IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
STARRY GROUP HOLDINGS, INC., *et al.*,	:	Case No. 23-10219 (KBO)
Debtors.[1]	:	(Jointly Administered) **Re: Docket Nos. 18, 199**

REPLY OF THE DIP AGENT AND PREPETITION AGENT TO LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

The DIP Agent and Prepetition Agent hereby file this reply (the "Reply") in support of the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [D.I. 18] (the "Motion")[2] and in response to the limited objection thereto by the Official Committee of Unsecured Creditors (the "Committee")[3] and, in support thereof, respectfully represent as follows:

---

[1] The debtors in these cases, along with the last four digits of each debtor's federal tax identification number, are: Starry Group Holdings, Inc. (9355); Starry, Inc. (9616); Connect Everyone LLC (5896); Starry Installation Corp. (7000); Starry (MA), Inc. (2010); Starry Spectrum LLC (N/A); Testco LLC (5226); Starry Spectrum Holdings LLC (9444); Widmo Holdings LLC (9208); Vibrant Composites Inc. (8431); Starry Foreign Holdings Inc. (3025); and Starry PR Inc. (1214). The debtors' address is 38 Chauncy Street, Suite 200, Boston, Massachusetts 02111.

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

[3] *Limited Objection of the Official Committee of Unsecured Creditors to Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Debtors to Use Cash*

2310219230328000000000028

PRELIMINARY STATEMENT

1. The Prepetition Secured Parties have a long history of cooperation and support for the Debtors' business and senior management. They are motivated first and foremost in these Chapter 11 Cases by a desire to stabilize the Debtors' business and ensure the Debtors maximally preserve their key business relationships and thereby the value of the enterprise.

2. The Prepetition Secured Parties' supportive approach to the Debtors' business was evident since the fall of 2022. The Debtors had retained PJT Partners to run a sale process in October 2022, and soon thereafter approached the Prepetition Secured Parties and informed them that the Debtor did not have sufficient cash to complete the ongoing sale process. At the Debtors' request, the Prepetition Secured Parties provided much needed capital that December—$11.2 million in Tranche D loans.

3. After failing to obtain any out-of-court bids from interested third parties, the Debtors requested—and the Prepetition Lenders provided—a second round of Tranche D loans: $11.0 million to bridge the Debtors to an orderly bankruptcy process. The Prepetition Secured Parties again supported the Debtors through that process, and additionally negotiated a new DIP Facility. Through the Restructuring Support Agreement, which has the support of 100% of the Prepetition Lenders, the Prepetition Lenders further agreed to backstop and assume control of the Debtors' business in the event that a buyer cannot be found in the in-court sale process.

4. Under the terms of the Restructuring Support Agreement, the Prepetition Lenders and DIP Lenders agreed to support a chapter 11 plan that, if confirmed, will pay all administrative and priority claims in full and pay a small distribution to unsecured creditors. Additionally, the

Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief [D.I. 199] (the "Committee Objection").

Prepetition Lenders and DIP Lenders have agreed to a "Wind-Down Budget" in the event a sale transaction is consummated, in order to fund the reasonable activities and expenses incurred in the subsequent winding down of the Chapter 11 Cases.

5. It is only through the Prepetition Lenders' and DIP Lenders' support that the Debtors have continued to operate. No other party has stepped forward to provide support. Specifically, it is through the Tranche D loans and use of the New Money DIP Loans that the Debtors have been able to fund payroll, run a postpetition sale process, pay millions of dollars of critical vendor claims, and compensate the professionals in these chapter 11 cases—including those employed by the Committee. In fact, as part of the negotiations related to the Committee's objection, the budget for allowed professional fees of the Committee's professionals was increased from $740,000 to $1,240,000. Notably, the Committee has not argued against the necessity of the DIP Loans. And it has not argued that any other lenders would be willing to make the DIP Loans on similar or better terms.

6. Most critically, the Committee, in its objections to the Debtors' proposed adequate protection to the Prepetition Secured Parties, has not argued that the value of the Prepetition Collateral exceeds the amount of outstanding Prepetition Obligations. That is because the facts show the opposite: the Debtors' liquidation analysis projects that "Holders of Prepetition Term Loan Claims…are not expected to realize any recoveries in a Chapter 7 liquidation."[4] That is, not only is there no "equity cushion" available to provide the Prepetition Lenders with any adequate protection, there is no other estate value that the Debtors can provide the Prepetition Lenders as

[4] *Notice of Filing of Proposed Exhibits to the Disclosure Statement for Joint Chapter 11 Plan of Reorganization of Starry Group Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [D.I. 275].

adequate protection besides a lien on unencumbered postpetition assets—including the proceeds of Avoidance Actions and commercial tort claims.

7. Given the foregoing, it is clear that the Prepetition Lenders and DIP Lenders have been uniquely supportive of the Debtors and has made every effort to support and fund a value-maximizing path forward. The structure and terms of the DIP Facility must, therefore, be understood against this backdrop, as well as in light of the growth-stage challenges facing the Debtors. Those challenges, particularly in maintaining their subscriber base, have been significant. *See* First Day Declaration. These circumstances, coupled with the significant level of funding required by the Debtors in order to pursue a comprehensive sales process, presented less than ideal lending conditions. As a result, the terms of the DIP Facility before the Court, including each of the provisions challenged in the Committee Objection, represents a fully integrated and comprehensive package and are the best terms upon which the DIP Lenders are willing to lend.

8. Despite the DIP Lenders' and Prepetition Lenders' best efforts to work constructively with the Committee, the Committee unreasonably requests that the Court deny meaningful protections to the Prepetition Lenders. The Committee ignores the benefits the Debtors are receiving through the ample liquidity provided by the DIP Facility and the orderly sales process under the Restructuring Support Agreement, which also provides benefits to the Committee's own constituents. In so doing, the Committee seeks to substitute the Debtors' well-considered business judgment for its own and disrupt the consensual arrangement by carping on features of the DIP Facility.

9. Specifically, the Committee incorrectly identifies certain issues in the Committee Objection, to which the DIP Agent and Prepetition Agent respond as follows:

a. **The Plan Milestones Are Not Too Truncated**. The chapter 11 milestones, coupled with the Bidding Procedures, permit a full and fair marketing process for the Debtors'

assets in order to obtain the highest and best bid or bids and thereby maximize the value of their estates, while also ensuring the Debtors' enterprise value and key relationships do not suffer further unnecessary deterioration due to prolonged uncertainty regarding the Debtors' survival. A myriad of other cases have been conducted on similar timeframes in the current environment. Furthermore, the DIP Facility is part of an overall comprehensive deal reached among the Debtors, the Prepetition Lenders and Prepetition Agent, and the milestones in the DIP Facility are consistent with, and are essential, integrated components of, that deal.

b. **The Attachment of Liens Pursuant to the DIP Facility to Avoidance Action Proceeds and Other Previously Unencumbered Property is Just and Appropriate**. It is appropriate in these Chapter 11 Cases for the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims and Adequate Protection Claims to attach to and against previously unencumbered property. Notably, it is commonplace in this jurisdiction for such liens to attach to Avoidance Action Proceeds. The Committee has not provided any sound reason why such liens with respect to the DIP Lenders and Prepetition Lenders should be effectively subordinated to all other claims in the Bankruptcy Code's priority scheme, including as it pertains to Avoidance Action Proceeds.

c. **Section 506(c) and 552 Waivers are Standard and Appropriate**. The Committee's argument appears to be premised on purported uncertainty as to the Debtors' administrative solvency following the closing of a sale. The Committee, however, ignores the fact that the Debtors and the DIP Lenders have expressly agreed to formulate a wind-down budget that will be completed shortly in connection with the sale process, which will serve as a budget for the wind-down of the Debtors' operations following the closing of a sale. Additionally, the Debtors and the DIP Lenders worked to size the DIP Facility to provide a sufficient liquidity cushion for the post-sale period. As such, the waivers are appropriate given the DIP Liens are subordinated to an ample carve-out and the Debtors' estates are otherwise provided for post-sale closing.

d. **Marshaling Waivers are Standard and Appropriate.** A waiver of marshaling requirements is commonplace in postpetition lending arrangements, and is appropriate in this case where the DIP Lenders and the Prepetition Secured Parties are being granted a postpetition lien on a diverse pool of assets of the Debtors.

10. Accordingly, the relief requested in the Motion, as reflected in the Final DIP Order, is fair, reasonable, necessary and appropriately tailored to the circumstances of these Chapter 11 Cases. The Committee complains about various common features of DIP financing facilities that have been negotiated at arm's-length as part of a package deal that the Debtors separately affirm are necessary, appropriate, fair and reasonable under the circumstances. Given the risks associated

with the Debtors' businesses and the Debtors' need for liquidity during these Chapter 11 Cases, the provisions of the DIP Facility and the Final DIP Order are entirely reasonable and consistent with the terms of financings of this size and type. Accordingly, for the reasons set forth in the Motion and herein, the Court should overrule the Committee Objection, grant the Motion, and enter the Final DIP Order as proposed.

REPLY

11. In the weeks leading up to the filing of these Chapter 11 Cases, the parties were able to negotiate a framework for a consensual restructuring and execute the Restructuring Support Agreement, which provides the Debtors a path forward to stabilize their business and preserve value. Both the entry into the Restructuring Support Agreement and agreement on the DIP Facility as embodied in the Final DIP Order are key components of the integrated agreement between the Debtors and the DIP Lenders on a consensual restructuring.

A. The Milestones Are Appropriate.

12. The Restructuring Support Agreement represents a comprehensive deal among the Debtors, the Prepetition Lenders and DIP Lenders, which includes conducting a sale and marketing process and confirmation of a chapter 11 plan as the necessary steps in implementing that deal. The timeline of the sale, marketing process, and attendant chapter 11 milestones are appropriate, entirely reasonable and consistent with timelines for similar cases in this district. The relief requested in the Motion and the negotiated Final Order is reasonable and appropriate because it is the product of an integrated, arm's-length and hard-fought agreement among the Debtors, the Prepetition Lenders, and the DIP Lenders with respect to the DIP Facility. This agreement was coupled with a Restructuring Support Agreement that sets the Debtors on a course for a sale

process, which is the best path to deliver maximal value to the Debtors and their stakeholders and ensure the value of the Debtors' enterprise is preserved.

13. Here, the terms of the Final DIP Order, including the milestones, were negotiated at arm's-length with dual purposes—to provide the Debtors with the necessary liquidity to implement the sale process contemplated under the Restructuring Support Agreement and at the same time balance the need for expediency in these Chapter 11 Cases to avoid unnecessary value-deterioration and administrative cash burn. As further described in the Schlappig Declaration in support of the Bidding Procedures, "[In] formulating the Bidding Procedures and the timeline and deadlines set forth therein, the Debtors balanced the need to provide adequate time for potential Bidders to submit a Bid with the need to navigate the sale process as efficiently as possible in order to avoid damage to the business from a prolonged stay in chapter 11 and associated administrative cash burn, which would be detrimental to all of the Debtors' stakeholders."[5]

B. Granting of Liens on the Proceeds of Avoidance Actions and Other Unencumbered Assets Is Necessary and Proper.

14. The Committee argues that the grant of the DIP Liens and Adequate Protection Liens on, and DIP Superiority Claims and Adequate Protection Claims against, certain previously unencumbered assets, particularly the Avoidance Action Proceeds, "constitute an improper windfall for the DIP Lenders and Prepetition Secured Parties at the expense of the unsecured class" as these "may be some of the Debtors' most valuable unencumbered assets and, thus, a crucial source of value for unsecured creditors." Committee Obj. at 6.

---

[5] *Declaration of Michael Schlappig In Support of Motion of Debtors For Entry of Order (I)(A) Establishing Bidding Procedures For Sale Of Substantially All Assets, (B) Scheduling Auction And Sale Hearing, And (C) Approving Form And Manner Of Notice Thereof, (II) Approving Sale Of Substantially All Assets Free And Clear Of Liens, Claims, Encumbrances, And Other Interests, And (III) Granting Related Relief* [D.I. 93] at 6.

15. The Committee's notion that avoidance actions and other unencumbered assets are reserved only for unsecured creditors is contrary to applicable law. The proceeds of avoidance actions are property of the Debtors' estates. *See, e.g.*, 11 U.S.C. §§ 550(a) (preserving recoveries on avoidance actions "for the benefit of the estate"), 541(a)(3) ("Such estate is comprised of . . . [a]ny interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 550, 553, or 723[.]"), 541(a)(4) ("Such estate is comprised of . . . [a]ny interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551[.]"); *In re Tex. Gen. Petrol. Corp.*, 52 F.3d 1330, 1335 (5th Cir. 1995) (recognizing that the proceeds of avoidance actions must be allocated in the plan recovery waterfall according to the relative priority of claims); *Mellon Bank, N.A. v. Dick Corp.*, 351 F.3d 290, 293 (7th Cir. 2003) ("Section 550(a) speaks of benefit to the estate-which in bankruptcy parlance denotes the set of all potentially interested parties-rather than to any particular class of creditors."); *Cambridge Realty West, L.L.C. v. NOP, L.L.C.*, 2010 WL 4668436 (Bankr. E.D. La. Nov. 8, 2010) ("[T]he fact that [the debtor] will then be compelled to distribute [avoidance action recoveries] according to 'contractual and statutory entitlements' does not mean that the original recovery does not benefit the estate."); *In re C.W. Min. Co.*, 477 B.R. 176, 189 (B.A.P. 10th Cir. 2012) (noting that, under section 550(a), "[t]his Court has specifically rejected the position that 'benefit of the estate' means 'payment to general unsecured creditors' and has held that 'benefit of the estate' should be interpreted broadly"); *In re Calpine Corp.*, 377 B.R. 808, 813 (Bankr. S.D.N.Y. 2007) (citing Mellon Bank with approval); *In re Fleming Packaging Corp.*, 2007 WL 4556985, at *6 (Bankr. C.D. Ill. Dec. 20, 2007) ("This Court does not consider Section 550(a)'s 'for the benefit of the estate' phraseology as a statutory requirement that the unsecured creditors benefit directly from the recovery of an avoided transfer, i.e., that the recovered funds end up in the pockets of the unsecured creditors."). The proceeds of

avoidance actions are property of the Debtors' estates pursuant to section 541(a)(3) of the Bankruptcy Code, and as such, they may be pledged to secure the claims of secured creditors.

16. As discussed above and further detailed in the First Day Declaration, these Chapter 11 Cases were filed following a period during which the Debtors experienced significant cash burn and operational uncertainty. Although the DIP Lenders and Prepetition Lenders have been, and continue to be, supportive of the Debtors, there are clear and attendant risks to the Debtors' business. Thus, the DIP Lenders and Prepetition Lenders require a customary collateral package and customary forms of adequate protection to protect their interests.

17. The Bankruptcy Code explicitly permits a debtor to grant additional or replacement liens to lenders on any property whether or not it is otherwise unencumbered as adequate protection. 11 U.S.C. § 361(a). Similarly, section 364(c)(2) of the Bankruptcy Code explicitly permits a debtor to grant lien on unencumbered property to secure post-petition debtor-in-possession financing. 11 U.S.C. § 364(c)(2). Indeed, courts in this district routinely approve the grant of liens on unencumbered assets (including the proceeds of avoidance actions) on a final basis to secure DIP financing, contrary to the assertions by the Committee. *See, e.g., Tect Aerospace Group Holdings, Inc.*, No. 21-10670 (KBO) (Bankr. D. Del. May 13, 2021) [Docket No. 174]; *In re Skillsoft Corp.*, No. 20-11532 (MFW) (Bankr. D. Del. July 20, 2020) [Docket No. 167]; *In re AAC Holdings, Inc.*, No. 20-11648 (JTD) (Bankr. D. Del. July 15, 2020) [Docket No. 159]; *In re Libbey Glass Inc.*, No. 20- 11439 (LSS) (Bankr. D. Del. July 2, 2020) [Docket No. 234]; *In re Exide Holdings, Inc.* No. 20-11157 (CSS) (Bankr. D. Del. June 19, 2020) [Docket No. 350].

18. Moreover, the grant of DIP Liens and Adequate Protection Liens on, and DIP Superiority Claims and Adequate Protection Claims against, the proceeds of avoidance actions is

an integral component of the collateral and adequate protection packages negotiated here and commensurate with the inherent risks the DIP Lenders and Prepetition Lenders are assuming. To do otherwise would be to effectively subordinate the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims and Adequate Protection Claims to every other claim in the Bankruptcy Code's priority scheme as it pertains to proceeds of avoidance actions, which is hardly a just result in exchange for up to $43 million in new money. And to be clear, the liens of the DIP Lenders and the Prepetition Lenders attach only to the proceeds of avoidance actions, and the lenders are in no way trying to control the avoidance actions or otherwise usurp the Debtors' avoidance powers. Accordingly, the Debtors' sound exercise of their business judgment is consistent with a number of other cases from this jurisdiction in which the court approved the inclusion of liens on and superpriority claims against the proceeds of avoidance actions.

C. **The Sections 506(c) and 552(b) Waivers Are Warranted**.

19. The Committee's objections to the sections 506(c) and 552(b) are to their timing with respect to the Chapter 11 Cases—not to their appropriateness. Specifically, the Committee argues against section 506(c) and 552(b) waivers on the premise that the estate could be administratively insolvent following a sale. The Committee somehow ignores that the DIP Lenders and Debtors have agreed pursuant to the Restructuring Support Agreement that there will be a wind-down budget to fund the wind-down of the Debtors' operations following the closing of a sale. *See* Restructuring Support Agreement at 7. The Committee's argument, therefore, are based on bald assumptions; it has not submitted any evidence of any pre- or post-sale potential for administrative insolvency.

20. The Committee also freely concedes that only the Debtors are vested with standing to invoke the surcharge provisions of section 506(c). *See Hartford Underwriters Ins. Co. v. Union*

Planters Bank, N.A., 530 U.S. 1, 12 (2000). Thus, it follows that the Debtors' waiver of that right in exchange for $43 million of value-preserving new money and the myriad material benefits they will receive under the Final DIP Order and as part of the comprehensive agreement with respect to the DIP Facility and the Restructuring Support Agreement is well within the sound exercise of their business judgment.

21. Not only is the waiver a valid exercise of Debtors' business judgment, section 506(c) waivers are common, particularly where, as here, a secured lender has agreed to subordinate its liens and claims to the post-default carve-out. Indeed, courts in this District routinely approve section 506(c) waivers, particularly when coupled with a professional fee carve-out. *See, e.g.*, *In re AAC Holdings, Inc.*, No. 20-11648 (JTD) (Bankr. D. Del. July 15, 2020) [Docket No. 159]; *In re Libbey Glass Inc.*, No. 20-11439 (LSS) (Bankr. D. Del. July 2, 2020) [Docket No. 234]; *In re Advantage Holdco, Inc.*, No. 20-11259 (JTD) (Bankr. D. Del. July 1, 2020) [Docket No. 324]; *In re Exide Holdings, Inc.*, No. 20-11157 (CSS) (Bankr. D. Del. June 19, 2020) [Docket No. 350]; *In re CraftWorks Parent, LLC*, No. 20- 10475 (BLS) (Bankr. D. Del. May 21, 2020) [Docket No. 535].

22. The Committee's attempt to argue that a section 506(c) waiver is inappropriate because the Debtors' estates may be left administratively insolvent is undermined by the Committee's own view of the ample liquidity provided by the DIP Facility, the actual content of the DIP Budget, as well as the agreement between the Debtors and DIP Lenders as to the funding of an appropriate wind-down budget.

23. As to a section 552 "equities of the case" waiver, section 552 of the Bankruptcy Code provides that, "prepetition security interests extend to postpetition 'proceeds, product, offspring, or profits' of prepetition collateral, 'to the extent provided by such security agreement

and by applicable nonbankruptcy law, except to the extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.'" *In re Tower Air, Inc.*, 397 F.3d 191, 205 n. 16 (3d Cir. 2005) (citing 11 U.S.C. § 552(b)(1)). The "equities of the case" exception in Bankruptcy Code section 552(b) is primarily intended to prevent a debtor's secured creditors from reaping any disproportionate windfall of the debtor's use of other unencumbered assets of its estate to increase the value of the secured lender's collateral. *See generally In re Tower Air, Inc.*, 397 F.3d at 205 ("[T]he normal application of the equity exception is in Chapter 11 cases, to prevent an oversecured lender from receiving a windfall by taking assets that would otherwise go to rehabilitating the debtor."); *see also In re J. Catton Farms, Inc.*, 779 F.2d 1242, 1246 (7th Cir. 1985) ("The equit[ies] exception is meant for the case where the trustee or debtor in possession uses other assets of the bankrupt estate (assets that would otherwise go to the general creditors) to increase the value of the collateral."); *In re Muma Servs., Inc.*, 322 B.R. 541, 558–59 (Bankr. D. Del. 2005) (quoting *Delbridge v. Prod. Credit Ass'n & Fed. Land Bank*, 104 B.R. 844, 826 (E.D. Mich. 1989)). This exception has been found to be inapplicable where the secured creditor possesses a lien over substantially all of the debtor's assets such that any appreciation in estate assets will almost necessarily originate from the use of the lender's cash collateral. *See id*. at 559.

24. Here, there has been no showing that the Prepetition Lenders will obtain a windfall by an increased value of their collateral as a result of the Debtors using assets that otherwise would be available to unsecured creditors. In fact, the Committee ignores the realities of this case, including the inherent risks the DIP Lenders and Prepetition Lenders are assuming given the challenges faced by the Debtors' maturity as an operation and its industry. Further, in cases where secured parties have agreed to subordinate their claims to a carve-out and have agreed to be primed by substantial postpetition financing–as the Prepetition Lenders have done in these Chapter 11

Cases–courts in this district routinely have approved waivers of the "equities of the case" exception as part of consensual adequate protection packages. *See, e.g., In re AAC Holdings, Inc.*, No. 20-11648 (JTD) (Bankr. D. Del. July 15, 2020) [Docket No. 159]; *In re Libbey Glass Inc.*, No. 20-11439 (LSS) (Bankr. D. Del. July 2, 2020) [Docket No. 234]; *In re Advantage Holdco, Inc.*, No. 20-11259 (JTD) (Bankr. D. Del. July 1, 2020) [Docket No. 324]; *In re Exide Holdings, Inc.*, No. 20- 11157 (CSS) (Bankr. D. Del. June 19, 2020) [Docket No. 350].

25. Additionally, as discussed herein, the Debtors and the DIP Lenders have agreed to provide for a wind-down budget in the Restructuring Support Agreement which, as further memorialized in detail in the Plan, will include amounts "sufficient to fund (a) the payment in full of Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed Other Priority Claims to the extent not otherwise assumed under any Sale Transaction Documentation, and (b) the costs to wind down the Estates and Chapter 11 Cases in accordance with the Wind-Down Budget."[6] As such, the DIP Facility, together with the Restructuring Support Agreement, is structured in such a way that provides for the payment of professional fees and expenses subject to the Wind-Down Budget agreed upon in the Restructuring Support Agreement.

D. The Marshaling Waiver is Warranted.

26. With respect to the Committee's contention that a marshaling waiver should not be granted—as an initial matter, unsecured creditors generally are not permitted to invoke the equitable doctrine of marshaling. *See In re Advanced Mktg. Servs., Inc.*, 360 B.R. 421, 427 (Bankr. D. Del. 2007), citing *Pittsburgh-Canfield Corp.*, 309 B.R. at 291. Therefore, the Committee's request to the Court to require both the DIP Lenders and the Prepetition Secured Parties to satisfy

[6] *Joint Chapter 11 Plan of Reorganization of Starry Group Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of The Bankruptcy Code* [D.I. 22], Art. I, A.

their claims or adequate protection claims, if any, from the proceeds of assets subject to their Prepetition Liens before they can look to the proceeds of assets on which they did not have liens prepetition is inappropriate.

27. Additionally, a waiver of marshaling requirements is commonplace in postpetition lending arrangements. *See, e.g., In re Phoenix Services TopCo LLC,* No. 22-10906 (MFW) (Bankr. D. Del. Nov. 2, 2022) [Docket No. 237] (approving waiver of equitable doctrine of marshaling); *In re Ector County Energy Center LLC,* Case No. 22-10320 (JTD) (Bankr. D. Del. June 3, 2022) (same); *In re EYP Group Holdings, Inc.,* No. 22-10367 (MFW) (Bankr. D. Del. May 25, 2022) [Docket No. 149] (same); *In re MD Helicopters, Inc.,* Case No. 22-10263 (KBO) (Apr. 26, 2022) [Docket No. 205]; *In re Teligent, Inc.,* Case No. 21-11332 (BLS) (Nov. 15, 2021) [Docket No. 174]; *In re Youfit Health Clubs, LLC,* Case No. 20-12841 (MFW) (Bankr. D. Del. Dec. 4, 2020) (same) [Docket No. 231]; *In re Rubio's Restaurants, Inc.,* Case No. 20-12688 (MFW) (Bankr. D. Del. Dec. 1, 2020) [Docket No. 225] (same); *In re The Hertz Corp.,* Case No. 20-11218 (MFW) (Bankr. D. Del. Oct. 29, 2020) [Docket No. 1661] (same); *In re MUJI U.S.A. Limited,* Case No. 20-11085 (MFW) (Bankr. D. Del. Aug. 11, 2020) [Docket No. 105] (same); *In re AAC Holdings, Inc.,* Case No. 20-11648 (JTD) (Bankr. D. Del. July 15, 2020) [Docket No. 159] (same). In this case, where the DIP Lenders and the Prepetition Secured Parties are being granted a postpetition lien on a diverse pool of assets of the Debtors, such a waiver is particularly appropriate. And like other terms of the DIP Facility, this was required as part of the overall financing package. The Committee's objection on this point should also be overruled.

CONCLUSION

WHEREFORE, the DIP Agent and Prepetition Agent request that the Court enter the Final DIP Order and grant such other relief as is just and proper.

[*Remainder of page left intentionally blank*]

Dated: March 28, 2023
Wilmington, Delaware

POTTER ANDERSON & CORROON LLP

/s/ L. Katherine Good

L. Katherine Good (No. 5101)
Elizabeth R. Schlecker (No. 6913)
Hercules Plaza
1313 North Market Street, 6th Floor
Wilmington, Delaware, 19801
Telephone: (302) 984-6000
Facsimile: (302) 658-1192
Email: kgood@potteranderson.com
eschlecker@potteranderson.com

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Justin Bernbrock (No. 6308584)
Catherine Jun (No. 6315454)
321 North Clark Street, 32nd Floor
Chicago, Illinois 60654
Telephone: (312) 499-6300
Facsimile: (312) 499-6301
Email: jbernbrock@sheppardmullin.com
cjun@sheppardmullin.com

Kyle J. Mathews (No. 218384)
333 South Hope Street, 43rd Floor
Los Angeles, California 90071
Telephone: (213) 620-1780
Facsimile: (213) 620-1398
Email: kmathews@sheppardmullin.com

Attorneys for the DIP Agent and Prepetition Agent

CERTIFICATE OF SERVICE

I, L. Katherine Good, do hereby certify that on March 28, 2023, I caused a copy of the foregoing **Reply of the DIP Agent and Prepetition Agent to Limited Objection of the Official Committee of Unsecured Creditors to Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief** to be served on the parties listed on the attached service list in the manners indicated.

/s/ L. Katherine Good
L. Katherine Good (No. 5101)

SERVICE LIST

***Via* First-Class Mail** *Starry Group Holdings, Inc.* 38 Chauncy Street, Suite 200 Boston, MA 02111	***Via* Electronic Mail** Ted A. Dillman, Esquire Jeffrey T. Mispagel, Esquire Nicholas J. Messana, Esquire *Lathan & Watkins LLP* 355 South Grand Avenue, Suite 100 Los Angeles, CA 90071 Email: ted.dillman@lw.com jeffrey.mispagel@lw.com nicholas.massana@lw.com (Counsel to the Debtors)
***Via* Electronic Mail** Jason B. Gott, Esquire *Lathan & Watkins LLP* 330 North Wabash Avenue, Suite 2800 Chicago, IL 60611 Email: jason.gott@lw.com (Counsel to the Debtors)	***Via* Electronic Mail** Michael R. Nestor, Esquire Kara Hammond Coyle, Esquire *Young Conaway Stargatt & Taylor, LLP* Rodney Square 1000 North King Street Wilmington, DE 19801 Email: mnestor@ycst.com kcoyle@ycst.com (Counsel to the Debtors)
***Via* Electronic Mail** David R. Hurst, Esquire *McDermott Will & Emery LLP* The Nemours Building 1007 North Orange Street, 10th Floor Wilmington, DE 19801 Email: dhurst@mwe.com (*Proposed* Counsel to the Official Committee of Unsecured Creditors)	***Via* Electronic Mail** Darren Azman, Esquire Kristin Going, Esquire Stacy A. Lutkus, Esquire Natalie Rowles, Esquire *McDermott Will & Emery LLP* One Vanderbilt Avenue New York, NY 10017-3852 Email: dazman@mwe.com kgoing@mwe.com salutkus@mwe.com nrowles@mwe.com (*Proposed* Counsel to the Official Committee of Unsecured Creditors)
***Via* Electronic Mail** Benjamin A. Hackman, Esquire *Office of the United States Trustee* 844 North King Street Wilmington, DE 19801 Email: benjamin.a.hackman@usdoj.gov	