

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)
) Chapter 11
)
Scout Media, Inc., et al.,¹) Case No. 16-13369-MEW
)
Debtors.) Jointly Administered
)
) Related Doc. Nos. 15, 57, & 71

**FINAL ORDER (A) AUTHORIZING POST-PETITION TERM LOAN
FINANCING AND USE OF CASH COLLATERAL; (B) GRANTING LIENS
AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE
STATUS; (C) GRANTING ADEQUATE PROTECTION; (D) MODIFYING
AUTOMATIC STAY; AND (E) GRANTING RELATED RELIEF**

Scout Media Holdings, Inc. (“Scout”) and the other debtors and debtors-in-possession have filed a motion [Docket No. 15] (the “Motion”)² seeking entry of an interim and final order authorizing them to obtain post-petition financing on a superpriority basis from Multiplier Capital, LP, a Delaware limited partnership (“Multiplier” or, in its capacity as lender under the DIP Loan Agreement, the “DIP Lender”) pursuant to the terms and conditions of a Debtor-in-Possession Loan and Security Agreement, a copy of which was attached as Exhibit A to the Interim Order, as defined below (the “DIP Loan Agreement” and, together with the agreements, documents, instruments and certificates executed or otherwise delivered in

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number are: Scout Media, Inc. (1438); Scout Media Holdings, Inc. (1936); FTFS Acquisition, LLC (7230); and Scout.com, LLC (3629). The location of the Debtors’ headquarters and the Debtors’ service address is 122 West 26th Street, Fifth Floor, New York, NY 10036.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

connection therewith, the “DIP Loan Documents”).

On December 20, 2016, the Court entered an order approving the Motion on an interim basis [Docket No. 71] (the “Interim Order”).

The Court has considered the Motion, the Declaration of Craig Amazeen in Support of Debtors’ Chapter 11 Petitions and First Day Motions (including the exhibits attached thereto) [Docket No. 22], the Supplemental Declaration of Craig Amazeen in Support of the Motion [Docket No. 62], the Declaration of David M. Johnson in Support of the Motion [Docket No. 63], the proposed DIP Loan Documents and proposed amendments thereto, the record established at the interim hearing that began on December 12, 2016 and that concluded on December 19, 2016 and the objections filed by the Official Committee of Unsecured Creditors [Docket Nos. 57 and 100], the record established at the final hearing on January 11, 2017 (the “Final Hearing”); and hereby enters this final order (the “Final Order”).

Deemed Modifications to DIP Loan Agreement and DIP Loan Documents

The DIP Loan Agreement and other DIP Loan Documents are hereby deemed to have been amended as follows for purposes of this Final Order and for purposes of the final financing authorized under this Final Order. All references in this Final Order to the DIP Loan Agreement and DIP Loan Documents shall constitute references to the DIP Loan Agreement and DIP Loan Documents as so amended. Any provision in the DIP Loan Documents that is contrary to the deemed modifications and amendments set forth below shall be deemed to have been stricken from the DIP Loan Documents for purposes of this Final Order and the final financing authorized

hereunder.

a. All references to the “Debtors” or to the “Borrowers” in this Final Order and in the DIP Loan Agreement and DIP Loan Documents shall be limited to Scout Media, Inc., Scout Media Holdings, Inc. and Scout.com, LLC (the “DIP Borrowers”). FTFS Acquisition, LLC shall have no obligations with respect to such borrowings and shall have no obligations under the DIP Loan Documents.

b. The fee payable in connection with the financing authorized by the Interim Order and this Final Order shall be \$217,500.

c. Except to the extent explicitly set forth in this Final Order, no provision of the DIP Loan Agreement or the DIP Loan Documents shall (i) permit payment of any amount owed to Multiplier with respect to pre-petition debts, (ii) provide additional security or collateral with respect to pre-petition obligations owed to Multiplier, (iii) perfect liens or security interests in favor of such pre-petition obligations that were not already perfected as of the Petition Date, (iv) add to or subtract from the collateral that secured the pre-petition obligations owed to Multiplier, or (v) grant any additional or modified rights, benefits or privileges to Multiplier with respect to its pre-petition obligations.

d. Adequate protection payments shall be provided only to the extent set forth in this Final Order. Any provision of the proposed DIP Loan Agreement or the proposed DIP Loan Documents that purports to require

other adequate protection payments, or that conditions the obligations of the DIP Lender upon the receipt of other adequate protection payments, or that purports to declare a default in the event that other adequate protection payments are not made, shall be of no force and effect.

e. Section 1.6 of the proposed DIP Loan Agreement is deemed amended to exclude section 506(c) from the list of obligations to which the proposed superpriority claims must be superior.

f. Any provisions of the proposed DIP Loan Agreement and proposed DIP Loan Documents that contemplate that the DIP Lender will have liens on avoidance actions pursuant to sections 544 through 551 of the Bankruptcy Code, or on the proceeds of such actions, shall be without effect and shall be deemed to have been deleted.

g. All provisions in the proposed DIP Loan Documents that purport to confirm the DIP Lender's credit bidding rights, including but not limited to section 2.5 of the proposed DIP Loan Agreement, shall be of no force and effect. Credit bidding rights (or disputes as to the same) will be resolved in connection with separate motions or proceedings.

h. All provisions of the proposed DIP Loan Documents that purport to waive the application of sections 506(c) and 552 of the Bankruptcy Code, or that purport to limit the DIP Borrowers' or any other parties' rights to make applications pursuant to those sections, or that provide that any motions or orders pursuant to those sections are defaults or

failures of conditions, shall be deemed deleted and without effect.

i. Defaults under pre-petition loan documents shall not constitute defaults under the DIP Loan Documents, and the extension of loans under the DIP Loan Documents shall not be affected by or conditioned upon the existence or absence of defaults under pre-petition loan documents.

j. Any condition, default provision or other term in the proposed DIP Loan Agreement that purports to bar the DIP Borrowers from making motions or requesting further relief, or that purport to establish defaults in the event motions or other requests are made by the DIP Borrowers or by other parties, are deemed to be deleted from the DIP Loan Agreement, including Sections 6.1(s), 6.1(y) (but only to the extent that section 6.1(y) provides that a mere “request” for an order granting *pari passu* or senior liens, as opposed to the entry of an order doing so, would constitute a default) and 6.1(aa). Notwithstanding anything herein to the contrary, if the Debtors “request” an order granting *pari passu* or senior liens the DIP Lender shall not be obligated to continue to advance funds to the Debtors pending a resolution of such request by the Court.

k. Notwithstanding any provision of the proposed DIP Loan Agreements to the contrary, no non-payment default shall give rise to an Event of Default unless the DIP Lender provides reasonable prior notice (which reasonable notice shall depend on the nature of the alleged default

but which in no event shall be less than two business days) and the non-payment default, though capable of being cured, is not cured in that time;

l. All provisions of section 6.2(a) of the DIP Loan Agreement following items (i) and (ii) are deemed deleted. No remedy may be exercised except pursuant to the terms of paragraph 16 of this Final Order.

m. Sections 6.2(b) and 6.4 of the DIP Loan Agreement shall be deemed modified to conform to the provisions of paragraph 16 of this Final Order.

n. Sections 6.2(c) and 8.17 (with the exception of 8.17(d)) of the DIP Loan Agreement are deemed to be deleted and shall have no effect.

o. The proposed limits in the Supplemental Budget (as defined herein) regarding the fees payable to counsel for an Unsecured Creditors Committee, and any provision of the proposed DIP Loan Agreement that purports to limit such amounts, are deemed modified so as to permit payments up to \$350,000 for professionals for an Unsecured Creditors Committee and so as to permit up to \$75,000 of such amount to be used to investigate and to pursue a Challenge pursuant to the terms of paragraph 21 of this Final Order. Any prohibition in the proposed DIP Loan Agreement on the use of any proceeds of the DIP Facility, or of Cash Collateral, to investigate the pre-petition liens in favor the DIP Lender with respect to its pre-petition debts, and any provision in the proposed Supplemental Budget that purports to limit the amount that may be used for such purpose, shall be

deemed modified to conform to the provisions of this paragraph.

The DIP Loan Agreement and DIP Loan Documents, as amended by the foregoing terms, shall constitute the agreements pursuant to which the final financing is provided.

DIP Borrowers' Stipulations

Subject to paragraph 21 hereof, and without the stipulated matters described in this section binding any parties other than the DIP Borrowers and without these stipulated matters constituting findings of fact or conclusions of law by the Court, the DIP Borrowers admit, stipulate, acknowledge, and agree as follows:

I. Prior to the Petition Date, the DIP Borrowers together with certain affiliated debtor and non-debtor borrowers (collectively, the "Borrowers") and Multiplier (the "Pre-Petition Lender") entered into that certain Loan and Security Agreement, dated as of November 15, 2013 (as amended, restated, supplemented or otherwise modified from time to time, the "Pre-Petition Loan Agreement").

II. The Pre-Petition Loan Agreement, and the other agreements, documents, instruments and certificates executed by the Borrowers or otherwise delivered in connection with the Pre-Petition Loan Agreement (collectively, the "Pre-Petition Loan Documents"), are valid and enforceable in accordance with their terms against each of the DIP Borrowers, are not subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever, and are not subject to avoidance, subordination, recovery, disallowance, recharacterization or other challenge pursuant to applicable state or federal law (including, without

limitation, the Bankruptcy Code).

III. As of December 8, 2016, the outstanding amount owed by the Borrowers with respect to the term loans made under the Pre-Petition Loan Agreement was not less than \$10,927,060.44, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the Pre-Petition Loan Documents (the “Pre-Petition Obligations”).

IV. To secure the Pre-Petition Obligations, the DIP Borrowers granted to Multiplier (as the pre-petition lender) security interests in and liens on (collectively, the “Pre-Petition Liens”) substantially all assets and properties of the DIP Borrowers, as more specifically set forth in the Pre-Petition Loan Agreement, including, without limitation, all Accounts,³ all Inventory, all Equipment, all Deposit Accounts (including all of the DIP Borrowers’ cash, the “Cash Collateral”), all General Intangibles (including without limitation all Intellectual Property); all Investment Property; all Other Property; and any and all claims, rights and interests in any of the above, and all guaranties and security for the any of the above, and all substitutions and replacements for, additions, accession, attachments, accessories, and improvements to, and proceeds (including proceeds of any insurance policies, proceeds of proceeds and claims against third parties) of any of and all of the above; and all DIP Borrowers’ books relating to any of the above (collectively, and as defined as “Collateral” in the Pre-Petition Loan Agreement, the “Pre-Petition

³ Capitalized terms not otherwise defined in this paragraph shall the meanings ascribed to them in the Pre-Petition Loan Documents.

Collateral”). Nothing in this Final Order shall be deemed to affect the liens, if any, that the Pre-Petition Lender may have with respect to the Debtors’ non-debtor affiliates.

V. The Pre-Petition Lender filed: (a) UCC-1 Financing Statements regarding the Pre-Petition Collateral against the DIP Borrowers in the applicable state and/or county filing offices; and (b) notices of security interest regarding the Pre-Petition Collateral consisting of intellectual property in the applicable filing offices.

VI. Also, as of the Petition Date, Debtor Scout Media Holdings, Inc. owed approximately \$11,557,393 on account of Subordinated Secured Convertible Promissory Notes (the “Subordinated Notes”) pursuant to that certain Note and Warrant Purchase Agreement by and between Scout and each individual investor listed on the schedule of investors attached thereto (the “Subordinated Noteholders”). The obligations due under the Subordinated Notes are each secured by a security agreement dated as of the date each Subordinated Note was issued. The relative claims and interests of the Pre-Petition Lender and the Subordinated Noteholders on and in the Pre-Petition Collateral, are governed by the terms of that certain Debt and Security Interest Subordination Agreement dated as of March 11, 2016 (the “Pre-Petition Intercreditor Agreement”), by and among Scout, Multiplier and the Subordinated Noteholders.

VII. Subject to the Carve-Out and the provisions of paragraph 21 hereof: (a) the Pre-Petition liens and security interests granted to the Pre-Petition Lender are

senior in priority to all other liens on or security interests in the Pre-Petition Collateral, subject only to certain liens otherwise permitted by the Pre-Petition Loan Documents (to the extent any such permitted liens were existing, valid, enforceable, properly perfected, non-avoidable, not subject to subordination, recharacterization or other challenge and senior in priority to the Pre-Petition Liens as of the Petition Date, the “Permitted Prior Liens”); (b) the Pre-Petition Liens held by the Pre-Petition Lender are valid, binding, enforceable, non-avoidable and perfected; (c) the Pre-Petition Obligations constitute legal, valid, binding and non-avoidable obligations of the DIP Borrowers, enforceable in accordance with the terms of the Pre-Petition Loan Documents (other than in respect of the stay of enforcement arising from Section 362 of the Bankruptcy Code); (d) no offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Pre-Petition Liens or the Pre-Petition Obligations exist, and no portion of the Pre-Petition Liens or the Pre-Petition Obligations is subject to any challenge or defense, including, without limitation, avoidance, disgorgement, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (e) the DIP Borrowers and their estates have no offsets, defenses, claims, objections, challenges, causes of action and/or choses in action, including, without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code, against the Pre-Petition Lender and/or any of its affiliates, parents, subsidiaries, controlling persons, agents, attorneys, advisors, professionals, officers, directors and employees.

VIII. The DIP Borrowers represent that all of the DIP Borrowers’ cash as

of the entry of the Interim Order, including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Pre-Petition Collateral, constitute the Pre-Petition Collateral of the Pre-Petition Lender.

IX. The DIP Borrowers acknowledge and stipulate that the DIP Borrowers are in default of their debts and obligations under the Pre-Petition Loan Documents.

Findings of Fact⁴

The record before the Court is sufficient to establish the following facts solely for the purposes of this Final Order:

A. *Petition Date.* On December 1, 2016, an involuntary petition was filed against Scout Media, Inc. in this Court. On December 8, 2016, Scout Media, Inc. filed an answer in which it consented to relief under chapter 11, and the other DIP Borrowers filed their own petitions under chapter 11. References herein to the “Petition Date” shall mean December 1, 2016 in the case of Scout Media, Inc., and shall mean December 8, 2016 in the case of the other DIP Borrowers.

B. *Debtors-in-Possession.* The DIP Borrowers continue to manage and operate their businesses and properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Cases.

C. *Jurisdiction and Venue.* This Court has jurisdiction pursuant to 28

⁴ Where appropriate in this Final Order, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact pursuant to Bankruptcy Rule 7052.

U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). The statutory predicates for the relief set forth herein are Sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code, Rules 2002, 4001 and 9014 of the Bankruptcy Rules and the Local Rules. Venue for these Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Consent to Priming of Pre-Petition Liens. Multiplier has consented to the priming of its pre-petition liens and claims on the terms and conditions set forth in this Final Order and the DIP Loan Agreement.

E. Need for Post-Petition Financing. The DIP Borrowers' obtaining credit on a final basis pursuant to the DIP Facility as provided for herein is necessary to avoid immediate and irreparable harm to the DIP Borrowers, their estates, their creditors and other parties-in-interest, and to enable the DIP Borrowers to continue operations and to administer and preserve the value of their estates. The DIP Borrowers do not have sufficient available sources of working capital or financing to operate their businesses or maintain their properties in the ordinary course of business without the DIP Facility.

F. No Credit Available on More Favorable Terms. The DIP Borrowers are unable to obtain financing from sources other than the DIP Lender on terms more favorable than provided for in the DIP Facility. The DIP Borrowers have been unable to obtain unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense. The DIP Borrowers also have been

unable to obtain sufficient credit (a) having priority over that of administrative expenses of the kind specified in Sections 503(b), 507(a) and 507(b) of the Bankruptcy Code, (b) secured by a lien on property of the DIP Borrowers and their estates that is not otherwise subject to a lien, or (c) secured solely by a junior lien on property of the DIP Borrowers and their estates that is subject to a lien.

G. Good Faith. The DIP Facility and the DIP Loan Documents were negotiated in good faith and at arms' length between the DIP Borrowers and the DIP Lender. The credit to be extended under the DIP Facility pursuant to the terms of this Final Order shall be deemed to have been allowed, advanced, made, used and/or extended in good faith, and for valid business purposes and uses, within the meaning of Section 364(e) of the Bankruptcy Code, and the DIP Lender is therefore entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code and this Final Order.

H. Notice. Notice of the Final Hearing and the relief requested in the Motion has been provided in the manner set forth in the certificates of service filed by the DIP Borrowers, and such notice is good and sufficient for purposes of the entry of this Final Order.

Conclusions of Law and Order

Based upon the foregoing findings, the Motion and the record made before this Court at the Final Hearing,

IT IS HEREBY ORDERED:

1. Final Financing Approved. The DIP Borrowers are authorized to

borrow an aggregate principal amount of up to \$4.35 million (the “Final DIP Obligations”) pursuant to the DIP Documents and to use Cash Collateral on a final basis subject to the terms and conditions set forth in this Final Order and in the DIP Loan Documents.

2. Authorization of the DIP Facility. The DIP Borrowers are expressly and immediately authorized and empowered to execute and deliver the DIP Loan Documents, and to incur and to perform the Final DIP Obligations in accordance with, and subject to, the terms of this Final Order and the DIP Loan Documents, and to deliver any and all instruments and documents that may be required or necessary for the performance by the DIP Borrowers under the DIP Facility and the creation and perfection of the DIP Liens. Upon execution and delivery, the DIP Loan Documents shall represent valid and binding obligations of the DIP Borrowers, enforceable against each of the DIP Borrowers and their estates in accordance with their terms.

3. DIP Liens. To secure the Final DIP Obligations, effective immediately upon entry of this Final Order, pursuant to Sections 361, 362, 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, as set forth more fully in the DIP Loan Documents, the DIP Lender, is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition, priming, first-priority security interests in and liens (collectively, the “DIP Liens”) on all assets or property of the DIP Borrowers, subject to the Carve-Out and Permitted Prior Liens, in each case, whether now

owned by or owing to, or hereafter acquired by or arising in favor of the DIP Borrowers (including under any trade names, styles, or derivations thereof), and whether owned or consigned by or to, or leased from or to, the DIP Borrowers, and regardless of where located (the “DIP Collateral”); provided, however, for the avoidance of doubt, that the DIP Collateral shall not include (and the DIP Liens shall not apply to) any claims and/or causes of action under Sections 542, 544, 547, 548, 549, and/or 550 of the Bankruptcy Code and the proceeds thereof (the “DIP Collateral”); provided further that the DIP Collateral shall not include more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by DIP Borrowers of any Foreign Subsidiary (as defined in the DIP Loan Documents), which shares entitle the holder thereof to vote for directors or any other matter only to the extent such pledge would cause a material adverse tax consequence to DIP Borrowers. The DIP Collateral shall constitute collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the obligations incurred by the DIP Borrowers pursuant to this Final Order.

4. DIP Lien Priority. Pursuant to Sections 364(c)(2), 364(c)(3) and 364(c)(4) of the Bankruptcy Code, the DIP Liens shall be continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition, priming, first-priority security interests in and liens on all DIP Collateral, subject to the Carve-Out and Permitted Prior Liens.

5. Superpriority DIP Claim. Subject to the Carve-Out, upon entry of

this Final Order, the DIP Lender is hereby granted, pursuant to Section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim (the “Superpriority DIP Claim”), in each of the DIP Borrowers’ chapter 11 cases, for all of the Final DIP Obligations, with priority over any and all administrative expense claims and unsecured claims against the DIP Borrowers or their estates, except to the extent such priority is not permitted by the Bankruptcy Code and except with respect to the Carve-Out. Provided, however, that the Superpriority DIP Claim granted hereunder shall not have recourse against any assets or proceeds of assets that are not part of the DIP Collateral, other than proceeds of avoidance actions pursuant to sections 544 through 551 of the Bankruptcy Code.

6. Extension of Credit. The DIP Lender shall have no obligation to make any loan or advance under the DIP Loan Documents, unless all of the conditions precedent to the making of such extension of credit under this Final Order and the DIP Loan Documents have been satisfied in full or waived in accordance with the DIP Loan Documents.

7. Use of DIP Facility Proceeds. The proceeds of the DIP Facility will be used only for the following purposes, in each case in accordance with and subject to the Supplemental Budget and except as otherwise agreed by the DIP Lender: (i) working capital and other general corporate purposes of the DIP Borrowers, and (ii) payment of the costs of administration of the Cases, including, without limitation, the costs, fees and expenses incurred in connection with the DIP Facility. (Absent further order of the Court, no proceeds of the DIP Facility or Cash Collateral may be

used to make any payments on behalf of FTFS, whether directly or indirectly.)

8. Asset Dispositions. Nothing in this Final Order shall authorize the disposition of any assets of the DIP Borrowers or their estates outside the ordinary course of business.

9. Adequate Protection Liens and Claims. Pursuant to Sections 361, 363(e), 364(d) and 507(b) of the Bankruptcy Code, as adequate protection of the interests of Multiplier (in its capacity as a pre-petition lender) for agreeing to be primed by the DIP Lender and for the use of Cash Collateral, and solely to the extent that such priming and/or such use of Cash Collateral results in an actual diminution in the value of the collateral that secured the pre-petition debts owed to Multiplier as of the Petition Date (as may later be determined by this Court) (the “Diminution in Value”), Multiplier is hereby granted the following:

(i) continuing, valid, binding, enforceable and perfected postpetition liens that shall attach to the DIP Collateral (the “Adequate Protection Liens”), which liens shall be junior to the DIP Liens, the Permitted Prior Liens, the Pre-Petition Liens and the Carve-Out; and

(ii) an allowed superpriority administrative expense claim in each of the Cases (the “the Adequate Protection Superpriority Claims”), which claim will be junior only to the Final DIP Obligations, the Superpriority DIP Claim, the Carve-Out and, with respect to the DIP Collateral, any validly perfected secured claim.

As further adequate protection, the DIP Borrowers shall provide the Pre-Petition

Lender with access to the DIP Borrowers' books and records and such financial reports as are provided to the DIP Lender.

10. Adequate Protection Reservation. The receipt by the Pre-Petition Lender of the adequate protection provided pursuant to paragraph 9 of this Final Order shall not be deemed an admission that the interests of the Pre-Petition Lender are indeed adequately protected. Further, this Final Order shall not prejudice or limit the rights of the Pre-Petition Lender to seek additional adequate protection.

11. Section 507(b) Reservation. Subject to the Carve-Out, nothing herein shall impair or modify the application of Section 507(b) of the Bankruptcy Code in the event that the adequate protection provided hereunder is insufficient to compensate for any Diminution in Value during any of the Cases.

12. Budget. An initial 17-week budget was attached as an exhibit to the Motion. Thereafter, on December 19, 2016, the Debtors filed an amended 9-week budget [Docket No. 61] (the "Supplemental Budget"). Notwithstanding the Supplemental Budget, nothing herein shall be deemed to require the DIP Lender to advance funds in excess of the maximum amount approved under the DIP Facility or this Final Order or extend financing beyond the stated term of the approved financing, other than with respect to payments under the Carve-Out which have been incurred but not yet funded.

13. Budget Compliance. Except as otherwise provided herein or approved by the DIP Lender, the DIP Borrowers will not, and will not permit any subsidiary or affiliate directly or indirectly to, use any cash or the proceeds of the

DIP Facility in a manner or for a purpose other than those consistent with the Supplemental Budget and this Final Order.

14. Modification of Automatic Stay. The automatic stay imposed by Section 362(a) of the Bankruptcy Code is hereby modified as necessary to permit: (a) the DIP Borrowers to grant the DIP Liens and the Superpriority DIP Claims, and to perform such acts as the DIP Lender may request to assure the perfection and priority of the DIP Liens; (b) the DIP Borrowers to take all appropriate action to grant the Adequate Protection Liens and the Adequate Protection Superpriority Claims set forth in paragraph 9 hereof, and to take all appropriate action to ensure that the Adequate Protection Liens granted hereunder are perfected and maintain the priority set forth herein; (c) the DIP Borrowers to pay all amounts referred to, required under, in accordance with, and subject to the DIP Loan Documents and this Final Order; and (d) the implementation of the terms of this Final Order.

15. Perfection of DIP Liens and Post-Petition Liens. This Final Order shall be sufficient and conclusive evidence of the validity, perfection and priority of all liens granted herein, including, without limitation, the DIP Liens and the Adequate Protection Liens, without the necessity of execution, filing or recording any financing statement, mortgage, notice or other instrument or document that may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable law) such liens, or to entitle the Pre-Petition Lender or the DIP Lender to the priorities

granted herein. Notwithstanding the foregoing, each of the DIP Lender and the Pre-Petition Lender are authorized to execute, file or record and the DIP Lender may require the execution, filing or recording, as each, in its sole discretion deems necessary, such financing statements, mortgages, notices of lien, and other similar documents to perfect in accordance with applicable law or to otherwise evidence the DIP Liens and/or Adequate Protection Liens, as applicable, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens and/or the Adequate Protection Liens. A photocopy of this Final Order may be filed as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instruments.

16. Rights and Remedies Upon Termination Event. Upon the occurrence and during the continuance of a Termination Event: (a) the DIP Lender may, by written notice to the DIP Borrowers, their counsel, the U.S. Trustee and any counsel for the Committee, if any, (a) terminate the DIP Facility and declare the Final DIP Obligations to be immediately due and payable; (b) immediately terminate the DIP Borrowers' use of Cash Collateral, other than with respect to payments under the Carve-Out which have been incurred; (c) cease making any extensions of credit under the DIP Facility to the DIP Borrowers; (d) freeze monies or balances in the DIP Borrowers' accounts, other than with respect to payments under the Carve-

Out which have been incurred; provided, however, that prior to the exercise of any right in clauses (b) and (d), and prior to the exercise of any other rights or remedies provided in the DIP Loan Agreement with respect to the DIP Collateral, the DIP Lender shall be required to provide seven (7) calendar days written notice (the “Remedies Notice Period”) to the DIP Borrowers and the Committee of the DIP Lender’s intent to exercise such rights and remedies; provided, further, that none of the DIP Borrowers, the Committee or any other party-in-interest shall have the right to contest the enforcement of the remedies set forth in this Final Order and the DIP Loan Documents on any basis other than an assertion that a Termination Event has not occurred or has been cured within the cure periods expressly set forth herein or in the applicable DIP Loan Documents. During the Remedies Notice Period, the DIP Borrowers and the Committee shall be entitled to seek an emergency hearing with the Court in connection therewith. With respect to the aforementioned clauses (i), (v) and (vi), unless the Court determines during the Remedies Notice Period that a Termination Event has not occurred, or to the extent of an applicable cure period was cured within the applicable cure period as provided under the DIP Loan Documents, the DIP Lender shall be entitled on shortened notice to seek relief from the automatic stay to exercise rights and remedies subject to such reasonable conditions as the Court may then establish.

17. Good Faith. Based on the record, the DIP Lender has acted in good faith in connection with the DIP Facility, the Final Financing, and with this Final Order. In accordance with Section 364(e) of the Bankruptcy Code, the DIP Lender

is entitled to the protections of section 364(e) of the Bankruptcy Code, with respect to amounts loaned or advanced under this Final Order, in the event any or all of the provisions of this Final Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court.

18. DIP and Other Expenses.

(a) The DIP Borrowers are authorized to pay promptly all (i) reasonable and documented (in summary form) out-of-pocket fees, costs, disbursements and expenses of the DIP Lender in connection with the negotiations, preparation, execution and delivery of the DIP Loan Documents and the funding of all extensions of credit under the DIP Facility and/or in connection with the enforcement of any rights and remedies under the DIP Loan Documents.

(b) The payment of fees, costs, disbursements and expenses of the DIP Lender pursuant to this Final Order shall be made within ten (10) days after the receipt by the DIP Borrowers, the Committee and the U.S. Trustee (the "Review Period") of summary invoices thereof (the "Invoiced Fees") (subject in all respects to applicable privilege or work product doctrines), including a description of the services provided and the expenses incurred by the applicable professional arising before or after the Petition Date, as applicable. The DIP Borrowers, the Committee and the U.S. Trustee may dispute any portion of the Invoiced Fees (the "Disputed Invoiced Fees"), within the Review Period, by filing with the Court a motion or other pleading, which must contain a specific basis for the objection to the Disputed Invoiced Fees and quantification of the undisputed amount of the fees and expenses

invoiced. The Court shall have the power to resolve any issue raised with respect to Disputed Invoiced Fees. Except as provided herein, none of the Invoiced Fees shall be subject to this Court's approval or required to be maintained in accordance with the U.S. Trustee Guidelines, and no recipient of any payment on account thereof shall be required to file with respect thereto any interim or final fee application with this Court. Any objection to the payment of Disputed Invoiced Fees shall be scheduled for hearing and resolution by the Court at the earliest reasonably practicable date.

19. Proofs of Claim. The DIP Lender and the Pre-Petition Lender shall not be required to file proofs of claim in any of the Cases for any claim allowed herein. Any proof of claim filed by the DIP Lender or the Pre-Petition Lender shall be deemed to be in addition to (and not in lieu of) any other proof of claim that may be filed by any such persons.

20. Carve-Out.

(i) For the purposes of this Final Order, the "Carve-Out" shall mean the payment of allowed professional fees and disbursements incurred by bankruptcy counsel and financial advisor, retained pursuant to sections 327 or 1103(a)(i) of the Bankruptcy Code, subject to the amounts set forth in the Supplemental Budget: (i) arising from services performed or expenses incurred prior to the earlier of (1) the date on which the DIP Lender provides written notice (the "Carve-Out Trigger Notice") to DIP Borrowers that either an Event of Default has occurred or the DIP Loan Agreement is terminated or (2) the Termination Date;

(ii) in an amount not to exceed \$50,000 arising from services performed or expenses incurred following the Carve-Out Trigger Notice (provided nothing herein shall be construed to (x) provide for double payment of any fees or disbursements; (y) alter the procedures for the approval of professional compensation as set forth under the Bankruptcy Code and the rules of the Bankruptcy Court; or (z) alter the ability of any party to object to such fees and disbursements); and (iii) in an amount not to exceed \$20,000 arising from services performed or expenses incurred by a chapter 7 trustee following the Carve Out Trigger Notice; and quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to the Clerk of the Bankruptcy Court. For the avoidance of doubt and notwithstanding anything to the contrary herein or elsewhere, the Carve-Out: (i) shall be senior to all liens securing the Final DIP Obligations, the Pre-Petition Obligations, the Adequate Protection Liens and all claims (including superpriority administrative expense claims) and any and all other forms of adequate protection, liens or claims securing the Final DIP Obligations or the Pre-Petition Obligations granted herein to the Pre-Petition Lender or the DIP Lender; and (ii) is valid only to the extent of any amounts not previously funded by the DIP Lender to the DIP Borrowers in accordance with the Supplemental Budget.

(ii) Subject to paragraph 21 herein, and with the exception of amounts that may be used by the Committee pursuant to the terms of this Final Order, neither the Carve-Out nor any other DIP Collateral may be used for the payment of any fees or disbursements incurred in connection with: (a) attempting to modify or

otherwise alter any of the terms and conditions set forth in this Final Order, without the prior written consent of the DIP Lender; (b) asserting, alleging, bringing, supporting any claim or cause of action, or the initiation or prosecution of any claim or action against the Pre-Petition Lender or the DIP Lender, including any causes of action under Chapter 5 of the Bankruptcy Code or state law of any type or nature whatsoever, against any of the Pre-Petition Lender or the DIP Lender, including, without limitation, challenging the amount, extent, priority, validity, perfection or enforcement of the Pre-Petition Obligations, the Final DIP Obligations, or any of the Pre-Petition Lender' or the DIP Lender's security interests and liens or to recover any funds previously paid to the Pre-Petition Lender or the DIP Lender; or (c) bringing or asserting any claims or causes of actions against the Pre-Petition Lender or the DIP Lender under the Pre-Petition Loan Documents or the DIP Facility (as the case may be), or their respective advisors or agents, including formal discovery proceedings in anticipation thereof, and/or challenging any lien, security or interest of Pre-Petition Lender under the Pre-Petition Loan Documents in the Pre-Petition Collateral or of the DIP Lender under this Final Order in the DIP Collateral.

21. Investigation Rights. The Committee and any other parties in interest (other than the DIP Borrowers) are permitted to undertake a Challenge (as defined below). Any party (other than the DIP Borrowers) shall have a maximum of sixty (60) calendar days after the entry of the Interim Order (the "Challenge Period") to investigate and commence an adversary proceeding or contested matter, as required by the applicable Bankruptcy Rules, and challenge (each, a "Challenge") the findings,

the DIP Borrowers' stipulations, or any other stipulations contained in this Final Order, including, without limitation, any challenge to the validity, priority or enforceability of the Pre-Petition Liens, or to assert any claim or cause of action against Multiplier arising under or in connection with the Pre-Petition Loan Documents or the Pre-Petition Obligations, as the case may be, whether in the nature of a setoff, counterclaim or defense of Pre-Petition Obligations or otherwise. The Challenge Period may only be extended: (a) with the prior written consent of the DIP Lender, as memorialized in an order of this Court, or (b) pursuant to an order of this Court upon a showing of good cause for such extension. Except to the extent asserted in an adversary proceeding or contested matter filed during the Challenge Period or an extension thereof, or to the extent a trustee acquires rights in the event of a conversion to chapter 7, upon the expiration of such applicable Challenge Period (to the extent not otherwise waived or barred), (i) any and all Challenges or potential challenges shall be deemed to be forever waived and barred; (ii) all of the agreements, waivers, releases, affirmations, acknowledgements and stipulations contained in the Interim Order and this Final Order shall be irrevocably and forever binding on the DIP Borrowers, the Committee and all parties-in-interest and any and all successors-in-interest as to any of the foregoing; and (iii) the Pre-Petition Obligations shall be deemed to be finally allowed and the Pre-Petition Liens shall be deemed to constitute valid, binding and enforceable encumbrances, and not subject to avoidance pursuant to the Bankruptcy Code or applicable non-bankruptcy law. Notwithstanding anything to the contrary in this Final Order, the Challenge Period

shall not apply to any disputes with respect to any asserted claim for adequate protection arising from Diminution in Value. Additionally, the Committee is and shall hereby be granted standing to pursue any Challenge, provided, however, that prior to the commencement of any such Challenge, counsel for the Committee shall provide counsel for the Pre-Petition Lender with three (3) business days' notice of its intent to assert such a Challenge and shall meet and confer with such counsel prior to commencing such Challenge.

22. No Third Party Rights. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

23. Joint and Several Liability. Nothing in this Final Order shall be construed to constitute a substantive consolidation of any of the DIP Borrowers' estates, it being understood, however, that the DIP Borrowers shall be jointly and severally liable for the obligations hereunder and in accordance with the terms of this Final Order.

24. Binding Effect of this Final Order. Pursuant to Bankruptcy Rules 6004(h) and 7062, immediately upon entry by this Court, this Final Order shall inure to the benefit of the DIP Borrowers, the Pre-Petition Lender, and the DIP Lender, and it shall become valid and binding upon the DIP Borrowers, the Pre-Petition Lender and the DIP Lender, their respective successors and assigns, any and all other creditors of the DIP Borrowers, any committee appointed in any of the Cases or any Successor Cases, including, without limitation, the Committee, and all

other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed as legal representative of any of the DIP Borrowers in any of the Cases or any Successor Cases, or upon dismissal of any of the Cases or any Successor Cases.

25. Final Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Loan Documents, any other document or any other order of this Court and of this Final Order, the provisions of this Final Order shall govern and control.

26. Survival. Unless otherwise agreed to by the DIP Lender, the grants of liens pursuant to this Final Order and protections of the DIP Lender and Pre-Petition Lender set forth herein shall survive entry of any order that may be entered: (a) confirming any plan of reorganization in any of the DIP Borrowers' Cases; (b) converting any or all of the DIP Borrowers' chapter 11 cases to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing any or all of the DIP Borrowers' chapter 11 cases; or (d) pursuant to which this Court abstains from hearing any of the DIP Borrowers' bankruptcy cases

27. Effect of this Final Order. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 and 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

28. Retention of Jurisdiction. This Court shall retain jurisdiction to hear, determine and, if applicable, enforce the terms of, any and all matters arising from or related to the DIP Facility and/or this Final Order.

Dated: New York, New York
January 18, 2017

s/Michael E. Wiles
Hon. Michael E. Wiles
United States Bankruptcy Judge