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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

MERIT STREET MEDIA, INC.,¹

Debtor.

Chapter 11

Case No. 25-80156 (SWE)

Docket Nos. 11, 12, 35

**OBJECTION OF PROFESSIONAL BULL RIDERS, LLC TO DEBTOR'S EMERGENCY
MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING (A)
POSTPETITION FINANCING, AND (B) THE USE OF CASH COLLATERAL; (II)
GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE
EXPENSE CLAIMS; (III) MODIFYING THE AUTOMATIC STAY; (IV) SCHEDULING
A FINAL HEARING; AND (V) GRANTING RELATED RELIEF**

Professional Bull Riders, LLC ("PBR"), by and through their undersigned counsel, hereby

¹ The last four digits of the Debtor's federal tax identification number are 8990. The Debtor's mailing address is 5501 Alliance Gateway Fwy, Fort Worth, TX 76177.

submits this objection (the “Objection”) to *Debtor’s Emergency Motion for Entry of Interim and Final Orders (I) Authorizing (A) Postpetition Financing, and (B) the Use of Cash Collateral; (ii) Granting Liens and Providing Superpriority Administrative Expense Claims; (iii) Modifying the Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* [Docket No. 11] (the “DIP Motion”)² and in support of the Objection respectfully states as follows:

PRELIMINARY STATEMENT

1. The Debtor does not need DIP Financing. It has laid off almost all its employees and is not operating. The DIP Budget provides for the payment of professional fees, labor costs for 6 employees, and wind-down costs, which are presumably fees and interest due under the DIP Financing. There is no expenditure for preserving the value of the Debtor’s assets, likely because the assets are intangibles that do not need preserving or were transferred to another entity founded by one of the Debtor’s directors on the eve of this Chapter 11 filing (the “Chapter 11 Case”).

2. The DIP Lender, Peteski Productions, Inc. (“Peteski”), is plainly an insider. Phillip C. McGraw (“Dr. Phil”) founded the DIP Lender and serves as its President and Chief Executive Officer.³ The DIP Lender is the Debtor’s majority shareholder, and Dr. Phil was the Debtor’s sole director at all relevant times until the Debtor hired its Chief Restructuring Officer, Gary Broadbent (the “CRO”). The Debtor appointed the CRO as a director alongside Dr. Phil just two weeks before filing this Chapter 11 Case.

3. The true purpose of the DIP Financing is to release the DIP Lender and other related parties from all Debtor’s claims against them. But the Debtor has not proffered what those claims might be or their potential value. Nor has the Debtor attempted to demonstrate that it conducted

² Undefined capitalized terms used in this Objection shall have the meanings given to them in the DIP Motion.

³ DIP Lender’s corporate information is publicly available at <https://comptroller.texas.gov/taxes/franchise/account-status/search/32003988881>.

any investigation into those claims whatsoever. It just proposes to waive them, sight unseen.

4. The DIP Financing also seeks to roll up the DIP Lender's \$7.9 million Prepetition Bridge Loan and permanently bar any challenge to the loan's validity, priority, and allowability, as well as the liens securing it. As already noted, the DIP Lender is an insider and made a loan to the Debtor on the eve of bankruptcy that no arm's length lender would have made. And the Debtor is doing its best to lock in this disguised equity interest as postpetition, senior, secured DIP financing.

5. As the release and roll-up illustrate, even if the DIP Financing was needed (it is not), its terms are neither fair nor reasonable and are designed to give the insider DIP Lender an unfair advantage over other creditors. The Court should reject this ploy.

BACKGROUND

I. Factual Background Between the Debtor and PBR

6. The objector, PBR, is an international professional bull riding organization. It is the largest and most prestigious bull riding organization in the world, promoting and organizing the premier professional bull riding tour, a Teams league established in 2022, and numerous world-class bull riding events in four countries (Australia, Canada, Brazil, and the United States).⁴

7. PBR and the Debtor were embroiled in extensive litigation when the Debtor filed this Chapter 11 Case, which the CRO acknowledged in his First Day Declaration. *See Declaration of Gary Broadbent, Chief Restructuring Officer of the Debtor, In Support of the Debtor's Chapter 11 Proceeding* (the "First Day Declaration") [Docket No. 14].

8. The dispute between PBR and the Debtor arises from the Debtor entering into a *Media Rights Agreement* ("Agreement") dated as of May 3, 2024 to air PBR's programming, under which the Debtor was required to pay PBR a sizable rights fee, in monthly installments, over four

⁴ Information about PBR and its events is publicly available on PBR's website: <https://pbr.com/>. PBR has worked to build a top-notch sport, and to make it accessible to fans around the world.

years. In July 2024, the Debtor and PBR also entered into a related *Digital Platform Development & Distribution Agreement* (“Digital Agreement”) and *Shoulder Program Agreement* (“SPA” and collectively with the Agreement and the Digital Agreement, the “Agreements”), under which the Debtor owed additional contractual duties and payments to PBR. The Debtor began broadcasting PBR’s content in mid-July 2024. Due to Debtor’s breaches of the Agreement, specifically its uncured failures to pay the rights fee owed thereunder, PBR terminated the Agreement in November 2024 and commenced an arbitration against the Debtor. In the arbitration, PBR alleges breach of contract and seeks damages in an amount of \$181,427,483.00 (the “Arbitration”), plus attorneys’ fees. The Debtor claims that the Arbitration is one of the bases for its bankruptcy filing.

9. PBR initiated the Arbitration against the Debtor on November 2, 2024. Shortly thereafter, PBR amended its arbitration demand to add Dr. Phil—the founder, President, and CEO of the DIP Lender—as a respondent. In December 2025, Dr. Phil filed a declaratory judgment action against PBR in Texas state court—*Phillip C. McGraw v. Professional Bull Riders, LLC*, Cause No. 067-360021-24 (67th Judicial District, Tarrant County, TX)—seeking a declaration that he was not subject to arbitration (the “Texas Alter Ego Action”). PBR agreed to litigate in Texas state court and filed counterclaims for alter ego against Dr. Phil. In the Texas Alter Ego Action, PBR alleges that Dr. Phil is the alter ego of the Debtor and thus is responsible to PBR for the Debtor’s breach of the Agreement. The Texas Alter Ego Action was stayed pending the outcome of the arbitration, in accordance with Texas law. The Arbitration was automatically stayed following the Debtor’s bankruptcy filing.

10. Dr. Phil and the Debtor have consistently refused to provide any discovery or information concerning the alter ego claims. Despite repeated requests, they refused to voluntarily provide any assurances that the Debtor was properly capitalized. Before the Texas Alter Ego

Action was stayed, they advanced a case management order which purported to resolve the alter ego claims on an expedited basis with no discovery (the order was never adopted). In the Arbitration, the Debtor vehemently objected to all alter ego discovery. The Debtor filed this Chapter 11 Case immediately before the deposition of Dr. Phil and disclosure of additional financial information was scheduled to occur. Now, as a condition for providing the DIP Financing to the Debtor, the DIP Lender has demanded immediate and comprehensive releases from the Debtor that would arguably extinguish all alter ego and fiduciary duty claims against Dr. Phil and the DIP Lender without any meaningful discovery or investigation into those claims.⁵

11. On July 11, 2025, PBR filed a proof of claim against the Debtor for an unsecured claim in the amount of \$181,427,483.00, assigned claim number 0000010003 on the Debtor's claim register. Based on its review of the Debtor's list of its top 30 unsecured creditors, PBR expects that it is the Debtor's largest unsecured creditor.

12. Despite the magnitude of PBR's claim, of which the Debtor was most certainly aware as the CRO disclosed it in his First Day Declaration, PBR was curiously omitted from the list of 30 largest unsecured creditors filed with the Debtor's petition, which list must include even claims disputed by the Debtor. This begs the inference that the intent of this omission was to make the depths of the Debtor's insolvency appear limited to relatively small trade creditor claims.

13. On July 17, 2025, the United States Trustee appointed an official committee of unsecured creditors. PBR was appointed to serve on that committee. [Docket No. 95].

14. The Debtor is not an operating entity, it has little to no assets, and it does not have

⁵ Notwithstanding the foregoing, PBR reserves all rights with respect to its claims against Dr. Phil and other Released Parties, whether such claims have been asserted already or may be asserted in the future, to argue that those claims are particular to PBR and do not belong to the Debtor and therefore, cannot be released by the Debtor. *See In re Coutts*, No. 21-40528, 2022 WL 3367711, *8 (Bankr. E.D. Tex. 2022) ("it does not seem consistent to read *Packer* as establishing a blanket rule that creditors have no standing in every case where alter ego is alleged, even if debtor is an individual. Nor does it seem consistent in light of the above guidance in *Buccaneer* and *Schimmelpenninck*, which both describe circumstances in which a creditor could possibly have standing.")

a plan to reorganize. Transcript of Hearing Held 7/3/25 [Docket No. 47] (“First Day Hearing Tr.”), at 46:22-47:05; 55:24-56:01.

II. The DIP Lender Caused the Debtor’s Bankruptcy Filing For Its Own Benefit

15. As set forth above, the DIP Lender is the Debtor’s majority shareholder. First Day Declaration ¶ 13. Dr. Phil, in turn, owns and controls the DIP Lender. First Day Hearing Tr. 38:20-23. Until mid-June, Dr. Phil was the sole director of the Debtor. First Day Hearing Tr. 45:02-22.

16. On or about June 18, 2024, Dr. Phil or DIP Lender caused the Debtor to retain (i) Gary Broadbent as CRO, (ii) new legal counsel, Sidley Austin LLP (“Sidley”), and (iii) Portage Point Partners LLC (“Portage Point”) as financial advisor and investment banker, purportedly to advise the Debtor in connection with a bankruptcy filing. The terms of the CRO’s engagement by the Debtor—including his scope of authority or terms of compensation—have not yet been disclosed to the Court. Neither Sidley nor Portage Point have filed applications for employment.

17. The Debtor appointed the CRO as the sole member of a Special Committee of the Debtor. First Day Declaration, ¶ 14. The CRO then negotiated the DIP Financing with the DIP Lender under which the Debtor agreed to give away the proverbial farm for the DIP Lender’s benefit in exchange for DIP Financing that does not preserve the value of the Debtor’s assets.

18. Two weeks later, on July 1, 2025, the CRO authorized filing the Chapter 11 Case and DIP Motion.⁶ Docket No. 1, Petition, Board Resolution. On July 2, 2025, the Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Texas (the “Court”).

19. The DIP Financing consists of a term loan secured by new DIP liens and given

⁶ The Resolutions attached to the Petition do not include the signature pages and therefore it is unclear whether anyone signed the Resolution. PBR will be serving discovery requests contemporaneous with the filing of this Objection to, among other things, seek further information regarding what knowledge the CRO had when he approved the DIP Financing and whether he did in fact cause the authorizing resolutions to be adopted.

superpriority administrative expense status in the Debtor's bankruptcy. The DIP Facility would consist of loans in the aggregate amount of \$21.4 million, approximately \$7.9 million of which would be a roll-up of the Prepetition Bridge Loan the DIP Lender made and \$13.4 million of which would be new money. Out of the new money, over 80% of the budgeted proceeds are to be spent on professional fees, with \$8,438,000 budgeted for the Debtor's professional fees and \$2,375,000 budgeted for "other professional fees." By contrast, less than 13% of the budget would be used for wages and other business expenses. Based on the DIP Budget, Sidley Austin, Portage Point, and possibly the CRO, may be the three largest beneficiaries of the DIP Financing proceeds.

20. The most alarming term of the DIP Financing is the release, which would release the DIP Lender and other "Released Parties," which includes the DIP Lender's "current or former affiliates, agents, subsidiaries, partners, controlling persons, attorneys, advisors, professionals, officers, directors and employees"⁷ from claims:

...in connection with the DIP Facility *or their prepetition relationship with such Debtor* or any affiliate thereof relating to any of the DIP Loan Documents or any transaction contemplated thereby; including, without limitation, any so-called 'lender liability' claims or defenses or claims or defenses under chapter 5 of the Bankruptcy Code *or any other causes of action, in each case that any Debtor at any time had, now has or may have, or that its successors or assigns hereafter can or may have against any of the Released Parties for or by any reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of the Final Order.*

See DIP Motion at 21-22 (the "Interested Parties Release") (emphasis added). The Interested Parties Release may include the Debtor's claims such as veil piercing or alter ego claims against Peteski and Dr. Phil and breach of fiduciary duty claims against Dr. Phil in his capacity as the sole director of the Debtor (until a couple of weeks before the Chapter 11 Case was filed).

21. The DIP Motion does not contain any proffer regarding an investigation by the CRO

⁷ Dr. Phil may be a Released Party based on this definition.

or the Debtor’s advisors of the potential value of the claims being released, which could potentially add significant value to the Debtor’s estate. Indeed, that value of the Interested Parties Release could greatly exceed the value of the proposed DIP Financing.

22. Via the Interim DIP Order, the Debtor sought (and received)—over the objection of TCT Ministries, Inc., Trinity Broadcasting of Texas *dba* Trinity Broadcasting Network (“TBN”)—access to \$4.1 million of interim funding for the Debtor to “operate” its business during the interim period and to commence the Adversary Complaint (defined below) against TBN. The balance of the DIP Financing will be funded *only* if, among other things, the Debtor receives a favorable adjudication of the Preference Claim Count in the Adversary Complaint. *See* DIP Motion ¶ 2.

III. Dr. Phil Forms New Media Enterprise on Eve of Debtor’s Bankruptcy Filing

23. On July 1, 2025—the day before the Debtor filed its Chapter 11 Case—Dr. Phil formed a new media company, Envoy Media Co. (“Envoy”). Put simply, Envoy is suspiciously similar to the Debtor’s business. Per a press release, Envoy will include “live, balanced news, original entertainment programming, and immersive viewer experiences,” including library programming and original shows from Dr. Phil and Steve Harvey (which were broadcast on the Debtor’s channel). [July 14, 2025, The Hollywood Reporter, Weprin, Alex, *Dr. Phil Returns: Launches Envoy Media Co. in Comeback Bid.*]

24. While the Debtor has not yet filed its schedules of assets and liabilities, in *Debtor’s Motion for Entry of An Order (I)(A) Approving Notice Thereof, (B) Authorizing the Selection of a Stalking Horse Bidder, (C) Establishing Bid Deadlines and Scheduling Auction and Sale Hearing, and (D) Establishing Certain Assumption and Assignment Procedures and Approving the Manner of Notice Thereof; (II)(A) Authorizing the Sale of the Assets Free and Clear of All Encumbrances, and (B) Approving the Assumption and Assignment of the Assumed Contracts; and (III) Granting*

Related Relief [Docket No. 44] (the “Bid Procedures Motion”), the Debtor states that the assets it is seeking to sell include (i) litigation claims, (ii) contract rights, (iii) intellectual property, (iv) certain other personal property rights, and (v) “an extensive video library developed and maintained by the Debtor.” *See* Bid Procedure Motion ¶ 2.

25. Debtor’s claimed assets include extensive video library and personal property rights, contract rights, and intellectual property, presumably including Dr. Phil’s name, image, and likeness. In comparison, Envoy’s reported assets include library programming and new shows from Dr. Phil and Steve Harvey—not to mention Dr. Phil’s name, image, and likeness. The overlap is curious. It suggests that Envoy may have misappropriated the Debtor’s assets. Dr. Phil was the face of Debtor; indeed, the network was branded as “Dr. Phil’s Merit TV.” Now, Dr. Phil is referenced in a press release as the face of Envoy, a nascent media network with a mission eerily similar to that of Debtor’s and formed on the eve of Debtor’s bankruptcy.

26. It is unclear whether Debtor transferred certain assets to Dr. Phil’s Envoy before filing this Chapter 11 Case or participated in conduct giving rise to additional claims. But as part of the Interested Parties Release, the Debtor seems prepared to cast aside any claim it may have against Dr. Phil for misappropriating its assets and business opportunities, launching a competing business, cannibalizing the Debtor’s business, poaching its talent, or otherwise.

OBJECTION

27. The DIP Financing includes provisions that make clear that the primary, or possibly sole, purpose of the DIP Financing is to insulate the DIP Lender and Dr. Phil from the litigation

claims PBR⁸ alleged against Dr. Phil and to prevent any investigation into those or other claims the Debtor may have against Dr. Phil or the other Released Parties. The DIP Financing terms are neither fair nor reasonable given that the Debtor, a non-operating business with limited assets, does not need a DIP Loan in the first place. The relief requested in the DIP Motion must be denied.

I. The DIP Motion Should Be Analyzed Under the Entire Fairness Standard

28. The proposed DIP Financing is not the standard fare DIP loan. First, the DIP Lender is the Debtor's majority shareholder, making the DIP Financing an insider transaction. *See* Petition, Corp. Ownership Statement [Docket No. 1]; 11 U.S.C. § 101(31). Second, the Debtor has proposed granting the Interested Parties Release, which may foreclose the Debtor from asserting claims such as (i) alter ego claims against the DIP Lender, in its capacity as the Debtor's majority shareholder, (ii) claims against Dr. Phil, in his capacity as the sole director of the Debtor until shortly before the Chapter 11 Case and indirect majority shareholder of the Debtor, and (iii) claims against the DIP Lender, in its capacity as the lender under the Prepetition Bridge Loan, without any investigation or analysis of the claims or their potential value to the Debtor's estate.⁹ Third, the CRO had been employed for less than two weeks when he negotiated with the DIP Lender. He could not, in that period of time, have properly assessed the claims to be released.

29. Debtor's propose that the Court evaluate the DIP Motion under the deferential business judgment rule. The business judgment rule "refers to the judicial policy of deferring to the business judgment of corporate directors ... courts will not second-guess a business decision, so long as corporate management exercised a minimum level of care in arriving at the decision."

⁸ As noted above, while PBR expects the Debtor to take the position that the Interested Parties Release includes PBR's claims (other than its claim against the Debtor), PBR does not concede this point, and reserves all of its rights with respect to its claims against the Released Parties to the extent that the Court approves the Interested Parties Release. That being said, PBR's claims against Dr. Phil do not foreclose the possibility that the Debtor may also have its own claims against him and the other Released Parties.

⁹ As discussed below, the Debtor also proposes to roll-up the Prepetition Bridge Obligations into the DIP Financing, which would also insulate this loan from any challenge.

In re Los Angeles Dodgers LLC, 457 B.R. 308, 313 (Bankr. D. Del. 2011). Critically, however, “[b]y definition, the business judgment rule is not applicable to transactions among a debtor and an insider of the debtor.” *In re Latam Airlines Grp. S.A.*, 620 B.R. 722, 769 (Bankr. S.D.N.Y. 2020).

This Court acknowledged the same at the First Day Hearing:

[w]ell, I will start by saying I agree with the comment made that whenever you have an insider DIP lender, the Court does have to give it higher scrutiny. Any insider transaction in the bankruptcy universe has to be given higher scrutiny if an insider is on the other side from the Chapter 11 debtor.

First Day Hearing Tr. 59:24-60:04.

30. Where (as here) the transaction involves an insider, the debtor must meet the “entire fairness” standard.¹⁰ This standard requires proof that the transaction was done in good faith and is inherently fair, meaning that there was fair dealing and a fair price. *In re Latam Airlines Grp. S.A.*, 620 B.R. 722 at 770-71. Under this analysis “courts are concerned with the integrity and entire fairness of the transaction at issue, typically examining whether the process and price of a proposed transaction not only appear fair but are fair and whether fiduciary duties were properly taken into consideration.” *In re Innkeepers USA Tr.*, 442 B.R. 227, 231 (Bankr. S.D.N.Y. 2010).

II. The DIP Financing Should Not Be Approved

31. To obtain DIP Financing, the Debtor must prove (i) it is unable to obtain unsecured credit per 11 U.S.C. § 364(b), *i.e.*, by allowing a lender only an administrative claim per 11 U.S.C. § 503(b)(1)(A); (ii) the credit transaction is necessary to preserve the estate’s assets; and (iii) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender. *Los Angeles Dodgers*, 457 B.R. at 312. “[T]he uses

¹⁰ This remains an insider transaction notwithstanding that the CRO had authority to negotiate the DIP Financing. In *In re Latam Airlines Grp*, the only two members of the board to vote on whether to approve the DIP financing were both independent directors. *In re Latam Airlines Grp. S.A.*, 620 B.R. at 747. Nonetheless, the bankruptcy court still applied the stricter entire fairness standard to the transaction. *Id.* at 771.

contemplated for the new loan must have serious likelihood of benefitting the property and advancing the purposes of reorganization.” *In re Olde Prairie Block Owner, LLC*, 448 B.R. 482, 493 (Bankr. N.D. Ill.), *aff’d*, 460 B.R. 500 (N.D. Ill. 2011).

32. Under the applicable entire fairness standard, the Debtor has grossly failed to establish facts and circumstances requiring (or justifying) its agreement to the terms and conditions demanded by the DIP Lender. The DIP Motion should be denied for two reasons. First, the DIP Financing is unnecessary. Second, many of its specific provisions are neither fair nor reasonable.

A. The DIP Financing is not necessary to preserve estate assets.

33. The DIP Motion states, with no support, that “the DIP Facility is necessary to preserve the Debtor’s estate, enabling the Debtor to run its restructuring or sale process.” DIP Motion ¶ 35. But the Court is left to guess at why it is necessary. Here, the Debtor has manifested no intention to restructure, and thus cannot contend that a DIP loan is necessary for the same. In fact, it has conveyed the opposite. The Debtor’s Bid Procedures Motion seeks to sell substantially all the Debtor’s assets. [Docket No. 44]. The DIP Motion itself contains milestones requiring the entry of a Bid Procedures Order no later than 35 days after the Petition Date. Tellingly, there is no alternate milestone for filing a plan and disclosure statement. Furthermore, the Debtor laid off substantially all its employees immediately prior to the Petition Date and Dr. Phil seems to have abandoned his interest in the Debtor in favor of his new media enterprise, Envoy. Plainly, neither the DIP Lender, in its capacity as majority shareholder of the Debtor, nor the Debtor, has any intent to restructure.

34. If it means the Debtor is seeking to maintain this Chapter 11 Case while it attempts to procure a release for its insiders, that is not a valid basis for incurring the DIP Obligations.

35. If it means that the DIP Facility will preserve the value of the Debtor’s business as a going concern, the CRO’s testimony at the First Day Hearing regarding the layoff of substantially

all the Debtor's employees and contractors because there was "no work for these people to do" squarely contradicts this. First Day Hearing Tr. 47:02-05.

36. If it means the DIP Facility will allow the Debtor to preserve its assets' value, incurring \$14 million in indebtedness for that purpose is overkill. In the Bid Procedures Motion, the Debtor states that the assets to be sold include (i) litigation claims, (ii) contract rights, (iii) intellectual property, (iv) certain other personal property rights and (v) "an extensive video library developed and maintained by the Debtor." See Bid Procedure Motion ¶ 2. Debtor's decision to include these assets suggests they are the most valuable. But they are all intangible and likely do not require any expenditure to preserve their alleged value. As such, preserving the Debtor's assets is not a valid basis for incurring the DIP Obligations.

37. This leaves funding the sale process as the only possible reason for the DIP Loan. While a Chapter 11 sale process may be a worthwhile expenditure to sell an operating business, the same does not apply to assets of a non-operating business. There is no evidence to support Debtor's assertion that a \$13.4 million DIP Loan is necessary to sell intangible, non-revenue-generating assets or that the sale process will provide value in excess of its cost.¹¹ The DIP Budget does not include any line items about preserving the assets' value. Instead, it will almost entirely fund professional fees and labor costs. The labor costs include payment of prepetition salaries and benefits (which was approved by the Interim DIP Order) and approximately \$184,000 a month in go-forward labor costs. DIP Motion, Ex. A. The CRO testified at the First Day Hearing that the Debtor laid off most of its workforce before the Petition Date and has only 6 employees left. First Day Hearing Tr., 46;19-24. So, the go-forward labor costs average out to \$30,000 a month—an annual salary of \$360,000—for each remaining employee. But the CRO testified there is no work

¹¹ If Dr. Phil transferred the Debtor's assets to his new venture, Envoy, there may be no sale process to conduct. And, if the DIP Financing is approved, there would also be no recourse to Dr. Phil for any misappropriation of assets.

to do. So, query why the Debtor retained these 6 high-cost employees, and why the Debtor should incur further indebtedness to pay these costs. The remainder of the DIP Budget will fund professional fees and \$850,000 in “wind down costs,” likely for the interest and Exit Fee payable under DIP Financing, as these costs are otherwise absent from the Budget. Put simply, the viability of the sale process is suspect. Accordingly, there is no basis to provide Debtor with a DIP Loan to pay sale-process costs.

38. Even if there are assets to be sold, this all adds up to a very expensive sale process for assets with no established value or stalking horse bidder. It is possible that the DIP Lender is the sole bidder, who would credit bid the DIP Obligations and leave no cash to the Debtor’s estate. In that event, Debtor’s assets would shift from creditors’ reach to Debtor’s majority equity owner, whose founder just created a brand-new media enterprise, free and clear of all liens, claims and encumbrances. Meanwhile, unsecured creditors would likely receive no recovery and lose the chance to pursue valuable claims against the DIP Lender. By contrast, if the DIP Financing is not approved, the DIP Lender would need to make a cash bid for the assets. After paying administrative expenses, that cash could flow to unsecured creditors, with no Interested Parties Release, ultimately preserving the value of those claims for the estate’s benefit.

39. In sum, the DIP Financing is an exercise in futility and waste. The Debtor has already shut down its operations (apparently, at least in part, so Dr. Phil can pursue a suspiciously similar new media venture free and clear from the debts, claims, and encumbrances incurred by the Debtor). There is nothing to be saved. The DIP Financing will saddle the Debtor’s estate with over \$13 million in new debt without accomplishing anything to justify its cost. Further, the cost of the DIP Financing is the release of what might be the only valuable assets that the Debtor has: claims against the Released Parties. Before entertaining such broad releases, the Debtor had a duty

to investigate those claims—but it appears it made no attempt to do so. As such, the Debtor asks the Court to approve the Interested Parties Release without any support for such extraordinary relief, particularly at this early stage of the case, and for a non-operating business.

40. The DIP Motion should be denied because the Debtor has failed to establish a need for the DIP Financing to preserve the assets of the estate.

B. The terms of the DIP Financing are neither fair nor reasonable.

41. Even if the Debtor could demonstrate a need for DIP Financing, its terms are neither fair nor reasonable. A DIP lender cannot utilize the DIP financing process to unfairly position itself at the expense of other creditors; yet that is exactly what DIP Lender endeavors to do here. *See In re Tenney Village Co.*, 104 B.R. 562, 568 (Bankr. D. N.H. 1989) (DIP financing terms must not “pervert the reorganizational process from one designed to accommodate all classes of creditors and equity interests to one specially crafted for the benefit of” the secured creditor). Indeed, “a proposed financing will not be approved where it is apparent that the purpose of the financing is to benefit a creditor rather than the estate.” *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 39 (Bankr. S.D.N.Y. 1990). When analyzing a proposed DIP loan, courts must “examine all the facts and circumstances to determine if the estate is being benefitted rather than principally the pre-petition creditor.” *Id.*

42. And yet, many of the provisions of the DIP Financing are designed to benefit the DIP Lender at the expense of the Debtor’s creditors. The two most flagrant examples are the Interested Parties Release and the Roll-Up of the Prepetition Bridge Loan. But, as detailed below, many other provisions would unfairly advantage the DIP Lender in its capacity as majority shareholder of the Debtor and the other Released Parties. This is not permissible.

43. The Debtor alleges it contacted 8 non-insider lenders to solicit DIP financing proposals. Not one offered a proposal. Accordingly, the DIP Lender was free to name its terms. *See Declaration of Lisa K. Lansio in Support of Debtor's Emergency Motion for Entry of Interim and Final Orders (I) Authorizing (A) Postpetition Financing, and (B) the Use of Cash Collateral; (II) Granting Liens and Providing Superpriority Administrative Expense Claims; (III) Modifying the Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* (the "Lansio Declaration") [Docket No. 12] ¶ 11; First Day Hearing Tr. 32:12–21. Soliciting proposals from 8 potential lenders does not constitute a robust process, nor does it mean that the DIP Financing represents the best terms available. The Debtor's process does *not* support the conclusion that the DIP Financing is fair or reasonable.

1. *The Interested Parties Release would waive potentially valuable estate causes of action without any meaningful investigation into such claims*

44. The Debtor seeks sweeping releases of the DIP Lender and other Released Parties that far exceed the DIP Lender's role. The Interested Parties Release likely encompasses Debtor's claims against the DIP Lender in its capacity as majority shareholder of the Debtor and Dr. Phil in his role as Debtor's sole director (until shortly before the Petition Date) and indirect majority equity owner. Specifically, the Interested Parties Release proposes releasing all claims by the Debtor against the Released Parties arising before a final DIP order based upon or related to:

...any other acts or omissions by any or all of the Released Parties in connection with the DIP Facility ***or their prepetition relationship with such Debtor*** or any affiliate thereof relating to any of the DIP Loan Documents or any transaction contemplated thereby; including, without limitation, any so-called 'lender liability' claims or defenses or claims or defenses under chapter 5 of the Bankruptcy Code ***or any other causes of action, in each case that any Debtor at any time had, now has or may have, or that its successors or assigns hereafter can or may have against any of the Released Parties for or by any reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of the Final Order.***

See DIP Motion at 21-22 (emphasis added). The Debtor will no doubt argue the release includes the claims PBR has brought against Dr. Phil and could bring against the DIP Lender.¹²

45. Noticeably absent from the DIP Motion's discussion of the Interested Parties Release is any indication that the Debtor, Debtor's counsel, or CRO have pursued any investigation of the potential value of the claims they are casting aside. These claims might include (without limitation) veil piercing or alter ego claims against the DIP Lender and/or Dr. Phil, and breach of fiduciary duties, fraud, and/or fraudulent transfer claims against Dr. Phil in his capacity as the sole director of the Debtor until shortly before the Petition Date and in connection with his new media enterprise that appears to misappropriate much of the Debtor's remaining assets.

46. Such claims could represent estate assets worth more—potentially much more—than the DIP Financing. If preserved, claims against the Released Parties could provide funds for distribution to creditors. It is not appropriate, fair, or reasonable to waive such claims on behalf of the Debtor's entire estate at this time based on the decision of a CRO and advisors that have been affiliated with the Debtor for less than a month.

47. To date, no one has conducted any investigation—much less a thorough one—that would allow the Court or creditors to fully value and understand the claims being released. What's more, (a) the Debtor has ceased to be an operating business and (b) it appears that Dr. Phil may have breached his duty of loyalty to the Debtor (or the Debtor and/or Dr. Phil may have committed a fraudulent transfer) by misappropriating the Debtor's assets to Envoy, a brand-new media venture—founded on the eve of the Debtor's bankruptcy filing—that appears to be a curiously similar business as the Debtor. Granting the Interested Parties Release before any investigation into these (and other) claims could create catastrophic prejudice to the Debtor's estate. Indeed,

¹² PBR hereby reserves all rights to contest this argument as and when appropriate to the extent that the Interested Parties Release is granted.

there may be no other means of recovery by unsecured creditors, leaving the Debtor's estate administratively insolvent.

48. The Interested Parties Release also fails to comply with the *Procedures for Complex Cases in the Northern District of Texas* (the "Complex Case Procedures"). In complex Chapter 11 cases (like the Debtor's¹³), unless otherwise ordered by the Court, parties-in-interest have rights to investigate releases proposed by a debtor in a financing motion. Complex Case Procedures. § 14(b). Specifically, Section 14(b) provides that:

Unless otherwise ordered by the Court, **an order approving a Financing Motion that contains provisions pursuant to which the debtor(s):** (i) stipulates, acknowledges, or otherwise admits to the amount, validity, priority, extent, and/or perfection of prepetition claims and/or liens; and/or (ii) **releases claims**, shall provide parties other than the debtor(s) with: (A) seventy-five (75) days from entry of the first interest order; and (B) as to an official committee appointed under 11 U.S.C. § 1102, sixty (60) days from the date of appointment, if appointed within thirty (30) days of the petition date, and in any event not more than ninety (90) days of the petition date, to investigate, challenge and not be bound by such stipulations or releases by filing a complaint or motion seeking authority to commence litigation as a representative of the estate.

Id. (emphasis added). The DIP Motion's proposed order would deprive parties-in-interest of their investigation right but does not request relief from this requirement. The Debtor seeks to render the protections in the Complex Case Procedures futile and end-run other parties' right to investigate and challenge claims that the Debtor is proposing to release. This should not be permitted.

49. In similar circumstances, courts have refused to approve transactions that include releases of claims for the benefit of an insider. *See, e.g. In re Family Christian, LLC*, 533 B.R. 600, 625 (Bankr. W.D. Mich. 2015) (denying a sale motion proposing a sale of assets to an insider that included releases of the debtors' claims against the insider, finding that the debtors failed to

¹³ The Complex Case Procedures are applicable to this Chapter 11 Case. The Debtor filed a *Notice of Designation as Complex Chapter 11 Case* [Docket No. 2] and the Court acknowledged the Chapter 11 Case as being subject to the Complex Case Procedures in the *Order Granting Complex Chapter 11 Bankruptcy Case Treatment*. [Docket No. 51, ¶ 7 (Parties in interest are encouraged to review the Court's Complex Case Procedures in their entirety...)].

“account for the value of the insider releases and avoidance actions being ‘sold,’” failed to pursue an investigation into the value of the insider releases and avoidance actions, and “were unable to articulate a basis for the granting of such releases, let alone their value, at the sale hearing.”); *In re HyLoft Inc.*, 451 B.R. 104, 113–117 (Bankr. D. Nev. 2011) (denying settlement motion to benefit debtor insiders where the court could not “completely ascertain whether the settlement will result in maximum benefit to the Estate and its creditors [where] there appears to be either missing or inconsistent information provided [relating to the values of the state court claims the settlement would release] that is potentially crucial to approving the settlement.”); *In re Exaeris, Inc.*, 380 B.R. 741, 746 (Bankr. D. Del. 2008) (rejecting settlement between debtor and insider that included a release against the insider in part because “the Debtor and the Committee did not submit any evidence of their investigation of potential claims [the debtor] might have against [the insider].”).

50. The Interested Parties Release reveals the true purpose of this Chapter 11 Case and DIP Motion: to transfer control of PBR’s derivative claims¹⁴ to the Debtor and use a release to terminate PBR’s claims against the Released Parties. But DIP lenders cannot use the Chapter 11 process for their own benefit. *See In re Laffite’s Harbor Dev. I, LP*, Case No. 17-36191-H5-11, 2018 WL 272781, at *2–3 (Bankr. S.D. Tex. Jan. 2, 2018) (post-petition financing should be rejected if the terms would “convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the post-petition lender.”); *see also In re Clouter Creek Rsrv. LLC*, 669 B.R. 764, 792 (Bankr. D. S.C. Apr. 18, 2025) (same).

51. The Court should strike the Interested Parties Release from the DIP Financing terms and should not include it in any Final DIP Order that may be entered. Such a broad release is not appropriate or warranted—and even less so at the outset of the case prior to any investigation into

¹⁴ PBR does not concede that the claims are derivative and belong to the Debtor.

such claims.¹⁵

2. *The Roll-up would permanently and irrevocably elevate the Prepetition Bridge Loan to secured, post-petition debt prior to the expiration of the Challenge Period.*

52. The Debtor requests that the Court roll-up the DIP Lender's \$7.9 million Prepetition Bridge Loan. If approved, this would cement the Prepetition Bridge Loan's status as secured debt and avoid any meaningful investigation of whether a loan made on the eve of bankruptcy by the Debtor's majority shareholder should be invalidated, equitably subordinated, recharacterized as equity, or otherwise be subject to challenge. The Court should not grant this request.

53. The Debtor offers the Court no basis to convert the Prepetition Bridge Loan to Roll-Up Loans, arguing only that "roll-ups are routinely made." To the contrary, courts are suspicious of roll-ups and generally disfavor them. *In re Bruin E&P Partners, LLC*, No. 20-33605(MI) (Bankr. S.D. Tex. July 17, 2020) (Judge Isgur noted that "Rollups are heavily disfavored under the Bankruptcy Code"); *see also In re Wildcat Met Mining, Inc.*, No. 1:22-bk-10080, 2024 WL 1025002, at *11 (Bankr. S.D.W.Va. Mar. 8, 2024) ("Roll-ups are generally disfavored.").¹⁶

54. And, importantly, the facts and circumstances here do not warrant converting the

¹⁵ The Interested Parties Release also renders the DIP Financing a *sub rosa* plan. In effect, by including these broad releases in the DIP Motion without permitting any creditor an opportunity to investigate the DIP Lender and the Debtor's relationship, and by limiting the potential estate assets that are available to creditors, the Debtor is trying to circumvent the plan process. *See In re Braniff Airways, Inc.*, 700 F.2d 935, 940 (5th Cir. 1983) ("The debtor and the Bankruptcy Court should not be able to short circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan *sub rosa* in connection with a sale of assets.").

¹⁶ As recognized by Collier, courts view roll-ups as problematic because they can remove any leverage that a debtor has to negotiate with a secured lender and they contravene "the general bankruptcy principle favoring equal treatment of similarly situated creditors and disfavoring payment of prepetition debt outside of a reorganization plan." See 3 COLLIER ON BANKRUPTCY 364.06[2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (noting that the additional protections that a DIP lender obtains on its prepetition debts can "sometimes shift the dynamics of a chapter 11 reorganization dramatically because of the increased rights that holders of an administrative claim may have as compared to the holder of a prepetition secured claim."). Additionally, scholars have also highlighted flaws with roll-ups, emphasizing that "they are not authorized in the Bankruptcy Code . . . [and] contravene the general notion that pre-bankruptcy claims must wait until the conclusion of the case for payment pursuant to a distribution scheme memorialized in a confirmed plan of reorganization." Frederick Tung, *Financing Failure: Bankruptcy Lending, Credit Market Conditions, and the Financial Crisis*, YALE J. REG. 651, 671 (2020).

Prepetition Bridge Loan to Roll-Up Loans. *See In re Capmark Fin. Grp. Inc.*, 438 B.R. 471, 512 (Bankr. D. Del. 2010) (explaining that while there is authority to pay prepetition secured claims outside of a plan of reorganization, including through a roll up, “[t]he question is whether making the payment is justified by the facts and circumstances of a particular case.”) As noted above, the Prepetition Bridge Lender is an insider, not a third-party lender. The Roll-Up request must therefore satisfy the entire fairness standard, which it does not. Instead, it is fraught with issues.

55. *First*, the Bridge Agreement is dated June 30, 2025, but effective as of June 10, 2025, to include prior advances by the DIP Lender to the Debtor in the amount of approximately \$2 million in the amount of the Bridge Loan. DIP Motion, ¶ 17. Lenders do not generally lend money without an agreement in place governing the terms of the loan and its repayment. As such, at least the initial advances by the DIP Lender cannot be properly characterized as secured debt and cannot be rolled up.

56. *Second*, the total funds advanced to the Debtor under the Bridge Loan was \$6,966,636 (*id.*) but the Debtor seeks to roll-up “approximately \$7.9 million in the aggregate principal amount of the Prepetition Bridge Obligations”. DIP Motion, ¶ 5(B). There is clearly a disconnect between the amount of funds advanced by the DIP Lender prior to the Petition Date and the amount the Debtor is seeking to roll-up.

57. *Third*, the Debtor has proffered that no third-party lender was willing to provide DIP financing to this Debtor. As such, it is reasonable to believe that a third-party lender also would not have made the Prepetition Bridge Loan to the Debtor, which was made outside of bankruptcy and without the typical protections afforded to DIP lenders and loans. As such, the Prepetition Bridge Loan bears all the hallmarks of an equity infusion disguised as a loan to afford an insider elevated standing in the Debtor’s bankruptcy case, meriting further investigation.

Accordingly, Debtor has failed to demonstrate the entire fairness of (or even a reasonable basis for) the roll-up and such request must be denied.

58. Moreover, at this early stage, creditors have no way to value the Debtor's assets and know whether the additional secured debt on its balance sheet in the form of the Roll-Up Loans will be the difference between the Debtor having the ability to make a distribution to unsecured claims or not. If the Court denies the request for the Roll-Up, it preserves the ability to seek the subordination or invalidation of the Prepetition Bridge Obligations and liens, should an investigation determine facts supporting such an outcome.

59. While the Debtor may be free to waive its right to challenge the Prepetition Bridge Loan, the Complex Case Procedures also limits a debtor's right to impose its stipulations with regard to prepetition date on other parties-in-interest without them having an opportunity to investigate the claims being released. *Complex Case Procedures*, § 14(b). The proposed Final DIP Order pays lip service to this fact by providing a right for other parties to challenge the Prepetition Bridge Loan during the Challenge Period. However, that right would be effectively negated if the Roll-Up is granted because the DIP Motion also seeks to irrevocably roll-up the Prepetition Bridge Loans upon entry of the Final DIP Order, insulating them from any Challenge, weeks before the Challenge Period would expire. DIP Motion at 24. Again, this Court should not enter an order that would limit, modify, or otherwise deprive parties-in-interests of the protections afforded by the Complex Case Procedures.

60. At the very least, the Roll-Up should be subject to challenge during the Challenge Period and, if the liens and claims of the Prepetition Bridge Lender are ultimately invalidated, recharacterized, or subordinated, the Roll-Up can be unwound and the Prepetition Bridge Lender returned to *status quo ante*. See e.g. *In re Strategic Materials, Inc.*, No. 23-90907 (CML), [Docket

No. 186], at 23 (Bankr. S.D. Tex. Jan. 10, 2024) (“[N]otwithstanding anything to the contrary herein, the DIP Roll-Up shall be subject to Challenge during the Challenge Period in accordance with paragraph 32 hereof”); *In re Sunguard AS New Holdings, LLC.*, No. 22- 90018 (DRJ), [Docket No. 220], at 27 (Bankr. S.D. Tex. May 11, 2022) (“Term Loan DIP Roll-Up [is] [s]ubject to entry of this Final Order and the Challenge Period”); *In re California Pizza Kitchen, Inc.*, No. 20-33752 (MI), [Docket No. 425], at 21 (Bankr. S.D. Tex. Sep. 23, 2020); (“The validity of the liens for the DIP Roll Up Loans shall be subject to the Challenge Period as set forth in Paragraph H.11 of this Final Order.”).

3. *Many other provisions of the DIP Financing are unfair and unreasonable and should not be approved.*

61. In addition to the Interested Parties Release and the Roll-Up Loans, there are several other provisions in the DIP Motion that are neither fair, reasonable, nor appropriate.

62. Critical Need for Financing. PBR objects to any language in the DIP Order providing that the Debtor has a critical need to obtain postpetition financing to “continue the orderly operation of the Debtor’s business, maximize and preserve the Debtor’s going concern value, make contractual payments and satisfy other working capital and general corporate purposes.” Interim Order, ¶ H. As set forth above, the Debtor’s own professionals’ testimony and statements reveal that the foregoing is entirely inaccurate as the main purpose of the DIP Financing is to pay the cost of running a Chapter 11 sale process.

63. Delayed Draw Term Loan. Although the Debtor refers to the proposed DIP Financing as a delayed draw term loan, in fact the DIP Loan would be extended in two installments, one upon entry of the interim order and the other upon entry of the final order. This means that the Debtor proposes to borrow the entire principal balance of the DIP Loan upon entry of the Final Order, thereby causing the Debtor to incur interest charges on the DIP Loan for the entirety of the

Chapter 11 Case. The Debtor should, at the very least, be required to revise the terms of the DIP Loan to make it an actual delayed draw term loan so that the Debtor can borrow only what it needs based on the Budget on a weekly or monthly basis, thereby reducing the interest cost to the estate.

64. Exit Fee. The DIP Financing calls for the DIP Lender to receive an Exit Fee equal to 1.5% “of the total amount of the DIP Facility Loans outstanding.” DIP Motion ¶ 9. The Motion does not specify outstanding as of when. Because the Debtor proposes to include the Roll-Up Loans in the DIP Facility Loans, the DIP Lender is seeking payment of an Exit Fee equal to approximately \$118,500 on the prepetition loan made by the DIP Lender. This should not be permitted. Furthermore, the DIP Lender also seeks an Exit Fee on the new money portion of the proposed DIP Financing, which is also unnecessary here given that the DIP Lender is an insider and will be the primary beneficiary of the DIP Loan and the Chapter 11 Case. The DIP Lender has every incentive to make the DIP Loan here and does not need an Exit Fee.

65. Liens on Avoidance Actions. Avoidance actions are statutory rights created solely for the benefit of a debtor’s estate to allow a debtor-in-possession or trustee to recover certain payments for the benefit of unsecured creditors. *See McFarland v. Leyh (In re Tex. Gen. Petroleum Corp.)*, 52 F.3d 1330, 1335 (5th Cir. 1995) (citation omitted) (proceeds recovered in an avoidance action should benefit “the debtor’s estate and particularly, the debtor’s unsecured creditors.”) The Fifth Circuit has recognized that avoidance powers are intended to benefit a debtor’s creditors in furtherance of bankruptcy law’s primary purpose of providing equality of distribution. *Gaudet v. Babin (In re Zedda)*, 103 F.3d 1195, 1203 (5th Cir. 1997) (“The paramount purpose of the Bankruptcy Act is to provide equality of distribution among creditors. A trustee’s avoidance powers are intended to benefit the debtor’s creditors, as such powers facilitate a trustee’s recovery of as much property as possible for distribution to the creditors.”) It is precisely for these reasons

that bankruptcy courts are hesitant to permit a debtor to pledge avoidance actions and their proceeds as collateral.¹⁷ Here, the Debtor has not yet filed its schedules, and as a result, creditors do not have any information on payments made within the preference period or other transfers made that could be subject to avoidance as fraudulent transfers, including whether any such claims could be asserted against the DIP Lender or other Released Parties, particularly in light of Dr. Phil's new media venture that is suspiciously similar to Debtor's business and was founded the day before this Chapter 11 Case was filed. The Debtor should not be permitted to effectively hand over these claims to the DIP Lender by granting a lien on its avoidance actions. Moreover, the Debtor has not demonstrated any ability to provide a recovery to any creditor other than the DIP Lender in this Chapter 11 Case. As such, the DIP Lender should not be entitled to claim an interest in the avoidance actions or the proceeds thereof. These assets should be reserved for the body of unsecured creditors.

66. Adequate Protection of the Prepetition Bridge Loan. The Debtor seeks adequate protection of the DIP Lender's interest in the Debtor's cash collateral, including the payment of post-petition interest. Presumably, this relief is being sought in the event that the Debtor's request to Roll-Up the Prepetition Bridge Loan into the DIP Financing is not granted, which it should not be. In that event, the Debtor has not established any basis for granting the DIP Lender, in its

¹⁷ See, e.g., *In re Bethlehem Steel Corp.*, 390 B.R. 784, 786-87 (Bankr. S.D.N.Y. 2008) ("Avoidance actions brought pursuant to the Bankruptcy Code never belonged to the Debtor, but rather were creditor claims that could only be brought by a trustee or debtor in possession[.]"); *Buncher Co. v. Official Comm. of Unsecured Creditors of GenFarm Ltd. P'shp. IV*, 229 F.3d 245, 250 (3d Cir. 2000) ("When recovery is sought under section 544(b) of the Bankruptcy Code, any recovery is for the benefit of all unsecured creditors, including those who individually had no right to avoid the transfer."); *Bear, Stearns Sec. Corp. v. Gredd*, 275 B.R. 190, 194 (S.D.N.Y. 2002) ("[T]he purpose of § 547 is to ensure fair distribution between creditors, while the purpose of § 548 is to protect the estate itself for the benefit of all creditors."); *In re Sweetwater*, 884 F.2d 1323, 1328 (10th Cir. 1989) ("[P]ostpetition avoidance actions should be pursued in a manner that will satisfy the basic bankruptcy purpose of treating all similarly situated creditors alike."); See *Official Comm. of Unsecured Creditors v. Goold Electronics Corp. (In re Goold Electronics Corp.)*, No. 93-4196, 1993 U.S. Dist. LEXIS 14318, at *12 (N.D. Ill., Sept. 20, 1993) (vacating bankruptcy court order approving post-petition financing "to the extent that the order assigns to the bank a security interest in the debtor's preference actions.").

capacity as the Prepetition Bridge Lender, adequate protection of its interest in cash collateral. The Budget contains a line item labeled “Bridge Financing” and that line item shows only dashes, indicating no balance.¹⁸ The Court entered the Interim Order in reliance on such testimony and the Debtor’s professed need for \$4.1 million in interim DIP Financing. As such, all creditors of the estate should be entitled to rely on the accuracy of this Budget and the testimony in support thereof. As such, there is no interest requiring adequate protection.

67. Even if the Debtor can establish that the Prepetition Bridge Lender has an interest that is entitled to adequate protection, such right should be subject to, in all respects, the expiration of the Challenge Period without a challenge to the liens securing the Prepetition Bridge Loan or seeking to recharacterize or equitably subordinate the loan. Until such time as the Prepetition Bridge Lender can determine conclusively, by entry of a final order or judgment denying any such Challenges, the Debtor should be prohibited from making any cash adequate protection payments, including reimbursement of fees and expenses or post-petition interest payments, to the Prepetition Bridge Lender.

68. Challenge Period; Budget. As set forth above, the Interested Parties Release and the Roll-Up Loans must not be permitted because if they are, they will cause the Challenge Period to be impermissibly shortened in violation of section 14(b) of the Complex Case Procedures. However, the Debtor seeks to curtail this Challenge Period as of the entry of the Final DIP Order.

69. Given that the Prepetition Bridge Lender is an insider of the Debtor and its majority shareholder, the Committee should be granted standing to bring a Challenge in the DIP Financing Order and should not be required to file a motion for standing as a prerequisite to filing such a Challenge. Further, the Challenge Budget of \$25,000 is too low and should be increased to

¹⁸ As the Debtor’s restructuring advisor testified at the first day hearing the dashes on the Budget mean \$0. First Day Hearing Tr., 34:23-35:3.

\$100,000. The Chapter 11 Case is primarily for the benefit of the DIP Lender and as a condition to being able to reap the benefits that chapter 11 offers, the DIP Lender must provide an adequate investigation budget for the Committee.

70. Carve-Out. The Carve-Out should be revised to limit the Estate Professionals fees subject to the Carve-Out to the amount provided for in the Budget. There is no assurance that the Debtor's estate will not become administratively insolvent. The Budget already allocates more than 80% of the DIP Financing to the fees of Estate Professionals. No amounts in excess of the Budget should be permitted to have the benefit of the Carve-Out.

71. DIP Lender Fees and Expenses. The proposed DIP Financing Order requires the Debtor to promptly pay the DIP Lender's fees and expenses. The order must be revised to provide that the DIP Lender may only be reimbursed for fees and expenses directly related to the DIP Financing, and not for any fees and expenses incurred in connection with the DIP Lender's role as majority shareholder, or the Prepetition Bridge Loan, or potential purchase of the Debtor's assets (even if the purchase price for such bid will be a credit bid of the DIP Obligations). Furthermore, any professional retained by the DIP Lender that is seeking reimbursement from the DIP Lender must be required to submit detailed time entries in order to ensure that the Debtor will not be bearing any costs, fees, or expenses of the DIP Lender when acting in any of its other capacities with respect to the Debtor.

72. In addition, the Debtor should be required to include a line item in the Budget for payment of the DIP Lender's fees and expenses. The Budget includes a line item for Other Professional Fees, which may include both the DIP Lender's fees and expenses and fees and expenses for an official committee of unsecured creditors. Give the DIP Lender's insider status, it is important for full transparency that the Debtor's allotted budget for payment of the DIP Lender's

fees be disclosed to all parties-in-interest.

73. Waivers. The relief requested by the DIP Motion includes the granting of waivers of both sections 506(c) and 552(b) of the Bankruptcy Code. Section 506(c) of the Bankruptcy Code allows the trustee or the debtor-in-possession to recover from a secured party's collateral "the reasonable, necessary costs and expenses of preserving and disposing of" such collateral. Section 552(b) of the Bankruptcy Code provides that a secured creditor's prepetition lien will attach to the postpetition proceeds of its prepetition collateral "except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise." 11 U.S.C. § 552(b)(1).¹⁹ The Debtor's request in the DIP Motion, that this Court allow the Debtor to waive its rights under sections 506(c) and 552(b) cannot be permitted, especially when the DIP Motion does not provide any explanation for why it is reasonable or fair for the Debtor to give up those rights. Additionally, the waiver of section 506(c) rights should not be allowed here where the Debtor does not generate any revenue, and thus, any expenses that are incurred with respect to a secured lender's property will only further deplete the recoveries that general creditors are entitled to.²⁰

74. Credit Bid. The DIP Lender should not be entitled to credit bid the Prepetition Bridge Loans pending the expiration of the Challenge Period without a Challenge being asserted (or a standing motion being filed seeking to assert a Challenge) to the validity and enforceability

¹⁹ Courts have maintained that "[t]he purpose of the equity exception is to prevent a secured creditor from reaping benefits from collateral that has appreciated in value as a result of the trustee's/debtor-in-possession's use of other assets of the estate (which normally would go to general creditors) to cause the appreciated value." *In re Muma Servs. Inc.*, 322 B.R. 541, 558–59 (Bankr. D. Del. 2005) (quoting *Delbridge v. Prod. Credit Ass'n*, 104 B.R. 824, 826 (E.D. Mich. 1989)). The waiver of section 552(b) rights also should not be permitted here where, as PBR has demonstrated above, the factual record of this case is nowhere near fully developed, and it is far too premature for the Debtor to be waiving potentially valuable rights. See *Sprint Nextel Corp. v. U.S. Bank Nat'l Ass'n (In re TerreStar Newworks)*, 457 B.R. 254, 272–73 (Bankr. S.D.N.Y. 2011) (finding request for section 552(b) waiver was premature because factual record was not fully developed).

²⁰ See *In re Domistyle, Inc.*, 811 F.3d 691, 696 (5th Cir. 2015) (citation and internal quotation marks omitted) ("Our case law administering Section 506(c) has emphasized the unfairness of requiring the general estate and unsecured creditors to bear the cost of protecting what is not theirs, an inequity that can be avoided by surcharge."); see also *In re J.K.J. Chevrolet, Inc.*, 26 F.3d 481, 483 (4th Cir. 1994) ("The purpose of this provision [11 U.S.C. §506(c)] is to prevent a windfall to a secured creditor at the expense of the estate.")

of liens securing the obligations, including a claim that the obligations should be recharacterized or equitably subordinated. Furthermore, if any bid by Peteski for all or a portion of the Debtor's assets includes a cash component, Peteski should be required to make a deposit based on the cash portion of the bid and provide evidence of its financial wherewithal to close such a transaction.

RESERVATION OF RIGHTS

75. PBR expressly reserves all rights, claims, defenses, and remedies, including, without limitation, its right to supplement and amend this Objection, to raise further and other objections to the DIP Motion and the form of Final DIP Order, and to introduce evidence prior to or at any hearing regarding the DIP Motion in the event that PBR's objections are not resolved prior to such hearing.

CONCLUSION

WHEREFORE, PBR respectfully requests that the Court deny the DIP Motion and grant PBR such other and further relief as may be just and proper under the circumstances, including immediate and expedited discovery into matters related to the DIP Motion, which PBR will be serving contemporaneously herewith.

Dated July 17, 2025

Respectfully submitted,

/s/ Jason M. Rudd

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CERTIFICATE OF SERVICE

I certify that on July 17, 2025, a true and correct copy of the foregoing document was served by the Court's ECF noticing system on all parties that consent to such service via electronic filing.

/s/ Jason M. Rudd

Jason M. Rudd