

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SPORTS AUTHORITY HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-10527 (MFW)

(Jointly Administered)

Hearing Date: April 14, 2016 at 9:30 a.m. (ET)
(Shortened Notice Requested)

Objections Due: April 13, 2016 at 4:00 p.m. (ET)
(Shortened Notice Requested)

**TERM LOAN AGENT’S
EMERGENCY MOTION FOR ADEQUATE PROTECTION**

Wilmington Savings Fund Society, FSB, as successor administrative and collateral agent (together, the “Term Loan Agent”) under that certain Amended and Restated Credit Agreement, dated as of November 16, 2010 (the “Term Loan Credit Agreement”), by and among The Sports Authority, Inc., as the Borrower, Slap Shot Holdings Corp., as Holdings, Wilmington Savings Fund Society, FSB, as successor Administrative Agent and Collateral Agent to Bank of America, N.A, and the lenders from time to time party thereto (the “Term Loan Lenders”), hereby files this emergency motion (the “Motion”), pursuant to Sections 361 and 363(e) of chapter 11 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), requesting adequate protection with respect to its interests in the Prepetition Consigned Goods and the proceeds thereof.² In support of this Motion, the Term Loan Agent respectfully states as follows:

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The Debtors’ headquarters are located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

² The Term Loan Agent fully incorporates herein by reference the *Term Loan Agent’s Reply (I) in Support of Debtors’ Consigned Goods Motion and Other First Day Relief, and (II) to Vendors’ Objections to Same*, dated



PRELIMINARY STATEMENT

1. It is undisputed that Term Loan Agent has a perfected security interest in the Prepetition Consigned Goods and the proceeds thereof. The Debtors acknowledge this and no party in interest has challenged this. Notwithstanding, the Debtors are presently selling the Term Loan Agent's collateral and paying the proceeds thereof to junior creditors without providing adequate protection to the Term Loan Agent, in violation of the Bankruptcy Code and the Term Loan Agent's and Term Loan Lenders' Fifth Amendment rights. The Term Loan Agent has already made timely demand for adequate protection in connection with the Debtors' Consigned Goods Motion. It intends to object to the Debtors' proposed settlement with the consignment Vendors on the ground of adequate protection. The Term Loan Agent, however, has become concerned that attempts will be made to assert pretextual procedural issues to evade or delay the Debtors' satisfaction of their obligations under Section 363 of the Bankruptcy Code. The Term Loan Agent accordingly hereby demands adequate protection with respect to its interests in the Prepetition Consigned Goods and the proceeds thereof.

2. The Debtors are presently seeking approval of a purported "compromise" with certain of the Vendors regarding the Prepetition Consigned Goods pursuant to Bankruptcy Rule 9019. The Term Loan Agent is filing a separate objection to this so-called "compromise" based, in large part, on the diminution of the Term Loan Agent's interests that would be caused by such compromises and the failure and inability of the Debtors to provide adequate protection for such loss and diminution. The Term Loan Agent has also filed an appeal of the Court's two interim

March 31, 2016 [Docket No. 932] (the "Term Loan Agent's Reply"), and the *Declaration of Michael J. Genereux in Support of (A) Term Loan Agent's Reply (I) in Support of Debtors' Consigned Goods Motion and Other First Day Relief, and (II) to Vendors' Objections to Same; and (B) Term Loan Agent's Emergency Motion for Adequate Protection* (the "Genereux Declaration" or "Genereux Decl."), filed contemporaneously herewith. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Term Loan Agent's Reply or the Genereux Declaration, as applicable.

consigned goods orders, which authorize the Debtors to continue selling the Prepetition Consigned Goods, provided that they pay the proceeds thereof to the Vendors, notwithstanding that the Debtors are not providing adequate protection in respect of the Term Loan Agent's interests.

3. The relief sought by this Motion is important because, in the event that the Court does not grant the Debtors' 9019 motion (or the remaining Vendors do not become party to the proposed settlement), the Debtors are seeking further relief from the Court at the April 14, 2016 omnibus hearing to permit the Debtors to continue selling the Prepetition Consigned Goods and paying the proceeds thereof to the Vendors, relief that the Debtors affirmatively requested for the first time on April 4, 2016.³ As set forth in the Term Loan Agent's reply, and as demonstrated on the record at the April 5, 2016 hearing, the Debtors cannot do this without proving that the Term Loan Agent's interests in the Prepetition Consigned Goods and the proceeds thereof are adequately protected.

4. Accordingly, to the extent that the Debtors propose to continue paying the proceeds of the Prepetition Consigned Goods to the Vendors, the Term Loan Agent demands adequate protection to fully compensate the Term Loan Agent and Term Loan Lenders for the diminution of their collateral that would be caused by such diversion of their collateral proceeds to junior creditors. [REDACTED]

³ See Debtors' Omnibus Reply in Support of Entry of Final Order on (I) The Debtors' Motion for interim and Final Order (A) Authorizing the Debtors to (I) Continue to Sell Consigned Goods in the Ordinary Course of Business Free and Clear of All Liens, Claims and Encumbrances and (II) Grant Administrative Expense Priority to Consignment Vendors for Consigned Goods Delivered Postpetition; and (B) Grant Replacement Liens to Consignment Vendors with Perfected Security Interests in Consigned Goods and/or Remit the Consignment Sale Price from Sale of Consigned Goods to Putative Consignment Vendors and (II) The Debtors' Emergency Motion for Interim and Final Order (A) Authorizing the Debtors to Assume Closing Store Agreement; (B) Authorizing and Approving Closing Sales Free and Clear of All Liens, Claims and Encumbrances; (C) Authorizing the Implementation of Customary Employee Bonus Program and Payments to Non-Insiders Thereunder; (D) Approving Dispute Resolution Procedures; and (E) Approving the Debtors' Store Closing Plan, dated April 4, 2016 [Docket No. 991] (the "Debtors' Omnibus Reply"), at ¶¶ 40-42.

[REDACTED]

[REDACTED]

[REDACTED] This proposal ensures that the interests of all parties in interest (including the Vendors and the Term Loan Agent) will be adequately protected, while also ensuring that the Debtors will be able to continue selling the Prepetition Consigned Goods for the benefit of the estates.

5. Contemporaneously herewith, the Term Loan Agent has filed a motion, in accordance with the Local Rules, to shorten notice and expedite the hearing on this Motion so that it can be heard at the April 14, 2016 omnibus hearing. This relief should be granted. All parties in interest have had notice of the relief requested herein since the Term Loan Agent filed its omnibus reply on March 31, 2016, wherein the Term Loan Agent explicitly stated that if the Debtors continue to pay the proceeds of the sale of Prepetition Consigned Goods to the Vendors, the Term Loan Agent was entitled to and would again demand adequate protection.

6. At the April 5, 2016 hearing, counsel for the Term Loan Agent again raised the issue of adequate protection with respect to the diversion of the Term Loan Agent's collateral proceeds to the Vendors. The Court declined to take evidence on the Term Loan Agent's adequate protection demand, and indicated that the demand would be heard at the April 14th hearing, noting that it was "inextricably intertwined" with the Consigned Goods Motion and DIP Financing Motion.

7. Moreover, the issue of the lack of adequate protection for the Term Loan Agent's interests in the Prepetition Consigned Goods will already be in front of the Court at the April 14th hearing, as the lack of adequate protection is one of the primary bases upon which the Term

Loan Agent will be objecting to the Debtors' 9019 motion. Thus, the issues presented herein substantially overlap with the matters that will already be heard at the April 14th hearing.

8. Accordingly, given the critical importance of this issue, the fact that all parties in interest have had ample notice of the relief requested herein, and the fact that the issue of the Term Loan Agent's lack of adequate protection will already be heard at the April 14th hearing, the Court should shorten notice with respect to this Motion and order that the Motion be heard at the April 14th hearing.

JURISDICTION AND VENUE

9. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code Sections 361 and 363(e) and Bankruptcy Rule 4001.

RELIEF REQUESTED

10. The Term Loan Agent respectfully requests that the Court enter an order, pursuant to Bankruptcy Code Sections 361 and 363(e), and Bankruptcy Rule 4001, requiring the Debtors to provide the Term Loan Agent with adequate protection to fully compensate the Term Loan Agent and Term Loan Lenders for the diminution of their collateral that would be caused by the diversion of their collateral proceeds to junior creditors. Notwithstanding anything herein that may be interpreted to the contrary, the relief sought by this Motion (and by the Term Loan Agent's several other demands for adequate protection) is merely to preserve and protect its Collateral.

RELEVANT FACTUAL BACKGROUND

**A. The Term Loan Agent's Perfected Security
Interest In And Lien On The Prepetition Consigned Goods.**

11. As of the Petition Date, the Debtors owe approximately \$276.6 million in principal under the Term Loan Credit Agreement. *Declaration of Jeremy Aguilar in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief*, dated March 2, 2016 [Docket No. 22], ¶ 27.

12. Under the Security Agreement,⁴ the obligations of the Debtors to the Term Loan Agent are secured by security interests in all "Collateral." Under the Security Agreement, "Collateral" is defined to include "Inventory." Inventory, in turn, is defined to have the meaning given that term in the UCC, "and shall also include, without limitation, all Goods *which are held* by a Person for sale...." Security Agreement at §102.⁵

13. The relative lien priority rights of the Term Loan Agent and the Term Loan Lenders, on the one hand, and the ABL Agent and the ABL Lenders, on the other hand, are governed by that certain Intercreditor Agreement, dated as of May 3, 2006 (as may be amended, modified, restated, extended, renewed, replaced or supplemented in accordance with its terms, the "Intercreditor Agreement"). Pursuant to the Intercreditor Agreement, the Term Loan Agent holds a first-priority security interest in and lien on the borrowers' and guarantors' property, plant and equipment, real property, intellectual property, investment property, and general intangibles (collectively, the "Term Loan Collateral") and a second-priority interest in and lien

⁴ Security Agreement, dated as of May 3, 2006 (the "Security Agreement"), by and among (a) The Sports Authority, Inc., a Delaware corporation, as borrower, (b) each of the guarantors listed on Schedule I thereto, and (c) Wilmington Savings Fund Society, FSB, as successor collateral agent to Bank of America, N.A.

⁵ The UCC also defines "Inventory" to include "goods held by a person for sale..." UCC 9-102(a)(48)(B).

on the borrowers' and guarantors' accounts receivable, deposit accounts, chattel paper, and inventory (the "ABL Collateral," and, together with the Term Loan Collateral, the "Collateral").

14. The Debtors acknowledge that the Prepetition Consigned Goods constitute ABL Collateral on which the Term Loan Agent holds a second-priority interest in a lien. See DIP Financing Motion, ¶ 19.

15. In accordance with Article 9 of the Uniform Commercial Code ("UCC"), the Term Loan Agent properly perfected its security interests in the Collateral.⁶

16. The Debtors acknowledge that the Term Loan Agent has properly perfected its security interest in the Prepetition Consigned Goods. See Debtors' Omnibus Reply, ¶ 23.

17. As set forth in the Term Loan Agent's Reply, the Debtors' Omnibus Reply, and the complaints filed in the various Adversary Proceedings, the Term Loan Agent's secured interest in the Prepetition Consigned Goods is senior to the interests of the Vendors because the Vendors either failed to properly file UCC financing statements or failed to timely provide the Term Loan Agent with the requisite authenticated notification as required under the UCC.⁷

B. Relevant Procedural Background.

18. On the Petition Date, the Debtors' filed their Consigned Goods Motion. [Docket No. 9]. At the Debtors' first day hearing, certain consignment Vendors objected to the Debtors' Consigned Goods Motion, claiming that the Prepetition Consigned Goods could not be sold

⁶ UCC statements filed by the Term Loan Agent (or its predecessor) evidencing the perfection of the Term Loan Agent's security interests in the Collateral are annexed to the motions to intervene filed by the Term Loan Agent in each of the Adversary Proceedings (defined below).

⁷ Two of the Vendors, Gordini USA, Inc. and SP Images, Inc., allege that they took the steps necessary to perfect a senior purchase-money security interest in the applicable Prepetition Consigned Goods. Further information is needed to determine if Gordini and SP Images have perfected their interests in the applicable Prepetition Consigned Goods and taken the steps necessary to obtain a senior interest in all or some of such respective Goods. As the Term Loan Agent has agreed to since the beginning of the Debtors' chapter 11 cases, if a Vendor, including Gordini and SP Images, in fact took the proper steps to perfect its interest in the Prepetition Consigned Goods and obtain priority over the Term Loan Agent's interests by timely sending the requisite authenticated notification, then such Vendor would have a senior interest in such Vendor's specific Prepetition Consigned Goods and the proceeds thereof.

pursuant to Section 363 because such Goods did not constitute property of the Debtors' estates. The Court authorized the Debtors to continue selling the Prepetition Consigned Goods on an interim basis while placing the Consignment Sale Price in escrow. On May 10, 2016, the Vendors and Debtors submitted competing forms of proposed interim orders to memorialize the Court's first day ruling. [Docket Nos. 259, 265].

19. March 11, 2016, the Court entered the Vendors' form of proposed order (the "Interim Consigned Goods Order"). [Docket No. 278]. Unlike the Debtors' proposed form of order, the Vendors' proposed order gave the Vendors the right to prohibit the sale of Prepetition Consigned Goods and required such goods to be segregated and accounted for to the Vendors. The Debtors immediately made an oral motion for reconsideration, and, on the same day, the Court conducted an emergency teleconference with the Debtors and certain Vendors. The Term Loan Agent neither received notice of nor participated in the teleconference. Thereafter, the Court issued an Order deleting that provision of the Interim Consigned Goods Order that gave the Vendors the right to prohibit the sale of Prepetition Consigned Goods and scheduled a hearing for March 16, 2016. [Docket. No. 289].

20. On March 15, 2016, the Debtors commenced adversary proceedings (the "Adversary Proceedings") against approximately 160 consigning Vendors. Each complaint filed in these Adversary Proceedings seeks a long list of declarations, including declarations that challenge the claimed "title" of the consigning Vendors in inventory. See, e.g., Docket Nos. 344, 345, 346, 347, 348. Such Adversary Proceedings were presumably intended to satisfy the requirements of Bankruptcy Code Section 363(f)(4) by establishing that the Vendors' claimed interests in the Debtors' inventory was in *bona fide* dispute. See 11 U.S.C. § 363(f)(4) (allowing sales of property where there exists a *bona fide* dispute).

21. On March 16, 2016, the Court held a hearing on the Court's March 11th reconsideration order. At the hearing, the Debtors claimed that as a practical matter, consignment inventory could not be segregated from other inventory and that, accordingly, a prohibition on the sale of consignment inventory would preclude both normal and going-out-of-business sales. See March 16, 2016 Hr'g Tr. at 12:9-13; 21:6-22:23; 23:23-24:3. On this basis, the Vendors were able to exercise leverage over the Debtors, which were then quickly forced to capitulate to demands by the Vendors to pay the proceeds of consignment sales to the Vendors or else succumb to immediate liquidation.

22. On March 22, 2016, Asics America Corporation ("Asics"), a participant in the Debtors' consignment program, filed its omnibus objection, which approximately thirty-one Vendors joined. [Docket No. 644]. Pursuant to the omnibus objection, Asics objected to the relief requested in the Consigned Goods Motion, as well as the DIP Financing Motion, Bid Procedures Motion, and Store Closing Motion, largely on the basis that the Prepetition Consigned Goods were not property of the Debtors' estates.

23. On March 31, 2016, the Term Loan Agent filed its Reply in support of the Consigned Goods Motion, pursuant to which it argued that the Adversary Proceeding complaints were sufficient to establish the existence a *bona fide* dispute as to the Vendors' interests in the Prepetition Consigned Goods, thereby entitling the Debtors' to sell such Goods under Section 363(f). [Docket No. 932]. [REDACTED]

[REDACTED]

[REDACTED]

24. On April 1, 2016, the Debtors filed their motion (the "9019 Motion") seeking approval, pursuant to Bankruptcy Rule 9019, of a proposed settlement with certain Vendors.

[Docket No. 959]. The Court has scheduled a final hearing on the 9019 Motion for April 14, 2016.

25. On April 4, 2016, the Debtors filed the Debtors' Omnibus Reply in support of the Consigned Goods Motion, in which the Debtors argued again that the Vendors hold merely unsecured claims in these cases or, at best, junior interests in the Prepetition Consigned Goods. To the extent that the remaining Vendors do not join the proposed settlement or the Court does not grant the relief requested in the 9019 Motion, the Debtors also request, in order to stay in business, authorization to continue selling the Prepetition Consigned Goods in accordance with the terms of the prepetition Agreements, including the payment of the proceeds thereof to the Vendors. The Debtors' Omnibus Reply and the accompanying pleadings provide no mention of, or evidence with respect to, the adequate protection to be provided to the Term Loan Agent in connection with this use of its Collateral.

26. On April 5, 2015, the Court held a hearing to consider, among other things, the Consigned Goods Motion on a final basis. The Court continued that hearing until April 14, 2016. At the April 5th hearing, the Term Loan Agent objected to the continued dissipation of its interests in the Prepetition Consigned Goods by the payment of the proceeds thereof to the Vendors without any provision of adequate protection to the Term Loan Agent. April 5, 2016 Hr'g Tr. 24:10-26:22. The Court declined to hear evidence on the Term Loan Agent's adequate protection demand, and ordered that the demand for adequate protection would be continued to the April 14, 2016 hearing as "a part of and inextricably intertwined with" the DIP Financing Motion, the Consigned Goods Motion, and the other first day motions, all of which were scheduled for final hearings on April 14, 2016. Id. at 32:10-15.

27. On April 6, 2016, the Court entered its *Supplemental Interim Order Authorizing the Debtors to Continue to Sell Certain Prepetition Consigned Goods* [Docket No. 1044] (the “Supplemental Interim Consigned Goods Order”), pursuant to which the Debtors were authorized to continue selling the Prepetition Consigned Goods, provided that they pay the proceeds of the sale of Prepetition Consigned Goods to the applicable Vendors in accordance with the terms of the pre-petition Agreements.

28. On April 8, 2016, the Term Loan Agent filed its notice of appeal of the Court’s Supplemental Interim Consigned Goods Order, as well as the Interim Consigned Goods Order, as modified by the Court’s reconsideration order. [Docket No. 1074]. That appeal is pending.

ARGUMENT

I. The Term Loan Agent Is Entitled To Adequate Protection As A Matter Of Law.

29. Bankruptcy Code Section 363(e) provides that, “at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold or leased, by the trustee, the court ... shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.”). 11 U.S.C. § 363(e).

30. The provision of adequate protection under Section 363(e) is mandatory, not discretionary. See In re Continental Airlines, Inc., 146 B.R. 536, 539 (Bankr. D. Del. 1992); In re Worldcom, Inc., 304 B.R. 611, 618-19 (Bankr. S.D.N.Y. 2004); In re Metromedia Fiber Network, Inc., 290 B.R. 487, 491 (Bankr. S.D.N.Y. 2003); In re Heatron, Inc., 6 B.R. 493, 494 (Bankr. W.D. Mo. 1980).

31. The adequate protection provisions of the Bankruptcy Code embody the constitutional prohibition against deprivation of property without just compensation. See In re Timbers of Inwood Forest Associates, Ltd., 793 F.2d 1380, 1396 (5th Cir. 1986), aff’d, United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 376 (1988) (“The

concept [of adequate protection] is derived from the fifth amendment protection of property interests.”); H.R. Rep. No. 595, 95th Cong., 1st Sess. 339 (1977) and S. Rep. No. 989, 95th Cong., 2d Sess. 49 (1978) (stating that the concept of adequate protection is derived from “the Fifth Amendment protection of property interests”); see, e.g., 11 U.S.C. §§ 361; 362(d)(1); 363(e); 363(p)(1).

32. The Term Loan Agent has a perfected security interest in the Prepetition Consigned Goods, which the Debtors have acknowledged and no party has challenged. As set forth more fully in the Term Loan Agent’s Reply, the Debtors’ Omnibus Reply, and the Adversary Proceeding complaints, substantially all of the Vendors have either failed to timely and properly file financing statements or failed to timely provide the requisite authenticated notification to the Term Loan Agent. Under these circumstances, the outcome under the UCC is clear, as articulated in the official comments to UCC 9-319:

- (i) Consignor Fails To File Financing Statement: “SP-1 delivers goods to Debtor in a transaction constituting a ‘consignment’ as defined in Section 9-102. SP-1 does not file a financing statement. Debtor then grants a security interest in the goods to SP-2. SP-2 files a proper financing statement. Assuming Debtor is a mere bailee, as in a ‘true’ consignment, Debtor would not have any rights in the collateral (beyond those of a bailee) so as to permit SP-2’s security interest to attach to any greater rights. Nevertheless, under [Section 9-319], for purposes of determining the rights of Debtor’s creditors, Debtor is deemed to acquire SP-1’s rights. ***Accordingly, SP-2’s security interest attaches, is perfected by the filing, and, under Section 9-322, is senior to SP-1’s interest.***” (emphasis added).
- (ii) Consignor Fails To Provide Authenticated Notification To Other Secured Lenders: “SP-1 obtains a security interest in all Debtor’s existing and after-acquired inventory. SP-1 perfects its security interest with a proper filing. Then SP-2 delivers goods to Debtor in a transaction constituting a ‘consignment’ as defined in Section 9-102. SP-2 files a proper financing statement but does not send notification to SP-1 under Section 9-324(b). ***Accordingly, SP-2’s security interest is junior to SP-1’s under Section 9-322(a). Under Section 9-319(a), Debtor is deemed to have the***

consignor's rights and title, so that SP-1's security interest attaches to SP-2's ownership interest in the goods." (emphasis added).

Del. Code Ann. tit. 6, § 9-319, Official Comments 2, 3.

33. Notwithstanding the Term Loan Agent's senior perfected interest in the Prepetition Consigned Goods, the Debtors are selling the Term Loan Agent's collateral and paying the proceeds thereof to junior creditors. Moreover, the Debtors are seeking relief that would permit them to continue to do so through the duration of these chapter 11 cases.

34. Accordingly, the Term Loan Agent is entitled to adequate protection as a matter of law to protect against any diminution in the Term Loan Agent's interests in the Prepetition Consigned Goods through the diversion of the proceeds thereof to junior creditors. See In re Continental Airlines, Inc., 146 B.R. 536, 539 (Bankr. D. Del. 1992) (noting that a debtor's right to use, sell or lease property is limited by Section 363(e) of the Bankruptcy Code which provides "the court ... shall prohibit or condition such use ... as is necessary to provide adequate protection of such interest"), aff'd 91 F.3d 553 (3d Cir. 1996); In re Dewey Ranch Hockey, LLC, 414 B.R. 577 (Bankr. Az. 2009) (sustaining objection to proposed Section 363 sale and sale and denying proposed sale because objecting party's interests in assets would not be adequately protected); In re American Kitchen Foods, 2 Bankr. Ct. Dec. 715, 719 (Bankr. D. Me. 1979) ("No material impairment of collateral is constitutionally permissible, either within or without bankruptcy proceedings, in the absence of just compensation.").

II. The Debtors Bear The Burden Of Proving That The Term Loan Agent's Interests Are Adequately Protected.

35. Pursuant to Bankruptcy Code Section 363(p)(1), the Debtors bear the burden of proving that the Term Loan Agent's interests are adequately protected. 11 U.S.C. § 363(p)(1)

(“In any hearing under this section ... the trustee has the burden on the issue of adequate protection....”).

36. Where, as here, a debtor is seeking the use of a secured lender’s cash collateral, “the Bankruptcy Code places a high burden of proof on the party requesting the use of cash collateral.” Northern Trust Company v. Leavell (In re Leavell), 56 B.R. 11, 13 (Bankr. S.D. Ill. 1985) (quoting In re Sheehan, 38 B.R. 859, 868 (Bankr. S.D. 1984)). A debtor must prove “by clear and convincing evidence that the secured creditor will realize the value of its bargain in light of all the facts and circumstances of the case.” Id. (citing In re Sheehan, 38 B.R. at 868).

37. If the Debtors fail to meet their burden, then the Court cannot approve the Debtors’ use of the proceeds of the Prepetition Consigned Goods to pay the Vendors. See Reiser v. Dayton Country Club Co. (In re Magness), 972 F.2d 689 (6th Cir. 1992) (finding that, if adequate protection cannot be provided, the use, sale or lease of collateral must be prohibited); Martin v. Commodity Credit Corp., 761 F.2d 472 (8th Cir. 1985) (same); In re Dewey Ranch Hockey, LLC, 414 B.R. 577 (Bankr. Az. 2009) (sustaining objection to proposed Section 363 sale and denying proposed sale because objecting party’s interests in assets would not be adequately protected). In that case, the Debtors presumably would then seek again to escrow the proceeds in dispute pending this Court’s resolution of the collateral priority dispute, as that interim escrow would maintain the status quo and fairly protect the interests of ALL parties—precisely the relief the Debtors sought at the outset of the case and what the Term Loan Agent has requested in its emergency appeal.

38. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

39. As of the Petition Date, the Debtors owe approximately \$276.6 million in principal under the Term Loan Credit Agreement. As set forth above, the Term Loan Agent has a first priority lien on the Term Loan Collateral and a second priority lien on the ABL Collateral. A material portion of the Term Loan recovery will derive from the second lien interest in ABL Collateral.

40. [REDACTED]

41. [REDACTED]

42. [REDACTED]

8 [REDACTED]

[REDACTED]

43. [REDACTED]

[REDACTED]

44. [REDACTED]

[REDACTED]

45. [REDACTED]

[REDACTED]

46. The Debtors do not even know the value of the Term Loan Collateral. See Douton Dep. at 137:18-139:15.

47. Replacement liens on new goods delivered by the Vendors post-petition cannot serve as adequate protection because such goods (by agreement of all parties) will be subject to the delivering Vendors' first-priority purchase-money security interests.

48. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

49. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RESERVATION OF RIGHTS

50. The Term Loan Agent hereby fully reserves its right to seek any other form of relief, whether in law or in equity, including, without limitation, any relief with respect to any claims or causes of action that the Term Loan Agent may have against the Debtors, the Vendors, or any other parties.

NOTICE

51. Notice has been provided to: (i) counsel for the Debtors; (ii) counsel for the Official Committee of Unsecured Creditors; (iii) the Office of the United States Trustee; (iv) the Vendors that are defendants in the Adversary Proceedings; and (v) all parties who have timely filed requests for notice pursuant to Bankruptcy Rule 2002.

NO PRIOR REQUEST

52. No prior request for the relief requested herein has been made to this Court or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE, the Term Loan Agent respectfully requests that the Court:

(i) enter an order, pursuant to Bankruptcy Code Sections 361 and 363(e), ordering the Debtors to provide adequate protection to the Term Loan Agent to protect the Term Loan Agent from any diminution in the value of its collateral through the payment of the proceeds thereof to junior creditors (including the Vendors); and (ii) grant such other and further relief as the Court deems just and proper.

Dated: April 8, 2016
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Robert J. Dehney

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*Counsel to Wilmington Savings
Fund Society, FSB, as Term Loan Agent*

EXHIBIT A

FILED UNDER SEAL

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SPORTS AUTHORITY HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-10527 (MFW)

(Jointly Administered)

Re: D.I. _____

**ORDER GRANTING TERM LOAN AGENT'S
EMERGENCY MOTION FOR ADEQUATE PROTECTION**

Upon the *Term Loan Agent's Emergency Motion for Adequate Protection*, dated April 8, 2016 (the "Motion")²; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that the relief requested in the Motion is appropriate pursuant to Bankruptcy Code Sections 361 and 363(e); and the Court having considered the Genereux Declaration filed contemporaneously with the Motion; and upon the record of the hearing and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

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

IT IS HEREBY ORDERED THAT:

1. The Motion is hereby GRANTED.
2. The Debtors are hereby Ordered to provide the Term Loan Agent with adequate protection to protect the Term Loan Agent from any diminution in the value of its Collateral through the payment of the proceeds thereof to junior creditors.
3. To the extent that Bankruptcy Rule 6004(h) is applicable, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: April __, 2016
Wilmington, Delaware

HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SPORTS AUTHORITY HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-10527 (MFW)

(Jointly Administered)

Requested Hearing Date:

April 14, 2016 at 9:30 a.m. (ET)

Requested Objection Deadline:

April 13, 2016 at 4:00 p.m. (ET)

**NOTICE OF TERM LOAN AGENT'S
EMERGENCY MOTION FOR ADEQUATE PROTECTION**

PLEASE TAKE NOTICE that on April 8, 2016, Wilmington Savings Fund Society, FSB, as successor administrative and collateral agent (together, the "Term Loan Agent") party in interest in the above-captioned debtor and debtor-in-possession cases, filed the **Term Loan Agent's Emergency Motion For Adequate Protection** (the "Motion").

PLEASE TAKE FURTHER NOTICE that any party wishing to oppose the entry of an order approving the Motion must file a response or an objection to the Motion (the "Response") with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **the date set by the Court in connection with the motion to shorten notice filed concurrently with the Motion, which the Term Loan Agent has requested Response to be submitted on or before April 13, 2016 at 4:00 p.m. (Eastern Time) (the "Objection Deadline")**. At the same time, you must serve such Response upon the undersigned counsel for the Term Loan Agent so as to be received by the requested Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT **THE TERM LOAN AGENT HAS REQUESTED THAT A HEARING ON THE MOTION BE SCHEDULED FOR APRIL 14, 2016 AT 9:30 A.M. (ET) BEFORE THE HONORABLE MARY F. WALRATH, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM #4, WILMINGTON, DELAWARE 19801. ONLY PARTIES WHO HAVE FILED A TIMELY RESPONSE IN ACCORDANCE WITH THE PROCEDURES ABOVE, WILL BE CONSIDERED BY THE BANKRUPTCY COURT AT THE HEARING.**

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: April 8, 2016
Wilmington, Delaware

MORRIS NICHOLS ARSHT & TUNNELL LLP

/s/ Daniel B. Butz

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