IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
TUPPERWARE BRANDS CORPORATION, *et al.*,[1]	)	Case No. 24-12156 (BLS)
Debtors.	)	Jointly Administered
	)	**Re: Docket Nos. 48, 49, 66, 80**

OBJECTION OF DEBTORS TO MOTION OF AD HOC GROUP OF SECURED LENDERS FOR AN ORDER (I) DISMISSING THESE CHAPTER 11 CASES OR CONVERTING THEM TO CHAPTER 7 OR (II) FOR RELIEF FROM THE AUTOMATIC STAY

The Debtors object to the *Motion of Ad Hoc Group of Secured Lenders for an Order (I) Dismissing these Chapter 11 Cases or Converting them to Chapter 7 or (II) for Relief from the Automatic Stay* [Docket No. 48] (the "Motion")[2] and respectfully state as follows:

Preliminary Statement

1. In the first days of these chapter 11 cases, the Ad Hoc Group repeatedly stated that it is not looking to shut down the Debtors' business and "never has."[3] Actions, however, speak

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Tupperware Brands Corporation (2333); Dart Industries Inc. (5570); Deerfield Land Corporation (0323); Premiere Products, Inc. (4064); Tupperware Home Parties LLC (1671); Tupperware International Holdings Corporation (8983); Tupperware Products AG (6765); Tupperware Products, Inc. (8796); Tupperware U.S., Inc. (2010); and Tupperware Brands Latin America Holdings, L.L.C. (0264). The location of the Debtors' service address in these chapter 11 cases is: 14901 S Orange Blossom Trail, Orlando, FL 32837.

[2] Capitalized terms not otherwise defined in this objection (the "Objection") are given the meanings ascribed to them in the Declaration of Brian J. Fox, Chief Restructuring Officer of Tupperware Brands Corporation, in Support of Chapter 11 Petitions and First Day Motions [Docket No. 2] (the "First Day Declaration").

[3] Motion, ¶8 ("The Ad Hoc Group stresses that, although it seeks dismissal or conversion, it does not, as the Debtors assert, wish to "shut down the business," and never has"); Transcript of First Day Hr'g at 19 ("MR. BRILLIANT: Mr. Fox says that the ad hoc group is seeking to shut down the company, which is far from the truth and not the case at all."), *In re Tupperware Brands Corp., et al.*, No. 24-12156 (BLS) (Sept. 19, 2024); Preliminary Obj. of Ad Hoc Group of Secured Lenders to Debtors' Mot. for Authority to Use Cash Collateral at ¶9, n.4, *In re Tupperware Brands Corp., et al.*, No. 24-12156 (BLS) (Sept. 19, 2024) [Docket No. 47] ("[T]he Ad Hoc Group does not wish to 'shut down the business,' and never has.").

louder than words, and the Ad Hoc Group's continued prosecution of the Motion—filed just over twenty-four hours into these chapter 11 cases, prior to the Ad Hoc Group's submission of an actionable proposal for a going concern transaction—speaks volumes. To be clear, the Debtors do not discount the work the Ad Hoc Group has done to date, but without an agreed deal or a binding commitment to fund ongoing negotiations, the Debtors, as fiduciaries for all stakeholders, cannot allow the Ad Hoc Group to continue to monopolize the process. With liquidity waning, the Debtors cannot continue waiting.

2. At this time, the Ad Hoc Group is not prepared to take over the assets. As a result, granting any of the relief requested in the Motion would, at best, change nothing: the Ad Hoc Group would neither be prepared to take over the assets nor be legally able to do so without completing a state-law process. That is the ***best-case*** scenario. The worst-case scenario—an uncontrolled global shut down of the business—is more likely. The Ad Hoc Group's "hope" that a dismissal or conversion would not doom the business (because much of the Company operates internationally and the associated entities are not subject to these proceedings) is fanciful. The Debtors house the Tupperware brand, employ the Company's executive leadership team, and operate its global headquarters; they are the Company's core, and thousands of individuals depend on their continued operation.

3. With these and other stakeholders in mind, the Debtors, with the assistance of their proposed investment banker Moelis, launched an additional postpetition marketing campaign for a cash-bid auction under the framework proposed by the pending Bidding Procedures Motion. As with prior marketing efforts, there is significant interest, but the overhang of the Motion and uncertainty regarding the Ad Hoc Group's right to credit bid have chilled progress in that process, as bidders are understandably hesitant to devote significant resources in the shadow of a potential

nine-figure credit bid. It is for this reason that the Debtors intend to file a revised proposed Bidding Procedures Order and Bidding Procedures reflecting the following schedule changes—most notably, moving the binding bid deadline until after the hearing regarding the Bidding Procedures Motion—to foster a competitive process should the Court deny the Motion and limit the Ad Hoc Group's credit bid:

Date	Initial Schedule	Revised	Description
IOI Deadline	N/A *Originally Bid Deadline*	October 15, 2024	Deadline for when the Debtors must ***actually receive*** non-binding indications of interest from parties
Bidding Procedures Hearing	October 1, 2024	October 17, 2024 at 2:00 p.m. Eastern Time	Date on which Court shall hold a hearing on the Bidding Procedures
Bid Deadline	October 8, 2024	October 21, 2024	Deadline for when the Debtors must ***actually receive*** binding bids from parties.
Auction (if any)	October 10, 2024, at 10:00 a.m. Eastern Time	October 22, 2024, at 10:00 a.m. Eastern Time	Date and time at which an Auction for the Assets will be conducted (if any).
Sale Hearing	October 17, 2024 (subject to the Court's availability)	October 24, 2024 (subject to the Court's availability)	Date on which the Court shall hold a hearing to consider one or more Sale Transactions.

4. The thesis of these chapter 11 cases is that this is not "in essence a two-party dispute capable of resolution in another forum" and the Debtors deserve the opportunity to advance their proposed sale process to completion and the freedom to negotiate with the Ad Hoc Group outside of the shadow of a potential disorderly, contentious, and value-destructive wind-down. Motion, ¶ 21. Contrary to the Ad Hoc Group's arguments, the Debtors are not "hopelessly administratively insolvent" and their business is not doomed. Motion, ¶ 1. As discussed in the First Day Declaration, the Debtors' commitment to an operational turnaround that maximizes value for all stakeholders has been steadfast and determined. *See* First Day Declaration, ¶¶ 74-77. These efforts—combined with market concern that Tupperware products may not be available for

purchase if these cases are not successful—have resulted in better-than-projected results in the early weeks of these cases. At the very least, these chapter 11 cases are not *harming* anything. The Debtors have a shot at success and should be given the chance to take it.

5. The Ad Hoc Group would prefer to exclude all of the Debtors' other stakeholders from the restructuring process, take the business and—if a going-concern transaction proves too complicated or expensive—walk away with the brand. Indeed, their strategy in these chapter 11 cases is a continuation of the aggressive tactics they adopted shortly before the commencement of these cases. To convert or dismiss these cases, the Ad Hoc Group must show that there is ***no*** reasonable likelihood that the Debtors will succeed in their efforts to reach a value-maximizing solution within these chapter 11 cases and establish that there is a substantial or continuing loss to or diminution of the estate to warrant dismissal or conversion. To lift the stay, the Ad Hoc Group's interests must be inadequately protected or their collateral unnecessary for an effective reorganization. The Ad Hoc Group cannot succeed under any of these applicable legal standards. Accordingly, the Motion should be denied and this Objection sustained.

Objection

I. The Ad Hoc Group Fails to Show Cause to Dismiss or Convert the Debtors' Chapter 11 Cases.

6. The Bankruptcy Code provides that the court shall convert a case to chapter 7 or dismiss a case, "whichever is in the best interests of creditors and the estate, for cause." 11 U.S.C. § 1112(b)(1). The "burden is on the moving party to prove cause by a preponderance of the evidence." *In re Rsrvs. Resort, Spa & Country Club LLC*, 2013 WL 3523289, at *2 (Bankr. D. Del. July 12, 2013). Once "cause" is found, "the burden shifts to the opposing party to show why dismissal or conversion would not be in the best interests of the estate and the creditors." *In re Dr. R.C. Samanta Roy Inst. of Sci. Tech. Inc.,* 465 F. App'x 93, 96–97 (3d Cir. 2011). The Ad Hoc

Group offers no evidence, but contends that dismissal or conversion of the Debtors' chapter 11 cases is warranted because of "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).[4] To prevail on a showing of "cause" under subsection 1112(b)(4)(A), "both tests [(a) loss to or diminution of the estate ***and*** (b) absence of a reasonable likelihood of rehabilitation] must be satisfied." *In re AIG Financial Products Corp*, 651 B.R. 463, 475 (Bankr. D. Del. 2023), *aff'd* No. 23-573-GBW, 2024 WL 3967465 (D. Del. Aug. 28, 2024). The Ad Hoc Group fails to show either.

A. The Debtors Have Not Suffered a Substantial or Continuing Loss to or Diminution of the Estate Supporting Dismissal or Conversion.

7. Subsection 1112(b)(4)(A) of the Bankruptcy Code requires a movant to first show the existence of "substantial or continuing loss to or diminution of the estate." 11 U.S.C. § 1112(b)(4)(A). To assess whether there is "substantial or continuing loss to or diminution of the estate," "[a] court must make a full evaluation of the present condition of the estate, not merely look at the debtor's financial statements." *In re AdBrite Corp.*, 290 B.R. 209, 215 (Bankr. S.D.N.Y. 2003); *see also AIG Financial*, 651 B.R. at 475 (declining to dismiss case where debtor "ha[d] cash on hand," had "reduced accruing losses by filing bankruptcy," and where there was potential for deal with movants, notwithstanding their pleadings). Courts do not convert a case merely because a debtor may be sustaining losses while administering its estate; "[s]mall losses over an extended period may be acceptable." *AdBrite*, 290 B.R. at 215. Instead, courts require more—a true degradation of estate assets. *See In re Strawbridge*, 2010 WL 779267, at *4 (Bankr. S.D.N.Y. Mar. 5, 2010) ("[T]here must be both a 'pattern of decline' and an inability to 'stop the

[4] 11 U.S.C. § 1112(b)(4) provides sixteen different grounds for "cause." However, the Ad Hoc Group only pleaded "cause" under § 1112(b)(4)(A). For the avoidance of doubt, the Debtors submit that there is no "cause" for dismissal or conversion on any grounds.

bleeding' for cause to exist under [section] 1112(b)(4)(A)."); *In re Creech*, 538 B.R. 245, 250 (Bankr. E.D.N.C. 2015) (denying motion to convert because "[t]his is clearly not a case where the operating account has been ***depleted*** and there is ***no*** income to fund ongoing expenses") (emphasis added).

8. Courts in the Third Circuit have required the passage of some material time following commencement of chapter 11 cases before finding cause for dismissal under section 1112(b)(4)(A); indeed, loss must be "substantial" and "continuing." *See In re Salem Consumer Square OH LLC*, 629 B.R. 562, 573 (Bankr. W.D. Pa. 2021) ("[A] debtor's monthly operating reports are key to the determination" of the loss prong.); *see also In re Alston*, 756 Fed. Appx. 160, 164 (3d Cir. 2019) (affirming dismissal of individual chapter 11 case where debtor had failed to pay administrative expenses over a nearly ***two-year*** case, had average negative cash flow over the last ***six months*** of the chapter 11 bankruptcy leading up to the dismissal proceedings, and debtor had ***repeatedly failed to file monthly operating reports***).

9. The Ad Hoc Group wants to close the curtain on the Debtors' historic brand and global cash-generating operations and cut short the Debtors' efforts to consummate a value-maximizing restructuring transaction at the very beginning of their chapter 11 process. To argue "loss," the Ad Hoc Group waves its hands at the Debtors' stabilization-focused cash collateral budget and otherwise points merely to the Debtors' prepetition cash flow. Motion, ¶ 20. But the Ad Hoc Group mischaracterizes the relevant legal standards and factual realities. The Debtors have been in chapter 11 for less than a month. Evaluation of "loss" focuses on analysis of "substantial" or "continuing" negative "postpetition" performance. *AIG Financial*, 651 B.R. at 475. In the short time they have been in chapter 11, on the operational front, the Debtors have outperformed their cash forecast. It would be premature and contrary to applicable

bankruptcy law for the Court to find "loss" at this juncture. The Ad Hoc Group has therefore not met its burden to satisfy the first prong of subsection 1112(b)(4)(A).

B. The Debtors Have a Reasonable Likelihood of Rehabilitation in Chapter 11, Including Through a Cash-Only Auction if Negotiations with the Ad Hoc Group Falter.

10. Even if "loss" can be shown, a movant seeking dismissal or conversion under subsection 1112(b)(4)(A) must also demonstrate "the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A). The inquiry into prospects for success is flexible, time-dependent, and the burden on the movant is strict: there must be an "absence" of reasonable likelihood; there must not be "any" chance that the debtor "will be able to stop [its] losses and regain solid financial footing within a reasonable amount of time." *AIG Financial*, 651 B.R. at 475; *see also In re Smith*, 77 B.R. 496, 502 (Bankr. E.D. Pa. 1987) ("The 'likelihood of rehabilitation' criterion . . . is largely a function of how long the debtor has been about trying to formulate a plan without success); *In re Ramreddy, Inc.*, 440 B.R. 103, 114 (Bankr. E.D. Pa. 2009) ("[I]n evaluating the merits of a § 1112(b) motion at a relatively early stage in the case, bankruptcy courts are not stringent in assessing the feasibility of the debtor's proposed . . . plan."). "In almost every case, the debtor's prospects will depend on whether the debtor has formulated, or can formulate within a reasonable amount of time, a reasonably detailed business plan." 7 COLLIER ON BANKRUPTCY ¶ 1112.04 (2024). A sale under section 363 is a "valid bankruptcy avenue" which constitutes rehabilitation, and the prospect of a 363 sale is sufficient to show a reasonable likelihood of rehabilitation. *In re AIG Financial Products Corp.*, No. 23-573-GBW, 2024 WL 3967465, at *11 (D. Del. Aug. 28, 2024).

11. The Debtors initiated these chapter 11 proceedings just three weeks ago in the midst of a comprehensive operational turnaround effort and with the articulated intention to consummate a value-maximizing sale of some or all of their business under section 363 of the Bankruptcy Code,

whether through successful negotiations with the Ad Hoc Group or the all-cash bidding process detailed in the Bidding Procedures Motion. First Day Declaration, ¶ 15. The Ad Hoc Group has repeatedly stated on the record that it would like to do a deal with the Debtors and has been working to achieve that outcome. In short, the Debtors have the means and the intention to reach a potential successful resolution of these cases *with the Ad Hoc Group*.

12. The Motion argues that the Debtors cannot reorganize without the Ad Hoc Group's support. While it would be much more difficult to successfully complete these cases without the Ad Hoc Group, the Debtors' Bidding Procedures have always provided for an all-cash process to ensure that these cases would not live or die based on the cooperation of the Ad Hoc Group. *See* Bidding Procedures Motion, ¶ 7; *see* Motion, ¶ 8 (objecting to an all-cash auction process as "an extremely contentious path" and arguing that it "deprives the Prepetition Secured Lenders of their statutory right to credit bid"). Third Circuit law expressly allows limitation of a credit bid for exactly this purpose. *In re Phila. Newspapers, LLC*, 599 F.3d 298, 315, 316, n.14 (3d Cir. 2010) ("[T]he right to credit bid is not absolute.").

13. Section 363(k) of the Bankruptcy Code permits the holder of a secured claim to bid the amount of the claim at the sale of property subject to the accompanying lien "unless the court for cause orders otherwise." 11 U.S.C. § 363(k). As the Third Circuit has directed, bankruptcy courts may deny or limit the right to credit bid for cause "in the interest of any policy advanced by the Code, such as . . . to foster a competitive bidding environment." *Phila. Newspapers*, 599 F.3d at 316, n.14 (considering request to limit credit bidding for cause pursuant to section 363(k)); *accord In re River Road Hotel Partners LLC*, 2010 WL 6634603, at *1 (Bankr. N.D. Ill. Oct. 5, 2010) ("Section [363(k)] gives courts the discretion to decide what constitutes 'cause' and the flexibility to fashion an appropriate remedy by conditioning credit bidding on a case-by-case

basis.") *aff'd, River Road Hotel Partners, LLC v. Amalgamated Bank*, 651 F.3d 642 (7th Cir. 2011)). Courts have permitted sale processes limiting credit bidding to proceed where uncapped credit bidding would chill the bidding process completely. *See, e.g.*, *In re Fisker Auto. Holdings, Inc.*, 510 B.R. 55, 60 (Bankr. D. Del. 2014); *compare In re Aeropostale, Inc.*, 555 B.R. 369, 415 (Bankr. S.D.N.Y. 2016) (denying motion to limit credit bidding where there was some evidence of bidding activity in spite of prospect of large secured creditor credit bid).

14. In this instance, absent a comprehensive settlement, the risk that the Ad Hoc Group's credit bid could dissuade any other potential suitor from submitting a bid for the Debtors' assets constitutes cause sufficient to limit the Ad Hoc Group's ability to bid the full amount of its secured claim. Indeed, bidders have already expressed hesitation to the Debtors' advisors at the prospect of devoting significant resources in the shadow of the Ad Hoc Group's potential nine-figure credit bid. Enabling the Ad Hoc Group to credit bid the full face value of its claim would likely inhibit any other party from submitting a competitive bid for the Debtors' assets. The overhang of the Company's secured debt posed a nearly insurmountable hurdle in attracting potential suitors outside of these proceedings. Now that the Debtors are in chapter 11, this overhang can be mitigated if a comprehensive settlement cannot be reached.

C. Even If The Ad Hoc Group Had Successfully Shown "Cause," Conversion or Dismissal Is Not In the Best Interests of Creditors or the Estates.

15. If cause is found, "the burden shifts to the opposing party to show why dismissal or conversion would not be in the best interests of the estate and the creditors." *In re Dr. R.C. Samanta Roy Inst. of Sci. Tech. Inc.,* 465 F. App'x 93, 96–97 (3d Cir. 2011); *In re Korn,* 523 B.R. 453, 464 (Bankr. E.D. Pa. 2014) (same). Even if the Ad Hoc Group had successfully satisfied its burden to show "cause" for conversion or dismissal, conversion or dismissal is decidedly against the interest of creditors and the estates at this time. The Debtors do not have an agreed

deal with the Ad Hoc Group and have launched a renewed marketing process for their assets guided by the cash bidding framework proposed in the Bidding Procedures Motion. Granting the Motion and cutting off the Debtors' sale process, which has been designed to foster a maximally competitive bidding environment through the limitation of credit bidding, without an agreed deal with the Ad Hoc Group would deprive the estate of the ability to consider a full spectrum of transactional alternatives to the detriment of all stakeholders, including the Ad Hoc Group.

16. The Ad Hoc Group is not prejudiced by the denial of their Motion: the Debtors are operating their business with an eye towards a value-maximizing turnaround and are marketing high-value assets on an expedited timeline. The uncontrolled shut down risked by granting the Motion, on the other hand, ***would*** destroy value to the detriment of ***all*** of the Debtors' stakeholders. Indeed, the Ad Hoc Group has not clearly articulated exactly what it would do if these cases are dismissed, apart from vague allusions to state law foreclosure remedies. Motion, ¶ 32. The reason the Ad Hoc Group fails to describe what a post-dismissal state law process entails is simple: it would be complete chaos, it would take the Ad Hoc Group years to effectuate, and it would destroy value currently preserved in the Debtors' business. It cannot be overemphasized: despite months of work, the Ad Hoc Group is not in a position to close a *consensual* transaction. The reality is that dismissal would only make the situation worse—the bell cannot be unrung on the commencement of these chapter 11 cases, and a dismissal would be a free for all. Conversion to a chapter 7 proceeding would not be any better for parties in interest: a chapter 7 trustee would take control of the business from the Debtors' experienced management team and a shutdown would be inevitable if not immediate. Accordingly, these cases should neither be dismissed nor converted, and the Motion should be denied.

II. The Ad Hoc Group's Motion for Relief from the Automatic Stay Under 362(d)(1) and 362(d)(2) Should Be Denied.

17. As an alternative to dismissal or conversion, the Ad Hoc Group seeks relief from the automatic stay to foreclose on their collateral on two grounds, section 362(d)(1) and section 362(d)(2) of the Bankruptcy Code. Motion, ¶¶ 26-32. Section 362(d)(1) requires a court to grant relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1). Section 362(d)(2) requires a court to grant relief from the stay of an act against property where "(A) the debtor does not have an equity in such property, and (B) such property is not necessary to an effective reorganization." 11 U.S.C. § 362(d)(2). Subsections (d)(1) and (d)(2) are separate, independent grounds for stay relief. *Nazareth Nat. Bank v. Trina-Dee, Inc.*, 731 F.2d 170, 170 (3d Cir. 1984). "On all issues other than equity" in a hearing concerning relief under section 362(d), following the moving party's establishment of a *prima facie* case, the Debtors "bear the burden of proof." 11 U.S.C. § 362(g); *In re Rexene Prods. Co.*, 141 B.R. 574, 577 (Bankr. D. Del. 1992).

A. The Ad Hoc Group Is Adequately Protected Through the Debtors' Value-Focused Operations and Advancement of the Proposed Sale Process.

18. The Ad Hoc Group's security interests in the Debtors' property are adequately protected, as the Debtors are operating their business focused on operational improvement and advancing a competitive value-maximizing sale process which will only enhance the value of the Ad Hoc Group's collateral.

19. Establishing whether relief from the automatic stay is proper under section 362(d)(1) of the Bankruptcy Code for lack of adequate protection is a two-step process. First, a moving party must make a *prima facie* showing that it has "a factual and legal right to the relief that it seeks." *In re RNI Wind Down Corp.*, 348 B.R. 286, 299 (Bankr. D. Del. 2006) (quoting *In re Elmira Litho, Inc.*, 174 B.R. 892, 902 (Bankr. S.D.N.Y. 1994)). For relief under 362(d)(1),

this means that the movant must first show that its interest in collateral is subject to diminution relative to the value of its interest on the petition date. *Elmira Litho*, 174 B.R. at 902 ("[A] secured creditor lacks adequate protection if the value of its collateral is declining as a result of the stay. It must, therefore, prove this decline in value—or the threat of a decline—in order to establish a *prima facie* case."); *In re Pinto*, 191 B.R. 610, 612 (Bankr. N.J. 1996) ("A secured creditor lacks adequate protection if there is a threat that the value of the property may decline.") (citing *Elmira*). As an initial matter, except for bald assertions as to the implications of the Debtors' interim cash collateral budget, the Ad Hoc Group has not even attempted to make such a showing, likely because doing so this early in the Debtors' cases would prove difficult.

20. Even assuming *arguendo* that the Ad Hoc Group has successfully made a *prima facie* showing under 362(d)(1), the Debtors' operation of their business and prosecution of their competitive bidding process is sufficient adequate protection under the Bankruptcy Code. Section 361 of the Bankruptcy Code provides some examples of forms of adequate protection, but ultimately "[a] determination of whether there is adequate protection is made on a case by case basis." *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Columbia Gas Sys., Inc.*, No. 91-803, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992).

21. Value-focused operation of a distressed business can be adequate protection for secured creditors. *In re Grant Broadcasting System, Inc.*, 71 B.R. 376, 387 (Bankr. E.D. Penn. 1987) (finding adequate protection, regardless of equity cushion, where debtors were "fully intending to remain in business…doing so with…vigor and vitality…even in the face of spirited opposition," and where management was implementing "belt-tightening" measures); *see also In re Stein*, 19 B.R. 458, 460 (Bankr. E.D. Penn. 1982) (finding creditor adequately protected by continued operation of business and use of cash cash collateral where creditor had continuing lien

on farm crops, livestock, and equipment such that operation necessarily enhanced collateral); *In re Mt. Olive Hospitality, LLC*, No. 13-3395, 2014 WL 1309953, at *4 (D. N.J. Mar. 31, 2014) (affirming order permitting use of cash collateral, finding creditor adequately protected where debtor used collateral to comply with franchise agreement and operate thereunder in the ordinary course, where maintenance of the franchise was "critical to the debtor's continued success and economic viability," and citing cases). Here, the Debtors are showing signs of operational improvement, and management is focused on fostering that trend, while also proceeding with discussions with potential bidders and acquirors (including the Ad Hoc Group) towards a value-maximizing sale.

22. Lifting the stay would not provide the Ad Hoc Group with any protective benefit beyond the protection afforded their collateral through the Debtors' prosecution of their marketing process and continued operation of their business as a going concern. The Ad Hoc Group is silent on what exactly they would do if the stay is lifted, but as discussed *supra*, the reality is that a state law process outside of this Court would massively damage the collateral that the Ad Hoc Group claims to seek to protect.

B. Though the Debtors Lack Equity in the Ad Hoc Group's Collateral, the Collateral Is Necessary for an Effective Reorganization.

23. The Ad Hoc Group also seeks relief from the automatic stay on the basis of section 362(d)(2) of the Bankruptcy Code, which requires that a court grant relief from the stay of actions against property if the debtor is shown to lack equity in such property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). While the Debtors do not dispute that they lack equity in the collateral securing the Ad Hoc Group's claims, it is also beyond dispute that such collateral is necessary to the Debtors' reorganization efforts, which efforts are proceeding apace. The secured lenders have first priority liens on, among other things, the

Debtors' brand and substantially all of the Debtors' current cash (with the exception of additional cash support which may be provided from non-debtors). This property is central to any potential restructuring transaction, whether with the Ad Hoc Group or otherwise. Therefore, the Ad Hoc Group's request to lift the stay should be denied.

Conclusion

24. The Ad Hoc Group's Motion is premature, against the interests of the Debtors' estates and their creditors, and frustrates both the Debtors' ability to complete potential consensual resolution of these chapter 11 cases with the Ad Hoc Group itself and the Debtors' ability to execute on an operational turnaround and parallel competitive third-party sale process. Under applicable legal standards, the Ad Hoc Group cannot show that conversion or dismissal of these chapter 11 cases is required nor that relief from the automatic stay is necessary. Accordingly, the Motion should be denied and this Objection sustained.

Dated: October 11, 2024
Wilmington, Delaware

/s/ Patrick J. Reilley

Patrick J. Reilley (No. 4451)
Stacy L. Newman (No. 5044)
Michael E. Fitzpatrick (No. 6797)
Jack M. Dougherty (No. 6784)
COLE SCHOTZ P.C.
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
Email: preilley@coleschotz.com
snewman@coleschotz.com
mfitzpatrick@coleschotz.com
jdougherty@coleschotz.com

-and-

Anup Sathy, P.C. (admitted *pro hac vice*)
Spencer A. Winters, P.C. (admitted *pro hac vice*)
Jeffrey T. Michalik (admitted *pro hac vice*)
Gabriela Z. Hensley (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
333 West Wolf Point Plaza
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: anup.sathy@kirkland.com
spencer.winters@kirkland.com
jeff.michalik@kirkland.com
gabriela.hensley@kirkland.com

Proposed Co-Counsel for the Debtors and Debtors in Possession