**UNITED STATES BANKRUPTCY COURT**
**DISTRICT OF NEW JERSEY**

**WOLLMUTH MAHER & DEUTSCH LLP**
Paul R. DeFilippo
James N. Lawlor
Joseph F. Pacelli (Admission *pro hac vice* pending)
500 Fifth Avenue
New York, New York 10110
Telephone: (212) 382-3300
Facsimile: (212) 382-0050
pdefilippo@wmd-law.com
jlawlor@wmd-law.com
jpacelli@wmd-law.com

**JONES DAY**
Bruce Bennett
555 South Flower Street, Fiftieth Floor
Los Angeles, California 90071
Telephone: (213) 243-2382
Facsimile: (213) 243-2539
bbennett@jonesday.com
(Admission *pro hac vice* pending)

-and-

Benjamin Rosenblum
250 Vesey Street
New York, New York 10281
Telephone: (212) 326-8312
Facsimile: (212) 755-7306
brosenblum@jonesday.com
(Admission *pro hac vice* pending)

*Counsel for the Cross-Holder Ad Hoc Group*

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| In re: | Chapter 11 |
| MULTI-COLOR CORPORATION, *et al.*, | Case No. 26-10910 (MBK) |
| Debtors.[1] | Judge: Michael B. Kaplan |
| | **Hearing Date and Time**: **January 30, 2026 at 1:00 p.m.** |

1 The last four digits of Debtor Multi-Color Corporation's tax identification number are 5853. A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at https://veritaglobal.net/MCC. The location of the Debtors' service address for purposes of these chapter 11 cases is: 3284 Northside Parkway NW, Suite 400, Atlanta, Georgia 30327.

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**<u>THE CROSS-HOLDER AD HOC GROUP'S OMNIBUS OBJECTION AND RESERVATION OF RIGHTS TO (A) DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING, (B) USE CASH COLLATERAL, AND (C) GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (II) GRANTING ADEQUATE PROTECTION TO CERTAIN PREPETITION SECURED PARTIES, (III) MODIFYING THE AUTOMATIC STAY, (IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF AND (B) CERTAIN OTHER FIRST DAY RELIEF</u>**

The Cross-Holder Ad Hoc Group, including Canyon Capital Advisors, LLC hereby submits this omnibus objection and reservation of rights to the *Debtors' Motion For Entry Of Interim And Final Orders (I) Authorizing The Debtors To (A) Obtain Postpetition Financing, (B) Use Cash Collateral, And (C) Grant Liens And Superpriority Administrative Expense Claims, (II) Granting Adequate Protection To Certain Prepetition Secured Parties, (III) Modifying The Automatic Stay, (IV) Scheduling A Final Hearing, And (V) Granting Related Relief* (the "<u>Motion</u>") and certain other first day relief. In support of this Objection, the Cross-Holder Ad Hoc Group states as follows:

## <u>PRELIMINARY STATEMENT</u>

1. The request to approve the proposed DIP facility (the "<u>Insider DIP Facility</u>") should be denied because it fails to satisfy the requirements of section 364 of the Bankruptcy Code and represents an improper attempt to reallocate value from unsecured creditors to the Debtors' controlling private equity sponsor, Clayton, Dubilier & Rice, LLC (the "<u>Sponsor</u>"), and its favored lenders, who were willing to facilitate a transfer to the Sponsor on account of its out-of-the-money equity position. Rather than serve the interests of the Debtors' estates, the Insider DIP Facility is designed to entrench a predetermined restructuring outcome that was negotiated prepetition between the Debtors, their private equity sponsor and certain undersecured creditors (the "<u>Favored</u>

Lenders")—all while depriving unsecured creditors of the procedural protections guaranteed by the Bankruptcy Code.

2. The Cross-Holder Ad Hoc Group offered an actionable, superior alternative DIP facility (the "Alternative DIP Facility"), which provides up to $500 million of new money at lower cost, on better terms, without any roll-up of prepetition debt, and without the restrictive covenants that tie the Debtors to a predetermined plan of reorganization. Despite being in frequent communication with the Cross-Holder Ad Hoc Group in the lead-up to these chapter 11 cases, the Debtors refused to meaningfully engage with this proposal. The Debtors sent DIP solicitation materials to the Cross-Holder Ad Hoc Group only on the same day they signed the Restructuring Support Agreement, having already committed to the Insider DIP Facility.

3. The Insider DIP Facility cannot survive scrutiny under any standard. The transaction involves the Sponsor, a statutory insider of the Debtors, as a material DIP lender, current controlling equity holder, and proposed Plan Sponsor—requiring application of the "entire fairness" standard. Under this heightened standard, the Debtors must demonstrate that both the process and the price are fair, and they can prove neither. The process was fatally flawed: the Debtors failed to shop the DIP or the plan sponsorship, choosing instead to negotiate exclusively with their controlling shareholder and the Favored Lenders while ignoring a demonstrably superior alternative. The price is similarly deficient: every economic term of the Alternative DIP Facility is more attractive to the Debtors' estates, including a lower interest rate, lower original issue discount, no backstop fee, longer tenor, and no roll-up component.

4. The $250 million roll-up embedded in the Insider DIP Facility is particularly egregious. The Debtors acknowledge that the Sponsor and other Favored Lenders are materially

undersecured. Based on the proposed Disclosure Statement,[2] the roll-up would transfer $133 to $167 million of value (assuming a 4-month case) from unsecured creditors to the Sponsor and the Favored Lenders by elevating their undersecured deficiency claims to DIP claims that would be paid in full, with interest. This is precisely the type of arrangement courts have repeatedly refused to approve—one that converts the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of post-petition lenders.

5. Finally, the Insider DIP Facility constitutes a prohibited *sub rosa* plan. The Insider DIP Facility is "inextricably" tied to the Restructuring Support Agreement,[3] which locks in plan terms before creditors can vote or object. The DIP's maturity provisions, milestone requirements, and economic terms are all designed to ensure that the predetermined restructuring proceeds on the Sponsor's preferred timeline to the Sponsor's preferred outcome. *Sub rosa* plans are prohibited precisely to prevent transactions that will, in effect, short circuit the requirements of chapter 11.

6. For these reasons, the Court should deny the Motion or, at minimum, decline to approve the roll-up and other objectionable provisions pending a final hearing.

**BACKGROUND**

7. Prior to the Petition Date, the Cross-Holder Ad Hoc Group had been negotiating an out-of-court restructuring with the Debtors and had agreed to the Debtors' last proposal. Nonetheless, the Debtors elected to file for chapter 11.[4]

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[2] "Disclosure Statement" means the *Disclosure Statement Relating to the Joint Prepackaged Plan of Reorganization of Multi-Color Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (ECF No. 18).

[3] "Restructuring Support Agreement" or "RSA" means that certain Restructuring Support Agreement, dated January 25, 2026, attached to the Disclosure Statement as Exhibit B.

8. Upon learning that the Debtors were evaluating a chapter 11 bankruptcy, on January 23, 2026, advisors for the Cross-Holder Ad Hoc Group communicated an interest in participating in any DIP solicitation process. Two days later, on January 25, 2026, advisors for the Debtors provided DIP solicitation materials to advisors for the Cross-Holder Ad Hoc Group. That same day, the Debtors entered into the Restructuring Support Agreement with the Sponsor and the Favored Creditors. RSA, pg. 1.

9. Also on January 25, 2026, and unaware that the Debtors had already entered into—or were about to enter into—the Restructuring Support Agreement, advisors for the Cross-Holder Ad Hoc Group submitted a DIP proposal to the Debtors. The Alternative DIP Facility contemplated a $350–500 million new money financing facility at a rate of SOFR + 5.50% and included a 1.0% original issue discount. *Id*. The Alternative DIP Facility would be non-priming—specifically, the liens securing the proposed Alternative DIP Facility would be junior liens on ABL Priority Collateral held by U.S. and non-U.S. Loan Parties under the ABL credit agreement, subordinate to the valid and enforceable liens of the ABL and non-ABL secured debt, and first liens on all unencumbered property. *Id*. The Alternative DIP Facility would have an 18-month tenor, with no RSA requirement or similar early maturity triggers. *Id.*

10. The advisors for the Cross-Holder Ad Hoc Group, without knowledge that the Debtors had already entered into a Restructuring Support Agreement obligating them to pursue the Insider DIP Facility, continued to follow up with the Debtors' advisors concerning the Alternative DIP Facility.

11. On January 27, 2026, the Debtors launched their "straddle" plan, which attached a copy of the DIP term sheet outlining the terms of the Insider DIP Facility. RSA, Ex. B. The terms of the Insider DIP Facility are materially worse for the Debtors' estates than the terms of the

Alternative DIP Facility in all respects. In terms of fees, the Insider DIP Facility contemplates $250 million new money at a rate of SOFR (or EURIBOR) + 6.75%, a "Backstop Premium" of $7.5 million, and a 2.0% original issue discount. Despite the fact that the Alternative DIP Facility was available on a non-priming basis, the Insider DIP Facility primes existing secured debt (other than the ABL). *Id.* The Insider DIP Facility also has a maturity of 10 months, though it contains early maturity triggers and milestones, including a milestone requiring the Debtors to emerge from chapter 11 within 90 days. *Id.*

12. The Insider DIP Facility also contains a $250 million roll-up for undersecured debt. *Id.* Pursuant to the proposed Disclosure Statement, the undersecured debt associated with the non-ABL secured debt is approximately $1.952 billion. Disclosure Statement, pg. 11. The Debtors estimate that unsecured claims, including deficiency claims, will receive approximately 2.8 cents on the dollar at the high end. *Id.* at pg. 12. Roll-up debt, in contrast, will receive a 100% recovery, plus interest at the aforementioned rate of SOFR + 6.75%. *Id.*, Ex. A, pg. 21.

13. The Insider DIP Facility reserves 30% of the DIP Commitments solely for the Sponsor and the Favored Lenders. RSA, Ex. B, "DIP Holdback." The Debtors contemplate that if interim approval of the Insider DIP Facility is obtained, they will launch a DIP subscription process between interim approval and final approval. *Id.* at "DIP Facility Subscription Process." If lenders do not subscribe by the deadline, which falls in advance of the final approval hearing for the Insider DIP Facility, they will forfeit the favorable economics associated with the Insider DIP Facility. *Id.* If a lender subscribes, it may participate in its pro rata share of 70% of the Insider DIP Facility, but without the economics associated with what is characterized as the "Backstop Premium." *Id.*

14. To be a subscribing lender, an institution must execute a joinder to the Restructuring Support Agreement, which, among other things, requires it to grant third-party releases (including in favor of the Sponsor), refrain from contesting final approval of the Insider DIP Facility, and vote in favor of the chapter 11 plan. *Id.*

15. The proposed chapter 11 plan contemplates that the out-of-the-money Sponsor will contribute new money and retain a controlling equity interest in the reorganized debtors. Disclosure Statement, pg. 31. Despite affording the Sponsor the exclusive right to become the controlling equity owner of the post-reorganization company, the Debtors have never engaged in any marketing process.

16. On January 29, 2026 (the "Petition Date"), the Debtors commenced chapter 11 cases before the Court. The instant Motion followed.

## ARGUMENT

### I. The Motion Does Not Satisfy the Requirements of Section 364

#### A. The Motion Cannot Be Approved Because a Non-Priming DIP Is Available

17. The Debtors have failed to satisfy the unambiguous statutory requirements of section 364(d) of the Bankruptcy Code. DIP financing that includes a priming lien may be approved "only if" the debtor "is unable to obtain such credit otherwise." 11 U.S.C. § 364(d)(1)(A). In other words, a priming DIP facility is permissible only if the Debtors demonstrate that a non-priming DIP facility is unavailable. *See*, *e.g.*, *In re L.A. Dodgers LLC*, 457 B.R. 308, 312-14 (Bankr. D. Del. 2011) (denying debtors' motion for approval of secured post-petition financing where "a better and unsecured loan" was available from an alternative lender); *In re Laffite's Harbor Dev. I, LP*, Case No. 17-36191-H5-11, 2018 WL 272781, at *3 (Bankr. S.D. Tex. Jan. 2, 2018) (debtor failed to demonstrate compliance with section 364(d)(1) before seeking approval of priming transaction); *In re Morgan & Co., Inc.*, No. 08-05066-8-ATS, 2008 Bankr. LEXIS 2654,

at *6 (Bankr. E.D.N.C. Sep. 16, 2008) (denying DIP approval where court was not persuaded that none of the interested parties would provide financing on a non-priming basis).

18. The Debtors cannot satisfy their burden here because they failed to conduct a meaningful market test for the DIP and a non-priming DIP facility is, in fact, available. The Cross-Holder Ad Hoc Group offered the Debtors an actionable, more economical, and non-priming DIP proposal. The Debtors, however, deemed the Alternative DIP Facility "inactionable because it did not have the support of the Secured Ad Hoc Group, and, most importantly, was not coupled with a viable chapter 11 plan." Mot., ¶ 8. These justifications are legally irrelevant and wrongheaded.

19. In particular, under the Debtors' proposed plan, the new money component of the Insider DIP Facility will be paid "in full in Cash" on the Effective Date, meaning the Debtors do not intend to use or need any of the new money contemplated under the Insider DIP Facility after emerging from these chapter 11 cases. The Insider DIP Facility is only intended to provide the Debtors with funding to support operations during these chapter 11 cases. The Alternative DIP Facility would do the same, but with additional availability and on better economic terms. Thus, any purported necessary link between the Insider DIP Facility and the Debtors' proposed plan is illusory. Furthermore, inextricably tying a DIP loan to a chapter 11 plan is not what the Bankruptcy Code requires, nor does the Bankruptcy Code require one DIP lender's permission to pursue a competing loan with another. The Debtors cannot rewrite the requirements of section 364(d) to suit their preferred transaction structure. Because the Debtors are able to obtain credit without granting a priming lien, the Motion must be denied.

**B. The Motion Cannot Be Approved Because the Insider DIP Facility Is Deficient, Both in Terms Of Price And Process**

20. The entire fairness standard governs approval of the Motion. The Sponsor is a statutory insider of the Debtors, 11 U.S.C. § 101(31), serving simultaneously as the Debtors'

private equity owner, a person in control of the Debtors, the proposed plan sponsor (i.e., the Debtors' proposed future majority owner and controller), one of the largest creditors of the Debtors, and a material proposed DIP lender. In each of these capacities—as DIP lender, existing sponsor, prepetition lender, and "Plan Sponsor" under the Restructuring Support Agreement—the Sponsor is a party to the proposed transaction, however defined.

21. Where a debtor proposes entering into a transaction with an insider, courts apply heightened scrutiny, often referred to as the "entire fairness" standard, even if other parties are also involved in the transaction. *See In re LATAM Airlines Grp., S.A.*, 620 B.R. 722, 769 (Bankr. S.D.N.Y. 2020) (holding that "[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 because they are rife with the possibility of abuse.") (internal quotation marks and citation omitted); *id.* at 772 (applying entire fairness review to both insider and non-insider DIP tranches); *see also Pepper v. Litton*, 308 U.S. 295, 306 (1939) (insider's "dealings with the corporation are subjected to rigorous scrutiny").

22. Under the entire fairness standard, the debtor bears the burden of demonstrating the "entire fairness" of the proposed transaction. This requires showing that both (a) the process leading to the transaction and (b) the price and terms of the transaction "not only appear fair but are fair." *LATAM*, 620 B.R. at 769 (quoting *In re Innkeepers USA Tr.*, 442 B.R. 227, 231 (Bankr. S.D.N.Y. 2010)); *see also L.A. Dodgers LLC*, 457 B.R. at 313 (insider DIP financing "requires proof of fair dealing and fair price and terms"). Critically, when a controlling shareholder is a beneficiary of a transaction, the entire fairness standard governs regardless of the appointment of an independent committee. *See, e.g., Quadrant Structured Prods. Co. v. Vertin*, 102 A.3d 155, 194 (Del. Ch. 2014) ("[E]ntire fairness governs interested transactions between a corporation and

its [controlling shareholder] even if a special committee of independent directors *or* a majority-of-the-minority vote is used, because of the risk that when push comes to shove, directors who appear to be independent and disinterested will favor or defer to the interests and desires of the majority stockholder.") (emphasis in original).

i. The Price Is Unfair

23. The price of the Insider DIP Facility is unfair—whether analyzed under the entire fairness or the business judgment standard—because the Alternative DIP Facility is superior in every material respect.

24. The following chart compares the key economic terms of the Alternative DIP Facility and the Insider DIP Facility.

| Term | Insider DIP Facility | Alternative DIP Facility |
|---|---|---|
| Size | $507.5mm DIP facility consisting of (i) $250mm of new money; (ii) a roll-up of $250mm; (iii) $7.5mm Backstop Premium; and (iv) a to-be-determined amount of Incremental DIP Loans | $350-$500mm DIP facility comprised of 100% new money |
| Roll-up Feature | $250mm roll-up of undersecured prepetition debt | None |
| Interest Rate | S + 6.75% Cash | S + 5.50% Cash |
| OID | 2.0% Cash | 1.0% Cash |
| Backstop Fee | $7.5mm | None |
| Tenor | 10 months, subject to certain early maturity triggers | 18 months; no RSA requirement or similar early maturity triggers |

25. The Alternative DIP Facility is superior to the Insider DIP Facility in every material respect. It offers a longer tenor, provides up to twice the amount of new money without any roll-up component, is not tied to any restructuring support agreement, and carries both a lower interest

rate and reduced original issued discount. It also requires no backstop fee and proposes a collateral package that is substantially less burdensome than that required under the Insider DIP Facility.

26. Given these materially superior terms, the Insider DIP Facility cannot satisfy the requirements for approval under section 364 of the Bankruptcy Code. *See L.A. Dodgers LLC* , 457 B.R. at 313–14 (concluding fair price requirement was not satisfied where alternative DIP financing offered more favorable terms); *see also VTX Commc'ns, LLC v. AT&T Inc.*, No. 7:19-cv-00269, 2020 WL 4465968, at *18 (S.D. Tex. Aug. 4, 2020) ("[F]air price relates to the economic and financial considerations of the proposed [transaction], including all relevant factors: assets, market value, earnings, future prospects, and any other elements that affect intrinsic or inherent value . . . .").

27. The Debtors ask the Court to consider certain non-economic benefits provided by the Insider DIP Facility in an effort to overcome the obvious economic superiority of the Alternative DIP Facility. Mot. at ¶ 42. The Debtors' appeal to *ION Media* in support of this argument is ineffective. In that case, the Bankruptcy Court for the Southern District of New York was presented with two debtor-in-possession proposals: one proposed by the first-lien lenders and another by the second-lien lenders. *In re ION Media Networks, Inc.*, 2009 WL 2902568, at *3 (Bankr. S.D.N.Y. July 6, 2009). The proposal from the second-lien lenders included some superior economic terms when compared to the first-lien lenders' proposal, but, notably, ***both*** of the proposals at issue were priming DIP facilities. *Id.* When it became clear that the first-lien lenders would not consent to being primed by any other lender, the debtors agreed to the first-lien lenders' proposal in order to avoid "the risk of a priming fight." *Id.* at *1. The second-lien lenders' proposal also had other significant deficiencies. *Id.* at *5.

28. Of course, a priming fight is not a risk here, as the Alternative DIP Facility does not purport to prime the Favored Lenders. What is more, the Debtors have not suggested that the Alternative DIP Facility has any of the other financing concerns present in the second-lien lender's proposal in *ION*. Nor does *ION* stand for the proposition that the Court can ignore the requirements of section 364 of the Bankruptcy Code and approve a priming DIP when a non-priming DIP is available and actionable. The Debtors cannot satisfy the "fair price" standard, and their appeal to non-economic factors in support of the Insider DIP Facility is unavailing. *See In re Pac. Drilling S.A.*, No. 17-13193 (MEW), 2018 Bankr. LEXIS 3024, at *6 (Bankr. S.D.N.Y. Oct. 1, 2018) (the Bankruptcy Code "does not permit the payment of extra compensation to large creditors in exchange for their commitment to vote for a plan.").

ii. The Process Is Unfair

29. The Debtors' purported "marketing" process leading to the Insider DIP Facility was woefully inadequate under any standard.

30. The Debtors were required to shop both the DIP financing and the plan sponsorship, yet they did neither. *See In re Innkeepers USA Tr.*, 442 B.R. at 231 (declining to approve insider plan support agreement where term sheet was not "shopped" prior to signing); *In re Bidermann Indus. U.S.A., Inc.*, 203 B.R. 547, 553 (S.D.N.Y. 1997) (holding insider sale cannot be approved under entire fairness standard absent a "concerted effort to shop the debtors *before* the debtors selected a purchaser") (emphasis in original); *VTX Commc'ns, LLC*, 2020 WL 4465968, at *18 ("Fair dealing" concerns "when the transaction was timed, how it was initiated, structured, negotiated, disclosed[.]"); *L.A. Dodgers LLC*, 457 B.R. at 313–14 (finding debtors could not prove entire fairness when director controlling debtor would have suffered economic consequences had debtors accepted alternative DIP).

31. Despite engaging in daily discussions with the Cross-Holder Ad Hoc Group regarding an out-of-court transaction, the Debtors elected to "market" the DIP exclusively to the Sponsor and the Favored Lenders. The Debtors provided DIP materials to the Cross-Holder Ad Hoc Group's advisors on the very same day they executed the Restructuring Support Agreement, by which point they had already committed to pursuing the Insider DIP Facility. RSA § 5. Moreover, even this belated disclosure occurred only in response to a specific request from the Cross-Holder Ad Hoc Group. Following limited discussions spanning merely a handful of days, the Debtors ceased engaging with the Cross-Holder Ad Hoc Group altogether, notwithstanding the group's continued outreach. Later, the Debtors took the position that the Alternative DIP Facility was inactionable because the Debtors' favored lenders said so, and because the Alternative DIP Facility was not stapled to a chapter 11 plan. These discussions were purely performative on the Debtors' part and were not conducted in good faith, as the Debtors had already bound themselves to the Insider DIP Facility before they began.

32. The Debtors cannot demonstrate that the Insider DIP Facility satisfies the exacting standard of entire fairness review because neither the price nor the process was—or is—fair. Even under a business judgment standard, the Debtors would fail to carry their burden. The Debtors' DIP marketing process, to the extent one existed at all, was both highly unusual and deeply problematic. The Insider DIP Facility is, moreover, materially inferior in all respects to the Alternative DIP Facility.

## II. The Roll-Up in the Insider DIP Facility Is Impermissible

33. The Insider DIP Facility should be denied because it is structured to benefit the Sponsor and the Favored Lenders at the expense of the Debtors' estates. Rather than providing necessary liquidity to stabilize operations, the facility's central feature is a case-defining roll-up of

prepetition debt sought on an emergency basis with inadequate notice to parties in interest. The proposed roll-up would, at the very outset of this case, effect a transfer of $133 to $167 million in value from unsecured creditors to the Sponsor and the Favored Lenders. Such a windfall cannot be sanctioned under the Bankruptcy Code.

34. Courts consistently refuse to approve debtor-in-possession financing arrangements that "convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition lender." *Laffite's Harbor Dev. I, LP*, 2018 WL 272781, at *2-3. Such financing subverts the fundamental purpose of the Bankruptcy Code. Accordingly, courts have held that "credit should not be approved when it is sought for the primary benefit of a party other than the debtor." *In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991). Similarly, courts have refused to approve financing "where it is apparent that the purpose of the financing is to benefit a creditor rather than the estate." *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 39 (Bankr. S.D.N.Y. 1990); *see also In re Tenney Vill. Co., Inc.*, 104 B.R. 562, 568 (Bankr. D.N.H. 1989) (refusing to approve financing arrangement that "would pervert the reorganizational process from one designed to accommodate all classes of creditors and equity interests to one specially crafted for the benefit of" a secured creditor).

35. Several published decisions have questioned or rejected the validity of roll-ups entirely. *See In re Saybrook Mfg. Co.*, 963 F.2d 1493, 1494–96 (11th Cir. 1992) (noting that postpetition cross-collateralization is an "extremely controversial form of Chapter 11 financing" and holding that it was not authorized by section 364 of the Bankruptcy Code); *Reynolds v. Servisfirst Bank (In re Stanford)*, 17 F.4th 116, 128 (11th Cir. 2021) (Jordan, J., concurring) (discussing the increase in requests for rollups since Saybrook, and describing roll-ups as "a formally distinct but functionally similar financing arrangement" to cross-collateralization);

*Tenney Vill.*, 104 B.R. at 570 (recognizing section 364 does not authorize granting of administrative expense priority for prepetition debt).

36. While roll-ups have been approved with increasing frequency in recent years, the payment of prepetition debt remains extraordinary relief, and the circumstances of each case matter.[5] Unlike the typical roll-up scenario, the secured creditors here have substantial deficiencies in their prepetition collateral package, as described briefly below. Moreover, the Debtors themselves acknowledge that the secured creditors are materially undersecured. Disclosure Statement at 12. Under these circumstances, the proposed roll-up amounts to nothing more than a reallocation of estate value away from unsecured creditors and toward a group consisting of the Sponsor and Favored Lenders which have negotiated a deal with the Sponsor to facilitate its continued post-reorganization ownership. This is improper and should not be sanctioned by the Court.

### A. The Roll-Up Unlawfully Enhances the Sponsor and the Favored Lenders' Recoveries on Undersecured Claims to the Detriment of Other Unsecured Creditors

37. The Debtors describe themselves as "the leading global manufacturer in prime . . . label solutions" and tout their "global presence across more than 25 countries with over 90 total facilities—including 39 facilities in North America . . . . ' Disclosure Statement at 1. The Debtors further say that the non-ABL secured lenders hold "liens on substantially all the assets and property." Disclosure Statement at 31–32. The Debtors, however, have failed to substantiate this characterization. None of the prepetition debt documents have been filed with the Court, and in fact, such secured creditors' liens *do not encumber* substantially all of the Debtors' assets.

[5] All but one of the unpublished orders cited in the Motion involved an uncontested roll-up, and in *STG*, the objecting party did not challenge the roll-up itself, only its allocation. *STG Logistics, Inc.*, No. 26-10258 (MEH) (Bankr. D.N.J. Jan 14, 2026).

38. The non-ABL security interests do not encumber a substantial portion of the Debtors' assets, including: (i) at least one-third of the Debtors' foreign subsidiary equity, as well as all assets held by these foreign subsidiaries; (ii) all owned and leased real property, including the Debtors' manufacturing facilities; (iii) all fixtures; and (iv) all foreign intellectual property. Collectively, these excluded assets represent a material portion of the Debtors' enterprise value.

39. Given the Debtors' status as a global manufacturer, the exclusion of foreign equity interests and foreign assets from the collateral package is particularly significant, as is the absence of any lien on the Debtors' manufacturing facilities and associated fixtures. Moreover, the non-ABL secured creditors hold only a second-priority lien on ABL collateral (i.e., cash, inventory, and receivables) at the domestic obligors and have no lien whatsoever on ABL collateral held by foreign entities. In short, the non-ABL secured lenders' collateral package is materially deficient. The proposed roll-up should not serve as a mechanism for elevating partially secured creditors to the position of all-asset lenders.

40. At the same time, the roll-up should not serve as a mechanism for elevating an unsecured deficiency claim to the detriment of other creditors. *See In re Wildcat Met Mining, Inc.*, No. 22-10080, 2024 WL 1025002, at *11 (Bankr. S.D. W. Va. Mar. 8, 2024) (holding that a proposed roll-up that would have elevated claim from general unsecured claim to superpriority administrative expense claim was "patently unapprovable"); *In re FCX, Inc.*, 54 B.R. 833, 840 (Bankr. E.D.N.C. 1985) ("If an undersecured creditor can obtain unencumbered assets as security for all of its prepetition claims, that creditor is being preferred to the detriment of other unsecured claimants.").

41. The Disclosure Statement values the Debtors' implied equity at approximately $2.9 billion to $3.4 billion as of the Effective Date. Disclosure Statement Ex. D. The Debtors entered

these chapter 11 cases with $4.5 billion in secured debt—meaning, as the Debtors themselves acknowledge, the non-ABL secured creditors are undersecured by a substantial margin. Approval of the Insider DIP Facility would result in payment in full of certain undersecured deficiency claims held by the Sponsor and the Favored Lenders. In effect, the Court would be sanctioning the Debtors' circumvention of the Bankruptcy Code's priority scheme to inflate recoveries for favored creditors—including the Debtors' own controlling shareholder—at the expense of other stakeholders.

42. For the foregoing reasons, the Court should reject the roll-up included in the Insider DIP Facility. If the Court is inclined to approve the Insider DIP Facility on an interim basis, however, it should defer any decision on the roll-up until the final hearing. The Debtors have articulated no reason why the roll-up must be approved on an emergency basis before a thorough analysis of the secured creditors' collateral value can be conducted. Should the Court nonetheless approve the roll-up on an interim basis, it should order that the roll-up be unwound if the Favored Lenders are ultimately found to be undersecured. *In re Lodgenet Interactive Corp.*, No. 13-10238 (SCC), 2012 WL 13339748, at *15 (Bankr. S.D.N.Y. Oct. 1, 2012) (ruling that roll-up could be unwound upon a determination that prepetition debt was undersecured); *In re School Specialty, Inc.*, No. 13-10125(KJC), 2010 WL 11827360, *8 (Bankr. D. Del. Dec. 3, 2010) (same); *In re Revel AC, Inc.*, No. 14-22654-GMB, 2009 WL 10805298, *15 (Bankr. D.N.J. Feb. 26, 2009) (same).

## III. The Backstop Premium Is Unfair

43. The backstop terms included in the Insider DIP Facility are similarly improper. The Insider DIP Facility includes a "Backstop Premium"—a fee equal to 3% of the $250 million in new money commitments, amounting to $7.5 million paid to a group that already represents over

70% of the secured claims and to which 30% of the DIP commitments have been allocated pursuant to the "DIP Holdback." The Court should deny this "Backstop Premium" because it is unreasonable and unnecessary to approve a fee—even one payable in kind—for the Sponsor and the Favored Lenders to backstop their own commitments.

44. The decision in *Momentive Performance Materials Inc.*, No. 14-22503-RDD, (Bankr. S.D.N.Y. June 19, 2014), is instructive. There, the Court did not award a similar request for backstop fees as a matter of fairness where the backstop fee was sized based on amounts that were already committed. ECF Doc. No. 615, Hr'g. Tr. 195:10-18. Further, not only are the Sponsor and the Favored Lenders backstopping their own commitments, but they expressly reserved for themselves an exclusive 30% holdback of the DIP commitments. The Insider DIP Facility is unfair and there is no need to "compensate" the Sponsor and the Favored Lenders further. The so-called "Backstop Premium" is no "backstop" at all—it is merely an additional mechanism to transfer value to the Sponsor and the Favored Lenders at the expense of the estate. *See In re Pac. Drilling S.A.*, No. 17-13193 (MEW), 2018 Bankr. LEXIS 3024, at *5, *15 (Bankr. S.D.N.Y. Oct. 1, 2018) (questioning "why there was a need for a backstop at all, since the parties in front of me seem to be fighting for the chance" and raising the possibility that a "backstop fee is really just an extra payment and an extra recovery rather than a reasonable, stand-alone financing term").

## IV. The Insider DIP Facility Impermissibly Establishes a *Sub Rosa* Plan

45. The Insider DIP Facility is not merely a financing mechanism—it is a case-determinative instrument designed to ensure that these chapter 11 cases proceed on the Sponsor's and the Favored Lenders' preferred timeline to their preferred outcome, all while stripping unsecured creditors of the procedural protections guaranteed by the Bankruptcy Code. The Debtors acknowledge as much, conceding that the Insider DIP Facility and the Restructuring

Support Agreement are one and the same: "the DIP Facility is an ***inextricable part*** of the overall Restructuring Support Agreement that provides the Debtors with a path to emerge swiftly and successfully from these chapter 11 cases." Banks Declaration (ECF No. 27), ¶ 28 (emphasis added).

46. The Restructuring Support Agreement obligates the Debtors to pursue the Insider DIP Facility. RSA § 7.3(b). To participate in the favorable economics of the Insider DIP Facility—albeit on terms less favorable than those afforded to the Sponsor and the Favored Lenders—a party must execute a joinder to the Restructuring Support Agreement after the interim DIP order is entered, thereby committing to granting a third-party release, voting in favor of the chapter 11 plan and agreeing not to contest, among other things, the final DIP. RSA, Ex. B, pg. 5-6. This arrangement constitutes impermissible vote-buying and ensures that the Insider DIP Facility, rather than the creditors' statutory rights under the Bankruptcy Code, dictates the terms of the Debtors' reorganization.

47. Such arrangements are precisely what the prohibition on *sub rosa* plans is designed to prevent. "*[S]ub rosa* plans are prohibited" to prevent "transactions that will, in effect, short circuit the requirements of chapter 11 for confirmation of a reorganization plan." *In re Iridium Operating LLC*, 478 F.3d 452, 466 (2d Cir. 2007) (internal quotation marks omitted). Courts have consistently rejected DIP financing that amounts to a disguised plan of reorganization. *See Laffite's Harbor Dev.*, 2018 WL 272781, at *3 (denying DIP motion where financing terms would grant lenders excessive control over the debtor, leverage the bankruptcy process, and unduly prejudice the rights of other parties in interest); *LATAM*, 620 B.R. at 816 (explaining that the touchstone inquiry is "whether the proposed terms would prejudice the powers and rights that the Code confers for the benefit of all creditors and leverage the Chapter 11 process by granting the lender excessive

control over the debtor or its assets as to unduly prejudice the rights of other parties in interest" (quoting *In re Def. Drug Stores, Inc.*, 145 B.R. 312, 317 (9th Cir. BAP 1992)); *In re Cont'l Airlines, Inc.*, 780 F.2d 1223, 1227–28 (5th Cir. 1986) ("Undertaking reorganization piecemeal pursuant to § 363(b) should not deny creditors the protection they would receive if the proposals were first raised in the reorganization plan.").

48. The Insider DIP Facility exhibits each hallmark of a *sub rosa* plan: it grants the Sponsor and Favored Lenders excessive control over the Debtors, subverts the chapter 11 voting process by forcing creditors to adhere to an agreement that obligates them to vote a certain way, and dictates the terms of the Debtors' reorganization outside the plan confirmation process. The Court should deny the Insider DIP Facility as a prohibited *sub rosa* plan. *See Cont'l Air Lines*, 780 F.2d at 1226 ("When a proposed transaction specifies terms for adopting a reorganization plan, the parties and the district court must scale the hurdles erected in Chapter 11.") (internal quotation marks omitted); *In re Biolitec, Inc.*, 528 B.R. 261, 271-72 (Bankr. D.N.J. 2014) (finding arrangement "resembles an impermissible *sub rosa* plan" because "the settlement clearly affects parties' rights by assigning rights and interests, forcing creditors to receive distributions through the Liquidating Trust instead of the bankruptcy process and subordinating the claims of the Non–Debtor Affiliates, parties other than those to the settlement did not receive disclosures or the opportunity to negotiate or vote on the settlement's provisions.").

## V. The Insider DIP Facility Violates the Good Faith Requirements of Section 364

49. "Good faith" in the context of DIP financing means "honesty in fact in the conduct or transaction concerned." *See Unsecured Creditors' Comm. v. First Nat'l Bank & Tr. Co. of Escanaba (In re Ellingsen MacLean Oil Co.)*, 834 F.2d 599, 605 (6th Cir. 1987) (citing UCC § 1201(19)). Good faith is lacking where, for example, lenders extend financing or credit for an

improper purpose (*e.g.*, to gain advantage in litigation) or fail to reveal material facts to the court. *See In re EDC Holding Co.*, 676 F.2d 945, 948-49 (7th Cir. 1982) (credit extended with "ulterior purpose" is not in good faith); *In re Grand Valley Sport & Marine, Inc.*, 143 B.R. 840, 852 (Bankr. W.D. Mich. 1992) ("[T]his court will not authorize postpetition financing pursuant to § 364 where a creditor leverages a debtor in possession into making a concession unauthorized by, or in conflict with, the Bankruptcy Code as a condition for the requested credit.").

50. The Insider DIP Facility violates section 364's good faith requirements. The entirety of the Insider DIP Facility is designed to circumvent the protections of the Bankruptcy Code and advance an insider's interests, on an unequal basis and without any market test. The fees, including the roll-up, and the coercive solicitation mechanics are designed to weaponize the Insider DIP Facility against unsecured creditors. And the provision of DIP solicitation materials on the very day that the Restructuring Support Agreement was executed is concerning. Accordingly, a good faith finding is not appropriate here, particularly in the absence of the opportunity to take discovery and a full evidentiary record.

**VI. Post-Petition Interest and Fees for Undersecured Creditors Must Not Be Allowed**

51. With respect to the "Prepetition Cash Flow Secured Parties," the Motion provides for non-cash postpetition interest and the cash payment of fees and expenses on account of claims that are acknowledged to be undersecured. Mot. at 18. This is not permitted under the Bankruptcy Code, 11 U.S.C. §§ 502(b)(2) and 506(b), and must be rejected.

**OBJECTION TO CERTAIN OTHER FIRST DAY RELIEF**

52. The Cross-Holder Ad Hoc Group also objects to certain relief sought in the *Debtors' Motion For entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Conditionally Approving the Disclosure Statement as*

*Containing Adequate Information, (III) Approving Related Dates, Deadlines, Notices, and Procedures, (IV) Approving the Solicitation Procedures and Related Dates, Deadlines, and Notices, (V) Conditionally Waiving the Requirements that (A) The U.S. Trustee Convene a Meeting of Creditors and (B) the Debtors File Schedules of Assets and Liabilities, Statements of Financial Affairs, And Rule 2015.3 Financial Reports, and (VI) Granting Related Relief* (ECF No. 16) (the "Solicitation Motion"), including as outlined below:

(i) The Court should deny conditional approval of the Disclosure Statement due to material omissions resulting in inadequate disclosure, including: failure to provide any information regarding the Alternative DIP Facility and a failure to properly disclose the Sponsor's role as a DIP Lender in the Insider DIP Facility;

(ii) The Court should deny the Debtors' requests for conditional waiver of the Section 341(a) Meeting and the filing of Schedules and SOFAs given that determining the extent to which the Favored Lenders are undersecured, as discussed above, is critical. *See* Solicitation Motion, Ex. A (Proposed Order) at ¶¶ 22-23;

(iii) The Motion fails to specify with any detail how the Debtors intend to value the Favored Lenders' undersecured deficiency claims, which are classified together with the Cross-Holder Ad Hoc Group's unsecured claims. A single footnote embedded 90 pages into the pleading that states "[t]he Solicitation Agent shall tabulate a Holder's Class 5 First Lien Deficiency Claim by using the Claim amount of such Holder's Secured Notes Claim when calculating voting results," is wholly inadequate. The Debtors must

describe this process in more detail before the Tabulation Procedures can be approved. *See* Solicitation Motion, Ex. A (Proposed Order) at Ex. 4(A); and

(iv) The Cross-Holder Ad Hoc Group should be given notice of any changes to the materials attached to the Solicitation Motion that either the U.S. Trustee or any statutory committee appointed in these Chapter 11 Cases are entitled to. *See, e.g.*, Solicitation Motion, Ex. A (Proposed Order) at ¶¶ 25-26.

**RESERVATION OF RIGHTS**

53. This Objection is submitted without prejudice to, and with a full reservation of, the Cross-Holder Ad Hoc Group's rights to supplement and amend this Objection, including by filing declarations in support thereof, to introduce evidence at any hearing relating to this Objection, and to further object to the Motion, including any amendment thereto, on any grounds that may be appropriate.

54. The Cross-Holder Ad Hoc Group hereby reserves all their rights to (a) raise additional arguments at the Final Hearing (including, without limitation, with respect to equities of the case, marshalling and section 506(c) and other waivers that are not requested as interim relief) in respect of the approval of the Insider DIP Facility, adequate protection and the terms of any proposed form of final order approving the Motion and (b) seek any other relief that is just and proper.

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## CONCLUSION

For the reasons above, the Cross-Holder Ad Hoc Group respectfully requests that the Court deny the Motion and grant such other and further relief to the Cross-Holder Ad Hoc Group as is just and proper.

Dated: January 30, 2026

**WOLLMUTH MAHER & DEUTSCH LLP**

*<u>/s/Paul R. DeFilippo</u>*
Paul R. DeFilippo, Esq.
James N. Lawlor, Esq.
Joseph F. Pacelli, Esq. (Admission *pro hac vice* pending)
500 Fifth Avenue
New York, New York 10110
Telephone: (212) 382-3300
Facsimile: (212) 382-0050
pdefilippo@wmd-law.com
jlawlor@wmd-law.com
jpacelli@wmd-law.com

**JONES DAY**
Bruce Bennett
555 South Flower Street, Fiftieth Floor
Los Angeles, California 90071
Telephone: (213) 243-2382
Facsimile: (213) 243-2539
bbennett@jonesday.com
(Admission *pro hac vice* pending)

-and-

Benjamin Rosenblum
250 Vesey Street
New York, New York 10281
Telephone: (212) 326-8312
Facsimile: (212) 755-7306
brosenblum@jonesday.com
(Admission *pro hac vice* pending)

*Counsel for Cross-Holder Ad Hoc Group*