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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

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

CD&R'S REPLY IN FURTHER
SUPPORT OF ENTRY OF THE FINAL DIP ORDER

[1] The last four digits of Debtor Multi-Color Corporation's tax identification number are 5853. A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at https://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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Clayton Dubilier & Rice LLC, on behalf of itself and its affiliates and/or related entities, including CD&R Labels Holdings, L.P., Arawak XI, L.P., Arawak XI-A, L.P., CD&R Investment Associates XI, Ltd., and Clayton, Dubilier & Rice Fund XI (Credit Investor), Ltd. (collectively, "**CD&R**"), by and through their undersigned counsel, hereby submits this reply (this "**Reply**") in support of final approval 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 "**Motion**") and in response to (a) *The Cross-Holder Ad Hoc Group's Objection to Final Approval of the 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* [Docket No. 426] (the "**Cross-Holder Group Objection**") filed by the Cross-Holder Ad Hoc Group (the "**Cross-Holder Group**") and (b) the *Objection and Reservation of Rights of the Excluded First Lien Lenders with Respect to Approval of the Debtors' DIP Financing Motion* [Docket No. 428] (the "**Canyon DIP Objection**" and, together with the Cross-Holder Group Objection, the "**Objections**") filed by Canyon CLO Advisors L.P. and Canyon Capital Advisors LLC (collectively, the "**Canyon Group**" and, together with the Cross-Holder Group, the "**Objecting Parties**" or "**Objectors**").[2] For the reasons set forth

[2] The self-appointed term "***Excluded First Lien Lenders***" is a misnomer at best. There is only one "Excluded First Lien Lender"—namely Canyon. *See Joint Verified Statement of Willkie Farr & Gallagher LLP and Rolnick Kramer Sadighi LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019* [Docket No. 73]. Canyon is also a member of the Cross-Holder Group. *See Joint Verified Statement of Jones Day and Wollmuth Maher & Deutsch LLP Pursuant to Bankruptcy Rule 2019* [Docket No. 199].

herein, CD&R respectfully requests that the Court overrule the Objections and enter the Final DIP Order.[3]

PRELIMINARY STATEMENT

1. The DIP Facility should be approved on a final basis. Final approval of the DIP Facility will provide the Debtors with liquidity necessary to run the business, obviate the need for a significant adequate protection and cash collateral fight, and put the Debtors on a clear path to emerge from chapter 11. The DIP Facility provides the Debtors with access to the new money financing required to fund the Chapter 11 Cases to a conclusion and with the consent from those secured creditors whose collateral is being used to sustain the Debtors' operations. And as the evidence will further show at the Court's final hearing on this matter (and consistent with the findings made in connection with the interim hearing held on the Motion), the DIP Facility remains the best and only actionable financing proposal available to the Debtors' estates.

2. To be sure, the Debtors' determination to enter into the DIP Facility was made by the Debtors and the Debtors alone. The Debtors' strategic review and decision-making process in this regard was undertaken by a special committee (the "**Special Committee**") consisting of two disinterested and independent directors on the board of LABL, Inc. (the "**Board**"). From the beginning of the Special Committee's process, it was delegated the exclusive and binding authority to consider, negotiate, and approve any transaction that could reasonably present a conflict with the Debtors' ultimate parent. To help carry out its mandate, the Special Committee is also represented by independent counsel to facilitate its effort to undertake business decisions as an

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or in the proposed *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 "**Final DIP Order**"), a copy of which CD&R understands will be filed by the Debtors in advance of the final hearing on the Motion.

informed, disinterested body. While the Objecting Parties will doubtless engage in speculation, innuendo, and ad hominem attacks with respect to the Special Committee's independence, the Objecting Parties will not (and cannot) present any actual facts to support their attempt at character assassination. Rather, the process undertaken by the Special Committee to approve the DIP Facility, and explore alternative sources of financing, reflects the quintessential exercise of disinterested business judgment that should be respected. *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("Debtors correctly posit that courts will almost always defer to the business judgment of a debtor in the selection of the lender.").

3. The Cross-Holder Group Objection devotes considerable ink to its competing DIP proposal that was considered, and ultimately rejected, by the Special Committee. But the facts remain that that proposal was rejected because the Debtors determined that the proposal was simply not the best proposal available to the Debtors' estates. And from the standpoint of secured creditors such as CD&R, that proposal was fundamentally flawed insofar as it apparently failed to make any provision at all for adequate protection, nor did the proposal include anything close to the capital required to fund the 18-month restructuring contemplated by that facility. Put differently, that "competing proposal" was a stage prop, and nothing more: it failed to provide adequate protection as required by the Bankruptcy Code, failed to provide adequate liquidity, and failed to provide any path to emergence.[4] It is hard to fault any debtor for refusing to build such an obvious bridge to nowhere.

[4] The Court has rightly observed the gamesmanship attendant to the Cross-Holder Group's alternative financing in the context of its recent venue ruling: "[E]ven the Cross-Holders assented to these chapter 11 cases moving forward in New Jersey when they proposed their own alternative DIP financing. In their documentation for that proposal, they expressed that they were prepared to stipulate to proper venue in this forum, and to waive all venue-related objections." *In re Multi-Color Corp.*, Case No. 26-10910, Docket No. 458 (Bankr. D.N.J. March 16, 2026), at p. 27; *see also id.* at pp. 26-27 n.13 ("As will be discussed, the Cross-Holder group was willing to consent to venue in this district so long as this Court ruled in its favor [with respect to DIP financing]. Moreover, its unsupported request for a transfer to the District of Delaware appears to be bottomed on the Cross-Holders' belief that it would receive more favorable treatment in that district.").

4. The Objecting Parties' remaining, miscellaneous contentions with specific DIP provisions should be similarly rejected. The DIP Facility provides market economics, including with respect to a one-to-one exchange of prepetition secured debt. The partial roll-up of secured debt is a customary and accepted provision for the adequate protection of a secured lender. Further, the Objecting Parties' arguments that the roll-up constitutes an impermissible non-*pro rata* payment under the Debtors' Prepetition Debt Documents are based on a basic misreading of those documents, as detailed below. This argument should again be recognized (and then discarded) for what it is: a shotgun approach undertaken to block financing necessary to fund the Chapter 11 Cases.

5. For the reasons set forth herein, the Court should approve the DIP Facility on a final basis and overrule the Objections in their entirety.

REPLY

I. The Business Judgment Rule Is the Appropriate Standard of Review

6. As the Court found in its interim ruling, the Debtors' entry into the DIP Facility is appropriately reviewed under the business judgment standard. Based on the record, the Court specifically found that "the debtors conducted a good faith and reasonable financing process under exigent circumstances and that there is no basis in the Code or the evidence presented which requires the application of the entire fairness standard or any other higher level of scrutiny apart from the debtors' proper exercise of business judgment." Feb. 2, 2026 Hr'g Tr. [Docket No. 112] 25:12–18.

7. To avoid application of the business judgment rule, the Objectors carry the burden of proof to demonstrate that "(1) the directors did not in fact make a decision, (2) the directors' decision was uninformed; (3) the directors were not disinterested or independent; or (4) the directors were grossly negligent." *See L.A. Dodgers LLC*, 457 B.R. at 313; *see also In re*

Integrated Res., Inc., 147 B.R. 650, 658 (S.D.N.Y. 1992) ("[T]he appropriate test is the 'entire fairness' of a transaction, rather than the business judgment rule, ***only*** 'in the face of illicit manipulation of a board's deliberative processes by self-interested corporate fiduciaries.'"), *appeal dismissed* 3 F.3d 49 (2d Cir. 1993) (emphasis added) (citation omitted).

8. The Objectors have cited no actual facts in this regard, nor can they. The Debtors' strategic review and decision-making process leading to the approval of the DIP Facility, and consideration of alternatives, reflects a quintessential business decision entitled to the protection of the business judgment standard. In July 2025, the Debtors delegated the authority to review, consider, negotiate and approve any transaction (including postpetition financing) to the Special Committee of two disinterested and independent directors of the Board of LABL, Inc. *See Declaration of Garrett Gabel in Support of Chapter 11 Petitions and First Day Pleadings* (the "**First Day Decl.**") ¶ 62 [Docket No. 23]. That delegation of authority was exclusive and binding with respect to any transaction that in the judgment of the Special Committee presents or is reasonably likely to present a conflict of interest. *Id*. CD&R has no representation on the Board of LABL, Inc., and CD&R did not participate in the Special Committee's deliberations and decision-making process at issue here.

9. It bears repeating, the Objecting Parties fail to allege any facts to question the Special Committee's independence or otherwise suggest that its directors acted in a self-interested or conflicted manner, and this is an issue on which the Objecting Parties carry the burden of proof. *Orman v. Cullman,* 794 A.2d 5, 20 (Del. Ch. 2002) ("To establish that a board was interested or lacked independence, a plaintiff must allege facts as to the interest and lack of independence of the individual members of that board."). To the contrary, and as will be further demonstrated by the Debtors, the Special Committee discharged its mandate, with the assistance of separate advisors,

to review, consider, negotiate, and, in the exercise of its business judgment, approve the Debtors' entry into the DIP Facility with full and complete independence. There is nothing in the record to suggest otherwise.

10. In the months leading up to the signing of the RSA and DIP Facility, the Debtors, through the Special Committee, engaged with the Cross-Holder Group, the Canyon Group, the Secured Ad Hoc Group, and CD&R in an extensive process that involved competing proposals to address the Debtors' capital structure and liquidity needs. *See* First Day Decl. ¶¶ 9, 65. That process ultimately culminated in the Special Committee's decision to enter into the RSA with the Secured Ad Hoc Group and CD&R to implement the comprehensive restructuring set forth in the Debtors' plan of reorganization. *See id.* ¶¶ 14–16. Ultimately, the Special Committee's decision to reject the Objecting Parties' competing proposals—including the subsequent Canyon DIP Proposal (as defined below)—reflects a fundamental exercise of the Special Committee's independent business judgment.[5]

11. And in what seems to be a theme in the Chapter 11 Cases, the Objecting Parties are again playing fast and loose with the case law. For instance, the Objecting Parties cite *L.A. Dodgers* for the proposition that entire fairness applies to DIP financing involving an insider. *See* Cross-Holder Group Objection ¶ 75. But that is not what the *L.A. Dodgers* court held. *L.A. Dodgers* involved a conflicted insider who personally directed the debtors' DIP process for personal gain, without independent governance: "The evidence shows that if Debtors, ***controlled by Mr. McCourt***, did not seek court approval for the Highbridge Loan, Mr. McCourt would personally owe $5.25 million to Highbridge. Such potential personal liability clearly compromised Debtors'/McCourt's independent judgment. Therefore, Debtors' decision is not entitled to review

[5] Even assuming the Cross-Holder Group can overcome the business judgment standard, the DIP Facility clearly meets any standard of review. *See supra* ¶¶ 8-10.

using the business judgment standard." *L.A. Dodgers*, 457 B.R. at 313 (emphasis added). Any attempt to analogize the facts here to *L.A. Dodgers* is wildly incorrect. This is not a case involving a conflicted decision-maker like Mr. McCourt; the Debtors are not controlled by any party other than a disinterested Special Committee; and the Debtors' decision to enter into the DIP Facility was exclusively delegated to, and undertaken by, that disinterested Special Committee. *See supra* ¶¶ 6–10. CD&R did not have any role or involvement in that decision-making process, nor will the Objectors establish evidence of direct control and manipulation of the debtors' DIP analogous to Mr. McCourt's control at issue in *L.A. Dodgers*. *See* 457 B.R. at 313-14.

12. The Objecting Parties' recourse to *Quadrant Structured Products Co. v. Vertin* is similarly flawed. In *Quadrant*, a board consisting of a controlling shareholder's designees and two purportedly independent directors (one of whom was a former employee of the shareholder) oversaw numerous transactions that siphoned value out of the company while it was insolvent. *Quadrant Structured Products Company, Ltd. v. Vertin*, 102 A.3d 155 (Del. Ch. 2014). Those transactions included, among other things, continued payment of interest on out-of-the-money notes held by the controlling shareholder when "[t]he Board ha[d] the authority to defer interest payments on the Junior Notes without penalty" as well as the separate payment of "excessive" service fees to affiliates of the shareholder. *Id*. at 168–69. The court found that entire fairness was appropriate based on plausible allegations that the transfers overseen by the directors were fraudulent and that "***[t]here [were] no indications in this case that the defendants deployed any procedural protections to limit the influence of EBF and its representatives on the Board over the challenged decisions***." *Id*. at 195 (emphasis added). Indeed, contrary to the facts here, there was no suggestion that the independent directors were delegated exclusive authority with respect to the challenged transactions, represented by separate advisors, or otherwise observed procedural

protections (such as the formation of an independent special committee) to maintain the independence of the decision-making process. *See generally id.* at 155.

13. Likewise, the Objecting Parties cite *Holten v. Standard Parking Corp*. for the proposition that "controlling shareholders must demonstrate their utmost good faith and the most scrupulous inherent fairness even if a committee of independent directors is used to approve the transaction." 98 F. Supp. 3d 444, 455 (D. Conn. 2015). *Holten*, however, applied entire fairness in a case where a controlling shareholder negotiated its own employment agreement without oversight of a special committee, and the court specifically noted that the company "did not form a special committee to evaluate" the contract despite the clear conflict. 98 F. Supp. 3d at 448. Once again, this case is entirely inapposite to the record before the Court. CD&R did not stand on both sides of a transaction as a decision-maker; it negotiated with the Debtors at arm's length where the Debtors' internal governance has been appropriately delegated to a disinterested Special Committee. In other words, the Special Committee here provides exactly the structural safeguards the *Holten* court found lacking. *See supra* ¶¶ 6–10.

14. And for completeness, the Objecting Parties' recourse on *In re UCI International, LLC* is, yet again, just wrong. In *UCI*, affiliates of Rank, a controlling shareholder, issued termination notices for critical shared services agreements—including warehousing, IT services, and laboratory equipment—which were undertaken without any involvement by the company's independent director or chief restructuring officer. *In re UCI Int'l, LLC*, No. 16-11354, Docket No. 303 (Bankr. D. Del. July 12, 2016) (Hr'g Tr. 199:10–200:25) ("**UCI Hr'g Tr.**"). The *UCI* court determined that those prepetition termination notices "were clearly not in the best interests of the debtor" and created an operational crisis that drove the debtor to accept an insider's DIP proposal. *See id.* at 200:5–15. While the court acknowledged that "after the bankruptcy, the

process was fair" and that the independent director and chief restructuring officer "were both independent, and both made their decisions independent of any untoward influence by Rank," it concluded: "I can't start from June 2nd . . . . I have to consider where the debtor was on June 2nd, as a result of what occurred pre-bankruptcy." *Id*. at 200:1–10. Here, and at the risk of repetition, the Special Committee was delegated the exclusive authority to negotiate, consider and approve any DIP financing involving any potential conflict from the outset of the process in July 2025. *See supra* ¶¶ 6-10. That is fundamentally different from the insider's attempts in *UCI* to retroactively cure prior actions taken without any comparable, independent oversight. *See* UCI Hr'g Tr. 199:17-25.

15. Finally, the other cases cited by the Objectors applying entire fairness to insider transactions are equally distinguishable. In *In re Winstar Communications, Inc*., the Third Circuit found that a creditor was a non-statutory insider that had "controlled many of [the debtor]'s decisions," "treated [the debtor] as a captive buyer," and "forced the purchase of its goods well before the equipment was needed." 554 F.3d 382, 397 (3d Cir. 2009) (citation modified). Similarly, in *In re Bidermann Industries U.S.A. Inc*., the bankruptcy court found the process unfair where a CEO stood on both sides of a management buyout and there was clear evidence that "the whole bidding arrangement [was] designed not to encourage but to stifle bidding." 203 B.R. 547, 552–53 (Bankr. S.D.N.Y. 1997). And, in *Weaver v. Kellogg*, the defendants were "the corporation's only directors" during the relevant period, and directors subsequently appointed to the board "served at the discretion of" the sole shareholders such that "a legitimate question exist[ed] . . . as to whether these directors were independent." 216 B.R. 563, 569, 581 & n.26 (S.D. Tex. 1997) (alteration in original) (citation omitted). The court found support for this

inference based on evidence that "[d]efendants continued to dominate the board after May 1992 for the duration of [the company]'s pre-bankruptcy existence." *Id*. at 586–87.

16. At bottom, the Objecting Parties' reliance on cases involving conflicted decision-makers—that either directly approved the challenged transactions or clearly controlled the process leading to the approval of such transactions—are directly controverted by the record here. The Debtors' decision to enter into the DIP Facility was the product of an extensive independent process undertaken by the Special Committee, and that decision is entitled to the protection of the business judgment rule.

II. A "Non-Priming" DIP Is Not Available: The Cross-Holder Group's Purported Alternative DIP Proposal Was Not Actionable

17. The Cross-Holder Group contends that the DIP Facility violates section 364(d) of the Bankruptcy Code because the Canyon Group "proposed" a non-priming DIP facility (the "**Canyon DIP Proposal**"). As the Objecting Parties concede, however, the Special Committee considered, and ultimately rejected, the Canyon DIP Proposal because it was not an *actionable* offer. Indeed, as the Court found, the Debtors' marketing and negotiation process yielded "no viable alternative financing proposal." Feb. 2, 2026 Hr'g Tr. [Docket No. 112] 20:19–24.

18. The proposed funding was not adequate to fund the case on the timeline it proposed, let alone any commitment to fund a longer non-consensual case. For one, the proposal contemplated the use of the first-lien lenders' collateral without any provision for adequate protection. Here, the payment of postpetition interest at the default rate, alone, could require up to $620 million under the 18-month tenor of the Canyon DIP Proposal.[6] Even if such a timeline

[6] *See* 11 U.S.C. § 361(1) (provides for periodic cash payments as adequate protection for use of collateral); *see also Bayside Cap., Inc. v. TPC Grp. Inc. (In re TPC Grp. Inc.)*, No. 22-10493, 2022 WL 2952518, at *12 (D. Del. July 26, 2022) ("As the Debtors are unable to provide adequate protection to the [senior collateral agent] . . . Appellants'

were shorter, it seems at best uncertain (if not utterly fanciful) to think that such proposal could actually fund any such case given the significant administrative costs of pursuing a non-consensual, fully-litigated process here. Absent an actual commitment under the Canyon DIP Proposal to fund a shortfall, such proposal would have required the Debtors to assume the very real (if not likely) risk that the funding would be inadequate, and the Debtors would be administratively insolvent.[7]

19. The Debtors' consideration in this regard should be respected. It bears repeating: "Debtors correctly posit that courts will almost always defer to the business judgment of a debtor in the selection of the lender." *L.A. Dodgers*, 457 B.R. at 313. The debtor—as a fiduciary of the estate—is permitted to consider the totality of circumstances in determining whether a DIP proposal is actionable.

> [A] business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant 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, e.g., *In re ION Media Networks, Inc.*, No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. 2009); *see also In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986) ("We conclude that neither the trustee nor the court was required to consider this conditional offer as an indication that credit was available without the senior lien.").

III. Even if a "Non-Priming Alternative" Is Available (Which It Is Not), Section 364(d) Does Not Compel the Debtors to Disregard a Better Alternative

20. Even if the Special Committee had determined that the Cross-Holder Group's proposal was actionable, section 364(d) does not compel a debtor to suspend its business judgment

assertions regarding an 'alternative proposal' are belied by the facts."). *See also* Cross-Holder Group Objection ¶ 41 (noting "18-month tenor" of the Canyon DIP Proposal).

[7] It is unclear from the Cross-Holder Group Objection whether such financing is even still available.

and accept a less favorable alternative. In its constrained reading of section 364(d), the Objecting Parties seek to read a debtor's business judgment out of the decision to incur DIP financing, contending that the availability of non-priming financing, on any terms, automatically prevents a debtor from incurring priming financing. *See* Cross-Holder Group Objection ¶¶ 65–66.

21. This analysis is absurd, which is perhaps why the Cross-Holder Group fails to cite any law in support of this proposition. The plain text of section 364(d) provides that, after notice and a hearing, the court "may authorize **the obtaining of credit or the incurring of debt secured by a senior or equal lien** on property of the estate that is subject to a lien only if . . . . the trustee is unable to obtain ***such credit*** otherwise[.]" 11 U.S.C. § 364(d)(1)(A) (emphases added). By its terms, Section 364(d) in no way conditions the incurrence of priming financing on the "unavailability" of ***any*** alternatives, although Congress clearly knows how to impose conditions on the incurrence of such secured debt where it chose to do so. *Cf.* 11 U.S.C. § 364(c). The question, then, is not whether a debtor cannot obtain ***any*** credit without a priming lien. Rather, the question is whether a priming lien is required by the terms of the financing ("such" financing) actually presented for approval by the Court. 11 U.S.C. § 364(d)(1)(A) (emphasis added).

22. An alternative reading, by which "any" financing is somehow read into the text of section 364(d), results in absurd outcomes. To wit, the Objecting Parties' reading would affirmatively require any debtor to decline priming financing that is available on more favorable and more attractive terms, and that actually provide adequate protection (unlike the illusory "alternative proposal" here), in favor of more expensive or value destructive junior financing alternatives simply because a junior financing proposal (however illusory) happens to exist. Such a reading is inconsistent with the text and fundamental policy goals of section 364. *In re Kaiser Aluminum Corp.*, 456 F.3d 328, 338 (3d Cir. 2006) (observing that it is "[a] basic tenet of statutory

construction that courts should interpret a law to avoid absurd or bizarre results"). As this Court recognized at its interim ruling, the Objecting Parties' reading of section 364(d) would "require a debtor actually to forego financing based on a consensually subordinated or primed lien on existing encumbered assets in favor of a financing secured by unencumbered assets available to other stakeholders, ***is to this Court value destructive and would produce policy adverse results***." Feb. 2, 2026 Hr'g Tr. [Docket No. 112] 24:25, 25:1–5 (emphasis added). That ruling was correct when made on February 2, 2026, and it remains correct today. This Objection should be denied.

IV. The DIP Holdback and Roll-Up Are Consistent with the Prepetition Credit Documents, Although Such Allegations Are Not Relevant Here

23. The Canyon Group argues it must be allowed to participate in the DIP backstop and roll-up, because its exclusion somehow breaches the Cash Flow Credit Agreement and Intercreditor Agreement.[8] The Canyon Group misreads the relevant agreements in this regard, but even if a hypothetical dispute exists, denial of the DIP Facility is not the proper remedy.

24. The Canyon Group's first argument in this regard focuses on the *pro rata* sharing provisions contained in Section 11.7 of the Cash Flow Credit Agreement.[9] Namely, the Canyon Group's argument that the DIP Lenders have received an impermissible non-*pro rata* payment

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[8] *Cash Flow Credit Agreement*, dated October 29, 2021, by and among LABL, Inc., the subsidiary borrowers from time to time party thereto, the lenders from time to time party thereto, and Barclays Bank PLC, as administrative agent and collateral agent, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time (the "**Cash Flow Credit Agreement**") and *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 of 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 (the "**Intercreditor Agreement**").

[9] *See* Canyon DIP Objection ¶ 3 (incorporating by reference *Excluded First Lien Lenders' Preliminary Objection to the Debtors' DIP Motion* [Docket No. 75] ("**Canyon Preliminary DIP Objection**") (unless otherwise indicated, all citations to the Canyon DIP Objection in this Section IV refer to the Canyon Preliminary DIP Objection)); *see id.* ¶ 9 (Arguing that "any payments on account of prepetition first lien claims must be made *pro rata*, and any party who obtains non-*pro rata* payment must ensure that any such benefit is shared with all other holders on equal terms." (emphases added)).

ignores that the cashless exchange provided by the DIP Credit Agreement is not a "payment" under Section 11.7 of the Cash Flow Credit Agreement. And even if a cashless exchange were somehow considered a payment (which it is not), Section 11.7 expressly permits non-*pro rata* transactions per Section 11.6(g) of the Cash Flow Credit Agreement. Section 11.6(g), in turn, provides that "[n]otwithstanding anything to the contrary contained [in the Cash Flow Credit Agreement]," the Company is 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(g)(i).[10]

25. The Canyon Group's second argument focuses on Section 2.05(b) of the Intercreditor Agreement, which establishes the relative rights of the secured parties with respect to DIP financings. Namely, Canyon argues that Section 2.05(b) requires any DIP Financing to ensure that amounts applied to repay First Lien Obligations are distributed pro rata pursuant to Section 2.01 of the Intercreditor Agreement. *See* Canyon DIP Objection ¶ 8. As a threshold matter, Section 2.05(b) is not an independent restriction on the Debtors' ability to incur postpetition financing, but instead governs the rights by which lenders can (or cannot) object to a particular DIP financing. One of those conditions, as the Canyon Group argues, is triggered if amounts of the DIP financing are "applied to ***repay***" outstanding amounts under the existing first lien debt facilities, and such amounts are not applied on a ratable basis pursuant to Section 2.01 of the Intercreditor Agreement. *See* Intercreditor Agreement § 2.01(a) (emphasis added). The Canyon Group entirely ignores, however, that Section 2.01(a) applies (in relevant part) only to "Proceeds" of enforcement actions and certain distributions in respect of shared collateral—not to the proceeds of purchases or

[10] Further, even if the Cash Flow Credit Agreement required ratable treatment in the context of a roll-up, the Canyon DIP Objection entirely ignores that Section 11.7 is not among the "sacred rights" that can only be waived or modified with unanimous consent. *See* Credit Agreement § 11.1(a).

exchanges of loans. Because the roll-up here is effectuated by a cashless exchange, the DIP Facility involves no distribution in respect of collateral and has generated no distributable Proceeds. *See* DIP Credit Agreement § 2.1(b)(iii)-(iv) (stating that the DIP Lenders "will roll-up and ***exchange***" a portion of their prepetition secured loans on a one-to-one basis) (emphasis added).[11]

26. But even if the Canyon Group were permitted to object to the DIP Facility (which they are not), and even if there was a colorable argument for a breach (which there is not), courts have repeatedly recognized that contractual disputes under prepetition debt documents are not relevant to the approval of a debtor's DIP financing.[12]

V. CD&R and the DIP Lenders Have Acted in Good Faith for Purposes of Section 364(e) of the Bankruptcy Code

27. For purposes of section 364(e) of the Bankruptcy Code, good faith will be found so long as a 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 (Bankr. N.D. Ill. 2011). Cases where lenders were not entitled to a "good faith" finding involved evidence of fraud, collusion, or actions for an improper purpose. *In re LATAM Airlines Grp. S.A.*,

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[11] The Canyon DIP Objection also cites *In re American Tire Distributors* for the unsupported proposition that a court "would not approve a DIP motion seeking similar preferential roll-up treatment in violation of the parties' pre-petition agreements." Canyon DIP Objection ¶ 13. This mischaracterizes the court's remarks in *American Tire*, where the bankruptcy court stated on the record that it did not consider the objecting lenders' state law contract claims to be relevant to its consideration of the DIP. *See* Nov. 21, 2024 Hr'g Tr., No. 24-12391 [Docket No. 312] 127:11-15 (Bankr. D. Del. Nov. 21, 2024) ("[M]y way of thinking about that is that the work of protecting yourself against that transfer is done by contract, not by bankruptcy law, and therefore the problem with this is a problem of contract, not bankruptcy law.").

[12] *See, e.g.*, *Keybank Nat'l Ass'n v. Franklin Advisers, Inc.*, 616 B.R. 14, 26-27 (Bankr. S.D.N.Y. 2020) ("[i]n these cases, the Delaware Bankruptcy Court's job in approving the transactions that were presented to it was to consider whether the transactions complied with sections 363 and 364 of the Bankruptcy Code and whether they represented reasonable business judgments of the Debtors – even if that meant that the Debtors (or other parties) might be breaching other contracts in the process"); *see also In re TCI 2 Holdings, LLC*, 428 B.R. 117, 139, 141 (Bankr. D.N.J. 2010) (holding that, in the context of confirmation of a chapter 11 plan, the court would not decide whether certain creditors "violated the Intercreditor Agreement, but even if such a violation occurred, it would not impede the confirmation of the [plan] as proposed.").

620 B.R. 722, 792 (Bankr. S.D.N.Y. 2020) ("[C]ourts will not find good faith where there is fraud, collusion, actions for an improper purpose, or knowledge of the illegality of the transaction.").

28. The Debtors' decision to enter into the DIP Facility was the product of extensive, arms-length negotiations between sophisticated third-party stakeholders. That process was overseen by the Special Committee—consisting of disinterested and independent directors—with the exclusive authority to review, consider, negotiate and ultimately approve any transaction that in the judgment of the Special Committee could reasonably present a conflict. *See* First Day Decl. ¶¶ 9, 65. Following an extensive marketing and competitive process, the Special Committee determined that the DIP Facility presented the best available financing to the Debtors. *See* Banks Interim DIP Decl. ¶ 18.[13] The Objecting Parties fail to offer any evidence to suggest the Special Committee lacked independence or the DIP Lenders (including CD&R) acted for an improper purpose. The facts directly support a finding of "good faith" for purposes of section 364(e) of the Bankruptcy Code.

VI. The DIP Facility Is Not a Plan

29. The Cross-Holder Group contends that the RSA constitutes a *sub rosa* plan because it requires the DIP Lenders to "pursue" the DIP Facility and "equally flawed Plan." *See* Cross-Holder Group Objection ¶ 114. But the Cross-Holder Group fundamentally distorts the terms of the RSA and the law. "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." *In re*

[13] *See 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* [Docket No. 27] (the "**Banks Interim DIP Decl.**").

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). That the RSA requires the DIP Lenders to support the DIP Facility does not dictate the terms of a plan, or limit the Debtors' ability to market and solicit alternative financing. The RSA contains a clear "fiduciary out" and specifically contemplates that the Debtors will market and pursue alternative financing proposals. *See* RSA § 8.02 (providing that the Debtors can "***solicit, consider, respond to, facilitate, and negotiate an Alternative Restructuring Proposal for debtor-in-possession financing*** and/or a sale or disposition of assets of the Company Parties.") (emphasis added)). Indeed, that is exactly what the Debtors, through the Special Committee, have done during this process. *See* Banks Interim DIP Decl. ¶¶ 15–18, 30.

CONCLUSION

30. For the reasons set forth herein, the Objections should be overruled, and the relief requested in the Final DIP Order should be granted.

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