IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: CTN HOLDINGS, INC., *et al*.,[1] Debtors.	Chapter 11 Case No. 25-10603 (CTG) (Jointly Administered) **Re: D.I. 21 & 65**

OMNIBUS OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' (I) DIP FINANCING MOTION AND (II) SALE PROCEDURES MOTION

The Official Committee of Unsecured Creditors (the "Committee") of CTN Holdings, Inc. and its affiliated debtors (collectively, the "Debtors"), by and through its undersigned proposed counsel, hereby submits this omnibus objection (the "Objection") to:

- *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Term Loan Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Hearing and (VI) Granting Related Relief* [D.I. 21] (the "DIP Motion"); and

- *Debtors' Motion for Entry of an Order Approving (I)(A) the Debtors' Entry into Stalking Horse Agreement and Related Expense Reimbursement and Break-Up Fee; (B) the Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets; (C) the Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) the Form and Manner of Notice of the Sale Hearing, Assumption Procedures and Auction Results, and (E) Dates for an Auction and Sale Hearing; (II)(A) the Sale of Substantially All of the Debtors' Assets Free and Clear of All Claims, Liens, Liabilities, Rights, Interests, and Encumbrances and (B) the Debtors' Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [ECF No. 65] (the "Sale Procedures Motion").[2]

[1] The Debtors in these chapter 11 cases, along with the last four digits of the Debtors' federal tax identification numbers, are CTN Holdings, Inc. (9122), CTN SPV Holdings, LLC (8689), Make Earth Green Again, LLC (4441), Aspiration QFZ, LLC (1532), Aspiration Fund Adviser, LLC (4214), Catona Climate Solutions, LLC (3375) and Zero Carbon Holdings, LLC (1679). The mailing address for the Debtors is 548 Market Street, PMB 72015, San Francisco, CA 94104-5401.

[2] Capitalized term used and not defined herein shall have the meanings ascribed to them in the DIP Motion and Sale Procedures Motion, as applicable.

In support of this Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT[3]

1. The Committee supports the Debtors in obtaining new money to finance these Chapter 11 Cases, including a competitive sale process that maximizes value for all stakeholders. The proposed DIP Facility and Bidding Procedures and Stalking Horse Agreement, however, include many terms and conditions that impinge upon the rights of unsecured creditors and would foreclose any possibility that they obtain a recovery in these Chapter 11 Cases.

2. The Debtors seek approval of a DIP Facility that, among other things, provides for $4,210,000 in new money loans and rolls up $13,805,000 of Prepetition Secured Note Obligations. While many of the economic terms of the DIP Facility appear on their face to be reasonable, it nevertheless improperly and unfairly allows the DIP Lender to extract the value of its collateral at the expense of the Debtors' unsecured creditors. Indeed, the Debtors and the DIP Lender have set a course that will result in these Chapter 11 Cases being administered solely for the benefit of the DIP Lender, to the severe detriment of the unsecured creditors. The DIP Facility has to be fair to all creditors, not simply a tool for the DIP Lender to foreclose on its collateral and extract all value from these estates.

3. The Committee recognizes that the Debtors have to make concessions to obtain DIP financing to maintain going concern value. At the same time, it is essential to ensure the administrative solvency of these chapter 11 estates and to preserve for the benefit of unsecured creditors any unencumbered assets, including without limitation, avoidance actions, commercial tort claims and whatever other rights or claims may exist against the Debtors' founders, officers,

[3] Capitalized terms used and not defined in the Preliminary Statement shall have the meanings ascribed to them elsewhere in this Objection.

directors and others (and any available insurance coverage) with respect to any improper actions taken pre-petition.

4. In this regard, the Committee does not oppose the roll up of $1,175,000 approved pursuant to the Interim Order, and it is willing to agree to a standard package of protections for the DIP Lender. However, the final terms of the DIP Facility, as proposed, go too far beyond what the Committee deem to be reasonable as there are several areas of overreach that must be corrected.

5. Specifically, the Committee has identified several provisions in the proposed Final DIP Order that are unacceptable including:

a. The Debtors' request to roll-up an additional $12,630,000 million is excessive compared to the amount of new money provided under the DIP Facility (each dollar of new financing rolls-up three (3) dollars of Prepetition Secured Note Obligations).

b. Other than to secure the new money portion of the DIP Facility, unencumbered assets must be preserved for unsecured creditors.

c. The Debtors should not be allowed to grant advance waivers of sections 506(c) and 552(b) of the Bankruptcy Code when the Budget is insufficient.

d. The Committee's budget is currently less than 20% of that provided to the Debtors' professionals. The Budget should provide sufficient resources to the Committee so that it is able to fulfill its fiduciary obligations, among other things, to investigate and challenge the DIP Lender's alleged pre-petition liens.

6. The Committee also supports a value maximizing sale process—one that does not include (i) an unreasonably short duration and (ii) an excessive Break-Up Fee and overly generous Expense Reimbursement for the proposed Stalking Horse Bidder, a Prepetition Secured Note Holder and the DIP Lender.

7. The proposed process timeline is too short for a company that was only exposed to a marketing and sale process post-petition. Compounding the detrimental effect of an insufficient

marketing process is the fact that the Debtors just began analyzing for sale their net operating losses ("NOLs") for U.S. federal income tax purposes of approximately $580.3 million and NOLs for state and local income tax purposes of approximately $251.2 million, which may be the Debtors' most valuable asset. The Committee seeks to strike a balance between the Debtors' cash constraints and the need for the Debtors to conduct a robust marketing and sale process that contemplates a value maximizing sale transaction, including a transaction involving the NOLs.[4] To achieve this balance, the Committee respectfully requests that the Court extend the Debtors' sale process by delaying the Bid Deadline, Auction and Sale Hearing by no less than two (2) weeks.

8. Additionally, the proposed Bid Protections are unsupported by law and fact. The proposed Stalking Horse Bidder needed no diligence, and seems to have undertaken no diligence, prior to its entry into the Stalking Horse Agreement by virtue of its status as a Prepetition Secured Note Holder and the DIP Lender. In fact, there is no evidence that the Stalking Horse Bidder's Credit Bid reflects a diligence-based purchase price determination warranting compensation by the Bid Protections. At a minimum, the Court should reserve its decision on the Bid Protections until the conclusion of the Sale Hearing because (i) the Bid Protections may be moot if the Stalking Horse Bidder is the Successful Bidder and (ii) the Debtors' expectation that the Stalking Horse Agreement will encourage competitive bidding should be proven true.

9. Prior to filing this Objection, the Committee raised the issues and arguments raised herein with the Debtors and the DIP Lender and is hopeful to resolve, or at least narrow them substantially, before the Final Hearing to ensure these Chapter 11 Cases are run efficiently and equitably. Although the Debtors and DIP Lender have been cooperative, to date, the Committee

[4] Although the hearing on the Sale Procedures Motion has been adjourned from April 30, 2025, to May 12, 2025 [D.I. 83], as of the date hereof, the Committee understands that the Debtors still intend to establish a Bid Deadline of May 13, 2025, only one (1) days after the potential approval of the Sale Procedures Motion.

has yet to receive a response from the Debtors or DIP Lender on the issues raised by the Committee.

BACKGROUND

A. Procedural Background

10. On March 30, 2025 (the "Petition Date"), the Debtors filed voluntary petitions for relief in this Court, commencing these cases (the "Chapter 11 Cases") under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. To date, no trustee or examiner has been appointed in these Chapter 11 Cases

11. On March 31, 2025, the Debtors filed the DIP Motion seeking the entry of interim and final orders (together, the "DIP Orders") authorizing the Debtors' entry into that certain *Superpriority Senior Secured Debtor-in-Possession Loan and Security Agreement and Guaranty* (the "DIP Credit Agreement") and other documents related to debtor in possession financing (the "DIP Documents") with Inherent Aspiration, LLC, as lender (the "DIP Lender") and Inherent Group, LP, as administrative agent (the "DIP Agent" and, collectively with the DIP Lender, the "DIP Secured Parties") to provide a superpriority, senior secured and priming debtor in possession loan (the "DIP Credit Facility"). The DIP Credit Facility is secured by substantially all property of the Debtors as set forth in the DIP Orders (the "DIP Collateral").

12. On April 3, 2025, the Court approved the DIP Motion on an interim basis (the "Interim DIP Order"). Among other things, the Interim Order authorized the Debtors to (i) borrow $2,210,000 of new money and (ii) roll-up $1,175,000 of Prepetition Secured Note Obligations.

13. On April 10, 2025, the United States Trustee for the District of Delaware (the "U.S. Trustee") constituted and appointed the Committee, consisting of: (i) InterPrivate III Financial

Partners Inc., (ii) Socure Inc., (iii) Eden Reforestation Projects and Compassionate Carbons, LLC, (iv) Clarity AI Inc., and (v) Sandline Discovery LLC. [D.I. 59]. Thereafter, the Committee selected and retained, subject to Court approval, Gibbons P.C. as its counsel and Dundon Advisers LLC as its financial advisor.

14. On April 11, 2025, the Debtors filed the Sale Procedures Motion to establish procedures to sell substantially all of their assets pursuant to an auction process. [D.I. 65]. By the Sale Procedures Motion, the Debtors also seek authority to designate Inherent Aspiration, LLC ("Inherent") as the Stalking Horse Bidder, establish May 13, 2025 at the Bid Deadline and to conduct an Auction on May 15, 2025.

15. For the foregoing reasons and those set forth below, the Committee requests that this Court deny final approval of the DIP Facility and the Sale Procedures Motion without the modifications necessary to address the Committee's objections herein.

OBJECTION

I. The DIP Motion Prejudices the Unsecured Creditors

16. To obtain post-petition financing under the Bankruptcy Code, a debtor must prove: (i) it is unable to obtain unsecured credit; (ii) the proposed credit is necessary to preserve the assets of the estate; and (iii) the terms of the financing are fair, reasonable and adequate.[5] Financing provisions that "tilt the conduct of the bankruptcy case" or "prejudice, at the early stage, the powers and rights that the Bankruptcy Code confers for the benefit of all creditors" are disfavored.[6] The Debtors cannot carry their burden to approve the DIP Facility on business judgment alone. They must demonstrate the DIP Facility is in the best interest of all creditors, not just the DIP Lender.[7]

[5] *In re Ames Dept. Stores, Inc*., 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990).
[6] *Id*.
[7] *Id*. at 40.

17. Moreover, a proposed financing should not be approved where "it is apparent that the purpose of the financing is to benefit a creditor rather than the estate."[8] Post-petition financing should not be authorized if its primary purpose is to benefit or improve the position of a particular secured lender.[9] Indeed, the law has long acknowledged the unequal bargaining power inherent in negotiations leading to proposed post-petition financing, as well as the very significant harm that can befall creditors if the proposed lender is permitted to exploit its position.[10]

18. The Committee acknowledges the Debtors require financing to pursue a sale in chapter 11. The expedited sale process, however, is being run for the DIP Lender's benefit and has not been designed to maximize the value the Debtors could possibly obtain by expanding their marketing efforts. In these circumstances, bankruptcy courts routinely require a secured lender to "pay the freight" associated with the chapter 11 process,[11] and in this case that should include funding an extended marketing process—as well as enough runway to get this case to a confirmed chapter 11 plan.

19. The DIP Lender should not be allowed to extract excessive value and enhanced protections they could not obtain outside of bankruptcy. The DIP Facility must be fair to the Debtors' estates and unsecured creditors. Without the modifications discussed below, the DIP

[8] *Id.* at 39.

[9] *See, e.g., In re Aqua Assocs*., 123 B.R. 192, 195-98 (Bankr. E.D. Pa. 1991) ("[C]redit should not be approved when it is sought for the primary benefit of a party other than the debtor."); *Tenney Village*, 104 B.R. 562, 568 (Bankr. D.N.H. 1989) (debtor in possession financing terms must not "pervert the reorganizational process from one designed to accommodate all classes of creditors and equity interests to one specially crafted for the benefit of [the secured creditor]").

[10] *See, e.g.*, *In re FCX, Inc.*, 54 B.R. 833, 838 (Bankr. E.D.N.C. 1985) ("[T]he court should not ignore the basic injustice of an agreement in which the debtor, acting out of desperation, has compromised the rights of unsecured creditors.").

[11] *See Precision Steel Shearing v. Fremont Fin. Corp*. (*In re Visual Indus., Inc*.), 57 F.3d 321, 325 (3d Cir. 1995) ("[S]ection 506(c) is designed to prevent a windfall to the secured creditor . . . ."); *In re TerreStar Networks, Inc*., 457 B.R. 254, 270 (Bankr. S.D.N.Y. 2011) ("'[Section 552(b)] is intended to prevent secured creditors from receiving windfalls and to allow bankruptcy courts broad discretion in balancing the interests of secured creditors against the general policy of the Bankruptcy Code, which favors giving debtors a 'fresh start.'") (quoting *In re Patio & Porch Sys. Inc*., 194 B.R. 569, 575 (Bankr. D. Md. 1996)).

Facility does not satisfy the governing standards, and the DIP Motion should be denied on a final basis.

A. The Roll-Up Is Inappropriate and Excessive

20. Courts are generally reluctant to approve post-petition financing that converts pre-petition debt into post-petition obligations, because such conversions go against "the general bankruptcy principle favoring equal treatment of similarly situated creditors and disfavoring payment of pre-petition debt outside of a reorganization plan."[12]

21. The DIP Facility consists of, among other things, a roll up of $13,805,000 of the Prepetition Secured Note Obligations. The Committee does not oppose the Interim Roll-Up of $1,175,000.00 million approved under the Interim Order. The Committee, however, opposes the requested Roll-Up as part of the Final DIP Order in an amount that exceeds the amount of new money provided under the DIP Facility. The requested Roll-Up is excessive when compared to the amount of new money provided under the DIP Facility (each dollar of new financing rolls-up approximately 3.3 dollars [13]of Prepetition Secured Note Obligations), and the Debtors' general unsecured creditors will be harmed if the DIP Lender further increases its collateral position against the Debtors' unencumbered assets. The Committee requests that the Final Roll-Up be limited to $3,035,000.00, which amount, together with the Interim Roll-Up approved under the Interim Order, equals the total amount of the new-money DIP Commitment.

[12] *See, e.g.*, *Official Comm. of Unsecured Creditors of New World Pasta Co. v. New World Pasta Co*., 322 B.R. 560, 569 n.4 (M.D. Pa. 2005) (noting that roll-up provisions "have the effect of improving the priority of a prepetition creditor"); *Tenney Vill. Co*., 104 B.R. at 570 (holding that Bankruptcy Code section 364 does not authorize the granting of administrative expense priority for prepetition debt); see also 3 COLLIER ON BANKRUPTCY ¶ 364.06[2].

[13] $13,805,000 roll up to $4,210,000 new money.

B. Unencumbered Assets Should Be Preserved for Unsecured Creditors

22. At the time of the filing of this Objection, the Debtors have just filed their schedules of assets and liabilities ("Schedules") and their statements of their financial affairs ("SoFAs") (only hours before this Objection was filed), and the Committee's investigation into the Prepetition Secured Parties' liens and claims and the Debtors' unencumbered assets is in its infancy. Yet, the Debtors propose to grant broad-reaching DIP Liens, Adequate Protection Liens, and DIP Super-priority Claims over potential unencumbered assets in favor of the DIP Lender, so as to put it ahead of the line for payment from previously unencumbered assets, including Avoidance Actions and Avoidance Proceeds, commercial tort claims and insurance policies and proceeds that may exist thereunder, without any transparency into the value of what they are giving away. Such a broad grant of security is inappropriate and should be denied.

23. Further, to allow the Debtors, as fiduciaries, to effectively assign the benefits of avoidance actions to a lender rather than preserve them for the benefit of unsecured creditors turns bankruptcy law on its head.[14]

24. To the extent that the $13,805,000 million in Prepetition Secured Note Obligations is rolled-up, any pre-petition unencumbered assets should remain unencumbered and free of any DIP Liens, Adequate Protection Liens, and DIP Super-priority Claims on account of such rolled-up debt. There is no basis to cross-collateralize what is otherwise pre-petition debt with unencumbered assets, especially new post-petition assets such as avoidance actions.

[14] *See Tenney Village*, 104 B.R. at 568 (debtor in possession financing terms must not "pervert the reorganizational process from one designed to accommodate all classes of creditors and equity interests to one specially crafted for the benefit" of the secured creditor).

C. Rights Under Sections 506(c) and 552(b) Should Be Preserved

25. Until the payment of all administrative expenses is ensured under the Budget, the estates' rights under sections 506(c) and 552(b) of the Bankruptcy Code must be preserved. Section 506(c) of the Bankruptcy Code allows a debtor to charge the costs of preserving or disposing of a secured lender's collateral to the collateral itself.[15] This provision ensures that the cost of preserving a lender's collateral is not paid from unsecured creditor recoveries.[16] Similarly, the "equities of the case" exception in section 552(b) of the Bankruptcy Code allows a debtor, committee or other party-in-interest to exclude post-petition proceeds from pre-petition collateral on equitable grounds, including to avoid having unencumbered assets fund the cost of a lender's foreclosure.[17] It is intended to ensure that a secured creditor "does not receive a windfall benefit when a trustee uses assets of the estate."[18]

26. Given the insufficiencies and inequities discussed in this Objection, the waiver of the estates' rights under sections 506(c) and 552(b) is inappropriate, especially on a final basis so early in these Chapter 11 Cases. The Committee is not presently asking the Debtors to surcharge

[15] *See* 11 U.S.C. § 506(c); *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 12 (2000); 4 COLLIER ON BANKRUPTCY ¶ 506.05 ("In general, a secured creditor receives a 'benefit' within the meaning of section 506(c) if the relevant expense preserved or increased the value of its collateral.").

[16] *See In re Visual Indus., Inc.*, 57 F.3d at 325 ("[Section 506(c)] understandably shifts to the secured party, who has benefitted from the claimant's expenditure, the costs of preserving or disposing of the secured party's collateral, which costs might otherwise be paid from the unencumbered assets of the bankruptcy estate, providing that such unencumbered assets exist. Failing that, the costs of preserving the security for the secured party's benefit would otherwise fall on the warehouseman, auctioneer, appraiser, etc.").

[17] *See* 11 U.S.C. § 552(b); *TerreStar Networks, Inc.*, 457 B.R. at 270 ("'[Section 552(b)] is intended to prevent secured creditors from receiving windfalls and to allow bankruptcy courts broad discretion in balancing the interests of secured creditors against the general policy of the Bankruptcy Code, which favors giving debtors a 'fresh start.'") (quoting *In re Patio & Porch Sys. Inc.*, 194 B.R. 569, 575 (Bankr. D. Md. 1996)).

[18] *In re Barbara K. Enterprises, Inc.*, No. 08–11474, 2008 WL 2439649, at *11 (Bankr. S.D.N.Y. June 16, 2008); *see In re Photo Promotion Assocs.*, 61 B.R. 936, 939–40 (Bankr. S.D.N.Y. 1986) (recognizing the court has significant discretion to apply pre-petition security interests to post-petition proceeds of property under the equities of the case, and ruling that creditor's security interest did not extend to proceeds from the sale of inventory that required the trustee to expend post-petition funds to prepare for sale).

the DIP Lender's collateral, but until the Budget is rationalized to fully satisfy the cost of these proceedings, including a wind-down, the estates' rights must be preserved.

D. The DIP Facility Inappropriately Limits the Committee's Ability to Fulfill its Fiduciary Duties

27. The Committee has a fiduciary duty to investigate, *inter alia*, the Debtors, their assets, liabilities and financial affairs, including, among other things, the amount of the Prepetition Secured Note Obligations and the validity and extent of the liens securing it.[19] The proposed Final Order and the Budget impose significant roadblocks to the Committee's ability to fulfill its fiduciary duty.

28. First, the Committee is entitled to retain professionals to represent it, and the Budget must provide a reasonable amount to allow the Committee to discharge its statutory mandate.[20] The Debtors' current Budget provides very little funds for the Committee and its professionals to perform their statutorily mandated duties and, if not increased, severely undermines the Committee's ability to participate meaningfully in these Chapter 11 Cases. Indeed, the Budget falls short of the general 33% benchmark for Committee professionals and stands in sharp contrast to the amounts allocated for the Debtors' professionals (20% of total Debtors' professionals fee budget, not including the Debtors' investment banker). The Committee submits that if the parties cannot agree on the Budget, the Court should disregard the professional allocations in the Budget

[19] *See* 11 U.S.C. § 1103(c)(2).

[20] *See Motorola, Inc. v. Official Comm. of Unsecured Creditors* (*In re Iridium Operating LLC*), 478 F.3d 452, 466 (2d Cir. 2007) (unsecured creditors' committees have a fiduciary duty to maximize unsecured creditor recoveries for the debtor's estate); *Value Prop. Trust v. Zim Co*. (*In re Mortg. & Realty Trust*), 212 B.R. 649, 653 (Bankr. C.D. Cal. 1997) (noting that the committee has many functions . . . "it investigates, it appears, it negotiates, it may litigate, and it is at all times intimately involved in the reorganization").

and require all estate professionals to share *pro rata* in the aggregate amount designated to pay estate professionals.[21]

29. Second, aside from the lack of funding for the Committee, the Budget appears wholly insufficient to support any alternative transaction or to fund these Chapter 11 Cases, thus constraining the Debtors and limiting all parties' rights of due process to investigate alternative paths or transactions and to commence challenges. As such, the Committee requests proper funding of a wind-down budget to ensure administrative solvency after completion of the contemplated sale process.

30. Lastly, absent modifications of the proposed Final Order, the Committee is prohibited from using any portion of the Carve-Out, DIP Loans or Collateral to investigate claims or causes of action against, among others, the DIP Secured Parties or Prepetition Secured Parties. Such restrictions are inconsistent with the lien investigation rights of a Committee and will severely limit or entirely deprive the Committee of its rights and ability to fulfill its fiduciary duties. DIP Credit Agreement at § 2.2.3; Interim Order at ¶19. The Committee, therefore, requests that such restrictions be removed. The Committee should be granted both time to investigate and standing to pursue any available challenge to the extent the Committee deems it appropriate to do so.

E. The DIP Facility Events of Default Should Be Modified

31. As currently contemplated under the DIP Credit Agreement, the DIP Lender can terminate the DIP Facility, and thereby jeopardize these Chapter 11 Cases, if the Committee commences a challenge against the DIP Agent or any DIP Lender. DIP Credit Agreement at § 9.1.

[21] *See In re Evergreen Solar, Inc.*, Case No. 11-12590 (MFW), Hr'g Tr. (Docket No. 189) at 42-51 (Bankr. D. Del. Sept. 6, 2011) (declining to apply the debtor's proposed caps and instead, substituted a general pool for all professionals from which debtor and committee professionals could recover fees on a pro rata basis).

Coupled with the Committee's insufficient Budget, this Event of Default strips the Committee of its challenge rights and ability to conduct a meaningful investigation into the validity, perfection, priority, extent, or enforceability of the liens under the Prepetition Secured Notes.

F. Other Objectionable Provisions

32. In addition to the foregoing, the following provisions of the Credit Agreement and the Final DIP Order are objectionable for the reasons stated below:

a. **Mandatory Loan Prepayments**: As currently contemplated, 100% of any net cash proceeds from asset sales and 100% of any extraordinary receipts must be used to make prepayments of the DIP Loan. DIP Credit Agreement at § 4.2. The Committee submits that no prepayments should be authorized prior to the end of the Challenge Period and that an appropriate holdback must be established to ensure proper funding of these Chapter 11 Cases.

b. **Committee Notices**: The Final Order must require the Debtors to provide copies to the Committee of all notices and reports the Debtors deliver to the DIP Agent and DIP Lender under the Final Order or DIP Documents.

c. **Challenge Period**: The Challenge Period began on the date of the entry of the Interim Order and expires no later than consummation of a sale of substantially all the Debtors' assets. Interim Order at ¶18. The Challenge Period must be extended to at least seventy-five (75) days from the date of formation of the Committee, which was April 10, 2025.

d. **Releases**: The Interim Order provides that Debtors and their estates irrevocably release and waive all claims against Prepetition Secured Parties and the DIP Secured Parties, including for pre-petition conduct. Interim Order at G(ix). Such broad Releases cannot be granted outside of a chapter 11 plan and must be narrowed to the DIP Lender/DIP Agent and solely (i) in their capacity as such, and (ii) with respect to claims or causes of action regarding the DIP Facility or the Prepetition Secured Debt. Further, the Releases, including Releases related to the DIP Facility, must be subject to the Challenge Period.

e. **No Marshaling**: The equitable doctrine of marshalling should not be waived. Interim Order at ¶ 9.

f. **Definition "Adequate Protection**:" The Committee requests confirmation that unencumbered assets are excluded from the scope of adequate protection liens. Interim Order at ¶ 13.

g. **Ambiguous "Carve Out" Definition:** The final order should clarify whether the Carve-Out is limited to the Committee's allocated fees in the Budget, or if it

includes all fees ultimately allowed to the Committee professionals. Interim Order at ¶ 4(a).

h. **Extension of Maturity Date**: The Committee requests an extension of the Maturity Date by an amount of time sufficient to confirm a chapter 11 plan.

i. **Good Faith Finding Premature**: The Committee submits that a finding of good faith is not yet supported, and may ultimately be contradicted by the evidentiary record, and requests that such finding be withheld until confirmation of a plan or Maturity. Interim Order at ¶ 20.

33. In sum, final approval of the DIP Facility must be denied unless and until the offending provisions of the proposed Final Order and DIP Documents have been revised and the Committee's objections have been adequately addressed.

II. The Sale Procedures Motion Prejudices the Unsecured Creditors

A. The Proposed Timeline if Unnecessarily and Impermissibly Brief

34. The proposed Bid Deadline is May 13, 2025—a mere forty-four (44) days after the Petition Date, thirty-two (32) days from the filing of the Sale Procedures Motion, and only one (1) day after the scheduled hearing on the Sale Procedures Motion—with a proposed Auction date of May 15, 2025.[22] While it is possible to conceive of cases where a fast-track, 46-day sale process might be appropriate, this is not such a case, particularly because of the complexities involved with preserving the potential value in the Debtors' NOLs.

35. Notwithstanding the NOL-related complexities, if the Debtors' assets had been marketed pre-petition, which they were not, and there was no expectation that post-petition marking would bring any new bidders to the table, then a truncated sale process *might* be justifiable. Hilco, the Debtors' proposed investment banker, however, was not retained by the Debtors until after the Petition Date [*See* D.I. 81 at ¶ 18], and, presumably, the Debtors' marketing

[22] As indicated above, the Committee believes that the Debtors and DIP Lender/Stalking Horse Bidder still intend on conducting a sale process in accordance with the dates set forth in the Sale Procedures Motion.

materials were not finalized for distribution until at least Hilco's retention (if not later). The post-petition marking process here will be crucially important to achieving maximum value for the Debtors' assets and needs to provide sufficient time to do so.

36. Additionally, as already noted, the Debtors have cumulative NOLs of more than $800 million, which, upon information and belief, (i) the Debtors only began analyzing for sale during the week of April 14, 2025, when the DIP Lender/Stalking Horse Bidder authorized the Debtors to retain tax professionals, and (ii) may be the Debtors' most valuable asset. A post-petition marketing process, which provides adequate time to identify interested parties and perform a full analysis, valuation and, if appropriate, marketing process of the NOLs, is necessary to pursue a value maximizing sale transaction. The proposed sale process timeline—including only one (1) day between the hearing on the Sale Procedures Motion and Bid Deadline—deprives the Debtors from pursuing a fully informed sale of its assets, thereby curtailing the Debtors' ability to seek a value maximizing sale.

37. The Committee is not averse to moving quickly, and it has worked expeditiously since its formation to review and analyze information, including introducing its tax professionals with NOL monetization experience to the Debtors' professionals. Simply, more time is required to pursue a value maximizing sale. To do so, the Committee requests that the Court extend the proposed sale process by delaying the Bid Deadline, Auction and Sale Hearing by two (2) weeks.

B. The Circumstances of these Cases Do Not Warrant Bid Protections

38. The Bidding Procedures contemplate Bid Protections for Inherent Aspiration, LLC, a Prepetition Secured Note Holder and the DIP Lender, consisting of a $600,00 Break-Up Fee and $400,000 in Expense Reimbursement for reasonable and documents costs and out-of-pocket

expenses. The proposed Bid Protections are excessive and unwarranted under the circumstances of these Chapter 11 Cases.

39. It is well established that bid protections, such as break-up fees and expense reimbursements, may be approved only where there has been a showing "'that the fees were actually necessary to preserve the value of the estate.'"[23] A break-up fee can meet this standard where (i) offering the break-up fee is necessary to "induce an initial bid" on the assets, and (ii) "allowance of the fee does not give an advantage to a favored purchaser over other bidders by increasing the cost of acquisition."[24] But when "the bidder would have bid even without the break-up fee," the standard is not met.[25]

40. In *O'Brien*, the Third Circuit concluded that requests for approval of bidding protections should be treated no differently than other applications for administrative expenses under section 503(b) of the Bankruptcy Code.[26] In other words, "the allowability of break-up fees . . . depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate. Therefore, we conclude that the business judgment rule should not be applied as such in the bankruptcy context."[27] Rejecting various formulations and factor-based analyses, the Third Circuit focused instead on the underlying question of whether the proposed break-up fee was necessary to preserve the value of the debtor's estate.[28] Dissatisfied with the bidder's suggestion that its bid promoted competitive bidding by establishing a minimum bid, the Third Circuit agreed with the bankruptcy court that there must be some showing that the

[23] *See also In re Reliant Energy Channelview LP*, 594 F.3d 2000 (3d Cir. 2010) (quoting *Calpine v. O'Brien Environmental Energy, Inc.*, 181 F.3d 527 (3d Cir. 1999))
[24] *Id*.
[25] *Id*.
[26] *O'Brien*, 181 F.3d at 535.
[27] *Id*.
[28] *Id*. at 536.

bid "served as a catalyst to higher bids."[29] Also significant to the *O'Brien* court's denial of the break-up fee was the fact that the bidder "had strong financial incentives to undertake the cost of submitting a bid . . . even in the absence of any promise of reimbursement."[30]

41. While, "in an exercise of their business judgment," the Debtors believe the Bid Protections "would enhance and incentivize bidding," [Sale Procedures Motion at ¶ 35] as set forth below, the Committee submits that the proposed Bid Protections do not meet the *Reliant* standard because (i) they were not necessary to induce the Stalking Horse Bidder to perform due diligence or provide a bid, and (ii) it remains to be seen whether Stalking Horse Bidder's Credit Bid will catalyze bidding by others. The purpose of offering bid protections to a potential stalking horse bidder it to induce them to enter into a purchase agreement that will be used to establish a floor for the purchase price and serve as a springboard for competitive bidding. Neither purpose is served here by the proposed Bid Protections.

42. The Stalking Horse Bidder is a Prepetition Secured Note Holder and the DIP Lender, which asserts an alleged valid, perfected and unavoidable lien on substantially all of the Debtors' assets, and is owed approximately $52 million. The Stalking Horse Bidder first loaned to the Debtors in 2024 and, in the three weeks prior to the Petition Date, provided three additional debt infusions totaling $1.75 million. Based on the lending relationship between the Debtors and the Stalking Horse Bidder, it is evident that the proposed Bid Protections did not induce the Stalking Horse Bidder to diligence the Debtors assets or value in connection with the proposed Credit Bid and Stalking Horse Agreement. There is no evidentiary support that the Bid Protections induced the Staling Horse Bidder to diligence the Debtors—the Stalking Horse Bidder was already fully informed by nature of being the Debtors' pre-petition lender.

[29] *Id*. at 537.
[30] *Id*.

43. Further, the Bid Protections are unlikely to have induced the Stalking Horse Bidder to make its Credit Bid, because, the Stalking Horse Bidder would likely have relied on its credit bid rights under section 363(k) of the Bankruptcy Code to avoid losing its entire investment to a undervalue bid by a third party. Additionally, the Stalking Horse Bidder agreed to the Credit Bid prior to the Debtors' engagement of Hilco (and presumably before the Debtors' marketing materials were finalized) further demonstrating that the Stalking Horse Bidder did not need an incentive to agree to the Credit Bid.

44. It also remains to be seen whether the Credit Bid, which equates to approximately one third (1/3) of the Stalking Horse Bidder's total debt and credit bid rights, will create competitive bidding. Any potential bidder entering the Auction would have to offer three times the Credit Bid or else fear it will be outbid by the Stalking Horse Bidder. Based on the current evidentiary record, there is no showing that the Credit Bid will spur a competitive Auction with multiple rounds of bidding.

45. In the instant case, the Debtors have failed to show that approval of the Bid Protections is necessary to induce the Stalking Horse Bidder to submit an offer or that the offer is necessary to preserve the value of the Debtors' estates. To the contrary, there is strong evidence to suggest that no such financial inducement is necessary. The Committee requests that the Court deny the Bid Protections, or in the alternative, reserve its decision on the Bid Protections until after the Sale Hearing.

C. Certain Other Terms of the Bidding Procedures and Stalking Horse Agreement Require Modification in Order to Ensure a Fair Sale Process

46. In addition to the issues discussed above, the Committee has identified the following objectionable provisions of the Bidding Procedures:

a. **Overbid Amount**: the $250,000 initial overbid amount is high, particularly in conjunction with the break-up fee and expense reimbursement amount, if they are ultimately allowed. Bid Procedures at § H(5). If a competing bidder is willing to offer more than the initial credit bid and cover the proposed bid protections, then such party should be afforded a seat at the table. The Committee requests that the overbid increment be $100,000.

b. **Consultation Rights**: The Committee should be added as a Consultation Party under the Bidding Procedures.

c. **Acquired Assets (Avoidance Actions)**: The Stalking Horse Agreement includes Avoidance Actions as an Acquired Asset. Stalking Horse Agreement at §§ 1.1 (s), (t). Avoidance Actions and proceeds thereof are for the benefit of unsecured creditors and should not be sold by the Debtors.

RESERVATION OF RIGHTS

47. The Committee expressly reserves all rights, claims, defenses, and remedies, including, without limitation, to supplement and amend this Objection, to raise further and other objections to the DIP Motion and Sale Procedures Motion and any proposed order in connection therewith, and to introduce evidence prior to or at any hearing regarding the DIP Motion or Sale Procedures Motion in the event that the Committee's objections are not resolved prior to such hearing.

NOTICE

48. Copies of the Objection have been provided to: (a) Counsel to the Debtors, Whiteford Taylor & Preston, LLP, attn.William F. Taylor, Jr., Esq. and David W, Gaffy, Esq.; (b) counsel for the Lender Group, Proskauer Rose, LLP, attn. Vincent Indelicato and Morris Nichols Arsht & Tunnell attn.. Robert J. Dehney, Sr.; (c) the Office of the United States Trustee for the District of Delaware, attn. Rosa Sierra-Fox, via electronic mail, and all parties having formally requested notice in these proceedings electronically via the Court's CM/ECF System.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court (i) deny the DIP Motion unless the proposed Final Order is modified as set forth herein; (ii) deny the Sale Procedures Motion unless the proposed Bidding Procedures and Stalking Horse Agreement are modified as set forth herein; and (iii) grant such other and further relief as the Court deems just and proper.

Dated: May 2, 2025
Wilmington, Delaware

/s/ Katharina Earle

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Proposed Counsel to the Official Committee of Unsecured Creditors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: CTN HOLDINGS, INC., *et al*.,[1] Debtors.	Chapter 11 Case No. 25-10603 (CTG) (Jointly Administered) **Re: D.I. 21 & 65**

CERTIFICATE OF SERVICE

I, Katharina Earle, hereby certify that on May 2, 2025, a true and correct copy of the foregoing *Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors' (I) DIP Financing Motion and (II) Sale Procedures Motion* (the "Objection") was caused to be served via CM/ECF on all parties who have registered for electronic service in the above-captioned Chapter 11 proceeding.

I further certify that, in addition, I caused the Objection to be served on the parties listed below via electronic mail.

Dated: May 2, 2025
Wilmington, Delaware

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[1] The Debtors in these chapter 11 cases, along with the last four digits of the Debtors' federal tax identification numbers, are CTN Holdings, Inc. (9122), CTN SPV Holdings, LLC (8689), Make Earth Green Again, LLC (4441), Aspiration QFZ, LLC (1532), Aspiration Fund Adviser, LLC (4214), Catona Climate Solutions, LLC (3375) and Zero Carbon Holdings, LLC (1679). The mailing address for the Debtors is 548 Market Street, PMB 72015, San Francisco, CA 94104-5401.

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