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**KIRKLAND & ELLIS LLP**
**KIRKLAND & ELLIS INTERNATIONAL LLP**
Steven N. Serajeddini, P.C. (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
steven.serajeddini@kirkland.com

-and-

**KIRKLAND & ELLIS LLP**
**KIRKLAND & ELLIS INTERNATIONAL LLP**
Rachael M. Bentley (admitted *pro hac vice*)
Peter A. Candel (admitted *pro hac vice*)
Ashley L. Surinak (admitted *pro hac vice*)
333 West Wolf Point Plaza
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
rachael.bentley@kirkland.com
peter.candel@kirkland.com
ashley.surinak@kirkland.com

*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**COLE SCHOTZ P.C.**
Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Felice R. Yudkin, Esq.
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com

*Proposed Co-Counsel to the Debtors and Debtors in Possession*

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

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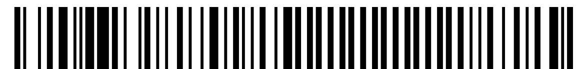
|---|---|
| In re: | Chapter 11 |
| MULTI-COLOR CORPORATION, *et al.*, | Case No. 26-10910 (MBK) |
| Debtors.[1] | (Jointly Administered) |

[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' claims and noticing agent at https://www.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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**DEBTORS' OMNIBUS
REPLY IN SUPPORT OF 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**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the "Debtors")[2] submit this omnibus reply (this "Reply") in further support of 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* [Docket No. 26] (the "DIP Motion"), which was approved on an interim basis by the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Superpriority Administration 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* [Docket No. 106] (the "Interim DIP Order"), and in response to the objections filed by the Minority Holdout Group[3] [Docket

[2] A detailed description of the Debtors, their business, and the facts and circumstances giving rise to the Debtors' chapter 11 cases is set forth in the *Declaration of Garrett Gabel, Chief Restructuring Officer of Multi-Color Corporation and Certain of Its Affiliates, in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [Docket No. 23] (the "First Day Declaration"), incorporated by reference herein. Capitalized terms used but not otherwise defined in this Reply shall have the meanings ascribed to them in the First Day Declaration, the DIP Motion, the Interim DIP Order, the Final DIP Order, the Final DIP Declarations, or the DIP Objections (each as defined herein), as applicable.

[3] "Minority Holdout Group" means the ad hoc group of certain holders of the Debtors' unsecured notes, represented by Jones Day, LLP and Guggenheim Securities, LLC. The Minority Holdout Group holds less than 11% of the Debtors' total funded indebtedness.

No. 426] (the "Minority Holdout Group Objection") and the Minority First Lien Lender Group[4] [Docket No. 428] (the "Minority First Lien Lender Group Objection,"[5] and together with the Minority Holdout Group Objection, the "DIP Objections," and the Minority Holdout Group and the Minority First Lien Lender Group, together, the "Objecting Parties"). In support of the DIP Motion and entry of an order approving the DIP Motion on a final basis,[6] and in response to the DIP Objections, the Debtors filed the Final DIP Declarations[7] contemporaneously herewith and state the following:

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[4] "Minority First Lien Lender Group" means the ad hoc group of certain first lien lenders, represented by Willkie Farr & Gallagher LLP and Rolnick Kramer Sadighi LLP. The Minority First Lien Lender Group—comprised of two affiliated entities *within* the Minority Holdout Group but acting solely in their *secured* first lien lenders capacity—holds less than 6% of the Debtors' total funded indebtedness and less than 3% of the Debtors' total secured funded indebtedness.

[5] The Minority First Lien Lender Group Objection incorporates by reference the objections made in the *Excluded First Lien Lenders' Preliminary Objection to the Debtors' DIP Motion* [Docket No. 75] (the "Minority First Lien Lender Group Original Objection").

[6] Contemporaneously herewith, the Debtors filed the proposed form of order approving the DIP Motion on a final basis (the "Final DIP Order"), along with a blackline against the Interim DIP Order.

[7] "Final DIP Declarations" means, collectively, the *Supplemental Declaration of Eric Koza In Support of 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 "Supplemental Koza Declaration"), the *Supplemental Declaration of Brent Banks In Support of 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 "Supplemental Banks Declaration"), the *Declaration of Jeffrey Kopa In Support of 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 "Kopa Declaration"), the *Declaration of Peter Laurinaitis In Support of Debtors' Motion for Entry of Final Order (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, and (IV) Granting Related Relief* (the "Laurinaitis Declaration"), and the *Declaration of Roger Meltzer In Support of Debtors' Motion for Entry of Final Order (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, and (IV) Granting Related Relief* (the "Meltzer Declaration").

## Preliminary Statement

1. The DIP Facility is the best financing available to the Debtors and should be approved. The Debtors filed these chapter 11 cases with a Plan that results in (a) $3.9 billion of net debt deleveraging, (b) adequate capitalization for the go-forward business with over $550 million of liquidity at emergence, (c) cash savings of approximately $350 million in debt service obligations on an annual basis, (d) a seven-year maturity runway on the New Debt (as defined in, and issued under, the Plan), and, (e) importantly, the unimpairment of all general unsecured creditors, including customers, employees, vendors, and trade counterparties. The Plan has been solicited and has the support of every voting class—***including approximately 96% of the Debtors' total funded secured indebtedness and approximately 86% of the Debtors' total funded indebtedness***.[8]

2. The Debtors commenced these cases with a senior secured superpriority debtor-in-possession term loan facility (the "DIP Facility") that would allow the Debtors to fund their ordinary course operations and the administration of these chapter 11 cases, and ultimately consummate the value-maximizing transactions embodied in the Plan. The DIP Facility provides the Debtors with $250 million of new money—$125 million of which was approved upon entry of the Interim DIP Order—and the consensual use of Cash Collateral.

3. The facts are simple. The Debtors' need for the liquidity is undisputed. That DIP Facility (a) was, and remains, the ***only*** actionable debtor-in-possession financing available to the Debtors under the facts and circumstances of these chapter 11 cases—notwithstanding the Debtors' marketing efforts and the ample opportunity for any party to put forth a proposal—

[8] On the Petition Date and excluding any of the Plan Sponsor's holdings, the Debtors had support for the Restructuring Support Agreement from 72.2% of the Cash Flow Term Loan Facilities and the Secured Notes in the aggregate, including 83.1% of the Cash Flow Term Loan Facilities and 56.3% of the Secured Notes individually.

and (b) contains terms and conditions that are reasonable, fair, within market, and appropriate under the Bankruptcy Code.

4. The Minority Holdout Group (and its subsect Minority First Lien Lender Group) are the ***only*** parties objecting to the entry of the Final DIP Order. ***No other party*** has raised any informal or formal objections to the Final DIP Order. Their objection expends dozens of pages on allegations that are wholly irrelevant to final approval of the DIP Motion and that serve as nothing more than a preview of baseless confirmation objections to come—but do nothing to alter the simple facts stated above. The Objecting Parties' objections are a self-interested and flawed attempt to displace the Debtors' reasonable business judgment under the purview of disinterested and independent directors.

5. The Debtors, the Secured Ad Hoc Group, and the Plan Sponsor have engaged with the Objecting Parties since the entry of the Interim DIP Order, both in formal mediation proceedings and in multiple informal sessions, to address the issues raised in the DIP Objections. No resolution was possible, nor will be possible, for so long as the Objecting Parties refuse to acknowledge the simple facts.

6. The relatively few words spent in the DIP Objections on substantive arguments also fail because (a) no non-priming financing alternative is available to the Debtors, (b) entry into the DIP Facility is a sound exercise of the Debtors' business judgment, as approved by disinterested and independent directors, (c) the Debtors' marketing efforts were sufficient and appropriate under the circumstances, and (d) the Plan is not a *sub rosa* plan. Therefore, the DIP Objections should be overruled, and the DIP Facility should be approved on a final basis to allow the Debtors to proceed to confirmation of their broadly-supported Plan for the benefit of their estates and stakeholders.

## Omnibus Reply

### I. Entry into the DIP Facility Is Appropriate Under Section 364 of the Bankruptcy and Reflects a Reasonable Exercise of the Debtors' Business Judgment.

#### A. The Standard For Approval Under Section 364 of the Bankruptcy Code is a Reasonable Exercise of a Debtors' Business Judgment.

7. Section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is "unable to obtain such credit otherwise" and, absent consent of the requisite lienholder, the debtor provides "adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d)(1). Courts grant considerable deference to a debtor's business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) ("The business judgment rule's presumption shields corporate decision-makers and their decisions from judicial second-guessing . . . ."). Indeed, courts "will uphold the board's decisions as long as they are attributable 'to any rational purpose.'" *Id*.

8. Here, the DIP Facility meets the basic requirements for approval under section 364(d) of the Bankruptcy Code. The DIP Facility provides the Debtors with sufficient credit to fund their ordinary course operations while pursuing a value maximizing prepackaged plan of reorganization supported by all voting classes, while the Minority Holdout Group's proposed DIP facility (the "Minority Holdout Group DIP Proposal") contemplates the provision of credit on a "non-priming" basis, section 364(d) of the Bankruptcy Code does not obligate a debtor to accept *any* credit. In considering postpetition financing proposals, courts have held that "[r]elevant features of the financing must be evaluated, including non-economic elements, such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a

successful reorganization." *See In re ION Media Networks, Inc.*, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009); *see also In re Snowshoe Co, Inc.*, 789 F.2d 1085. 1088 (4th Cir. 1986) (affirming approval of a priming DIP over alternative DIP lender's objections claiming it was willing to provide a junior DIP). Here, the Debtors' marketing process—which included engagement with several sophisticated parties who conducted extensive diligence on the Debtors' business prior thereto—yielded no alternatives to, or even interest in, the DIP Facility outside of the Minority Holdout Group DIP Proposal. *See* Suppl. Banks Decl., ¶¶ 17, 29. The Minority Holdout Group DIP Proposal, the only alternative proposal submitted to the Debtors, does ***not*** provide the Debtors with the ability to consummate a prepackaged chapter 11 plan, leave general unsecured claims unimpaired, or provide approximately $3.9 billion of net debt deleveraging. In contrast, the Minority Holdout Group DIP Proposal would result in significant uncertainty and delays in these chapter 11 cases and carries substantial costs and execution risk when considering the Debtors' path to emergence. As a result of the foregoing, the Debtors are unable to otherwise obtain the credit provided by the DIP Facility on a non-priming basis and the requisite lienholders have consented to the DIP Facility. Accordingly, the DIP Facility complies with the policies and provisions of the Bankruptcy Code and deference should be given to the Debtors' reasonable exercise of their business judgment in selecting the DIP Facility.

9. Under the "business judgment" standard, the relevant inquiry is "whether a reasonable businessperson would make a similar decision under similar circumstances." *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 799 (Bankr. D. Del. 2007) (declining to "entertain an objection to [a] transaction . . . that . . . involves a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy Code]"). In the case of a

challenged business decision, so long as that question is answered in the affirmative, courts will defer to the decisionmaker's business judgment. *See, e.g.*, *In re Ames Dep't Stores*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990); *Quality Inns Int'l., Inc. v. L.B.H. Assocs. Ltd. P'ship*, 1990 WL 116761, at *7 (4th Cir. July 26, 1990).

10. In the postpetition financing context, relevant factors include the debtor's particular circumstances (including relative to potential postpetition lenders), as well as economic and non-economic considerations relating to postpetition financing arrangements, including such consequences, related execution risk, and corresponding prejudicial impact on a debtors' reorganization efforts. *See, e.g.*, *In re ION Media Networks Inc.*, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009). The Minority Holdout Group argues that *Ion Media* is not applicable here because both DIP proposals at issue in that case were priming DIP facilities and "[a] priming fight is not a risk here." *See* Minority Holdout Group Objection, ¶ 69. The Minority Holdout Group is wrong. *Ion Media* stands for the proposition that a debtor can consider, and section 364 of the Bankruptcy Code does not bar a debtor from considering, various risks and factors in assessing financing proposals, including a guaranteed exit proposal, as the Debtors properly did here. As set forth in the Supplemental Banks Declaration and herein, the Debtors and the Special Committee, in consultation with their advisors, determined, in their reasonable business judgment, that the DIP Facility represented the Debtors' only actionable source of financing for these prepackaged chapter 11 cases and was appropriate under the facts and circumstances.

11. Notwithstanding the foregoing, the Objecting Parties argue in favor of a higher standard than business judgment without demonstrating the basis for heightened review. The Objecting Parties argue for the "entire fairness" standard to apply, however, such a standard is only appropriate in one of two circumstances. The first is where "directors individually and the

board collectively fail to inform themselves fully and in a deliberate manner." *In re Bridgeport Holdings, Inc.*, 388 B.R. 548, 569 (Bankr. D. Del. 2008) (internal quotations omitted). The second is "in the face of illicit manipulation of a board's deliberative processes by self-interested corporate fiduciaries." *In re Integrated Resources, Inc.*, 147 B.R. 650, 658 (S.D.N.Y. 1992) (internal quotations omitted). Neither of those circumstances is present here. As the evidence will show, the disinterested and independent directors of the Special Committee, acting independently and with the advice of its independent counsel, Quinn Emanuel Urquhart & Sullivan, LLP, reviewed, analyzed, and ultimately approved the DIP Facility on a fully informed basis.[9]

12. As set forth in the Laurinaitis Declaration and the Meltzer Declaration, the Special Committee is comprised of two disinterested and independent directors—Peter Laurinaitis and Roger Meltzer. *See* Laurinaitis Decl., ¶ 10; Meltzer Decl., ¶ 5. Under Delaware law a disinterested director is a director "who is not a party to the act or transaction and does not have a material interest in the act or transaction or a material relationship with a person that has a material interest in the act or transaction." 8 Del. Code § 144(e)(4). Neither Mr. Laurinaitis nor Mr. Meltzer were parties to the DIP or RSA. Additionally, neither director had a relationship with a DIP Lender or RSA party that had a material interest in the DIP or RSA.[10] Mr. Laurinaitis and Mr. Meltzer

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[9] The Objecting Parties cite *Quadrant Structured Products Co. v. Vertin* and *Holten* to support their arguments in favor of heightened review, however, these cases are easily distinguishable. In *Quadrant Structured Products Co. v. Vertin*, the Delaware Chancery Court applied the entire fairness standard to transactions coerced by the controlling shareholder who exerted influence over the company's CEO and board without any "indication[] . . . that the [company] deployed any procedural protections to limit the influence of [the controller] and its representatives on the Board." 102 A.3d 155, 195 (Del. Ch. 2014). Similarly, the Court in *Holten* applied heightened scrutiny because the company "did not form a special committee to evaluate" a contract where the controlling shareholder negotiated his own employment agreement. *Holten v. Standard Parking Corp*., 98 F. Supp. 3d 444, 448 (D. Conn. 2015). Here, the Special Committee was indeed formed, and no party controlled the Special Committee, who independently determined that entry into the DIP Facility was in the best interests of the Debtors and their estates.

[10] The Objecting Parties cite *Chrystall v. Serden Techs* to argue that the Special Committee is interested in these transactions due to the releases contemplated under the Plan. *Chrystall v. Serden Techs* does not stand for the general proposition that granting a director a release as part of a transaction means the director is interested in the transaction. In *Chrystall*, the court concluded that a director was interested in a settlement agreement where the

confirmed that they do not have a financial relationship with any Company entity or any equity holder of any Company entity, nor have they had any employment, consulting, advisory, or directorship relationship during the last three years with any Company entity or any equity holder of any Company entity. *See* Laurinaitis Decl., ¶¶ 7-8, 26; Meltzer Decl., ¶ 6.

13. Since its formation, the Special Committee scheduled regular meetings with the Debtor's advisors, meeting on a weekly basis for the past several months (and more frequently on an as-needed basis) to consider transactional options, stakeholder feedback, and any potential conflict matters in connection therewith, and to provide guidance to the management team and advisors regarding the Special Committee's position on such options. After this thorough process, the Special Committee unanimously approved the Debtors' entry into the Restructuring Support Agreement and the DIP Facility. *See* Laurinaitis Decl., ¶ 24.

14. Notwithstanding the limited circumstances in which a heightened standard of review is merited—none of which are present here—the Objecting Parties seek to create a new scenario requiring a heightened standard of review with no legal or factual bases. The mere fact that an insider, represented by its own independent advisors, is providing only 12.1% of the DIP Facility does not render the DIP Facility an "insider" financing facility, nor does it warrant doing away with the business judgment rule. This is especially true when (a) disinterested and independent directors were appointed and a Special Committee approved the DIP Facility and (b) the DIP Facility was negotiated with an ad hoc group of secured lenders, who are

director used corporate assets to obtain a settlement agreement that released him of personal liability in a lawsuit that he, along with the company, was party to and where indemnification was not available to the director under Delaware law because of his wrongful conduct. *See Chrystall v. Serden Techs.*, 913 F.Supp.2d 1341, 1354 (S.D. Fla. 2012). Here, there are no such allegations against the Special Committee.

providing 78.4%, of the DIP Facility and represented by sophisticated advisors.[11] The Plan Sponsor was not involved in the decision to approve the DIP facility, nor was it present when the DIP Facility was approved by the independent directors of the Special Committee.

15. Under Delaware law, even a controlling shareholder transaction is entitled to the business judgment rule when, as is the case here, the transaction was approved by a special committee with delegated authority to negotiate and approve the transaction. *See Rutledge v. Clearway Energy Grp. LLC*, 2026 WL 548504, at *7 (Del. Feb. 27, 2026) (explaining that subsection (b) of section 144 of Delaware General Corporations Law displaced the Delaware Supreme Court's ruling in *Match* and codified the result the defendants advocated); *see also In re Match Grp., Inc. Deriv. Litig.*, 315 A.3d 446, 463 (Del. 2024) (explaining that defendant argued that approval by a special committee, alone, was sufficient to "invoke business judgment review in controlling stockholder transactions"); *see* 8 Del. Code § 144(b)(1) (setting forth the safe harbor for controlling stockholder transaction if transaction is approved by special committee consisting of at least two disinterested directors, that is aware of the material facts of the transaction, has delegated authority to negotiate and approve the transaction, and that votes to approve the transaction in good faith and without gross negligence).

16. Here, unlike in *In re L.A. Dodgers*, where the debtors' controlling shareholder personally owed the proposed DIP lenders over $5 million, the independent and disinterested members of the Special Committee holistically reviewed and considered the Debtors' postpetition financing alternatives and approved the Debtors' entry into the DIP Facility, finding the terms to be well within market. As a result, the business judgment standard applies to the approval of

[11] For the avoidance of doubt, the Debtors negotiated against the Plan Sponsor and its own sophisticated advisors in negotiating the DIP Facility and the other transaction documentation related to these chapter 11 cases.

the DIP Facility. In choosing a competitive proposal that provides the foundation for a confirmable prepackaged plan of reorganization, the Debtors have met the business judgment standard.

### B. Even If Entire Fairness Were the Appropriate Standard, the DIP Facility Should Be Approved.

17. Even if the more onerous entire fairness standard is applied here—which there is absolutely no basis to do—the DIP Facility would nonetheless satisfy the heightened standard. To satisfy the entire fairness standard, fair price and fair process must be satisfied, examined together as a whole. *In re Green Field Energy Servs., Inc.*, 594 B.R. 239, 297 (Bankr. D. Del. 2018). Further, under such standard, "[t]he key inquiry is not whether some hypothetical alternative might have been 'better' in the abstract, but whether the Debtor adopted a reasonable, good-faith process to obtain financing that was realistically obtainable and justified under the circumstances." *In re SPAC Recovery Co.*, 2026 WL 18778, *9 (Bankr. S.D.N.Y. Jan. 2, 2026).

18. *First*, courts have held that it can be established that entry into a DIP facility was done at a fair price if no "better alternatives were available." *See In re Latam Airlines Grp. S.A.*, 620 B.R. 722, 791 (Bankr. S.D.N.Y. 2020); *see also In re Zohar III, Corp.*, No. 18-10512-KBO, 2022 WL 11110270, at *3 (D. Del. Oct. 19, 2022) (citing to *Latam Airlines* when explaining how to determine a fair price in the context of evaluating a sale process). Here, there were no alternatives to the DIP Facility that provided the Debtors with a foundation to support confirmation of a value maximizing prepackaged chapter 11 plan. *See* Suppl. Banks Decl., ¶ 26. As outlined in the Supplemental Banks Declaration, when considering the interest rate, the all-in fees, and the tenor, the economic impact of the DIP Facility compares favorably to recent precedent DIP financings Evercore reviewed. *See* Suppl. Banks Decl., ¶ 25. Therefore, even if entire fairness was the appropriate standard, the DIP Facility satisfies such standard.

19. *Second*, the Debtors adopted a fair process. As further described herein, the Debtors engaged in a marketing process to solicit out-of-court financing proposals, with discussions beginning in the fall of 2025. The Debtors, along with their advisors, engaged extensively with the Secured Ad Hoc Group, the Minority Holdout Group, certain prepetition lenders, comprised of seventeen banks and financial institutions, and the Plan Sponsor. Suppl. Banks Decl., ¶ 9. Six third-parties signed non-disclosure agreements and two third parties, along with the Minority Holdout Group, advanced to further diligence stages. *See id.* at ¶ 11. The Debtors also led a marketing process to elicit DIP financing proposals from third parties. Evercore contacted eight, sophisticated potential lenders, all of which had done significant diligence on the Company during the Debtors' out-of-court marketing process. *Id.* at ¶ 17. As shown by the Minority Holdout Group's own proposal, it is evident that these parties, given their work previously done, had sufficient time to put forth a proposal. *Id.* at ¶ 12. Notwithstanding the efforts of the Debtors and their advisors, none of these parties, outside of the Minority Holdout Group, were interested in moving forward with providing alternative DIP financing proposals. *Id.* And despite the public nature of these proceedings over the last six weeks, no party has come forth during the pendency of these chapter 11 cases with a proposal—or even indicating interest—with respect to DIP financing.

20. Furthermore, the DIP Facility was approved by independent, disinterested directors. Contrary to the Minority Holdout Group's baseless assertions, such independent fiduciaries are well-positioned to ensure the integrity of the DIP marketing and negotiation process and were involved in, and ultimately recommended and approved, the Debtors' entry into the DIP Facility as the best and only actionable option available to the Debtors. The record is clear that the Debtors' process was fair and reasonable.

## II. The DIP Facility Marketing Was Sufficient to Elicit Alternative Proposals, Section 364 Findings Are Supported by the Record, and Section 364(e)'s Good Faith Protection Should Be Extended to the DIP Facility.

21. As stated in the Supplemental Banks Declaration, the Debtors engaged in a fulsome marketing process to solicit out-of-court financing proposals, with discussions beginning in the fall of 2025, including engaging with the Secured Ad Hoc Group, the Minority Holdout Group, certain prepetition lenders, and the Plan Sponsor. Suppl. Banks Decl., ¶ 9. Despite those prepetition marketing efforts and hard-fought negotiations undertaken by the Debtors, the Debtors obtained no actionable proposals for postpetition financing other than the DIP Facility. Suppl. Banks Decl., ¶ 11, 16. "The key inquiry is not whether some hypothetical alternative might have been 'better' in the abstract, but whether the Debtor adopted a reasonable, good-faith process to obtain financing that was realistically obtainable and justified under the circumstances." *In re SPAC Recovery Co.*, 2026 WL 18778, *9 (Bankr. S.D.N.Y. Jan. 2, 2026) (citations omitted) (analyzing a debtor's entry into a postpetition financing agreement under the more stringent entire fairness standard).

22. Further, the inclusion of the sponsor in DIP financing negotiations does not constitute bad faith, as argued by the Minority Holdout Group. Minority Holdout Group Objection, ¶¶ 119-22. Rather, the appropriate standard for a finding of good faith under section 364(e) of the Bankruptcy Code is whether DIP financing "is an arms-length transaction between independent entities seeking to further their own commercial interests." *In re Olde Prairie Block Owner, LLC*, 460 B.R. 500, 509 (Bankr. N.D. I'll. 2011). That is clearly the case here. As noted above, the Plan Sponsor did not lead the negotiations with the Debtors regarding the DIP Facility, nor was it involved in the decision to approve the DIP Facility, and all parties to the DIP Facility—including the Debtors and the Secured Ad Hoc Group—have zealously advocated for their own commercial interests.

23. The Minority Holdout Group further claims it was excluded from the marketing process and presented with misleading solicitation materials. Minority Holdout Group Objection, ¶ 121. The Debtors and their advisors were in communication with the Minority Holdout Group and its advisors almost daily leading up to the filing of these chapter 11 cases. Suppl. Banks Decl., ¶ 9. The dual-track negotiation process helped the Debtors and their advisors create competitive tension among the interested parties. *See id.* at ¶¶ 9–10. The result was a DIP Facility that provides the Debtors with the requisite liquidity and a clear and efficient path to emergence. The Minority Holdout Group's own submission of a DIP proposal contradicts that they were in any way harmed by the process undertaken by the Debtors.

24. As discussed above, and contrary to the Minority Holdout Group's claims, the Debtors conducted a marketing process for DIP financing from third parties, with Evercore reaching out to sophisticated potential lenders, all of which had done significant diligence on the Company during the prepetition, out-of-court financing process, which ultimately did not lead to any alternative DIP proposals to the financing provided by the DIP Facility. *Id.* at ¶ 17. Thus, despite the Debtors' comprehensive, good-faith marketing efforts, no superior proposals to the proposed DIP Facility were received. *See id*. Therefore, the Debtors' entry into the DIP Facility followed a sufficient, open marketing process, as overwhelmingly supported by the evidence before this Court. Entry into the DIP Facility should, therefore, be approved on a final basis as the findings in the DIP Orders are entitled to the good faith protections of section 364(e) of the Bankruptcy Code.

## III. The Roll-up Is Market and Valid Under the Bankruptcy Code.

### A. The Roll-up Is Not Structured to Benefit Certain Lenders at the Expense of the Debtors' Estates.

25. There is nothing remarkable about the roll-up in the DIP Facility—the 1:1 roll-up is well within market ranges. *See e.g.*, *In re Del Monte Foods Corp. II*, No. 25-16984 (MBK) (Bankr. D.N.J. Aug. 12, 2025) (authorizing a 1.5:1 roll-up on a final basis); *In re Vyaire Medical, Inc.*, No. 24-11217 (BLS) (Bankr. D. Del. Jul. 11, 2024) (authorizing a 3:1 roll-up on a final basis); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. Apr. 4, 2024) (authorizing a 3:1 roll-up on a final basis); *In re Sientra, Inc.*, No. 24-10245 (JTD) (Bankr. D. Del. Mar. 11, 2024) (authorizing a 3:1 roll-up on a final basis); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. June 15, 2023) (authorizing a 5:1 roll-up on a final basis).

26. The Minority Holdout Group cites *In re Saybrook Mfg. Co.*, 963 F.2d 1493, 1494-96 (11th Cir. 1992), which found cross-collateralization "controversial" and holding it to be unauthorized by section 364 of the Bankruptcy Code. *Saybrook* is distinguished, however, by *In re S B Building Associates LP*, 621 B.R. 330 (Bankr. D.N.J. 2020), which recognizes cross-collateralization is allowed when necessary for the debtor to reorganize, without which the debtor would be "forced to liquidate and unsecured creditors would receive a greatly diminished recovery or no recovery at all." *Id.* at 367. That is, cross-collateralization is allowed where it is a key provision in the global settlement and a "cornerstone of the plan" with the overwhelming support of creditors. *Id.* This is the case here.

27. The DIP Facility is necessary to preserve the value of the Debtors' estates as a whole. *See* Suppl. Koza Decl., ¶¶ 13–19. Without the DIP Facility, the Debtors would have had to cease operations within a week of filing. *See In re Multi-Color Corp.*, Hr'g Tr. 45:18–21, Jan. 30, 2026 ("Jan. 30 Hr'g Tr.") ("Q: Just cutting to the bottom line, if the debtors do not receive

interim financing, approximately how long can they continue to operate given the current cash available? A: We wouldn't make it next week."); *see also* First Day Decl. at ¶ 71 ("[T]he Debtors are unable to administer these Chapter 11 Cases or continue ordinary course operations absent access to the DIP Facility."). The continued operation of the Debtors' business, which requires the liquidity provided under the DIP Facility, is necessary to maximize the value of their estates. *See* Suppl. Koza Decl. at ¶ 16 (noting how, without access to the DIP Facility, substantial impairment to the Debtors' business operations would harm the value of the Debtors' estates). The DIP Lenders would not provide the DIP Facility without the inclusion of a roll-up, which the Debtors negotiated to keep at a 1:1 ratio. *See* Suppl. Banks Decl., ¶¶ 20-21. Because the DIP Facility is the only actionable DIP proposal setting the foundation for the Debtors' prepackaged chapter 11 cases, the roll-up is necessary to the Debtors successful reorganization. As a result, the primary beneficiaries of the DIP Facility, including the roll-up, are the Debtors' and their estates, and the DIP Facility should be approved on a final basis.

**B. The Roll-up Has a *De Minimis* Impact on Recoveries for Unsecured Creditors.**

28. The Minority Holdout Group's allegations that that the DIP Facility roll-up would transfer between $133 million and $167 million of value away from the potential recovery of unsecured creditors is wholly inaccurate. Based on the Waterfall Analysis, after accounting for the DIP Facility ***except for*** the roll-up, there remains only $99 million of unencumbered value for unsecured creditors (including deficiency claims). *See* Kopa Decl., ¶ 19. Assuming that the Plan continued to leave general unsecured claims unimpaired—which would not be the case absent a consensual DIP facility with the Debtors' secured creditors—such $99 million would be allocated to Holders of Class 5 Claims, with approximately $74 million allocated for the Holders of First Lien Deficiency Claims and approximately $25 million allocated for the Holders of Unsecured Notes Claims. *See id.* If general unsecured creditors were not unimpaired and participated in such

value, Holders of First Lien Deficiency Claims and Holders of Unsecured Notes Claims would receive materially less than the amounts set forth above.

29. In comparison, Holders of Class 5 Claims are estimated to receive approximately $83.75 million under the Plan ***despite*** the DIP Facility roll-up. Of that $83.75 million, approximately $52.4 million would be allocated for the Holders of First Lien Deficiency Claims and approximately $31.3 million would be allocated for the Holders of Unsecured Notes Claims. *See id.*, ¶ 20. As a result, the recovery for Unsecured Notes Claims under the Plan (*i.e.*, after accounting for the DIP roll-up) is ***greater*** than the $25 million set forth above (*i.e.*, solely allocating unencumbered value without the DIP roll-up)—which, again, ignores the impact of general unsecured creditors participating in such value. *See id.* In other words, Holders of Unsecured Notes Claims are receiving more under the Plan (with the DIP roll-up) than the unencumbered value that they *may* at most be entitled to without the DIP roll-up. There is therefore ***no*** adverse impact of the DIP roll-up, based on the midpoint of the Waterfall Analysis, relative to what Holders of Unsecured Notes Claims are estimated to receive under the Plan. *See id.* When factoring in that the DIP roll-up helps ensure unimpairment for ***all*** general unsecured creditors, it is clear that unsecured creditors are better off with the proposed DIP Facility and related roll-up.

**C. Even If There Is Significant Unencumbered Value, the Roll-up Is Appropriate.**

30. The DIP Facility is necessary to continue operations in the normal course of business, administer these chapter 11 cases, and maintain relationships with customers and vendors. *See* Suppl. Koza Decl., ¶¶ 13, 20. The DIP Facility (including the roll-up) was the only viable alternative presented to the Debtors and required the inclusion of the roll-up. *See* Suppl. Banks Decl., ¶¶ 20-21, 28. In a situation like this, it is appropriate to approve a roll-up that is part of the only actionable DIP proposal that is critical to the Debtors' ongoing operations, even if,

assuming arguendo, that the roll-up encumbers significant prior unencumbered value. *See In re Phoenix Servs. Topco*, Hr.'g Tr. 70:19–71:3, 72:5–8, Sept. 29, 2022 (approving a 3:1 roll-up where collateral package was expanded from a pledge of 65% of foreign entities' equity to 100% of foreign entities' equity). There is no case law or statute that dictates otherwise.

## IV. The Backstop Premium Is Standard and Fair.

31. The Backstop Premium is a standard provision, necessary to entice the backstop parties and to obtain their commitment to provide ***the full $250 million*** of requisite financing under the DIP Facility, which includes amounts that were offered to other Holders of First Lien Claims, including members of the Minority Holdout Group holding First Lien Claims. As a "customary" fee, the Backstop Premium here serves as "a material component of the overall terms that were specifically required by the DIP Lenders in order to extend postpetition financing and to agree on the comprehensive restructuring transactions embodied in the Restructuring Support Agreement." *See* Suppl. Banks Decl., ¶ 23. The Backstop Premium is a necessary component of the DIP Facility in order to compensate the lenders for their commitments. Furthermore, courts frequently approve similar backstop fees. *See In re STG Logistics, Inc.*, No. 26-10258 (MEH) (Bankr. D.N.J. Feb. 10, 2026) (approving a backstop fee of 5.55% on a final basis); *In re Marelli Automotive Lighting USA LLC*, No. 24-11034 (Bankr. D. Del. July 30, 2025) (approving a backstop fee of 5% on a final basis); *In re Vyaire Med., Inc.*, No. 24-11217 (Bankr. D. Del. Jun. 12, 2024) (approving a backstop fee of 5% on an interim basis); *In re Thrasio Holdings, LLC*, No. 24-11840 (CMG) (Bankr. D.N.J. Apr. 4, 2024) (approving a 7.5% backstop premium on a final basis); *In re Careismatic Brands, LLC*, No. 24-10561 (Bankr. D.N.J. Feb. 29, 2024) (approving an 11% backstop premium on a final basis). Thus, the Backstop Premium is standard and fair and should be approved on a final basis.

## V. The DIP Facility Does Not Breach the Cash Flow Credit Agreement.

### A. The Minority Holdout Group's Allegations That the Debtors Are Not in Compliance with Their Prepetition Debt Documents Are Unfounded.

32. In its unfounded allegations, the Minority Holdout Group argues that the Debtors are not in compliance with the Intercreditor Agreements.[12] As counsel for the ABL Agent outlined on the record, the prepetition liens are still valid and continuing and the Intercreditor Agreements work in parallel with the Interim DIP Order. Jan. 30 Hr'g Tr. at 168:14-18; 177:19-2.

33. Findings that the prepetition liens are valid and continuing are standard provisions in DIP orders approved in this district and others. *See In re Pretium Packaging, LLC*, No. 26-10896 (CMB) (Bankr. D.N.J. Feb. 18, 2026) (validating the continuation of prepetition liens on a final basis); *In re Anthology, Inc.*, No. 25-90498 (Bankr. S.D. Tex. Sept. 30, 2025) (same); *In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. Jan. 29, 2024) (same); *In re Yellow Corp.*, No. 23-11069 (Bankr. D. Del. Aug. 18, 2023) (same); *In re Nielsen & Bainbridge, LLC*, No. 23-90071 (Bankr. S.D. Tex. Feb. 10, 2023) (same). Finally, the Bankruptcy Code does not require compliance with the Debtors' prepetition debt documents. *See* 11 U.S.C. § 365 (permitting rejection of prepetition contracts); *Keybank Nat'l Ass'n v. Franklin Advisers,*

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[12] "Intercreditor Agreements" means collectively, that certain First Lien Intercreditor Agreement, dated as of July 1, 2019, by and among LABL Acquisition Corporation, as Holdings (as defined therein), LABL, Inc., as lead borrower, the other Grantors (as defined therein) from time to time party thereto, Bank of America, N.A., as collateral agent for the Credit Agreement Secured Parties (as defined therein), and Wilmington Trust National Association, as collateral agent for the Indenture Secured Parties (as defined therein), and each additional agent from time to time party thereto, as may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time through the Petition Date, and (ii) that certain ABL Intercreditor Agreement, dated as of July 1, 2019, by and among Bank of America, N.A., as collateral agent for the Holders of the Revolving Credit Obligations (as defined therein), Bank of America, N.A., as collateral agent for the Holders of the Initial Fixed Asset Obligations (as defined therein), Wilmington Trust, National Association, as collateral agent for the Holders of the Initial Additional Fixed Asset Obligations (as defined therein), LABL Acquisition Corporation, as Holdings (as defined therein), LABL, Inc., as lead borrower, and certain subsidiaries of the lead borrower that sign an acknowledgement thereto from time to time as a borrower or guarantor, and the other parties from time to time party thereto, as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time through the Petition Date.

*Inc.*, 616 B.R. 14, 26 (Bankr. S.D.N.Y. 2020) ("[T]ransactions that are presented for approval are not barred just because they may breach contracts.").

34. Furthermore, the DIP Facility is necessary for the Debtors' reorganization efforts, irrespective of whether the DIP Facility complies with the prepetition debt documents. *See* Suppl. Koza Decl., ¶ 20. Section 364 of the Bankruptcy Code does not require that DIP financing comply with prepetition debt documents. In fact, section 364 of the Bankruptcy Code expressly provides debtors with the power to supersede prepetition debt documents, including through imposition of *pari passu* or priming liens on encumbered assets in exchange for adequate protection. 11 U.S.C. § 364(c), (d). While the DIP Facility consensually primes Holders of existing secured debt, the priming of such claims does not alter the recoveries proposed under the Plan, and therefore, does not negatively impact recoveries under the Plan. In sum, even if the DIP Facility violated the Debtors' prepetition debt documents, which it does not, the DIP Facility would not violate the Bankruptcy Code and should be approved on a final basis.

**B. The Roll-up Does Not Breach the Intercreditor Agreement or the Prepetition Cash Flow Credit Agreement Because the Roll-up Is Not a Repayment.**

35. Contrary to the Minority First Lien Lender Group's assertion, there is no repayment of existing prepetition debt. The roll-up is a cashless exchange of a prepetition claim, not a repayment of prepetition claims. *See* DIP Credit Agreement §§ 2.1(a)(iii)-(iv), 2.1(b)(iii)-(iv) (roll-up is "effected by means of a 'cashless' roll"); DIP Note Purchase Agreement § 2.1(c)-(d) (roll-up is an "exchange on a cashless basis"). The roll-up is effected by a cashless exchange of the prepetition claims—it is neither a repayment of, nor payment on account of, the prepetition loans, and does not violate the Intercreditor Agreement or the Prepetition Cash Flow Credit Agreement. *See* Intercreditor Agreement § 2.05(b)(C) (stating "each First Lien Secured Party agrees that it will raise no objection . . . unless the Controlling Collateral Agent, shall then oppose

or object . . . so long as . . . (C) if any amount of such DIP Financing and/or cash collateral is applied to repay any of the First Lien Obligations, such DIP Financing and/or cash collateral is applied [pro rata] . . . ."); Prepetition Cash Flow Credit Agreement § 4.8(a) (stating "[e]xcept as expressly otherwise provided herein, each payment . . . by a Borrower on account of principal of and interest on account of any Loans of a given Tranche . . . shall be allocated by the Administrative Agent pro rata. . . .").

36. This treatment is consistent with other roll-ups in large, complex chapter 11 cases, where the roll-up is structured as an exchange or conversion rather than a repayment. *Compare In re STG Logistics, Inc.*, No. 26-10258 (MED) (Bankr D.N.J. Jan. 14, 2026) (roll-up was structured where prepetition loans "shall be automatically deemed exchanged via assignment on a cashless basis into and shall be deemed to constitute DIP Obligations"); *In re Del Monte Foods Corp. II*, No. 25-16984 (MBK) (Bankr. D.N.J. July 2, 2025) (roll-up was structured where prepetition loans "shall be deemed converted into and exchanged for such Roll-Up Loans"); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. Mar. 1, 2024) (roll-up was structured where prepetition loans "shall be deemed converted from an equal amount of Prepetition First Lien Loans . . . into and exchanged for such Roll-Up Loans") *with In re RiteAid Corp.*, No. 23-18993 (Bankr. D.N.J. Oct. 17, 2023) (roll-up was structured where prepetition loans "shall be authorized and deemed to have repaid and refinanced the Prepetition FILO Loans with the Roll-Up DIP FILO Loans" and "shall be refinanced and repaid by and with Roll-Up DIP Revolving Loans and shall constitute DIP ABL Obligations"); *In re Monitronics Corp.*, No. 23-90331 (Bankr. S.D. Tex. May 16, 2023) (roll-up was structured where "the DIP Loan Parties' immediate[ly] use a portion of the proceeds of the DIP Facility to repay in cash in full all outstanding 2019 Exit Facility Debt").

37. In support of their argument, the Minority First Lien Lenders cite to *In re American Tire Distributors, Inc*. *See* Minority First Lien Lender Group Original Objection at ¶ 13. While the court in *American Tire Distributors* expressed skepticism in dicta about whether the roll-up was a repayment of prepetition debt at a hearing, the court entered a final DIP order that expressly provided that the ABL roll-up "shall not be deemed to be a repayment under [the prepetition credit agreement]." *In re American Tire Distributors, Inc.*, No. 24-12391 (Bankr. D. Del. Nov. 22, 2024) [Docket No. 340]. The Minority First Lien Lender Group also cite an adversary proceeding complaint filed in *In re Del Monte Foods Corp. II* in support of their argument. *See* Minority First Lien Lender Group Original Objection at ¶ 14. That adversary proceeding *complaint* is not a decision by a court and is neither persuasive nor authoritative to support the proposition that courts apply close scrutiny to roll-ups that exclude certain creditors.

38. But even if the cashless exchange contemplated by the DIP Facility were considered a repayment—which it is not—section 11.7 of the Cash Flow Credit Agreement contains an express exception permitting non-*pro rata* transactions pursuant to section 11.6(h) thereof. Section 11.6(h), in turn, provides that "[n]otwithstanding anything to the contrary contained [in the Cash Flow Credit Agreement]," the Debtors are permitted to "purchase or prepay Loans, in each case, on a non-pro rata basis through . . . (2) open market or other privately negotiated purchases[.]" *See* Cash Flow Credit Agreement §§ 11.7; 11.6(h)(i).

39. Further, bankruptcy courts have the power to approve transactions, including DIP financings, that breach prepetition contracts. *See Keybank Nat'l Assoc. v. Franklin Advisers, Inc.*, 616 B.R. 14, 26 (Bankr. S.D.N.Y. 2020) ("[T]ransactions that are presented for approval [by a bankruptcy court] are not barred just because they may breach contracts."); *see also A & K Endowment, Inc. v. Gen. Growth Props., Inc. (In re Gen. Growth Props., Inc.)*, 423 B.R. 716, 726

(S.D.N.Y. 2010) (explaining that "the Bankruptcy Code preempts prepetition contracts," and so the bankruptcy court had the power to grant DIP financing secured by a lien on property of the estate, despite the existence of a prepetition stock agreement that prohibited placing a lien on certain property without approval).

40. Assuming *arguendo* that the DIP Facility breaches the Cash Flow Credit Agreement, the Court should still approve the DIP Facility because, as described more fully above and in the DIP Motion, the Debtors' decision to enter the DIP Facility is a reasonable exercise of their business judgment and in the best interest of the Debtors' estates and all stakeholders. The DIP Facility provides the Debtors with the liquidity needed to fund ordinary course operations and the administration of these chapter 11 cases. *See* Suppl. Koza Decl., ¶ 14. The DIP Facility was the product of good faith and arm's-length negotiations, and has customary economic terms, some of which are highly competitive and favorable to the Debtors. *See* Suppl. Banks Decl., ¶¶ 22-25. Importantly, the DIP Facility represents the only actionable postpetition financing option available to the Debtors. *See id.* at ¶ 25. As a result, the Debtors determined, in a proper exercise of their business judgment, that they should proceed with the DIP Facility. Accordingly, the Court should approve the DIP Facility regardless of whether the DIP Facility breaches the Cash Flow Credit Agreement. *See In re Multi-Color Corporation*, Hr'g Tr. 28:3–9, Feb. 2, 2026 (explaining that concerns regarding violations of prepetition debt documents "do not warrant denial of the DIP facility").

41. Finally, the Minority First Lien Lenders are prohibited from objecting to the DIP Financing as the Controlling Collateral Agent under the Intercreditor Agreement does not object to such financing. *See* Suppl. Banks Decl., ¶ 13. The Minority First Lien Lenders argue that the Intercreditor Agreement does not prohibit the objection because non-pro rata sharing of payments

is a condition to the collateral agent consenting to the DIP financing. *Id.* As discussed herein, the roll-up component is not a repayment within the meaning of section 2.05(b)(C) of the Intercreditor Agreement because it is a cashless exchange or conversion, and therefore does not constitute a non-pro rata sharing of payments. Therefore, the Minority First Lien Lenders do not have the right to object to the DIP Facility.

**C. The Plan Satisfies Section 1123(a)(4) of the Bankruptcy Code.**

42. The Minority Holdout Group argues that "the roll-up opportunity offered exclusively to the Secured Ad Hoc Group amounts to unequal treatment of claims prohibited by section 1123(a)(4) of the Bankruptcy Code," relying on the decision in *In re ConvergeOne*. *See* Minority Holdout Group Objection, ¶ 109.

43. The DIP Facility does not lead to a plan that violates section 1123(a)(4) of the Bankruptcy Code and comports with the requirements of *ConvergeOne*, which is not binding precedent. The plan in *ConvergeOne* included a backstop and equity rights, offered only to certain first lien lenders, that allowed participants to purchase discounted equity in the reorganized company. *See ConvergeOne*, at *2–3. The court concluded that because the backstopping opportunity "was not offered to all class members nor subjected to a market test," it constituted unequal treatment of members of the same creditor class, and therefore violated section 1123(a)(4). *Id.* at *22. *ConvergeOne* is inapplicable for several reasons.

44. *First*, *ConvergeOne* involved an equity rights offering in a plan, not a DIP financing. *See id.* at *3. The court in *ConvergeOne* only discussed exclusive opportunities contained within a plan of reorganization. *See id.* at *9–13. The DIP Facility is not contained within the Plan and therefore does not fall within the ambit of *ConvergeOne* and section 1123(a)(4) of the Bankruptcy Code. If it did, then the Minority Holdout Group DIP Proposal and many DIP

financings approved by this Court and others around the country would also lead an unconfirmable plan if any portion of the DIP financings were not offered to all members of a class.

45. *Second*, the DIP Facility ***was*** subject to a market test, unlike the backstop equity rights offering in *ConvergeOne*. The court in *ConvergeOne* found that no matter what definition of market test was used, there was no market test in that case. *See id.* at *15. Here, as described in the Supplemental Banks Declaration, the Debtors, with the assistance of Evercore, undertook a marketing process to gauge potential interest of third parties in providing alternative DIP financing. *See* Suppl. Banks Decl., ¶ 17. This marketing process, "subjected the opportunity to a market test," and submitted "the deal to an 'open market,'" satisfying the requirements of *ConvergeOne*. *ConvergeOne*, at *8, *18.

46. The Minority Holdout Group points to the portion of the *ConvergeOne* opinion where the court explained that an illusory opportunity to propose an alternative plan was not a market test, and states that this case is similar. *See* Minority Holdout Group Objection, ¶ 111. The situation here is not similar. As discussed above, the Debtors, with their advisors, engaged in a marketing process where they actively solicited alternative proposals for DIP financing. *See* Suppl. Banks Decl., ¶ 17. The Debtors began their marketing process before they signed the Restructuring Support Agreement, a fact acknowledged by the Minority Holdout Group. *See* Minority Holdout Group Objection, ¶ 35 (explaining that the Debtors began their marketing efforts on January 22, 2026, before the Restructuring Support Agreement was signed). Even once the Debtors signed the Restructuring Support Agreement, the Debtors continued this marketing process, as the Minority Holdout Group concedes in the Minority Holdout Group Objection, by continuing to "'pester' the [Minority Holdout Group] for more information about their proposal." Minority Holdout Group Objection, ¶ 42. At that time the Debtors were not fully committed to

the DIP Facility as they could exercise their fiduciary out and accept an alternative proposal. *See* RSA § 12.03(b). Finally, unlike in *ConvergeOne*, the Debtors were able to continue to search for alternative proposals for DIP financing, even once they signed the RSA. *See* RSA § 8.02(b) ("[E]ach Company party . . . shall have the right to . . . solicit, consider, respond to, facilitate, and negotiate an Alternative Restructuring proposal for debtor-in-possession financing . . . ."); *see also ConvergOne*, at *18 n.7 (explaining that "the RSA precluded an attempt to seek other alternatives to the proposed 'deal' to the market as it had a 'no-shop' provision"). Therefore, the DIP Facility is distinguishable from the backstop equity rights offering in *ConvergeOne*, and the DIP Facility does not lead to an unconfirmable plan.

## VI. The DIP Facility Is Not a *Sub Rosa* Plan.

47. Here, the DIP Facility, while critical to the Restructuring Support Agreement, is not and does not constitute a *sub rosa* plan. A "*sub rosa* plan is one where a chapter 11 debtor constructs a broad settlement that amounts to a de facto plan of reorganization, which enables a debtor to restructure its debt while bypassing many of the Bankruptcy Code's fundamental creditor protections." *See In re Energy Future Holding Corp.*, 527 B.R. 157, 168 (D. Del. 2015), *aff'd sub nom. In re Energy Future Holdings Corp.*, 648 F. App'x 277 (3d Cir. 2016). "[C]ourts will reject proposed DIP loans as improper sub rosa plans where the terms of the loan include concessions to creditors or parties in interest that are unauthorized under, or in conflict with, provisions of the Bankruptcy Code." *In re LATAM Airlines Grp. S.A.*, 620 B.R. 722, 816 (Bankr. S.D.N.Y. 2020). For a DIP facility to constitute a *sub rosa* plan it must have "the effect of dictating the terms of a prospective chapter 11 plan." *In re Capmark Financial Grp. Inc.*, 438 B.R. 471, 513 (Bankr. D. Del. 2010).

48. The Plan Sponsor and Secured Ad Hoc Group do not have excessive control over the Debtors and the DIP Documents do not predetermine the outcomes of these chapter 11 cases

or circumvent the Bankruptcy Code. *See In re Empire Generating Co, LLC*, 2020 WL 1330285, at *9 (S.D.N.Y. Mar. 23, 2020) ("The RSA does not cement a reorganization . . . . [T]he RSA is an agreement about 'supporting things,' – not an approval of the sale. All plan terms remained subject to confirmation of the plan."); *Energy Future Holdings*, 648 F. Appx., at 285 (holding that because a settlement agreement "neither subverts the bankruptcy process nor impermissibly dictates the outcome to other creditors, it is not a *sub rosa* plan."). Similarly, the DIP Documents do not dictate recoveries for any creditors under the Plan, which is an entirely separate process from the DIP Facility and the relief requested under the DIP Motion.

49. The Minority Holdout Group also argues that the Restructuring Support Agreement obligates the Debtors to pursue the DIP Facility. *See* Minority Holdout Group Objection, ¶¶ 46-48, 117. The Restructuring Support Agreement, however, contains a "fiduciary out" allowing the Debtors to select the best possible DIP financing offer for the Debtors and their estates if one was presented, which there was not. *See* RSA §12.03(b). While the Minority Holdout Group claims that the fiduciary out is "illusory by design" because of the lock up provision, this is not true. Minority Holdout Group Objection, ¶ 47. The Debtors do not "violate any duty of good faith by accepting a lock up agreement that would effectively limit competing options." *In re Bush Indus., Inc.*, 315 B.R. 292, 304 (Bankr. W.D.N.Y. 2004) (stating, "[l]ife is not a computer simulation, through which one can test how variations of action will affect outcome. Perhaps shareholders might have enjoyed a greater recovery without the limiting impact of the Lock Up and Voting Agreement. On the other hand, this agreement also provided assurances of post-petition financing and of support for the plan by the only class of impaired creditors. Without the Lock Up and Voting Agreement, the debtor might have been unable to effect any distribution to general unsecured creditors."). Here, the Restructuring Support Agreement, and the Restructuring Transactions

contemplated thereunder, maximizes the value of the Debtors' estates to the benefit of all stakeholders.

50. Further, the fact that one group of creditors does not support the proposed treatment for itself under the Plan does not mean a transaction is a *sub rosa* plan. This is an issue for confirmation and not final approval of the DIP Facility. The Minority Holdout Group argues that the Backstop Premium and holdback dictate recoveries under the Plan. Minority Holdout Group Objection, ¶¶ 100-02. The Backstop Premium and holdback are instead economic concessions made by the Debtors to secure the critical, necessary, and statutorily valid DIP Facility. They do not "(i) dispose of all claims against the estate or (ii) restrict creditors' rights to vote." *Energy Future Holding*, 527 B.R. at 168. Simply put, the recoveries under the Plan in these chapter 11 cases are not predetermined. Debtor-in-possession facilities with new-money financing and modest roll-ups of prepetition debt are exceedingly common in modern bankruptcy practice, especially in complex chapter 11 cases with substantial quantities of funded debt. Either the DIP Facility here is not an impermissible *sub rosa* plan, or a vast number of such *sub rosa* plans are approved routinely and unknowingly by bankruptcy courts across the United States. It hardly bears noting that the latter is not the case.

51. In sum, the DIP Facility does not dictate the terms of the Plan, or any other chapter 11 plan. Therefore, the DIP Facility does not constitute an improper *sub rosa* plan.

## VII. The DIP Facility Is the Best Available Financing and Its Terms Are Customary and Well Within Market.

52. This Court should continue to consider the DIP Facility in context, and its terms are the best available when considering the headwinds facing the Debtors' business and with respect to the particular circumstances of these chapter 11 cases. *See, e.g.*, *ION Media*, 2009 WL 2902568, at *4; *In re Farmland Indus., Inc.*, 294 B.R. at 879-892 (evaluating postpetition financing

transaction comprehensively); *In re Elingsen McLean Oil Co., Inc.*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard bargains" to obtain postpetition financing). While the Minority Holdout Group DIP Proposal includes certain lower fees, the fees contemplated in the DIP Facility remain debtor-friendly and are the product of arm's-length, good-faith negotiations between the Debtors and the DIP Lenders, during which the Debtors secured meaningful concessions to benefit the Debtors' estates. Suppl. Banks Decl., ¶¶ 23-24. Nonetheless, the Minority Holdout Group objects to a number of terms in the DIP Orders that are customary and well within market for a DIP facility of this size. *See* Jan. 30 Hr'g Tr. at 59:17-19 ("Q: And based on Evercore's work here, do you believe that each of these terms are consistent with market ranges? A: I do.").

53. The Minority Holdout Group asserts that the indemnification provisions of the DIP Orders should not be approved on a final basis because the Debtors did not know about the value of the released claims. Minority Holdout Group Objection, ¶¶ 148-49. This is not the case. The indemnification provision in ¶ H(viii) DIP Orders indemnify the Prepetition Secured Parties and the DIP Secured Parties (each as defined in the DIP Credit Agreement) for certain losses and expenses in connection with to Extensions of Credit (as defined in the DIP Credit Agreement) made under the DIP. *See* DIP Credit Agreement § 4.12; DIP Note Purchase Agreement § 2.10. The Debtors and the Special Committee had sufficient information to assess the indemnification provisions contained in the DIP Orders and these types of releases are frequently approved in bankruptcy cases. *See, e.g.*, *In re STG Logistics, Inc.*, No. 26-10258 (MEH) (Bankr. D.N.J. Feb. 10, 2026) (approving DIP financing that included indemnification for DIP lenders and prepetition secured parties for liabilities arising out of or relating to transactions contemplated by DIP financing); *In re Del Monte Foods Corp. II*, No. 25-16984 (MBK) (Bankr.

D.N.J. Aug. 12, 2025) (same); *In re Carismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. Feb. 29, 2024) (same). Thus, the indemnification provisions of the DIP Orders are proper and should be approved on a final basis.

54. The opening of paragraph J of the Final DIP Order reads "Nothing herein constitutes a finding or ruling by the Court that any alleged Prepetition Permitted Senior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party in interest . . . to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Permitted Senior Lien." While paragraph J does find that the Prepetition Liens are valid and continuing, this finding is subject to the challenge period, and the Final DIP Order does not contain improper findings regarding the scope of the prepetition liens nor that the prepetition liens are valid and continuing. The Debtors continue to find that the Prepetition Liens are valid and continuing, with proper scope as set forth in the Final DIP Order. Given the Challenge Period remains in the Final DIP Order, the Objecting Parties rights under their pending adversary proceeding with respect to disputing such finding are fully reserved and not prejudiced by entry of the Final DIP Order with such finding. Therefore, the findings in paragraph J are appropriate.

## VIII. All First Lien Lenders Had the Opportunity to Participate in the DIP and the Roll-Up.

55. Participation in the DIP Facility and the roll-up was made available to ***all*** first lien creditors (including any Minority First Lien Lender), not just the parties backstopping the DIP Facility. *See* Interim DIP Order, ¶ 2(b) (authorizing the roll-up for DIP Lenders, which includes all participating lenders). As a result, the Minority First Lien Lender Group had the opportunity to participate in the roll-up, and, therefore, could have participated in, and benefitted from, the roll-up as all other non-backstop first lien creditors could have.

56. The Minority First Lien Lender Group argues that it is unfair that the parties to the Restructuring Support Agreement are allowing parties to participate in the DIP Facility, subject to first signing the Restructuring Support Agreement. Minority First Lien Lender Group Original Objection, ¶ 16. Accordingly, the Minority First Lien Lenders would like to participate in the DIP Facility without signing a joinder to the Restructuring Support Agreement that they claim supports a Plan that would favor the Secured Ad Hoc Group. *Id.* at ¶ 17. It would be unreasonable for a debtor to allow lenders to provide DIP financing while retaining the ability to waste estate resources by attacking the very deal that the lenders are benefiting from. Notably, Article II.C of the Plan provides that claims related to the DIP roll-up are converted into New Debt—and not repaid in cash, similar to the new money DIP loans—therefore requiring each DIP Lender's consent to such alternative treatment, which the Debtors reasonably need before permitting a lender to provide any of the DIP (and obtain the related roll-up). Otherwise, a DIP lender that does not support the Plan could mandate payment in full on account of its roll-up DIP loans. Therefore, it is well within the Debtors' business judgment to require such parties to support the Debtors' reorganization efforts. They are otherwise well within their rights to not participate and preserve their objections to the Debtors' efforts.

## IX. The Debtors Have Complied with Their Fiduciary Duties.

57. The transactions embodied in the Restructuring Support Agreement and DIP Facility are in the best interest of the Debtors' estates, and, therefore, maximize value for the benefit of all stakeholders, including the Objecting Parties. Rather than propose any explanation for how the Minority Holdout Group DIP Proposal would provide a viable path to emergence from these chapter 11 cases, the DIP Objections are a further attempt to seek greater recoveries for the Objecting Parties, at the expense of the Plan that, given the prepackaged nature of these cases, currently provides for 100% recovery to general unsecured creditors.

58. As the Minority Holdout Group itself acknowledges, the Restructuring Support Agreement contains a broad fiduciary out provision, permitting the Debtors to terminate the Restructuring Support Agreement in favor of a better transaction. *See* RSA § 12.03(b); Minority Holdout Group Objection, ¶ 126. This language explicitly permits the Debtors to abide by their fiduciary duties owed to all creditors. As explained above, the Minority Holdout Group DIP Proposal does not provide the Debtors with sufficient credit to fund their ordinary course operations while pursuing the value maximizing Restructuring Transactions embodied in the Plan, a fact the Minority Holdout Group simply refuses to recognize or accept. The Minority Holdout Group DIP Proposal would have led to an unconfirmable chapter 11 plan, given its lack of support from the Secured Ad Hoc Group and result in lower recoveries for *all* creditors because that proposal requires payment of secured claims of the Secured Ad Hoc Group in full.

## X. The Final DIP Order Is Lawful, Appropriate, and Should Be Approved.

### A. The Debtors' Potential Amendment to the DIP Documents Is Permissible.

59. The Minority Holdout Group argues that the Final DIP Order allows for amendments to the DIP documents without Court oversight. Minority Holdout Group Objection, ¶ 130. The potential amendments, however, are subject to a materiality standard, so the parties cannot materially change the bargain of the DIP Facility without Court approval. Such provisions are standard in DIP orders approved in this district. *See In re STG Logistics, Inc.*, No. 26-10258 (MEH) (Bankr. D.N.J. Feb. 10, 2026) (allowing future amendment of the DIP documents, provided any modification is not material); *In re United Site Services, Inc.*, No. 25-23630 (MBK) (Bankr. D.N.J. Feb. 3, 2026) (same); *In re Del Monte Foods Corp. II Inc.*, No. 25-16984 (MBK) (Bankr. D.N.J. Aug. 12, 2025) (same); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. Apr. 4, 2024) (same); *In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J.

Feb. 29, 2024) (same). Therefore, such provision is standard, limited to nonmaterial changes, and should be approved on a final basis.

**B. The DIP Lenders Do Not Control the Debtors.**

60. The DIP Orders find that the DIP Lenders, including CD&R, do not control the Debtors or owe fiduciary duties to the Debtors because of the DIP Lenders' decision to (a) extend loans under the DIP Facility, (b) permit the use of collateral under the DIP Facility, or (c) exercise rights or remedies under the DIP Facility.

61. It is irrelevant that CD&R is an equity owner of the Debtors for purposes of this finding. Nothing in the record establishes that CD&R exercised control of the Debtors by virtue of the DIP Facility. It is CD&R's position as an equity owner of the Debtors that gives rise to any fiduciary duties, not CD&R's position as a DIP Lender. Similarly, there is nothing in the record that establishes that any of the other DIP Lenders exercised control over the Debtors by virtue of the DIP Facility. Therefore, the language in paragraph 26 of the Final DIP Order is appropriate and should be approved.

**C. Paragraph 19(c) of the Final DIP Order Is Appropriate.**

62. The Minority Holdout Group cites to no authority in support of its baseless proposition that the DIP Orders are impermissible because they attempt to bind appellate courts by specifying the impact of being reversed or vacated on appeal. *See* Minority Holdout Group Objection, ¶ 130. Pursuant to section 364(e) of the Bankruptcy Code, the Court clearly has authority to enter the DIP Orders, including the language in paragraph 19(c). *See* 11 U.S.C. § 364(e) ("reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted…"). Furthermore, there is no language in the Final DIP Order directing that an appellate court must approve the DIP Facility.

### D. The Final DIP Order Does Not Grant Liens on Avoidance Actions and Liens on the Proceeds of Avoidance Actions Are Appropriate and Should Be Approved.

63. The Final DIP Order does not grant liens on Avoidance Actions or Recovery Actions. *See* Final DIP Order, ¶¶ 5, 6(a) (granting superpriority claims on "all prepetition and postpetition property . . . excluding . . . (b) [the Avoidance Actions] and (c) [the Recovery Actions]," and granting liens on "all tangible and intangible prepetition and postpetition property . . . other than the Avoidance Actions [and] the Recovery Actions"). The Final DIP Order only grants liens and superpriority claims on the proceeds of Avoidance and Recovery Actions. *See id.*

64. As a threshold matter, unsecured creditors do not hold exclusive rights to the proceeds of the Causes of Action. The law is clear that proceeds of avoidance actions are property of the Debtors' estates under section 541(a)(3) of the Bankruptcy Code. There is no requirement that proceeds of avoidance actions be reserved for unsecured creditors. To the contrary, the proceeds of avoidance actions are for the benefit of the estate. *See* 11 U.S.C. §§ 550(a) (preserving recoveries on avoidance actions "for the benefit of the estate"); 541(a)(3); 541(a)(4). Indeed, the Seventh Circuit has stated:

> Lest this way of resolving the issue be taken to assume that § 550(a) requires that some benefit flow to unsecured creditors, we add that the statute does not say this. Section 550(a) speaks of benefit to the estate—which in bankruptcy parlance denotes the set of all potentially interested parties—rather than to any particular class of creditors.

*Mellon Bank, N.A. v. Dick Corp.*, 351 F.3d 290, 293 (7th Cir. 2003); *accord In re Trans World Airlines, Inc.*, 163 B.R. 964, 972) (Bankr. D. Del. 1994) ("Section 550(a) requires a benefit to the 'estate,' not to creditors. 'Estate' is a broader term than 'creditors.' There is no requirement that an avoidance action recovery be distributed (or 'committed') in whole or in part to creditors.

Indeed, the Code clearly contemplates otherwise."); *see also In re Enserv Co.*, 64 B.R. 519, 522 (B.A.P. 9th Cir. 1986) ("Section 547 specifically gives the debtor in possession the right to bring an action to recover preferences. This is a decision subject to its discretion."); *In re C.W. Min. Co.*, 477 B.R. 176, 189 (B.A.P. 10th Cir. 2012) (noting in the context of section 550(a) actions, that "[t]his Court has specifically rejected the position that 'benefit of the estate' means 'payment to general unsecured creditors' and has held that 'benefit of the estate' should be interpreted broadly"). Further, section 507(b) of the Bankruptcy Code is clear that where a secured creditor's collateral is diminished, a secured creditor's adequate protection claim "shall have priority" over every other administrative claim. 11 U.S.C. § 507(b). Section 507(b) of the Bankruptcy Code does not contemplate, or even permit, assets to be excluded from such claims, absent agreement.

65. The Debtors and the DIP Lenders heavily negotiated the terms of the DIP Facilities, including the grant of liens on the proceeds of Causes of Action. The Debtors would be prejudiced and irreparably harmed without access to the DIP Facilities or the consensual use of Cash Collateral, to the detriment of their estates and all stakeholders. The DIP Lenders have provided significant new money consideration, and if the DIP Lenders do not receive sufficient adequate protection, they are entitled to seek and obtain relief from the automatic stay (*e.g.*, to foreclose on their collateral). *See* 11 U.S.C. § 362(d)(1) ("[T]he court shall grant relief from the stay . . . (1) for cause, including the lack of adequate protection of an interest in property of such party in interest."). Were the DIP Lenders to exercise these remedies, such actions would undoubtedly destroy value in these chapter 11 cases that could otherwise be used to drive recoveries for stakeholders.

66. This Court and courts in this district routinely grant DIP financing that includes liens and superpriority claims on the proceeds of avoidance actions. *See, e.g.*, *In re Pretium*

*Packaging, L.L.C.*, No. 26-10896 (CMG) (Bankr. D.N.J. Feb. 18, 2026) (granting, on a final basis, DIP financing that included liens and superpriority claims on the proceeds of avoidance actions); *In re STG Logistics, Inc.*, No. 26-10258 (MEG) (Bankr. D.N.J. Feb. 10, 2026) (same); *In re United Site Services, Inc.*, No. 25-23630 (MBK) (Bankr. D.N.J. Feb. 3, 2026) (same); *In re Del Monte Foods Corp. II*, No. 25-16983 (MBK) (Bankr. D.N.J. Aug. 12, 2025) (same); *In re CCA Const., Inc.*, No. 24-22548 (CMG) (Bankr. D.N.J. Feb. 18, 2025) (same).

**E. The Section 506(c) Waiver Is Fair and Reasonable Under the Circumstances.**

67. The Debtors have assented to the waiver of their surcharge rights under section 506(c) of the Bankruptcy Code as a *quid pro quo* for the DIP Lenders' agreement to extend postpetition financing to fund administrative costs of these chapter 11 cases. Section 506(c) of the Bankruptcy Code provides a debtor the right to "recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property[.]" 11 U.S.C. § 506(c). Section 506(c) claims are available to, and are an asset of, the Debtors, and not any other party in interest. *See In re Smart World Techs., LLC,* 423 F.3d 166, 181–82 (2d Cir. 2005) ("Section 506(c) . . . allows only the 'trustee,' or debtor-in-possession, to take advantage of this exception . . . § 1109(b) does not entitle parties in interest, such as [the debtor]'s creditors, to usurp the debtor-in-possession's role as legal representative of the estate.").

68. As an initial matter, the Debtors' section 506(c) rights are limited. *See, e.g.*, *In re Towne, Inc.* 536 Fed.Appx. 265, 268 (3d Cir. 2013) ("In general, [administrative] fees and expenses are not chargeable against secured collateral . . . However, section 506(c) . . . provides a limited exception to this rule . . .") (citations omitted). It is unclear if the Debtors would ever be able to exercise such surcharge even if they tried to do so. *See also*, *In re Broadway Realty I Co., LLC*, Case No. 25-11050 (DSJ), 2025 WL 1803089, at *8 (Bankr. S.D.N.Y. June 29, 2025)

(finding that the debtors' proposed expenditures were not eligible for surcharge under section 506(c) of the Bankruptcy Code, demonstrating its limited scope).

69. Further, it is well-established that the right to waive the section 506(c) surcharge is within a debtor's discretion. *See In re Hartford Underwriters*, 530 U.S. 1, 6 (2000) (only a trustee or a debtor in possession may seek recovery under section 506(c)). The Debtors have the sole authority and discretion to waive such rights, and the Debtors believe that such waiver is unambiguously justified in light of the facts and circumstances of these chapter 11 cases. The Debtors do not believe that the DIP Lenders would have consented to the Debtors' continued use of Cash Collateral without a section 506(c) waiver, and the Debtors determined, in a valid exercise of their business judgment, that such a waiver was reasonable and appropriate in light of the considerable benefits arising from the DIP Facility and consensual use of Cash Collateral.

70. Finally, both this Court and other courts in this district frequently approve similar waivers as part of highly-negotiated postpetition financing packages. Section 506(c) claims are standard with respect to postpetition financings between sophisticated parties, and this Court and other courts in this district have approved final DIP orders providing for such waivers where the parties have negotiated an appropriate carve out, and the secured parties have agreed to subordinate their claims to that carve out. *See, e.g.*, *In re Pretium Packaging, L.L.C.*, No. 26-10896 (CMG) (Bankr. D.N.J. Feb. 18, 2026) (approving, on a final basis, 506(c) waiver in connection with DIP financing and consensual use of cash collateral); *In re STG Logistics, Inc.*, No. 26-10258 (MEG) (Bankr. D.N.J. Feb. 10, 2026) (same); *In re United Site Services, Inc.*, No. 25-23630 (MBK) (Bankr. D.N.J. Feb. 3, 2026) (same); *In re Del Monte Foods Corp. II*, No. 25-16983 (MBK) (Bankr. D.N.J. Aug. 12, 2025) (same); *In re CCA Const., Inc.*, No. 24-22548 (CMG) (Bankr. D.N.J. Feb. 18, 2025) (same).

**F. The Section 552(b) Waiver Is Appropriate and Should Be Approved.**

71. Section 552(a) of the Bankruptcy Code generally ensures that an entity's prepetition security interest in the proceeds of collateral does not extend to such proceeds acquired postpetition, subject to a limited exception from this general rule to the extent that the "equities of the case" so require. *See* 11 U.S.C. § 552(b)(1). Here, the waiver of this exception is reasonable and appropriate for a number of reasons.

72. *First*, the "equities of the case" exception is narrowly applied, meaning that it is typical for debtors to provide the section 552(b) waiver as part of a consensual adequate protection package, particularly where, as here, it is another bargaining chip that the debtor may use to facilitate negotiations with the secured creditor and provide such creditor protection against the diminution in value of its collateral. *See, e.g.*, *MPM Silicones, LLC*, No. 14-22503 (Bankr. S.D.N.Y.), Hr'g Tr. 85:4–8, 93:21-25, May 23, 2014 (overruling committee's objection and holding that the section 552(b) equities of the case exception is "waived to the extent it's needed to protect against any diminution").

73. *Second*, the section 552(b) waiver is also appropriate where, as here, the Prepetition Secured Parties have agreed to a carve out from their collateral to fund the Debtors' operations and fees and expenses of other parties, such as U.S. Trustee fees and various professional fees. *See, e.g.*, *In re AbitibiBowater, Inc.*, No. 09-11296 (Bankr. D. Del.), Hr'g Tr. 35:4-18, June 4, 2009 (finding that such waivers are usually granted "in cases in which it looks like . . . the lenders are doing the right thing in terms of . . . providing for payment of administrative expenses"); *In re Am. Media, Inc.*, No. 10-16149 (MG), 2010 WL 5141244, at *4 (Bankr. S.D.N.Y. Dec. 6, 2010) ("In light of the Prepetition Agent's and Prepetition Lenders' agreement to subordinate their liens and superpriority claims to the Carve Out . . . and to permit the use of their Cash Collateral as set forth herein, the Prepetition Agent and Prepetition Lenders are entitled to (a) a waiver of any 'equities

of the case' claims under section 552(b) of the Bankruptcy Code and (b) a waiver of the provisions of section 506(c) of the Bankruptcy Code.").

74. The unencumbered assets will not be used to unfairly enhance the DIP Lenders recoveries at the expense of the unsecured creditors. The section 552(b) waiver that the Debtors agreed to was part of a heavily negotiated DIP Facility that provides critical funding to support the Debtors' operations and the administrative costs of these chapter 11 cases, as well as greatly enhances the Debtors' ability to achieve the goals necessary to timely emerge from these chapter 11 cases and such waiver strikes the appropriate balance between preserving the DIP Lenders' rights and furthering the rehabilitative purposes of the Bankruptcy Code. As with section 506(c) waivers, section 552(b) waivers are customarily negotiated as part of DIP financing facilities or in granting consensual use of Cash Collateral—regardless of whether or not a party objects to such. Without the waiver, the DIP Lenders simply would not have provided the financing embodied in the DIP Facility or would have imposed other, less favorable terms. Furthermore, as outlined in the Waterfall Analysis, there are significantly less unencumbered assets available than the Minority Holdout Group falsely believes. *See* Kopa Decl., ¶ 11.

75. Accordingly, secured creditors routinely request, and debtors routinely provide, a waiver of section 552(b) "equities of the case" claims in connection with DIP financing and the consensual use of their cash collateral, and courts regularly approve such waivers as part of adequate protection packages. *See, e.g.*, *In re Pretium Packaging, L.L.C.*, No. 26-10896 (CMG) (Bankr. D.N.J. Feb. 18, 2026) (approving DIP financing including section 552(b) waiver on a final basis); *In re STG Logistics, Inc.*, No. 26-10258 (MEG) (Bankr. D.N.J. Feb. 10, 2026) (same); *In re United Site Services, Inc.*, No. 25-23630 (MBK) (Bankr. D.N.J. Feb. 3, 2026) (same);

*In re Del Monte Foods Corp. II*, No. 25-16983 (MBK) (Bankr. D.N.J. Aug. 12, 2025) (same); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. Apr. 4, 2024) (same).

### G. The Doctrine of Marshalling Waiver is Appropriate and Should be Approved.

76. The marshaling doctrine clearly allows a court to compel a senior creditor "with a right to proceed against more than one asset of a debtor [to], in fairness, attempt to satisfy his claim(s) from assets that are not encumbered with junior liens." *See In re San Jacinto Glass Indus., Inc.*, 93 B.R. 934, 937 (Bankr. S.D. Tex. 1988). The Debtors believe that the waiver of this doctrine is appropriate.

77. *First*, the Minority Holdout Group fails to acknowledge that an unsecured creditor may not utilize the doctrine of marshaling. *See In re Advanced Marketing Serv., Inc.*, 360, 421, 427 (Bankr. D. Del. 2007) (providing that unsecured creditors cannot utilize the doctrine of marshaling); *In re Mesa Int'l, Inc.*, 79 B.R. 669, 672 (Bankr. S.D. Tex. 1987) (holding that an unsecured creditor "falls outside the class of creditors able to request [marshaling]").

78. *Second*, the no-marshaling provision is a common element of a negotiated postpetition financing facility between a debtor and its secured lenders. In fact, courts recognize it as one of the bargaining chips debtors may use to reach an agreement with their secured lenders. *See MPM Silicones, LLC*, No. 14-22503 (Bankr. S.D.N.Y.), Hr'g Tr. 92–93, May 23, 2014 (approving a no-marshaling provision in a cash collateral order and commenting that "[g]enerally speaking, this is the debtor's right to negotiate or secured creditors' right to insist on"). This Court and courts in this district routinely approve DIP financing that waive the doctrine of marshalling. *See, e.g.*, *In re Pretium Packaging, L.L.C.*, No. 26-10896 (CMG) (Bankr. D.N.J. Feb. 18, 2026) (approving DIP financing on a final basis that included waiver of doctrine of marshalling); *In re STG Logistics, Inc.*, No. 26-10258 (MEG) (Bankr. D.N.J. Feb. 10, 2026) (same); *In re United Site Services, Inc.*, No. 25-23630 (MBK) (Bankr. D.N.J. Feb. 3, 2026) (same); *In re Del Monte Foods*

*Corp. II*, No. 25-16983 (MBK) (Bankr. D.N.J. Aug. 12, 2025) (same); *In re CCA Const., Inc.*, No. 24-22548 (CMG) (Bankr. D.N.J. Feb. 18, 2025) (same).

79. Given the foregoing, the "marshaling" waiver was part of arm's-length negotiations between the Debtors and the DIP Lenders and was required for the Debtors to obtain postpetition financing. As such, the Court should approve the DIP Facility's marshaling waiver.

**H. Section 506(b) Findings Are Supported by the Record and Adequate Protection Payments Comply with the Bankruptcy Code.**

80. The adequate protections provided under the DIP Orders are required under section 364(d)(1)(B) of the Bankruptcy Code. The debtor must give a creditor whose lien is primed by postpetition financing "adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d). Pursuant to sections 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, as adequate protection of their respective interests in the Prepetition Collateral (including Cash Collateral), to the extent of any Diminution in Value and as an inducement to the Prepetition Secured Parties to consent to the priming of the Prepetition Liens and the use of their Cash Collateral, the Prepetition Secured Parties were granted adequate protection in various forms. DIP Motion, Summary of Material Terms, ¶¶ 60-61. Furthermore, fees and payments to secured creditors are a standard form of adequate protection. Finally, any arguments that the adequate protections payments should be recharacterized and reduce the amount of the secured claims on account of the fact that they are undersecured are issues that are preserved under the DIP Orders and the related ability to Challenge therein.

81. Postpetition interest is allowed to accrue on the prepetition secured parties' claims as adequate protection of their claims with respect to ***diminution in value***. Section 361 of the Bankruptcy Code does not, by its terms, place any explicit limits on adequate protection for

undersecured creditors. The only limitation for undersecured creditors, is that the adequate protection can only be for the value of the collateral. *See Timbers*, 484 U.S. at 372 ("We think the phrase 'value of such entity's interest' in § 361(1) and (2), when applied to secured creditors, means [the value of the collateral]."); *see also In re Union Meeting Partners*, 178 B.R. 664, 675 (Bankr. E.D. Penn. 1995) (explaining that the Supreme Court in *Timbers* "said only that the secured portion of a creditor's claim could not be augmented post-petition by payments intended to compensate the creditors for ***lost use value***").

82. Here, the "interest payments" are payments required by section 364(d)(1)(B) of the Bankruptcy Code and are made to compensate for ***diminution in value*** from the continued use by the Debtors of the collateral, which are not unmatured interest payments. *See In re Pengo Indus., Inc.*, 962 F.2d 543, 546 (5th Cir. 1992) (explaining that unmatured interest payments, or their economic equivalent, are payments to compensate for the risk and delay in the repayment of money that are not earned at the time of the bankruptcy filing). Because the payments to the Prepetition Secured Parties are being made as adequate protection payments, not as interest payments to compensate for risk and time value of money, the payments are not in violation of section 502(b) of the Bankruptcy Code and should be approved on a final basis.

**I. The Findings in Paragraph J of the Final DIP Order Are Appropriate.**

83. The opening of paragraph J of the Final DIP Order reads "Nothing herein constitutes a finding or ruling by the Court that any alleged Prepetition Permitted Senior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party in interest . . . to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Permitted Senior Lien." While paragraph J does find that the Prepetition Liens are valid and continuing, this finding is subject to the challenge period. The Prepetition Liens are only deemed valid and continuing, and

not subject to other challenge, if "no Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such Challenge." *See* Final DIP Order, ¶ 21.

84. If the scope or validity of the liens is disputed, then any "party in interest with requisite standing" can file an adversary proceeding during the Challenge Period and challenge the liens. *See id.* And here, the Minority Holdout Group will have an opportunity to challenge the extent of any Prepetition Liens in connection with Confirmation and their ultimate treatment under the Plan. Absent such a dispute, it is appropriate for the Court to find that the Prepetition Liens are valid following the expiration of the Challenge Period. Therefore, the findings in paragraph J are appropriate.

**J. The Provisions in Paragraph 29(b) of the Final DIP Order Concerning Credit Bidding Are Appropriate.**

85. The Minority Holdout Group argues that the record does not support a finding of lack of cause under section 363(k) because the scope of the secured creditors' liens is disputed. Minority Holdout Group Objection, ¶ 130. The dispute over the scope of the secured creditors' liens is irrelevant to the Final DIP Order's authorization for the secured parties to credit bid the Prepetition Secured Obligations. The authorization to credit bid the Prepetition Secured Obligation is "[s]ubject to . . . the expiration of the Challenge Period." Final DIP Order, ¶ 29(b). The credit bidding rights of the Prepetition Secured Obligations is not determined before the resolution of the Adversary Proceeding. This Court and other courts in this district regularly approve DIP financing that includes the right to credit bid prepetition secured obligations, where that right is subject to the challenge period. *See, e.g.*, *In re Pretium Packaging, L.L.C.*, No. 26-10896 (CMG) (Bankr. D.N.J. Feb. 18, 2026) (approving DIP financing, on a final basis, that granted right to credit bid prepetition secured claims, subject to the challenge period); *In re*

*STG Logistics, Inc.*, No. 26-10258 (MEG) (Bankr. D.N.J. Feb. 10, 2026) (same); *In re United Site Services, Inc.*, No. 25-23630 (MBK) (Bankr. D.N.J. Feb. 3, 2026) (same); *In re Del Monte Foods Corp. II*, No. 25-16983 (MBK) (Bankr. D.N.J. Aug. 12, 2025) (same); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. Apr. 4, 2024) (same).

86. The scope of the liens is also irrelevant because under Third Circuit precedent, under section 363(k), parties are entitled to credit bid the entire portion of their claims both secured and unsecured. *See In re SubMicron Sys. Corp.*, 432 F.3d 448, 459 (3d Cir. 2006) ("It is well settled among district and bankruptcy courts that creditors can bid the full face value of their secured claims under § 363(k)."). Cause under section 363(k) is a flexible term that allows "a court to fashion an appropriate remedy on a case-by-case basis." *In re NJ Affordable Homes Corp.*, 2006 WL 2128624 (Bankr. D.N.J. June 29, 2006). Limiting credit bidding would be appropriate if the lenders engaged in inequitable conduct or if credit bidding would otherwise chill bidding and harm the restructuring. *See In re Philadelphia Newspapers, LLC*, 599 F.3d 298, 316 n.14 (3d Cir. 2010) ("A court may deny a lender the right to credit bid in the interest of any policy advanced by the Code, such as to ensure the success of the reorganization or to foster a competitive bidding environment."). There is no evidence on the record that the ability to credit bid the entire portion of the Prepetition Secured Obligation, whether secured or unsecured, would chill bidding or otherwise harm the Debtors' estates. There is also no evidence that other cause exists to limit their ability to credit bid. Therefore, the credit bidding provisions in paragraph 29(b) of the Final DIP Order are appropriate.

## **Conclusion**

87. For all the forgoing reasons, the Debtors respectfully request that the Court overrule the DIP Objections and enter the Final DIP Order.

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Trenton, New Jersey
Dated: March 16, 2026

*/s/ Michael Sirota*

**COLE SCHOTZ P.C.**
Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Felice R. Yudkin, Esq.
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
Email: msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com

*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**KIRKLAND & ELLIS LLP**
**KIRKLAND & ELLIS INTERNATIONAL LLP**
Steven N. Serajeddini, P.C. (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: steven.serajeddini@kirkland.com

-and-

**KIRKLAND & ELLIS LLP**
**KIRKLAND & ELLIS INTERNATIONAL LLP**
Rachael M. Bentley (admitted *pro hac vice*)
Peter A. Candel (admitted *pro hac vice*)
Ashley L. Surinak (admitted *pro hac vice*)
333 West Wolf Point Plaza
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: rachael.bentley@kirkland.com
peter.candel@kirkland.com
ashley.surinak@kirkland.com

*Proposed Co-Counsel to the Debtors and Debtors in Possession*