

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

In re:

SPORTS AUTHORITY HOLDINGS, INC., *et al.*,<sup>1</sup>  
  
Debtors.

Chapter 11

Case No. 16-10527 (MFW)

(Jointly Administered)

Redacted - Public Version

**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**

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 respectfully submits this reply (the “Reply”)<sup>2</sup>: (i) in support of the Debtors’ Consigned Goods Motion<sup>3</sup> and the Debtors’ other first day motions (collectively, the “Debtors’ Motions”), and (ii)

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used in this Reply but not otherwise defined shall have the meanings ascribed to such terms in the *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] (the “Aguilar Declaration”).

<sup>3</sup> *Debtors’ Motion for Interim and Final Orders (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 Arising from Sale of Consigned Goods to Putative Consignment Vendors*, dated March 2, 2016 [Docket. No. 9].



to the Vendor Objections to the Debtors' Motions, and the Joinders to the same.<sup>4</sup> In support of this Reply, the Term Loan Agent respectfully states as follows:

**PRELIMINARY STATEMENT**

1. The Prepetition Consigned Goods are collateral of the Term Loan Agent. This is because the Debtors gave the Term Loan Agent a lien on all "Inventory" and Inventory includes *all* "goods held for sale." The Term Loan Agent has the right to look to its collateral, including the Prepetition Consigned Goods, for repayment of its secured debt.<sup>5</sup>

2. 

3. The Vendors claim an interest in the Prepetition Consigned Goods. But, at minimum, that interest is subject to "*bona fide* dispute." In fact, the Debtors have commenced adversary proceedings against the Vendors, alleging that the Vendors have either failed to file a financing statement perfecting their interest in the Prepetition Consigned Goods (the vast majority of cases), filed such statement improperly (rendering it invalid), or filed it within the 90-day preference window. Vendors possess, *at most*, a junior security interest in the Prepetition

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<sup>4</sup> The Vendor Objections and Joinders are listed on Exhibit A attached hereto.

<sup>5</sup> See Security Agreement, dated as of May 3, 2006, 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. "Inventory" is defined in the Security Agreement 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. The UCC also defines "Inventory" to include "goods held by a person for sale . . . ." UCC 9-102(a)(48)(B). 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).

Consigned Goods. On the basis of this *bona fide* dispute with respect to the Vendors' claimed interests, Prepetition Consigned Goods may immediately be sold under Section 363(f)(4), free and clear of such interests for the benefit of the Debtors' estates.

4. [REDACTED]

[REDACTED] Unless the Debtors cease these payments, tens of millions of dollars representing the proceeds of fully-perfected secured interests in collateral will be transferred out of the Debtors' estates.

5. [REDACTED]

[REDACTED] Under Bankruptcy Code Section 363(p)(1), the Debtors bear the burden of proving that the Term Loan Agent's interests in its collateral, including the Prepetition Consigned Goods, are being adequately protected. [REDACTED]

6. [REDACTED]

[REDACTED] To the extent that the Vendors have an interest in the Prepetition Consigned Goods, such putative interest can be adequately protected by the escrowing of proceeds from the sale of the Prepetition Consigned Goods pending resolution of the Adversary Proceedings.

7. Accordingly, the Term Loan Agent submits that the Court should enter the proposed final order attached as Exhibit B to the Consigned Goods Motion (the “Proposed Final Order”), and should approve on a final basis the relief requested in each of the Debtors’ Motions, as such relief relates to the Prepetition Consigned Goods and the proceeds thereof. If the Court concludes that it cannot grant the relief requested in the Consigned Goods Motion without allowing for the Vendors to receive proceeds from the sale of Prepetition Consigned Goods, then the Term Loan Agent respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit B, denying the Consigned Goods Motion in its entirety.

**RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

**I. The Term Loan Agent’s Interests In The Prepetition Consigned Goods.**

8. As of the Petition Date, the Debtors owe approximately \$276.7 million in principal under the Term Loan Credit Agreement (plus accrued and unpaid interest, fees and other obligations). The Term Loan is secured by a first-priority interest in and lien on the “Term Loan Collateral” and a second-priority interest in and lien on the “ABL Collateral,” including accounts receivable, deposit accounts, chattel paper, and inventory of the borrowers and guarantors under the ABL Loan (collectively, the “Collateral”). In accordance with Article 9 of the UCC, the Term Loan Agent properly perfected its security interests in the Collateral.<sup>6</sup>

**II. The Consignment Vendors And The Consignment Agreements.**

9. As of the Petition Date, the Debtors’ inventory included approximately 8.5 million units of goods supplied on consignment (the “Prepetition Consigned Goods”) from approximately 170 vendors (the “Vendors”), with a value of approximately \$84.8 million. Aguilar Declaration ¶ 97. These Prepetition Consigned Goods were generally delivered to the

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<sup>6</sup> UCC statements filed by the Term Loan Agent (or its predecessor) evidencing the perfection of its 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).

Debtors for resale prior to the Petition Date pursuant to agreements (“Agreements”) that consist of a short-form agreement with TSA identifying the arrangement as “a consignment as defined in Section 9-102 [of the UCC]” and which incorporate by reference the terms of TSA’s “Vendor Relationship Guide” (the “VRG”).<sup>7</sup> Prior to the Petition Date, the Debtors paid Vendor either a percentage of the retail proceeds of consigned goods or an agreed-upon invoice price (in either case, as applicable, the “Consignment Sale Price”) after the sale of the consigned goods to a retail customer. See Consigned Goods Motion ¶ 7.

### **III. The Debtors’ Chapter 11 Proceedings.**

#### **A. The Consigned Goods Motion.**

10. Through the Consigned Goods Motion, the Debtors sought entry of an interim order, and seek entry of a final order, authorizing them to continue selling the Prepetition Consigned Goods in the ordinary course of business. Consigned Goods Motion ¶ 8. The Debtors also propose to grant the Vendors liens on the proceeds of the sale of the Prepetition Consigned Goods, up to the value of the Consignment Sale Price, with such liens having the same validity and priority as any lien that existed on the Prepetition Consigned Goods immediately prior to their sale. See id. at ¶ 10.

#### **B. The Debtors’ First Day Hearing.**

11. At the Debtors’ first day hearing on March 3, 2016, a number of Vendors objected to the relief requested in the Consigned Goods Motion, arguing, *inter alia*, that the Prepetition Consigned Goods were not property of the Debtors’ estates and thus ineligible for Section 363 sale. Such Vendors also claimed that the determination of whether the Prepetition Consigned Goods were property of the estates could be made only in the context of an adversary

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<sup>7</sup> The Agreements specify the versions of the UCC in effect in Colorado and Delaware. A copy of each Agreement is attached to each of the respective approximately 160 adversary proceedings filed by the Debtors in these Chapter 11 Cases.

proceeding. See Mar. 16, 2016 Hr'g Tr. at 38:10-39:23.

12. At the first day hearing, the Court authorized the Debtors to continue selling the Prepetition Consigned Goods on an interim basis while placing the Consignment Sale Price in escrow. The Court indicated that: (i) the Debtors were to initiate an adversary proceeding seeking a declaratory judgment if there was a dispute as to which party had a superior interest in the Prepetition Consigned Goods; (ii) initiating such an adversary proceeding would create a *bona fide* dispute; and (iii) the Debtors, as hypothetical lien creditors, may hold superior interests in the Prepetition Consigned Goods over the Vendors. See Mar. 3, 2016 Hr'g Tr. at 96:14-111:25. On May 10, 2016, the Vendors and the Debtors submitted competing forms of proposed interim orders.

**C. The Interim Consigned Goods Order.**

13. On 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 Vendor. [Docket No. 265]. 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]. The hearing was for the purpose of addressing the issue of "what procedure shall be followed in the event a consignor provides notice to the Debtor to cease selling its goods[.]" Id.

**D. The Commencement Of The Adversary Proceedings.**

14. On March 15, 2016, the Debtors commenced approximately 160 adversary proceedings (the “Adversary Proceedings”) seeking, *inter alia*, a declaratory judgment against the Vendors declaring that the Vendors do not have perfected and senior security interests in the Prepetition Consigned Goods and that such Goods are property of the Debtors’ estates.<sup>8</sup> Mar. 16, 2016 Hr’g Tr. at 11:5-11.

**E. March 16, 2016 Hearing On The Reconsideration Order.**

15. At the March 16, 2016 hearing, the Court heard from the Debtors that there were no practical means to segregate and stop selling the Prepetition Consigned Goods without incurring substantial expense and disruption to the Debtors’ operations. See Mar. 16, 2016 Hr’g Tr. at 44:3-13. The Court reiterated the Debtors’ options vis-à-vis the Prepetition Consigned Goods: (i) to cease sales, (ii) to reach a settlement with Vendors, or (iii) to comply with the terms of the Agreements as were in effect prepetition, including paying Vendors the Consignment Sale Price. The Debtors opted to sell the Prepetition Consigned Goods and comply with the terms of the prepetition Agreements. See id. at 46:15-21. The Court indicated that such payments to Vendors of the Consignment Sale Price may be subject to potential claw-back and that all parties’ interests were reserved in that regard. See id. at 47:3-48:4; 51:19-20; 52:15-17. The Court stated that it would not accelerate the Adversary Proceedings or any determination regarding priority in the Prepetition Consigned Goods. See id. at 44:11-13.

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<sup>8</sup> The Term Loan Agent has moved to intervene in each of the Adversary Proceedings. As of the filing of this Reply, that motion remains pending before the Court.

**F. Vendor Objections And Vendor Joinders To Same.**

16. On March 22, 2016, Asics America Corporation (“Asics”), a participant in the Debtors’ consignment program, filed its Omnibus Objection.<sup>9</sup> [Docket No. 644]. Of the approximately 170 vendors that participate in the consignment program, thirty-one have joined in the Vendor Objections. The aggregate value of Prepetition Consigned Goods supplied by Asics and the Vendors who filed Joinders is approximately \$65,360,220, or approximately 77% of the total value of the Prepetition Consigned Goods held by the Debtors as of the Petition Date.

17. Pursuant to the Omnibus Objection, Asics argued, in reliance on its participation in the Debtors’ consignment program, that “the Debtors have no interest in [property supplied by Asics to the Debtors]” and furthermore, that because of the Debtors’ supposed lack of any interest in what Asics defines as “Asics Property,” that the Debtors are “unable to grant a security interest in or lien on” consigned property. Asics concedes however, that Article 9 of the UCC governs consignments other than “true consignments” that do not meet the definitional requirements of a consignment set forth in section 9-102(a)(20) of the UCC. The Asics Agreement, and all of the Agreements, states that the arrangement between the Vendor and TSA is an Article 9 consignment as defined in Section 9-102 of the UCC.

**ARGUMENT IN REPLY**

**I. The Debtors Have A Sufficient Interest In The Prepetition Consigned Goods Such That They Are Property Of The Estates, Which The Debtors May Sell Free And Clear Of Any Interests Under Bankruptcy Code Section 363.**

**A. The Prepetition Consigned Goods Are Property Of The Debtors’ Estates.**

18. Subsections (b) and (c) of Section 363 allow, subject to the provisions of Section 363, for sales by the Debtors of “property of the estate,” free and clear of any interest in such

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<sup>9</sup> As noted on Exhibit A, additional Vendors filed objections to the Debtors’ Motions (and joinders to those objections) on substantially similar grounds as set forth in the Omnibus Objection.



property of any entity other than the estate. 11 U.S.C. § 363(b), (c). Vendors' objections to the Debtors' motions, apparently relying on a single sentence in the Agreements, can be summarized as the meritless assertion that as consignors, the Vendors, and the Vendors alone, have a property interest in the Prepetition Consigned Goods, to the exclusion of the Debtors' estates. Based on this incorrect premise, Vendors object to the Debtors' Motions and insist that sales by the Debtors of Prepetition Consigned Goods may be made only with the Vendors' consent. Moreover, Vendors take the position that, as the exclusive owners of the Prepetition Consigned Goods, they may impose as a condition of sale that they receive the proceeds of sales, free and clear of any claims of the Debtors' Secured Lenders.

19. Vendors' argument that the Debtors have "no interest" in the Prepetition Consigned Goods and, accordingly, that such goods are not "property of the estate" under the Bankruptcy Code, is made by the Vendors in apparent willful disregard of well-established bankruptcy and state law.

20. First of all, legal "title" is not the exclusive means by which a debtor's interest in property is determined. Property of the Debtors' estates includes "all legal *or equitable interest* of [the Debtors] in property as of the commencement of the case." 11 U.S.C. § 541 (emphasis added). Here, pre-Petition, the Debtors had extensive rights to the Prepetition Consigned Goods. The Debtors could sell Prepetition Consigned Goods at locations in its discretion, in many cases at a price solely within the Debtors' discretion, and received, in connection with Prepetition Consigned Goods, an indemnity from Vendors from any liability or expense arising from "any act or omission by Vendor." VRG at ¶ 23. In addition, the Vendors made representations and warranties in favor of the Debtors with regards to the absence of defects, compliance with safety standards and non-infringement of intellectual property. *Id.* at ¶ 20. All of these rights became

property of the estates as of the Petition Date. See In re Valley Media, Inc., 279 B.R. 105, 139 (Bankr. D. Del. 2002) (holding that rights to distribute, rights to set the sale price, rights to indemnification, and other rights of the consignee with regard to consigned property, became “property of the estate” as of the petition date and, that as a consequence, such rights could continue to be exercised by the debtor in possession without the need to assume the related agreements).

21. In addition to the rights granted to the Debtors under the Agreements, the UCC confers other rights on the Debtors. Each Vendor has agreed that its arrangement with the Debtors is an Article 9 consignment.<sup>10</sup> Under Section 9-102(a)(20) of the UCC,<sup>11</sup> a “consignment” is defined as a transaction in which (i) a person delivers goods (other than consumer goods and goods valued at less than \$1,000) to a merchant for purposes of sale, where the merchant (a) deals in goods of that kind, (b) is not an auctioneer, and (c) is not generally known by its creditors to be substantially engaged in selling goods of others; and (ii) where the transaction does not expressly create a security interest in the goods to secure an obligation.<sup>12</sup>

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<sup>10</sup> Accordingly, each Vendor is estopped from disputing this characterization in litigation involving the Debtors. See Aluminum Co. of Am. v. Essex Grp., Inc., 499 F. Supp. 53, 57, 84-85 (W.D. Pa. 1980) (party who entered into agreement with a clause characterizing it as a contract to provide services estopped from arguing that the contract was for the sale of goods); Albertson v. Winner Automotive, No. Civ.A. 01-116 KAJ, 2004 WL 2435290, at \*4 (D. Del. Oct. 27, 2004) (party estopped from asserting “a position inconsistent with one to which he acquiesced, or from which he accepted a benefit”).

<sup>11</sup> The Agreements provide that the arrangement contemplated therein shall be consignments as defined in Section 9-102 of the Colorado and Delaware Uniform Commercial Codes. All citations herein refer to the law of Delaware because that is where the relevant Debtors are deemed to be “located” under the law of both jurisdictions. Del. Code Ann. tit. 6, § 9-307(e); Colo. Rev. Stat. § 4-9-307(e).

<sup>12</sup> In the Vendor Objections and Joinders, the Vendors purport to reserve their rights on the issue of whether the Debtors are “generally known by [their] creditors to be substantially engaged in selling the goods of others.” Were this the case, the consignment transactions would fall outside of the UCC. However, not only are the Vendors estopped from challenging the characterization of their arrangements with the Debtors as Section 9-102 consignments, but there is no *bona fide* issue with regard to this test here. To demonstrate that this exception applies, the Vendors must prove by a preponderance of the evidence that (i) TSA is “substantially engaged in selling the goods of others,” and (ii) that this fact is “generally known by the creditors of [TSA].” In re Valley Media, 279 B.R. at 123-24. To be “substantially engaged in selling the goods of others,” a merchant must hold at least 20% of the value of its inventory on a consignment basis. See id. at 125; Heller Financial, Inc. v. Samuel Schick, Inc. (In re Wedlo Holdings, Inc.), 248 B.R. 336, 342 (Bankr. N.D. Ill. 2000) (holding that, as a matter of law, consignee who

22. As stated in the UCC, for a security interest to be created, a debtor must have “rights in the collateral or the power to transfer rights in the collateral to a secured party.” Del. Code Ann. tit. 6, § 9-203(b)(2). Accordingly, a debtor may not create a security interest in property to which it has no rights. At common law, because a consignee’s creditors were viewed as unable to take an interest through the consignee, consignors were able to prevail over secured lenders. See Excel Bank v. Nat. Bank of Kansas City, 290 S.W.3d 801 (Mo. Ct. App. 2009). Not so under the UCC. Under the UCC, a consignment results in a property interest held by the consignee through which a consignee’s creditor can be secured. UCC 9-319 provides that “while the goods are *in the possession* of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.” Del. Code Ann. tit. 6, § 9-319(a) (emphasis added). Thus, while the debtor remains in possession of consigned goods, and *notwithstanding that “title” remains with the consignor*, the debtor may transfer to any creditor a “security interest” in such consigned goods.

23. The power of a debtor to confer on a creditor a security interest in property in its possession is an “interest in property” under Section 541. See Larry Liebrecht v. FVTS Acquisition Company, Inc. (In re Wolverine Fire Apparatus Co. of Sherwood Michigan), 465 B.R. 808, 820 (Bankr. E.D. Wis. 2012) (holding that, where consignor did not prove superior interest in consigned goods, debtor had interest as “deemed” owner of consigned goods under UCC 9-319, and rights as “deemed” owner pass to debtor in possession as property of the estate

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obtained only 15% to 20% of its inventory on consignment was not substantially engaged in selling the goods of others). Based on the value of inventory set forth by the Debtors, consigned goods comprised approximately 11.3% to 12.7% of the aggregate inventory of TSA and its respective subsidiaries as of the Petition Date, a percentage well below the 20% threshold. See Aguilar Declaration ¶ 26 (indicating that the value of the Prepetition Consigned Goods as of the Petition Date was approximately \$84.8 million); ¶ 31 (indicating that the value of total inventory (which may or may not include consigned goods) as of the Petition Date was approximately \$665.9 million). The Vendors have not contested these valuations or submitted other evidence on the value of TSA’s inventory. Given that the first prong of the “generally known/substantially engaged” test has not and cannot be met, there is no need to consider the second prong.

under Bankruptcy Code Section 541); see also In re Tristar Automotive Group, Inc., 141 B.R. 41, 43-44 (Bankr. S.D.N.Y. 1992) (holding that consigned goods were property of the estate notwithstanding consignors' retention of title). Here, upon receipt by the Debtors of the Prepetition Consigned Goods from the Vendors, the Debtors were able to pledge such Prepetition Consigned Goods as Collateral to the Term Loan Agent. It is undisputed that the Debtors did transfer a security interest in the Prepetition Consigned Goods to the Term Loan Agent for the benefit of the Term Loan Lenders. The Debtors' transfer to the Term Loan Agent of a security interest in the Prepetition Consigned Goods satisfies the "interest of the debtor" requirement of Section 9-203 of the UCC.<sup>13</sup>

**B. The Prepetition Consigned Goods May Be Sold Pursuant To Section 363 Because The Vendors' Claims To Such Goods Are In "Bona Fide Dispute."**

24. Even if, *arguendo*, the Debtors' rights in the consigned property under the Agreements and the UCC did not satisfy the "property of the estate" requirements of subsections (b) and (c) of Section 363, the Prepetition Consigned Goods may be sold free and clear of the Vendors' claimed interests because the claimed interests of the Vendors in the Prepetition

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<sup>13</sup> As Asics correctly notes in the Omnibus Objection, prior to the 2001 revisions to the UCC, consignments were addressed mostly under Article 2. Under former Section 2-326, consigned goods were deemed to be on "sale or return" with respect to the claims of a debtor's creditors, and, by application of the debtor's rights as a hypothetical lien creditor (discussed further below), were conclusively determined to be property of the debtor's estate. Furr v. The Corvette Experience, Inc., (In re Corvette Collection of Boston, Inc.), 294 B.R. 409, 413 (Bankr. S.D. Fla. 2003) ("More importantly, pursuant to § 544(a) of the Bankruptcy Code, all goods held by the Debtors sale or return become assets of the estate."); In re Morgansen's Ltd., 302 B.R. 784, 789 (Bankr. E.D.N.Y. 2003), aff'd in part, remanded in part, 2005 WL 3270856 (E.D.N.Y. Sept. 27, 2005) ("Under UCC Section 2-326 as amended, goods which are consigned for sale, are property of the bankruptcy estate of the 'consignee,' and subject to the claims of the creditors of the entity doing the sale.... If a person takes goods to one who is considered a consignee (a 'buyer' for resale) and that buyer files for bankruptcy relief, the buyer/debtor's trustee will take the goods as property of the debtor's estate."); In re Tristar Automotive Group, Inc., 141 B.R. 41, 43-44 (holding that consigned goods were property of the estate notwithstanding consignors' retention of title). The Vendors glibly contend that the revisions to Article 2 and Article 9 heralded a sea change with respect to this outcome. However, commentary to the UCC expressly rejects this frivolous contention, and so has this Court. Del. Code Ann. tit. 6, § 9-319, Official Comment 2 ("Insofar as creditors of the consignee are concerned, this Article to a considerable extent reformulates the former law, which appears in former Sections 2-326 and 9-144, *without changing the results.*") (emphasis added); In re Valley Media, Inc., 279 B.R. at 123 ("Once it is determined that either former U.C.C. § 2-326(3) or revised U.C.C. §§ 9-102(a)(20) & 9-319(a) applies, the goods are deemed to be on sale or return with respect to claims made by the creditors of the consignee.").

Consigned Goods are subject to challenge under state law and avoidable pursuant to Section 544 of the Bankruptcy Code.

25. Pursuant to Section 544, immediately upon the filing of the bankruptcy petitions, the Debtors acquired the rights and powers of a hypothetical judgment lien creditor. 11 U.S.C. § 544(a); Georgetown Steel Company, LLC v. Progress Rail Services Corporation (In re Georgetown Steel Co., LLC), Adv. Proc. No. 03-80571 (Bankr. D.S.C. Dec. 3, 2004) (Waites, J.) (“[Section] 544 plainly states that the strong arm powers of the trustee or debtor in possession are applied at the time of commencement of the case.”).

26. With respect to other creditors of a consignee, the UCC provides that the interest of a consignor in goods is a purchase-money security interest (PMSI) in inventory. See Del. Code Ann. tit. 6, §§ 9-103(d) (“The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.”); In re Salander-O’Reilly Galleries, LLC, 506 B.R. 600, 607 (Bankr. S.D.N.Y. 2014), rev’d on other grounds, 2014 WL 7389901 (Nov. 25, 2014) (Briccetti, J.) (“In contrast, the consignor—in this case Kraken, the “owner” of the Botticelli—is deemed to hold only a purchase-money security interest in the consigned goods as against creditors of the consignee.”); Marcoly v. National Bank of the Commonwealth (In re Marcoly), 32 B.R. 423, 425 (Bankr. W.D. Penn. 1983). The clear-cut provisions of the UCC regarding a consignor’s interest in consigned goods vis-à-vis other creditors “obviates any need to set forth special priority rules applicable to the interest of a consignor.” Del. Code Ann. tit. 6, § 9-103, Official Comments 6.

27. Pursuant to Bankruptcy Code Section 362(p)(2), the Vendors bear the burden of proving their alleged interest in the Prepetition Consigned Goods. 11 U.S.C. § 363(p)(2) (“In any hearing under this section . . . the entity asserting an interest in property has the burden of

proof on the issue of the validity, priority, or extent of such interest.”); see Morris v. Kasparek (In re Kasparek), 426 B.R. 332, 342 (B.A.P. 10th Cir. 2010) (party asserting equitable title in property “shoulder[s] the burden to prove the extent of his interest”); VanCura v. Hanrahan (In re Meill), 441, B.R. 610, 613-14 (B.A.P. 8th Cir. 2010) (alleged lienholder who objected to Section 363 sale has burden to prove interest in property); Kiser v. Russell Cty., Va. (In re Kiser), 344 B.R. 432, 439 (Bankr. W.D. Va. 2004).

28. To satisfy their burden under Section 363(p)(2), each Vendor must prove that it timely and properly perfected its PMSI in the applicable Prepetition Consigned Goods by properly filing a UCC financing statement, and, with respect to the Term Loan Agent, that it timely sent the requisite authenticated notification prior to delivering the Prepetition Consigned Goods to the Debtors. See Del. Code Ann. tit. 6, §§ 9-322, 324(b); In re Valley Media, 279 B.R. at 123; Chequers Inc. Assocs. v. Hotel Sierra Vista Ltd. P’ship (In re Hotel Sierra Vista Ltd. P’ship), 112 F.3d 429, 434 (9th Cir. 1997).

29. Here, no Vendor that is subject to the Adversary Proceedings has satisfied the requirements of the UCC to properly perfect their interests in the Prepetition Consigned Goods. As is alleged in the Adversary Proceedings, it appears that the vast majority of Vendors simply failed to file any financing statement. Others either filed a financing statement improperly (rendering such financing statement invalid), or filed a financing statement within the 90-day preference period. As a consequence of their failure to comply with provisions of the UCC that provide for the protection of Article 9 consignors, the Vendors’ interests in the Prepetition Consigned Goods are relegated to that of a mere unsecured creditor. See In re Niblett, 441 B.R. 490, 492-93 (Bankr. E.D. Va. 2009) (“The trustee’s rights are superior to those of the consignor. The trustee has the right to sell property consigned to a debtor and use the proceeds to pay

creditors who file proofs of claims.”); Marcoly v. National Bank of the Commonwealth (In re Marcoly), 32 B.R. 423, 425 (Bankr. W.D. Pa. 1983) (“Section 544 gives the Debtor in Possession a perfected interest in the goods superior to that of [consignor]. Although the Court is convinced that this transaction was intended to be a consignment, [consignor] did not protect its interest by ... filing a financing statement.”); In re Tristar Automotive Group, Inc., 141 B.R. at 44 (holding that consignor that did not prove that it had a perfected security interest in consigned goods had interest inferior to Debtors’ Section 544 power and, thus, could not obtain relief from the automatic stay to retrieve its goods). Thus, the interests of the Debtors (as hypothetical lien creditors) and the Term Loan Agent in the Prepetition Consigned Goods are superior to the interests of each of the Vendors.<sup>14</sup>

30. At a minimum, the Vendors’ interests in the Prepetition Consigned Goods are in *bona fide* dispute, and, pursuant to Bankruptcy Code Section 363(f)(4), the Debtors may sell the Prepetition Consigned Goods free and clear of any interests that the Vendors may have in such Goods. As a condition to sale under Section 363(f)(4), the Debtors or an interested third party bears the burden of proving that a *bona fide* dispute exists. See Scherer v. Federal Nat’l Mortgage Ass’n (In re Terrace Chalet Apartments, Ltd.), 159 B.R. 821, 828 (N.D. Ill. 1993). To

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<sup>14</sup> Official Comments 2 and 3 to UCC 9-319 provide the following illustrative examples:

(i) Consignor Fails To Perfect Security Interest: “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.”

(ii) Consignor Fails to Provide Adequate Notice 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.”

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

meet this burden, the Debtors or an interested third party must show that there is an objective basis for either a factual or legal dispute as to the validity of the alleged interest. See In re Daufuskie Island, Props., LLC, 431 B.R. 626, 645-46 (Bankr. D.S.C. 2010) (history of litigation regarding alleged interest); In re Collins, 180 B.R. 447, 452 (Bankr. E.D. Va. 1995).

31. Here that burden is satisfied. Claimed interests subject to avoidance are “in *bona fide* dispute” for purposes of Section 363(f). See, e.g., In re Bedford Square Assocs., L.P., 247 B.R. 140, 145 (Bankr. E.D. Pa. 2000) (permitting sale under § 363(f)(4) because debtor’s asserted right to commence strong-arm proceeding to avoid interest created a *bona fide* dispute). The Court does not need to resolve the *bona fide* dispute as a condition to authorizing the Section 363 sale, but must only determine that such a *bona fide* dispute exists. See In re Octagon Roofing, 123 B.R. 583, 590 (Bankr. D. Ill. 1991). The commencement of the Adversary Proceedings, and the allegations set forth in the complaints filed therein, provide sufficient legal and factual bases to establish a *bona fide* dispute regarding the Vendors’ claimed interests in the Prepetition Consigned Goods.

**C. Asics’ Claimed Pre-Petition Termination Does Not Alter the Debtors’ Rights.**

32. Asics contends that its situation is different when compared to other Vendors because it purports to have terminated its Agreement prior to the Petition Date. This purported termination, Asics contends, entitles it to the return of applicable Prepetition Consigned Goods. The Debtors contend that Asics’ purported termination of their Agreement was invalid, and that even if it were valid, the Debtors are nevertheless permitted to continue to sell consigned goods delivered by Asics prior to the effective date of such termination. Mar. 16, 2016 Hr’g Tr. at 58:22-59:22. In that regard, it should be noted that Asics cites to no provision in its Agreement with TSA supporting its contention that it has a termination right. Moreover, assuming such a



termination rights exists, the Agreement does not require TSA to stop selling and return consigned goods to a Vendor upon such termination. See VRG *passim*. A plausible consequence of the termination is that the Vendor will simply cease shipping new consigned goods to TSA.

33. As set forth above, under Bankruptcy Code Section 363(p)(2), Asics bears the burden of proving its purported superior interest in the Prepetition Consigned Goods. The Debtors have initiated an Adversary Proceeding against Asics seeking to avoid its interest in the Prepetition Consigned Goods, and otherwise contest the validity of Asics' purported prepetition termination of their Agreement. At a minimum, a *bona fide* dispute exists regarding Asics' purported interests in the Prepetition Consigned Goods and, under Bankruptcy Code Section 363(f)(4), the Debtors are permitted to sell such goods free and clear of any interests of Asics.

**D. The Relative Rights Of Vendors And Secured Creditors Do Not Need To Be Finally Resolved As A Condition To Allowance Of The Debtors' Motions.**

34. Vendors argue that a Section 363 sale must await final resolution of the Adversary Proceedings. This asserted ordering of necessary procedures disregards "ample authority" that Section 363(f) allows for the sale of property subject to dispute "so long as the [claimed interests] attach to the proceeds of the sale." In re DVI, Inc., 306 B.R. 496, 504 (Bankr. D. Del. 2004) (citing In re Wells, 296 B.R. 728, 734 (Bankr. E.D. Va. 2003) (holding that trustee could sell property free and clear of equitable interest in property with interest to attach to proceeds); see also In re Bedford Square Assocs., L.P., 247 B.R. 140, 145 (Bankr. E.D. Pa. 2000) (permitting sale under § 363(f)(4) because debtor's asserted right to commence strong-arm proceeding to avoid interest created a *bona fide* dispute); In re Surplus Furniture Liquidators, Inc., 199 B.R. 136, 145 (Bankr. M.D.N.C. 1995) (permitting sale under § 363(f)(4) where equitable lien was disputed).

35. In support of the contrary position, Vendors rely principally on In re Whitehall Jewelers Holdings, Inc., 2008 WL 2951974 (Bankr. D. Del. 2008). The Vendors' reading of Whitehall is erroneous. In refusing to allow the debtor to proceed with a Section 363 sale, Judge Gross observed that the debtors were unable to provide the consignors with adequate protection of their interests. Id. at \*7. Because the proposed sale would in substance effect a lien avoidance, and because the debtors were unable to provide the consignors with adequate protection, the procedural protections of an adversary proceeding were required before the Court could approve any sale of the consigned goods. Id.

36. In this case, where adequate protection can be provided to Vendors, there is no reason for Section 363 sales to be deferred until the Adversary Proceedings are concluded. See Valley Media, 279 B.R. at 133 (while acknowledging the need for an adversary proceeding to “complete” the debtors’ avoidance, allowing the Section 363 sale to go forward).

**E. Absent a Lifting of the Automatic Stay, Vendors May Not Take Possession of Prepetition Consigned Goods.**

37. The Vendors well understand the value destructive impact that will result if the Consigned Goods Motion is not granted. Indeed, the Debtors have asserted that prohibiting the Debtors from continuing to sell the Prepetition Consigned Goods (in which they hold a superior interest to each and every Vendor) will inflict substantial harm upon the Debtors and the estates. Mar. 16, 2016 Hr’g Tr. at 9:21; 12:11-13 (discontinuing the sale of Prepetition Consigned Goods would be “devastating to the [Debtors’] business,” and risks “cratering the business and losing up to 8,000 jobs”); Aguilar Declaration ¶ 99 (any disruption in the sale of Prepetition Consigned Goods would cause the Debtors to “experience significant loss in sales volume, disrupt[] the Debtors’ business and jeopardize[] their restructuring efforts”).

38. Unfortunately, it is the Vendors' apparent intent to hold up the fair and correct resolution of the Consigned Goods Motion in order to leverage their ability to delay and disrupt the Debtors' Section 363 sale process and extract improper concessions from the Debtors in violation of the Bankruptcy Code. Further impairing the going concern sales process is their looming threat to bring the Debtors' operations to a halt if the Debtors are required to stop selling and segregate the Prepetition Consigned Goods. In addition, any buyer of a TSA store faces the prospect of having to remove thousands of Prepetition Consigned Goods from their shelves upon closing.

39. A consignor seeking to recover possession of goods in the possession of a debtor-in-possession must seek and obtain relief from the automatic stay in order to do so. Emerson Quiet Kool Corp. v. Marta Grp., Inc. (In re Marta Grp., Inc.), 33 B.R. 634, 641 (Bankr. E.D. Pa. 1983) (holding that debtor's possessory interest in consigned goods triggered automatic stay, even where debtor's held no ownership interest in such goods); Liebzeit v. FVTS Acquisition Co. (In re Wolverine Fire Apparatus Co. of Sherwood Mich.), 465 B.R. 808, 814 (Bankr. E.D. Wis. 2012) (holding that consignor violated automatic stay when it took possession of consigned vehicle from debtor); In re Downey Creations, LLC, 414 B.R. 463, 465 (Bankr. S.D. Ind. 2009) (denying consignor's request for relief from the automatic stay to recover possession of consigned goods). The Prepetition Consigned Goods are in the Debtors' possession.

40. Subject to exceptions not present here, requests for relief from the automatic stay must be made by motion, comply with Local Bankruptcy Rule 4001-1 (including the requirements to file supporting documentation with the motion and provide notice to all affected parties), and be supported by a substantial evidentiary showing that the party seeking relief from stay will suffer "significant" hardship absent such relief. See Atlantic Marine Inc. v. American

Classic Voyages, Co. (In re American Classic Voyages, Co.), 298 B.R. 222, 225 (Bankr. D. Del. 2003) (denying relief from stay and holding that party seeking relief must show “significant” hardship).

41. None of this has happened. No Vendor has formally moved for relief from the automatic stay, nor has any Vendor come forward with the substantial evidence necessary to support such extraordinary relief. Indeed, no Vendor can adduce such evidence because (a) the interests of both the Debtors and the Term Loan Agent in the Prepetition Consigned Goods are superior to any interests of the Vendors, and (b) in the unlikely event that a Vendor can prove that it has a superior interest in the Prepetition Consigned Goods (which is each Vendor’s burden under the Bankruptcy Code, and which no Vendor can do), such interest can be adequately protected through entry of the Proposed Final Order escrowing the Consignment Sale Price; thus, no Vendor will be “significantly” harmed by a denial of relief from the automatic stay. Accordingly, this Court should not approve an order permitting any Vendor to take possession of Prepetition Consigned Goods or receive payment of the Consignment Sale Price.

II. [REDACTED]

A. [REDACTED]

42. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43. [REDACTED]

[REDACTED]

44. [REDACTED]

[REDACTED]

45. [REDACTED]

[REDACTED]

[REDACTED]

46. [REDACTED]

[REDACTED]

47. [REDACTED]

[REDACTED]

48. [REDACTED]

49. [REDACTED]

50. The provision of adequate protection under Section 363 is mandatory. See In re Continental Airlines, Inc., 146 B.R. 536, 539 (Bankr. D. Del. 1992) (noting that a debtor’s right to use property of the estate in the ordinary course of business 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 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).

51. Adequate protection is provided both as a matter of policy and as a matter of constitutional law. See In re Timbers of Inwood Forest Associates, Ltd., 793 F.2d 1380, 1396 (5th Cir. 1986) (“The concept [of adequate protection] is derived from the fifth amendment protection of property interests. It is not intended to be confined strictly to the constitutional protection required, however. The ... concept of adequate protection is based as much on policy

grounds as on constitutional grounds. Secured creditors should not be deprived of the benefit of their bargain....” (internal quotations and citations omitted), aff’d, United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 376 (1988); In re Townley, 256 B.R. 697, 700 (Bankr. D.N.J. 2007) (“The right of a secured creditor to the value of its collateral is a property right protected by the Fifth Amendment.”)

52. Here, it is undisputed that the Term Loan Agent has a perfected security interest in the Collateral, which includes the Prepetition Consigned Goods. The Term Loan Agent, therefore, is entitled to adequate protection for any diminution in the value of the Term Loan Agent’s interests in the Collateral.

**B. The Debtors Bear The Burden Of Proving That The Term Loan Agent’s Interests In The Collateral Are Adequately Protected.**

53. The Debtors bear the burden of proving the issue of adequate protection. 11 U.S.C. § 363(p)(1) (“In any hearing under this section ... the trustee has the burden on the issue of adequate protection....”). Absent the Debtors’ ability to prove the Term Loan Agent’s interests in the Collateral are being adequately protected, the Debtors are prohibited from continuing to use the Prepetition Consigned Goods without the Term Loan Agent’s consent.<sup>15</sup>

*[Remainder of page intentionally left blank.]*

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<sup>15</sup> Despite the clear mandates of the Bankruptcy Code, there is some limited authority suggesting that the creditor seeking adequate protection must make a *prima facie* showing demonstrating a decline or threatened decline in the value of its collateral. See, e.g., Zink v. VanMiddlesworth, 300 B.R. 394, 402-03 (N.D.N.Y. 2003); In re Panther Mountain Land Dev., LLC, 438 B.R. 169, 189-90 (Bankr. E.D. Ark. 2010). Although this standard turns Section 363(p)(1) on its head, the Term Loan Agent can easily satisfy it for the reasons set forth herein.



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

(i) either (a) grant the relief requested in the Consigned Goods Motion by entering the Proposed Final Order, or (b) if the Court denies the relief requested in the Consigned Goods Motion, then enter an Order, substantially in the form attached hereto as Exhibit B, denying such relief

(ii) grant the relief requested in the other Debtors' Motion, (iii) overrule the Vendor Objections and the Joinders to the same, and (iv) grant such other and further relief as the Court deems just and proper.

Dated: March 31, 2016  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

/s/ Robert J. Dehney

Robert J. Dehney (No. 3578)  
Gregory W. Werkheiser (No. 3553)  
Tamara K. Minott (No. 5643)  
1201 N. Market St., 16th Floor  
P.O. Box 1347  
Wilmington, DE 19899-1347  
Tel: 302-658-9200  
Fax: 302-658-3989  
Email: rdehney@mnat.com  
gwerkheiser@mnat.com  
tminott@mnat.com

-and-

**BROWN RUDNICK LLP**

Robert J. Stark (admitted *pro hac vice*)  
William R. Baldiga (*pro hac vice* pending)  
May Orenstein (*pro hac vice* pending)  
Bennett S. Silverberg (admitted *pro hac vice*)  
Seven Times Square  
New York, NY 10036  
Tel: (212) 209-4800  
Fax: (212) 209-4801

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

**EXHIBIT A**

**(Objections and Joinders)**

Objection / Joinder	Docket. No.
Limited Objection of Agron, Inc. to Debtors' Motion for Interim and Final Orders (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 Arising from Sale of Consigned Goods to Putative Consignment Vendors	102
Joinder of Gordini USA, Inc. and SGS Sports, Inc. to Agron, Inc's Limited Objection to Debtors' Motion for Interim and Final Orders (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 Vendor with Perfected Security Interests in Consigned Goods and/or Remit the Consignment Sale Price Arising from Sale of Consigned Goods to Putative Consignment Vendors	110
Declaration of Henry Sutton, on Behalf of Castlewood Apparel Corp., in Response to Debtors' Motion for Interim and Final Orders Authorizing the Debtors to Continue to Sell Consigned Goods in the Ordinary Course of Business and Granting Related Relief	113
Objection of ASICS America Corporation to Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights	549
Joinder and Reservation of Rights of Gordini USA, Inc. to Limited Objection of ASICS America Corporation to Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights	552
Joinder and Reservation of Rights of SGS Sports, Inc. to Limited Objection of ASICS America Corporation to Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights	553
Joinder and Reservation of Rights of SP Images, Inc. to Limited Objection of ASICS America Corporation to Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights	554
Joinder of M.J. Soffe, LLC to the Limited Objection of Asics America Corporation to Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights	555
Joinder of THORLO, Inc. to the Limited Objection of Asics America Corporation To Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights	556
Joinder to Limited Objection to Debtors' Bid Procedures Motion	557
Joinder and Reservation of Rights of Ameriform Acquisition Company, LLC d/b/a KL Industries to Limited Objection of ASICS America Corporation to Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights	558

Objection / Joinder	Docket. No.
E & B Giftware, LLC's Joinder in Limited Objection of ASICS America Corporation to Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights	559
Limited Objection and Reservation of Rights of Easton to Debtors' Proposed Bid Procedures in Connection with Debtors' Motion to Sell Substantially All Their Assets	560
Limited Objection of Shock Doctor, Inc., d/b/a United Sports Brands ("USB") to Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, Joinder by USB in Limited Objection of ASICS America Corporation to Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights by USB	562
Joinder of Castlewood Apparel Corp. to the Limited Objection of ASICS America Corporation to Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights	570
Limited Objection of Agron, Inc., and Joinder to Limited Objection of Asics America Corporation to Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights	572
Joinder and Reservation of Rights of Colosseum Athletics, Corp. in Limited Objection of Asics America Corporation to Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing	578
Limited Objection of Rip Curl, Inc., and Joinder to Objection of Asics America Corporation to Debtors Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights	603
Objection of Wigwam Mills, Inc. to Debtors' Motion for Interim and Final Orders (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 Arising from Sale of Consigned Goods to Putative Consignment Vendors	608
Joinder of Altus Brands, LLC to the Limited Objection of ASICS America Corporation to Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights	615
Limited Objection of Wigwam Mills, Inc. to Debtors' Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364; (II) Granting Liens and Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C. §§ 364 and 507; (III) Authorizing the Use of Cash Collateral and Providing Adequate Protection to Prepetition Secured Parties and Modifying the Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(B) and (C) and Local Rule 4001-2	637
Omnibus Objection of ASICS America Corporation to Debtors' Motions for Entry of Final Orders on the (1) Consignment Motion; (2) GOB Motion and (3) DIP	644

Objection / Joinder	Docket. No.
Motion	
Joinder by Casio America Inc. to Omnibus Objection of ASICS America Corporation to Debtors' Motions for Entry of Final Orders on the (1) Consignment Motion; (2) GOB Motion and (3) DIP Motion	646
Joinder of M.J. Soffe, LLC to the Omnibus Objection of ASICS America Corporation to Debtors' Motions for Entry of Final Orders on the (1) Consignment Motion; (2) GOB Motion and (3) DIP Motion	648
Joinder of THORLO, Inc. to the Omnibus Objection of ASICS America Corporation to Debtors' Motions for Entry of Final Orders on the (1) Consignment Motion; (2) GOB Motion and (3) DIP Motion	654
E & B Giftware, LLC's and Sportline Inc.'s Joinder in Omnibus Objection of ASICS America Corporation to Debtors' Motions for Entry of Final Orders on the (1) Consignment Motion; (2) GOB Motion and (3) DIP Motion	657
Joinder of Sport Write, Inc. to Omnibus Objection of ASICS America Corporation to Debtors' Motions for Entry of Final Orders on the (1) Consignment Motion; (2) GOB Motion and (3) DIP Motion	661
Castlewood Apparel Corp.'s (I) Joinder to Omnibus Objection of ASICS America Corporation to Debtors' Motions for Orders on the (1) Consignment Motion; (2) GOB Motion; and (3) DIP Motion; and (II) Additional, Limited Objection to GOB Motion	662
Joinder of SGS Sports, Inc. to Omnibus Objection of ASICS America Corporation to Debtors' Motions for Entry of Final Orders on the (1) Consignment Motion; (2) GOB Motion and (3) DIP Motion	663
Joinder of SP Images, Inc. to Omnibus Objection of ASICS America Corporation to Debtors' Motions for Orders on the (1) Consignment Motion; (2) GOB Motion; and (3) DIP Motion	664
Joinder of Gordini USA, Inc. to Omnibus Objection of ASICS America Corporation to Debtors' Motions for Entry of Final Orders on the (1) Consignment Motion; (2) GOB Motion and (3) DIP Motion	666
Supplemental Objection to Agron, Inc.'s Limited Objection to Debtors' Motion for Interim and Final Orders (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 Arising from Sale of Consigned Goods to Putative Consignment Vendors	667
Joinder Limited Omnibus Objection of Shock Doctor, Inc., d/b/a United Sports Brands (USB) to Debtors Motions for Orders on the (1) Consignment Motion; (2) GOB Motion; and (3) DIP Motion, Joinder by USB in Omnibus Objection of Asics America Corporation, and Reservation of Rights by USB	671
Objection to Debtors' Consignment Motion, Limited Objection to GOB Motion,	673

Objection / Joinder	Docket. No.
and Joinder to Other Objections	
Limited Objection and Joinder of Easton to (I) Objections to Consignment Motion and (II) Omnibus Objection of ASICS America Corporation to Debtors' Motions for Entry of Final Orders on the (1) Consignment Motion; (2) GOB Motion and (3) DIP Motion	676
Joinder of Boyt Harness to Omnibus Objection of ASICS America Corporation to Debtors' Motions for Entry of Final Orders on the (1) Consignment Motion; (2) GOB Motion and (3) DIP Motion	680
Objection of Bravo Sports and Joinder to Objection of Asics America Corporation to Debtors' Motions for Orders on the (1) Consignment Motion; (2) GOB Motion; and (3) DIP Motion	681
Limited Objection of Goal Zero LLC to Debtors' Motion for Interim and Final Orders (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 Arising from Sale of Consigned Goods to Putative Consignment Vendors, and Joinder in Objection, Responses, and Joinders of Agron, Inc., Gordini USA, Inc., SGS Sports, Inc., Castlewood Apparel Corp., and Wigwam Mills, Inc.	684
Joinder of Altus Brands, LLC to the Omnibus Objection of ASICS America Corporation to Debtors' Motions for Entry of Final Orders on the (1) Consignment Motion; (2) GOB Motion and (3) DIP Motion	687
Joinder of Ad Hoc Committee of Consignment Creditors to Objection of Asics America Corporation to Debtors' Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights	689
Objection of Agron, Inc. and Joinder to Omnibus Objection of ASICS America Corporation to Debtors' Motions for Entry of Final Orders on the (1) Consignment Motion; (2) GOB Motion and (3) DIP Motion	691
Joinder of Filmar USA, Inc. to Omnibus Objection of ASICS America Corporation to Debtors' Motions for Entry of Final Orders on the (1) Consignment Motion; (2) GOB Motion and (3) DIP Motion	693
Joinder of Ad Hoc Committee of Consignment Creditors to Agron, Inc.'s Limited Objection to Debtors' Motion for Interim and Final Orders (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 the Consigned Goods and/or Remit the Consignment Sale Price Arising from Sale of Consigned Goods to Putative Consignment Vendors	694
Joinder of Performance Apparel Corp. to the Omnibus Objection of ASICS America Corporation to Debtors' Motions for Entry of Final Orders on the (1)	698

<b>Objection / Joinder</b>	<b>Docket. No.</b>
Consignment Motion; (2) GOB Motion and (3) DIP Motion	
Limited Objection and Joinder of J.J's Mae, Inc. d/b/a Rainbeau to Objection of Asics America Corporation to Debtors': (A) Motion for Interim and Final orders re Consigned Goods and Consignment Vendors, and (B) Proposed Bid Procedures Order and Notice of Auction and Sale Hearing, and Reservation of Rights	700
Joinder by Mission Product Holdings, Inc. to Omnibus Objection of ASICS America Corporation to Debtors' Motions for Orders on the (1) Consignment Motion; (2) Gob Motion; and (3) DIP Motion	707
Joinder of O2COOL, LLC to Omnibus Objection of ASICS America Corporation to Debtors' Motions for Orders on the (1) Consignment Motion; (2) GOB Motion and (3) DIP Motion	713
Limited Omnibus Objection of Trends International, LLC ("Trends") to Debtors' Motions for Orders on the (1) Consignment Motion; (2) GOB Motion; and (3) DIP Motion, Joinder by Trends in Omnibus Objection of ASICS America Corporation, and Reservation of Rights by Trends	753
Joinder by Hi-Tec Sports USA, Inc. to Omnibus Objection of Asics America Corporation to Debtors' Motions for Orders on the (1) Consignment Motion; (2) Gob Motion; and (3) DIP Motion	853
Joinder of Ogio International, Inc. to the Omnibus Objections of Asics America Corporation, and Other Consignors, to Debtors' Motions for Entry of Final Orders on the (1) Consignment Motion; (2) GOB Motion; and (3) DIP Motion	888

**EXHIBIT B**

**(Proposed Order)**



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

In re:

SPORTS AUTHORITY HOLDINGS, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-10527 (MFW)

(Jointly Administered)

Ref. Docket Nos. 9 & 278

**ORDER DENYING RELIEF  
REQUESTED IN DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS  
(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 ARISING  
FROM SALE OF CONSIGNED GOODS TO PUTATIVE CONSIGNMENT VENDORS**

Upon the *Debtors' Motion for Interim and Final Orders (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 Arising from Sale of Consigned Goods to Putative Consignment Vendors* (the "Motion")<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); and objections to the Motion having been asserted, either in a

<sup>1</sup> 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.

<sup>2</sup> All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

writing filed with the Court or orally at the hearing on the Motion on March 3, 2016 (the “First Day Hearing”), by various Consignment Vendors of the Debtors, including (without limitation) Agron, Inc., Gordini, SGS Sports, Castlewood Apparel Corp., Implus Footcare, LLC, and Asics America Corporation; 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 it may enter a final order consistent with Article III of the United States Constitution; and the Court having considered the First Day Declaration; and upon the record of the hearing and all of the proceedings had before the Court; and the Court having previously entered an interim order submitted by the Consignment Vendors on March 11, 2016 (Doc. 278) (the “Interim Order”); and the Court having convened an emergency conference with the Debtors and the Consignment Vendors on March 11, 2016, subsequent to the entry of the Interim Order (the “Emergency Conference”); and, following the Emergency Conference, the Court having entered an order, dated as of March 11, 2016, granting reconsideration of the Interim Order to the extent set forth therein (the “Reconsideration Order”); and the Court having scheduled and conducted a subsequent hearing (the “Second Interim Hearing”) on March 16, 2016, to consider the implementation of the Interim Order; and the Court having scheduled and conducted a final hearing with respect to the Motion on April 5, 2016 (the “Final Hearing,” and, collectively, with the First Day Hearing, Emergency Conference, the Second Interim Hearing, and the Final Hearing, the “Hearings”); and objections to the Motion having been filed by certain

Consignment Vendors prior to the Final Hearing; and joinders to those objections having been filed by certain Consignment Vendors prior to the Final Hearing; and a reply in support of the Motion having been filed by the Term Loan Agent prior to the Final Hearing; and the Court having heard argument from, among others, the Debtors, the Term Loan Agent, and certain Consignment Vendors at the Hearings as reflected in the record; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is hereby DENIED for the reasons set forth on the record at the Hearings.
2. Nothing in this Order shall impair or expand the rights or interests of any of the Debtors, Secured Lenders, Secured Lender Agents (as defined in the Interim Order), or Consignment Vendors with respect to any Consigned Goods or Consignment Sale Proceeds.
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

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HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT C**

**DECLARATION OF JAMES H. BAIRD IN SUPPORT OF TERM LOAN AGENT'S  
REPLY (I) IN SUPPORT OF DEBTORS' CONSIGNMENT MOTION AND OTHER  
FIRST DAY RELIEF, AND (II) TO VENDORS' OBJECTIONS TO SAME**

**[FILED UNDER SEAL]**