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

	)	
In re:	)	Chapter 11
	)	
MULTI-COLOR CORPORATION, <i>et al.</i> ,	)	Case No. 26-10910 (MBK)
	)	
	)	Honorable Michael B. Kaplan
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	

**THE SECURED AD HOC GROUP’S REPLY TO OBJECTIONS TO  
FINAL APPROVAL OF THE DEBTORS’ DIP FINANCING MOTION  
AND JOINDER IN THE DEBTORS’ AND SPONSOR’S REPLIES TO SAME**

The *ad hoc* group of secured first lien lenders and noteholders (the “Secured Ad Hoc Group”), by and through its undersigned counsel, hereby (i) replies to the objections to the 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*

<sup>1</sup> 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.



*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”)<sup>2</sup> filed by the Cross-Holder Ad Hoc Group at Docket No. 426 (the “Cross-Holder Ad Hoc Group Objection”) and a sub group of certain minority first lien lenders (the “Minority Lender Group” and, together with the Cross-Holder Ad Hoc Group, the “Objectors”) at Docket No. 428 (the “Minority Lender Group Objection” and, together with the Cross-Holder Ad Hoc Group Objection, the “Objections”) and (ii) joins in the Debtors’ reply at Docket No. 459 (the “Debtors’ Reply”) and the Sponsor’s reply at Docket No. 460 (the “Sponsor’s Reply”). In reply to the Objections and in further support of the final approval of the DIP Motion, the Secured Ad Hoc Group respectfully states as follows:

**PRELIMINARY STATEMENT**

1. The Objections are the latest salvo in a relentless, yet meritless, campaign by the Objectors to upend the Debtors’ restructuring, notwithstanding the widespread consensus achieved in these cases. The Debtors have met their burden of demonstrating that the DIP Facility is a result of good-faith, arms-length negotiations, a sound exercise of their business judgment, and the only actionable postpetition financing available. The Objections should be overruled, and the DIP Motion should be granted on a final basis.

2. The Objectors portray themselves as hapless bystanders deprived of an opportunity to participate in the Debtors’ restructuring process. In reality, the Cross-Holder Ad Hoc Group (whose members include the members of the Minority Lender Group) engaged in extensive prepetition negotiations with the Debtors and the Sponsor. Their goal in that process was to

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the DIP Motion or the Interim DIP Order, as applicable.

advance an aggressive out-of-court liability management transaction (“LMT”), which would have stripped significant value from secured creditors and resulted in costly and protracted litigation while providing minimal deleveraging and very limited runway for the Debtors. Upon learning of the proposed LMT, the Secured Ad Hoc Group implored the Debtors instead to pursue a holistic, value maximizing transaction that would substantially de-lever the capital structure and position the business for long-term success.

3. The Debtors ultimately decided to abandon the highly problematic LMT championed by the Objectors. They pivoted to the comprehensive restructuring embodied in the Restructuring Support Agreement, which enjoys the support of more than 96% of the Debtors’ non-ABL first lien debtholders. While this restructuring undoubtedly is in the best interests of the Debtors’ estates, the projected recovery by secured creditors is significantly less than that constituency would have preferred. Faced with the possibility of the LMT, which would have upended the capital structure in favor of unsecured funded debt, the Secured Ad Hoc Group was compelled to accept a deal in which secured creditors are estimated to recover a mere 50% on their claims. The Secured Ad Hoc Group simply had no choice but to accept this outcome because the alternative was for the Debtors to consummate the LMT, which was not only unlawful but also flagrantly value-destructive.

4. The Cross-Holder Ad Hoc Group attacks the Secured Ad Hoc Group’s good faith in extending the DIP Facility by disingenuously pointing to a letter by which the Secured Ad Hoc Group urged the Debtors to abandon the LMT. Any argument that a good faith finding here is improper is completely counter to the facts of these cases. It makes no sense to base an allegation of bad faith on a letter the Secured Ad Hoc Group sent to the Debtors to persuade them not to pursue the LMT and to engage in negotiations with the Secured Ad Hoc Group instead.

5. It is apparent that the Cross-Holder Ad Hoc Group is hurling these unfounded accusations because it cannot muster a viable legal challenge to the DIP Facility. The Objectors make no effort to show that the terms are off-market. Nor could they, since the uncontroverted evidence shows that the terms are decidedly *below* market. The Objectors therefore claim that the DIP Facility should be rejected merely because they proposed an alternative facility secured on a junior basis, untethered to any restructuring (the “Alternative DIP Proposal”). What follows from the Objectors’ arguments is that a prepackaged chapter 11 plan would be impossible in these cases. The Objectors contend that instead of sourcing financing to usher through the quick prepackaged plan, the Debtors were required to embrace a free-fall bankruptcy, funded by out-of-the-money junior creditors, which has no realistic chance of generating consensus and instead will lead to protracted litigation with the Debtors’ senior-most (and fulcrum) creditors. Put even more starkly, the Objectors contend that junior creditors always are entitled to force a debtor to jettison a prepackaged case supported by all voting classes whenever an out-of-the-money creditor is willing to offer a junior DIP, even when that DIP is a transparent attempt to upend the reorganization that enjoys the support of the requisite creditor majorities, in favor of a bankruptcy process that will be mired in uncertainty and litigation.

6. That is not the law, which makes sense because the Objectors’ position is economically irrational, harmful to the Debtors, and completely unfair to the senior creditors that demonstrated a willingness to fund a prepackaged case. The Court should reject the Objectors’ absurd interpretation of the Bankruptcy Code.

7. Finally, the Objectors repeatedly refer to the DIP Facility as the product of insider dealing because the Sponsor is a participant in the DIP loans, arguing that the Court should apply the entire fairness standard. This is rhetoric, not analysis. The Sponsor will have a mere 12%

allocation, which leaves no room for doubt that the DIP Facility is the product of arms-length negotiations between the Debtors and the Secured Ad Hoc Group. Given these indisputable facts, the Court should defer to the Debtors' business judgment in selecting the DIP Facility – the only actionable post-petition financing option available.

### REPLY

#### **I. The DIP Facility is the product of the Debtors' sound business judgment and complies with Section 364 of the Bankruptcy Code.**

8. Courts accord considerable deference to a debtor's business judgment in obtaining postpetition financing. *See In re G-I Holdings, Inc.*, 313 B.R. 612, 657 (Bankr. D. N.J. 2004) (“On the issue of the exercise of a debtor-in-possession’s business decision and judgment, a debtor-in-possession’s business decision ‘should be approved by the court unless it is shown to be so manifestly unreasonable that it could not be based upon sound business judgment, but only on bad faith, or whim or caprice.’”); *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender ... [and] will not second-guess a business decision, so long as corporate management exercised a minimum level of care in arriving at the decision.”).

9. Notwithstanding this well-established principle, the Cross-Holder Ad Hoc Group argues that the DIP Facility cannot be approved because the Alternative DIP Proposal contains terms that make it less expensive.

10. That is too facile an argument. Unlike the Alternative DIP Proposal, the DIP Facility has the support of more than 96% of non-ABL first lien debtholders, who are also signatories to the Restructuring Support Agreement that will shepherd these cases to emergence and position the reorganized Debtors for long term success. Courts do not require a debtor to focus solely on headline economics while “ignor[ing] the noneconomic features of the DIP Facility and

the [competing] alternative DIP proposal.” *In re UCI International, LLC, et al.*, Case No. 16-11354, 2016 WL 11740295 (Bankr. D. Del. July 16, 2016); *see also In re ION Media Networks, Inc.*, No. 09-13125JMP, 2009 WL 2902568, at \*4 (Bankr. S.D.N.Y. July 6, 2009) (“[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 noneconomic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization.*** This is particularly true in a bankruptcy setting where cooperation and establishing alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. ***That which helps to foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.***”) (emphasis added).

11. Courts therefore regularly reject financing proposals that are superficially economically superior, where their structure, conditions, or strategic effect would create delay, conflict, or uncertainty about the debtor’s reorganization prospects. *See, e.g., In re Mid-State Raceway, Inc.*, 323 B.R. 40, 61-62 (Bankr. N.D.N.Y. 2005) (holding that the board exercised sound and reasonable business judgment in rejecting an economically superior financing proposal in favor of a proposal from a source it considered more trustworthy); Hr’g Tr. 58:22-59:12, *In re Hornblower Holdings, LLC*, Case No. 24-90061 (MI) (Bankr. S.D. Tex. Feb. 21, 2024) [Docket No. 165] (approving DIP financing notwithstanding “excessive” interest rate where “the most important thing that’s coming with these DIPs is stability and an exit plan”); Hr’g Tr. 218:2-219:5, *In re Office Properties Income Trust*, Case No. 25-90530 (Bankr. S.D. Tex. Jan. 28, 2026) [Docket Nos. 690-693] (finding that the debtor had “exercised its business judgment in going with” a DIP facility tied to a restructuring support agreement over an alternative that had “better economics on

its face, but there was no guarantee that that DIP would get approved” and where the differential was not “so material . . . that it would be an abdication of fiduciary duties to propose one and not the other”).

12. The Cross-Holder Ad Hoc Group next suggests that Section 364(d)(1)(A) of the Bankruptcy Code *obligates* the Debtors to select their Alternative DIP Proposal, irrespective of whether such a decision would be in the best interests of the estates, simply because it is non-priming. As the Court correctly acknowledged in approving the DIP Facility on an interim basis, this “constrained reading” of the statute would “require a debtor actually to forgo 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,” leading to “value destructive” and “adverse” results. Hr’g Tr. 24:21-25:11, *In re Multi-Color Corp.*, Case No. 26-10910 (MBK) (Bankr. D.N.J. Feb. 2, 2026) [Docket No. 100]. As the Court correctly anticipated, the Objectors’ reading of the statute would lead to absurd results. For example, if a potential non-priming DIP facility included usurious interest rates or extreme or unwarranted terms, under the Cross-Holder Ad Hoc Group’s interpretation, a debtor would be forced to choose that facility over a consensual priming facility that ensured prompt emergence from chapter 11 on reasonable terms. That is not the law. *See Pub. Citizen v. U.S. Dep’t of Just.*, 491 U.S. 440, 453–54, 109 S. Ct. 2558, 2566–67, 105 L. Ed. 2d 377 (1989) (noting broad statutory language which would dictate absurd results if applied literally should be limited to proper scope based on circumstances).

13. Rather, Section 364(d)(1)(A) requires only that the debtor show it is “unable to obtain *such* [i.e., acceptable] credit otherwise”—a practical, fact-driven inquiry that respects a debtor’s business judgment to select a financing partner and identify a viable path for

reorganizing.<sup>3</sup> Indeed, the Cross-Holder Ad Hoc Group’s interpretation would require a debtor to abandon a prepackaged plan in favor of a costly free-fall bankruptcy solely due to the existence of a junior DIP financing proposal, notwithstanding the inherent benefit of a prepackaged bankruptcy case. *See In re Genco Shipping & Trading Ltd.*, 509 B.R. 455, 462 (Bankr. S.D.N.Y. 2014) (noting that “beneficial value of prepack cases has . . . been widely recognized” and that a successful prepackaged plan “can cut down the duration of a bankruptcy case and, therefore, the incredible cost associated with a long, drawn out bankruptcy process. When a Chapter 11 case is not concluded quickly, debtors and their stakeholders can be grievously injured by the destruction of value.”).

14. Moreover, Section 364(d)(1)(A) of the Bankruptcy Code was not designed to protect disgruntled unsecured creditors with a competing DIP financing proposal, but rather secured creditors in the event of non-consensual priming.<sup>4</sup> Tacitly recognizing that purpose, the Cross-Holder Ad Hoc Group claims that priming under the DIP Facility is not consensual, misleadingly claiming the combined holdings of the members of the Secured Ad Hoc Group were not sufficient to direct the Prepetition Secured Notes Trustee because the Sponsor’s holdings could not be counted. Wrong.

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<sup>3</sup> The Cross-Holder Ad Hoc Group cites to *In re L.A. Dodgers LLC*, 457 B.R. 308 (Bankr. D. Del. 2011), as an example of a court denying approval of a DIP facility where a junior DIP was available. However, as the Cross-Holder Ad Hoc Group Objection acknowledges, the debtors in *L.A. Dodgers* simply refused to engage in negotiations with the proposed unsecured financing provider. *See id.* at 313. Not so here, where the Debtors engaged in discussions regarding the Cross-Holder Ad Hoc Group’s proposals and ultimately decided, in their business judgment, that the DIP Facility presented a better path. The Debtors need only show that they made a “reasonable effort” to obtain credit on more favorable terms, they are not obligated to accept any DIP proposal simply due to the fact that it is non-priming. *See In re YL W. 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) (“Generally, courts require only a showing of reasonable effort; debtors are not required to seek an alternative financing from every possible lender.”).

<sup>4</sup> *See* Hr’g Tr. 25:6-11, *In re Multi-Color Corp.*, Case No. 26-10910 (MBK) (Bankr. D.N.J. Feb. 2, 2026) [Docket No. 100] (“This Court reads the mandates of Section 364(d)(1) as designed and intended to protect the interest of existing unwilling lien holders and can certainly be subject to their waiver and consent. Here, the exhaustion of Section 364(c) opportunities is of less import given that the policy concern of protecting unwilling secured creditors is absent.”).

15. **First**, the Cross-Holder Ad Hoc Group conveniently ignores the fact that, under the Prepetition Loans/Notes Intercreditor Agreement, it is the Prepetition Cash Flow Agent, **not** the Prepetition Secured Notes Trustee, that has the right and power to consent to any DIP financing, and there is no doubt that the members of the Secured Ad Hoc Group held sufficient Prepetition Cash Flow Obligations to direct that consent. *See* Prepetition Loans/Notes Intercreditor Agreement § 2.05(b).<sup>5</sup> Under the Restructuring Support Agreement, the requisite holders expressly stated that the agreement was deemed a direction to the Prepetition Cash Flow Agent to consent to the priming DIP Facility.<sup>6</sup>

16. **Second**, in any event, the members of the Secured Ad Hoc Group still held the requisite majority of Prepetition Secured Notes to direct the Prepetition Secured Notes Trustee because the Prepetition Secured Notes Indenture provides that the Sponsor's notes are deemed to be not "outstanding" for purposes of the calculation. *See* Prepetition Secured Notes Indenture § 101 (definition of "Outstanding"). Accordingly, the Sponsor's notes would need to be deducted from both the numerator and the denominator for the purpose of determining a majority of Prepetition Secured Notes outstanding. When that adjustment is properly made, the members of the Secured Ad Hoc Group held a majority capable of instructing the Prepetition Secured notes Trustee.

17. **Third**, numerous additional noteholders have executed the Restructuring Support Agreement since the filing of the Secured Ad Hoc Group's Rule 2019 statement. Now, holders of

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<sup>5</sup> This makes perfect sense, given the approximately \$2.367 billion in outstanding principal amount of Prepetition Cash Flow Obligations dwarves the approximately \$1.75 billion in outstanding face amount of Prepetition Secured Notes Obligations.

<sup>6</sup> Perhaps acknowledging this reality, the Cross-Holder Ad Hoc Group cites to the Minority Lender Group's argument that the consent of the Prepetition Secured Notes Trustee is nonetheless needed where a DIP facility is "non-pro rata." As discussed below, the DIP Facility does not violate the ratable sharing provisions of the relevant debt instruments.

more than 94% of Prepetition Secured Notes support the DIP Facility.

18. Finally, the Cross-Holder Ad Hoc Group argues that the Debtors' business judgment is not entitled to deference, and that the entire fairness standard applies, because the Sponsor is participating in the DIP Facility. This is nonsense. The Sponsor's allocation of the DIP Facility is a mere 12%. As a factual matter, the Sponsor had no ability or right to dictate its terms.

## **II. The DIP Facility was extended in good faith.**

19. The Cross-Holder Ad Hoc Group argues that the DIP Facility does not satisfy the requirements for a good-faith finding under Section 364(e) of the Bankruptcy Code by casting unsubstantiated aspersions regarding the Secured Ad Hoc Group's and the Debtors' motives. Although the Bankruptcy Code does not define "good faith", courts generally find a lack of good faith where there is "fraud, collusion, actions for an improper purpose, or knowledge of illegality of the transaction." *In re Latam Airlines Grp. S.A.*, 620 B.R. 722, 792 (Bankr. S.D.N.Y. 2020); *see also Whorl v. Solidus Networks, Inc. (In re Solidus Networks, Inc.)*, No. BAP CC-08-1046-MKKPA, 2008 WL 8462968, at \*4 (B.A.P. 9th Cir. Dec. 24, 2008) (explaining that to determine the existence of good faith for purposes of Section 364(e), a court should "look to the integrity of an actor's conduct during the proceedings.").

20. The Cross-Holder Ad Hoc Group has no way to dispute the evidence that the DIP Facility is the product of a robust arm's-length process.<sup>7</sup> Rather than present evidence of fraud or illegality, the Cross-Holder Ad Hoc Group makes repeated, meritless assertions that the DIP

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<sup>7</sup> In support of its argument of lack of good faith, the Cross-Holder Ad Hoc Group cites two highly distinguishable decisions in which the courts found a lack of good faith where the lenders knowingly extended credit in violation of applicable law. *See In re EDC Holding Co.*, 676 F.2d 945 (7th Cir. 1982) (Lack of good faith found where lenders extended credit that was on its face improper under well-settled law); *Matter of Grand Valley Sport & Marine, Inc.*, 143 B.R. 840, 849 (Bankr. W.D. Mich. 1992) (Lack of good faith found where lender extended post-petition financing that it knew was not authorized by the court).

Facility is an “insider” financing negotiated at the Sponsor’s direction. As explained above, however, the Sponsor has only a 12% allocation of the DIP Facility. It makes no sense to say that with this minority share, the Sponsor somehow drove the negotiations of the DIP Facility’s terms.

21. The Cross-Holder Ad Hoc Group points to the Secured Ad Hoc Group’s December 23, 2025, letter to the Debtors as purported evidence of impropriety. But the Cross-Holder Ad Hoc Group knows full well that the point of the letter was to explain why the LMT supported by the Cross-Holder Ad Hoc Group would be injurious to the business, while pursuing the current restructuring was the better course. It is thus nonsensical for the Cross-Holder Ad Hoc Group to say that this letter somehow demonstrates that the current restructuring and the DIP Facility are the product of bad faith.

22. Without any credible evidence to the contrary, the Court should find that the DIP Facility was extended in good faith. *See In re Latam Airlines Grp. S.A.*, 620 B.R. 722, 795 (Bankr. S.D.N.Y. 2020) (rejecting argument that DIP facility was not extended in good faith where there was no evidence that DIP lenders “engaged in fraud or collusion, or attempted to take gross advantage of other bidders which is the typical misconduct giving rise to a finding of bad faith.”).

**III. The Roll-Up DIP Loans are appropriate.**

23. The Cross-Holder Ad Hoc Group further argues that the Roll-Up DIP Loans impermissibly benefit the DIP Lenders. In addition, both the Minority Lender Group and the Cross-Holder Ad Hoc Group contend that the Roll-Up DIP Loans violate provisions of the Prepetition Cash Flow Credit Agreement and the Prepetition Loans/Notes Intercreditor Agreement. Both arguments lack merit.

**A. The Roll-Up DIP Loans are customary, reasonable, and necessary.**

24. Roll-ups are a common feature in the DIP financing market where, as here, the lenders are unwilling to extend credit without one and the debtor cannot obtain viable alternative

financing otherwise. Here, the roll-up is an integral part of the overall financing package and a critical driver of the DIP Lenders' decision to provide the DIP Facility. The quantum, ratio, and timing of the Roll-Up DIP Loans were heavily negotiated by the parties.

25. The Supreme Court has explicitly acknowledged the validity of roll-ups. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 468 (2017) (noting that “[c]ourts have [regularly] approved ... ‘roll-ups’ that allow lenders who continue financing the debtor to be paid first on their prepetition claims.”). The DIP Facility contemplates a 1:1 roll-up of prepetition debt, which is an entirely reasonable ratio, well within the bounds of roll-up ratios approved in this District. *See In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D. N.J. Apr. 4, 2024) [Docket No. 81] (approving a 1:1 interim roll-up); *In re STG Logistics, Inc.*, No. 26-10258 (MEH) (Bankr. D. N.J. Jan. 14, 2026) [Docket No. 84] (authorizing a 1.15:1 interim roll-up); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) [Docket No. 35] (Bankr. D. N.J. June 15, 2023) (approving a 5:1 interim roll-up).

26. Notwithstanding the eminently reasonable roll-up ratio, the Cross-Holder Ad Hoc Group relies heavily on the fact that the DIP Lenders' prepetition debt is undersecured which, in its telling, somehow means the DIP Lenders are not entitled to this bargained-for feature. But bankruptcy courts in this District and others routinely recognize that a roll-up of prepetition debt is a common incentive to induce lenders to extend financing to insolvent debtors, regardless of whether the lenders are undersecured. *See, e.g., In re Thrasio Holdings, Inc.*, Case No. 24-11840 (CMG) (Bankr. D. N.J.) [Docket No. 297] (approving \$360 million DIP, including \$270 million roll-up), [Docket No. 397] (noting that the class receiving the roll-up received 20% recovery); *In re Digital Media Solutions, Inc.*, Case No. 24-90468 (ARP) (Bankr. D. Del.) [Docket No. 423] (approving \$121.9 million DIP, including \$91.9 million roll-up), [Docket No. 522] (noting that the

class receiving the roll-up received 0% recovery); *In re Anthology Inc.*, Case No. 25-90498 (ARP) (Bankr. S.D. Tex.) [Docket No. 286] (approving \$100 million DIP, including \$50 million roll-up), [Docket No. 598] (noting that the class receiving the roll-up received 8.7-30.4% recovery); *In re WEH Liquidating, LLC*, Case No. 25-11602 (TMH) (Bankr. D. Del.) [Docket No. 229] (approving DIP tranches with 2:1 and 3:1 roll-ups), [Docket No. 395] (noting that the class receiving the roll-up received 0-60% recovery).<sup>8</sup> Simply put, there is nothing unusual about the Roll-Up DIP Loans.

**B. The Roll-Up DIP Loans do not violate the Prepetition Cash Flow Credit Agreement.**

27. The argument that the Roll-Up DIP Loans violate the Prepetition Cash Flow Credit Agreement fails for three reasons.

28. *First*, the Minority Lender Group cites section 11.7, entitled “Adjustments; Set-Off; Calculations; Computations.” That section states that if a lender “receive[s] any *payment* of all or part of its Loans . . . in a greater proportion than any such payment . . . received by any other Lender,” then the lender shall share the *excess payment* ratably with others. Prepetition Cash Flow Credit Agreement § 11.7 (emphasis added). Section 11.7 is clearly inapplicable to the roll-up. Under the DIP Credit Agreement, the DIP Lenders will “*exchange*” a portion of their prepetition term loans for Roll-Up Dollar Term Loans, “which shall be effected by means of a ‘*cashless roll*.’” DIP Credit Agreement §§ 2.1(a)(iii), (b)(iii) (emphasis added). No payment is being made here, no cash is being distributed, and there is no “excess” to share ratably. Moreover, section 11.7 is not even the applicable section discussing *pro rata* treatment in the Prepetition Cash Flow Credit Agreement. That is contained in section 2 and is expressly limited to sharing among the *revolving credit facility lenders*.

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<sup>8</sup> The Cross-Holder Ad Hoc Group also argues that due to purported “gaps” in the secured lenders’ collateral, they have no security interest in the Debtors’ going concern value. This argument is irrelevant and outside the scope of consideration of the DIP Facility. In any event, the Cross-Holder Ad Hoc Group’s theory is incorrect given the secured lenders here have a lien on goodwill. *In re Bellanca Aircraft Corp.*, 56 B.R. 339, 386 (Bankr. D. Minn. 1985) (discussing insolvency valuation methods to address avoidable preferences and noting that “goodwill is included as an element of going concern value.”).

29. **Second**, and relatedly, section 11.7 includes numerous express exceptions to ratable treatment, including transactions in accordance with section 11.6. Section 11.6(g)(i) permits the Debtors “[n]otwithstanding anything to the contrary contained [in the Credit Agreement]” to “purchase or prepay Loans . . . on a non-*pro rata* basis through . . . open market or other privately negotiated purchases.” The Roll-Up DIP Loans are appropriately characterized as a purchase of prepetition debt (where the consideration is postpetition debt), which unquestionably was privately negotiated. That places them squarely within the exception to ratable treatment.

30. **Third**, in any event, the right to *pro rata* treatment under section 11.7 is not among the “sacred rights” that can be modified only with unanimous consent. *See* Prepetition Cash Flow Credit Agreement § 11.1(a) (listing sacred rights, not including ratable treatment). A simple majority of lenders—such as the members of the Secured Ad Hoc Group—can waive it without the consent of the Minority Lender Group. And the Restructuring Support Agreement operates as such a waiver, since it constitutes written consent by a majority of lenders to the roll-up under the DIP Facility.

31. The Minority Lender Group cites non-binding *dicta* from a hearing in *American Tire*, a case in another jurisdiction, to contend that non-*pro rata* roll-ups cannot be approved as part of a DIP facility without violating the underlying credit agreement. But the DIP credit agreement in *American Tire* provided that the “rollup commitment shall be deemed funded and immediately, automatically applied in **repaying** the corresponding principal amount of the prepetition term loan obligations.” Hrg. Tr. at 124:13-16, *In re American Tire Distributors, Inc.*, Case No. 24-12391 (CTG) (Bankr. D. Del. Nov. 19, 2024) [Docket No. 312] (emphasis added). Unlike here, the roll-up in *American Tire* constituted a **payment** of prepetition loans, not an exchange or purchase. Nor did *American Tire* focus on provisions like sections 11.6(g)(i) or 11.1(a) of the Prepetition Cash Flow Credit Agreement, which permit a non-ratable roll-up,

especially where a majority of lenders consent. Moreover, unlike here, participation in the DIP facility was not open to all applicable lenders in *American Tire*. In any case, the *American Tire* court did not deny the DIP facility because of the objection to non-ratable treatment; the court concluded that this contractual challenge was irrelevant to its determination whether the DIP facility could be approved under the Bankruptcy Code. *Id.* at 127:11–15 (noting that such a challenge is “a problem of contract, not bankruptcy law.”); *id.* at 128:9-14 (suggesting entry of an order preserving lenders’ rights to litigate the *pro rata* issue in another forum).<sup>9</sup>

**C. The Roll-Up DIP Loans do not violate the Prepetition Loans/Notes Intercreditor Agreement.**

32. The Minority Lender Group next points to section 2.05 of the Prepetition Loans/Notes Intercreditor Agreement. That provision states that a first lien lender may not object to any proposed DIP financing provided by one or more other lenders, and then goes on to describe exceptions, including “if any amount of such DIP Financing . . . is applied to repay any of the First Lien Obligations” and such amount is not applied in accordance with section 2.01. Prepetition Loans/Notes Intercreditor Agreement § 2.05(b). Section 2.01 does not apply to a cashless debt-for-debt exchange; it governs only the repayment of prepetition debt.

33. In any event, section 2.05 does not prohibit non-*pro rata* DIP financing; it merely carves out situations in which a lender may object to a proposed DIP financing.<sup>10</sup> Any remedy

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<sup>9</sup> In any case, courts have approved DIP financings even where their terms may have violated prepetition instruments. *See, e.g., Keybank Nat’l Ass’n v. Franklin Advisers, Inc.*, 616 B.R. 14, 26 (Bankr. S.D.N.Y. 2020) (explaining that in approving DIP financings, the bankruptcy court’s “job” is 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 (Bankr. D.N.J. 2010) (declining to adjudicate alleged violations of an intercreditor agreement in connection with plan confirmation, holding that any such violation “would not impede confirmation of the [plan] as proposed.”).

<sup>10</sup> Notably, neither the Prepetition Cash Flow Agent nor the Prepetition Secured Notes Trustee has objected to the DIP Facility.

that the Minority Lender Group may have as a result is purely contractual and should be addressed in another forum.<sup>11</sup>

**IV. The Backstop Premium is appropriate and necessary.**

34. The Cross-Holder Ad Hoc Group opposes the Backstop Premium on the grounds that it gives the DIP Backstop Parties a disproportionate recovery. But 3.0% backstop premiums are reasonable and customarily granted in this context. In fact, courts in this District have recently approved larger backstop premiums in similar complex chapter 11 cases. *In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D. N.J. Jan. 24, 2024) [Docket No. 60] (approving a 11% backstop premium); *In re STG Logistics, Inc.*, No. 26-10258 (MEH) (Bankr. D. N.J. Jan. 14, 2026) [Docket No. 84] (approving a 5.55% backstop premium); *In re Thrasio Holdings, LLC*, No. 24-11840 (CMG) (Bankr. D. N.J. Apr. 4, 2024) [Docket No. 81] (approving a backstop premium of 7.5%).

35. The Cross-Holder Ad Hoc Group cites *In re Momentive Performance Materials Inc.* No. 14-22503-RDD, (Bankr. S.D.N.Y. June 19, 2014), to argue that the premium should be denied if it is “sized based on amounts that were already committed.” Bankruptcy courts, however, regularly award backstop fees where the fee was scaled to amounts already committed. *See In re LATAM Airlines Group S.A.*, Case No. 20-11254 (JLG) (Bankr. S.D.N.Y. Mar. 15, 2022) [Docket No. 4667] at 46-50 (overruling objections to backstop fee where majority of notes offering was allocated to Commitment Creditors); Confirmation Order, *In re Wolfspeed, Inc.*, Case No. 25-90163 (CML) (Bankr. S.D. Tex. Sep. 8, 2025) (approving backstop premium and associated

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<sup>11</sup> The Cross-Holder Ad Hoc Group also attempts to challenge the roll-up by citing the district court decision in *In re ConvergeOne Holdings, Inc.*, Case No. 4:24-cv-02001 (S.D. Tex. Sept. 25, 2025) [Docket. No. 54], which reversed confirmation of a plan because an opportunity to backstop an equity rights offering was not properly marketed. That case (in addition to being wrongly decided) is irrelevant in the present context, which involves a roll-up component of a DIP facility, not an equity rights offering in a plan.

holdback on full amount of rights offering); *see also In re Peabody Energy Corp.*, 933 F.3d 918 (8<sup>th</sup> Cir. 2019) (affirming confirmation of plan which contemplated backstop premium tied to size of commitment by party); Confirmation Order, *In re Lyondell Chemical Co.*, Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Apr. 23, 2010) [Docket No. 4418] (approving backstop premium determined by parties’ commitments prior to results of rights offering pursuant to plan confirmation); Order Authorizing Entry into Backstop Commitment Letter, *In re Seadrill Ltd.*, Case No. 21-30427 (DRJ) (Bankr. S.D. Tex. Oct. 26, 2021) [Docket No. 1159] (approving backstop commitment agreement allocating 6.67% backstop premium by share of parties’ commitment prior to rights offering); *In re WOM S.A.*, Case No. 24-10628 (KBO) (Bankr. D. Del. Dec. 16, 2024) [Docket No. 912] (approving 12.5% backstop premium over creditor committee objection where committee argued that “under the BCA, the Favored Noteholders are already committing to exercise all subscription rights available to them in the rights offering and purchase their pro rata share of the New Money New Secured Notes and the New Money New Convertible Notes ...”).

**V. The remaining objections to the DIP Facility should be overruled.**

36. The Cross-Holder Ad Hoc Group’s remaining objections to the DIP Motion should be overruled for the reasons outlined below.

OBJECTION	REPLY
Section 506(b) findings ( <i>See</i> Cross-Holder Ad Hoc Group Objection ¶ 128)	The proposed Final DIP Order appropriately contains a finding that the Adequate Protection terms are consistent with the Bankruptcy Code, including Section 506(b) thereof. The Cross-Holder Ad Hoc Group misconstrues the operative Adequate Protection language in the proposed order, which provides that postpetition interest on the Prepetition Cash Flow Obligations and the Prepetition Secured Notes Obligations will <i>accrue</i> , not be <i>paid</i> . Any payment of postpetition interest will be subject to a determination under Section 502(b) of the Bankruptcy Code.

<p>Prepetition debt document findings (<i>See</i> Cross-Holder Ad Hoc Group Objection ¶ 129)</p>	<p>The Cross-Holder Ad Hoc Group complains of the findings in the Final DIP Order to the effect that the Prepetition Liens are valid and continuing and the findings regarding compliance with the prepetition debt documents. The Cross-Holder Ad Hoc Group has presented no evidence to counter these customary findings, and the validity of the Prepetition Liens is in all cases subject to the Challenge provisions.</p>
<p>Liens on, or superiority claims against, avoidance actions and their proceeds (<i>See</i> Cross-Holder Ad Hoc Group Objection ¶¶ 132-34)</p>	<p>Liens on, or superiority claims against, avoidance actions and their proceeds are appropriate and are regularly approved as a matter of course. <i>See In re United Site Services, Inc.</i>, Case No. 25-23630 (MBK) (Bankr. D. N.J. Feb. 3, 2026) [Docket No. 266] (approving liens on avoidance action proceeds); <i>In re Thrasio Holdings, Inc.</i>, Case No. 24-11840 (CMG) (Bankr. D. N.J. Apr. 4, 2024) [Docket No. 297] (approving same); <i>In re Avenue Stores</i>, Case No. 19-11842 (LSS) (Bankr. D. Del. Aug. 13, 2019) [D.I. 223] at ¶ II(A) (DIP lien granted on avoidance actions and avoidance action proceeds); <i>HRI Holding Corp.</i>, Case No. 19-12415 (MFW) (Bankr. D. Del. Dec. 5, 2019) [D.I. 163] at ¶ II(A) (DIP lien granted on avoidance actions and avoidance action proceeds).</p> <p>There is nothing unusual about this. Section 364(c) of the Bankruptcy Code expressly provides that a court may authorize the debtor to obtain postpetition credit “secured by a lien on property of the estate <b>that is not otherwise subject to a lien.</b>” 11 U.S.C. § 364(c)(2) (emphasis added). Congress designed Section 364 of the Bankruptcy Code with a series of “incentives” and “inducements” that a debtor may offer, with court approval, to attract postpetition credit. <i>Tully Constr. Co. v. Cannonsburg Env’t. Assocs., Ltd. (In re Cannonsburg Env’t. Assocs., Ltd.)</i>, 72 F.3d 1260, 1267 (6th Cir. 1996). Taking away such incentives and inducements “undercuts the goals of bankruptcy and would cause a chilling effect on DIP lending.” <i>In re Silver Cinemas Int’l, Inc.</i>, Memorandum Order, No. 00-1978, at 4 (Bankr. D. Del. Aug. 11, 2000).</p>
<p>Section 506(c) waiver (<i>See</i> Cross-Holder Ad Hoc Group Objection ¶¶ 135-140)</p>	<p>The Section 506(c) waiver is customary and appropriate under the circumstances. The members of the Secured Ad Hoc Group are providing the estates with desperately needed DIP financing to allow the Debtors to reorganize, and the DIP Facility is tied to a comprehensive restructuring package and a viable exit plan, with respect to which the Section 506(c) waiver was negotiated as valuable consideration. In other words, this is not a situation where the lenders are not “paying the freight.”</p>

	<p>The Cross-Holder Ad Hoc Group suggests that a Section 506(c) waiver is improper when liens are granted on unencumbered assets. However, courts in the Third Circuit have consistently approved these waivers in conjunction with the granting of liens on unencumbered assets. <i>See In re Blink Holdings, Inc.</i>, Case No. 24-11686 (JKS) (Bankr. D. Del. Sep. 18, 2024) [Docket No. 393]; <i>In re ViewRay, Inc.</i>, Case No. 23-10935 (KBO) (Bankr. D. Del. Aug. 29, 2023) [Docket No. 226].</p> <p>Moreover, the ability to waive Section 506(c) rights belongs solely to debtors and the decision to waive is one that lies squarely within their business judgment. <i>See Hr’g Tr.</i> at 71:7-14, <i>In re Clovis Oncology, Inc.</i>, Case No. 22-11292 (JKS) (Bankr. D. Del. Jan 20, 2023) [Docket No. 251] (“Section 506(c) is the debtors to waive ... this part of a global package, a not unusual global package at all for accommodation of new money from an existing lender.”); <i>Hr’g Tr.</i> at 19:12-19, <i>In re Nielsen &amp; Bainbridge, LLC</i>, Case No. 23-90071 (CML) (Bankr. S.D. Tex. Mar. 1, 2023) [Docket No. 225] (stating that 506(c) waivers “are the debtors’ rights to waive. And it is all an exercise of business judgment in my mind.”). Here, the Debtors clearly exercised sound business judgment in electing to waive their Section 506(c) rights to obtain the DIP Facility and ensure the associated restructuring.</p>
<p>“Equities of the Case” waiver (<i>See</i> Cross-Holder Ad Hoc Group Objection ¶¶ 141-45)</p>	<p>The equities of the case waiver is appropriate. Courts have recognized that the application of the “equities of the case” exception is not appropriate where postpetition financing (or the use of cash collateral) is necessary to preserve the value of the estate. <i>See, e.g., In re Muma Servs., Inc.</i>, 322 B.R. 541, 558-59 (Bankr. D. Del. 2005) (concluding that the “equities of the case” exception did not apply where debtor required postpetition financing and use of cash collateral to operate.).</p> <p>Courts also consistently hold that a waiver of the Section 552(b) “equities of the case” exception is appropriate where, as in these cases, the lenders agree to subordinate their claims to a carve-out. <i>See Hr’g Tr.</i> 58-59, <i>In re Hostess Brands, Inc.</i>, Case No. 12-22052 (RDD) (Bankr. S.D.N.Y. Feb. 2, 2012) (secured creditors’ “willingness to provide for a carve-out upfront as opposed to letting the professionals hang on that point” was a sufficient “tradeoff” to justify Section 552(b) waiver); <i>In re Blockbuster Inc.</i>, 2010 WL 48673646, at *18 (Bankr. S.D.N.Y. Sep. 24, 2010) (same); <i>In re Gen. Growth Props., Inc.</i>, 412 B.R. 122, 127 (Bankr. S.D.N.Y. 2009) (same).</p>

	<p>It is clear that, to preserve the value of their estates, the Debtors require both the use of the Prepetition Secured Parties’ cash collateral and the DIP Facility backstopped by the members of the Secured Ad Hoc Group, a subset of the Prepetition First Lien Lenders.</p>
<p>Marshaling waiver (<i>See</i> Cross-Holder Ad Hoc Group Objection ¶¶ 146-47)</p>	<p>The waiver of marshaling is appropriate. Only secured creditors can invoke the equitable doctrine of marshaling – unsecured creditors have no right to pursue marshaling and thus have no standing to challenge its waiver. <i>See Herkimer Cnty. Tr. Co. v. Swimelar</i>, 170 B.R. 41, 45 (Bankr. N.D.N.Y. 1994); <i>Galey &amp; Lord v. Arley Corp.</i>, 239 B.R. 261, 274 (Bankr. S.D.N.Y. 1999) (same).</p> <p>Courts acknowledge that the decision to waive marshaling is well within a debtor’s business judgment and is a common component of negotiated DIP facilities that provide new money financing and represent comprehensive agreements with secured lenders. <i>See In re Accuride Corp.</i>, Case No. 24-12289 (JKS) (Bankr. D. Del. Feb. 6, 2025) [Docket No. 662]; <i>see</i> Hr’g Tr. 92:22-93:11, <i>In re MPM Silicones, LLC</i>, Case No. 14-22503 (RDD) (Bankr. S.D.N.Y. May 27, 2014) [Docket No. 270] (approving a no-marshaling provision and commenting that “[g]enerally speaking, this is the debtor’s right to negotiate or secured creditors’ rights to insist on.”).</p>
<p>Indemnification (<i>See</i> Cross-Holder Ad Hoc Group Objection ¶¶148-49)</p>	<p>The indemnification protections granted to the DIP Lenders are appropriate and should be approved.</p> <p>The Cross-Holder Ad Hoc Group contends that the members of the Secured Ad Hoc Group should not be entitled to indemnification with respect to prepetition conduct and, given their so-called “controlling” position in these chapter 11 cases, owe fiduciary duties to the Debtors and, accordingly, the “gross negligence” carve-out from their indemnification in connection with the DIP Facility is insufficient. These arguments lack any evidentiary support and are meritless.</p> <p>Debtors’ indemnification of secured lenders under DIP orders is standard. <i>See In re Pretium Packaging, L.L.C.</i>, Case No. 26-10896 (CMG) (Bankr. D. N.J. Feb. 18, 2026) [Docket No. 152] (DIP credit agreement included indemnification with respect to claims related to prepetition debt documents); <i>In re Thrasio Holdings, Inc.</i>, Case No. 24-11840 (CMG) (Bankr. D. N.J. Apr. 4, 2024) [Docket No. 297]; <i>In re WeWork Inc.</i>, Case No. 23-19865 (JKS) (Bankr. D. N.J. May 30, 2024) [Docket No. 2054]; <i>In re United Site Services, Inc.</i>, Case No. 25-23630 (MBK) (Bankr. D. N.J. Feb. 3, 2026) [Docket No. 266].</p>

**CONCLUSION**

37. Based on the foregoing, the Court should overrule the Objections and grant the DIP Motion on a final basis.

Respectfully submitted this 16<sup>th</sup> day of March 2026.

*/s/ Thomas M. Walsh*

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