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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS
BANKRUPTCY DIVISION

In re IMPERIAL PACIFIC INTERNATIONAL (CNMI), LLC, Debtor and Debtor-in-Possession.	Case No. 1:24-bk-00002 **OPPOSITION BY JOSHUA GRAY TO THE JOINT MOTION OF THE DEBTOR AND THE COMMITTEE TO APPROVE THE SALE OF THE DEBTOR'S ASSETS** Hearing Date: March 25, 2025 Hearing Time: 9:00 a.m. Judge: Hon. Robert J. Faris

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I. INTRODUCTION

Judgment creditor Joshua Gray ("Gray")[1] respectfully submits his opposition (the "Opposition") to the "*Joint Motion of Debtor and Official Committee of General Unsecured Creditors for Order (I) Approving the Sale of Substantially All of the Debtor's Assets Free and Clear of All Liens, Claims, and Encumbrances Pursuant to 11 U.S.C. § 363, Subject to Overbids; and (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Cure Amounts Associated Therewith*" (ECF No. 367 (the "Motion")), filed by Imperial Pacific International (CNMI), LLC, the debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 bankruptcy case, and the Official Committee of General Unsecured Creditors (the "Committee").

The proposed sale of substantially all the Debtor's assets for $12.95 million to Team King Investment (CNMI) LLC ("Team King") should not be approved because it is a transaction between insiders, after a defective sale process that failed to foster competitive bidding, that lacks "good faith" and does not maximize the value to the estate. *In re Hat*, 310 B.R. 752 (Bankr. E.D. Cal. 2004) (rejecting transaction orchestrated by insiders). After the Committee insisted that an investment banker be retained to value and market the Debtor's assets to its wide network, the sale process only produced a total of two Qualified Bidders—the Stalking Horse bidder Loi Lam Sit, and Team King. Loi Lam Sit has no hotel or casino experience, and only got involved with this bankruptcy because a friend asked him to help Mr. Ji, the Debtor's principal investor. Team King's principals are also closely tied to the Debtor—one actually was appointed Executive Director of the Debtor's parent company in 2023, and the other had signed an MOU to invest $300 million to help the Debtor complete the project. Of course, none of these connections were disclosed by Team King. At the

[1] On August 22, 2024, Gray filed proof of claim number 15 on the Debtor's claim register asserting a secured claim of no less than $5,467,083.29, which includes copies of Gray's recorded judgment lien and documents related to his writ of execution on the Debtor's personal property.

auction, there was no competitive bidding between these two insiders. After it was announced that Team King had placed the minimum overbid of $12.95 million, Mr. Sit declined to bid any higher.

The conduct of the sale process also suffered from many other significant flaws, all of which are quite obvious under the heightened scrutiny standard applicable here. At least one potential bidder who has significant experience with hotels in Micronesia did not participate because Intrepid Investment Banker LLC ("Intrepid") refused to modify its overbearing Non-Disclosure Agreement ("NDA"). Despite the Debtor, Committee, and Intrepid explicitly reserving the right to accept piecemeal bids, Gray's $1.5 million credit bid for certain personal property and another firm's $150,000 bid for the gambling debts owed to the Debtor were summarily denied, and both partial bidders were excluded from the auction. Their bids could have been combined with Mr. Sit's bid or Team King's bid to achieve an overall higher price than the $12.95 million, but the flawed sale process precluded even the possibility of such competitive bidding. In short, while a sale process is supposed to foster competitive bidding and maximize value, the process here failed to do either. *In re Atlanta Packaging Products, Inc.*, 99 B.R. 124, 131 (Bankr. N. D. Ga. 1988) (the objective of a sale is to "obtain the highest price or greatest overall benefit possible for the estate").

More specifically, the Opposition presents several arguments in response to the Motion. First, the sale should not be approved because it has not been conducted in good faith, as the bidders and bids were orchestrated by the Debtor and its insiders, which suppressed bidding and the final price. Second, the insider sale, which is subject to heightened scrutiny, should not be approved because the process was flawed and failed to maximize value, including by excluding potential bidders and partial bids. Third, the sale should not be approved because Gray was deprived of his right to credit bid. Fourth, the sale of the assets cannot be approved free and clear of Gray's lien. Fifth, if the sale is approved, Mr. Sit should not be entitled to a breakup fee. Sixth, if the sale is approved, the Court should not waive the 14-day stay period because Gray will appeal such a decision.

While Gray understands the need to move expeditiously, this does not justify ignoring procedural safeguards, denying basic creditor rights, or eliminating the mandatory 14-day stay. *See In re Bidermann Indus. U.S.A., Inc.*, 203 B.R. 547, 552 (Bankr. S.D.N.Y. 1997) (refusing to approve sale supported by debtor and committee based on the objections of secured creditors due to procedural concerns and self-dealing concerns even where there is "some window-dressing" to make the sale look "tested"). Instead, the Court should void the current sale and direct the Debtor and Committee to conduct an expedited process that addresses these prior fatal procedural flaws.

In support of this Opposition, Gray is submitting the Declaration of Aaron Halegua, dated March 11, 2025 ("Halegua Decl."), and the Declaration of David Wickline, dated March 10, 2025 ("Wickline Decl."). Gray also references the Declaration of Brendan Layde, dated March 11, 2025 (ECF No. 388-2 ("Layde Decl."), submitted in connection with the CNMI's Objection to the Motion (ECF No. 388)—in which Gray hereby formally joins. The Layde Declaration also includes a chart illustrating the relationship between the parties to this transaction. (Layde Decl., Ex. P).

II. BACKGROUND

The Debtor's casino has been closed since the start of the COVID pandemic in 2020, and the hotel was never completed. Even if these assets were purchased, it would take years for either the casino or hotel to be operational.

A large number of creditors obtained judgments against the Debtor prior to the Petition. Gray obtained a judgment for $5.68 million on May 31, 2023, based on his discrimination and retaliation claims, then recorded a judgment lien on the Debtor's assets and executed a writ of execution on the Debtor's personal property. (Claim No. 15). Before the bankruptcy, at Gray's direction, Clear Management Ltd. ("Clear") had sold the Debtor's liquor collection, auctioned 11 of its vehicles, and taken steps to inventory and find buyers for other assets—including at least one buyer willing to pay

$1 million for the Debtor's furniture and equipment. (Halegua Decl. ¶ 8). These efforts were all halted when the Petition was filed.

After the Petition, Gray repeatedly impressed on the Debtor and Committee that the personal property must be marketed and sold separate from the real estate and casino license in order to maximize its value. The Debtor initially proposed a sale procedure with Loi Lam Sit ("Mr. Sit") as the Stalking Horse who would buy all assets (except the casino license) for $10 million; after objections by Gray and others, the Debtor modified the proposal to allocate $1.5 million of the proceeds for the personal property. (Halegua Decl. ¶ 13). The Debtor also agreed that the gambling debts, also referred to as Causes of Action, would not be included in the assets sold to Mr. Sit. (*Id.*).

The Committee nonetheless opposed the initial sale as proposed by the Debtor. The Committee argued that the "relationship between Mr. Sit and the Debtor's owners, as well as his overall intentions, remain murky at best." (ECF No. 219 at 2–3). Indeed, Mr. Sit himself explained that he has no experience in developing hotels or operating casinos, and he got involved in this bankruptcy solely because a friend asked him to help Mr. Ji. (ECF No. 140 ¶ 21). The Committee also objected that Mr. Sit's offer was not accompanied by a valuation analysis stating what value Mr. Sit is attributing to each asset, including the "accounts receivable" and "equipment." (ECF No. 219 at 7). The Committee's justification for hiring the investment banker Intrepid Investment Bankers LLC ("Intrepid") to run an auction process, and opposing the employment of the real estate firm Keen-Summit, was that Intrepid could "value and market *all* of the Debtor's assets as a casino-hotel enterprise." (ECF No. 244 at 3) (emphasis in original). Judge Manglona adopted the Committee's plan, noting that "… the Court favors the Committee's proposed approach, *which requires valuing* and marketing the Debtor's assets—*including* the casino license and *the causes of action*—as a package deal." (ECF No. 281 at 3) (emphasis added).

Gray engaged in numerous conversations with Intrepid impressing the importance of permitting separate bids on the personal property and causes of action to make sure maximum value was obtained. Gray again expressed his concern to Intrepid when the initial marketing materials prepared by Intrepid made no mention of these assets. Gray sought to confirm if this was corrected when Intrepid prepared its Data Room of the Debtor's assets. However, despite signing the onerous NDA, and despite having more involvement with the Debtor's assets than all the professionals involved in the sale, Gray was denied access to the Data Room. (Halegua Decl. ¶ 20). Gray later discovered that there was no mention of the personal property in the Data Room, let alone any actual appraisals, valuations, financial information, or other details. Even the inventory of vehicles prepared by Clear Management was not included. (Halegua Decl. ¶ 27).

Despite Intrepid's promise of a "transparent and equitable" sale process (Motion at 10), there are numerous procedural deficiencies and concerns with the sale process conducted by Intrepid. First, at least one serious bidder, David Wickline—a former Goldman Sachs executive with experience managing resort hotels in the United States and Micronesia—was unable to gain access to the Data Room because Intrepid refused to accommodate even reasonable modifications to its NDA, which was "more broad and severe than anything [Mr. Wickline or his lawyer] had experienced in the past." (Wickline Decl. ¶¶ 2–7). Mr. Wickline therefore could not formulate a bid, and thus was not permitted to participate in the auction. (*Id.* ¶ 8). Nonetheless, if given a proper opportunity for due diligence, Mr. Wickline remains interested in bidding on all or some of the Debtor's assets at a level that would increase the total recovery to the estate. (*Id.* ¶ 9).

Second, even after the Committee's insistence on hiring Intrepid to expand the pool of bidders and objections to Mr. Sit, the proposed Bidding Procedures once again used Mr. Sit as the Stalking Horse, with his bid of $12.5 million for all assets and an additional $2.5 million if he obtained the casino license. The Asset Purchase Agreement (APA) for the Stalking Horse states categories of

assets that are included in the sale (i.e. "vehicles"), but there is no actual inventory or accounting of specific items. (Halegua Decl. ¶ 21). Indeed, the shipping containers belonging to the Debtor were presumably sold as part of this sale without anyone even opening them, let alone conducting an analysis or even making an inventory of the contents. (*See* ECF No. 74 at 4) (the Debtor's schedules report "90 containers of construction materials" held at the Port of Saipan of "unknown" value).

Third, Intrepid did not approve any of the partial bids that were submitted, and did not permit those bidders to participate in the auction. Gray submitted a credit bid of $1.5 million for just some of the personal property that was subject to his writ of execution (the Debtor's liquor, cigars, furniture, equipment, computer hardware, and casino security equipment), but the bid was rejected by the Debtor, Committee, and Intrepid, even over Gray's objection. (Halegua Decl. ¶¶ 22, 24-26). The company DAC Management LLC ("DAC") submitted a bid for the gambling debts, offering $150,000 cash and 20% of future recoveries up to a $5.25 million cap; however, this bid was also summarily rejected. (*Id*. ¶ 33). DAC's bid makes apparent that it was never provided with key documents necessary to value the debts, such as the underlying contracts or past correspondence with the debtholders—forcing DAC to make a conditional bid based on whether the Debtor had taken the proper steps to ensure that these debts were still enforceable. (Halegua Decl. ¶ 33, Ex. F).[2] The Data Room did not contain any information about the gambling debts, let alone an analysis of their collectability or any type of valuation by Intrepid. (*Id.* ¶ 27).

The actual auction, conducted virtually by Intrepid on February 26, 2025, was not a competitive process. Aside from Mr. Sit, the only other bidder approved to participate was Team

[2] Gray believes that the Debtor filed some lawsuits in the local CNMI courts to give the impression that it was seeking to collect these debts, but had no interest in ever pursuing them. It is believed that the Debtor never served the complaints on the defendants. Gray raised this issue numerous times with the Debtor, noting that the value of these debts was being jeopardized due to their negligence and inaction, but the Debtor never responded. (*See* Halegua Decl. ¶¶ 29, 31-32, Ex. E).

King, whose principals have extensive ties to and relationships with the Debtor. (Halegua Decl. ¶ 44; Layde Decl. ¶¶ 17-27). When Intrepid announced that Team King had offered the minimum permissible overbid, Mr. Sit's representative then stated that he did not wish to bid any further, and the auction was thus over. (Halegua Decl. ¶¶ 46-47). There was no mention of the partial bids. Further, Mr. Sit's attorney has confirmed that Intrepid never notified Mr. Sit about the partial bids or asked whether he would be interested in submitting a combined bid. (*Id*. ¶ 51).

III. LEGAL STANDARD

Section 363(b)(1) provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate…." 11 U.S.C. § 363 (b)(1). In the Ninth Circuit, "cause" exists for authorizing a sale of estate assets only where it is in the best interest of the estate, and a reasonable business justification exists for authorizing the sale. *In re Huntington, Ltd.*, 654 F.2d 578, 589 (9th Cir. 1981); *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. B.A.P. 1988) (debtor's personal living expenses that do not benefit the estate cannot be paid out of assets of the estate). It is well-established that "the objective of bankruptcy sales and the [debtor's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate." *In re Atlanta Packaging Products, Inc.*, 99 B.R. at 131.

A sale must satisfy several requirements for a bankruptcy court to find that it is in the best interest of the estate, including that: (1) there is a sound business reason for the sale; (2) accurate and reasonable notice of the sale was provided to interested persons; (3) the sale yielded an adequate price (i.e., one that is fair and reasonable); and (4) the parties to the sale have acted in good faith. *Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *see also, In re Walter*, 83 B.R. at 19–20 (proposed use of assets not in the best interest of the estate). Additionally, courts have long recognized the need for competitive bidding in private sales because it

"yields higher offers and thus benefits the estate… [and thus] the objective is to maximize bidding, not restrict it." *In re Atlanta Packaging Products*, 99 B.R. at 131 (internal quotations omitted).

When the sale transaction is between insiders, such transactions "are necessarily subjected to heightened scrutiny because they are rife with the possibility of abuse." *In re Bidermann Indus. U.S.A., Inc.*, 203 B.R. at 551 (rejecting transaction between insiders) (internal quotations and citations omitted). Thus, "[b]y definition, the business judgment rule is not applicable to transactions among a debtor and an insider of the debtor. Those kinds of transactions are inherently suspect …". *In re LATAM Airlines Grp. S.A.*, 620 B.R. 722, 769 (Bankr. S.D.N.Y. 2020). "In applying heightened scrutiny, courts are concerned with the integrity and entire fairness of the transaction at issue, typically examining whether the process and price of a proposed transaction not only appear fair but are fair and whether fiduciary duties were properly taken into consideration." *Id.* (internal quotations omitted); *see also In re Marquam Inv. Corp.*, 942 F.2d 1462, 1465 (9th Cir. 1991) (insider transactions are subject to rigorous scrutiny to show that they are in good faith, inherently fair, and the product of an arms-length bargain); *Pepper v. Litton*, 308 U.S. 295, 306 (1939) (insider transactions are "subjected to rigorous scrutiny").

If the aforementioned sale conditions are not met, or the transaction does not survive rigorous scrutiny as to its appearance of fairness, then the sale is to be rejected and the process must begin again. *See*, *e.g.*, *In re Fehl*, 19 B.R. 310, 312 (Bankr. N.D. Cal. 1982) (denying motion to confirm sale of real property because of deficient notice procedures and an inadequate sales price, and ordering that a new sale be conducted); *In re Crowthers McCall Pattern, Inc.*, 114 B.R. 877, 886 (Bankr. S.D.N.Y. 1990) (the court should not cherry-pick provisions and rewrite the sale agreement).

IV. ARGUMENT

A. The sale should not be approved because it is not conducted in good faith, and there should be no "good faith" finding under 11 U.S.C. § 363(m).

Gray joins in the CNMI's objection to the Motion with respect to the evidence, record, arguments, and conclusions that Team King is an insider of the Debtor—with connections to the Debtor, its investors (Lijie Cui and Xiaobo Ji), and Howyo Chi (the Manager of the Debtor and husband of Lijie Cui)—giving rise to a logical inference of collusion and bad faith.

When a Bankruptcy Court authorizes a sale of assets pursuant to § 363(b)(1), it is required to make a finding with respect to the "good faith" of the purchaser. *In re Abbotts Dairies of Pennsylvania, Inc. ("Abbotts Dairies")*, 788 F.2d 143, 149 (3rd Cir. 1986). Such a procedure ensures that § 363(b)(1) will not be employed to circumvent creditor protections. *Id.* at 150. With respect to a debtor's conduct in conjunction with the proposed sale, the good faith requirement focuses principally on whether there is any evidence of "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *Abbotts Dairies*, 788 F.2d at 147 (internal quotations omitted); *In re Wilde Horse Enterprises Inc.*, 136 B.R. 830, 842 (C.D. Cal. 1991); *see also In re Industrial Valley Refrig. and Air Cond. Supplies, Inc.*, 77 B.R. 15, 17 (Bankr. E.D. Pa. 1987) (denying approval of sale and noting good faith analysis "focuses principally on the element of special treatment of the debtor's insiders in the sale transaction").

Here, the Court should find there was fraud, collusion, and an attempt to take grossly unfair advantage of other bidders. The record reflects that the insiders of the Debtor are playing all sides on this sale. The Debtor's principal, Mr. Ji, had a "personal friend" approach Mr. Sit to ask him to loan $1.4 million of DIP financing at the outset of the case (although Mr. Sit was initially willing to loan $7 million) and make an initial purchase offer of $10 million (later raised to $12.5 million) despite having no experience in hotels, hospitality, or casinos, or in Saipan. (ECF No. 140 ¶¶ 9–11,

21). Even the Committee previously objected to Mr. Sit serving as the Stalking Horse because of his relationship with the Debtor's owners and given that "his overall intentions[] remain murky at best." (ECF No. 219 at 3).

Next, Team King's directors and officers all have close ties to the Debtor. Teck Tien Kon, one of three Members of Team King's parent company, was appointed as the Executive Director of the Debtor's parent company, IPIH, effective October 23, 2023—less than one year before the Petition was filed. (Layde Decl. ¶ 22). A director or officer of the debtor is an "insider" under the Bankruptcy Code. 11 U.S.C. § 101(2), 101(31). Further, Hiroshi Kaneko of Team King also heads the investment group that gave Mr. Ji $20 million in 2023 as part of a deal to help Mr. Ji finish the casino project. (Layde Decl. ¶¶ 23-24). The Debtor's acting principal, Mr. Chi, filed the paperwork and paid the fee to incorporate Team King just weeks before the auction. (*Id.* ¶ 27). Thus, the Debtor, the Stalking Horse, and Team King are all connected, and they are all insiders.

These facts resemble other cases in which courts have declined to approve sales because the debtor had largely orchestrated the transaction. *See, e.g., In re Hat,* 310 B.R. at 759 (vacating sale order where debtor "made all contacts with potential investors," "first contacted [potential bidder]," and "structured the financing" of a transaction, thus leaving "no doubt of debtor's interest in retaining control of the property.").

Furthermore, the fact that Team King did not disclose the dense relationships between its principals and the Debtor weighs heavily against a finding of good faith. *See In re Gulph Woods Corp.*, No. 87-03093S, 1988 WL 134688 at **3–5 (Bankr. E.D. Pa. 1988) (court denied sale motion, finding that "the [sales] Agreement bristles with *undisclosed insider dealing* involving [Debtor's principal]," including where the parties executed separate agreements and there were other monies loaned or exchanged between the parties) (emphasis added). Here, the Layde Declaration makes clear the extensive relationships between the parties, including the past transfers between Kyosei Bank and Mr.

Ji. (Layde Decl. ¶¶ 17-25, Ex. J, K, L, M). It is particularly troubling that Team King made *no mention* of any of these relationships in its bid package. (*Id.* ¶¶ 29-32).

This collusion between the parties suppressed the ultimate sale price. Since the two bidders were both working with the Debtor, there was no incentive for them to outbid one another. Indeed, as soon as Team King made the minimum overbid, Mr. Sit—despite having been involved in this bankruptcy process for nearly one year—simply backed out without a single bid. *In re Abbotts Dairies*, 788 F.2d at 147 (overturning both bankruptcy court and district court's affirmation of a sale and directing the bankruptcy court to "determine whether there was any impermissible collusion" between debtor and purchaser that had suppressed the value of the assets purchased); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. at 842 ("A sale is fraudulent where, through personal as opposed to arms-length dealing, property … is obtained at the lowest price as opposed to a higher price…") (internal citation omitted). *See also In re Exennium, Inc.*, 715 F.2d 1401, 1404-05 (9th Cir. 1983); *In re M Capital Corp.*, 290 B.R. 743 (9th Cir. B.A.P. 2003).

Particularly under a heightened scrutiny standard, the sale cannot be found to constitute an arms-length bargain without collusion. The "auction" process itself, which was open and shut within 10 minutes, provides only the thinnest veneer of legitimacy as one insider, Mr. Sit, immediately folded upon the presentation of the overbid by yet another insider, Team King. *In re Bidermann Indus. U.S.A., Inc.,* 203 B.R. at 552 (sale could not be approved where bidding procedures were "incomprehensible," notwithstanding "some window-dressing" to make the sale look "tested.")

For the same reasons, the Court should not enter a finding of "good faith" protections under 11 U.S.C. § 363(m).

B. The sale should not be approved because the process was flawed and it failed to maximize the value to the estate, particularly when subjected to heightened scrutiny.

Gray respectfully submits that the sale should not be approved because the Debtor's sale process was procedurally flawed and failed to maximize the value to the estate. First, it is extremely troubling that a serious potential bidder with experience in the region did not participate in the auction because he was prevented from obtaining the due diligence information. (*See generally* Wickline Decl.). This disturbing fact alone is a sufficient reason to void the sale and reopen the auction process. *See Matter of CADA Invs., Inc.*, 664 F.2d 1158 (9th Cir. 1981) (affirming order to set aside sale of property where there was a "failure to achieve the highest price [due to] an innocent breakdown in communication."); *Matter of Ohio Corrugating Co.,* 59 B.R. 11, 13 (Bankr. N.D. Ohio 1985) ("[The court's] objective is to maximize the bidding, not to restrict it…") (citing *In re Beck Industries, Inc.*, 605 F.2d 624, 636 (1979)).

Second, there was no effort to appraise and market the personal property, including the gambling debts. Despite Judge Manglona instructing that there be a valuation and marketing of the personal property, including the gambling debts, the evidence suggests that this was never done. Indeed, the Data Room made zero mention of any personal property. (Halegua Decl. ¶ 27). In fact, the precise contents of the tangible personal property were never defined—for instance, a set of the Debtor's shipping containers were sold without even being opened, much less inspected and inventoried. No information was provided as to the status of the lawsuits that had been filed to collect the gambling debts. *Id.* This leads to a strong inference that no value was being attributed to these assets by the two insider bidders who submitted the only Qualified Bids.

Third, there are genuine concerns that the notice provided about the auction was improper. Gray did not receive information about the location of the auction or how to participate until he affirmatively asked for it. It is believed that potential bidders such as DAC and Wickline were never

provided information on how to access the auction. Indeed, other than the professionals, the two qualified bidders, Gray, and the CNMI, there were few other people at the auction. The failure to notice all potential bidders about the auction resulted in an inadequate sales price. *See In re Fehl*, 19 B.R. at 312 (denying motion to confirm sale of real property because of deficient notice procedures and an inadequate sales price, and ordering that a new sale be conducted).

Fourth, not only did Intrepid fail to market the personal property, but the Debtor and Committee failed to properly conduct the auction because they rejected the partial bids that were submitted for certain tangible personal property and the gambling debts. The Bidding Procedures, which were drafted by the Debtor and the Committee, stated: "For avoidance of doubt, the Committee and the Debtor, in consultation with Intrepid, shall have the authority to accept bids for piecemeal asset(s) of the Debtor." (ECF No. 340 ¶ 4(a) n.3). Yet, the partial bids of Gray and DAC were rejected, and neither Gray nor DAC were permitted to participate in the auction.[3] *See Matter of Ohio Corrugating Co.,* 59 B.R. at 13 ("[The court's] objective is to maximize the bidding, not to restrict it…") (citing *In re Beck Industries, Inc.*, 605 F.2d at 636).

These partial bids could have increased the ultimate value obtained through the auction process. *In re THQ Inc.*, No. 12-13398, 2013 WL 428623 at *1 n.4 (Bankr. D. Del. Jan. 24, 2013) (in some cases, a "composite of piecemeal bids generate[s] the highest and best aggregate bid…"). For instance, Mr. Sit's Stalking Horse bid was $12.5 million for all assets. The competing winning bid was $12.95 million for all assets (the very minimum overbid according to the Court's order (ECF 340 ¶4(b)), which is a gain to the estate of only $250,000 when reduced by Mr. Sit's breakup fee of $200,000. Gray's credit bid was far greater than the $450,000 minimum overbid submitted by Team King. The combination of Gray's bid with Mr. Sit's bid could have raised that competing bid to $14

[3] Gray's objection related to the Debtor summarily rejecting his credit bid is discussed below in Section C of this Opposition in greater detail.

million if Mr. Sit were willing to forego the personal property subject to Gray's bid, which seems very likely. The number could be even higher if DAC's bid was also combined with Mr. Sit's. When the Debtor and Committee summarily rejected these initial partial bids, and barred these bidders from participating in the auction, they prevented the estate from exploring a combination of bids that could have increased the estate's recovery by at least $1.5 million and potentially more.[4]

Worse, because of the prohibition on collusion set forth in 11 U.S.C. § 363(n), neither Gray nor DAC could know of each other, collaborate, or combine to make a competing bid. The far better way to have conducted the auction would have been to permit Gray and DAC to bid and overbid, so that other bidders and all parties in interest could hear the offers, and to provide the opportunity in an open forum to combine bids. Unfortunately, here, neither Gray nor DAC were allowed to participate in the auction, and creditors of the estate are left to wonder how much more value could have been obtained by the estate if they had participated in the auction.

Despite being aware that there have already been independent efforts to market and sell the personal property prior to the Petition, and despite the Debtor itself recognizing the value of these assets, the Debtor and Committee provide no analysis or explanation for the decision to lump these assets together for Team King's bid, to the exclusion of possible combinations with Gray's credit bid and DAC's bid for the gambling debts.[5] Indeed, there is no logical reason why a billion dollars of

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[4] Importantly, the Debtor and Mr. Sit had previously agreed to an allocation of $1.5 million for ***all*** of the Debtor's personal property. (Halegua Decl. ¶ 13). Therefore, Gray's bid of $1.5 million for ***some*** of the personal property means that the valuation is very generous to the estate, and also one that Mr. Sit should be willing to accept. Furthermore, this was only an ***initial*** bid, and Gray could have raised his bid if permitted to participate in a competitive auction process.

[5] In Schedule B of its Schedules and Statement of Financial Affairs (ECF No. 74), the Debtor identified tangible property in Part 5 (Inventory), Part 7 (Office furniture, fixtures, and equipment; and collectibles), and Part 8 (Machinery, equipment, and vehicles). Part 5 includes "construction materials" and "90 containers of construction materials" held at the Port of Saipan of "unknown" value, 1,276 bottles of wine, and 712 boxes of cigars; Part 7 includes computer equipment, non-office furniture and equipment, phone equipment, maintenance equipment, forklifts and lifting equipment,

gambling debts should be sold together with the unfinished hotel building. Similarly, the purchaser of the hotel, which would not realistically open for many years, will not pay much for the old vehicles, cigars, and bottles of wine for which Gray had placed a credit bid. Instead, it is obvious that these items are essentially just being given away to a party that is primarily interested in the Hotel and Leasehold—which directly contradicts the fundamental goal of maximizing the value to the estate. *See In re Fehl*, 19 B.R. at 312 (ordering new sale to be conducted due to inadequate sales price).

C. The sale should not be approved because Gray was denied his right to credit bid.

Bankruptcy courts have recognized that a secured creditor's right to credit bid for their collateral by using the debt it is owed to offset the purchase price provides an important "safeguard" from the collateral being undervalued in an asset sale. *In re: Aeropostale, Inc.*, 555 B.R. 369, 414 (Bankr. S.D.N.Y. 2016); 11 U.S.C. § 363(k). Indeed, the U.S. Supreme Court has held that a Chapter 11 plan to sell a debtor's assets that does not permit a secured creditor to credit bid may not be confirmed under the Bankruptcy Code. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 649 (2012); *see also id.* at 645, n.2 ("The ability to credit-bid helps to protect a creditor against the risk that its collateral will be sold at a depressed price. It enables the creditor to purchase the collateral for what it considers the fair market price (up to the amount of its security interest) without committing additional cash to protect the loan."). While the merits of credit bidding may be debated, that is an issue for Congress, as the statutory text is clear. *Id.* at 649.

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and laundry equipment; and Part 8 includes 99 vehicles. The Debtor estimates that the current value of its tangible property is $1,650,200, not including the unknown value of the 90 containers. (ECF No. 74 at 4–6). The Debtor lists the value of its Accounts Receivable as $4,687,770. (*Id.* at 4). The Debtor also lists the value of its causes of action against third parties as "unknown," but notes that the claims are for more than $1.26 billion in unpaid debts. (*Id.* at 8–16).

While a credit bid may be limited where "cause" exists, in light of the Supreme Court's guidance, the denial of this right for cause "should be an **extraordinary exception** that is used only upon equitable considerations…." *In re RML Dev., Inc*., 528 B.R. 150, 155 n.11 (Bankr. W.D. Tenn. 2014) (emphasis added). Some courts have also found "cause" where the lien is disputed. *Id.* at 155. However, the standard for a bona fide dispute disallowing a credit bid under 11 U.S.C. § 363(k) is the same as the standard for selling free and clear of an interest in bona fide dispute under 11 U.S.C. § 363(f)(4). *In re Figueroa Mountain Brewing Co.*, No. 9:20-bk-11208, 2021 WL 2787880, at *8 (Bankr. C.D. Cal. July 2, 2021). That test requires the court to determine whether there is "an objective basis for either a factual or a legal dispute as to the validity of the claim." *Id.* (internal quotations omitted).

Here, no "cause" exists to limit Gray's right to submit a credit bid. Gray filed his proof of claim on August 22, 2024 (Claim No. 15 on the Court's claim register), stating that he had a "secured" claim of $5.46 million, and attached more than 100 pages of supporting documentation, including a federal judgment, a recorded judgment lien, a recorded UCC-1 financing statement, a writ of execution issued by the District Court, evidence that the writ was executed, and evidence of the value of Gray's collateral. *See* Claim No. 15. A filed claim is an allowed claim until such time as an objection is filed. *See* 11 U.S.C. § 502(a); FED.R.BANKR.P. 3003(c). While the Motion lists several claims and liens as being in *bona fide* dispute, Gray's claim and lien are not among them. (*See* Motion at 19). Indeed, the Debtor and Committee stipulated to Gray receiving a distribution of vehicle auction proceeds after the Petition. (ECF No. 327). Because Gray has a secured claim that is not in *bona fide* dispute, he should have been permitted to protect his secured claim and collateral by credit bid at the auction as required under 11 U.S.C. § 363(k).

Any argument that permitting Gray's credit bid on partial assets would somehow "scare off" other bidders or chill bidding would also fail. *See In re Decurtis Holdings LLC*, No. 23-10548, 2023

WL 5274925, at *15 (Bankr. D. Del. Aug. 14, 2023) (rejecting argument that permitting credit bid would have limited competitive bidding); *In re Aeropostale, Inc.*, 555 B.R. at 417 ("Indeed, the Court is unaware of any cases where the chilling of bidding alone is sufficient to justify a limit on a credit bid."). Neither the Committee nor the Debtor provided any reasoning or details to support their position that Gray's $1.5 million credit bid would somehow "chill" bidding, particularly as no other partial bids for those assets had been submitted. *In re Figueroa Mountain Brewing Co.*, 2021 WL 2787880 at *7 (rejecting argument about risk of chilling other bids because the debtor had offered no evidence of the risk); *In re Murray Metallurgical Coal Holdings, LLC*, 614 B.R. 819, 835 (Bankr. S.D. Ohio 2020) ("the mere *argument* that credit bidding generally chills the bidding process ... does not establish cause to reduce the amount of a credit bid. ... [C]ause exists ... only if there is 'specific evidence' demonstrating the allegation of bid chilling 'to be true in th[e] [particular] case.'") (citing *In re River Rd. Hotel Partners, LLC*, 2010 WL 6634603, at *2 (Bankr. N.D. Ill. Oct. 5, 2010), *aff'd sub nom. River Rd. Hotel Partners, LLC v. Amalgamated Bank*, 651 F.3d 642 (7th Cir. 2011)). Indeed, as set forth above, permitting Gray to credit bid on the personal property, if anything, would *encourage* a more competitive bidding process. Hence, the sale should be rejected because Gray was denied his "statutory right" to bid up to the amount of his claim. *In re: Aeropostale, Inc.,* 555 B.R. at 416.[6]

D. The sale of the assets cannot be approved free and clear of Gray's lien.

Section 363(f) permits a sale of property "free and clear of any interest in such property of an entity other than the estate" only if any one of the following five conditions is met:

> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;

[6] In their Motion, the Debtor and Committee did not argue that "cause" exists to limit Gray's or any other party's right to credit bid in the auction. In the event that this argument is made in their reply, Gray would request an opportunity to respond in writing prior to any hearing on this issue.

> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Section 363(f) is written in the disjunctive; thus, satisfaction of any one of the five conditions is sufficient to sell property free and clear of liens. *See, e.g., In re Elliot*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988). Here, however, the Debtor and Committee cannot satisfy any of the five prongs of Bankruptcy Code § 363(f) with respect to Gray's lien.

1. **Section 363(f)(1).** As the Motion addressed § 363(f)(1) in tandem with § 363(f)(5) (Motion at 19–20), Gray does the same here.

2. **Section 363(f)(2).** In regard to § 363(f)(2), the "consent" of an entity asserting an interest in the property sought to be sold can be implied if such entity fails to make a timely objection to the sale after receiving notice of the sale. *In re Eliot*, 94 B.R. 343, 345 (E.D. Pa. 1988); *see also, In re Ex-Cel Concrete Company, Inc.*, 178 B.R. 198, 203 (B.A.P. 9th Cir. 1995) ("The issue here is whether there was consent or non-opposition by Citicorp."). Here, though, Gray objects to the sale and the Motion, and Gray does not consent.

3. **Section 363(f)(3).** Section 363(f)(3) authorizes a sale to be free and clear of an interest if such interest is a lien and the price at which the property to be sold is greater than the aggregative value of all liens against the property. Here, the aggregate value of all liens against the property greatly exceed the proposed sale price of $12.95 million. Further, Gray's claim and lien are "in the money" within the first $12.95 million of liens. In order to demonstrate this fact, the table of "secured claims" presented in the Motion is copied below. However, the Motion's table did not include the UCC lien obtained by Gray on June 6, 2023 (*see* Claim No. 15, Part 3, Ex. B), so that has been inserted here.

Table of Secured Claims

POC #[7]	Sale Motion title report #	Creditor	Type	Date Filed	Amount	Notes
26 [25]	14	DRT	tax lien	8/20/2020	$7,656,225.69	
	15	DRT	tax lien	10/27/2020	$0.00	see above
	20	DRT	tax lien	3/4/2021	$0.00	see above
137	21	Winzy	judgment	5/18/2021	$179,217.50	unsecured
18 [13]	19	Michael W. Dotts	judgment	12/29/2021	$247,973.70	
	23	DRT	tax lien	3/17/2022	$0.00	see above
	UCC	Visualstar Investment	UCC	12/29/2022		disputed
77 [33]	29	Art Man Corp.	judgment	1/17/2023	$118,148.63	
	UCC	Bo, Ji Xiao	UCC	3/2/2023		disputed
	UCC	Tzu, Wu Pei	UCC	3/2/2023		disputed
19 [15]	**UCC**	**Gray**	**UCC**	**6/6/2023**	**$5,367,083.29**	
39 [31]		U.S. A. Fanter	writ	6/16/2023	$51,893.04[8]	
182	UCC	Century Estate	UCC	6/30/2023	unknown	unsecured
	UCC	Visualstar Investment	UCC	6/30/2023		disputed
100 [40]	27	James Whang	Judgment	8/29/2023	$837,453.48	
95 [37]	7	US DOL	Default	9/15/2023	$797,719.13	unsecured
	UCC	Imp. Pac. Int'l H.	UCC	10/2/2023	unknown	
	26	DRT	tax lien	12/12/2023	$0.00	see above
76 [31]		U.S.A. Fanter	writ	1/11/2024	$506,247.88	

Thus, according to this chart, there are only $8,201,565.52 in claims prior to Gray. If Gray's claim is included, there is $13,568,648.81 in claims. At a sale price of $12.95 million, this means that Gray has a lien on sale proceeds of $4,748,434.48 and a deficiency claim of $618,648.81.

[7] These numbers refer to the claim numbers used on the Verita website. The number in brackets refers to the Proof of Claim number on ECF.

[8] The claim amount of $219,160.20 has been reduced by the $167,267.16 in proceeds distributed to Fanter from the first vehicle auction.

Even if the Debtor attempted to value the assets pursuant to 11 U.S.C. § 506(b) and strip off wholly under-secured (and therefore, unsecured) claims, Gray's claim and lien would still be at least partially secured, and the face value of the lien would exceed the total sale price. Therefore, the Debtor cannot meet the requirements of 11 U.S.C. § 363(f)(3).

As a final note, the Motion disputes the validity and amounts of the UCC filings by Visualstar Investment, Ji Xiao Bo (Mr. Ji), and Pei Tzu Wu—which are all insider liens. Mr. Ji is primarily responsible for the Debtor, Pei Tzu Wu (Pace Wu) is the mother of Mr. Ji's children, and Visualstar Investment is simply an affiliate of the Debtor. (*See* Layde Decl. ¶¶ 8, 13). In the event that the Debtor or Committee argue that Gray comes behind Century Estate, Gray strongly objects. Century Estate is also an affiliate of the Debtor, owned and operated by the same individuals. (*See* Halegua Decl. ¶ 52). Gray's UCC filing also predates Century Estate's. The UCC filing is furthermore an improper fraudulent conveyance and bears virtually every "badge of fraud." (*See id.*, Ex. I). Finally, not only has Century Estate been entirely absent from this bankruptcy proceeding, when it finally filed a Proof of Claim, it stated that its claim is not secured. (Claim 182). Hence, none of these purported security interests should be treated as senior to Gray's.

4. **Section 363(f)(4).** To satisfy § 363(f)(4), not only must there be an objective basis for a factual or legal dispute as to the validity of the interest, but "the moving party must 'provide *some* factual grounds to show some objective basis for the dispute.'" *SEC v. Capital Cove Bancorp LLC,* No. 15-980-JLS, 2015 WL 9701154, at *7 (C.D. Cal. Oct.13, 2015) (emphasis added) (internal citations omitted). The Motion states that the validity of the claims of Visualstar Investment, Ji Xiao Bo, and Pei Tzu Wu are disputed, and therefore § 363(f)(4) is satisfied. (Motion at 18–19). Since the Motion does not present any facts to explain the dispute, this prong has not been satisfied.

More significantly, the movants have not disputed the liens of the non-insider secured creditors—CNMI (DRT), Michael Dotts, Art Man, or Gray—let alone asserted a factual basis for any dispute. (And, as explained above, the validity of Gray's lien is fully documented.)

5. **Section 363(f)(1) and (f)(5).** Applicable nonbankruptcy law may permit a sale of the assets free and clear of interests. 11 U.S.C. § 363(f)(1). Similarly, under §363(f)(5), a debtor in possession may sell property free and clear of any interest if the holder of that interest "*could* be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." 11 U.S.C. § 363(f)(5) (emphasis added). Section 363(f)(5) has generally been interpreted to mean that if, under applicable law, the holder of the lien or interest could be compelled to accept payment in exchange for its interest, the debtor in possession may take advantage of that right by replacing the holder's lien or interest with a payment or other adequate protection. *Collier on Bankruptcy*, ¶ 363.06 (6) (15th ed. rev. 2003).

However, the Ninth Circuit has held that to satisfy § 363(f)(5), the court must "make a finding of the existence of … a mechanism" that would extinguish the lien without paying the interest in full; the debtor must "demonstrate how satisfaction of the lien 'could be compelled'"; and there needs to be "some proceeding, either at law or at equity, in which the nondebtor could be forced to accept money in satisfaction of its interest." *In re PW, LLC*, 391 B.R. 25, 41, 45-46 (B.A.P. 9th Cir. 2008) (reversing Bankruptcy Court's approval of sale to a senior lender free and clear of the junior liens under § 363(f)(5), on grounds that the debtor had not "directed" the court to any potential legal or equitable proceeding available to the debtor that could constitute a bona fide dispute). Similarly, in *In re URBAN COMMONS 2 WEST LLC, et al.*, the Bankruptcy Court recently rejected the idea that "any conceivable hypothetical proceeding" could be used to satisfy § 363(f)(5); rather, "only proceedings that might realistically be brought in the case," and noted that "[i]n most cases, this would include either foreclosure proceedings or UCC sale." No. 22-11509, 2025 WL 717024,

at *5 (Bankr. S.D.N.Y. Mar. 4, 2025) (ultimately finding § 363(f)(5) was satisfied because an actual foreclosure proceeding had already been initiated).

Here, the requirements of § 363(f)(5) have not been satisfied and it would be inequitable to use this provision to sell the assets free and clear of Gray's lien. The Motion relies upon a hypothetical tax foreclosure sale (*see* Motion at 19–20) in support of using § 363(f)(5). First, the Motion cites (twice) to 4 C.M.C. § 1865, stating that this provision allows DRT to compel a tax sale through a civil suit. (*Id.*). However, the provision concerns the priority of tax liens versus other liens. The sole CNMI case cited in the Motion is one in which the Commonwealth Development Authority (CDA) had a mortgage on an individual's property, and during the foreclosure process, reached a stipulation with the taxing authority, the Department of Finance (DOF), that CDA's lien was superior to the tax lien and therefore its lien would be paid off first from the proceeds. *See Commonwealth Development Authority v. Camacho*, No. CV-06-0040-GA, 2010 WL 5330503 (N. Mar. I., December 21, 2010). The case does not involve a tax sale. *Id.* Therefore, the Motion does not identify an appropriate mechanism as required under *In re PW, LLC*, 391 B.R. at 43.[9]

More problematically, the scenario described in the Motion is not only entirely hypothetical, but the CNMI has also specifically not sought to foreclose on its tax lien to achieve the result being sought by the Motion. For instance, despite the tax liens being filed in 2020 and 2021, the CNMI has repeatedly agreed to share the proceeds from the sale of the Debtor's assets with other judgment creditors and lienholders. (*E.g.,* ECF No. 327). Furthermore, the CNMI has actively participated in these proceedings and is actively opposing the Motion and its proposal to sell all the Debtor's assets free and clear of all liens. No hypothetical musings about a tax foreclosure sale should prevail over

[9] As for the *Pinnacle* case, which is cited in the Motion, the issue was whether a leasehold interest survives under 11 U.S.C. § 365(h) when real property is sold "free and clear" under 11 U.S.C. § 363. *Pinnacle Rest. at Big Sky, LLC v. CH SP Acquisitions, LLC (In re Spanish Peaks Holdings II, LLC)*, 872 F.3d 892 (9th Cir. 2017). The case did not involve a tax lien or tax sale. *Id.*

the CNMI's actual objection that it will not engage in a tax foreclosure sale to wipeout the junior liens. Accordingly, a hypothetical tax sale by the CNMI should not justify the use of § 363(f)(5) in this particular case. *In re: URBAN COMMONS 2 WEST LLC, et al.,* 2025 WL 717024, at *5.

Furthermore, the Court should not permit the Debtor to use a hypothetical tax foreclosure sale for an over-secured tax lien to deprive junior secured creditors of their rights. In recent years the Supreme Court ruled that excessive uses of tax foreclosure schemes violate the Constitution's Fifth Amendment Takings Clause because the government "could not use the toehold of the tax debt to confiscate more property than was due." *Tyler v. Hennepin Cnty, Minnesota*, 598 U.S. 631, 639 (2023). Here, the Debtor and Committee would seek to use the CNMI tax lien of approximately $7.5 million, which could be paid in full from the sale, to wipeout the rest of the junior lienholders' rights. This excessive use of a tax lien is unconstitutional because lien rights are property rights.

The Debtor's proposed sale requires adequate protection for lienholders' rights, and Gray demands such adequate protection. *See* 11 U.S.C. §§ 361 & 363(e). The principle of adequate protection reconciles the competing interests of the debtor, who needs time to reorganize free from harassing creditors, and the secured creditor, who is entitled to constitutional protection for its bargained-for property interest. *See In re Jug End in the Berkshires, Inc.,* 46 B.R. 892, 899 (Bankr. D. Mass. 1985).

The Supreme Court's decision in *Tyler* deals with a home owner and the return of surplus funds of a tax sale to the home owner. *Tyler*, 598 U.S. at 635. But the Fifth Amendment Takings Clause does not define property rights. *Id.* at 638. "For that, the Court draws on 'existing rules or understandings' about property right." *Id.* (citation omitted). Here, the secured creditors, like Gray, have property rights in their liens. Though the Bankruptcy Code does not define the phrase "interest in ... property" for purposes of § 363(f), *Collier on Bankruptcy* observes a trend in caselaw "in favor of a broader definition [of the phrase] that encompasses other obligations that may flow from

ownership of the property." 3 *Collier on Bankruptcy* ¶ 363.06[1] (Alan N. Resnick & Henry J. Sommer eds. 16th ed. rev. 2017)*; see also In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 567 B.R. 820, 825 (Bankr. C.D. Cal. 2017); *Folger Adam Sec., Inc. v. DeMatteis/MacGregor JV*, 209 F.3d 252, 259 (3d Cir. 2000).

Property rights against governmental overreach "became rooted in English law[, and] Parliament gave the Crown the power to seize and sell a taxpayer's property to recover a tax debt, but dictated that any 'Overplus' from the sale be 'immediately restored to the Owner.'" *Tyler*, 598 U.S. at 639-40. In a bankruptcy, the equity owner is last in the waterfall of absolute priority, and secured creditors have property rights in the surplus of the sale of their collateral. 11 U.S.C. §§ 361 (adequate protection); 363(e) (adequate protection); 363(k) (credit bidding); 1111(b) (election to have under-secured claim treated as fully secured with lien on collateral); 1129(b)(2)(A)(ii) (right to credit bid). Consistent with the Supreme Court's reasoning in *Tyler*, here, the "Overplus" is not only the excess sale proceeds funds, but all of the bundle of rights that "in the money" junior lienholders maintain when a senior tax lien is paid in full—including a meaningful opportunity to credit bid pursuant to 11 U.S.C. § 363(k) and a meaningful opportunity to withhold consent to the sale pursuant to 11 U.S.C. § 363(f)(2). If, as would be the case here, the Debtor is permitted to invoke § 363(f)(5) and a tax foreclosure sale on a tax lien that will be paid completely in full in order to accomplish a sale free and clear of several junior liens that are well "within the money," then every bankruptcy estate has *carte blanche* to file bankruptcy with as little as $1 of tax lien debt, confident in the authority that such statutorily senior tax debt can "hypothetically" foreclose on that $1, and, therefore, meet the requirements of § 363(f)(5). This outcome would effectively make all the other foregoing provisions of § 363(f)(1) to (4) superfluous. That cannot be the correct result because it would deprive the junior "in the money" lienholders of their property rights in the "Overplus" and would be an unconstitutional violation of the Takings Clause.

Additionally, there are no other lienholders senior to Gray that would or could actually foreclose and eliminate Gray's lien. Like the CNMI, Mr. Dotts has been participating in these proceedings and has never sought to foreclose on his security interest; to the contrary, he has also agreed to other lienholders (more junior according to the Motion's list) receiving distributions from the Debtor's proceeds. (ECF No. 327). The other alleged senior lienholder "Winzy Corporation" filed an unsecured proof of claim and so should be deemed to have admitted that it is unsecured, and cannot conduct a senior foreclosure sale. (*See* POC 137). Century Estate filed an unsecured proof of claim and therefore should be deemed to have admitted that it is unsecured. (*See* POC 182). Visualstar has not filed a proof of claim at all, and, as the Motion notes, this claim is "unknown" and subject to a *bona fide* dispute. (Motion at 19). Although the Sale Motion indicates that creditor Art Man has a lien dated January 17, 2023 (before Gray's lien), the Art Man writ of attachment order was issued on January 11, 2024, more than 7 months after (and junior to) Mr. Gray's lien, as shown on the documentation supporting the Art Man proof of claim. (Claim No. 33). Accordingly, there is no valid senior secured claim available to justify a sale free and clear of Gray's lien pursuant to 11 U.S.C. § 363(f)(5).

E. Mr. Sit should not be entitled to a break-up fee.

The Court should not approve the sale, but, if it does, the Court should not approve Mr. Sit's breakup fee of $200,000. In the bankruptcy context, a break-up fee or expense reimbursement is generally permissible "if reasonable in relation to the bidder's efforts and to the magnitude of the transaction." *Cottle v. Storer Communication* Inc.*,* 849 F.2d 570, 578 (11th Cir. 1988) (citation omitted). A break-up fee is not permissible where it is (1) the product of self-dealing by the debtor or the trustee, (2) likely to hamper or chill, rather than encourage, bidding on the assets to be sold, or (3) unreasonably large in relation to the proposed purchase price. *In re Integrated Resources, Inc.*, 147 B.R. 650, 662 (S.D.N.Y. 1992).

Here, the break-up fee to Mr. Sit does not pass muster. Firstly, by the time Mr. Sit made his bid, he had already performed whatever due diligence he needed when he agreed to make a post-petition loan (DIP financing) to the Debtor. Second, the auction and proposed sale have been a product of insider dealing among the Debtor, Mr. Sit, and Team King (as discussed above). Moreover, the common reason for a break-up fee, i.e., incentive to participate in the sale process and possibly not be the winning bidder, is unnecessary here. Mr. Sit already had an incentive for a successful sale; to wit, a successful sale is necessary to repay his DIP financing loan. Additionally, Mr. Sit was never making a commercial deal. As he himself stated, he has no background in hotels or casinos, and his involvement here is because a friend asked him to help out Mr. Ji. (ECF No. 140 ¶¶ 9–11, 22). *See also In re O'Brien Env't Energy, Inc.*, 181 F.3d 527, 534-38 (3d Cir. 1999) (affirming Bankruptcy Court's denial of a break-up fee because awarding a fee was "not actually necessary to preserve the value of [the] estate.")

F. The Court should not waive the 14-day stay period.

Consistent with their effort to force through this insider sale, avoid close scrutiny of the sale, and ignore the rights of creditors and other parties, the Debtor and Committee also request that the Court should waive the 14-day stay pursuant to Bankruptcy Rule 6004(h) because of the "Debtor's deteriorating financial position." (Motion at 26). This request must be denied. The two largest secured creditors, the CNMI and Gray, object to the Motion. If it is approved, Gray (and likely the CNMI) intend to appeal the decision and seek a stay while the appeal is pending. The Debtor and Committee know that if they eliminate the chance to seek a stay pending appeal, then even a reversal on appeal will not undo the sale. 11 U.S.C. § 363(m); *see also In re Filene's Basement, LLC,* No. 11-13511, 2014 WL 1713416, at *14 (Bankr. D. Del. Apr. 29, 2014) (where a party had "objected to [a sale] … they are entitled to a reasonable period of time to file an appeal and request a stay from the District

Court to prevent [appeal of the sale] from … becoming moot."). Accordingly, if the sale is approved, the stay period should not be waived.

V. CONCLUSION

The proposed sale to Team King is not right and does not seem right. At a minimum, the Court must agree that "[a]n insufficient record has been developed to suggest that this transaction is in the best interests of the estate." *In re Bidermann Indus. U.S.A., Inc.*, 203 B.R. at 554. Accordingly, the Motion should be denied at this time.

Dated: March 11, 2025

Respectfully submitted,

__/s/_____

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