

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

In re:	§	Chapter 11
	§	
ANAGRAM HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	§	Case No.: 23-90901 (MI)
	§	
Debtors.	§	(Jointly Administered)

**SILVER POINT CAPITAL’S LIMITED OBJECTION TO EMERGENCY MOTION OF  
DEBTORS FOR ENTRY OF AN ORDER (I)(A) APPROVING THE BIDDING  
PROCEDURES FOR THE SALE OF THE DEBTORS’ ASSETS, (B) APPROVING THE  
STALKING HORSE BID PROTECTIONS, (C) SCHEDULING CERTAIN DATES WITH  
RESPECT THERETO, (D) APPROVING FORM AND MANNER OF NOTICES  
THEREOF AND (E) APPROVING CONTRACT ASSUMPTION AND ASSIGNMENT  
PROCEDURES, (II)(A) APPROVING SALE OF DEBTORS’ ASSETS FREE AND  
CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES AND (B)  
AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES AND (III) GRANTING RELATED RELIEF  
[Relates to ECF 26]**

Silver Point Capital, which manages certain funds and/or accounts (collectively, “Silver Point”) that hold approximately 28.5% of all outstanding 10.00% PIK/Cash Senior Secured Second Lien Notes due 2026, issued by debtor Anagram Holdings, LLC (the “Second Lien Notes”),<sup>2</sup> submits this limited objection, through its undersigned counsel, to the *Emergency Motion of Debtors for Entry of An Order (I)(A) Approving the Bidding Procedures for Sale of Debtors’ Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Certain Dates with Respect*

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtors’ federal tax identification number are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors’ service address for purposes of these chapter 11 cases is 7700 Anagram Drive, Eden Prairie, MN 55344.

<sup>2</sup> As of the Petition Date, approximately \$108.9 million in aggregate principal amount of Second Lien Notes was outstanding, *see Declaration of Adrian Frankum in Support of Debtors’ Chapter 11 Petitions and First Day Motions* [ECF 19] (the “First Day Declaration”), of which Silver Point holds approximately \$31.05 million. Silver Point is also a significant shareholder of Party City Holdings Inc. and, in order to protect all of its investments, is also interested in participating as a bidder for the Debtors’ assets.



*Thereto, (D) Approving Form and Manner of the Assignment Procedures and (E) Approving Contract Assumption and Assignment Procedures, (II)(A) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases and (III) Granting Related Relief*[ECF 26] (the "Bidding Procedures Motion") and respectfully states as follows:

### **I. PRELIMINARY STATEMENT<sup>3</sup>**

1. While Silver Point does not object to the Debtors' efforts to engage in a sale process, Silver Point does object to the proposed Bidding Procedures—namely, the proposed deadlines (the "Proposed Deadlines") for the Sale Process, which are unnecessarily compressed. The Debtors claim that the 5-week pre-petition marketing process was sufficient such that indications of intent ("IOIs") can be due 6 business days following the Petition Date with Final Bids due November 30 and an auction to be held on December 5. Even if the Court is persuaded that a bidder who signed a non-disclosure agreement ("NDA") and obtained access to the Debtors' data room at the very beginning of the process would have sufficient time to conduct diligence and formulate a bid, there are potential bidders who have only recently (*i.e.*, post-petition) been granted access the data room.<sup>4</sup> Silver Point is one such bidder, having signed an NDA only on November 13. Post-petition bidders should be afforded at least the same 5-week opportunity to conduct diligence as did the pre-petition bidders. Accounting for the upcoming holidays, Silver Point

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<sup>3</sup> Capitalized terms not defined herein have the meanings given to them in the First Day Declaration and/or the Bidding Procedures Motion.

<sup>4</sup> According to the Debtors' investment banker, 9 additional parties have already reached out post-petition to the Debtors or their advisors requesting to participate in the Sale Process. *See Declaration of Ajay Bijoor in Support of Debtors' Emergency Motion for Approval of Bidding Procedures and Related Relief* [ECF 145] ("Bijoor Decl.").

proposes that, among other modified deadlines, Final Bids be due January 15, 2024, with a Sale Closing by February 19.

2. Additional time is particularly important in this case, because there is admitted uncertainty regarding the status of the Debtors' legacy relationship with Party City. Party City comprises nearly 40% of the Debtors' business, licenses valuable intellectual property to the Debtors, and provides important services for the Debtors. Party City, which recently emerged from its own chapter 11 case, has sought to reject these contracts. The Rejection Notice, as well as Anagram's objection thereto, remain pending. The status of the Anagram-Party City Contracts is material to bidders, as acknowledged by the Debtors' lead investment banker at the First Day Hearing.<sup>5</sup> Silver Point's proposed modified deadlines allow a reasonable opportunity for bidders to gain better clarity regarding the status of the Debtors' significant relationship with Party City—whether through a judicial resolution or as a negotiated result.

3. Moreover, unlike many “melting ice cubes” the Court has previously supervised, this is not a case in which dwindling liquidity necessitates a rushed sale. Indeed, the Debtors are projected to have more than \$11 million of cash on February 3 (the last week included in their 13-week budget filed in connection with the DIP) and the DIP Financing will not mature until up to 6 months following the issuance of the DIP Notes (which may not yet have occurred).

4. The bankruptcy process imposes upon the Debtors, as fiduciaries to their estates, the duty to maximize value for those estates.<sup>6</sup> An unnecessarily abbreviated Sale Process, which

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<sup>5</sup> See Transcript of hearing on First Day Motions, Nov. 9, 2023 (the “First Day Hr’g Tr.”) at 44:8-16.

<sup>6</sup> See *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010) (trustee has the duty to maximize the value of the debtors' estates) (5th Cir. 2010); *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003) (noting that debtor, as fiduciary to the estate, has the duty to maximize the value of the estate).

deprives interested bidders an optimal amount of time and clarity, is not the path most likely to lead to that result.

## II. RELEVANT FACTUAL BACKGROUND<sup>7</sup>

5. The Debtors—manufacturers and distributors of foil balloons and inflated décor—are wholly owned subsidiaries of Party City Holdings Inc. (“PCHI”). PCHI and certain of its affiliates (not including the Debtors, “Party City”) have recently emerged from their own chapter 11 cases before this Court.

6. While the Debtors operate independently of Party City, their business remains connected. The parties’ relationship is governed by three “critical” intercompany contracts (collectively, the “Anagram-Party City Contracts”), including (i) the Services Agreement, pursuant to which Party City provides an array of business, administrative, tax, legal, and other services to support the Debtors’ day-to-day operations, (ii) the IP Cross-License Agreement, pursuant to which Party City and the Debtors grant each other non-exclusive licenses and rights to each other’s intellectual property, and (iii) the Supply Agreement, pursuant to which Amscan Inc. (a subsidiary of PCHI) designated Anagram International as its primary supplier of balloons and agreed to purchase a minimum volume of balloons. All-told, Party City accounts for approximately 38% of the Debtors’ sales, while the products that the Debtors market through their rights under the IP Cross-License Agreement comprise a significant portion of the Debtors’ revenues.

7. On May 23, 2023, Party City filed a *Notice of Rejection of Certain Executory Contracts and/or Unexpired Leases* (the “Rejection Notice”) in its own chapter 11 cases, listing

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<sup>7</sup> Unless otherwise noted, the facts below are derived from the First Day Declaration. For the avoidance of doubt, Silver Point reserves the right to contest these facts in other proceedings before this or any other Court.

the Anagram-Party City Contracts as contracts to be rejected. The Debtors have objected to the proposed rejection of the Anagram-Party City Contracts. The Rejection Notice is still pending.

8. In the months prior to the Petition Date, the Debtors were simultaneously working to resolve issues relating to the Anagram-Party City Contracts and addressing their own capital structure and liquidity needs. In July 2023, the Debtors engaged Baird & Co. Incorporated (“Baird”) to render investment banking advisory services in connection with the Debtors’ evaluation of certain strategic alternatives, including negotiations with the Ad Hoc Group of potential restructuring transactions.<sup>8</sup> According to the Debtors, these negotiations were “complicated by the breakdown of negotiations between Party City and Anagram, which created significant uncertainty.” First Day Decl. ¶ 76. As a result, the Debtors determined to sell all or substantially of their assets (the “Assets”).

9. Commencing in October 2023, the Debtors, led by Baird, reached out to 107 parties and signed NDAs with 42 parties and have granted those parties access to the data room containing information and diligence on the Debtors’ assets. Notably, however, Baird did not contact either Party City, the Debtors’ largest customer and current owner, or Silver Point, the largest holder of the Debtors’ second-lien notes, to explore potential interest in acquiring the Debtors.<sup>9</sup> Instead, the Debtors negotiated the Stalking Horse APA with the Ad Hoc Group, which formed a new entity (Celebration Bidco, LLC) to act as the Stalking Horse Bidder, as well as the DIP Financing, also with the Ad Hoc Group acting as DIP lenders.

10. What resulted from these negotiations with the Ad Hoc Group was a Stalking Horse APA providing for the credit bid of the full amount of the DIP Notes Facility and First Lien Notes,

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<sup>8</sup> See Bijoor Decl. ¶ 4. The Ad Hoc Group comprises holders of approximately 60% of the Debtors’ First Lien Notes and 50% of the Debtors’ Second Lien Notes. See First Day Dec. ¶ 13.

<sup>9</sup> First Day Hr’g Tr. at 42:21-43:17.

a minimal cash payment to wind down the Debtors' estates, assumption of all of the Debtors' pre- and post-petition trade payables and operating expenses, no value for the Debtors' Second Lien Notes, and an up to \$2 million expense reimbursement/break-up fee. Due simply to impatience (and not any asserted diminution in value), the proposed \$22 million in DIP Financing provided by affiliates of the Stalking Horse Bidder(*i.e.*, the Ad Hoc Group) includes aggressive sale-related milestones (and no plan-related milestones).

11. Specifically, the relevant Bidding Procedures deadlines and Stalking Horse APA and DIP Financing milestones are as follows:

<b><u>Event</u></b>	<b><u>Proposed Bidding Procedures Deadline</u></b>	<b><u>APA Milestone</u></b>	<b><u>DIP Milestone</u></b>
<b>IOI Deadline</b>	November 20, 2023	N/A	N/A
<b>Final Bid Deadline</b>	November 30, 2023	N/A	N/A
<b>Auction</b>	December 5, 2023	December 15, 2023	N/A
<b>Sale Hearing</b>	December 18, 2023	December 22, 2023	January 15, 2024
<b>Sale Closing</b>	December 29, 2023	December 29, 2023	January 28, 2024

12. The Debtors filed their Bidding Procedures Motion and DIP Financing motion on the Petition Date.

### **III. LIMITED OBJECTION**

#### **A. Proposed Deadlines Are Not Designed To Maximize Value Of The Estates**

13. The Debtors have a duty to maximize the value of their estates. *See In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010); *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003). This duty to maximize the value of the estates extends to the conduct of a sale process, including its procedures. *See In re Mountain States Rosen, LLC*, 619 B.R. 750, 754-55 (Bankr. D. Wyo. 2020) ("Regardless of a debtor's discretion, debtors, in conducting the sale process, have a fiduciary duty to maximize the value of their estates."); *In*

*re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (sale procedures must seek to “facilitate an open and fair public sale designed to maximize value for the estate.”).

14. As this Court has noted, “a meaningful, robust auction” furthers the goal of maximizing the value for the bankruptcy estate. *In re Offshore Specialty Fabricators, LLC*, 2018 WL 889374, at \*1 (Bankr. S.D. Tex. Jan. 16, 2018) (Isgur, J.). The Bidding Procedures proposed by the Debtors—namely, the Proposed Deadlines—are not designed to foster a “meaningful, robust” sale process that will yield the maximum value for the estates, and should be modified to achieve that result.

15. The compressed timeline negotiated with the Ad Hoc Group/Stalking Horse Bidder/DIP lenders is neither sufficient to ensure a full and fair marketing process, nor is it otherwise appropriate under the circumstances of this case. First, while the Debtors apparently hired their investment banker in July 2023, the marketing process did not commence until October 2023—approximately 5 weeks prior to the November 8 Petition Date. *See* Bijoor Decl. ¶ 5; Bid Proc. Mot. ¶ 14. As the Debtors’ investment banker testified at the First Day Hearing, several prospective bidders did not execute NDAs (thereby obtaining access to the company’s data room) until later in the process. *See* First Day Hr’g Tr. at 46:18-24. Nevertheless, the Debtors ask the Court to approve Bidding Procedures that would require bidders to submit indications of interest by November 20 with Final Bids due by November 30. Although the Bidding Procedures provide that “the Debtors may, in consultation with the Consultation Parties, extend the Final Bid Deadline,” this does not provide much flexibility because the Auction in any event is required to be held on December 5. Under the proposed timeline, a prospective bidder who executed an NDA in the week prior to the Petition Date would have little more than 2 weeks to conduct diligence and submit an IOI and less than a month to submit a Final Bid. Silver Point, which signed an NDA

on November 13, 2023, would have only one week to submit an IOI, and 17 days to submit a Final Bid. It bears emphasizing that Qualified Bids must provide a 100% cash recovery to members of the Ad Hoc Group on account of their pre-petition claims even though that is not a requirement of the Bankruptcy Code. Such a compressed timeline that forces competitors to come up with \$180 million in cash unnecessarily hinders bidders' ability to formulate bids that could result in higher value to the estates, if not discourages them from even engaging in the process altogether. Even if the Debtors have good business justifications for agreeing with the Stalking Horse Bidder (which is not in cash) that all other bids must be "all cash offers," at the very least bidders should have a reasonable amount of time to evaluate the feasibility of doing so.

16. The truncated Sale Process is particularly problematic on the unique undisputed facts of this case, where the fate of the "critical" Anagram-Party City Contracts is not yet known and yet material to bidders. As noted, due to the Supply Agreement, Party City accounts for nearly 40% of the Debtors' sales, while the products that the Debtors market through their rights under the IP Cross-License Agreement "comprise a significant portion of the Company's revenues." First Day Decl. ¶ 44. Unsurprisingly, the Debtors' investment banker readily acknowledged that the Party City contracts are "important" to prospective bidders, and there is "uncertainty" regarding the Anagram-Party City relationship going forward. *See* First Day Hr'g Tr. at 44:8-20. This uncertainty stems from the pending Rejection Notice which, if effectuated, "would be incredibly detrimental to the Debtors' business." First Day Decl. ¶ 73. As a result, prospective bidders cannot have a "concrete understanding" of the business on which they are bidding until there is more clarity regarding the status of these contracts, and the Debtors' relationship with Party City more generally. *Cf. Offshore Specialty Fabricators*, 2018 WL 889374, at \*1 ("[A] meaningful, robust auction is needed to maximize value for the bankruptcy estate. To foster the



effectiveness of this process, bidders should have a concrete understanding of any potential priority maritime tort lien claim that may exist on one of OSF's vessels.”).

17. Such a compressed timeframe could possibly be warranted if the Debtors were projected to run out of liquidity imminently, but the evidence here is to the contrary. The Initial DIP Budget projects the Debtors will retain positive liquidity through the entire 13-week budget period (*i.e.*, through February 3, 2024). *See* ECF 7-1 at 242/242. Indeed, the Debtors' investment banker testified that even the DIP Financing's outside milestone for the Sale Closing, January 28, 2024, is not tied to any estimate of when the Debtors will run out of cash. First Day Hr'g Tr. At 40:2-4. Thus, the Debtors' liquidity position clearly does not necessitate the December 29, 2023 Sale Closing deadline that the Bidding Procedures Motion seeks to impose. In fact, the DIP Financing has a maturity date of up to 6-months from the issuance date of the DIP Notes, which presumably has yet to occur. *See* ECF 7-1 at 107/242.

18. To foster a more meaningful and robust auction process that would maximize the value realized from the Sale Process, the Debtors' Proposed Deadlines should be extended to allow bidders, particularly those who did not gain access to the data room until after the Petition Date, sufficient time to conduct diligence and formulate bids (the “Modified Deadlines”):

<u>Event</u>	<u>Modified Deadline</u>
<b>IOI Deadline</b>	January 8, 2024
<b>Final Bid Deadline</b>	January 15, 2024
<b>Auction</b>	January 22, 2024
<b>Sale Hearing</b>	February 5, 2024
<b>Sale Closing</b>	February 19, 2024

19. Silver Point submits that the Modified Deadlines are eminently fair; they were calculated to afford Silver Point and others who signed NDAs post-petition the same 5-week diligence period that pre-petition bidders were afforded, while accounting for the holidays.

**B. Silver Point Is Not Contractually Precluded From, And Has Standing To, Assert This Limited Objection**

20. During the First Day Hearing, several parties in interest raised questions regarding Silver Point's ability to be heard in opposition to the DIP Financing, citing the parties' intercreditor agreements as restricting that right. Such argument misreads the plain text of the underlying contracts, the relevant provisions of which do not prohibit Silver Point—as beneficial owner of approximately 30% of the Second Lien Notes—to exercise its statutory right to be heard as a party in interest in these chapter 11 cases. As discussed below, the intercreditor agreements expressly restrict certain rights of the registered holders of the security but not beneficial owners.

21. Under section 7.01 of the First Lien/Second Lien Intercreditor Agreement, dated as of July 30, 2020 (the “Intercreditor Agreement”), “the Second Priority Collateral Trustee, for itself and *on behalf of each other Second Priority Secured Party*, agrees that, in the event of any Insolvency or Liquidation Proceedings, such Second Priority Secured Parties will not oppose or object to” certain relief, including sales of collateral under section 363 of the Bankruptcy Code (including related bidding procedures) if the First Priority Secured Parties otherwise consent to the sale, subject to certain exceptions. (emphasis added). Notably, this provision restricts only Second Priority Secured Parties, which does not include beneficial owners. “Second Priority Secured Party” is defined to mean “(a) the Holders, (b) the Collateral Trustee, (c) the Trustee, (d) the beneficiaries of each indemnification obligation undertaken by any Grantor under any Note Document and (e) the successors and permitted assigns of each of the foregoing.” Intercreditor Agreement § 1.01 (referencing Second Lien Pledge and Security Agreement § 1.03).

22. That the Intercreditor Agreement would focus only on registered holders makes sense, because that contract concerns the rights of parties with respect to interests in shared collateral, including those who can direct the Collateral Trustee to exercise remedies with respect thereto. Consistent with that purpose, “Holder” is defined for the purposes of the Intercreditor Agreement and the Indentures to mean only “the Person in whose name a Security is registered on the registrar’s books.” Caselaw interpreting the defined term “Holder” in indentures, similar to the Debtors’ indentures, holds that the term “Holder” is limited to the registered holder (*i.e.* the depository) and does not include the beneficial owner when the security is issued in global form, as is the case here. *See Cortlandt St. Recovery Corp. v Hellas Telecom., S.A.R.L.*, 47 Misc 3d 544, 559 (N.Y. Sup. Ct. 2014) (holding that when an indenture limits the right to pursue actions to the registered holder, “it is well settled that a beneficial holder of a note lacks standing to sue for payments due upon the note where, as here, the indenture reserves the right to sue to the registered holder of the note”).

23. The registered holder (The Depository Trust Company, here) is the only party empowered to take certain actions under the Debtors’ Indentures. By the contracts’ plain meaning, however, “Holder” does not include the beneficial owner of the notes, such as Silver Point. Second Lien Indenture § 1.01; *see also* First Lien Indenture § 1.01 (same definition). Nor does “Second Priority Security Party” otherwise include beneficial owners. As a result, any restrictions that would be imposed under 7.01 apply only registered holders, not beneficial owners. Nothing in the Second Lien Indenture broadens the restrictions imposed by section 7.01 of the Intercreditor Agreement, and in fact expressly provides that the Intercreditor Agreement shall govern in the event of conflict with the indenture. *See* Intercreditor Agreement § 11.02.

24. The Intercreditor Agreements and the Indenture, both governed by New York law, must be construed by “looking to their language, for a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms.” *Greenfield v. Philles Records*, 98 NY2d 562, 569 (2002). Moreover, “the precise words and language used” in provisions that would act to restrict a party’s ability to assert its rights under an indenture must be given effect. *Quadrant Structured Prods. Co., Ltd. v. Vertin*, 23 N.Y. 3d 549, 560 (N.Y. 2014) (In holding that a no-action clause should not be interpreted more broadly to contain terms not expressly included, the court stated, “[a]s the case law further establishes, we read a no-action clause to give effect to the precise words and language used, for the clause must be strictly construed.”) (internal quotation marks omitted) (citing cases). In *Quadrant*, the New York’s Court of Appeals held that a creditor could pursue claims at common law or conferred by statute without complying with the no-action clause because the restriction was written to apply only to claims “under the Indenture,” and not also “under the Securities.” In such a situation, when the parties omit terms, the “inescapable conclusion is that the parties intended the omission.” *Id.* (referencing the maxim *expressio unius est exclusio alterius*); see also *In re Ore Cargo, Inc.*, 544 F.2d 80, 82 (2d Cir. 1976) (where sophisticated drafter omits a term, *expressio unius* precludes the court from implying it from the general language of the agreement).

25. Applying these canons of contract interpretation to the Intercreditor Agreement and the Second Lien Indenture, the restrictions of section 7.01 of the Intercreditor Agreement do not by their terms apply to beneficial owners of Second Lien Notes, such as Silver Point. Moreover, because the Intercreditor Agreement focuses on parties’ rights to collateral rather than rights to payment (which are expressly not subordinated), this interpretation does not lead to an absurd result.

26. As for whether a mere beneficial owner (rather than a registered holder) of a debtor's bonds has statutory standing to appear and be heard in a bankruptcy case, the answer is clearly yes. *See In re Bd. of Directors of Telecom Argentina*, 2006 WL 3378687, at \*2 (S.D.N.Y. Nov. 20, 2006) (noting that the argument that beneficial owner of notes had no standing is unsupported by the bankruptcy rules, statutes, and case law). Section 1109(b) of the Bankruptcy Code provides that a "party in interest ... may raise and may appear and be heard on any issue in a case under [chapter 11]." 11 U.S.C. § 1109(b). "Whether a party qualifies as a 'party in interest' is determined on a case-by-case basis, taking into consideration whether that party has a sufficient stake in the outcome of the proceeding, which can include having a pecuniary interest directly affected by the bankruptcy proceeding." *In re Heating Oil Partners, LP*, 422 F. App'x 15, 17 (2d Cir. 2011) (internal quotation marks omitted); *see also In re Tower Park Properties, LLC*, 2013 WL 12067469, at \*3 (C.D. Cal. May 28, 2013) ("As applied in the Chapter 11 context, Article III standing exists where the participant holds a financial stake in the outcome of the proceeding such that the participant has an appropriate incentive to participate in an adversarial form to protect his or her interests.") (internal quotation marks omitted). Silver Point—like the Ad Hoc Group, whose members are also mere beneficial owners of the Debtors' notes—undoubtedly has a "sufficient stake" in the outcome of the Sale Process, and therefore has standing under section 1109(b).<sup>10</sup>

27. Finally, even if the Intercreditor Agreement included restrictions on beneficial owners (which its terms easily could have, but did not), it would not necessarily follow that a pre-petition waiver of rights guaranteed by the Bankruptcy Code such as section 1109(b) is enforceable

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<sup>10</sup> Although the Ad Hoc Group has yet to file a verified statement as required by Federal Rule of Bankruptcy Procedure 2019 disclosing its members' "economic interests" with respect to the Debtors, Silver Point expects the members are beneficial owners (and not registered holders) as is customary for participating in chapter 11 cases. *See* Fed. R. Bankr. P. 2019.

in bankruptcy. Under section 510(a) of the Bankruptcy Code, it is only a “subordination agreement” that is enforceable in bankruptcy “to the same extent that such agreement is enforceable under applicable nonbankruptcy law.” 11 U.S.C. § 510(a). The term “subordination” plainly concerns payment priority; stapling additional waivers into the Intercreditor Agreement that do not alter the right of the senior lien creditor to be paid first from collateral does not automatically make them part of the subordination agreement. While certain bankruptcy courts have agreed with senior creditors in their efforts to “silence” junior stakeholders to deter obstructive tactics, there is nothing obstructionist about Silver Point seeking more time for *all* bidders to submit qualifying bids—particularly on the unique facts of this case. Moreover, the leading case decided shortly after the Bankruptcy Code’s enactment in 1978 said it best: “To hold that, as a result of a subordination agreement, the ‘subordinor’ gives up all its rights to the ‘subordinee’ would be totally inequitable.” *Beatrice Foods v. Hart Ski Mfg. Co., Inc. (In re Hart Ski Mfg. Co., Inc.)*, 5 B.R. 734, 736 (Bankr. D. Minn. 1980); *see also* American Bankruptcy Institute Commission to Study the Reform of Chapter 11, 23 Am. Bankr. Inst. L. Rev. 1, 85-86 (Winter 2015) (urging against enforcing the waiver of rights to participate in chapter 11 cases).

#### **IV. CERTIFICATION PURSUANT TO LOCAL BANKRUPTCY RULE 9013-1(g)**

28. The Debtors’ counsel contacted Silver Point’s undersigned counsel to discuss the possibility of resolving any objections to the Bidding Procedures on November 16, 2023. Silver Point’s counsel conveyed the foregoing request to extend the Proposed Deadlines and intent to object to the Bidding Procedures Motion absent such extension. On November 17, 2023, Silver Point’s counsel followed up with Debtors’ counsel by email and requested that the Bidding Procedures be modified to adopt Silver Point’s proposed Modified Deadlines. By the time of this filing, the parties were unable to reach agreement. Given the hearing is one business day away,

Silver Point respectfully submits this Limited Objection, yet hopes to continue discussing the matter with the Debtors over the weekend.

**V. RESERVATION OF RIGHTS**

29. Silver Point reserves the right to supplement this Limited Objection at any time prior to the Bidding Procedures Hearing. For the avoidance of doubt, Silver Point expressly reserves its rights to raise additional or further objections to the Sale Transaction, the Sale Process (both pre-and post-petition), including the Auction, any term sheets or asset purchase agreements regarding the Assets, including the Stalking Horse APA, and/or the DIP Financing prior to the relevant hearings.

*[Remainder of page intentionally left blank]*

## VI. CONCLUSION

**WHEREFORE**, Silver Point respectfully requests that the Court enter a Bidding Procedures Order that incorporates the Modified Deadlines and grant such other or further relief as is just and proper.

Respectfully submitted this 17th day of November, 2023.

QUINN EMANUEL URQUHART & SULLIVAN,  
LLP

By: /s/ Susheel Kirpalani

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*Attorneys for Silver Point Capital*



**CERTIFICATE OF SERVICE**

I, Susheel Kirpalani, hereby certify that, on the 17<sup>th</sup> day of November, 2023, I caused a copy of the foregoing Limited Objection to be served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Susheel Kirpalani

Susheel Kirpalani