IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: HDC HOLDINGS II, LLC, *et al.*,[1] Debtors.	Chapter 7 Case No. 24-12307 (TMH) (Jointly Administered) **Hearing Date: September 8, 2025 at 10:00 a.m. (ET)** **Objection Date: August 18, 2025 at 4:00 p.m. (ET)** **Related D.I. 506**

OBJECTION OF GEORGE L. MILLER, CHAPTER 7 TRUSTEE, TO JOINT MOTION OF HILCO TRADING, LLC AND BMO BANK N.A. FOR ENTRY OF AN ORDER COMPELLING ABANDONMENT OF ESTATES' INTERESTS IN AND TO THE ERTCS

George L. Miller, the Chapter 7 trustee (the "Trustee")[2] of the estates of the above-captioned debtors (the "Debtors"), by and through his undersigned counsel, hereby objects (the "Objection") to the *Joint Motion of Hilco Trading, LLC and BMO Bank N.A. for Entry of an Order Compelling Abandonment of Estates' Interests in and to the ERTCS* (the "Motion"), and in support thereof, respectfully represents as follows:

PRELIMINARY STATEMENT

The Motion seeks extraordinary relief and must be denied. On its face, the Motion appears to be a straightforward motion to compel the Trustee to abandon the ERTCSs. That request, in and of itself, is not a controversial issue and is to be guided by the express terms of

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: HDC Holdings II, LLC (2013); HDC Holdings III, LLC (3296); CCM Capital Assets, LLC (9451); Channel Control Merchants, LLC (3319); Dirt Cheap I, LLC (9433); CCM Support Services, LLC (2059); CCM Wholesale SE, LLC (7219); Channel Control Merchants of Texas, LLC (8091); Creative Sales Solutions, LLC (1691); Dirt Cheap Arkansas, LLC (0244); Dirt Cheap Building Supplies, LLC (0880); Dirt Cheap of Georgia, LLC (0269); Dirt Cheap of Louisiana, LLC (0067); Dirt Cheap SE, LLC (4928); Dirt Cheap Tennessee, LLC (1273); Treasure Hunt, LLC (9393); CCM Wholesale, LLC (7219); Channel Control Merchants of California, LLC (9011); and CAL Support Services, LLC (2859). The Debtors' headquarters are located at 6892 US Hwy 49 North, Hattiesburg, Mississippi 39402.

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

Section 554 of the Bankruptcy Code and applicable caselaw. But what makes the Motion remarkable is that the relief Movants seek goes well beyond mere abandonment. Indeed, Movants seek affirmative injunctive relief via Section 105 to require the Trustee to provide them a power of attorney (the so-called "Power of Attorney Relief" or "POA"). Movants want that general authority to, among other things, assist them in their efforts to realize on their collateral, something the Trustee disputes. While Movants style the Power of Attorney Relief as "limited" and "narrowly tailored", any such conferral of authority is, at its core, a delegation of the Trustee's duties. It grants a creditor (who is not a fiduciary) authority to bind the estate and, as relevant here, will give Movants access to confidential payroll and other data to which they are not entitled. Nor do Movants need that information to realize on their collateral. That sort of relief is entirely improper, and is, by any measure, a request that the Trustee abdicate his statutory duties. As repeatedly explained to the Movants, the Trustee will not do so. And this Court should not provide that relief to the Movants. The Motion must be denied.

RELEVANT BACKGROUND

1. On October 10, 2024 (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors were authorized to continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On October 23, 2024, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Committee") [D.I. 60]. No request was made for the appointment of a trustee or examiner.

3. On December 23, 2024, the Court entered an Order converting the chapter 11 cases to cases under chapter 7 of the Bankruptcy Code [D.I. 280]. Additionally, on December 26,

2024, the United States Trustee for the District of Delaware appointed George L. Miller to serve as interim chapter 7 trustee in these Cases. A meeting of creditors under and pursuant to 11 U.S.C. § 341(a) was held and concluded on January 24, 2025.

4. Since the date of his appointment, the Trustee has been investigating the assets and liabilities of the Debtors. Consistent therewith, and as a result of that investigation, and after consideration of facts available to him, the Trustee filed his *Notice of Abandonment of Property* (the "Abandonment Notice") [D.I. 514], pursuant to which, among other things, the Trustee provided notice, under and pursuant to 11 U.S.C. §554 and Rule 6007(a)(1) of the Federal Rules of Bankruptcy Procedure, of his intention to abandon the estates' interest in the ERTCs. The Abandonment Notice explained that in the absence of an objection thereto by August 15, 2025, such assets (and others) would be abandoned.

5. On August 15, 2025, the Movants filed an objection to the Abandonment Notice, advancing the very arguments they lodge in the Motion (the "Joint Objection") [D.I. 523] (requesting entry of an Order "which directs the Trustee to execute the Form 2848 and contains the other Critical Findings expressly set forth in the [] Motion").

OBJECTION

6. As noted above, the relief Movants seek in the Motion, as well as the arguments they raise in their Joint Objection, is improper and without precedence. With the issue of abandonment moot (as the Trustee has already stated his intention to abandon the ERTCs), nothing more is (or should be) required. Yet, the Movants are not content with abandonment alone – they want more. To be sure, without any valid statutory or other basis to do so, Movants seek to force the Trustee to give them a power of attorney (and, unabashedly, seek to enjoin him from taking any action in derogation of that power of attorney). On top of that, Movants seek

approval of certain "Critical Findings" – apparent directives to the Trustee to cooperate blindly in Movants' efforts. *See* Motion, ¶28.[3] But neither Section 105 nor Section 554 (or any other section of the Bankruptcy Code) provides grounds to compel the Trustee to cede that authority. The relief the Movants seek is an improper reach, is intended to benefit them only and will result in an abdication of the Trustee's duty. The Trustee will not do so, and the Court should not compel him to do so.

A. Section 105 Does Not Confer Authority to Contravene the Bankruptcy Code, and Section 554 Does Not Support Movants' Requested Relief.

7. Movants' reliance on Section 105 as the basis for their requested relief is misplaced. By its terms, Section 105(a) provides bankruptcy courts with equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. §105(a). However, these powers are not boundless. Indeed, section 105(a) has a limited scope. *In re Forever 21, Inc.,* 623 B.R. 53, 63–64 (Bankr. D. Del. 2020). It does not "create substantive rights that would otherwise be unavailable under the Bankruptcy Code." *Id.* (quoting *In re Continental Airlines*, 203 F.3d 203, 211 (3d Cir. 2000)). Instead, the bankruptcy court's powers under section 105(a) can only be used in furtherance of other provisions of the Code. *In re Joubert*, 411 F.3d 452, 455 (3d Cir. 2005). As such, and notwithstanding Movants' assertions to the contrary, Section 105 does not (and cannot) serve as an independent basis to grant the relief they seek, nor, critically, is it a basis to compel the Trustee to delegate core statutory responsibilities or fiduciary authority.

8. Section 554 similarly fails as a proper basis to compel the Trustee to grant a

[3] Movants also ask the Court to retain jurisdiction to resolve all disputes including "the Trustee's cooperation thereunder." *See* Motion, ¶28, n.9. While styled as "cooperation", what Movants want is the for the Trustee to be their instrument. There is zero basis for that, and Movants have articulated none.

power of attorney. That section merely provides that which the Trustee has already agreed to do; that is, the right to compel the Trustee to abandon the ERTCs. *See* 11 U.S.C. §554(b) ("On request of a party in interest . . . the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate"). And as expressly stated in the Notice, the Trustee has provided notice to all parties, including the Movants, that he will abandon those (and other) assets.

9. That is all that Section 554 provides. It says nothing of assisting in the disposition of abandoned assets, nor does the statute require the Trustee to do anything beyond abandonment. And it certainly says nothing about granting a creditor with an asserted security interest in abandoned property a power of attorney. In short, Movants seek to engraft a new, substantive right into Section 554 by way of Section 105, and that is something the Third Circuit said cannot be done. *See In re Continental Airlines*, 203 F.3d at 211. *Accord, In re Caesars Enter. Oper. Co.*, 526 B.R. 265, 269 (N.D. Ill. 2015) ("Section 105(a) thus is not a vehicle for reading into section 1102(a)(1) a power to do away with statutory committees when section 1102(a)(1) itself grants no such power—and especially when section 1102(a) grants other powers but not that one").[4]

[4] Movants cite to *In re Pilz Compact Disc, Inc.* as authority for the placement of conditions on a trustee's abandonment of property. *See* Motion at ¶32. That decision, however, put no conditions on actual abandonment (and certainly placed no affirmative obligations on the trustee), but simply imposed timing considerations for parties in interest to review various records. *See In re Pilz Compact Disc, Inc.,* 229 B.R. 630*,* 645 (Bankr. E.D. Pa. 1999) ("The intent of these two conditions is to provide HFA or its principals the opportunity to enforce whatever copyright protections the law provides them as against the debtor and third parties"). It has no application to this matter. Movants don't seek temporal relief; rather, they seek to condition abandonment by requiring the Trustee to do what they demand. But there is no basis to do so, and the Movants have articulated no reason to qualify (or preclude) abandonment unless they receive that which they demand. *See In re Unidigital, Inc.*, 262 B.R. 283, 286 (Bankr. D. Del. 2001) ("the majority of courts have read the exception to abandonment narrowly by disallowing abandonment only where there is an imminent and identifiable harm to the public

B. A Grant of a Power of Attorney Under Compulsion Would Result in the Improper Abdication of the Trustee's Duties, and Improperly Delegates Fiduciary Duties of the Chapter 7 Trustee.

10. A chapter 7 trustee is a fiduciary charged with representing and administering the estate, including collecting and liquidating property of the estate under 11 U.S.C. § 704(a)(1). *See* 11 U.S.C. § 323(a). *See also* 11 U.S.C. § 704(a) (listing duties of trustee). Consistent therewith, a chapter 7 trustee, among other things, has exclusive authority and discretion over estate property, a duty to act in the best interests of all creditors and an obligation to act independently and impartially. *See In re Harber*, 553 B.R. 522, 527 (Bankr. W.D. Pa. 2016) ("Under the Bankruptcy Code, the trustee has the exclusive authority to administer and dispose of property within the bankruptcy estate"); *In re Computer Learning Centers, Inc.,* 268 B.R. 468, 473 (Bankr. E.D. Va. 2001) ("[chapter 7 trustee] is charged with impartially administering the estate entrusted to him. He is the representative of all the creditors, not merely some of them"). Those principles will be lost if the Motion is approved.

11. To be sure, the grant of the authority Movants seek – limited or tailored as the Movants may believe it to be – clashes directly with the Trustee's statutory duties and authority. Indeed, the delegation of authority by power of attorney – particularly to one or more creditors to whom the Trustee will abandon the ERTCs – would not only create a conflict of interest but also undermine the Trustee's statutory obligations. Beyond that, it would create an appearance of favoritism and breach the Trustee's duty to treat creditors equally.[5]

---

health or safety"; "in order to fit into the *Midlantic* exception, the debtor must be attempting to abandon property in contravention of state or local laws or regulations designed to protect the public") (citing *Midlantic Nat'l Bank v. New Jersey Dept. of Envtl. Protection,* 474 U.S. 494, 507 (1986)).

[5] The central purpose of Chapter 7 is the orderly and equitable distribution of estate property to creditors. *In re Old Electralloy Corp.,* 164 B.R. 501, 505 (Bankr. W.D. Pa. 1994). Allowing a

12. More importantly, the forced POA creates an impermissible delegation of an appointed fiduciary's authority. The Trustee cannot do that. As explained by one court, "[i]t has long been a widespread principle that a Trustee may not relinquish their fiduciary and representative duties by delegating their responsibilities to professionals. Trustee duties are just that, the duties entrusted only to the Trustee. They are not to be ignored, nor are they to be delegated, absent well established special circumstances." *In re Peterson*, 566 B.R. 179, 190 (Bankr. M.D. Tenn. 2017). *See also In re Computer Learning Centers, Inc.,* 285 B.R. 191, 207 (Bankr. E.D. Va. 2002) (explaining trustee must remain in control of administration of the case and may not delegate essential decision-making responsibility"); *In re Stevens*, 407 B.R. 303, 307 (Bankr. N.D. Ill. 2009) ("[a] trustee is presumed to be competent to perform all of the duties enumerated in section 704 and may not delegate those duties to others").

13. And the Court, respectfully, cannot compel him to do so. No provision in the Bankruptcy Code permits the delegation nor does it provide a basis for compulsion. This Court should not use its equitable authority to infringe on the exclusive authority the Bankruptcy Code confers on trustees generally.

14. There is good reason for that. To allow or compel the delegation of a chapter 7 trustee's duties would create a number of issues and concerns. While hardly exhaustive, the following are a but a sampling of the problems such an act of delegation would engender: (i) circumvention of proper procedures for creditor involvement (*e.g.*, motions to compel action under § 704, or removal of trustee under § 324), (ii) violation of the integrity of trustee oversight

---

single creditor to act under a power of attorney—effectively substituting themselves for the trustee in estate administration—would risk disproportionate or preferential treatment, interfere with the trustee's ability to the case(s), and potentially subject the estate *and the Trustee* to unnecessary risk, and liability. That is in addition to the confusion that will likely, if not certainly, follow.

mechanisms set by the U.S. Trustee Program, and (iii) denial of a meaningful opportunity by other interested stakeholders to object or participate in a decision with significant impact on the estate(s). These concerns are real, raise serious due process concerns and disrupt the balance of responsibilities created by the Bankruptcy Code. It shouldn't be allowed.

C. The Motion Seeks Affirmative and Improper Injunctive Relief.

15. Though couched as a limited and benign request, the Movants seek – improperly – affirmative injunctive relief against the Trustee. Movants seek to compel him to act and, specifically, provide them with the POA to further their own interests. That sort of relief is exceptional and is not warranted here. At the end of the day, the Movants will be able to monetize their collateral as they see fit. And despite their urging otherwise, the authorization and relief Movants seek is hardly "necessary to effectuate the abandonment of the ERTCs". *See* Motion at ¶31. In fact, authorization is not needed at all as the Trustee has already filed his Notice to abandon the ERTCs. Movants simply want the relief as it will make their life easier. But that cannot come at the expense of the estate(s), the Trustee and his enumerated duties.

16. But even assuming such relief might appropriately be considered (it is not), the Motion must fail as the Movants cannot establish a right to the injunction they seek. Aside from the Movant's procedural foot-fault in seeking such relief,[6] the Movants cannot satisfy their heavy burden. "It is frequently observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *In re Philadelphia Newspapers, LLC*, 407 B.R. 606, 616–17 (E.D. Pa. 2009) (quoting *Mazurek v. Armstrong,* 520 U.S. 968, 972, 117 S.Ct. 1865, 138 L.Ed.2d 162 (1997)).

17. To obtain a preliminary injunction under Section 105, the Movants bear the

[6] Pursuant to Rule 7001(g) of the Federal Rules of Bankruptcy Procedure, an adversary proceeding is required to obtain an injunction.

burden of showing a "substantial likelihood of success on the merits, irreparable harm to the movant, harm to the movant outweighs harm to the nonmovant, and injunctive relief would not violate public interest". *In re Forever 21, Inc.,* 623 B.R. at 65 (quotation omitted). The Motion fails entirely on this front as the Movants cannot establish, and have not established, any of the foregoing requirements.

18. That is not surprising as no harm has befallen the Movants, and the concerns they express in their Motion are speculative at best. Put differently, there is no present controversy because the ERTCs have not yet been abandoned (given the Movants' Joint Objection), and Movants cannot point the Court or the Trustee to any actual or imminent harm. It is all conjecture. Unless and until the harm Movants claim is real, there is no basis to grant the relief Movants seek. They cannot satisfy their burden, and the Motion should be denied.

WHEREFORE, for the foregoing reasons, the Trustee respectfully requests that the Court (i) deny the Motion and the relief requested therein (specifically, the request for the POA), and (ii) grant the Trustee such other relief as is just and proper.

Dated: August 18, 2025

ASHBY & GEDDES, P.A.

/s/ Ricardo Palacio

Ricardo Palacio (#3765)
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, Delaware 19899
(302) 654-1888
Email: rpalacio@ashbygeddes.com

Counsel for George L. Miller, Chapter 7 Trustee