct?
A That's my understanding, yes.
Q And what was the date of the closing of the sale?
A March 19.
Q Okay. And if you quickly turn to Page 65 of the APA and direct your attention to Section 901. Let me know when you're there, Mr. Goulding.
A Okay.
Q Okay. Section 901 is titled Survival. Correct?
A That's right.
Q And it states that the parties intending to modify any applicable statute of limitations agree that (a)(1) the reps and warranties in this agreement and in any certificate delivered pursuant hereto, and (2), the covenants in this agreement only requiring performance at or prior to the closing shall in each case terminate and be of no further force and effect effective as of the closing and shall not survive the closing for any purpose and thereafter there shall be no liability on the part of, nor shall any claim be made by or on behalf of any party or any party's affiliates in respect thereof. Do you see that?
A I do.

Q Okay. And you agree that that survival clause related to the covenant we talked about, we briefly discussed in 501(a). Correct?

A Yeah, 501(a) is talking about maintaining the business in the ordinary course.

Q Okay. And pursuant to the survival clause those covenants cease to exist as of the closing date. Correct?

A That's right.

Q Okay.

A We're not operating a business anymore so I don't know why would have the covenant anyway.

Q Right. If you turn to Exhibit 50 which is in Tab 15 in your binder. Let me know when you're there.

(Pause)

THE WITNESS: Okay.

BY MR. ESPANA:

Q Okay. Do you recognize Exhibit 50, Mr. Goulding?

A I do.

Q And Exhibit 50 is the order approving the Pacific Coast Producers asset purchase agreement and authorizing the sale of assets and authorizing the assumptions and assignment of contracts and leases that was entered in this court on February 20, 2026 and filed as Docket 1210. Correct?

A That's right.

MR. ESPANA: Okay. We move for the admission of

Minority Exhibit 50, Your Honor.

THE COURT: Objection?

MR. HAMERMAN: No, Your Honor, that's fine.

THE COURT: So admitted.

(Minority Group Exhibit 50 received into evidence.)

BY MR. ESPANA:

Q Now, Mr. Goulding, would you turn to Page 55 of the PDF.

A Okay.

Q And Page 55 of the PDF includes as Exhibit A to the order of the APA for Pacific Coast Producers. Correct?

A That's right.

Q Okay. And if you turn to Page 34 of the agreement, the lease, and it's Page 92 of the PDF if that's helpful.

A I'm there.

Q Okay. And Section 5.01 of this APA has a similar or identical covenant. Right? The seller's covenant. Correct?

A There's a similar covenant here about how we are to operate the business up until the closing time.

Q Okay. And similar to Exhibit 49 these covenants only apply between the date the APA was signed and the closing date. Correct?

A Right, we're not operating the business on a post-closed basis, they're operating the business. But that's not really addressing the payment if that's what you're asking.

Q No, I'm asking you, these covenants cease to apply or be

applicable as of the closing date. Correct?
A That's right.
Q Okay. And if you look at Page 53.
A Yes.
Q Okay. So Exhibit 50 also has an identical survival clause. Correct? As the one we saw in Exhibit 49?
A I don't know if it's identical or not, they come off the same form, but it's a similar provision, yes.
Q Okay. And this survival clause states that with respect to covenants in this agreement only requiring performance at or prior to the closing they shall in each case terminate and be of no further force and effect effective as of the closing and shall not survive the closing for any purpose, and therefore -- thereafter shall -- there shall be no liability on the part of nor shall any claim be made on behalf of any party or any party's affiliates. Correct?
A That's right.
Q Okay. And that applies to the covenants in Section 5.01(a). Correct?
A That's right.
Q Now the covenants that we just briefly looked at in Exhibit 49 and 50, they do not require the debtors to provide the trade creditors with a recovery under the plan. Correct?
A The payment of obligations is really in the excluded liabilities construct where the pre-close AP is something that

we are responsible for paying.
Q And is it your testimony that these covenants in Section 5.01(a) require you to pay pre-close AP, accounts payable?
A I'm not sure I would parse the document in that way. The way I understand it is there's certain excluded liabilities that are part of the court-approved transactions, those excluded liabilities are things that we are responsible for paying as part of the transactions that were approved by the Court.
Q But these covenants that we just reviewed in Section 5.01(a) do not require the debtors to pay those pre-close payables. Correct?
MR. HAMERMAN: Objection insofar as it calls for a legal conclusion.
THE COURT: He can testify as to his understanding.
THE WITNESS: Some of those will be paid in the normal course, right, depending on when close is, and then on a post-close basis there are obligations as excluded liabilities under the APAs.
BY MR. ESPANA:
Q And one of my earlier questions was, these covenants as written do not require the debtors to provide the trade creditors with any recovery under the plan. Correct?
A Again, those covenants aren't, I don't think, what spells out the payment of pre-close AP.

Q My question is specifically with respect to these covenants, Mr. Goulding.
A I don't think those do, no.
Q Okay. And they also do not require the debtors to make any payments on pre-petition claims. Correct?
A I don't think so.
Q And they don't require the debtors to make any payments on post-petition claims. Correct?
MR. HAMERMAN: Same objections, Your Honor. Well, this entire line has now crossed from factual into legal.
MR. ESPANA: It's your understanding, Mr. Goulding.
THE COURT: We'll let it go with his understanding.
THE WITNESS: So my understanding of the way these works is the APAs are structured such that we are going to pay stuff in the normal course. So we originally thought we would close earlier. In the week following the date that we thought we were going to close, we're paying certain post-petition obligations in the normal course as we had done with admin creditors throughout. The APAs spell out certain excluded liabilities. Those excluded liabilities are the obligations of the debtors and we pay those in the ordinary course.
BY MR. ESPANA:
Q If you look at 5.01(a), Mr. Goulding -- strike that. And the sum-of-the-parts transactions have already closed. Correct? You've already -- we discussed that earlier?

A We did.
Q Okay.
MR. ESPANA: You can bring that down, Paige.
BY MR. ESPANA:
Q Mr. Goulding, the members of the majority ad hoc group have received certain equity and governance rights with respect to the debtors. Correct?
A On a pre-petition basis there was, yes.
Q And they also had the right to 25 percent of the equity of Del Monte Food Holdings Limited. Correct?
A They did have that right, I don't think they ever exercised that right.
Q Okay. And those rights were to ordinary voting shares. Correct?
A I just remember it was 25 percent, to be honest I didn't focus on that issue.
(Pause)
BY MR. ESPANA:
Q Mr. Goulding, you agree that common equity is equal to voting shares. Correct?
A Not always, you can have non-voting or voting shares that can be different types of common, there's a lot of different permutations.
(Pause)
BY MR. ESPANA:

Q And here can the common equity vote for the debtors in this case?
A No, the equity did not vote, I don't think.
Q No, did the common equity for the debtors in this case have the right to vote?
A I don't believe so.
THE COURT: Are you speaking as to voting on the plan or just --
THE WITNESS: On the plan?
BY MR. ESPANA:
Q No, no, no, just in the normal course, shareholders, would they have the right to vote if they held common equity?
A I don't know, it's not an issue I focused on.
(Pause)
BY MR. ESPANA:
Q All right. The majority ad hoc group also have the right to appoint 6 directors to the board of Del Monte Food Holdings Limited. Correct?
A That's right.
Q And if they appointed the 6 members, that would be a majority of the board. Correct?
A 6 is a majority of 10, yes.
Q And they currently appointed 4 or 5, approximately 4 or 5 directors to the board. Correct?
MR. HAMERMAN: Objection to the form of the question.

THE WITNESS: 4, yes.

BY MR. ESPANA:

Q And the majority group -- members of the majority group are also holders of the DIP term loan claims. Correct?

A They are.

Q And as holders of the DIP term loan claims they have certain rights under the DIP. Correct?

A Of course.

Q And they have the right to approve the DIP budgets. Correct?

A That's right.

Q And the debtors are also obligated to maintain a cash management system that complies with the covenants set forth in the DIP covenant agreement. Correct?

A That's right.

Q And the debtors cannot confirm a plan without the DIP lenders' consent. Correct?

A I believe that's right.

Q And the debtors, in fact, couldn't really do anything in this case without the DIP lenders' consent. Correct?

A I don't know about that, I mean we operated the business in the normal course, we focused on running the business, there were certain things that required their consent.

Q And the majority ad hoc group also had a right to weigh in on the wind-down budget. Correct?

A That's right.
Q All right. Mr. Goulding, you can close that down. If you could turn back to your declaration, which is Minority Exhibit 162. Let me know when you're there.
A Okay.
Q If you'd look to Paragraph 84 on Page 32. And if you look at the first sentence in Paragraph 84, it states, I understand that Section 1129(a)(10) of the Bankruptcy Code provides that if any class of claims is impaired under the plan, that at least 1 class of impaired claims must accept the plan without including any acceptance of the plan by any insider. Do you see that?
A I do.
Q And when you're referring to insider, you're referring to an insider as defined by the Bankruptcy Code. Correct?
A That's right.
Q And are you aware -- you're aware that Section 101 of the Bankruptcy Code defines what constitutes an insider. Correct?
A I'm to sure what section it is.
Q Mr. Goulding, I left in your -- in the pocket of your binder a copy of the Bankruptcy Code.
A Okay.
Q If you'll turn to Section 101, please. It's actually 101, Subpart 31.
A Yes.

Q And Section -- Subpart 31 is the definition for insider. Correct?
A That's right.
Q And 31(b) provides the definition that the debtor is a corporation. Correct?
A That's right.
Q And Subpart 3 is if the person is in control of the debtor. Correct?
A Correct.
Q And if you look at Subpart (e), it also includes if the debtor -- sorry, if it's an affiliate or insider of an affiliate as if such affiliate were the debtor. Correct?
A That's what it says.
Q Okay. And if you go to Subpart 2 in Section 101, that's the definition of affiliate. Correct?
A That's right.
Q And it defines an affiliate as an entity that directly or indirectly owns, controls or holds with power to vote 20 percent or more of the outstanding voting securities of the debtor other than an entity that holds such securities. Correct?
A That's what it says, yes.
Q Okay. You can put that down. And the majority ad hoc group here controls 25 percent of the voting shares. Correct?
A They have the ability to exercise to get 25 percent in the

special shareholder, but I don't believe that ever happened.
Q Okay. If you look at Paragraph 33 of your declaration, actually 33 through 35.
A Yes.
Q Okay. So Paragraphs 33 through 35 address the differences between the claims in Class 3 and 4. Correct?
A That's right.
Q Okay. And in your opinion the principal difference between the Class 3 and Class 4 claims is that Class 3 claims arise from a creditor agreement. Correct?
A That's the easiest way to think about it, is they're secured creditors under the credit agreement and Class 4 is general unsecured trade claims principally.
Q But you agree then in general unsecured deficiency claims have the same priority as the unsecured trade claims. Correct?
A We classified them this way because we were really just implementing the settlement, and for the purposes of the settlement they're treated differently.
Q Okay. But my question is you agree that in general unsecured deficiency claims have the same priority as unsecured trade claims. Correct?
A That's right.
Q And according to your declaration you believe that another distinction between Class 3 and 4 claims is that Class 3 claims are subject to turnover provisions in the super senior credit

agreement under which junior tranches must turn over payment to more senior tranches. Correct?

A That is another factor.

Q All right. And you agree that the first-out loans are not subject to turnover provisions. Correct?

A That's right.

Q And since Class 3 is not expecting any distribution under the plan, there will be no turnover. Correct?

MR. HAMERMAN: Objection, calls for a hypothetical again.

THE COURT: Sustained. You can rephrase the question if you want, such as, Do you anticipate.

BY MR. ESPANA:

Q Do you anticipate -- in light of the fact that the plan provides zero recovery for the Class 3 claims, do you anticipate there being -- the turnover provision being implemented here for the Class 3 claims?

A If there's no recovery, then there's nothing to turn over.

Q And you agree that the turnover provisions for the second- and third-out term loans do not change the priority of the deficiency claims versus the trade claims. Correct?

A It's just another factor in how they're different.

Q But my question, Mr. Goulding, is you agree that the turnover provisions for the second- and third-out loans will not change the priority of the deficiency claims versus the

trade claims, correct, here?
A That's right.
Q And you're not aware of any provision in the plan that would implement those turnover provisions. Correct?
A I don't think the plan has to provide for the turnover provisions that's covered in the credit agreement.
Q Again, the question is, you're not aware of any provision in the plan that would implement those turnover provisions. Correct?
A I'm not aware there is one -- not aware there would need to be one.
Q Okay. So the plan would not need to address or implement those turnover provisions. Correct?
A My understanding is it's subsumed within the credit agreement.
Q And you agree that implementing the turnover provision would be an intercreditor dispute. Correct?
A Well, I think what ends up happening in a lot of these cases is that we end up working with the admin agent if we're making a distribution to that class so that we don't distribute pro rata to another class and then have them turnover, we would have to pay pursuant to the turnover.
Q All right. Mr. Goulding, let's look at your deposition testimony. It's in Paragraph -- Tab 14. Let me know when you're there.

A What page?
Q 124.
A Okay.
Q Okay. Page 124, Line 2, I asked you, Okay, so the plan would not need to address or implement those turnover provisions. Correct? Answer on Line 8, Right, my understanding is the credit agreement still exists so the turnover provisions still exists as they are. Question, In other words, it's just an intercreditor dispute. Answer, Yes.
MR. ESPANA: You can put that down.
BY MR. ESPANA:
Q And, Mr. Goulding, you have not reviewed the underlying agreements between the trade creditors and the debtors to determine whether those agreements also contain turnover provisions. Correct?
A I'm not aware of who anybody would turn those over, we pay these people on a routine basis. If there were turnover provisions, I guess we would know about them, but, no, we didn't review specifically trade creditors to look for turnover provisions.
Q And to the extent there is a dispute about turnover provisions among the trade creditors, that will not be the debtors' issue. Correct?
A Again, there's the practical question of is there something that needs to be effectuated, like if somebody sold a

claim to somebody we need to pay somebody else, I suppose there's a world in which we would deal with it, but it's generally payment goes out to the class, you know, how they're situated.

Q And the debtors don't currently have any ongoing operations. Correct?

A That's right.

Q And all their businesses were sold to the purchasers. Correct?

A All we're doing is maintaining the properties for sale.

Q And the debtors don't currently have any equity in the purchases. Correct?

A Any equity in the -- no.

Q Okay. And the debtors don't have any earn-outs as part of the sum-of-the-parts transactions. Correct?

A That's right.

Q And you agree that if the debtors decide not to make any distributions to unsecured creditors, it won't impact the debtors' operations. Correct?

A I'm sorry, you're saying if we don't pay the 8 million to the unsecureds creditors?

Q Correct.

A Well, I don't know the world in which we're not paying, the settlement's approved and we're implementing it.

Q But my question is it won't impact the operations of the

debtors. Correct?
A I don't know. I don't think so, there's not much left, but I don't know who all the folks are and whether they're -- whether one of those might be like a security guy who is expecting some recovery and is maintaining the Modesto facility I guess.
Q But sitting here today you're not aware of any. Correct?
A I haven't done the work to figure that out, no.
Q And the debtors' operations don't get any benefit from paying trade creditors after the closing. Correct?
A I mean we got the benefit during the course of the case, right. What part of the negotiation with the committee and getting sort of an agreement on the settlement that the Court then approved was the payment of the 8 million. So the benefit was something that we got already, and probably in order to our benefit in the proceeds that we received.
Q But the debtors will not receive any benefit today or post-closing for making payments to the trade creditors. Correct?
A I haven't assessed what happens if we renege on the settlement, no.
Q You're not aware of any benefits to the debtors' operations if payments are not made to the trade creditors. Correct?
A I haven't spent any time looking at it.

Q If you'll look at Paragraph 34 of your declaration.
A Yep.
Q Okay. If you'll look at the second sentence (indiscernible) Exhibit 162.
A Yes.
Q It states, These claims, and we're referring to Class 4 claims. Correct?
A That's right.
Q These claims are largely held by trade creditors who conducted business with the debtors and will do business with the purchasers in the sum-of-the-parts transactions. Did I read that correctly?
A That's right.
Q And you agree that not all the holders of claims in Class 4 will do business with the purchasers in the sum-of-the-parts transactions. Correct?
A Yeah, I don't know. I don't know every single one of them, I know that there are folks who are in that class who will likely be doing business with the purchasers, but I don't know that it's every single one.
Q Okay. But, in fact, purchasers -- the purchasers themselves don't want to do business with all of the debtor's pre-petition creditors. Correct?
A I don't know, I haven't really spent much time on that, but there are certain ones, sure, that we were like these

rejections are executory contract rejections or something.
Q And those creditors whose leases and contracts had been rejected will still get a treatment under Class 4. Correct?
A Right.
Q And as you testified earlier, the APAs which we reviewed don't specifically require the plan to provide payment to unsecured creditors, the trade creditors. Correct?
MR. HAMERMAN: Objection --
THE COURT: Sustained. Not the answer. Rephrase -- that wasn't his testimony.
BY MR. ESPANA:
Q It's your understanding, Mr. Goulding, that the APAs don't require the debtors to make any payments under the plan to those trade creditors, correct?
A Again, the settlement agreement governs the $8 million settlement that pays them, that settlement was in place at the time people negotiated the APAs, many people understood what was happening in a holistic picture. I don't think there's a provision in the APAs that requires us to make those payments, but I think it was understood by people that those payments -- that $8 million would be paid to that class of unsecured creditors.
Q And you, Mr. Goulding, have not directly or personally asked holders of Class 4 claims whether they will continue doing business with the purchasers in the sum-of-the-part

transactions if they do not receive a benefit under the plan, correct?

A I did not call individual trade creditors to ask them that question, no.

Q And no trade creditor informed you that they will not continue to do business with the purchasers if they don't receive a benefit under the plan, correct?

A Again, we didn't solicit that information.

Q And under orders issued by this Court it was possible to pay creditors as critical vendors that the debtors believed that nonpayment could harm the operations of the business, correct?

A That's right.

Q And you agree that if a creditor is paid in full as a critical vendor they would not have a claim in Class 4, correct?

A That's correct.

Q And so you agree that if a creditor was actually important to the debtors' business operations they would have paid something as a critical vendor to those trade creditors, correct?

A It just depends. Everybody is a little bit unique in terms of how those get negotiated. So, in certain instances we might have paid off somebody in full, in other instances we might have given them a partial payment, in other instances

they may have been willing to do business without that payment. So, you know, the company is a big company and there's lots of different vendors who got treated in a lot of different ways.

Q But generally, if there's a trade creditor who the debtors believed was important to the operations and who threatened to leave them unless they were getting paid, the debtors had the ability to pay them as critical vendors, correct?

A We did have the ability. Again, it depends on how they're situated, whether we have a contract or don't have a contract, whether we assume -- whether we think that's going to be assumed or not, that all factors into what payment any of those vendors may get.

Q And the debtors have actually paid certain vendors as critical vendors, correct?

A Definitely, yes.

(Pause)

Q And you're not aware of anyone on your team who directly asked holders of Class 4 claims whether they will continue doing business with the purchasers even if they do not receive a benefit under the plan, correct?

A We didn't solicit that information from folks.

Q And during your discussions with the DIP term loan lenders or majority ad hoc group for purposes of the wind-down building, they did not identify a specific vendor that needed to receive a benefit under the plan, correct?

A I'm sorry, you're saying did the DIP term lenders identify during the wind-down discussions a specific vendor we needed to pay?
Q Or at any point in time.
A I'm not aware of them singling out a vendor. They're not as familiar with the company's vendor base as we or the management team would be.
Q And it's your understanding that the APAs for the purchasers also provided for assumption and assignment of executory contracts, correct?
A Right.
Q And if the purchasers wanted to continue doing business with a certain contract counterparty, they had the right to designate that contract to be assumed and assigned, correct?
A That's right.
Q And for the debtors to assume and assign those contracts they would have to pay the counterparty's outstanding prepetition debt, correct?
A That's right.
Q And the purchasers have actually designated some contracts with the trade creditors to be assumed, correct?
A There are some, yes.
Q And for those trade creditors that have contracts with the debtors, you agree that their claims arise out of the relationship created by those contracts, correct?

MR. HAMERMAN: Objection in so far as it calls for a legal conclusion again.

BY MR. ESPANA:

Q Your understanding, Mr. Goulding.

THE COURT: Give your best understanding.

THE WITNESS: I mean, yes.

BY MR. ESPANA:

Q Mr. Goulding, you agree that Class 3s comprise of members of the ad hoc group, as well as members of the majority ad hoc group that are also the DIP term loan lenders, correct?

A Right. There are, I believe, still certain holdings by the majority in Class 3.

Q And the DIP term loan lenders will receive releases under the plan, correct?

A That's right.

Q And the DIP term loan lenders are also receiving a release in their capacity as holders of super-senior term loans, correct?

A I don't think that they're getting that consideration in the plan, like Class 3 isn't getting some bifurcated release; the majority is getting a release.

Q But they were the same entities, correct, that are the DIP term loan lenders and the majority ad hoc group?

A I don't know exactly how their funds are structured or anything, but my understanding is they are similar entities.

Q And you agreed that the releases have some monetary value, correct?

A Again, I think they're getting the releases on a post-petition basis in connection with their capacity as DIP term lenders, and my understanding is that all of the term lenders got a release in the DIP order. So, I'm not sure that there's much parse with respect to Class 3.

MR. ESPANA: Okay, move to strike, Your Honor, as non-responsive.

THE COURT: Overruled.

BY MR. ESPANA:

Q And the members of the minority ad hoc group are not getting any releases under the plan, correct?

A I'm not aware of anything that they would be getting released for, no.

Q Okay. Would you look at paragraph 39 of your declaration?

MR. ESPANA: J.J., it's 162.

THE WITNESS: Yep.

(Pause)

MR. ESPANA: Actually, go to paragraph 107, please. It's on page 39.

THE WITNESS: Okay.

BY MR. ESPANA:

Q All right. In paragraph 107 of your declaration you state in the first sentence, "In determining whether there has been

discrimination, it may be relevant to consider what would happen if the eight million slated for Class 4 was instead distributed pro rata between Classes 3 and 4," correct?

A That's right.

Q And you further state that, according to you, this shows no material discrimination because, as you state in your declaration, quote, "Even if the minority group were to share in the eight million GUC recovery, along with all the other members of Class 3, its percentage recovery would be no more than that 0.85 percent, an amount that I understand is nonmaterial under case law." Is that correct?

A That's right.

Q And the basis for your assertion that a recovery of no more than 0.85 percent is nonmaterial under the case law are conversations with counsel, correct?

A That's right.

Q You did not personally review any case law to form that conclusion, right?

A Correct.

Q And the conclusion -- or your opinion that the percentage recovered would be no more than 0.85 percent assumes that the members of the majority ad hoc group would also share in the eight million GUC recovery, correct?

A That's right.

Q And your calculation of course assumes that the members of

the majority ad hoc group would share in those proceeds, correct?

A Right.

Q But, Mr. Goulding, you also agree that the members of the majority ad hoc group agreed to waive their share in those proceeds pursuant to the settlement in this case, correct?

A Well, again, I don't know what world we're in at this point where we're making an $8 million distribution out to people that is pursuant to a settlement agreement and we're rewriting how the settlement agreement works. So I don't think -- I think if it's not getting paid in that form then you're revisiting terms of the credit agreement, so who knows what's happening with the deficiency.

Q It's your understanding, right, Mr. Goulding, that the members of the majority ad hoc group waived any recovery under the eight million GUC recovery claim under the terms of the settlement, correct?

A They are not participating in that the way that it's structured, correct.

Q And they're not participating because they agreed to it, correct?

A That's the way the settlement is structured.

Q If you look at paragraph 106 --

A Yes.

Q -- you state, "Even comparing the projected recoveries of

Class 3 and 4, there's no material difference in recovery," correct?

A That's right.

Q And you state, "The estimated recovery for holders of Class 4 claims on account of the GUC recoveries is between three and five percent," correct?

A That's right.

Q And your opinion -- and it's your opinion that the difference between zero and three to five percent is nonmaterial, correct?

A That's right.

Q And the basis for that conclusion is just your personal opinion, correct?

A That's right.

Q All right, you can put that one away for now.

Mr. Goulding, the plan does not provide for the payment of any administrative expense claims for any members of the minority ad hoc group, correct?

A Yeah, I'm not aware of any.

Q Mr. Goulding, if you can turn to Tab 2 in your binder, and it's Minority Group Exhibit 8.

(Pause)

A Okay.

Q Just give me a second. These binders are terrible.

THE COURT: While you're doing that, Mr. Espana, give

me a sense for how long your -- for your cross? I'm just trying to look at the clock and see how we go forward.

MR. ESPANA: Probably another hour or a little less than an hour, maybe less.

THE COURT: Well --

MR. ESPANA: This is a new section, so if --

THE COURT: If we're at a breaking point, maybe it's better to break now.

MR. ESPANA: That would be okay, Your Honor.

THE COURT: Does counsel have any thoughts on --

MR. HAMERMAN: We're happy to keep going, if the witness is okay. Obviously everybody, the Court and the courtroom staff, but I -- I'm okay to keep going if the witness is okay to keep going.

THE COURT: I mean, if we can get this done by 1:00, it's 45 minutes. Maybe --

MR. ESPANA: If we can take a break, I can try to see if there's anything we can cut, so it will be less --

MR. HAMERMAN: In other words, a ten-minute break now and then go to --

MR. ESPANA: Well --

MR. HAMERMAN: That would be fine too, Your Honor.

THE COURT: Why don't we take a ten --

MR. HAMERMAN: We'd love to get it done before lunch.

THE COURT: Let's come back at 12:30. See what you

can cut, that's ten minutes, and then we'll see what we'll do for the afternoon.

MR. ESPANA: Okay. Thank you.

MR. HAMERMAN: Thank you.

THE COURT: Thank you.

(Recess at 12:18 p.m./Reconvened at 12:31 p.m.)

THE COURT: Okay. Any discussions on timetables?

MR. BRILLIANT: I think -- Your Honor, Allan Brilliant on behalf of the minority ad hoc group -- the debtors have agreed to, you know, not seek a waiver of the 14-day stay, so -- and --

THE COURT: I wasn't going to grant that anyway.

MR. BRILLIANT: Yeah, so to -- anyway, that will save us having to ask questions on that, and we think that, you know, hopefully we can get it done in --

MR. ESPANA: Like 30 minutes.

MR. BRILLIANT: -- by 1 o'clock. So that would be -- that would be --

THE COURT: That would --

MR. BRILLIANT: -- the whole --

THE COURT: -- be optimal.

MR. BRILLIANT: So, if the debtors can just confirm that on the record, Your Honor.

MS. RINGER: Rachel Ringer from HSF Kramer on behalf of the debtors. I can confirm what Mr. Brilliant just said

that we've agreed not to seek a waiver of the 14-day stay, we're not going to go effective within 14 days of --

THE COURT: I think you reflected that in response to the U.S. Trustee --

MS. RINGER: We did.

THE COURT: -- yeah.

MS. RINGER: There was some kind of back-and-forth this morning. We're going to modify paragraph 13 of the confirmation order to be consistent with that. I guess there was some lingering language that gave people pause. We'll make sure that that order is consistent with our agreement not to seek that.

While I'm at the podium, Your Honor, if you'll indulge me for just one moment, a bit of good news. We were actually able to over the course of the morning resolve the U.S. Trustee's objections. So, we will take Your Honor through that I guess on closing, along with a resolution of all the other miscellaneous objections, but with the modifications that we're going to make to the confirmation order and the plan, the U.S. Trustee's objections, I don't know if Mr. Sponder was --

THE COURT: Mr. Sponder has magically appeared. There he is.

MS. RINGER: So, I think, just to finish out the thought, we mean to kind of finalize actual language, but I think in concept we have agreed on a resolution that would take

care of all of their objections subject to actually implementing it.

THE COURT: All right. Mr. Sponder?

MR. SPONDER: Good afternoon, Your Honor, Jeff Sponder form the Office of the United States Trustee. That is correct, Your Honor.

THE COURT: All right, then --

MS. RINGER: And then --

THE COURT: -- thank you --

MS. RINGER: Oh, apologies, Your Honor.

THE COURT: No, thank you.

MS. RINGER: The last thing I was going to say while I have the podium, I know we've got a little bit more of the cross and then more evidence to come, in advance of a break for lunch, I just wanted to respond to the comment that Your Honor made at the outset of this hearing. From the debtors' perspective and I assume, although I'll kind of look around the courtroom, on behalf of the plan proponents, we would all be willing to spend a lunch break with Judge Gravelle mediating if the minority group was so inclined. And so I just wanted to respond to that remark that Your Honor made at the outset.

THE COURT: All right. Thank you.

Why don't when we're done with -- let's get the cross completed. Mr. Brilliant, you can discuss with co-counsel or clients and, if there is a consensus, I'll reach out for Judge

Gravelle. All right?

MR. BRILLIANT: Thank you, Your Honor.

THE COURT: All right.

MR. ESPANA: May I proceed, Your Honor?

THE COURT: Yes, please.

BY MR. ESPANA:

Q Mr. Goulding, I think before the break I asked you to take a look at Minority Exhibit 8 and Tab 2.

A That's right.

Q And Exhibit 8 is the DIP order that has been entered in this case, correct?

A That's right.

Q And you're familiar with the DIP order?

A I am.

Q Could you please turn to page 48 of the DIP order? And you can look at the PDF on top, the PDF numbers.

A Okay.

Q And direct your attention to Section 8.

A I see it.

Q Okay. And Section 8 of the DIP order addresses the adequate protection measures provided to the super-senior -- and if you look at the page 49, at the end of that paragraph it states that it is the -- it relates to the adequate protection measures that are provided to the, quote, "super-senior agent for the benefit of itself and the super-senior first-out

secured parties to the extent they experience a decrease in the value of their interest in the first-out collateral," correct?

A That's right.

Q And the super-senior first-out secured parties includes members of the minority ad hoc group, correct?

A That's right.

Q And if you look at Section 8(a), let me know when you're there. It's on page 49.

A Yep.

Q Okay. And you agree that Section 8(a) provides the super-senior first-out secured parties with super-senior first-out adequate protection liens as adequate protection in the event of a decrease in the value of their interest in the first-out collateral, correct?

MR. HAMERMAN: Objection, the document speaks for itself, and insofar as it calls for a legal conclusion.

THE COURT: You can go ahead, give your understanding of the provision.

THE WITNESS: My understanding is that it's a question of has there been a diminution in the value of the collateral, not in the -- not in specific people's interest in the value of the collateral.

BY MR. ESPANA:

Q Okay. And what's the basis for that understanding?

A Well, as a practical matter, if these types of, you know,

superpriority administrative claims gave rise -- would arise in a Chapter 11 case where we have a consensual priming DIP, then to the extent that you have a situation where the priming means that value is put in front of the prepetition lenders, then their interest would be reduced.

So, I've never seen that before, I'm not aware of anybody asserting a similar type of claim. So, the way I understand it is, if there's a diminution in the value of the collateral during the course of the case, then that could give rise to it, but here we had new money, we packed for the season, we built up the value of the business, there wasn't a diminution in the value of those assets.

Q So, if you look at Section 8 on page 48 -- let me know when you're there.

A Yep.

Q It states it's subject only to the carveout in accordance with the lien claim priorities and the rights of parties in interest specifically set forth in the DIP orders pursuant to Sections 361, 363, and 364 of the Code, and consideration of the stipulations and consent set forth herein as adequate protection of their interest in the first-out collateral as applicable to the extent of and in an amount equal to any decrease in the value, as that phrase is used in Section 361 of the Code, of such interest, defined as a diminution in value. Correct?

A Again, I am not here to parse the language in the DIP order --
Q I'm just asking --
A -- I'm asking --
Q -- you whether that's your -- that's what it says, correct?
A You read it correctly.
Q And it refers to -- the first, second, third, fourth line -- as adequate protection of their interest in the first-out collateral, correct, that's what it says?
A Those are the words.
Q Okay. And if you look at -- and that's defined as diminution in value, correct?
A What is defined as diminution in value?
Q A decrease in their interest in the first-out collateral.
A That is a defined term there, yes.
Q Okay. And it's defined as diminution in value, correct?
A That is the defined term.
Q All right. If we look at Section 8(b), which is on page 50.
A Okay.
Q Section 8(b) provides the super-senior first-out secured parties with a super-senior first-out adequate protection superpriority claim in the event they experience a diminution in value, correct?

A That's what it says.
Q Okay. And if you look at the next page, 8(c).
A Yes.
Q It also says that it provides -- the DIP order provides super-senior first-out secured parties with super-senior first-out adequate protection payment liens in the event they experience a diminution in value, correct?
A That's what it says.
Q Okay. And the plan provides for the release of all liens in this case, correct, Mr. Goulding?
A I believe that's right.
Q And that includes adequate protection replacement liens granted to the members of the minority ad hoc group, correct?
MR. HAMERMAN: Objection.
THE COURT: Sustained. I've sustained the objection.
(Pause)
BY MR. ESPANA:
Q And, Mr. Goulding, the members of the minority ad hoc group are not receiving any payment or property in return for the release of their liens, correct?
MR. HAMERMAN: Objection insofar as it calls for a legal conclusion.
THE COURT: I'll overrule that.
THE WITNESS: Class 3 is not likely to receive a recovery.

BY MR. ESPANA:

Q And prior to your deposition no one asked you or your team to analyze whether the members of the minority ad hoc group have adequate protection replacement liens, correct?

A That's right, no one had suggested that there was this issue until a couple of days before my deposition.

Q Okay. And specifically no one asked you or your team to analyze whether members of the minority ad hoc group have adequate protection replacement liens, correct?

A That's right.

Q And you're familiar with the DIP term loan, correct?

A I am.

Q And you agreed that the DIP term loan included 247.5 million of principal amount in roll-up loans, correct?

A I believe that's right.

Q And the roll-up loans reflect the majority ad hoc group's super-senior first-out initial loans and super-senior first-out incremental loans that were converted into the roll-up loans, correct?

A I believe the roll-up was done based on those that participated in the DIP, yes. I don't know whether -- I don't have the schedules, I don't recall whether all of those are majority members or not. I believe everybody could participate.

Q And in order to participate you have to sign an RSA,

correct?
A I believe that's right.
Q And the minority ad hoc group's super-senior first-out initial loans were *pari passu* with the super-senior first-out loans that were converted into the roll-up loans, correct?
A You're saying prepetition?
Q Correct.
A Right, prepetition, all of the first-out were in the same priority.
Q And, pursuant to the DIP order, the DIP liens primed the minority ad hoc group's interest in these super-senior first-out initial loans, correct?
A That's right.
Q And the priming of the minority ad hoc group's lien securing the super-senior first-out loans had the effect of pushing the priority of their interest in the first-out collateral down in the waterfall, correct?
MR. HAMERMAN: Objection. It's again the issue of who holds the liens, it's not the witness' testimony and it calls for a legal conclusion, and it's different than what the documents say.
THE COURT: All right. I'm not sure of the value of his answer on that question. It seems to be more of a legal issue that the Court will have to grapple with.
To the extent you can answer it, give it a shot.

THE WITNESS: I'm sorry, I forgot the question.

BY MR. ESPANA:

Q The priming of the minority ad hoc group's liens securing the super-senior first-out loans had the effect of pushing the priority of their interest in the first-out collateral down in the waterfall, correct?

A The easiest way I guess to describe it is the DIP term loan primed the prepetition -- remaining prepetition term loan.

Q Okay. All right, if we turn to Tab 3, Tab 3 is Minority Exhibit 35.

A Okay.

Q And, Mr. Goulding, do you recognize Exhibit 35?

A Yes.

Q And Exhibit 35 is the superpriority credit agreement -- credit and guarantee agreement dated August 2nd, 2024, correct?

A That's right.

Q And you're familiar with Exhibit 35, correct?

A I am.

Q And Exhibit 35 is the credit agreement between the debtors and the super-senior first-out secured parties, correct?

A That's right.

Q And if we turn to, it's the page with the bottom number ending in 138. It's the one starting with MIN underscore AHG and it should end in 138.

(Pause)

A Okay.
Q All right. And what we have here is Exhibit H to the credit agreement, correct?
A That's right.
Q Which is the security agreement governing the credit agreement, correct?
A Correct.
Q And you agree that the security agreement in this case is what creates the first priority collateral for the senior -- super-senior first-out secured parties, correct?
A I mean, it's the security agreement of the credit agreement, it spells out what their security interests are.
Q Okay. And if you go to page 8 in the security agreement.
A Okay.
Q And if I direct your attention, there's Section 3.1 titled "Grant of Security Interest," correct?
A That's right.
Q And you agree that Section 3.1 creates the first priority interest in the collateral, correct?
A It grants a security interest to the collateral agent, as I understand it.
Q And the collateral -- and it lists, Section 3.1 lists the 19 different categories of assets that are part of that collateral, correct?
A That's right.

Q And the first liens on that collateral are junior only to the DIP term loans, correct?

(Pause)

Q On the petition date.

A Sorry.

Q Prior to the petition date, the first liens on that collateral --

(Pause)

Q Sorry. Currently the first liens on that collateral are junior only to the DIP term loan, correct?

A I think there's inventory listed on here and a few others, I didn't see AR, but inventory and AR are DIP ABL collateral, to the extent the DIP -- because the DIP is paid off at this point, then there wouldn't be anybody in front of them.

Q Okay. And the real estate and IP, that is the first lien's collateral junior only to the DIP term loan's, correct?

A That's correct.

Q And on the petition date -- well, and the real estate that is part of the collateral includes the excluded real estate that we previously discussed, correct?

A So, on the excluded real estate, principally Modesto and Yakima, those were essentially sold or designation rights were given for a waiver of DIP claims.

Q On the petition date, prior to the DIP order being issued, the excluded real estate was part of the collateral on which

the super-senior term loans had a first-priority lien, correct?
A Sorry, prior to the petition, is that what you're saying?
Q Yeah, on the petition date, prior to the DIP order being issued.
A That's right.
Q And you valued the excluded real estate at approximately 52 million in your wind-down budget, correct?
A That's what's in there.
Q And you agree that prepetition the super-senior first-out secured parties' first-out collateral had some value, correct?
A Yeah, it had value, it is a question of can it be realized, you know, given the state of --
Q Mr. Goulding, would you please answer my question?
Do you agree that the prepetition, the super-senior first-out secured first -- first-out secured parties' first-out collateral had some value, correct?
A It had value; I'm not sure how you would monetize it.
Q And if the debtors' assets were sold on day one of this case, the super-senior first-out secured parties, including members of the minority interest group, would have been entitled to receive their pro rata share of that value in the collateral, correct?
MR. HAMERMAN: Objection. This is a hypothetical that requires -- if we're going to ask him, requires some further development.

THE COURT: No, he's just asking whether they would be entitled to share if there value based on their lien position. I think you can ask it.

THE WITNESS: Your Honor, I think the challenge here is that there's no world in which you're going to monetize all the assets of this estate on day one, and so what is the likely scenario that you're painting. This is a debtor that's out of money and --

THE COURT: Correct.

THE WITNESS: -- and you'd have to put it into a Chapter 7, which is going to get much more complicated to describe that situation.

THE COURT: Well, let me just -- the question is whether there's an entitlement to share. We're not talking about likelihood of recovery.

THE WITNESS: I mean, it's their collateral, I just don't know how you get to any of the value.

BY MR. ESPANA:

Q So, if it's their collateral, they were entitled to share in that collateral, correct?

A Again, to the extent there's any sharing, sure.

(Pause)

Q And you agree, Mr. Goulding, that the members of the minority ad hoc group which had a first priority lien on that collateral are expected to recover zero percent under the plan,

correct?
A Class 3 is likely get to a zero recovery.
Q Okay. And prior to your deposition you did not perform any valuation regarding whether the value of the super-senior first-out secured parties, their interest in the collateral had declined, correct?
A That's right.
Q All right, Mr. Goulding. Thank you very much.
MR. ESPANA: Nothing further, pass the witness.
THE COURT: All right. A good place to stop, unless -- give me a sense of your redirect.
MR. HAMERMAN: I think redirect will probably be about 30, 45 minutes. I'm happy to take the break. I don't know if there's anybody else who wants to cross, I assume not, but before we --
THE COURT: I didn't anticipate anybody else crossing.
MR. HAMERMAN: Okay.
THE COURT: And I hear and see nobody. So, we are good then to take a break.
Why don't we take a break. We'll reconvene at 2:00 p.m., that will also -- if there is consensus to go visit with Judge Gravelle, she's down the hall. Talk among yourselves. I'll plan on seeing you all back at 2 o'clock. If I don't, if there's a request for more time if something gets productive,

the Court will accommodate; otherwise, we'll be back at 2:00.

(Recess at 12:54 p.m./Reconvened at 2:18 p.m.)

THE COURT: All right. I remind you, Mr. Goulding, you're still under oath.

REDIRECT EXAMINATION

BY MR. HAMERMAN:

Q Good afternoon, Mr. Goulding. There were a few places during your cross-examination where you were asked questions about testimony you gave in your deposition; do you recall that?

A I do.

Q Do you have your deposition transcript still in front of you there?

A I do. Give me a minute.

Q Sure. And I'm going to start on page 132, just as that was one of the places you were asked about.

THE COURT: What page, 172?

MR. HAMERMAN: 132, Your Honor.

THE COURT: 132.

(Pause)

THE WITNESS: Okay.

BY MR. HAMERMAN:

Q Okay. Do you recall being asked some questions about the deposition transcript here on page 124?

A Yes.

Q The nature of the questions I think concerned turnover obligations, correct?
A Sorry, are you on 124, is that what you said?
Q I'm sorry. I skipped around, my mistake. 132, my apologies.
A Okay.
Q You recall being asked some questions about administrative expense claims, sir?
A That's right.
Q And I think you were asked questions about this question on page 132 at lines 15 through 18, "Have you identified any administrative expense claims for any parties who have not filed a claim?
"I have not."
Do you recall that?
A I do.
Q During the course of your deposition did you continue to answer and explain further after that?
A I did, yes.
Q Okay. And just looking down the page, did you give a further answer at the bottom of page 132 and on to page 133?
A I did.
Q Okay. And just for the Court's benefit can you describe generally how the debtors -- whether the debtors and how the debtors have a sense of accounts payable in the absence of

claims?
A Yeah, we looked at what was in the accounts payable, like in the books and records, then we looked at what was accrued liabilities for which we don't yet have invoices, and we made some estimates with respect to how much we think there is that's, you know, like goods received not invoiced or services incurred, but not yet billed for, and we made estimates for those.
Q Okay. There was another instance where you were asked about your deposition transcript, that's page 124, just take a look there and let me know if you recall that.
A Yes.
Q And I think you were asked questions about lines 16 through -- or actually above that, 8 through 12 or 13, about intercreditor disputes and turnover provisions. Do you recall that?
A I do.
Q Did you continue to answer that in your deposition as well?
A I did.
Q Consistent with other testimony you gave here today?
A That's right.
Q Okay. And I think you described both in your deposition here at page 124 and here today how you in practice have addressed turnover provisions. Can you just describe that for

the Court, lease?
A Yeah, typically, when we actually make the distribution to that class of creditors, we work with the agent to kind of incorporate whatever those turnover provisions might be so we're paying the right people and people don't have to go chase each other afterwards.
Q I think the last instance where you were asked questions about what was said at your deposition was with respect to Class 5. Do you recall that?
A I do.
Q Describe whether and how, hypothetically speaking, Class 5 can obtain a recovery?
A Yeah, I think it's -- again, Class 5 has agreed to subordinate to Class 4, and so you'd have to get a recovery through 3 and 4 in terms of getting it into Class 5.
Q And, in the same sort of scenarios, is there any theoretical possibility of that occurring that you've preserved through the waterfall account?
A Yeah, we preserved it through the waterfall. I don't -- you know, it is what it is, yeah.
Q Okay. You were asked some questions earlier today about the debtors' organizational chart; do you recall that?
A I do.
Q And where certain claims sit; do you recall that?
A I do.

Q Okay. Is there any box on the organizational chart, any entity on the organizational chart, where the minority lenders have claims, but the majority does not?

A None that I'm aware of.

Q Okay. On cross you were asked some questions about $28 million being left over to pay the minority group, do you recall those questions?

A I do.

Q Okay. That arithmetic was set out in the minority lender -- or some version of it was set out in the minority lender's objection. Have you had an opportunity to read, at least in brief, their objection?

A I have.

Q Okay. I'm going to ask you -- I've pulled up on the screen, it's ECF 1476, I'm going to ask you to look, please, at paragraph 39. And we'll slide down when you are ready.

A Yep, go ahead.

(Pause)

A I see it.

Q Okay. Do you agree with the arithmetic, the mathematical exercise set out here?

A Well, I think, as a practical matter, the amount of money that needed to be satisfied as part of the closing of the transactions, you know, requires us to pay what's in the admin and priority line item in the wind-down budget, and so I don't

know how you could close the transactions and not pay those obligations.

Q Is there $28 million left in the estate to be able to -- in the manner described here by the minority group?

A No, that's not how it's working.

Q Okay. How is it working?

A Well, we -- as it shows in the wind-down budget, we distributed 300 million to the DIP term lenders and they waived 70, we have paid -- we have collected the AR, most of the AR, and paid most of the AP at this point, and we have the remaining cash balance as a result of that.

Q Okay. Let's try to pull up the wind-down and see if we can walk through that a little bit.

(Pause)

MR. HAMERMAN: Can I ask to look at the Excel spreadsheet, please?

BY MR. HAMERMAN:

Q Can you just -- using this document, can you walk the Court through the timing of the receipts and payments with respect to accounts receivable and accounts payable that impact this $28 million of extra money, supposed extra money?

A Yeah, I think you can see the collection of AR here through a little bit into May. I think we anticipated, there's a weekly schedule behind this, that we would probably be done by the sort of second week of May with collections of AR. And

then you can see the AP payments, the pre-close AP and the unclassified admin priority claims there under distributions, and we've largely been paying that in the normal course of business and, likewise, that would be done mostly by the end of April. Sitting here more like mid-May, I think there's probably still a few reconciling items that we're working through, but for the most part that's been paid.

Q Okay. And you mentioned a weekly schedule as well, is that something that you prepared or your team prepared?

A That's right.

Q Okay. I would like to call that up, it is Debtors' Exhibit 52. We'll put it up on the screen.

(Pause)

Q Okay. And describe what we're looking at, please, here?

A Yeah, this is the weekly that sits behind that exhibit and it shows it on a weekly basis. There's a few more line items of detail in here that we were using for purposes of forecasting. But, like I said, you can see the AR is collected by the week ending 5/10, and in this forecast the AP payments were expected to be concluded by May 3rd.

Q You were asked some questions about -- I'm going to come back to this, but I don't need it right this second -- you were asked some questions about the asset purchase agreements. Do you recall that?

A I do.

Q In connection with the asset purchase agreements and the sale orders, did the debtors view paying accounts payable as optional?

A We did not.

Q What was supposed to happen with contract assumptions under the APA with respect to cure payments?

A I don't remember exactly who pays the cures, but I think with respect to any of the contracts assumed there were cures that were getting paid.

Q Okay.

MR. HAMERMAN: Let's pull up -- actually, the debtors did not -- I'm sorry, the minority group did not use one of those contracts, I'd like to pull that one up first. That's the Fresh De Monte contract, it is our Exhibit 76.

BY MR. HAMERMAN:

Q Have you seen this before today, sir?

A I have, yes.

Q Okay. I'd like -- let's take a look at paragraph 31, please, of the order.

(Pause)

Q Okay, just take a look at that paragraph. Let me know when you've had an opportunity to read it. I'm going to draw your attention specifically to the "provided, however" paragraph -- or sentence, phrase.

A Yep.

Q Okay. Is this instruction here, is this provision of the order instructing that for any purchased contract the debtors would still need to pay cure amounts in the ordinary course of business if those are being assigned, sir?

A That's right.

Q Okay. And most of the debtors' major vendors -- were most of the debtors' vendors under contract -- major vendors under contract, sir?

A I don't know, it's kind of a mixed bag, to be honest.

Q Did the major -- did some of the major vendors use -- have contracts?

A Yes, for sure.

Q And were many of those contracts assigned?

A A number of them.

Q And if someone had -- if the debtors had not paid those cure costs, would you be able to assume and then assign them?

A No.

Q And then would that, to your understanding, have been a breach of the APA in the order?

A That's right.

Q Let's do the same exercise, please, just briefly with the other two contracts that were -- and orders that were mentioned before. Let's start with what we have as our Tab 11, which is our Exhibit 77 and the Minority Group's Exhibit 49, that's the B&G contract. And I'll ask you to look at paragraph 27 of the

order and is that in sum and substance the same as what we just looked at with Fresh Del Monte?

A Yeah, it looks very similar.

Q Okay. And let's do the last one, which is PCP, which is Debtors' Exhibit 78 and Minority Group's Exhibit 50, and I'll ask you to look at paragraph 28 over there and, again, is that in sum and substance the same?

THE COURT: Which exhibit was this?

MR. HAMERMAN: It's Debtors' Exhibit 78 --

THE COURT: 78, okay.

MR. HAMERMAN: -- and Minority Group's Exhibit 50.

THE COURT: Okay. Thank you.

THE WITNESS: Yes, it looks very similar.

BY MR. HAMERMAN:

Q Okay. Did the debtors have a view as to what might have occurred if they hadn't agreed to pay these accounts payable at the time of negotiating the sum-of-the-parts transaction?

MR. ESPANA: Objection, Your Honor, scope.

MR. HAMERMAN: I think this is squarely within the scope.

MR. ESPANA: Your Honor, we did not get into the debtors' understanding of the obligation -- we were talking about primarily the obligations under the APA and what he understood the obligations were under those agreements.

THE COURT: And your question is to?

MR. HAMERMAN: The debtors negotiated these contracts and it's about the negotiation of them.

MR. ESPANA: No, the question was, what was the understanding if they didn't get paid.

MR. HAMERMAN: It was about at the time of negotiating the sum-of-the-parts. The obvious implication --

THE COURT: I'll overrule the objection.

MR. HAMERMAN: Thank you.

BY MR. HAMERMAN:

Q Did the debtors have a view as to what would have occurred if they hadn't agreed to pay the AP at the time of negotiating the sum-of-the-parts transaction?

A Yeah, I think there would probably have been a couple of possible outcomes. We would have had to either escrow funds associated with those or they would have reduced purchase price, you know, part and parcel of whatever assumed liabilities they were taking. So, if they took the AP, the pre-close AP, they would have reduced the purchase price.

Q Okay. Let's go back to the wind-down budget briefly.

(Pause)

Q And do you recall being asked questions about the roughly 400 million in transaction proceeds described at kind of the top line in payables of that chart?

A I do.

Q If the debtors did not have to reduce the purchase price

paid for the assets, would that have been 400 million?
A No, likely it would have been a dollar-for-dollar reduction of whatever assumed liabilities the buyers were taking.
Q Okay. There was another instance in the debtors' objection that I'd like to bring to your attention, it's paragraph 58.
(Pause)
Q Okay, I'd like you to take a look at this. When you're finished reading the top part, we'll scroll down and read the bottom part.
A Yeah, I'm familiar with this paragraph.
Q Okay. Let's slide it down a bit.
The minority group here says that this would -- the arithmetic they've described here would still result in 6.31 million of proceeds available for distribution, do you see that?
A I do.
Q Can you describe what's erroneous about this analysis?
MR. ESPANA: Objection, Your Honor, scope. We did not address this at all in his cross-examination.
THE COURT: Agreed.
MR. HAMERMAN: Okay.
THE COURT: Sustained.
BY MR. HAMERMAN:

Q In the minority group's discussion about payment that would be available for the -- ostensibly available for the super-senior term loan lenders, can you describe in substance how they are misusing the wind-down budget and liquidation analysis?

MR. ESPANA: Objection, Your Honor, same objection.

THE COURT: Well, no, this is a little different. Overruled.

THE WITNESS: I think in certain instances they were not looking at it as though -- in the liquidation analysis we're looking at it as a point in time, which is May 15th, and so certain things have happened by the time that you get to May 15th with respect to the liquidation analysis and that, looking at the numbers on the wind-down, that would be the time period you would need to look at.

MR. HAMERMAN: I have no further questions, Your Honor.

THE COURT: Recross?

MR. ESPANA: Could we have one minute?

THE COURT: Sure.

(Pause)

RECROSS EXAMINATION

BY MR. ESPANA:

Q Mr. Goulding, Mr. Hamerman asked you a few minutes ago questions -- showed you the APAs, do you recall that?

A I do.
Q And you discussed the obligation to pay some cure claims, correct?
A That's right.
Q And in your wind-down budget, is it your understanding that the cure claims are in the 109.8 million line item for unclassified admin priority claims?
A I think they maybe end up getting netted out of the transaction proceeds.
Q And what is the amount of the cure claims?
A I don't recall off the top of my head.
Q Is it -- if you look at, it's Tab 13 in your binder, Minority Exhibit 170.

(Pause)

Q Do you recognize it?
A This is the weekly?
Q I believe this is the mapping to the wind-down budget the debtors produced.

MR. ESPANA: Can we put it up?

(Pause)

BY MR. ESPANA:
Q Do you recognize Exhibit 170?
A This is the weekly detail, yes.
Q Okay. And if you look at the more detailed grid, does this --

THE COURT: Let me just stop you for a second.

(Pause)

THE COURT: Continue, please.

BY MR. ESPANA:

Q Mr. Goulding, does this more detailed budget in your weekly identify the amount of the cure claims?

A Yeah, the cure costs are listed down there at four and a half million.

MR. ESPANA: Nothing further, Your Honor.

THE COURT: All right -- oh, re-redirect?

MR. HAMERMAN: No. Thank you.

THE COURT: All right. Well, you are done then --

THE WITNESS: Thanks.

THE COURT: -- Mr. Goulding, thank you for your time today.

(Witness excused)

THE COURT: Mr. Hamerman?

MR. HAMERMAN: The debtors' next witness is Ms. Leticia Sanchez. She is available by Zoom.

THE COURT: Well, there, I see her. Bear with me one second.

(Pause)

THE COURT: And we have her declaration, correct?

Ms. Sanchez, good afternoon. Can you hear me?

THE WITNESS: Good afternoon.

THE COURT: Okay. You can hear me, correct?

THE WITNESS: I can hear you.

THE COURT: Okay, great. I'm going to ask you to please raise your right hand.

LETICIA SANCHEZ, DEBTORS' WITNESS, SWORN

THE COURT: Okay. We have a little bit of a delay, so we'll have to deal with that.

Is there anyone in the room with you?

THE WITNESS: No.

THE COURT: And do you have any materials in front of you?

THE WITNESS: No.

THE COURT: All right. Mr. Hamerman?

DIRECT EXAMINATION

BY MR. HAMERMAN:

Q Ms. Sanchez, did you provide a declaration in this action?

A I did.

MR. HAMERMAN: And that is ECF Number 1479, for the record, Debtors' Exhibit 2 and Minority Group -- I don't have their exhibit number in front of me, but I'll get it to the Court.

BY MR. HAMERMAN:

Q Ms. Sanchez, are you familiar with that declaration?

A I am familiar.

Q Did you prepare it?

A I did.
Q And what about the exhibits behind it, those as well?
A I did, I also prepared those.
Q If you were asked to testify about the contents, would you testify consistently with what's in the declaration and those exhibits?
A Yes.
Q Okay.

MR. HAMERMAN: I would ask for their admission in lieu of direct testimony?

MR. BRILLIANT: No objection, Your Honor.

THE COURT: With respect to D-2, no objection?

MR. BRILLIANT: No objection.

THE COURT: D-2 comes into evidence.

(Debtors' Exhibit 2 admitted into evidence)

MR. HAMERMAN: And with that I would offer Ms. Sanchez for cross.

THE COURT: All right.

MR. BRILLIANT: And, Your Honor, as we indicated to Mr. Hamerman earlier that, based on our being able to cross Mr. Goulding on the issues we would have crossed Ms. Sanchez, we have no questions for Ms. Sanchez.

THE COURT: Well, Ms. Sanchez, you are getting off scot-free. All right. Thank you for your efforts, we appreciate your time.

Thank you, Counsel.

THE WITNESS: Thank you.

(Witness excused)

MR. HAMERMAN: Okay. So that brings us to the close of evidence except for documents.

THE COURT: All right. And no witnesses coming in on your end, Mr. Brilliant?

MR. BRILLIANT: Well, we called --

THE COURT: Apart from --

MR. BRILLIANT: -- Mr. Goulding.

THE COURT: -- Mr. Goulding.

MR. BRILLIANT: We have documents that we would --

THE COURT: Right.

MR. BRILLIANT: -- like to have admitted, Ms. Chiang will handle that on our side, and we have no other evidence that we want to put in.

THE COURT: All right. How do the parties want to handle the exhibits? Have you had a chance to meet and confer or do you want --

MR. HAMERMAN: Not since this morning.

THE COURT: Not since this morning.

MR. HAMERMAN: So, I think --

UNIDENTIFIED SPEAKER: I would suggest taking a break.

MR. HAMERMAN: Yeah, we would take a break, then both

sides can use a few minutes to get ready to have closings and come back at 3:15 -- 3 o'clock? 3:15?

THE COURT: You tell me what you need.

MR. HAMERMAN: Let's do 3 o'clock.

THE COURT: We're planning 45 minutes each side for closing, so we can get people out of -- nobody wants to be in Trenton late -- between 4:30 and 5:00. So, come back at 3 o'clock?

MR. HAMERMAN: 3 o'clock.

THE COURT: Okay. Thank you.

(Recess at 2:46 p.m./Reconvened at 3:02 p.m.)

THE COURT: All right. Okay, we are back.

Mr. Hamerman, what's the good word?

MR. HAMERMAN: Well, the good word is that we're almost there. There are a few exhibits as to which we likely need to have some discussions with the Court --

THE COURT: Okay.

MR. HAMERMAN: -- but for the most part I think the exhibits are coming in consensually, subject to sometimes one of us saying not for the truth of the matter asserted or things of that nature.

I think maybe -- I can read them into the record, we can prepare a list for the Court --

THE COURT: I would say why don't you prepare a stip. I'm not ruling today, just in case there's any thought about

it, you know. So, you have some time to put together a stip, and that way you can get the language you want right.

MR. HAMERMAN: Okay. Would it --

THE COURT: Do you want me to go over the contested ones?

MR. HAMERMAN: Yeah, I think that that was going to be my suggestion.

THE COURT: That's what I'm here for.

MR. HAMERMAN: Okay. There are various exhibits that the debtors would propose to submit on our exhibit list, things like the declaration of Ms. Frizzley, the declaration of Mr. Mates, the declaration of Mr. Brash that have been submitted earlier in the case. Most of those are referenced in our papers in one place or another. The purpose of those documents are limited. The idea is to provide the indication of the conclusions of the Special Investigation Committee, for example, or the absence of alternative financing arrangements with respect to Mr. Mates. These are kind of limited points.

Each of these witnesses was made available for cross examination. If Dechert would like, we're happy to put in the transcripts of those hearings where they were cross examined. We think they help round out the record in various ways. They're matters of which the Court has heard and can take, in our view, judicial notice today for the purposes of establishing these kind of limited facts in the way they're

cited in the documents.

So, we would ask for those admissions.

THE COURT: Counsel?

MS. CHIANG: Thank you for hearing from me, Your Honor --

THE COURT: Yes.

MS. CHIANG: -- May Chiang for the Minority Ad Hoc Group from Dechert.

We oppose the admission of the Brash declaration, which is Debtors' Exhibit 9, the Frizzley declaration at 10, the Debtors' 10, and the Brash declaration again at Debtors' 11, as well as the Debtors' Exhibit 43, which is the Mates declaration. Those three witnesses were not made available for cross examination today and they are -- obviously the Court has heard their testimony, but the issues that they testified to in the past aren't necessarily relevant to the plan confirmation, and so we would ask that those be excluded.

THE COURT: I don't see frankly how they have any significance for plan confirmation issues, what's at issue, I mean, tangentially to support a fact that may have been -- an argument that maybe bottomed on a very specific fact. I think I'm going to uphold the objection on those.

MS. CHIANG: Thank you, Your Honor.

MR. HAMERMAN: I think, with the exception of those, we didn't quite finish in the 15 minutes, but I think we're

probably -- we'll give you a stipulated list, subject to the reservations on both sides as to admission for the truth.

THE COURT: And with respect -- if it turns out you all miss one or two exhibits and you have competing views on it, just include it in a page letter and I'll rule on it that way.

MR. HAMERMAN: Thank you.

MS. CHIANG: Thank you, Your Honor.

THE COURT: How long -- when do you think you can have the exhibit lists, the stipulation?

MR. HAMERMAN: I think tomorrow at --

THE COURT: How about -- what --

MR. HAMERMAN: -- tomorrow at the end of the day?

THE COURT: Today is Tuesday? By close of business, how's that?

MS. RINGER: Thank you, Your Honor.

THE COURT: Okay.

MR. HAMERMAN: With that, I think we're moving on to closings.

THE COURT: Closings. And my usual admonition, if in closings you're relying on PowerPoints, please make sure you get them to -- get them to chambers or --

MS. RINGER: Your Honor, just for the record, Rachel Ringer from HSF Kramer on behalf of the debtors. I believe that we emailed a copy of this to chambers. I also have a hard

copy for you, if you'd like one.

THE COURT: Yes.

MS. RINGER: May I approach?

THE COURT: Yes, unless you're going to throw it.

(Laughter)

MS. RINGER: I don't have that kind of aim.

Your Honor, and I believe someone on our side is going to throw it up on screen. I'm not going to flag specific slides as I go, but they will follow my presentation.

THE COURT: Okay.

MS. RINGER: May I proceed?

THE COURT: Yes, please.

MS. RINGER: One second.

UNIDENTIFIED SPEAKER: Thirty seconds.

MS. RINGER: Give us 30 seconds, if you don't mind. Thank you.

(Pause)

MS. RINGER: I think we're just trying to make sure the right person has sharing privileges.

(Pause)

MS. RINGER: Okay, would it be possible to grant Ashland Bernard sharing privileges?

THE COURT: You're asking the wrong person.

(Laughter)

MS. RINGER: I know. I'm not sure --

(Off the record)

UNIDENTIFIED SPEAKER: You know, I think we got it.

MS. RINGER: Thank you.

(Pause)

MS. RINGER: Are we good? I think we're good.

THE COURT: All right.

MS. RINGER: Good afternoon again, Your Honor. To the extent I need it, Rachel Ringer from HSF Kramer for the debtors.

I want to start before I get into my remarks just thanking Your Honor for today, for all of the work that Your Honor and chambers and your staff has put in through the entirety of this case.

I also want to take a moment and thank the company who's really been through a lot of significant milestones in this case and we're really happy to be here today. I also want to thank all the debtors' advisers, as well as the majority lender group and the committee, all of the parties really who have worked so hard to bring us here today finally.

We're here, as Your Honor is aware, seeking final approval of the amended disclosure statement and confirmation of the First Amended Joint Chapter 11 Plan. We believe the record before the Court is more than sufficient to grant the relief that we're requesting, we intend to demonstrate exactly why. Before I turn to the substance, I want to make sure we

put the hearing in proper context, although I will try to be brief, because I think context really matters here and is important for purposes of the record.

The debtors commenced these Chapter 11 cases really to implement a value-maximizing restructuring that was centered on a competitive sales process, and then an orderly wind-down of their remaining estates. The filings here were driven by real documented challenges, including declining consumer demand, elevated production and logistics costs, and an over-leveraged balance sheet carrying over a billion dollars in funded debt.

What happened next is the story of a restructuring that actually worked. A process that was competitive, transparent, and supervised by the Court, not to mention one mediator and now two mediators at every critical juncture, and the result ultimately speaks for itself.

The plan and disclosure statement here are the culmination of a long, complex, and collaborative process, and the degree of stakeholder consensus is ultimately remarkable. The debtors received originally only two substantive objections to confirmation with only one remaining, now that the objections of the U.S. Trustee have been resolved. Confirmation is supported by the debtors' DIP lenders, the committee, the debtors' parent company, and the dozens of creditors who voted in favor of the plan.

The sole objector that remains, Your Honor, the minority ad hoc group, really stands alone. And, as I'll explain, the arguments they have constructed to justify their positions are either legally incorrect, factually unsupported, internally inconsistent, or ultimately are really attempts to re-litigate issues that this Court has already decided.

I know Your Honor is obviously very familiar with all of the facts that brought us here, but they are supported by the declarations in support of confirmation, and I do just want to hit a little bit on the way that the sale process transpired because it ultimately becomes important for purposes of some of the arguments that the minority group has raised.

We did file these cases originally with a stalking horse bid from the majority ad hoc group, now our DIP lenders, for a $575 million stalking horse. We conducted a lengthy sale process. That sale process was ultimately extended a number of different times, but there was no guarantee of outcome at the start of the cases. Had the majority group been the winning bidder, after just funding the cases through the DIP, they would have had to prepare again to fund the business through the 2026 pack season that would have really been upon us basically right now.

This was a risk that the majority group and the DIP lenders took when they agreed to fund the DIP and fund these Chapter 11 cases. Ultimately, through the efforts of all of

the parties, the sale process culminated in three separate transactions, what we refer to as the sum of the parts transactions, covering the debtors' core business segments and representing, in the aggregate, the highest or otherwise best value available for the estates.

As Your Honor heard a little bit about in cross and as is set forth in Mr. Goulding's declaration, the debtors did enter into three different asset purchase agreements, and on February 6th, the Court approved the transactions in a bench ruling. The sale orders were entered on February 20th, and the sum of the parts transaction closed on March 19th of this year.

No one appealed approval of those sales. The minority group actually consented to them, including the terms of those orders that provided for the pay down of the DIP upon their closing and those sales and those orders are now final.

But that sale was not conducted in a back room. It was open. It was competitive, marketed broadly, and resulted in proceeds that exceeded the stalking horse bid by at least seven and a half million dollars. That figure and all of this context becomes important when we look at the minority lender group's new 507B diminution in value argument.

So too will the fact that no one bid on the debtors' avoidance actions, even though they were available for sale. In the midst of the sale process, but prior to the auction, this Court appointed the Honorable Christine Gravelle as

mediator, really at the debtor's request originally. The debtors, the committee, the majority ad hoc group, and the debtor's parent, DMPL, all participated.

That mediation produced a comprehensive settlement that resolved all potential challenge litigation under the DIP. Among the key parties, it facilitated the ad hoc group's role as stalking horse bidder heading into the auction and critically provided an $8 million meaningful recovery to general unsecured creditors funded entirely by a voluntary carve out from the DIP lender's own collateral.

This Court held a two day evidentiary hearing on the settlement and ultimately approved the settlement on February 6. This Court's approval of that settlement is, as Your Honor is aware, up on appeal. So fast forward from February to now, and we're before Your Honor with a plan that implements that settlement. The plan provides ultimately for the orderly wind down of the debtors' estates following the closing of the sale and provides for distributions, if any, pursuant to the waterfall recovery. This is really in accordance with the Bankruptcy Code's priority scheme. It also provides for the appointment of a plan administrator to oversee the wind down and a claims reconciliation process.

And despite the fact that the debtors' DIP lenders are not being paid in full, it still facilitates this $8 million distribution to general unsecured creditors through the

settlement, and as I'll discuss again in a moment. Three classes were entitled to vote. Class 3, which is the super senior term loan claims, Class 4, the general unsecured claims, and Class 5, other general unsecured claims. And the results were decisive.

In Class 3, the class that the minority lender group belongs to, that class voted in favor of the plan. 78.5 percent of creditors by number, holding 74.2 percent in dollar, voted to accept. In Class 4, there was an overwhelming acceptance, and in Class 5, there was unanimous acceptance of the plan. These are not the voting results of a plan that is being imposed on creditors. These are the voting results of a plan that has the overwhelming majority of creditors, and those creditors believe it is in their best interests.

So I don't want to spend too long just on the general 1129 factors, as I know the Court is well familiar with them and has reviewed all of the pleadings heading into today. The debtor submissions, whether it be the confirmation brief, the Goulding declaration, the voting declaration, and the evidence that has come in all establish satisfaction of each of the 1129 requirements.

The plan was proposed in good faith. It satisfies the best interest test. It's feasible and has been accepted by the requisite majorities of each voting class. I will get to minority groups' objections to certain of these in a moment,

but each of their objections ultimately fail. So here, this plan really is the culmination of a value maximizing process, and both the plan and the disclosure statement should be approved.

Now, let me turn to the objection, the remaining objection, and that's really the objection of the minority group. And I'm going to walk through our responses to the minority group's objections, and then Ms. Wasson is going to go through really the resolution of everything else, just so that Your Honor understands how all of the other objections that were outstanding have ultimately been resolved.

With respect to the minority group's objections, they fall into a number of categories. There are a number of them, and I'm going to try and bucket them to address them in different ways. Really, this is because kind of depending on where we are in the minority group's objection, sometimes they are treating themselves as an administrative claimant, sometimes they are treating themselves as a secured claimant, and other times they are treating themselves as a completely unsecured claimant. So I'm going to try and impose a little order in various of those threats.

But ultimately, the evolution of the minority group's views on their own claims has itself evolved over the course of the case, not as a result of circumstance, but rather as is necessary to serve what appears to be the ultimate goal of

trying to defeat the plan. And this is because, at bottom, they aren't entitled to any recovery. As a result of their decision early on in this case not to participate in the DIP financing, notwithstanding the fact that it was offered to them and to any party to participate, the values here ultimately did not yield a recovery that satisfies the DIP in full.

So while the minority group was able to proceed through the case without the risk that the DIP lenders undertook of how this case might ultimately unfold, they're not entitled to any of the benefits or any recovery at all, given where the values shook out. So the first bucket of objections I'm going to call the feasibility and the 507B objections. The second bucket I'm going to call kind of classification and voting. Third, I'll call unfair discrimination and absolute priority. And the last bucket I'll really call best interests. And then there's kind of a couple of miscellaneous objections that I'll get to at the end.

So with respect to the 507B claim objection, this is really the minority group's new lead objection. And this objection boils down to an argument that they hold super priority administrative expense claim under 507B, a claim that they believe renders this plan infeasible and therefore unable to be confirmed. And the basis for this claim is apparently that the imposition of the priming DIP at the outset of the case, one that they could have participated in but did not,

immediately caused them a diminution in the value of their collateral, a fate that they apparently suffered months ago but are really waiting to raise until right now.

But this claim suffers from a gating deficiency in standing that's fatal to its assertion. And beyond that, it suffers from what I would call a half dozen substantive equally fatal flaws. But in this context, given the ability for this group to even assert this claim in the first place, this is precisely the type of situation where courts say a highly speculative claim like this cannot possibly hold up confirmation on a feasibility basis. If it were any other way, any holdout claimant could concoct the claim at the last minute and use it as a basis to derail the plan. That's not the way the Bankruptcy Code works, and that's certainly not the way the case law provides.

Fortunately here, though, this claim cannot exist and therefore does not exist so the plan itself is feasible. And while I'll discuss the arguments for why the claim should be disallowed in its entirety, the very same arguments show that the claim is so highly speculative that it cannot serve today as a basis for questioning the plan's feasibility. And, Your Honor, while I recognize you've not decided whether or not to address the allowance or disallowance of the claim today, the minority group did put the allowance at issue through their questioning of Mr. Goulding, but really going beyond the scope

of his direct to ask him questions about diminution in value. But ultimately, the answer to that question doesn't even need to be answered because this claim can't be asserted and therefore, can't block the plan on a feasibility basis.

So let me hit the specifics. And in our slides, we've got kind of the various language of the relevant documents for Your Honor's reference. But under the governing documentation, the individual lenders here do not hold liens. These liens are held through the collateral agent. The documents are very clear on this. This is really in the security agreement, Section 3.1, and the credit agreement, Section 9.8b.

We do cite several cases in our deck for this proposition. And, in fact, this is really just the same thing. But consistent with the credit agreement to which lenders are a party and the security agreement to which they are not, the final DIP order does not provide the individual lenders with rights to adequate protection, but they provide the agent the right to adequate protection. And this is in paragraphs 8, 9, and 10 with respect to the first out, second out, and third out prepetition term loan, respectively.

When the minority group was questioning Mr. Goulding earlier today, they were careful to paraphrase what the subsections of paragraph 8 of the DIP order say, really because the introductory language of Section 8 makes clear that the

adequate protection is being granted to the super senior agent. This is why it really, I think in any of the cases where you see actual fights about adequate protection, it's with the agent at the helm, not a minority lender. Indeed, here the agent is actually --

(coughing)

THE COURT: I'm sorry.

MS. RINGER: It's okay. It's actually opposing the claim based on an objection filed last night at docket 1550. And really, if the result were any different, you would have minority lenders asserting this all of the time. You don't. This is really the first, at least that I'm aware of and really should be the last. The inquiry should end there. There is no claim. There is no basis for an objection to feasibility. But even beyond standing, there are a number of bases for approving the plan as feasible. The claim cannot prevail on a substantive basis.

First, the minority group has not satisfied their burden of establishing the claim. There's no evidence in the record supporting the existence of this claim, which appeared really for the first time only two weeks ago. The only evidence in the record before the Court is that the aggregate value of the collateral increased during the case. And RESCAP stands for the proposition that you have to look at the aggregate value and RESCAP also stands for the proposition that

just simply using cash during a case pursuant to an agreed budget cannot itself result in a diminution in value.

So really the only thing that the minority group can point to is the opposition of the priming lien, but that does not result in a diminution in value. And I assume that you will hear from the minority group a reference to the interest in the value of the collateral. But what the Supreme Court held in Timbers is that what that means, the interest in the value of the collateral, really means the value of the collateral. Not the priority of the lien, but the value of the collateral.

And courts ultimately measure diminution, if any, by comparing the petition date value against a subsequent measuring date. Here, that comparison really is dispositive. At the petition date, the debtors had a stalking horse credit bid that valued the minority lenders group's collateral, really all of the collateral, at the very most, $575 million. And even though it's not the debtor's burden to prove it, the value is actually likely less for reasons that Mr. Goulding testified about earlier today.

Following the competitive marketing process, that same collateral was sold for proceeds that exceeded the stalking horse bid by at least seven and a half million dollars, meaning the aggregate value of the collateral increased during the pendency of the case. Accordingly, Your

Honor, for a number of reasons, this newly created claim is not one the minority group can assert. And certainly is not one that renders the plan infeasible.

Next, I want to turn to the voting and classification objections, unless Your Honor has any questions feel free --

THE COURT: No.

MS. RINGER: Okay. On the voting and classification objections, again, I'll try and bucket these two because there are a couple of different versions of this. These are all ultimately geared towards trying to get this Court to have to apply a cram down standard for confirmation. But fortunately, we both classified the claims correctly in the first place and allowed creditors the opportunity to vote, meaning that Your Honor doesn't actually have to analyze this plan under a cram down standard. But we do satisfy the cram down standard if Your Honor finds otherwise.

On classification, the minority lender group argues that Class 3 should have been deemed to reject the plan under a Section 1126G of the Bankruptcy Code because they say that a projected recovery of zero percent means that Class 3 receives no property. But that ultimately, that argument misreads the statute, really, I think, in two different ways. First, Section 1126G is focused on what the plan provides.

Here, the plan provides for the possibility that Class 3 could receive a recovery. Each Class 3 holder is

entitled to receive their pro rata share of distributable proceeds pursuant to the waterfall recovery. All we are doing is preserving that option through the plan. Second, the minority lender group's argument ignores that Section 1126G focuses not just on what a party is to receive under the plan, but also on what it is to retain.

Here, each Class 3 holder retains their setoff and recoupment rights. To the extent that debtors bring any claims against such holder, these are property rights under the plan. So under these circumstances, providing this class with the ability to vote is consistent with the case law, including Pipeline Health, which said where there is a possibility of a recovery, creditors are retaining a right under the plan, and therefore, Section 1126G does not apply.

That is exactly what we're doing here.

Nor are we walking away from any of the testimony or the arguments at the settlement hearing. The projected recovery for this class is still zero, but it doesn't mean the recovery is impossible, and we're just preserving the optionality under the plan, meaning that Class 3 had the right to vote and ultimately did vote in favor of the plan.

The next classification argument suggests that Class 3 creditors should be classified either together with Class 4, and potentially also with Class 5, or should be classified separately from each other, meaning, I think, first out

classified and separate from second out and third out. Again, this is really all geared towards trying to force the cram down question, depending on how you kind of smoosh creditors together or separate them apart.

But with respect to the Class 3 creditors, those creditors and those claims held by those creditors are all substantially similar. For purposes of Section 1122 of the code and case law, all of the super senior term loan claims arise under the same credit agreement. They share the same collateral package, and they're governed by a single set of contractual arrangements, including contractual turnover provisions within those contractual arrangements that dictate their relative priorities. That really fits squarely within substantially similar under Section 1122.

But in the alternative, you know to the extent they suggest that they should actually be classified with Class 4 claims, because in that set of circumstances, they would classify themselves as totally unsecured, Class 4 claims are predominantly trade claims, not funded debt claims. Those claims are not subject to a credit agreement. They're not subject to any contractual turnover provisions and it is well within the case law that debtors do not have to classify all substantially similar creditors together. They just, those that they do classify together have to be substantially similar.

We have complied with all of the requirements of the Bankruptcy Code with respect to classification, and there is really no statute and no Third Circuit precedent and no rule of law that requires consolidated classification in a liquidating plan. And really, the practical results of separate classification make sense. Class 3 ultimately retains a right, if any, to recover first from the waterfall priority if funds ever exist. And then Class 4 ultimately is able to access the GUC recovery reserve, which is funded, again, from the DIP lender's collateral, not from assets that Class 3 was ever entitled to reach.

So regarding plan acceptance, the minority group spent a fair amount of time this morning focusing on what I believe is the assertion that acceptance must be measured on a per debtor, not a per plan basis. But despite the air time this morning, it's really not an issue here. First, if this Court finds that Class 3 is an impaired accepting class, then there is an impaired accepting class at every relevant debtor.

Second, it is standard practice in many districts, including this one in particular, to measure plan acceptance on a per plan basis and the case law supports that. But finally, even if this were a potential issue, and it's not, the minority group has pointed to no evidence suggesting that there actually is any debtor at which there is no impaired accepting class. And while we certainly recognize that the debtors bear the

burden of proof on confirmation, the minority group does bear its own burden of proving its objections, and it has to do so more on, you know, than what amounts to theoretical issue spotting. So this objection can be easily overruled.

Finally, just as a last argument on classification and voting, the minority group argues that votes by the majority group should not be counted since they are inherently insiders. We have addressed this in our papers, and we have addressed this really every time it has been raised by the minority group throughout this case unsuccessfully, so I'm not going to dwell on it too much. But it is worth noting, again, for the record, that if the minority group ultimately had an issue with any purported case controls implemented by the DIP, which I think was what was being alluded to in the cross examination of Mr. Goulding, or really if they had thought the minority group were insiders at the time of the approval of the DIP, this should have been something that was raised then.

Ultimately, the Court approved the DIP as a sound exercise of the debtor's business judgment, a standard that would not have applied had the majority group been insiders whose dealings with the debtors were subject to heightened scrutiny. And the DIP order itself contains findings about the arms length nature of those negotiations, and that's really at Paragraph J of the findings and paragraph G4 of the findings in the final DIP order.

Now I want to briefly touch on cram down to the extent Your Honor ultimately believes that you need to go through that analysis. But I would say, you know, in the face of a plan with uniformly accepting classes of creditors, the Court does not actually need to undertake this analysis, but this plan does satisfy the standard. So let me just go through it quickly. All that a cram down analysis requires is that the plan does not discriminate unfairly, and it is fair and equitable with respect to a class of creditors that voted to reject.

If the Court gets to a cram down analysis, though, it means that it has found that Class 3 should be deemed to reject because they're receiving nothing, and therefore would require a finding that the prepetition term loan lenders are entirely unsecured. The minority lender group argues that the plan discriminates unfairly because Class 3 receives a zero percent projected recovery, while Class 4 receives a projected recovery of 3 to 5 percent through the GUC recovery reserve. But this point fails on both the law and the facts. There is no unfair discrimination here, and even if there were, it's amply justified under the circumstances.

So first, let me turn to the fairness which really, in fairness of any discrimination, which really turns on materiality. And there are several different ways of looking at the degree of discrimination, and really the plan succeeds

under any one of these scenarios. But we think that the most appropriate way of looking at it is the way that the Third Circuit looked at it in Tribune, and that is to compare the minority group's desired recovery with its actual recovery.

And that comparison yields a difference of less than nine tenths of one percent, really because if you were to take the minority lender group's assumption that you can combine Classes 3 and 4 to allow them to participate in the GUC recovery reserve, their share of that GUC recovery reserve in this hypothetical scenario would be less than one percent.

But again, and I think we heard it a little bit this morning, there may be a suggestion that in that hypothetical scenario, you should essentially disregard the claims of the majority lender group for purposes of calculating what their share would be of that GUC recovery reserve. But that would really require Your Honor to cherry pick different elements of the settlement. It's very clear under the terms of the settlement itself that the majority lender group did not waive any claims. All that the settlement provides, which is exactly what Mr. Goulding testified, is that the class of prepetition term lenders would not participate in the GUC recovery reserve.

So in a hypothetical scenario where we're ignoring the settlement, and we are putting Classes 3 and 4 together for purposes of this analysis, those, the majority lender's claims should likewise be entitled to participate because those claims

still exist, they are still asserted against the debtors, and therefore have to be included as part of the denominator for purposes of that calculation.

And really, again, when you look at Tribune, that falls squarely within the case law, and Tribune says that that's not material and therefore is not unfair discrimination. Even if you were though, to compare what Class 4 is receiving under the plan, again, on a projected basis with what Class 3 is receiving under the plan, the percentage point difference there is, I guess, between 3 and 5 percent, which the Court held was not material in Great Bay.

But there's really a more fundamental point here. The GUC recovery reserve, in which the minority lenders want to participate, is, as I've said now a couple of times, it's funded through a voluntary carve out from the DIP term lender's own collateral. If Class 4 creditors did not receive this recovery, the surplus would revert to the DIP term lenders, not Class 3. And the minority lender group is ultimately not worse off by a single dollar because of the GUC recovery reserve. Class 3 was never entitled to those funds. They would not receive those funds outside of the bankruptcy, and this is consistent with Nuvera, Genesis, Robert Shaw, and frankly this Court's ruling just a couple of months ago that the settlement now being implemented through the plan does not constitute impermissible gifting.

Again, even if the difference in treatment was material, the presumption of unfair discrimination is pretty easily rebutted. Again, as I said, this recovery and this treatment is consistent with what it would receive outside of a bankruptcy, as is set forth in the liquidation analysis, which I'll get to more in a moment. Class 3 is entitled to receive nothing in a liquidation, so the plan remains fully consistent with that baseline.

Briefly on fair and equitable, this Court already found that the settlement implemented through the plan does not violate absolute priority. That's correct. There's no class junior to unsecured creditors receiving or retaining property under the plan, and Mr. Goulding's testimony was pretty clear on this point.

So let me get to kind of the final of what I would call the main objections from the minority group, and that's the best interest objection. And we do have a couple of, you heard a lot of math today, and I want to put that math in a little bit of context through some charts in our presentation. This one, when you do the math correctly, is very easy to dismiss of. The minority lender group's analysis rests really on using the wrong document for the wrong purposes, and then, as a result, doing the math incorrectly.

So to boil it down, the minority group has tried to come up with a scenario where they believe, using the wind down

budget, not the liquidation analysis, that they've uncovered $28 million of value to which they are somehow entitled. But this ignores a few fundamental and important points. First, the wind down budget really covers a period of time that stretches from the closing of the sales through the wind down, as compared to the liquidation analysis, which is as of the effective date, pursuant to the requirements of the Bankruptcy Code.

Second, the minority group's analysis requires this Court to really suspend reality for a second and assume that the debtors could collect all post closing accounts receivable, attributable really to the pre-closed period, but then forego paying all accounts payable. This is not what is provided or required by the DIP order, the DIP budget, or otherwise. And frankly, it's not consistent with the debtors' contractual obligations that you heard a little bit of testimony from Mr. Goulding on earlier today. But it's also just not factually accurate.

As you heard from Mr. Goulding, these amounts have already been paid for the most part, and so you can't rewind history here for the benefit of the minority group. If you ultimately do the correct math, and this is in the correct math chart, and really we kind of borrowed the chart that was started from the minority group's objection, if you do the right math, the net proceeds post DIP are negative $81.8

million, and that really requires you actually putting in the payables per the APA, the DIP order in the ordinary course, of $109.8 million, which eliminates any hypothetical $28 million and brings you current to where we are today.

They also tried to do the math, I guess, slightly differently, but that one unfortunately fares no better. When you look at the liquidation analysis, again, this was done as of May 15th, and that's consistent with the Bankruptcy Code, which says you conduct a liquidation analysis as of the effective date, the DIP lenders have a deficiency claim of $79 million in a liquidation scenario. Here, the minority group suggests that you should just add back the $86 million of accounts receivable, and that would put them at least $6 million in the money. But again, the $86 million of accounts receivable, as you heard from Mr. Goulding, as well as the $109 million of corresponding accounts payable, has already, for the most part, been collected and paid, respectively, and therefore is built into the starting cash number that's set forth in the liquidation analysis that does result in that nearly $80 million DIP deficiency.

So the upshot is that the plan satisfies the best interest test under really any way you want to run the math. I want to hit on just a couple of the miscellaneous objections quickly. I don't think they require too much emphasis. I'm just going to tick through them. The disclosure statement

objections uniformly fail. Ms. Wasson will get into this a little bit in a moment, but none of the purported disclosure objections would have actually changed the way their holders voted. Their group really had a full opportunity to provide whatever disclosure they believed was necessary at the time, and they just simply did not.

The good faith objection also fails. There is nothing in the record to establish anything other than good faith in putting together this plan, particularly when this plan was premised upon a settlement mediated by Chief Judge Gravelle. Any suggestion otherwise, frankly, is absurd and belied by the record. And finally, on releases, I don't want to steal too much of Ms. Wasson's thunder, but as I mentioned at right before lunch break, we did settle with the US Trustee earlier today.

While I think our releases were perfectly fine and consistent with applicable legal standards, we did ultimately agree to switch the releases from an opt out to an opt in, which I recognize will require a brief opt in solicitation post confirmation if Your Honor ultimately confirms the plan, but I think that that should really avoid whatever arguments the minority group had with respect to the releases, even though from the debtors' perspective, they had already opted out and therefore really didn't need to or shouldn't have standing to raise those objections on behalf of any other creditors.

So unless Your Honor has questions, I would love to reserve a couple minutes for rebuttal, and I will hand it over to Ms. Wasson.

THE COURT: Fair enough. Ms. Wasson.

MS. RINGER: Thank you, Your Honor.

THE COURT: Thank you.

MS. WASSON: Good afternoon, Your Honor. Megan Wasson from HSF Kramer for the debtors. Always a hard act to follow Ms. Ringer, but I will try. So turning to the US Trustee's objection, and I think we can go to the next few slides. Here we go. As Ms. Ringer previewed, we were able to resolve all of Mr. Sponder's objections to confirmation, and I will walk through the resolution of each of those. I do want to flag, as Ms. Ringer hinted, that we do believe what we proposed in the plan originally was confirmable and acceptable under case law in the Circuit, but we have worked with the US Trustee to resolve these issues to really streamline what was on for the hearing today in an effort to make this a shorter, although still long, hearing.

So on the scope of the debtor release, the US Trustee had originally objected that the release was too broad and they have agreed to withdraw that objection given the other resolutions that I will talk through in a moment. On the third party release as Ms. Ringer previewed, we are going to switch from an opt out release to an opt in release. We will work

with the US Trustee and the other parties in interests on a solicitation form that we will send out if the plan is confirmed to parties to make sure that they have the ability to opt in to the third party release, and we will make corresponding changes to the plan and confirmation order on that point.

We are going to modify the scope of the gatekeeping provision to make it permissive instead of required, which I believe resolves the US Trustee's objection on that point. On exclusive jurisdiction being retained by the Court under the plan, we are going to delete exclusive so we'll just be whatever jurisdiction the Court has will be retained and that resolves the US Trustee's objection on that point. Next slide.

The US Trustee had originally objected on the scope of the exculpation provisions. We have agreed to narrow that language to resolve their objections, both in terms of who is covered and the scope of time of the exculpations. The US Trustee had also objected to some language about voting classes being deemed to accept if no one in the class voted. That has been mooted because each of the voting classes had voting creditors in them. We had added some language at the US Trustee's request to clarify that the debtors are not getting a discharge because this is a liquidating plan, and we have added language to provide joint and several liability on statutory fees as requested by the US Trustee.

And then I believe that the changes we've made to the plan throughout resolve the US Trustee's objections on inclusion of language if the plan is a settlement. And I think we've covered more or less all of these already. There was some language about dissolution of the committee that we have worked with counsel to the committee and the US Trustee to resolve their objection on that point as well. And I believe with all of those changes, we have worked through each of the US Trustee's objections, and we are going to work with them on a modified form of plan and confirmation order.

And then for the remaining objections that were filed, Your Honor may have seen last night that we filed a revised form of proposed confirmation order at docket number 1544. The changes we made in that confirmation order were largely to resolve both informal and formal objections that we had received prior to today's hearing. And we have been able to resolve all of those objections except for the ones that Ms. Ringer just walked through for the Court.

Just to tick through those resolutions quickly. So Smuckers had filed an objection to the plan at docket 1490. They were reserving rights on the scope of the third party release and rejection of some pension obligations. We have agreed on an insert in the confirmation order that resolves that objection. The State of New Jersey had raised an issue on payment of their asserted tax claims. We are working with them

both to quantify the tax claim and have included an insert in the confirmation order to resolve that objection.

Schenker had objection to be included, had objected to the inclusion of their contract in our deferred decision list. We have removed that contract as we no longer need it, and so that has mooted that objection. The minority lender group had objected to the waiver of the 14 day stay of the confirmation order. As Your Honor knows, we have agreed to no longer seek a waiver of the 14 day stay, and so that objection has been resolved.

We also, we'll also make some clarifying changes in the confirmation order in I believe paragraph 13 to make it clear that we are not seeking a waiver of the 14 day stay. And then the minority litigation plaintiffs had objected both to the scope of the third party release and the plan's gatekeeping and adjunctive provisions, and we've added an insert in the confirmation order that resolves that objection as well.

And with that, I believe we've walked through each of the objections to confirmation of the plan. Just quickly on the disclosure statement. As Ms. Ringer walked through, we believe the disclosure statement satisfies the requirements of Section 1125 of the Bankruptcy Court and should be approved on a final basis. Go to the next slide. We've laid out in our brief, and I won't go through it here because it was a long day, where we've hit on each of these different points that we

believe is required under 1125 in the confirmation order to provide adequate disclosure for a hypothetical investor to vote on the plan.

I do not believe we received any objections to disclosure other than from the minority lender group, and as Ms. Ringer walked through, we do not believe that those are objections that should prevent the Court from approving the disclosure statement on a final basis. And we would ask that the Court approve the disclosure statement as well. Thank you, Your Honor.

THE COURT: Thank you. Always nice to objections resolved especially with the US Trustee although it takes away some of my fun. Before we get to the minority group, I wanted to hear if there's the committee or the ad hoc --

MR. MARINUZZI: Thank you, Your Honor. For the record, Lorenzo Marinuzzi, Morrison Forster, again, very mindful of the time limits imposed on the parties, and I want to try to keep to them very briefly. We filed the statement in support of confirmation at docket 1511. The settlement has already been approved. We already had a hearing on the benefits of the settlement, but I think they're worth stating again.

It's $8 million coming from the DIP lender’s collateral to the unsecured creditors in addition to the payment of allowed 503B9 claims, the waiver of preference

claims, avoidance claims against ordinary trade vendors, the assumption of the company's collective bargaining agreement with its unionized employees. A continuation of employment obviously as well as the assumption of the liabilities going to the BGC under the sponsored plans. All of these have been implemented in a manner that was very different from how we originally anticipated they would be implemented when we were talking about a credit bid sale back in December, but ultimately, we got to where everybody promised to get, and this is the culmination of those efforts, and we would urge the Court to approve confirmation of the plan.

We think Ms. Ringer hit on all of the legal arguments and unless the Court has any questions, I will yield the podium to my colleague representing the majority ad hoc group, and I'll sit back down. Thank you.

THE COURT: Thank you, Mr. Marinuzzi. Thank you. Mr. Goldstein.

MR. GOLDSTEIN: Thanks so much, Your Honor. For the record, Jason Goldstein from Gibson Dunn on behalf of the majority ad hoc group. I'll be brief, and I won't cover the legal arguments. I think Ms. Ringer did a fantastic job. I'm just here today to give a voice to my clients, and this is in part cathartic because we really don't understand the whole posture of this case. What I continually get asked and this is for everyone to think about, is what else could have been done

here to make this more fair?

When we set out to file this case, this was not the result my clients were looking for. This was not the result my clients wanted. This was not the expectation when we filed. What the expectation was, and what we did, was to run the fairest process that we possibly could. We had a DIP financing that was open to everybody. We had the ability for anyone to participate in that. We had a sale process that was open to anybody.

We purposefully and strategically worked to ensure that our credit bid wouldn't be chilling. I said it the first day, that we wanted robust marketing. We wanted to find the absolute best value. That is not just to our benefit. That's to everyone's benefit, the minority lenders, the unsecured creditors. We have been the party funding these estates over and over again. We funded the PAC season a year prior to the bankruptcy. We funded a settlement of claims for the benefit of everyone, including the minority lenders. We funded the cases again so that we didn't have a day one liquidation for the PAC season in 2025.

We have tried to preserve value at every single turn here, and we've done it in a way that was non-exclusionary. And what I don't think anyone on our side understands, and I again put it to all the parties, is how this could have been a more fair process. We pushed deadlines. We moved the bid

deadline multiple times at the request of parties in interest here, including working with the committee. We mediated multiple times when parties wanted to mediate.

We did everything to try to ensure employees were paid, vendors were paid. Every single party that was providing value here was being taken care of. And it pains me in a way because we made this promise to the debtors, and I can tell you my clients would love to recover more on the DIP, right. Having an impaired DIP is never a good case result.

What we're talking about administrative claimants being paid, people that provided real value to the company, kept it operating during the Chapter 11, employees who worked with us to maximize the value. Those are the people that are being paid. And I understand it's not a good result for the minority group either. And we more than anyone in the majority group can sympathize with that. They didn't participate here. They could have participated in the DIP and recovered alongside of us. They could have been on assets during the sale. They could have raised the baseline price for everyone's benefit. They did not.

And that is the single frustration that I think my clients have voiced. And we still, I mean, until we got to this hearing, and actually during this hearing, we've still talked to these parties to try to work something out. So I hope that everyone hears me from the majority group viewpoint.

We have tried to do everything that we possibly could to benefit every constituency here. And it was really to our great detriment. We are the party that suffered the greatest loss. And we have the plan and we have the process that we have.

We were able to get some additional value through the sale process. We were able to fund the cases in full, keep them from being administratively insolvent, delivering on the promise that we made to the debtors. For that reason, for the reasons the committee stated on the record, we feel like this is the right culmination of the cases. We all wish that there was more value. But to show up and continue to be a detriment, to not have provided anything in these cases, to be costing the estate money, and continuing to fight, and to be trying to take more things away from the one party that really did stand up here, is the frustration that my clients have.

But we're here. We're at a place where the plan should be confirmed for all the reasons Ms. Ringer stated on the record. We appreciate Your Honor's time and attention to this. We feel the plan should be confirmed. I'm happy to answer any questions Your Honor has.

THE COURT: Thank you, Mr. Goldstein.

MR. GOLDSTEIN: Thank you.

THE COURT: I appreciate it. Mr. Brilliant, I'm going to ask one more patient, be patient one more moment. I

see a raised hand. Eric Fromme.

MR. FROMME: Yes, Your Honor. Eric Fromme, of ArentFox Schiff. We represent Wilmington Savings Fund Society.

MR. BRILLIANT: Your Honor, I'm going to object him, for not participating. Your Honor set down rules as to what people needed to do to participate in this hearing. They did not give us a witness list or an exhibit list. They didn't file an objection or anything with connection with this hearing. They filed something in connection with our claim this morning or, you know, I think this morning. I think I saw it when I was coming in on the train. They have no role here. This is not appropriate for them to get on the phone and then just, you know, say that, you know, they support the debtors or to argue that we don't have a claim or something of that sort. This is not appropriate, Your Honor.

THE COURT: Mr. Fromm, Fromme, I'm sorry. Without getting into what you were going to say, did you rise to speak to voice a view of your client with respect to the merits of confirmation or were you addressing a procedural matter? I'm not sure.

MR. FROMME: Only with respect to our file joinder, Your Honor.

THE COURT: All right. Well, with that, I'm going to let the joinder speak for itself.

MR. FROMME: Thank you, Your Honor.

THE COURT: And I appreciate it. Thank you. All right. Mr. Brilliant.

MR. BRILLIANT: Thank you, Your Honor.

THE COURT: Good afternoon again.

MR. BRILLIANT: Just give me a second to --

THE COURT: Yes.

MR. BRILLIANT: -- get organized. Well, Your Honor, I guess heard a lot of argument. I guess I would say with respect to what the majority ad hoc groups had is all of it was argument. There's no evidence with respect to a lot of what Mr. Goldstein put on the record. And I would say, Your Honor, that this case is not a success from any perspective. And we'll go back and talk about that. And it is not overwhelmingly supported by the creditors. That's just not true either.

But the key thing here, Your Honor, isn't, and not once have you, you know, seen a witness, you know, from the majority ad hoc group or anything of that sort. And when they talk about how they wanted to maximize value, who did they maximize value for? Themselves. Nobody else.

With respect to prepetition creditors in this case, the total distributions for all prepetition creditors, whether secured or unsecured, under their plan is $8 million. A company that filed Chapter 11 with $1.2 billion of senior secured indebtedness and the only payments to prepetition

creditors other than, you know, contracts that were assumed or things of that like is $8 million. This case is not a success by any stretch of the imagination for anyone other than the DIP lenders and the parties whose debt was rolled up.

And you can continuously hear, Your Honor, that, oh, you know, I think from Ms. Ringer in the pleadings they filed the night before last, no, I guess last night, you know, they say in their papers, we, my clients, regret the fact that they did not participate in the DIP. There's no evidence of that. That's just surmise on their part. I represent, Your Honor, this is in our 2019, three farm credit banking institutions and two credit funds. They are both first lien lenders, second lien lenders, and, or first out lenders, second out lenders, and third out lenders.

Now, Mr. Goldstein and Ms. Ringer keep telling, Your Honor, and they keep saying it over and over again like it will be true. Everyone could participate in the DIP. Not true. Not true at all. If you look at the RSA, Your Honor, which is one of the exhibits that has put in, and you heard the testimony from Mr. Goulding, in order to participate in the DIP, you had to sign the RSA. Moreover, you only could participate in the DIP if you were a first out lender, and if you signed the RSA, which is in evidence, and Your Honor should look at it if Your Honor doesn't recall this from the DIP hearing, you had to agree that the majority ad hoc committee

could make all the rules, decide everything in connection with this case on your behalf.

You had to agree to participate in the credit bid, which would have eliminated the second and the third out. You had no right to file any pleadings in the Court or to bring any claims. You had to give up, at that point in time, any rights or any expectation you might have had with respect to the avoidance actions against Black Diamond or otherwise.

And, and this is the thing that Your Honor, that they just keep sweeping under the rug. As Your Honor recalls, they started this case with a credit bid and a very short sale process. A process that would have guaranteed that the credit bid was the only bid, given the complicated nature of this company and who the prospective buyers were. We objected, or, you know, we, we had our, our deadline for objecting extended. We negotiated. We got an extension of the, of that date.

I think Your Honor probably remembers that from the sale hearing and the DIP hearing. And we made some compromises in connection with the DIP. We got, you know, there was adequate protection in there, you know, for, you know, for our clients. There was an exception made so that there wasn't a third party release with respect to the, you know, the DIP. So that inter-creditor disputes, you know, relating to the roll up, you know, you know, could be litigated.

And the debtors agreed, you know, and the majority ad

hoc committee agreed to provide certain notice requirements. They increased what was at our request, what would be in the data room, and they extended the time period so that there could be, you know, more potential, you know, purchasers, you know, here, and there might have been a successful outcome.

Now, ultimately, the outcome in the sale process was better than the low ball bid of the majority ad hoc group, but it didn't cover what we had hoped. If there would have been a larger time period, maybe we would have done better, maybe not, but all of that is prologue. We're here where we are today. So, why is it we're here? When this case filed, our clients had $100 million, over $100 million of secured debt. The company would have been liquidated on the first day. Undoubtedly, we would have received something.

It clearly would have been significantly more than nothing. We would have received something. My clients had a first out lien in the IP, the real estate, the equipment and 17 other categories that Mr. Goulding spoke about and a second lien behind the ABL in connection with the AR in the inventory. We started this case with my clients having a positive interest in the collateral. And we're ending the case with, if you believe, you know, the debtor's arguments, I'll go through them on evaluation. If you believe the debtor's arguments in a situation where all of our collateral is gone.

Now, why is that? Because there was a roll up. Now,

in their papers, they say, oh, if you have a 507B claim, then, you know, roll ups are going to be hard to do. So what? So what? You know, the bankruptcy system worked very well for 40 some odd years after the adoption of the, you know, the new Bankruptcy Code in 1978 without roll ups. But what we had here, Your Honor, was a roll up of an under secured creditor class into the DIP, which pushed down, you know, our interest in the collateral behind not just the new money, not just the fees, but behind, you know, the rolled up debt from people who were pari passu, you know, to us. And that was done through a priming lien under 364D. And I'm sure Your Honor is familiar with it. I mean, you know, I don't mean to pick on Ms. Ringer, but I'm shocked when she's saying, like, don't know about 507B claim. This is so unusual. This is not unusual. This is what happens when you have inadequate, adequate protection, when you have cases that are, and Your Honor had to ask him before Mr. Goulding would admit to it, when you have administratively insolvent cases, when all the secured creditors do not, you know, aren't going to get paid in full when they're under secured, and if you believe the debtors, our collateral is completely, completely gone.

So that's why we're here, Your Honor, because we started this case on the first day of the case with a positive interest in collateral, and if the company would have been liquidated on that day, not that that's necessarily, you know,

what I think is the standard for valuation for purposes of setting our 507B claim, but even if they would have liquidated the company, we would have gotten something, more than nothing.

And so we're here today, Your Honor, because the debtors have tried to, you know, you know, being pushed by the majority ad hoc group. They have done everything possible to push the envelope. You know, I guess, you know, to a point where it broke, where it tore, with respect to everything, you know, in this case, to keep us from getting something, not necessarily, Your Honor, that it would have been a huge economic interest, but for whatever reason, they chose not to do that, and they tried to get around us with respect to this unfair discrimination in connection with the $8 million, which for purposes of the plan was not decided in connection with the settlement, you know, hearing.

So, you know, that is still an issue that Your Honor at the hearing, you know, set aside here so there wouldn't have been a sub rosa plan, and Your Honor needs to decide that. But they've done everything here, Your Honor, pushing the envelope, you know, to the point where it tears, where it, you know, infects the entire system here.

And that's why we're here today, Your Honor, because this cannot go on. Minority creditors cannot be abused in this way where they have property interests constitutionally protected by the United States Constitution, and subject to

protections under the Bankruptcy Code, and they just want to take all of that away and give it to themselves.

Now, administrative insolvent cases don't necessarily all have the ability to confirm a plan of reorganization. You know, they just, they don't. You have to pay all the admin claims in full. You have to pay all the priority claims in full, and you have to have an impaired accepting class properly classifying all your claims that are getting something. And we don't have that here, Your Honor.

We just don't have that here. We don't have an appropriate amount set aside for the administrative claims that are likely to be allowed, and we don't have impaired accepting classes that have approved the plan.

Now, Your Honor, you know, I don't have a fancy, you know, PowerPoint, but if I can borrow Ms. Ringer's, --

THE COURT: That's fine --

MR. BRILLIANT: I'm sure Your Honor didn't want to read it anyway. So, you know, but if you'll get Ms. Ringer's, you know, page six. So, you know, she told us this plan is overwhelmingly supported, right? Well, the reality is there's 68 creditors in class four, you know, who support this plan, and then there were, you know, and then 179 members of the majority ad hoc group who support the plan, and three shareholders who are getting, you know, releases, you know, under the plan.

So, for non-insiders, we'll come back to the insider issue, Your Honor, and it's clear that the ad hoc group members, the majority ad hoc group members are insiders here, but there's only 68 people who approve this plan. 68 people for a company the size of Del Monte, only 68 unsecured creditors approve this plan. How many people oppose the plan? 49 and five, 54. So, 68 approve it, 54 oppose it, not overwhelming support by anybody's, you know, stretch of the imagination.

Now, Your Honor, I think in terms of the classification of claims, you know, Ms. Ringer says, well, there's no Third Circuit law on this. Well, I don't know about that. You know, John Hancock, authored by then Judge, now Justice Alito, you know, is controlling Third Circuit, you know, law here, and what does it say about classification of claims? It says that, you know, claims need to be put, you know, there's limits on putting unsecured creditors in separate classes, and there have to be a situation where people have to have a distinct, you know, material, you know, voice, you know, that requires something different, and we don't have that here.

This company is liquidated. All of its assets are sold. Almost all of its assets are sold. Its operations, you know, are closed. You heard that from Mr. Goulding, sitting right there. This company's operations have closed down. You just have people who want money. So what is the separate voice

that the trade creditors get? Are they providing services to the debtor on a go forward basis? No.

What, so what, was there any benefit? You heard Mr. Goulding, Mr. Espana ask him several ways. What is it the debtors get out of giving these people something extra? No explanation, you know, for it because there is no explanation. The only reason they're separately classified is to get an impaired accepting class and in order to be able to argue that there should be, you know, a discrimination, you know, in, you know, in treatment here.

Now, Ms. Ringer just misunderstands, you know, our argument about there not being an impaired accepting class here. The evidence was clear. You heard it from Mr. Goulding. It's in the declaration from Ms. Sanchez in the documents that are attached. The plan says it's a debtor by debtor plan. There is not substantive consolidation. Now with respect to class three, it's a consolidated class.

All the lenders, you know, potentially have claims against all the debtors, so you know, you can have one consolidated class there in theory.

We'll come back to 1126 you know, and whether or not, you know, that class, you know, gets to vote, but the, but that's a consolidated, that's a consolidated class. But with respect to you know, the, you know, the GUC class, class four, they didn't vote on a debtor by debtor basis. You cannot tell.

There is no evidence that any individual debtor voted to approve the plan. The cases they cite for 1129.A10 deal with a very different issue.

The question is, when you vote on an individual basis and you have a administratively consolidated plan, do you have to have an impaired accepting class without the votes of insiders in every class in order to get approval under 1129.A10 or do you just need to have one class in the jointly, you know, consolidated plan, but it has to be one for each of the, you know, for one of the debtors. That's the issue. You know, the Trans-West case, as I'm sure Your Honor knows, it's really kind of indica, but you know, in the Ninth Circuit had said no, in a plan where all the different debtors vote, you can only, you don't have to have an impaired accepting class without an insider for every debtor. You just have to have one. Their interpretation of the statute.

That's not the interpretation of the statute that has been followed otherwise, you know, here, and it's not the interpretation that is followed in the Third Circuit, including in the, you know, Tribune case, but that's the question. It's not whether you can just have everybody vote together. The question is whether or not there's one, you know, class for debtor that votes separately. That's not what they have. They didn't do that. They didn't do it right.

You know, why they didn't do it right, I don't know,

but they didn't do it right, and you know, unless Your Honor finds that, you know, that class three, you have to make two findings there. One, that they're retaining or getting some value. We'll come back to, you know, this specious issue about retention, and then two, you know, you have to find that the majority ad hoc group who have in the transfer agreement, you know, for the shares, is in the record, as an exhibit, you should look at that, Your Honor. They, you know, they have 25 percent of the equity, the right to 25 percent of the ordinary shares of the company which get to vote, plus in addition to that, in the voting agreement, they have the right to appoint the majority of the creditors.

So there's no doubt here that they're an insider. You know, the words insiders, as Your Honor knows and the statute says, insiders include and someone who controls the debtor, but it's also, you know, an affiliate, and with respect to, you know, here, they're clearly, you know, meet those tests by their ability to elect the majority of the Board and the fact that they control, even if they don't own it. If they're right in that they never took ownership, read the transfer agreement, Your Honor, I, you know, I can't reach that conclusion, but even if Your Honor, you know, and there's no real evidence or testimony with respect to it, but if you look at the transfer agreement, they control 25 percent of the shares. Anytime they want, they can have it. They either have

it currently or they could have it.

But the bottom line is, Your Honor, if you, you know, that makes them an affiliate, and the fact that they can vote for the majority of the Board, you know, which they don't dispute, makes them an affiliate. The fact that they may not have done that doesn't change things. You're still an affiliate. If you're an affiliate, you're an insider, and you're an insider here because you have all this, you know, governance control. So, Your Honor, they don't have an impaired accepting class here.

So let's talk about 1126, you know, briefly. Testimony, Your Honor, is absolutely clear. You heard it from Mr. Goulding. His opinion, class will get nothing. He's not aware of what would have to happen for them to get something. Doesn't know of what that event might be, you know, in order to do something.

Now, Debtors cite a transcript from Judge Isgur in the Bankruptcy Court from the Southern District of Texas in connection with the Pipeline case. Now, you know, there, Your Honor, it’s a transcript. It’s, you know, distinguishable, and I’ll come through with this, it’s not even a ruling, here, but it’s a different story.

So, what happened was the debtors there wanted to have a class not vote, you know -- you know, say that they were going to get zero and not vote. They were just going to cram

them down. Judge Isgur questioned from the bench, well, this is early on in the process. Your Honor, I think they provided the transcript, so Your Honor can see this. But it's early on in the process. There's an investigation going on. Maybe there's going to be a claim.

You know -- you know, that brings in money, and they -- and they get something. Shouldn't they have, you know -- you know, the right to vote? And ultimately, Judge Isgur said, well, look it, if you want to not have them have the right to vote and just cram them down, just put something in the disclosure statement that says that what's going on with this other stuff, and he said, I'm okay with that. So, it's not even, you know, like, you know, he ultimately required them to have them vote. It's just not, you know, in opposite. But the bigger issue is, there was something that was going on there or something that could potentially go on there, that if it worked out, might have led to a distribution there. You know -- you know, there is -- you know, there is not.

Now, with respect to this issue of, you know, of retention, you know, they made a -- what they claim was a, you know, technical change after we filed, you know, our objection, and they -- you know, they added some language, you know, now that, I guess, we're -- you're hearing is something being retained. So, what is being -- they're saying that people are retaining their set-off and recoupment rights. Now, everybody

in the class, except for my clients, everyone in the class, except for my clients, are getting a release. So, they don't need a set-off right or a recoupment right. They don't have one. They're -- you know, they don't need one, because they're getting a release.

Now, we're not getting a release, but no one has asserted any claims against us. So, no one is retaining anything here. This is just sophistry, Your Honor. You know, there is no distribution of the class. Mr. Goulding said, you know, there is not likely to be a distribution to the class. He doesn't even know what would have to happen for there to be a distribution, you know -- you know, to the class. And we went through with him in categories. Would there be a cause of action? Are you aware of litigation, you know, any of these other things fill the gap? No, no, no.

Your Honor, it's -- when Congress said that people who don't get anything don't get to vote, there's a reason for that. No reasonable person votes for a plan that you get nothing, unless you're getting something else, unless you're getting releases, unless you're getting something else as a DIP lender or in some other category. No one votes for a plan, you know, to -- you know, to get nothing. And Congress didn't want, you know, parties saying that there was an acceptance to the plan with people who weren't getting any -- you know, weren't getting anything and had other ulterior motives for --

you know, for voting for a plan.

So, there's -- I mean, not only does this violate the Bankruptcy Code, but it's absolutely clear. But in order for them to confirm their plan, leaving everything else aside, Your Honor, leaving everything else aside, they need an apparent accepting class, I would say, for each debtor. That's what most Bankruptcy Courts in this Circuit say. It's for every debtor. They say it's for one debtor, and they cite some courts, you know, that say that one debtor, you know, is good enough, but they don't even have one debtor, because 1126(g) doesn't allow Class 3 to vote. Even if Your Honor were to buy some argument, here, that something hypothetical that no one thinks can ever happen somehow changes something or the fact that you have a recoupment or set-off right for something that you don't need, you know -- you know, somehow allows people, you know, to -- to vote, they're insiders. They're affiliates. It's clear.

Your Honor didn't decide this at the settlement hearing. I understand that. I respect that, that it wasn't necessary, and I understand why Your Honor would rule in the most narrow way you can. But to the extent that you find that, under 1126(g), that those people get to vote, you have to decide that here. And there is -- Your Honor, I submit, there is no way that you could find somebody who has the ability to appoint the majority of the Board, even if they don't do it,

isn't an affiliate, isn't an insider, you know, in connection with the case, and someone who either has 25 percent or has the right to get 25 percent, the words are used, direct, indirect, and you also used the word, control. They clearly control, you know, the 25 percent.

And when you look at the transfer agreement, the ordinary shares that they have, and then there is another series of non-voting shares, but they have the ordinary, you know, shares, and the implication from the transfer agreement is that, you know, those are voting shares. But even if they're not, they still have the right to appoint the Board. So, I think -- you know, I don't think you need to even, you know, get there, Your Honor.

So, the question is, Your Honor, so, you know, so their response is, oh, you know, so sorry, all the value, you know -- you know, ran out. You know, you could have done other things, here, in the case. Why are your clients, you know, unhappy? Well, we're unhappy because we started out the case with first-out debt, secured by assets of the Debtors, and, now, we're being told that we're getting nothing, because the Debtors did a roll-up, and, you know, and ultimately, there wasn't enough value.

So, now, the Debtors say, you know, I guess -- you know, as Your Honor knows, we filed our objection. They filed their reply, standing issue in connection with our 507(b) claim

wasn't in their objection. That showed up, I guess, either yesterday or the day before yesterday. But I want to talk about this for a second, Your Honor. They cite to the Timbers decision. Now, you know, the Timbers decision, Your Honor, is a case under 506. You know, it's not a 364(d) case. It's not a priming case. And the issue, as Your Honor, I'm sure knows, because everybody who is involved in the bankruptcy bench or, you know, counsel, knows what the case is about.

The case is about whether or not you're entitled to post-petition interest, even if you're under-secured. You know, that's what the case is about. And that's what the holding is about. And in analyzing that, the Court looks at what is the value of your collateral on the date of the filing of the petition, and the language that the debtors point out is in the case. I mean, I'm not saying it's not in the case. But it doesn't mean what they say it means.

And other courts have looked at this. The -- you know, the District Court, you know, on appeal, in North Carolina, in connection with a case called construction services, which is -- do you have a cite for me? If I had a PowerPoint, Your Honor, I would just turn it to the page of the PowerPoint, and it would be right there, but --

THE COURT: I actually have the cite.

MR. BRILLIANT: Oh, you have Construction Service? You found it, too?

THE COURT: Yes, I did.

MR. BRILLIANT: Okay. So, here we go, 2016 WL 2764328, District Court, Eastern District, North Carolina, you know, on appeal. In there, the Court looked at what does Timbers, you know, say. And Timbers says, which is what you'd expect that someone would interpret Timbers, that, basically, all the Court was saying is that you, you know, when you're not getting primed, you just look at what's the value of your collateral, you know, on the date of the filing of the petition and your interest, you know, in the collateral is your pro rata share of the value of your collateral on the petition date. Just trying to figure out, what do you have on the day they file, not in the context of any kind of priming, but just in the context of determining whether or not, as they did in that case, your over-secured and would be entitled to post-petition interest or, in that case, you know, obviously, a groundbreaking decision at the time, but whether or not, even if you're under-secured, because of the imposition of the stay, you would be entitled to post-petition interest.

But, you know, the District Court, you know, Construction Services, you know, looked at the decision, you know, and interprets it correctly. And we know that that's the right interpretation. If you look at the definition, you know -- if you look at, you know, 507(b) and super priority claims, the -- you know, it specifically talks about, you know,

diminution in the value of your collateral from being primed. It specifically talks about it. And it's obvious that that's the right answer, and 364(d), you know -- you know, only allows priming if there's adequate protection. If the idea is that the collateral can stay the same, but your interest gets diluted, because somebody is ahead of you, then there would be a million priming cases. I mean, you know, you talk about opening up, you know, the flood gate, everybody would be out, you know, trying to prime.

I guess, it sounds like Your Honor's chambers did a lot of research, so I'm going to give you another case to look at, but it sounds like you probably already found it. I'd ask you to look at the Fountain Blue case, which is also a District Court, you know, appeal from a 364, you know, priming case. And, there, the Court, you know, talks about what -- you know, the fact that, you know, priming pushes you down and reduces your interest, and, therefore, you know, entitles you to, you know, adequate protection.

If you interpreted the statute the way they want to, you know, take just a portion, a snippet, you know, out of, you know, Timbers and apply it, you would render, you know, that provision superfluous. And, like I said, everybody would be a able to prime you, because a secured lender, if the collateral wasn't going to be diminished, but just your interest in it, you wouldn't be entitled to adequate protection. And, you

know, and we -- and we just know that's just not right.

So, I think, Your Honor, we had a first lien on the date of the filing, and a number of, you know, of pieces of, you know, collateral, if just sold at that point, if the company were liquidated, undoubtedly, the first-out would have gotten something. I don't think, you know, for purposes of this hearing, Your Honor doesn't need to decide anything. You just need to decide, I think, whether or not, you know, there is a prima facie, you know, potential for an administrative -- super priority administrative claim and then whether or not the plan provides, you know, a sufficient reserve, you know, if it's ultimately allowed.

And I guess I would say, Your Honor, in this context, for people who are pari with us became senior to us and are getting a distribution, and we're getting, you know, zero, you know, it's pretty clear that there's been a diminution in the value of collateral, and we're entitled to a 507(b) claim. Now, whether that claim is going to be $25,000,000 or it's going to be $15,000,000 or $20,000,000, I don't know. And that'll be for a different day. But the plan needs to potentially reserve for it.

So, now, Your Honor, I want to talk about, you know, the issue of standing, which was just -- was just raised. So, you know, Your Honor, I think the debtors, they -- they, you know, they misunderstand the argument or they purposely are,

you know, trying to, you know, align past it.

The question is whether we have a 507(b) claim. We're not saying we have a lien, and that we're trying to enforce a lien. You know, they say that, you know, in their papers, that -- and I'm talking, now, about their objection to our claim. They're saying that, you know, that we have -- you know, that we're trying to enforce a lien. And they say, you know, that under the DIP, we can't enforce a lien until the DIP is paid in full.

We're not trying to enforce a lien. Sometimes, people talk about a 507(b) claim as a super priority, you know, lien or a super priority claim, but it's not. It's just an administrative claim that gets paid before anybody else. That's all it is. It's just a claim, you know, in bankruptcy.

So, I want to go through, you know, some of the provisions, Your Honor, that are in the, you know, the DIP order so Your Honor can see, you know, that we have, you know, an adequate protection lien. At a minimum, we're the beneficiary of the lien. All the places where they talk about, you know, the agent, it says the agent, you know, on behalf of and for, you know, the benefit of the pre-petition secured lenders.

But, you know, can you turn to the preamble on page seven of the final DIP order?

(Pause)

MR. BRILLIANT: Number four, right there. Can you -- can you highlight that?

So, this is your DIP order, Your Honor. What does the DIP order do? It grants adequate protection to the pre-petition secured parties, as defined below, to the extent of any diminution of value as defined below, of their interest in the pre-petition collateral.

It doesn't say, grant adequate protection to the agent. It says, grants adequate protection to the pre-petition secured parties, as defined below.

Can you go to finding (g)?

(Pause)

MR. BRILLIANT: Can you just search the document or --

THE COURT: There we go.

MR. BRILLIANT: There, okay. Go -- I apologize, Your Honor.

THE COURT: No problem.

MR. BRILLIANT: Technical difficulties here. It's (g)(5). There we go. Okay.

At any time any pre-petition obligations remain outstanding, each of the pre-petition secured parties are entitled, pursuant to 105, 361, 362, 363(e) of the Bankruptcy Code, to adequate protection of their respective interests in the pre-petition collateral, including cash collateral for the

diminution in value, as defined below thereof.

Now, this is your finding, Your Honor. This is what the order says. It doesn't say that, you know, that only the agent, you know, gets adequate protection. It says, the pre-petition secured parties are entitled to adequate protection.

Can you go to paragraph 14?

(Pause)

MR. BRILLIANT: There, okay. Subject only to the carve-out, notwithstanding any other provision of the DIP order, the other DIP documents to the contrary, the entry of this order without prejudice, does not constitute waiver, expressly or implicitly or otherwise, of any of the rights of any of the pre-petition lenders to seek any other or supplemental relief in connection with respect to the Debtors, any of the -- go to the bottom.

And then, if you go to the bottom, here, of the paragraph. And then it says, for all adequate protection purposes throughout the cases, each of the pre-petition secured parties shall be deemed to have requested relief from the automatic stay and adequate protection for any diminution in value from and after the petition date. With the avoidance of doubt, such request will survive termination of this final order.

Your Honor, the order makes it clear, pre-petition lenders, including my clients, who are getting adequate

protection, were deemed to have made these requests, you know, to trigger the adequate protection. The adequate protection was in connection with, you know, protecting us from, you know, diminution in the value -- where is this one here?

(Pause)

MR. BRILLIANT: You know, then, later in the order -- I'll get you the paragraph in a second, Your Honor -- it says, the adequate protection for the first-out, second-out and third-out secured parties as granted under paragraphs eight, nine and ten, respectively, it included, as adequate protection of their interests in their collateral, including cash collateral, to the extent of any decrease in value, as that phrase is used in 361, you know, of such interest.

But even if we didn't have the other paragraph -- it's in paragraph eight, Your Honor. But even if we -- even if we didn't have all these express language, you know, we're, clearly, as lenders and the agent, you know, has the liens, was granted the liens for our benefit and for us. We, clearly, are third-party beneficiaries of it and have, you know, the right to enforce it.

I would point out, Your Honor, it's on slightly -- well, I shouldn't say slightly -- it's on different facts. But I would point Your Honor to Cohen vs. K.B. Mezzanine, 432 F.3d 448, 3rd Circuit, 2006. And there, Your Honor, the finding, the lenders prevented, you know, there, similarly -- you know,

there's an issue of the collateral agent being the, you know, the collateral party. But, here, you know, it's found that the lenders presented valid, secured claims that the lenders could credit bid. We have secured claims. We had the right to credit bid.

The fact that somebody, you know, holds them on our behalf, for administrative purposes, you know, doesn't change that. The language that they point to, Your Honor, has to do with liens. But if you look at it carefully, and every time it says, you know, the collateral agent, it says, for the benefit, you know, of the lenders. It's not holding it for itself. It's holding it for us. And I would submit, leaving aside the issue of them, you know, filing an objection, and, I guess, when the majority, you know, lenders direct them to do something or ask them to do something, I guess they do it, but the reality is, either, we have an admin claim, here, a super priority administrative claim or the agent has it on our behalf. And the plan needs to provide for it. It needs to reserve for it. It doesn't do so for anything more than $10,000,000, which isn't sufficient.

So, unless, you know, Your Honor orders them to put $25,000,000 in reserve for us, the plan isn't feasible. We have shown enough, Your Honor, to show that we have a prima facie, you know, right to a super priority claim.

Now, the Debtors say, well, you know, if you have a

super priority claim, that kind of messes everything up. Well, every company doesn't get to confirm a Chapter 11 plan. Congress decided all administrative claims, you know, need to get paid. And I submit to Your Honor, if this is not a quintessential 507(b) claim, then I don't know what is.

We were primed, not by new money, although some new money, but not just by new money. We were primed by people where pari-passu to us. People who were pari-passu to us, their claim became senior. Whether we were offered the opportunity to participate is of no moment. It does not matter. We were primed. We were granted adequate protection. We went from having something to nothing. A senior secured creditor at a company this large would get something in any liquidation. Your Honor knows that, you know, and Mr. Goulding, you know -- although he tried -- he didn't really say anything, you know, different than that. And you saw him, you know, fighting, you know, not to have to admit things that were, you know, obvious, Your Honor, advocating, you know, for the Debtors, here.

So, Your Honor, a couple things, and then, you know, I'll sit down, and, obviously, we've raised a lot of stuff in our -- you know, in our objection. So, Your Honor, there's no doubt that when they filed the wind-down budget, and when they filed the plan of reorganization, and they filed the disclosure statement, that they had $108,000,000 of outstanding

administrative claims and they had -- and that they had sufficient cash to pay off, you know, the DIP, and that, therefore, this was this $28,000,000 that was available.

Can you pull up the objection filed by the majority ad hoc group? I want to show you the chart that is in the papers from the majority ad hoc group.

(Pause)

MR. BRILLIANT: It's on page four, yeah. So, Your Honor -- can Your Honor see that?

THE COURT: Yes.

MR. BRILLIANT: All right. So, if you look at this, on page four, right, and what -- what this effectively shows is that if you pay the admin claims and you pay the GUCC settlement that there's an $89,000,000 deficit for the DIP lenders, if you pay out of the collateral, the $8,000,000 and the 109. If you don't, as you'll see in the second column, if you don't pay those, then there was $28,000,000 of value that was available.

So, when they filed the plan of reorganization and the disclosure statement, if you didn't pay the 109 and the $8,000,000, they were over-secured, but the DIP lenders were paid in full, and then, you know, using their math, there would have been $28,000,000 that would have been available for first-out senior secured lenders, you know, as Mr. Goulding testified, although we don't need anybody to testify. We all

know, right, senior secured claims that have adequate protection liens on all of the assets of, you know, the Debtor's estate come ahead of unsecured administrative, you know, priority creditors.

So, on the day they filed their plan, there was an ability, you know, to pay. Now, you know, Mr. Goulding -- and you see in his declaration and his testimony today, they say, well, we had to pay that. We had to pay the $108,000,000. It was required under the asset purchase agreements. It wasn't required under the asset purchase agreements, Your Honor. there were some covenants in there that didn't -- that Mr. Goulding went through with Mr. Espana, you know, that provided -- you know, that they had to operate in the ordinary course of business, but it ended before this. It ended on March 19th when the deals closed. They were not obligations anymore.

Now, on rebuttal, you know, the Debtor's counsel put Mr. Goulding, and they showed him, you know, the order that, you know, they had to pay cure amounts. Although you heard Mr. Goulding say that, you know, all the payables were in cure amounts, and most of the cure amounts were paid by deductions, you know, from the purchase price, they're just two different things. They have not shown at all that there was any requirement to pay them. If anything, I think we showed the opposite. But they chose to pay them. Why? Because, if you look at it, what they do is they have all of these being paid,

you know, through the end of May, and then, on May 15th, they do their liquidation analysis, and because the $108,000,000 is gone, because they're assuming that it was paid, they're saying that, you know, that they meet the best interest test.

Now, I would say, Your Honor, this would be, you know, bad faith, and the reason in and of itself, for not confirming the plan. But, even if that were true, and it's all been paid, and it's very unclear what's been paid and what's still to be gotten, you know, here, and I'm not going to pull it up, Your Honor. It's taking too much time, and I've probably blown my 45 minutes already.

But I would ask you to look at Exhibit 137 of ours, which is a chart that Mr. Goulding, you know, testified to at the sale hearing. And as Your Honor remembers, one of the issues, at that point, was whether or not they were using these $8,000,000 paying out of our collateral or paying it out of, you know, the DIP loans.

But if you look at that, you could see, they don't show, you know, $108,000,000 and then the cash collections. There's just one line that says, net working capital, 5.5 million dollars, you know, and that's all it says. So, he didn't have any idea about, you know, the fact of this. But even, Your Honor, you know, if it turns out that the money is gone now, as Ms. Ringer said it is -- I'm not sure the evidentiary record, you know, is complete on that. But even if

that's right, we would have, from the use of our cash collateral, you know, we would have a super priority administrative claim, you know, in connection with that.

So, it just seems to me, Your Honor, you know, there's issues here. Either the plan doesn't meet the best interest test, because there was value for the, you know, the senior secured class, and it doesn't meet the best interest test, because, you know, if you took out this administrative claims, there would be monies that would be available, you know, for the first-out, you know, the first-out lender.

So, you know, and in that context, like I said, it was either proposed in bad faith -- they sent this money out. You know, they put it in their chart, but then don't include it in their, you know, liquidation analysis, just assume it's all going to be gone before the effective date of the plan.

So, one second. Could I have a moment, Your Honor?

THE COURT: Sure.

(Counsel conferring)

MR. BRILLIANT: So, Your Honor, I guess a couple of things, just some minor stuff. Your Honor, you know, they cite ResCap in connection with the 507(b) case. Your Honor should read it. It's out of context. It's got to do with consensual use of cash collateral. It has nothing to do with priming, and it's just, you know, not relevant here.

You know, there's a couple minor things. I don't

know exactly what their changes are with respect to the gate-keeping function, you know. Here, Your Honor, you know, where there is opt-out releases, and a significant number of people, not just my clients, you know, opted-out, don't think it's appropriate there be any gate-keeping function, even if it's, you know, permissive. You know, obviously, the Debtors can -- or anybody else who thinks that the plan has to be (indiscernible), can always come back to the Court, if the Court retains jurisdiction, but there should not be any kind of obligations to come to the Court before, you know, bringing claims, you know, against a third -- third-parties.

And then, I think, Your Honor, they just misconstrue and just either don't understand or just misconstrue what we're saying in connection with, you know, extending the challenge period. As Your Honor knows, we've appealed the settlement agreement. If we're right about that, and the -- you know, the case is reversed, you know, on appeal, then somebody would -- and there is not a stay, you know, in effect, then someone would need to be able to bring the claims. And we would want the tolling period, you know, to be extended.

Now, you know, the Appellate Court has rights to undo stuff and things, so, you know, but I think Your Honor, given that there is an appeal that exists, you know, Your Honor should require, in this order, that nothing be done in this order that undermines that appeal.

Now, the Debtors say, in their reply, that if we would put this in, that somehow, you know, that would undermine the whole plan, but we're not asking did anybody bring the claims. All we're saying is that the challenge period should be extended until a point in time when the appeals are ultimately resolved, and that a party be able, you know, to bring those claims, to the extent there is a plan administrator or something, since the Creditors Committee, you know, is being disbanded as part of the plan, don't want to create some kind of, you know, mootness, here, or at least argument for moot -- I don't think there could ever be, you know, complete mootness, here. As Your Honor knows, the Black Diamond claims are not subject to, you know, the challenge period, because it's not a claim against the Debtors.

So, Your Honor, I think it's a -- you know, there's just a fundamental problem with this plan. It's being proposed solely to benefit the DIP lenders. They give a -- I won't even call it a tip -- they give a small amount of money, you know, to the unsecured creditors. They make it seems like, you know, if our client's got $8,000,000 or some pro rata sharing of $8,000,000, that that's immaterial. It's not, you know, immaterial, Your Honor.

With respect to this combination of, you know, they're saying they're collapsing the plans, they just make that up. We're not saying that, you know, we -- that our

desired outcome here, you know, is to get .85 percent because the -- you know, the majority ad hoc group, you know, should share with us.

What we're saying is, they can't put us in a separate class under the Hancock decision, because it's only being done to gerrymander or take away our legal rights under the Bankruptcy Code. And we're saying that, you know, the amount is -- you know, they're saying it's a de minimis amount, but that's not true. And the one percent that they point out in the Tribune case is not a situation where somebody gets zero, you know, and somebody gets three and a half to five cents. It's a situation where two people get slightly different amounts, and they're saying that the discrimination between the two, you know, is -- is not material in that context.

You know, I'm not going to spend any time on it, Your Honor. We -- I think it's pretty well, you know, briefed on the unfair discrimination claim. You know, I think for similarly situated creditors, general unsecured creditors in a liquidation context, one group getting something, another group, you know, getting nothing, and that the -- you know, they're being put in separate classes, solely to either, you know -- you know, create an apparent accepting class or alternatively, you know, to justify, you know, the unfair discrimination, it, clearly, just doesn't work, you know, in the Third Circuit, you know, here. And, you know, with -- I

know Your Honor didn't really rule on this, you know, on a final basis at the settlement hearing, but I think, Your Honor, that Nuverra, you know, it's just not good law, you know, post-Jevic. And if the 3rd Circuit, in the context of a plan, here, you know, is faced with, you know, a formerly or currently senior secured or, you know, potential super priority administrative creditor getting nothing, somebody who started out the case, you know, in the pole position with collateral getting nothing, and other people, you know, getting something, just to gerrymander a vote or to get the UCC, you know, on board -- exactly what the Supreme Court said is the problem with these types of structures -- I think the 3rd Circuit would not countenance it.

So, Your Honor, I'm losing my voice, and I think I've overstayed my welcome, unless Your Honor has some questions, I'll sit down, and we would ask that you not confirm the plan.

THE COURT: Thank you, Mr. Brilliant. I do have two quick questions.

MR. BRILLIANT: Sure.

THE COURT: I didn't want to interrupt your flow.

With respect to 507(b) on this claim, that is on behalf of the first-out, second-out and third-out or all three?

MR. BRILLIANT: I think there's a -- we don't think that the value would go, you know, to the third-outs, but there is a smidgen, you know, that would go, you know, to the second-

out, under the claim, based on the way we calculated it, which is, we think the minimum way we calculate it, we took the ultimate, you know, proceeds of the sale, you know, and based on that, we did not -- you know, because new money came in, you know, we did not say that our claim would be, you know, enhanced by the new money portion of the DIP, but the other portion of the DIP. And, then, based on that, there would have been, you know, enough to pay the first and a very small amount for the seconds.

THE COURT: And the second has turn-over obligations, correct?

MR. BRILLIANT: Right. But if the first gets paid in full, it's not an issue. But, I don't -- you know, but I think that's, you know, kind of irrelevant, as well. Firsts, clearly, don't have any, but, you know, the fact that you have to turn something away doesn't mean that you don't have, you know, have a claim, and that you wouldn't --

THE COURT: Well, it just bears on who you're collecting it for?

MR. BRILLIANT: Correct. And that you'd have a claim, and then you might have to give it to somebody else, but if the firsts were paid in full such that you'd be entitled, you know, to a claim, presumably you get to keep it.

THE COURT: And with respect to -- and I can take a look at the transfer agreement -- when you speak about the ad

hoc having rights to become shareholders or to appoint directors, those rights are in favor of what entities, the individual secured creditors or --

MR. BRILLIANT: Yeah, the 25 percent shares where there was an entity that was, you know, created that was controlled by the ad hoc group that had, you know, the right to the shares. You'll see that in the transfer agreement. In connection with the, you know, the voting, that's from a separate agreement.

THE COURT: But does an individual secured creditor have rights to acquire shares, the individual secured creditors in this case?

MR. BRILLIANT: It's, I think, the voting is, you know, their group. They're the requisite lender, so they control it. And the other one is, you know, a limited number of people. But I would, you know, given the size of the claims of the people who participate in that fund, you know, my sense is that, well, there will be no evidence that the class carried without the votes of insiders, but, you know, but I don't think that we could possibly have carried without the votes of the largest creditors who were the shareholders in that entity.

THE COURT: But it was an entity that was accorded these rights on behalf of all of the --

MR. BRILLIANT: Yeah. There's two different things. One is the voting.

THE COURT: Right. The voting and the shares?

MR. BRILLIANT: Right. And the voting --

THE COURT: And the ability to appoint Board members.

MR. BRILLIANT: Appoint the majority of the directors. That was one thing. That's on behalf of the whole majority ad hoc group. And then, some portion of the majority ad hoc group created this entity that had the right to the 25 percent.

THE COURT: All right. Thank you.

MR. BRILLIANT: You'll see that in the transfer agreements, Your Honor.

THE COURT: Thank you.

Ms. Ringer?

MS. RINGER: Thank you, Your Honor, Rachel Ringer from HSFKramer on behalf of the Debtors.

Let me figure out where to start. I want to hit on a couple of points that Mr. Brilliant made. I kind of want to do some real-time fact checking. Over the course of that argument, I think there were a lot of sweeping generalizations that were made that are not supported by any of the evidence in the record or, in fact, were directly contradicted by some of the things that Mr. Goulding said today. But I want to start with the issue that Mr. Brilliant started with, which is, I guess his admonition that this case was not a success. And I, on behalf of the Debtors, would have to disagree. What we did,

through this case, was we preserved a legacy business as a going concern, which is one of the fundamental goals of Chapter 11.

And what Mr. Brilliant would have this Court do is essentially ignore the success that we achieved in the sale, ignore the fact that whether it was at his behest or at the behest of the Creditor's Committee, who he ignores as having been involved at all in the sales process, the extension of he time line, the development of bidders, the auction, all of that, at which the Committee was very much involved at every step of the way, and, frankly, was pushing for the extended time line, which the majority group, to their credit, ultimately agreed to for the very reasons that you heard from Mr. Goldstein, both today and at the outset of the case, because they really did want this to be an open process to facilitate a real true sale, here, and that is exactly what we did.

We were able to preserve this business. The business was sold. So, we're, now, here, Your Honor, with a settlement that was constructed before the auction, intentionally, to make sure that we had paved the best path for the most successful auction. We constructed that settlement. We held the auction. That auction was successful. We were able to achieve a sum of the parts transaction that was higher and better than the stalking horse credit bid that we entered these Chapter 11

cases with. We then sought approval of the settlement, got approval of the settlement, were able to close the sales on the backs of that settlement approval, and we're now here, today, to kind of do the final step to implement that settlement, with the history of this case as a foundation for that.

And what, I think, really becomes clear as you hear all of different permutations and various arguments to just simply try and block approval of the plan with no alternative in sight from their perspective, which it seems as though that's fine from their perspective, but they want to ignore all of the pieces of the puzzle that led us here today, and, really just view each of these things in isolation, as if any one of them could be undone and things could proceed.

They can't. Right? We're here to implement a plan that implements a settlement that has already been approved, that laid the foundation for the sales to close, to which the minority group didn't object to, for the dollars to go out. They already have. You heard the testimony from Mr. Goulding. The dollars have both come in and gone out. So, this liquidation analysis discussion is kind of besides the point. You can do all kinds of funky math you want, it's not going to lead to the actual results that they want, because the reality is, in a liquidation, they receive nothing, but they're receiving nothing under the plan, too, so they fare no worse under the plan than they would in a liquidation. They're not

entitled to anything. That's the reality.

The value did not yield any recovery beyond the DIP. They chose not to participate in the DIP. Whether they regret that decision or not, I will leave to them, but they chose not to participate in the DIP. They did not. They are not entitled to receive anything, because the DIP is not getting paid in full. That is just the circumstances that we have today.

So, let me kind of hit a couple of different things that I heard. I think they're -- I'm going to try and go in some sort of an order, but forgive me, I just want to respond to a few of the points. I think I really responded to all of these arguments in my initial presentation, but I just -- I want to return to a few of them.

First, Mr. Brilliant said in our pretrial conference, pretty strongly, that he didn't want to litigate his diminution in value claim today. I think he then spent the last 45 minutes arguing in favor of it. But, you know, I think he tried to say that they clearly suffered a diminution in value. I heard no such testimony. The testimony that I heard from Mr. Goulding was that he doesn't know what the value of their collateral was on the petition date, and in connection with them actually supporting a diminution in value claim, it's their burden to establish both the value of their collateral on the petition date, and the value of their collateral on the

date at which you measure diminution value. They've done none of that.

So, whether -- you know, whether they are able to prove their claim now or later, they certainly haven't proved it today. But, again, as I said, in my initial remarks, there is a more fundamental problem, and the problem is that they really don't have standing to assert this claim. And I know that -- I find it moderately ironic that Mr. Brilliant jumped up to object to the agent saying anything today, other than with respect to, you know, relying on the papers that they filed last night, only to then argue, no, no, they really do have standing. You shouldn't listen to the agent, who is the actual party in interest with respect to the collateral and the adequate protection claims, but you should listen to Mr. Brilliant's argument about why they really do have standing.

Ultimately, the actual granting language in the DIP order grants adequate protection in favor of the agent. An adequate protection is there to protect a security interest. They did not -- they, the minority group, did not actually have a lien under the pre-petition credit agreement. That lien was granted in favor of the agent, as is fairly typical in credit agreements. They do not have that lien, so the adequate protection, again, following the pre-petition documents, is granted to the agent.

And, you know, then Mr. Brilliant pointed to language

about the adequate protection being granted for the benefit of the pre-petition secured parties, and if you look at slide nine in our initial presentation, In re: Enron Corp. -- I am not going to read all of the various numbers in the citation, but it's cited on slide nine -- what Enron says is that a grant that's made for the benefit of lenders is not sufficient to confer standing on those lenders. So, again, when we're looking at who actually has the right to assert adequate protection, it's the agent. I heard Mr. Brilliant argue that, perhaps, this amounts to a taking. I would say that you can't take something that you don't have, and so, you know, again, as is typical under credit agreements, there are collective action clauses, there are no action clauses. It is very typical for these types of credit agreements to require action to be done by the agent for, you know, whether it's with respect to collateral or by the agent at the direction of some percentage of the lenders.

None of this is atypical here, and, so, you know, I think an alleged taking is, frankly, not relevant, because you can't take something that you never had in the first place.

And I would also say that paragraph 14 of the DIP order, which I think they threw up, that is a reservation of rights. It is not conferring any new rights. I think it was just preserving whatever rights the parties had. Again, if you look at the actual granting language, that grant of adequate

protection is granted to the agent.

Again, this is why you don't see a minority group raising this issue in every case in which a majority group does a priming DIP that includes a roll-up. This is precisely why.

Let me just hit on a couple of other points. I think that maybe a little bit a similar vein. You know, I think a lot of the -- when Mr. Brilliant was talking about, perhaps, why they decided not to participate in the DIP at the outset of the case, it was because the majority group would nevertheless control whatever decisions that group was entitled to control through the RSA. Again, that's not atypical. If those holders were to have signed onto the RSA, they become part of the denominator for purposes of calculating whatever requisite threshold is necessary for decisions to be made under that RSA, in the RSA, itself, makes them in the room, right, rather than out of the room.

Now, maybe they'd say the original holders might still carry the majority, but they would have had a voice in the room, and within, you know, the holders that are party to the RSA. And, in fact, you know, I think a lot of the rights that they would have supposedly had to give up, if they had signed onto the RSA were rights that were already controlled by the requisite lenders under the credit agreement, as is, again, fairly typical for these credit agreements for a syndicated loan facility.

But, again, I mean, I think -- let me just make sure I am kind of hitting all of these other points. I think that with respect to the suggestion that the -- sorry -- that the majority holders are insiders, I think a finding of that nature would be directly in conflict with every other decision that has been rendered in this case, but also in direct conflict with the language of the Bankruptcy Code. The Bankruptcy Code says that an insider is someone who is in control, and as you heard, I think, even Mr. Brilliant admits regardless of what rights the majority group had, at any point in time, they never exercised those rights. So, even if they could have appointed a majority of the Board, they didn't, so all of the decisions of the Board were done by a Board that was not in control of the majority group. Even if they had rights with respect to the equity, they didn't exercise those rights. And I think that there is even a distinction to be drawn by the entity who held those rights and the actual folks who voted on the plan, the 179 holders of class three claims that voted for the plan, which Mr. Brilliant conveniently left out of kind of math equation of who voted in favor and who did not.

So, I don't think that there is any suggestion that the majority group was ever or is today an insider. I think that the actual evidence in the record suggests quite to the contrary as do all of the orders entered by Your Honor throughout the balance of this case.

I would mention that there was some suggestion that the set-off language in the plan was new. It's not actually new. It was moved or a reference was moved from a different part of the plan. I think it had already existed in the plan, and in a subsequent turn of the plan, it was just clarified that it also applied. I'm just looking to make sure I hit all of the points that I wanted to hit.

Oh, I guess, okay, and the last point I wanted to hit was this suggestion on whether Nuverra is good law. I did a quick check in response to the argument from Mr. Brilliant that it was not good law post-Jevic. I believe Nuverra actually came down post-Jevic. So, I don't think that Jevic somehow renders Nuverra not good law. I also believe that Robert Shaw, which is relatively recent was also post-Jevic, so the idea that these cases that allow gifting in the exact way that we are doing under the plan and the settlement that's already been approved, those are still very much good law. And, Your Honor, could certainly follow them for purposes of approving the plan, here.

And then, I guess, the final point with respect to this suggestion that challenge rights should somehow be preserved, post-confirmation, that would essentially require a blue-penciling of a settlement agreement. I'm not sure why the majority group would, frankly, allow dollars to go out, dollars that are a carve-out of their own collateral to go out to class

four creditors, if there was some chance that they, you know, that they would have let those dollars go out and then have the challenge claims come back against them at some later point in time.

It's not the deal. It's not the -- this was a provision that was a part of a comprehensive negotiation, and I just -- I could certainly understand that that majority group would not want any sort of blue-penciling of any provision of the settlement to each -- each term of the settlement, as Your Honor knows, is kind of tied to another, so you can't change one without it, kind of, popping out a number of other provisions.

Unless Your Honor has other questions for me, I would otherwise rely on our papers and on my argument initially. I looks like Mr. --

THE COURT: I can't think of a possible question.

MS. RINGER: Okay. Well, that means I did my job. Thank you, Your Honor.

THE COURT: Okay.

Mr. Goldstein?

MR. GOLDSTEIN: Thanks, Your Honor, Jason Goldstein, from Gibson, Dunn, on behalf of the majority ad hoc group. Just a couple of quick clean up points. I'm not testifying as if I'm trying to put evidence in the record. I think these can be established through the documents that are on the Docket.

So, I'll address three points.

One is on the insider affiliate allegations. I think you can look at the disclosure statement and the transfer agreement. The right to receive the 25 percent equity was in the aggregate. The right was for an entity that none of my clients ever owned. It's actually two entities. We looped the stock. They owned each other. The right never conveyed.

But I think the more important point -- I think this is what Your Honor was getting at -- is that that's an aggregate 25 percent that was granted. That is to every lender that funded the incremental. You can see in our 2019, which was filed on the Docket, which of my clients participated in that. No single institution would hold 20 percent, but on top of that, which you can see from the RSA, which is attached to Mr. Goulding's declaration, pro se declaration, there are multiple funds at each institution. So, each fund held a very small amount.

I think Mr. Brilliant might say, well, didn't they sign an RSA together. They only signed the RSA as term loan holders, not on behalf of any equity. They were not acting in concert. They never owned the equity. They never owned the entity that had the right to receive the equity. There was never a conveyance.

On the allegation that you have directors controlling the Board, this is in the disclosure statement, you only ever

had four special directors, I believe they're called. Those four directors all met the New York Stock Exchange independent standard. They are not people from the institutions I represent, sitting directly on the Board. I just wanted to clear that up.

On the RSA, and I -- you know, I was waiting, in a way, to address this, because I think it's fundamental that the DIP was open to everybody. The RSA was open to everybody. And I've done probably more RSAs than most. And if you look at this RSA, also on the Docket, attached to Mr. Goulding's declaration, he is very minimal in terms of the requirements. There is no direction in that term sheet about treatment of first-out, second-out, third-out claims. It's a credit bid. Mr. Brilliant said you'd have to participate in the credit bid if you signed the RSA.

The credit bid was on behalf of the DIP. The DIP works such that the majority lenders under the DIP can direct the DIP agent to credit bid. So, yes, anyone that was involved in the DIP would be part of the credit bid. The RSA doesn't dictate that. Any DIP lender, even if there wasn't a requirement to be part of the RSA would have been involved in the credit bid. That was the case structure. Why did we structure it that way? To provide a value-maximizing for the auction process, not to steal value as Mr. Brilliant has alleged on multiple occasions. And I guess an ancillary point

to that is, the idea that the bid deadline initially was so short, the original bid deadline under the RSA was 75 days. 75 days is not so short. It was, then, extended. We filed these cases in July, first day of July, I believe. It was extended to in November.

We didn't have an auction until December. These were after a series of extensions that my clients granted without any pressure from the minority group, again, as I said, because we really did want the value-maximizing transaction. We wanted the Debtors and the advisers to have all of the time possible to go and find real third-party bids, and we did have, in the end, multiple bids at the auction.

The other things under the credit agreement that were mentioned, the ability to file claims -- I'm not sure if that was a reference to a group of claims. The agent files claims on behalf of everyone, so that's actually something helpful under the RSA. If the allegation was about the preference claim, the Black Diamond claim, look at the RSA. It says, the new co acquires the preference claims. Mr. Brilliant's clients wanted that preference claim. They could have participated in the RSA and owned an entity that would actually have owned their preference claim. We ended up consummating a credit bid, so there was a different direction that it went under a third-party bid, but there was nothing to do with not being able to bring that claim, and, in fact, could have owned it if they

signed on to that RSA. Like I said, there was nothing dictating second-out and third-out treatment, but something interesting that was raised was, only first-out lenders were entitled to participate in the DIP.

Well, that's true, but you can imagine what would happen if we said, second out lenders are entitled to participate in the DIP, and Mr. Brilliant's clients didn't want to engage in the DIP, and then the allegation would be, well, now, the second-outs, who were junior in the waterfall to the first-out, have jumped over the first-outs.

Mr. Brilliant said, and I'll guess that 2019 is accurate, that his clients own a hundred million dollars of debt, all aggregated. I have one single client that owns close to 98 billion dollars of second-out debt, alone. It would have been overwhelmingly in our economic interest to allow the second-out to participate in the DIP. We didn't do that, because we didn't want an argument that it was unfair that somebody in the second-out jumps over somebody in the first-out.

So, all of these facts can be contorted to make it look like we were doing something bad. This was not the intent. The intent was to be as fair as possible, give all of the senior lenders the ability to participate. The RSA is something that I just walked through, did not lock people into anything offensive. There is voting regimes under an RSA, that

is true. But, again, as someone who does a ton of these, it is not true that an ad hoc group votes unanimously.

Like Ms. Ringer said, if the minority ad hoc group had joined the RSA, their vote would be counted like anyone else.

I was going to talk more about extending the bid deadlines, but I think I have covered that, and I know it's been a long day, so I'll pause there, unless Your Honor has any questions.

THE COURT: I do not. I appreciate your comments. Thank you.

MR. GOLDSTEIN: Thank you very much, Your Honor.

THE COURT: All right. We are done. The evidence -- subject to an agreement on the exhibits, hopefully by close tomorrow. The record is closed. Oral argument is done.

Let me tell you about my -- first of all, I want to say, this has obviously been a hard fought contentious case that brings out the best and sometimes, the worst. I just saw the best from the law. Professionalism, advocacy, on behalf of clients. It's what a Court and a judge wants to see. I respect it all, and I appreciate what you brought into this case. It's a difficult case with difficult issues. In that regard, I am not going to just turn over and render a ruling in a day. When I -- and I need to set myself to have deadlines or else they go by the boards.

So, I intend to have a ruling available to read into the record at 10:00 on Monday morning. We'll set up a Zoom for that. That gives me, hopefully, time over this coming week and weekend to absorb the record, absorb the arguments and put my thoughts together.

So, until that time, you all still have the opportunity to try to reach an accord. I know -- I believe you made efforts this afternoon with Judge Gravelle, great. If you need to -- if you can continue that, great. If you can do it on your own, all the better.

What I am saying is you have, probably until 9:59 on Monday to do so, which is ample time. Part of me has to be honest, you know, I was kind of fearful that you would come in and actually have it settled, and, you know, just show me up terribly that you could do in an hour what I couldn't do in nine hours.

But, if you can get there, that would -- you know, now that you've seen the evidence come in and the arguments come in, and the Court's questions, think about what makes sense for this case, otherwise, thank you, and I'll see you virtually -- excuse me?

COURTROOM DEPUTY: Same Zoom link for Monday.

THE COURT: Oh, use the same Zoom -- use the same Zoom link for Monday at 10:00 a.m. unless something comes up, and I have to delay it.

That's it for now.

MR. BRILLIANT: Thank you, Your Honor.

THE COURT: Thank you. Thank you, Counsel.

(Proceedings concluded, 5:19 p.m.)

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C E R T I F I C A T I O N

We, KAREN WATSON, TERRI STARKEY, TRACEY WILLIAMS, TRACY GRIBBEN and JACKIE MULLICA, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Karen Watson
KAREN WATSON

/s/ Terri Starkey
TERRI STARKEY

/s/ Tracey Williams
TRACEY WILLIAMS

/s/ Tracy Gribben
TRACY GRIBBEN

/s/ Jackie Mullica
JACKIE MULLICA

J&J COURT TRANSCRIBERS, INC. Date: May 14, 2026

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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

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Attorneys for the Ad Hoc Group of Minority Secured Lenders

In Re:

Del Monte Foods Corporation II, Inc., *et al.*,

Debtors.[1]

Chapter 11

Case Number: 25-16984 (MBK)

Jointly Administered

[1] The last four digits of Debtor Del Monte Foods Corporation II Inc.'s tax identification number are 1894. A complete list of the Debtors in these Chapter 11 Cases and their respective tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent, at https://cases.stretto.com/DelMonteFoods. The location of the Debtor Del Monte Foods Corporation II Inc.'s principal place of business and the Debtors' service address is 205 North Wiget Lane, Walnut Creek, California 94598.

ORDER GRANTING AD HOC GROUP OF MINORITY SECURED LENDERS' EMERGENCY MOTION TO STAY ORDER CONFIRMING DEBTORS' FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION PENDING APPEAL

The Relief set forth on the following page, numbered three (3), is **ORDERED.**

Upon consideration of the emergency motion (the "Motion") of the Ad Hoc Group of Minority Secured Lenders (the "Minority Ad Hoc Group"),[2] to Stay Order Confirming Debtors' First Amended Joint Chapter 11 Plan of Reorganization Pending Appeal, as more fully set forth in the Motion; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and this Court having determined that there is good and sufficient cause for the relief granted in this Order, therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Effective Date[3] of the Plan and distributions thereunder are hereby stayed pending the outcome of the Minority Ad Hoc Group's appeal of the Confirmation Order.
3. This Court retains jurisdictions with respects to all matters, claims, rights or disputes arising from, based upon, or related to this Order.

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2 The members of the Minority Ad Hoc Group (the "Members") are listed in the *Second Verified Statement of the Ad Hoc Group of Minority Secured Lenders, Pursuant to Bankruptcy Rule 2019* [Docket No. 1262].

3 All capitalized terms undefined herein shall have the same meaning as in the Motion.