

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

In re:

ASCEND PERFORMANCE MATERIALS
HOLDINGS INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 25-90127 (CML)
)
)
) (Jointly Administered)
)

**DEBTORS' MOTION FOR ENTRY OF
AN ORDER (I) AUTHORIZING AND APPROVING THE DEBTORS'
KEY EMPLOYEE INCENTIVE PLAN AND (II) GRANTING RELATED RELIEF**

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

A hearing will be conducted on this matter on June 10, 2025, at 2:00 p.m. (prevailing Central Time) in Courtroom 401, 4th floor, 515 Rusk Street, Houston, Texas 77002. You may participate in the hearing either in person or by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Lopez's conference room number is 590153. Video communication will be by use of the GoTo platform. Connect via the free GoTo application or click the link on Judge Lopez's home page. The meeting code is "JudgeLopez". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Lopez's homepage. Select the case name, complete the required fields, and click "Submit" to complete your appearance.

The above-captioned debtors and debtors in possession (collectively, the "Debtors") state the following in support of this motion (this "Motion")²:

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/Ascend>. The location of Debtor Ascend Performance Materials Holdings Inc.'s principal place of business is 1010 Travis St., Suite 900, Houston, Texas 77002.

² A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of Robert Del Genio, Chief Restructuring Officer of Each of the Debtors, in Support of the Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 24] (the "First Day Declaration"). Capitalized terms used but not defined in this Motion shall have the meanings ascribed to them in the First Day Declaration.

Preliminary Statement

1. The Debtors are one of the world's largest fully integrated producers of nylon 6,6, or "PA66," and a leading provider of high-performance engineered materials for everyday essentials and new technologies with operations throughout the U.S., Europe, and Asia. Given the Debtors' complex and global operations, the Debtors depend on their senior management team to drive their financial performance. It is therefore critically important to properly incentivize such employees—namely 11 key executives (each, a "KEIP Participant" and collectively, the "KEIP Participants") whose specialized skills and institutional knowledge allow them to run the day-to-day operations of the Debtors' business. The Debtors would not be able to replace such employees during these chapter 11 cases without incurring substantial costs and disrupting operations to the detriment of all stakeholders.

2. In the months leading up to the Petition Date, the Debtors undertook a series of business performance initiatives to manage their cash flows, adapt to current market trends, and offset operational headwinds, including:

- imposing strict governance controls on spending decisions;
- engaging with key vendors and suppliers and making strategic determinations to defer certain vendor obligations;
- entering into approximately \$250 million in sale leaseback transactions for assets in the United States;
- implementing several cost rationalization measures, including reducing headcount, decreasing manufacturing costs, and consolidating the operational footprint;
- factoring certain of the Company's foreign accounts receivables; and
- reducing inventory levels to control costs.

Each of the KEIP Participants were critical in implementing these initiatives while diligently performing their daily responsibilities.

3. In addition to implementing key business initiatives and addressing their standard daily responsibilities, the KEIP Participants spent significant time preparing the Debtors for these chapter 11 cases and were crucial to the Debtors' soft landing into chapter 11. Specifically, the KEIP Participants diligently worked with the Debtors' advisors to, among other things, obtain bridge financing and subsequent debtor-in-possession financing, analyze operational and contractual issues related to the filing, and discuss and review first day pleadings in advance of filing. Now in chapter 11, the KEIP Participants are continuing their increased workload and diligent efforts to navigate the Debtors through these chapter 11 cases, all with uncertainty around their future compensation during the process. The KEIP Participants, together with the Debtors' advisors, are continuing to engage directly with vendors, customers, and employees to maintain stability and seamless performance across the business. The KEIP Participants will also play a vital role in negotiations concerning a comprehensive deleveraging transaction as these chapter 11 cases progress. A leadership team that is properly incentivized to focus on the crucial role they play in these chapter 11 cases, along with their day-to-day business responsibilities, is critical to maintaining a high level of business performance, which in turn will maximize value for the benefit of the Debtors' estates and their major stakeholders, including their lenders, customers, vendors, and employees.

4. To maintain operations during the pendency of these chapter 11 cases and avoid severe business disruption from employee turnover, the Debtors now seek approval of a cash-based key employee incentive plan (the "KEIP"). The anticipated aggregate cost for the KEIP is approximately \$1.97 million to be paid over two performance periods during the pendency of these chapter 11 cases, subject to the Debtors achievement of monthly operational performance metrics tied to the target EBITDA for the 2025 fiscal year set forth in the Debtors' 2025 annual operating

plan (the “2025 Operational EBITDA Goal”) during each performance period.³ All of the KEIP Participants may potentially be “insiders” as defined in section 101(31) of the Bankruptcy Code.

5. As noted above, in addition to their substantial day-to-day responsibilities running a highly complex global enterprise, the KEIP Participants have seen their workloads increase significantly as the Debtors have transitioned their operations into chapter 11, which impacts the KEIP Participants’ ability to achieve targeted business performance. As such, the Debtors, with the help of their advisors, designed the KEIP so that it is properly structured to incentivize achievement of the Debtors’ business performance targets.

6. To develop the KEIP, the Debtors and their advisors conducted a benchmarking analysis, reviewing the compensation structures of a peer group of 13 similarly situated companies that implemented such incentive plans during their respective chapter 11 cases, with considerations given to the peer group financials, industry, and bankruptcy court district (the “Peer Group”). The KEIP is derived from this analysis and falls within the market range of key incentive plans of the Peer Group.⁴ Therefore, these award opportunities are reasonable in terms of size and scope. If approved, the KEIP, taken together with existing salaries, will ensure that the Debtors’ key leadership is compensated at levels that fall within the market range of compensation offered at comparable companies in bankruptcy.

7. After extensive preparation and analysis by the Debtors and their advisors, the KEIP was presented to the special committees of the governing bodies of each of the Debtors (collectively, the “Special Committee”) and board of directors of Debtor Ascend Performance Materials Holdings Inc. (the “Board”). The Special Committee recommended approval of the

³ The target EBITDA performance calculation will be adjusted to exclude the impact of any potential tariffs.

⁴ In addition to the Peer Group, the Debtors and their advisors also reviewed compensation arrangements that set incentive compensation as a percentage of base salaries in place at a broader set of distressed companies in developing the Debtors’ compensation programs as a whole.

KEIP to the Board and the Board unanimously approved its adoption, subject to this Court's approval.⁵ The KEIP also reflects extensive input from the Ad Hoc Group of Term Loan Lenders and DIP Term Loan Lenders and has their support. Accordingly, the Debtors believe that the incentive-based compensation awards are appropriately tailored to incentivize the KEIP Participants and have a strong incentivizing effect, which positively aligns their interests with the interests of the Debtors and will inure to the benefit of the Debtors' creditors and other key stakeholders.

Relief Requested

8. The Debtors seek entry of an order, substantially in the form attached hereto (the "Order") (a) approving the KEIP and (b) granting related relief. In support of this Motion, the Debtors submit the *Declaration of Gilbert Jones in Support of the Debtors' Motion for Entry of an Order (I) Authorizing and Approving the Debtors' Key Employee Incentive Plan and (II) Granting Related Relief*, attached hereto as **Exhibit A** (the "Jones Declaration") and the *Declaration of Robert Del Genio in Support of the Debtors' Motion for Entry of an Order (I) Authorizing and Approving the Debtors' Key Employee Incentive Plan and (II) Granting Related Relief* (the "Del Genio Declaration"), attached hereto as **Exhibit B**.

Jurisdiction and Venue

9. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

⁵ Phil McDivitt is a member of the Board and is entitled to compensation under the KEIP in his capacity as a KEIP Participant. Mr. McDivitt recused himself with respect to the Board's evaluation, review, and approval of the KEIP with respect to the proposed payment made to him thereunder.

The Debtors confirm their consent to the Court's entry of a final order in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

10. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

11. The bases for the relief requested herein are sections 105(a), 363(b), and 503(c)(3) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Key Employee Incentive Plan

I. Overview of the KEIP.

12. The proposed KEIP contains the following primary design features:

- ***Eligible Participants.*** The KEIP is limited to the 11 KEIP Participants specifically, key executives and members of senior management who are critical to the Debtors’ day-to-day operations, financial performance, and the success of the Debtors’ restructuring.
- ***Awards.*** Each KEIP award will be a cash amount provided in two installments upon the conclusion of each of the performance periods set forth below. Potential payments are based on the Debtors’ achievement of operational EBITDA targets under their 2025 annual operating plan for each performance period.
- ***Performance Periods and Payment Timing.*** The KEIP consists of two periods and awards will be measured and paid out in two installments, one at the end of each period. The first period ends on the last day of the month that is three months from the Petition Date and the second period ends on the last day of the month that is the month before emergence from these chapter 11 cases.
- ***Performance Targets.*** KEIP payments will be based on the Debtors’ 2025 Operational EBITDA Goal and will vary based on three performance tiers (the “Performance Tiers”): (a) a maximum tier (equivalent to an achievement of equal to or greater than 110 percent of the 2025 Operational EBITDA Goal), (b) a target tier (equivalent to an achievement equal to 100 percent of the 2025 Operational EBITDA Goal), and (c) a threshold tier (equivalent to an achievement of 90 percent of the 2025 Operational EBITDA Goal). If a Performance Tier is not reached during one performance period, a catch-up

provision will be in place to provide an opportunity to achieve full value to the extent a set of performance goals are reached cumulatively over both performance periods (the “Cumulative Performance Goals”). The amount of the catch-up payment shall be equal to the excess, if any, of (i) the amount payable to a KEIP Participant based on satisfaction of the Cumulative Performance Goals *over* the sum of the aggregate amount earned and paid or payable to a KEIP Participant for satisfaction of a Performance Tier during each performance period.

- ***KEIP Payout Ranges.*** Threshold performance achievement would result in a payout equivalent to 50% of the target KEIP award. Maximum performance achievement would result in a payout equivalent to 125% of the target KEIP award.
- ***Termination of Employment.*** If a KEIP Participant is dismissed for cause, then they are no longer eligible for any portion of the KEIP award, whether earned or un-earned. In the event a KEIP Participant becomes a Good Leaver⁶ during a performance period, such KEIP Participant will be entitled to: (a) a pro rata portion of their bonus for the performance period during which they became a Good Leaver, (b) any earned but unpaid bonus from any performance period(s) that ended prior to the KEIP Participant’s termination date, and (c) a catch-up payment applicable for the portion of the second performance period, if any, that the KEIP Participant was employed for. In the event a KEIP Participant is terminated during the 12-month period following March 31, 2025 (the “Clawback Period”), that is not a Good Leaver termination, the KEIP Participant will repay 100% of the after-tax value of the KEIP Participant’s bonus (if any) within 30 days of such termination. For the avoidance of doubt, no KEIP Participant shall be required to repay any portion of the participant’s bonus as a result of termination after the end of the Clawback Period.
- ***Length of KEIP.*** The Debtors currently anticipate that the KEIP will be in place during the pendency of these chapter 11 cases. The milestones set forth

⁶ “Good Leaver” shall mean the termination of the KEIP Participant’s employment (i) by the Debtors for a reason other than cause, (ii) by the KEIP Participant for Good Reason (defined as the occurrence of any of the following events prior to the end of both performance periods without the KEIP Participant’s written consent, unless such events are corrected in all material respects by the Debtors within thirty (30) days following the KEIP Participant’s written notification to the Company of the occurrence of any such event(s): (a) a material adverse change in the KEIP Participant’s title; (b) material reduction in the KEIP Participant’s base salary; or (c) relocation of the KEIP Participant’s primary work location by more than thirty-five (35) miles from its then current location), (iii) due to the KEIP Participant’s disability, or (iv) due to the KEIP Participant’s death if, and only if, in the case of any termination pursuant to clauses (i), (ii) and (iii), the KEIP Participant executes a release of employment related claims in a form to be provided by the Debtors (the “Release”) within the time provided by the Debtors to do so, and the KEIP Participant does not revoke such Release within any time provided by the Debtors to do so.

in the DIP Order⁷ currently contemplate the Debtors emerging by August 29, 2025.

13. If approved, the KEIP would provide aggregate threshold, target, and maximum opportunities of approximately \$983,200, \$1.97 million, and \$2.46 million, respectively. The individual award opportunities available to each KEIP Participant are summarized as follows:

KEIP Values			
Participants Title	Threshold Performance Tier	Target Performance Tier	Max Performance Tier
President, Chief Executive Officer	\$182,200	\$364,400	\$455,500
Senior Vice President Technology	\$96,200	\$192,400	\$240,500
Senior Vice President and Chief Human Resources Officer	\$97,800	\$195,600	\$244,500
Senior Vice President Operations & Integrated Supply Chain ⁸	\$96,800	\$193,600	\$242,000
Senior Vice President and Managing Director of Asia Pacific	\$93,800	\$187,600	\$234,500
Senior Vice President General Counsel	\$88,600	\$177,200	\$221,500
Senior Vice President and Chief Financial Officer	\$81,800	\$163,600	\$204,500
Senior Vice President, Environment Security, Safety and Health	\$67,400	\$134,800	\$168,500
Vice President Strategic Development	\$60,200	\$120,400	\$150,500
Vice President Commercial	\$61,600	\$123,200	\$154,000
Vice President Chemicals and Intermediates	\$56,800	\$113,600	\$142,000
Total Award Values	\$983,200	\$1,966,400	\$2,458,000

14. Such award opportunities are reasonable, market-based, and justified under the circumstances of these chapter 11 cases. As set forth in the Jones Declaration, the target cost per participant would be in the 8th percentile of the Peer Group, with only one Peer Group company setting a lower per participant target award. The aggregate target total cost of the KEIP would be at the 31st percentile. As further set forth in the Jones Declaration, the KEIP's total cost at target

⁷ *Revised Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Authorizing the Use of Cash Collateral, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 96] (the "DIP Order").

⁸ One KEIP Participant is currently on medical leave and scheduled to return in June 2025. As detailed in the Del Genio Declaration, he is essential to the Debtors' go-forward business and as such has been included as a KEIP Participant.

is also reasonable when compared to funded debt levels, with the aggregate target KEIP being approximately 0.10 percent of the Debtors' funded debt, or the 23rd percentile of the KEIP Peer Group. Moreover, the KEIP Participants' go-forward target total direct compensation represents a five percent decrease, in the aggregate, from their prepetition target levels.

II. The Performance Targets.

15. Under the KEIP, awards are payable only upon the Debtors' achievement of a series of monthly operational adjusted EBITDA performance goals through both performance periods, all as set forth in more detail in the Jones Declaration. Achieving these monthly goals, will require substantial effort from the KEIP Participants, as detailed in the Del Genio Declaration. The performance targets were developed carefully to ensure they are an appropriate "reach" to drive performance, on the one hand, but will not present unrealistic or unattainable goals, on the other hand—which would thwart the incentivizing nature of the plan.

III. The Need for a KEIP.

16. It is critical that the Debtors implement the KEIP immediately to ensure that key leadership employees are incentivized to continue performing to the best of their abilities during this critical phase of these chapter 11 cases. The Debtors have already had to contend with management attrition issues in the lead up to the filing of these chapter 11 cases. In order to immediately address this attrition, on April 18, 2025, the Board approved a retention program which included the issuance of one-time bonuses to the KEIP Participants. The Debtors believe, however, that the KEIP is also necessary in order to provide the KEIP Participants with proper incentive opportunities throughout these chapter 11 cases, which will appropriately incentivize the Debtors' key employees to push to achieve their near-term operational goals and avoid any further disruption as a result of the filing of these cases. Given the Debtors' highly-specialized industry and the institutional knowledge of their management team, any turnover from the KEIP

Participants at this juncture would cause severe business disruption. Additionally, if the KEIP Participants meet the performance targets, it will mean that the Debtors achieved substantial improvements in operational EBITDA, maximizing value of Debtors' estates for the benefit of all their stakeholders.

Basis for Relief

I. Implementing the KEIP is a Proper Exercise of The Debtors' Sound Business Judgment Under Section 363(b) of the Bankruptcy Code.

17. Section 363(b)(1) of the Bankruptcy Code provides in relevant part that a debtor "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtor must show that the decision to use the property outside of the ordinary course of business was based on the debtor's business judgment. *See In re Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or a debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); *In re Viking Offshore (USA), Inc.*, 2008 WL 1930056, at *2 (Bankr. S.D. Tex. Apr. 30, 2008) (applying the business judgment rule to determine whether the debtors' proposed bonuses were justified outside the ordinary course of business); *see also In re Mesa Air Grp., Inc.*, 2010 WL 3810899, at *34 (Bankr. S.D.N.Y. Sept. 24, 2010) (employee bonus programs can be approved as a "valid exercise of their business judgment" under section 363(b)).

18. Courts give great deference to a debtor's business judgment. *See In re Perez*, 339 B.R. 385, 399, n. 14 (Bankr. S.D. Tex. 2006), *aff'd sub nom. Perez v. Peake*, 373 B.R. 468 (S.D. Tex. 2007) ("Section 363(b) should be interpreted liberally to provide a bankruptcy judge with substantial freedom to tailor his orders to meet differing circumstances and to avoid shackling the

judge with unnecessary rigid rules.”) (quotations and citations omitted). “The business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.’” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984) (overruled on separate grounds)). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Johns-Manville*, 60 B.R. at 616; *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”). That is because “[c]ourts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence.” *Integrated Res., Inc.*, 147 B.R. at 656.

19. The Debtors possess an articulable business purpose to implement the KEIP. The implementation of the KEIP is a proper exercise of the Debtors’ business judgment and is in the best interests of the Debtors’ estates for the benefit of all stakeholders in these chapter 11 cases. The KEIP Participants—along with their skills, specialized knowledge, and hard work—are critical to ensuring that the Debtors maximize stakeholder value. The KEIP Participants are intimately familiar with the Debtors’ finances, manufacturing process, and internal operations and have the requisite training and knowledge that is essential to the Debtors’ continued operations during these chapter 11 cases.

20. The KEIP results from an independent analysis undertaken by the Debtors, with the assistance of their advisors. The KEIP was further subject to review and approval by the Special Committee and the Board and has lender support. The KEIP properly incentivizes the KEIP

Participants who possess the skills, knowledge, and experience critical to the Debtors' ability to operate in the ordinary course during the chapter 11 cases, generate value for the Debtors' creditors, and consummate a chapter 11 plan. The KEIP Participants hold positions that are integral to the Debtors' restructuring process and will face additional stress and demands during these chapter 11 cases. Therefore, implementing a plan that incentivizes employees to perform these additional duties is critical at this juncture to maintain the viability of the Debtors' business. If such KEIP Participants are not provided with incentivizing compensation to keep up with the increased demands imposed upon them, the Debtors run the risk of these integral employees leaving for the Debtors' competitors at a critical stage in the Debtors' restructuring, a reality that the Debtors have already had to face in the days leading up to the Petition Date when one former member of the senior leadership team left to take an executive position with one of the Debtors' customers.

21. As discussed above, the performance targets under the KEIP are tied directly to meeting operational adjusted EBITDA targets that contemplate an increase in performance over the Debtors' 2024 operating plan. By tying any payments under the KEIP to achievement of the 2025 Operational EBITDA Goal, the KEIP Participants will be properly incentivized to attain the performance goals. Moreover, the KEIP is reasonable in size and earnings potential. As detailed in the Jones Declaration, FTI conducted a benchmark analysis of 13 different companies and their bankruptcy-approved key employee incentive plans. The Peer Group was selected with consideration given specifically to the peer financials, industry, and bankruptcy court district where the specific key employee incentive plan was approved to determine the reasonableness of the KEIP, in both the aggregate and on a per-participant basis. In comparison to the Peer Group,

the aggregate and per-participant incentive bonuses contemplated under the KEIP at each target level are at or below the 25th percentile of the Peer Group equivalent.

22. Furthermore, the KEIP Participants are familiar with the Debtors' business and have the experience and knowledge necessary to ensure the Debtors' continued operations during the chapter 11 cases. Indeed, the KEIP Participants have already played a vital role in the soft landing into chapter 11 by providing important support to the Debtors' advisors in meeting the additional demands imposed by chapter 11, as more fully set forth in the Del Genio Declaration. The Debtors cannot easily replace these participants without adversely affecting the Debtors' operations or restructuring process. For these reasons, the Debtors' decision to implement the KEIP is a valid exercise of the Debtors' business judgment and should be approved.

II. The KEIP is Justified by The Facts and Circumstances of These Chapter 11 Cases.

23. Section 503(c)(3) of the Bankruptcy Code prohibits certain transfers made to managers, consultants, and others that are not justified by the facts and circumstances of a bankruptcy case. *See* 11 U.S.C. § 503(c)(3). Certain courts have held that section 503(c)(3)'s "facts and circumstances" justification test "creates a standard no different than the business judgment standard under section 363(b) of the Bankruptcy Code." *In re Velo Holdings, Inc.*, 472 B.R. 201, 209 (Bankr. S.D.N.Y. 2012); *In re Alpha Nat. Res., Inc.*, 546 B.R. 348, 356 (Bankr. E.D. Va. 2016) ("a majority of courts...agree that the 'facts and circumstances' test of 503(c)(3) is identical to the business judgment standard under 363(b)(1)"); *In re Patriot Coal Corp.*, 492 B.R. 518, 530–31 (Bankr. E.D. Mo. 2013) (using the business judgment test to analyze an incentive plan under section 503(c)(3)); *In re Dana Corp.*, 358 B.R. 567, 576–77 (Bankr. S.D.N.Y. 2006) (describing six factors that courts may consider when determining whether the structure of a compensation proposal meets the "sound business judgment test" in accordance with section 503(c)(3) of the Bankruptcy Code). Other courts have determined that section 503(c)(3)

of the Bankruptcy Code requires the court “to make its own determination that the transaction will serve the interests of creditors and the debtor’s estate.” *In re Pilgrim’s Pride Corp.*, 401 B.R. 229, 237 (Bankr. N.D. Tex. 2009). A court should make this determination based on whether the proposed compensation is justified on the facts of a particular case. *Id.*

24. Under either the business judgment standard or the facts and circumstances analysis proposed by *Pilgrim’s Pride*, courts have analyzed compensation plans using the six factors identified in *Dana Corporation* to determine whether a compensation proposal is permitted by section 503(c)(3): (a) whether the plan is calculated to achieve the desired performance; (b) whether the cost of the plan is reasonable in the context of a debtor’s assets, liabilities, and earning potential; (c) whether the scope of the plan is fair and reasonable or discriminates unfairly among employees; (d) whether the plan is consistent with industry standards; (e) whether the debtor performed due diligence in investigating the need for the plan; and (f) whether the debtor received independent advice in performing due diligence, creating, and authorizing the plan. *See Dana Corp.*, 358 B.R. at 576–77; *see also Patriot Coal*, 492 B.R. at 531 (applying the business judgment standard and analyzing an insider incentive plan and a non-insider retention plan using the *Dana Corp.* factors); *In re Residential Capital, LLC*, 491 B.R. 73 85–86 (Bankr. S.D.N.Y. 2013) (applying the *Dana Corp.* factors to the debtors’ retention plan for non-insiders and approving the plan as an exercise of sound business judgment); *In re FirstEnergy Sol. Corp.*, 591 B.R. 688, 697–698 (Bankr. N.D. Ohio 2018) (analyzing a proposed KERP using the *Dana Corp.* factors without deciding whether section 503(c)(3) modifies the business judgment standard).

25. No single factor is dispositive, and a court has discretion to weigh each of these factors based on the specific facts and circumstances before it. *See, e.g., FirstEnergy Sol. Corp.*, 591 B.R. at 697 (stating the *Dana Corp.* factors are “neither exhaustive nor of inherently equal

weight”). Even the total absence of a factor may be permissible, so long as the interests of the Debtors are sufficiently protected. *See In re Borders Grp. Inc.*, 453 B.R. 459, 477 (Bankr. S.D.N.Y. 2011) (finding that the lack of independent counsel was “not fatal” where the presence of other factors ensured “that the [d]ebtors’ interests were sufficiently protected”); *In re Glob. Aviation Holdings Inc.*, 478 B.R. 142, 154 (Bankr. E.D.N.Y. 2012) (noting that “the relatively modest size of the proposed bonus payouts made the retention of independent legal counsel economically inefficient”). The Debtors respectfully submit that the KEIP satisfies each of the six factors.

26. The KEIP a sound exercise of the Debtors’ business judgment and is justified by the facts and circumstances of these chapter 11 cases.

- i. **The KEIP is Calculated to Achieve the Desired Performance Targets.** The KEIP is tied to the Debtors’ ability to meet the 2025 Operational EBITDA Goal, which directly links the KEIP to the stability and future success of the Debtors’ business and which goal is budgeted to account for an approximately 18 percent improvement over 2024 adjusted operating EBITDA. Accordingly, the KEIP seeks to ensure that the Debtors achieve near-term operating performance goals while successfully consummating the restructuring.
- ii. **The Cost of the KEIP is Reasonable.** The estimated aggregate payout at target performance levels under the KEIP is approximately \$1.97 million over the pendency of the chapter 11 cases for all participants, to be earned only if the KEIP Participants achieve the challenging goals of meeting the target EBITDA metrics. Given the high performance metrics that will be set under the KEIP and significant benefits to the estate if those metrics are achieved, the Debtors submit that the cost of the KEIP is reasonable and within market norms.
- iii. **The Scope of the KEIP is Reasonable.** The scope of the KEIP is fair, reasonable, and does not discriminate unfairly among the KEIP Participants. As discussed in the Del Genio Declaration, the KEIP Participants are a carefully selected, narrow group of individuals who drive company performance and are critical to ensuring a successful outcome in these chapter 11 cases. The KEIP is reasonably limited to senior management whose efforts are critical to the Debtors’ restructuring and maximizing the value of the Debtors’ estates.

- iv. **The KEIP is Consistent with Industry Practices.** To evaluate an appropriate compensation structure for the KEIP Participants, the Debtors and their advisors gathered external market compensation data, encompassing a representative database of compensation information for comparable companies. The KEIP Participants' potential *maximum* payouts are within the Peer Group range of compensation for similarly situated companies.
- v. **The Debtors Performed Due Diligence and Received Independent Advice in Developing the KEIP.** The Debtors actively reviewed their compensation programs and sought input from their advisors, the Special Committee, the Board, and the Ad Hoc Group of Term Loan Lenders when developing the KEIP. The Debtors concluded that it was critical to implement the KEIP to ensure the KEIP Participants were sufficiently incentivized to perform to the best of their ability. Moreover, based on a review of the market peer group data, the KEIP is reasonable and consistent with market practice and industry standards. As a result of these efforts, the Special Committee recommended the KEIP to the Board for approval, which the Board approved.

27. Significantly, courts in this district and elsewhere routinely approve relief similar to that requested herein. *See, e.g., In re Northvolt AB*, No. 24-90577 (ARP) (Bankr. S.D. Tex. Feb. 25, 2025) (approving a cash-based compensation plan for employees whereby payments were based on challenging, incentive-based performance metrics); *In re Robertshaw US Holding Corp.*, No. 24-90052 (CML) (Bankr. S.D. Tex. June 12, 2024) (same); *In re Alpine Summit Energy Partners, Inc.*, No. 23-90739 (MI) (Bankr. S.D. Tex. Nov. 15, 2023) (same); *In re Instant Brands Acquisition Holdings Inc.*, No. 23-90716 (DRJ) (Bankr. S.D. Tex. Aug. 30, 2023, as later amended Jan. 11, 2024) (same); *In re Genesis Care Pty Ltd.*, No. 23-90614 (DRJ) (Bankr. S.D. Tex. July 31, 2023) (same); *In re Athenex, Inc.*, No. 23-90295 (DRJ) (Bankr. S.D. Tex. June 15, 2023) (same).

III. Section 503(c)(1) of the Bankruptcy Code is Inapplicable to the Debtors' KEIP.

28. Section 503(c)(1) of the Bankruptcy Code generally prohibits payments to “insiders” made for the sole or primary purpose of inducing the “insider” to remain with a debtor’s

business—i.e., those insider plans that are essentially “pay to stay” plans. *See, e.g., Borders Grp.*, 453 B.R. at 471. The KEIP is not barred under section 503(c)(1).

29. Section 503(c)(1) of the Bankruptcy Code does not apply to performance-based incentive plans. *See, e.g., Velo Holdings*, 472 B.R. at 209 (finding that an incentive-based plan alleviated the need for a section 503(c)(1) analysis); *Borders Grp.*, 453 B.R. at 471 (finding that “the Debtors [had] met their burden of establishing that the [compensation program was] incentivizing, thereby alleviating the need for a section 503(c)(1) analysis”). In determining whether an employee bonus plan is primarily incentivizing, courts consider whether the plan is “designed to motivate insiders to rise to a challenge or merely report to work.” *In re Hawker Beechcraft, Inc.*, 479 B.R. 308, 313 (Bankr. S.D.N.Y. 2012). This analysis further recognizes that all compensation, to some degree, has a retentive element. *Glob. Home Prod.*, 369 B.R. at 786 (“The fact . . . that all compensation has a retention element does not reduce the Court’s conviction that [the] Debtors’ primary goal [is] to create value by motivating performance.”); *Dana Corp.*, 358 B.R. at 584 (“However, as noted, this Court also opined that incentivizing plans with some components that arguably have a retentive effect do not necessarily violate section 503(c).”). Rather, the focus remains on whether the plan is, on the whole, incentivizing in nature by demanding a “stretch” or a “reach” before an award opportunity is achieved. *Dana Corp.*, 358 B.R. at 581.

30. The Debtors recognize that potentially all of the KEIP Participants may be Insiders as defined under the Bankruptcy Code. However, because the KEIP is incentive-based, section 503(c)(1) of the Bankruptcy Code does not apply. The KEIP does not contain retention-based components and the participants are not paid merely for maintaining their employment for a certain

time period.⁹ The KEIP provides award opportunities only if the KEIP Participants satisfy threshold levels of performance tagged to metrics that are subject to considerable challenges in these chapter 11 cases. Namely, the adjusted EBITDA benchmarks require at least 90 percent achievement of the 2025 Operational EBITDA Goal in order for KEIP Participants to reach the target achievement award. The 2025 Operational EBITDA Goal is budgeted to account for an approximately 18 percent improvement over 2024 adjusted operating EBITDA.¹⁰

31. While the KEIP Participants are integral to the Debtors' restructuring process, they will not be eligible to obtain any award simply for "showing up." *Cf. Hawker Beechcraft*, 479 B.R. at 315 (denying KEIP approval where lower threshold was attainable so long as debtor did not encounter "any 'whoopsies.'"). Instead, the KEIP Participants must perform in order to earn even the minimum award opportunity.

32. Because implementing the KEIP will motivate the KEIP Participants to the ultimate benefit of all parties in interest, the KEIP reflects a sound exercise of the Debtors' business judgment and is justified by the facts and circumstances of these chapter 11 cases, and therefore satisfies the requirements of section 503(c)(3) of the Bankruptcy Code.

⁹ The primary characteristic of the Debtors' KEIP is to *incentivize* the performance of a narrowly defined group of the Debtors' senior management through the implementation of appropriately challenging operational performance goals. Payments under the KEIP are earned and payable if and only if these challenging goals are met. The fact the KEIP may indirectly encourage KEIP Participants to remain employed with the Debtors is not the purpose of the program and should not bar its implementation. All successful incentive programs have the indirect benefit of encouraging an employee to remain with the company, and the fact that a KEIP has the effect does implicate § 503(c)(1) of the Bankruptcy Code. *See, e.g., In re Alpha Natural Resources, Inc.*, 546 B.R. at 357 ("[A] KEIP that merely has some retentive effect should not be analyzed under § 503(c)(1)."); *In re Dana Corp.*, 358 B.R. at 572 (noting that "some components that arguably have a retentive effect do not necessarily violate section 503(c)").

¹⁰ The 2025 Operational EBITDA Goal is \$124.1 million based on the Debtors' 2025 annual operating plan.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

33. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exempt such relief from the fourteen-day stay under Bankruptcy Rule 6004(h).

Reservation of Rights

34. Notwithstanding anything to the contrary herein, nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended as or should be construed or deemed to be: (a) an implication or admission as to the amount of, basis for, priority, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; (h) a concession that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (i) a waiver of the obligation of any party in interest to file a proof of claim; or (j) a waiver or impairment of the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. If the Court grants the relief sought herein, any payment made

pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

Notice

35. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (c) the official committee of unsecured creditors, and counsel thereto; (d) Gibson, Dunn & Crutcher, as counsel to the Ad Hoc Group of Term Loan Lenders and certain of the DIP Lenders; (e) Wilmington Savings Fund Society, FSB ("WSFS"), as the agent under the DIP Term Loan Facility; (f) ArentFox Schiff LLP, as counsel to WSFS; (g) Greenberg Traurig, LLP as counsel to the ABL Agent and the agent under the DIP ABL Facility; (h) the agents under each of the Debtors' prepetition secured credit facilities; (i) the United States Attorney's Office for the Southern District of Texas; (j) the Internal Revenue Service; (k) the Environmental Protection Agency; (l) the state attorneys general for states in which the Debtors conduct business; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given. In light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

36. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
Dated: May 16, 2025

/s/ Jason G Cohen

BRACEWELL LLP

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*Proposed Co-Counsel for the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on May 16, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Jason G Cohen

Jason G. Cohen

EXHIBIT A

Jones Declaration

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

In re:

ASCEND PERFORMANCE MATERIALS
HOLDINGS INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 25-90127 (CML)
)
)
) (Jointly Administered)
)

**DECLARATION OF GILBERT JONES
IN SUPPORT OF THE DEBTORS' MOTION FOR ENTRY OF
AN ORDER (I) AUTHORIZING AND APPROVING THE DEBTORS'
KEY EMPLOYEE INCENTIVE PLAN AND (II) GRANTING RELATED RELIEF**

I, Gilbert Jones, hereby declare under penalty of perjury under 28 U.S.C. § 1746:

1. I am a senior managing director in the Human Capital practice at FTI Consulting, Inc. ("FTI"), the proposed restructuring advisor to the above-captioned debtors and debtors in possession (the "Debtors"). I serve as a human capital advisor, including in matters of compensation, to the Debtors. My team and I have worked closely with the Debtors on their restructuring initiatives. As a result of my work with the Debtors, I am familiar with the pre-and postpetition structure of the Debtors' compensation plans, including the Debtors' proposed key employee incentive plan (the "KEIP") as set forth in the *Debtors' Motion for Entry of an Order (I) Authorizing and Approving the Debtors' Key Employee Incentive Plan and (II) Granting Related Relief* (the "KEIP Motion").²

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/Ascend>. The location of Debtor Ascend Performance Materials Holdings Inc.'s principal place of business is 1010 Travis St., Suite 900, Houston, Texas 77002.

² A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of Robert Del Genio, Chief Restructuring Officer of Each of the Debtors, in Support of the Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 24]

2. I submit this declaration (the “Declaration”) in support of the Motion. Except as otherwise indicated, all facts set forth in this Declaration are based upon (a) my personal knowledge of the Debtors’ operations and finances, (b) information learned from my review of relevant documents, (c) information supplied to me by members of the Debtors’ management and their advisors, or (d) my views based on my experience, knowledge, and information concerning the Debtors’ operations, financial affairs, and restructuring initiatives. I am not being compensated specifically for this testimony, other than through payments proposed to be received by FTI as professionals retained by the Debtors. I am above 18 years of age; I am competent to testify, and, if called as a witness, I could and would testify competently to the facts set forth in this Declaration on that basis.

Background and Qualifications

3. I have over eight years of experience related to executive compensation, organization design, right-sizing, labor forecasting, and operational improvements. During that time, I have advised clients on compensation plans and developed strategies for executive compensation and retention programs. I have extensive experience analyzing compensation structures and assessing them for market competitiveness, researching compensation trends, developing incentive compensation programs, identifying key performance drivers, and evaluating company performance relative to compensation programs.

4. I have served as a consultant on executive compensation matters and in connection with numerous chapter 11 cases including but not limited to executive compensation consultant to: Ligado Networks LLC, UpHealth Holdings Inc., Wellpath Holdings Inc., Bowflex Inc., Western

(the “First Day Declaration”). Capitalized terms used but not defined in this Declaration shall have the meanings ascribed to them in the First Day Declaration or the KEIP Motion, as applicable.

Global Airlines, Inc., and Proterra Inc. Prior to joining FTI, I co-founded and served as a Managing Director at Strategy X Partners, a boutique human capital consultancy firm.

FTI's Qualifications

5. FTI is a global provider of turnaround advisory services to companies in crisis or those in need of performance improvement in specific financial and operational areas. FTI has assisted, advised, and provided strategic advice to debtors, creditors, bondholders, investors, and other entities in prior cases. Its debtor advisory experience has involved a wide range of activities targeted at stabilizing and improving a company's financial position such as developing or validating forecasts and business plans, and monitoring and managing cash, cash flow, and supplier relationships.

6. FTI has acted as a compensation consultant, financial advisor, crisis manager, and corporate officer in middle market to large multinational companies in crisis or those in need of performance improvement in specific financial and operational areas across a wide array of industries. The professionals at FTI have assisted and advised debtors, creditors, creditors' committees, bondholders, investors, and others in numerous bankruptcy cases, including the bankruptcy cases of Arcapita, Energy Future Holdings, General Motors, Invitae Corporation, Lehman Brothers, PG&E Corporation, Sears Holdings, Toys "R" Us, and Washington Mutual.

7. FTI's human capital practice consists of senior human resources, management consulting, and other professionals who specialize in advising on the design and implementation of comprehensive compensation programs that help businesses—including in distressed scenarios— attract and retain top talent, reward, and motivate management and employees for their performance, and align the interests of employees with key stakeholders. FTI has a wealth of experience in providing compensation services to businesses involved in both in-court and out-of-court

restructurings, sales, and wind down scenarios. Accordingly, I believe that FTI enjoys an excellent reputation for the services it has rendered in large and complex chapter 11 cases on behalf of debtors and creditors throughout the United States. FTI's professionals have significant restructuring and industry experience assisting distressed companies with financial and operational challenges, as well as working with management teams and boards of directors of large companies facing financial challenges similar to those the Debtors have faced.

FTI's Retention and Involvement with the Debtors

8. The Debtors engaged FTI in February 2025 to provide financial services in connection with the evaluation of various strategic alternatives for improving their liquidity and overall financial situation and has since engaged FTI in connection with these chapter 11 cases.³

9. Since FTI was engaged by the Debtors, I have familiarized myself with the Debtors' operations, business, and restructuring challenges. At the start of our engagement, FTI discussed with the Debtors and their advisors the Debtors' operational history, financial performance, restructuring process, and various issues regarding the Debtors' workforce and employee plans. FTI reviewed the structure of the Debtors' existing base salary and primary incentive plans, paying specific attention to the various incentive plans' performance metrics, participating employees, payout frequency, and target payout level. This review culminated in the KEIP. The Debtors, in consultation with FTI and the Debtors' other advisors, determined that implementing the KEIP is

³ On March 6, 2025, the Debtors and FTI executed an amended engagement letter under which FTI agreed to provide the Debtors with certain restructuring and interim management services in connection with Debtors' restructuring efforts and evaluation of strategic alternatives.

necessary and appropriate to properly incentivize and compensate the Debtors' key executives and ultimately retain them during these chapter 11 cases.

10. The Debtors performed significant due diligence in developing their KEIP, and my team and I collaborated closely with the Debtors' management and advisors during the process. Specifically, my team and I provided input and advice on the reasonableness of the KEIP's design, structure, total cost, and award opportunities. My analysis of the reasonableness of the KEIP was presented and approved by board of directors of Debtor Ascend Performance Materials Holdings Inc.

The KEIP

I. Background.

11. The KEIP provides 11 members of the Debtors' management team, who have been identified by the Debtors as critical to the Debtors' financial and operational success (each, a "KEIP Participant," and collectively, the "KEIP Participants"), the opportunity to earn cash incentives based on the Debtors' business performance. More specifically, the KEIP Participants will earn cash payments only if the Debtors achieve the monthly EBITDA performance goals for the 2025 fiscal year set forth in the Debtors' 2025 annual operating plan (the "2025 Operational EBITDA Goal") during these chapter 11 cases.

12. The anticipated aggregate cost for the KEIP is approximately \$1.97 million (approximately \$179,000 per KEIP Participant) to be paid over two performance periods during the pendency of these chapter 11 cases subject to the Debtors achievement of monthly operational performance metrics tied to the 2025 Operational EBITDA Goal.⁴ Payments under the KEIP will

⁴ For the avoidance of doubt, the target operational EBITDA performance calculation will be adjusted to exclude the impact of any potential tariffs.

be measured and paid out at the end of each of two performance periods, the first period ending the last day of the month that is three months following the Petition Date and the second period ending the last day of the month that is the month before the effective date of a chapter 11 plan.

II. Overview of the KEIP.

13. The proposed KEIP contains the following primary design features:

- ***Eligible Participants.*** The KEIP is limited to the 11 KEIP Participants specifically, key executives and members of senior management who are critical to the Debtors' day-to-day operations, financial performance, and the success of the Debtors' restructuring.
- ***Awards.*** Each KEIP award will be a cash amount provided in two installments upon the conclusion of each of the performance periods set forth below. Potential payments are based on the Debtors' achievement of operational EBITDA targets under their 2025 annual operating plan for each performance period.
- ***Performance Periods and Payment Timing.*** The KEIP consists of two periods and awards will be measured and paid out in two installments, one at the end of each period. The first period ends on the last day of the month that is three months from the Petition Date and the second period ends on the last day of the month that is the month before emergence from these chapter 11 cases.
- ***Performance Targets.*** KEIP payments will be based on the Debtors' 2025 Operational EBITDA Goal and will vary based on three performance tiers (the "Performance Tiers"): (a) a maximum tier (equivalent to an achievement of equal to or greater than 110 percent of the 2025 Operational EBITDA Goal), (b) a target tier (equivalent to an achievement equal to 100 percent of the 2025 Operational EBITDA Goal), and (c) a threshold tier (equivalent to an achievement of 90 percent of the 2025 Operational EBITDA Goal). If a Performance Tier is not reached during one performance period, a catch-up provision will be in place to provide an opportunity to achieve full value to the extent a set of performance goals are reached cumulatively over both performance periods (the "Cumulative Performance Goals"). The amount of the catch-up payment shall be equal to the excess, if any, of (i) the amount payable to a KEIP Participant based on satisfaction of the Cumulative Performance Goals *over* the sum of the aggregate amount earned and paid or payable to a KEIP Participant for satisfaction of a Performance Tier during each performance period.
- ***KEIP Payout Ranges.*** Threshold performance achievement would result in a payout equivalent to 50% of the target KEIP award. Maximum performance achievement would result in a payout equivalent to 125% of the target

KEIP award.

- ***Termination of Employment.*** If a KEIP Participant is dismissed for cause, then they are no longer eligible for any portion of the KEIP award, whether earned or un-earned. In the event a KEIP Participant becomes a Good Leaver⁵ during a performance period, such KEIP Participant will be entitled to: (a) a pro rata portion of their bonus for the performance period during which they became a Good Leaver, (b) any earned but unpaid bonus from any performance period(s) that ended prior to the KEIP Participant's termination date, and (c) a catch-up payment applicable for the portion of the second performance period, if any, that the KEIP Participant was employed for. In the event a KEIP Participant is terminated during the 12-month period following March 31, 2025 (the "Clawback Period"), that is not a Good Leaver termination, the KEIP Participant will repay 100% of the after-tax value of the KEIP Participant's bonus (if any) within 30 days of such termination. For the avoidance of doubt, no KEIP Participant shall be required to repay any portion of the participant's bonus as a result of termination after the end of the Clawback Period.
- ***Length of KEIP.*** The Debtors currently anticipate that the KEIP will be in place during the pendency of these chapter 11 cases. The milestones set forth in the DIP Order⁶ currently contemplate the Debtors emerging by August 29, 2025.

14. If approved, the KEIP would provide aggregate (for all participants) threshold, target, and maximum opportunities of approximately \$983,200, \$1.97 million, and \$2.46 million, respectively. The individual award opportunities available to each KEIP Participant are summarized as follows:

⁵ "Good Leaver" shall mean the termination of the KEIP Participant's employment (i) by the Debtors for a reason other than cause, (ii) by the KEIP Participant for Good Reason (defined as the occurrence of any of the following events prior to the end of both performance periods without the KEIP Participant's written consent, unless such events are corrected in all material respects by the Debtors within thirty (30) days following the KEIP Participant's written notification to the Company of the occurrence of any such event(s): (a) a material adverse change in the KEIP Participant's title; (b) material reduction in the KEIP Participant's base salary; or (c) relocation of the KEIP Participant's primary work location by more than thirty-five (35) miles from its then current location), (iii) due to the KEIP Participant's disability, or (iv) due to the KEIP Participant's death if, and only if, in the case of any termination pursuant to clauses (i), (ii) and (iii), the KEIP Participant executes a release of employment related claims in a form to be provided by the Debtors (the "Release") within the time provided by the Debtors to do so, and the KEIP Participant does not revoke such Release within any time provided by the Debtors to do so.

⁶ *Revised Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Authorizing the Use of Cash Collateral, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 96] (the "DIP Order").

Participants Title	Threshold Performance Tier	Target Performance Tier	Max Performance Tier
President, Chief Executive Officer	\$182,200	\$364,400	\$455,500
Senior Vice President Technology	\$96,200	\$192,400	\$240,500
Senior Vice President and Chief Human Resources Officer	\$97,800	\$195,600	\$244,500
Senior Vice President Operations & Integrated Supply Chain ⁷	\$96,800	\$193,600	\$242,000
Senior Vice President and Managing Director of Asia Pacific	\$93,800	\$187,600	\$234,500
Senior Vice President General Counsel	\$88,600	\$177,200	\$221,500
Senior Vice President and Chief Financial Officer	\$81,800	\$163,600	\$204,500
Senior Vice President, Environment Security, Safety and Health	\$67,400	\$134,800	\$168,500
Vice President Strategic Development	\$60,200	\$120,400	\$150,500
Vice President Commercial	\$61,600	\$123,200	\$154,000
Vice President Chemicals and Intermediates	\$56,800	\$113,600	\$142,000
Total Award Values	\$983,200	\$1,966,400	\$2,458,000

III. Market Compensation Benchmarking Analysis

15. In assessing the reasonableness of the KEIP, I worked with my team to review and analyze a peer group of thirteen companies with funded debt between approximately 50 percent to 250 percent of the Debtors' funded debt.⁸ Further, my team and I matched the proposed KEIP program to those of the Peer Group companies.⁹ The analysis provided competitive key employee incentive compensation benchmarks based on companies with similar financials, industry focus, and

⁷ One KEIP Participant is currently on medical leave, and scheduled to return in June 2025. As detailed in the *Declaration of Robert Del Genio in Support of the Debtors' Motion for Entry of an Order (I) Authorizing and Approving the Debtors' Key Employee Incentive Plan and (II) Granting Related Relief*, he is essential to the Debtors' go-forward business and as such has been included as a KEIP Participant.

⁸ The executive compensation peer group consists of California Resources Corp., Talen Energy Supply, LLC, Revlon, Inc., Wesco Aircraft Holdings, Inc., Diamond Offshore Drilling, Inc., Enviva, OneWeb Global Ltd., Genesis Care Pty Ltd., Amyris Inc., LSC Communications, Inc., NPC International, Inc., RobertShaw U.S. Holding Corp., and Exide Holdings, Inc. (collectively, the "Peer Group").

⁹ In addition to the Peer Group, the Debtors and their advisors also reviewed compensation arrangements that set short term compensation programs as a percentage of base salaries in place at a broader set of distressed companies in developing the Debtors' compensation program as a whole.

bankruptcy district. Subsequently, my team and I compared the aggregate proposed payments for KEIP Participants to the aggregate payments made under the Peer Group key employee incentive programs.

16. If the Court approves the KEIP, the target cost per participant would be in the 8th percentile of the Peer Group and the total cost would be in the 31st percentile. Further, when compared to the Debtors' funded debt, the KEIP constitutes 0.10 percent of the Debtors' funded debt. This number falls at the 23rd percentile of the Peer Groups' KEIP amount to funded debt ratio. Finally, the Participants' go-forward annual target total direct compensation represents a five percent decrease, in the aggregate, from their prepetition compensation levels. Further, in comparison to the Peer Group, the aggregate and per-participant incentive bonuses contemplated under the KEIP at each target level are, respectively, approximately at or below the 25th percentile of the Peer Group.

17. I believe that the compensation opportunities will result in KEIP Participants in the aggregate receiving compensation comparable to market compensation, on average, assuming even the maximum payouts under the KEIP. As such, I believe that such award opportunities are a reasonable, market-based approach and are justified under the circumstances of these chapter 11 cases.

IV. The Performance Targets

18. Under the KEIP, awards are payable only upon the Debtors' achievement of certain monthly adjusted EBITDA-based operational performance targets measured at the end of each performance period, first period ending the last day of the month that is three months following the Petition Date and the second period ending the last day of the month that is the month before the effective date of a chapter 11 plan, which I understand under the current case milestones is expected to be August 29, 2025. Achievement of the performance targets were designed to help the Debtors

successfully increase their performance and achieve their operational goals. The performance targets established by the Debtors were developed carefully to ensure that they (a) incentivize participation and (b) are an appropriate “reach” to drive performance, on the one hand, but will not present unrealistic or unattainable goals, on the other hand—which would thwart the incentivizing nature of the KEIP. To accomplish this, the Debtors developed the performance targets based on both historical performance data as well as the levels of production needed to accomplish their go-forward production plan.

19. Accordingly, I believe that the KEIP is appropriately tailored to incentivize the KEIP Participants, which will inure to the benefit of the Debtors’ creditors and other key stakeholders and is in line with similarly situated companies.

Conclusion

26. Based on my experience, and the work I have completed in this case, I believe that the design, structure, cost, and award opportunities available under the KEIP are reasonable given the facts and circumstances of these chapter 11 cases. The Debtors and their advisors performed substantial due diligence in developing the KEIP, including thoroughly reviewing peer group data, and determining the payments amounts that are reasonable in comparison to other similarly situated companies. Lastly, I believe the KEIP is essential to the success of the Debtors’ continued operations during these chapter 11 cases. For the reasons set forth in this Declaration, I submit that it would be appropriate for the Court to approve the KEIP, as contemplated by the KEIP Motion.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: May 16, 2025

/s/ Gilbert Jones

Name: Gilbert Jones

Title: Senior Managing Director

FTI Consulting, Inc.

Exhibit B

Del Genio Declaration

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

In re:

ASCEND PERFORMANCE MATERIALS
HOLDINGS INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 25-90127 (CML)
)
)
) (Jointly Administered)
)

**DECLARATION OF
ROBERT DEL GENIO IN SUPPORT OF THE
DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING AND APPROVING THE DEBTORS'
KEY EMPLOYEE INCENTIVE PLAN AND (II) GRANTING RELATED RELIEF**

I, Robert Del Genio, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury:

1. I am the Chief Restructuring Officer of each of the Debtors and the co-leader of the Corporate Finance and Restructuring segment of the New York Metro Region at FTI Consulting, Inc. ("FTI"), the Debtors' proposed restructuring advisor. I have over forty years of experience in restructuring and mergers and acquisitions and have served as a financial advisor to both public and private companies, specializing in advising companies, lenders, creditors, corporate boards, and equity sponsors across a wide range of industries, both domestically and internationally. I have undertaken both advisory and executive roles, including Interim Chief Executive Officer, Chief Strategic Officer, Strategic Planning Officer, and Chief Restructuring Officer.

2. I have played a key role in many successful chapter 11 restructurings, including,

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/Ascend>. The location of Debtor Ascend Performance Materials Holdings Inc.'s principal place of business is 1010 Travis St., Suite 900, Houston, Texas 77002.

but not limited to, serving as the financial advisor to Audacy Inc., Waypoint Leasing Holdings Ltd., TPC Group, Inc., GNC Holdings Inc., Catalina Marketing Corporation, Frontier Communications Corporation, OSG Group Holding, Inc., Mobileum Inc., Altera Infrastructure, LP, ESSAR Steel, Algoma Steel Inc., Reichhold Holdings US, Inc., Milacron, Inc., Bowflex Inc., Caraustar Industries, Inc., MicroAge, Inc., CST Industries, Inc., Dan River, Inc., Wheeling-Pittsburgh Steel Corp., US Internetworking, Factory Card Outlet, Malden Mills, and Metal Forming Technologies. I have also acted as the Chief Restructuring Officer or Strategic Planning Officer, as applicable, of the following entities during their chapter 11 proceedings: Voyager Aviation Holdings, LLC, CHC Group Ltd., RHI Entertainment, Inc., The Weinstein Company Holdings LLC, PHI, Inc., F & W Media, Inc., and Western Global Airlines LLC. In addition, I previously served as the Chief Strategic Officer of Production Resources Group, L.L.C. and the interim Chief Executive Officer of Panavision Inc. and was a member of the boards of Panavision Inc., Voyager Aviation Management Ireland, CHC Group Ltd., Washington Group International, Inc., Lazare Kaplan International, Inc., and Buffets, Inc.

3. FTI has a wealth of experience in providing financial advisory and interim management services in restructurings and enjoys an excellent reputation for the services it has rendered in large and complex chapter 11 cases on behalf of debtors and creditors throughout the United States. I joined FTI in 2017 when it acquired CDG Group plc, where I was a co-founder and managing member. Prior to that, I was a Corporate Finance Partner and a National Director of Ernst & Young Global Limited. I graduated from the University of Notre Dame with high honors and a bachelor's degree in business administration and received a master's in management from the Kellogg Graduate School of Management at Northwestern University. I am also a fellow of the American College of Bankruptcy.

4. In my capacity as the Debtors' Chief Restructuring Officer, I advise the Debtors on a number of issues including preparation of weekly and monthly operating cash flow budgets, addressing concerns of customers, vendors, and other constituents regarding this chapter 11 process, and preparation of various operational analyses on behalf of the Debtors. As a result, I am familiar with the Debtors' day-to-day operations, business and financial affairs, and books and records, including the Debtors' proposed key employee incentive plan (the "KEIP") as set forth in the *Debtors' Motion for Entry of an Order (I) Authorizing and Approving the Debtors' Key Employee Incentive Plan and (II) Granting Related Relief* (the "KEIP Motion").²

5. I submit this declaration (the "Declaration") on behalf of the Debtors in support of the KEIP Motion. Except as otherwise indicated, all facts set forth in this Declaration are based upon (a) my personal knowledge of the Debtors' operations and finances, (b) information learned from my review of relevant documents, (c) information supplied to me by members of the Debtors' management, their advisors, and/or employees of FTI working directly with me or under my supervision, direction, or control, or (d) my views based on my experience, knowledge, and information concerning the Debtors' operations, financial affairs, and restructuring initiatives. I am not being compensated specifically for this testimony, other than through payments proposed to be received by FTI as professionals retained, subject to Court approval, by the Debtors. I am above 18 years of age; I am competent to testify, and, if called as a witness, I could and would testify competently to the facts set forth in this Declaration.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the KEIP Motion.

Background

6. As further described in my First Day Declaration,³ prior to the commencement of these chapter 11 cases, the Debtors undertook a series of business-performance initiatives to manage their cash flows, adapt to current market trends, and offset operational headwinds, including:

- imposing strict governance controls on spending decisions;
- engaging with key vendors and suppliers and making strategic determinations to defer certain vendor obligations;
- entering into approximately \$250 million in sale leaseback transactions for assets in the United States;
- implementing several cost rationalization measures, including reducing headcount, decreasing manufacturing costs, and consolidating the operational footprint;
- factoring certain of the Company's foreign accounts receivables; and
- reducing inventory levels to control costs.

These labor-intensive initiatives involved each of the KEIP Participants, who were mission critical in implementing these initiatives while simultaneously performing their daily duties.

7. In the months leading up to the Petition Date, in addition to working to preserve their long-term growth initiatives and addressing their standard daily responsibilities, each of the KEIP Participants simultaneously spent significant time preparing the Debtors for these chapter 11 cases, and worked diligently with the Debtors' advisors to, among other things, obtain bridge financing and subsequent debtor-in-possession financing, analyze operational and contractual issues related to the filing, discuss and review first day pleadings in advance of filing. The KEIP Participants' increased workloads have continued postpetition, as they remain instrumental in the

³ Declaration of Robert Del Genio, Chief Restructuring Officer of Each of the Debtors, in Support of the Debtors' Chapter 11 Petitions and First Day Motions [Docket No. 24] (the "First Day Declaration").

administration of these chapter 11 cases by, for example, continuing to engage with vendors, customers, and employees to maintain stability and uphold seamless performance across the business. The KEIP Participants are continuing these efforts all while performing their day-to-day functions.

8. Accordingly, to ensure continued smooth operations during the pendency of these chapter 11 cases and a successful emergence, the Debtors have been working with their advisors to ensure the KEIP Participants are properly incentivized to keep up with the increased demands that they are facing. As a result, the Debtors, their advisors, the Special Committee, and the Board determined that the KEIP was necessary to appropriately incentivize management during these chapter 11 cases. Additionally, the KEIP has been shared with various constituents, including the United States Trustee for the Southern District of Texas (the “U.S. Trustee”), the Ad Hoc Group of Term Loan Lenders, and the ABL Agent. Further, the KEIP reflects the Debtors’ extensive negotiations with the Ad Hoc Group of Term Loan Lenders who are supportive of the contemplated KEIP.

The Need for a KEIP

9. I believe that each of the KEIP Participants is critical to the Debtors’ restructuring. The KEIP Participants include 11 members of the Debtors’ management team. The KEIP Participants are:

- Phillip McDivitt, President and Chief Executive Officer;
- Vikram Gopal, Senior Vice President of Technology;
- Gustavo Nechar, Senior Vice President and Chief Human Resources Office;
- Chris Witte; Senior Vice President of Operations and Integrated SC⁴;

⁴ Chris Witte is currently on medical leave, and scheduled to return in June, 2025. Mr. Witte joined the company in 2024, and brings with him over thirty-five years of chemical manufacturing and engineering expertise,

- Kevin Wu, Senior Vice President and Managing Director of Asia Pacific;
- Scott Ralston, Senior Vice President and General Counsel;
- Tim Frielingsdorf, Senior Vice President and Chief Financial Officer;
- Paul Cartlidge, Senior Vice President and Environmental, Safety, Security, and Health Officer;
- Grace Rojas, Vice President of Strategic Development;
- Steven Manning, Vice President Commercial; and
- Alex Mihut, Vice President of Chemicals and Intermediates.

10. These members of the Debtors' management team are generally responsible for the overall strategy and direction of the Debtors' enterprise and have played, and will continue to play, a central role in the Debtors' chapter 11 cases and in the overall success of the restructuring effort.

11. Specifically, the KEIP Participants, among other things, are leaders of various business units or functional areas for the Debtors and are directly involved in (a) developing growth strategies and new product development, (b) creating the budget and developing the business plan, (c) increasing the efficiency of the Debtors' operations, (d) developing protocols for hiring and training employees, (e) managing liquidity, (f) implementing cost reduction programs, (g) designing and instituting safety programs, (h) managing customer and vendor relationships, and (i) driving sustainability initiatives.

12. In recent months, the KEIP Participants have seen a substantial increase in their workloads without any concomitant increase in their compensation. Despite uncertainty about their

including multiple prior executive leadership roles with companies such as BASF SE and SABIC. Mr. Witte also possess extensive experience in capital budgeting and investments, strategic direction, manufacturing digitalization and sustainability strategy. While Mr. Witte is currently on leave, he is set to return during the pendency of these chapter 11 cases where, in my opinion, his excellent background and extensive skillset will be invaluable to the Debtors and their go-forward operations. Absent inclusion in the KEIP, the Debtors' ability to maintain seamless performance across the business would be at risk, to the detriment of their stakeholders.

go-forward salaries, the KEIP Participants have put substantial effort into negotiating the Debtors' restructuring and operating the Debtors' business during these chapter 11 cases. In the months leading up to the Petition Date and during these chapter 11 cases, the KEIP Participants have and will continue to face particular challenges, including: (a) providing proper messaging to, and engaging with, various stakeholders, including but not limited to, lenders, employees, customers, and vendors, (b) assisting the Debtors' advisors in providing stakeholder diligence, preparing material pleadings filed with the Court, and satisfying the Debtors' chapter 11 reporting obligations, (c) facilitating the Debtors' restructuring transaction through a chapter 11 plan, and (d) confronting and addressing any and all legal, operational, and compliance issues that have arisen since the Petition Date and are likely to continue to arise as a result of these chapter 11 cases. To date, the KEIP Participants have met these challenges and have directly engaged with vendors, customers, and employees to maintain stability and performance across the Debtors' business.

13. The Debtors' ongoing success depends on the skill, dedication, knowledge, and loyalty of its management. Without the KEIP Participants' services, the Debtors will be unable to successfully maintain their operations during the pendency of these chapter 11 cases and likely experience severe business disruption from any attendant employee turnover. Accordingly, I believe that it is critical that the Debtors implement the KEIP to ensure that the KEIP Participants are incentivized to continue navigating the Debtors through chapter 11 while performing their day-to-day obligations to the best of their ability. I believe that a leadership team that is properly incentivized to focus on the crucial role they play in these chapter 11 cases, along with their daily responsibilities, is critical to maintaining a high level of business performance and will inure to the benefit of the Debtors' major stakeholders, including their lenders, customers, vendors, and employees.

The KEIP Metrics

14. Under the KEIP, the KEIP Participants will receive cash incentive payments, measured and paid out in two installments, the first on the last day of the month that is three months following the Petition Date and the second on the last day of the month that is the month before the effective date of a chapter 11 plan. The KEIP incentive payments will be determined by one performance metric: achievement of operational EBITDA at a rate of \$124.1 million under the Debtors' 2025 annual operating plan via monthly performance goals (the "2025 Operational EBITDA Goal"). This goal represents an 18 percent increase from the Debtors' 2024 adjusted operating EBITDA.⁵ The payments will vary based on performance tiers: (a) a maximum tier equivalent to achievement of equal or greater than 110 percent of the 2025 Operational EBITDA Goal, (b) a target tier equivalent to achievement of equal or greater than 100 percent of the 2025 Operational EBITDA Goal, and (c) a threshold tier equivalent to achievement of equal or greater than 90 percent of the 2025 Operational EBITDA Goal. Pursuant to these tiers, payments will range from 50 percent of the target performance amount if the Debtors meet the threshold performance level to 125 percent of the target performance amount for exceeding the 2025 Operational EBITDA Goal. However, the KEIP Participants are not entitled to payment under the KEIP if the Debtors fail to meet the threshold performance target (*i.e.*, achievement of at least 90 percent of the 2025 Operational EBITDA Goal, as adjusted for any impact on tariffs).

15. The performance targets will be measured twice, once each performance period, first on the last day of the month that is three months following the Petition Date and second on the last day of the month that is the month before the effective date of a chapter 11 plan. Achieving the performance target for each period will be considered independently of performance for other

⁵ For the avoidance of doubt, the impact of any potential tariffs would be excluded from the calculation of EBITDA.

periods, but performance will also be measured on a cumulative basis at the end of the program, and a “catch up” payment will be made to the extent the Debtors’ achieve their performance goal by emergence.

16. I believe the Debtors’ performance metrics under the KEIP ensure that the Debtors will maximize value for all their stakeholders, minimize the disruption to the Debtors’ business caused by the chapter 11 cases, and facilitate a successful restructuring. Since the Petition Date, the Debtors have evaluated the KEIP with the benefit of independent oversight and guidance from FTI, and their other financial and legal advisors and was recommended by the Special Committee to the Board for approval. The KEIP was subsequently approved by the Board and the Debtors’ key economic stakeholders. The proposed award opportunities reflect FTI’s benchmarking analysis versus the Debtors’ industry peers and historical practices, as well as a review of incentive-based compensation plans approved in other chapter 11 cases.

17. I also believe that the KEIP properly incentivizes the KEIP Participants to operate the Debtors’ business during the pendency of chapter 11 in as efficient and cost-effective a manner as possible to maximize the value of their estates. The 2025 Operational EBITDA Goal is based on the Debtors’ projections contained in their annual operating plan for the 2025 fiscal year, which contemplates an 18 percent increase over 2024. As such, the goal under the KEIP is challenging, with the baseline threshold still requiring 90 percent achievement of the 2025 Operational EBITDA Goal, but attainable based on historical performance. Further, the KEIP Participants are not entitled to a payout should none of the performance thresholds be reached, ensuring that the KEIP Participants must continue the exceptional efforts they have shown so far in these chapter 11 cases, and not merely clock in to earn their payout.

18. Further, I believe that providing incentive opportunities, such as those contemplated by the KEIP, will enable the Debtors to not only achieve, but possibly exceed, their near-term operational goals, as reflected by tangible increases in the Debtors' adjusted operational EBITDA. I believe that achieving even the threshold award opportunity will mean that KEIP Participants have performed well against these challenges for the benefit of all stakeholders. The KEIP Participants are material to sustaining the Debtors' business and facilitating the restructuring transactions. I believe that without the continued commitment of the KEIP Participants, the Debtors' ability to achieve a successful result in these chapter 11 cases may be severely compromised.

19. For the reasons set forth in this Declaration, I submit the KEIP is a sound exercise of the Debtors' business judgment, is justified based on the facts and circumstances, and should be approved.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: May 16, 2025

/s/ Robert Del Genio

Robert Del Genio

Chief Restructuring Officer

Ascend Performance Materials Holdings Inc.

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

notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”), if any; and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing, if any, establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The KEIP is authorized and approved in its entirety.
2. The Debtors are authorized, pursuant to sections 363(b) and 503(c) of the Bankruptcy Code, to take all actions necessary to implement the KEIP on the terms and conditions set forth in the Motion, including making any payments that come due pursuant to the terms thereof during these chapter 11 cases and without the need for further Court approval.
3. Notwithstanding the relief granted herein or any action taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of, any claim held by any employee or other person or entity.
4. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rules 2002 and 6004(a), the *Bankruptcy Local Rules for the Southern District of Texas*, and the *Procedures for Complex Cases in the Southern District of Texas* are satisfied by such notice.
5. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.
6. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

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

Houston, Texas

Signed:

CHRISTOPHER LOPEZ
UNITED STATES BANKRUPTCY JUDGE