**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	)	Chapter 11
	)	
AUTO PLUS AUTO SALES LLC,[1]	)	Case No. 23-90055 (CML)
	)	
Wind-Down Debtor.	)	(Formerly Jointly Administered under Lead Case IEH Auto Parts Holding, LLC, Case No. 23-90054)

MANN + HUMMEL FILTRATION TECHNOLOGIES US LLC'S RESPONSE TO THE WIND-DOWN DEBTORS' OBJECTION TO (1) THE NON-GUC PORTION OF PROOF OF CLAIM NO. 567 FILED BY MANN + HUMMEL FILTRATION TECHNOLOGIES US LLC; AND (2) MANN + HUMMEL FILTRATION TECHNOLOGIES US LLC'S MOTION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO SECTION 503(b) OF THE BANKRUPTCY CODE

MANN + HUMMEL Filtration Technologies US LLC ("M+H"), by and through its undersigned counsel, files this response (the "Response") together with the Declaration of Luis Enrique Linan Araiza (the "Linan Decl."), annexed hereto as **Exhibit A**, in opposition to the *Wind-Down Debtors' Objection* (the "Objection") [Docket No. 272] to (i) M+H's proof of claim no. 567 (the "Pre-Petition Claim"), solely with respect to the portion that asserts a claim under section 503(b)(9) of the Bankruptcy Code (the "20 Day Claim") and (ii) the *Motion for Allowance and Payment of Administrative Expense Claim Pursuant to Section 503(b) of the Bankruptcy Code* (the "503 Claim" and together with the 20 Day Claim, the "Administrative Claim").[2] In support of this Response, M+H respectfully states as follows:

[1] The Wind-Down Debtor's service address is 533 Carmel Crest Lane, Charlotte, North Carolina 28226. All pleadings related to these chapter 11 cases may be obtained from the website of the Wind-Down Debtor's claims and noticing agent at https://www.kccllc.net/autoplus.

[2] *See* Case No. 23-90054, Docket No. 966.

Introduction

1. When a chapter 11 debtor is on the verge of bankruptcy or has already filed for bankruptcy, vendors and other third parties alike may be wary of continuing to conduct business with the debtor for fear of not being paid. But for a debtor to successfully reorganize or liquidate its assets in an orderly fashion through chapter 11, it often needs its existing vendors' and service providers' valuable goods and services to continue uninterrupted during the debtor's time in bankruptcy. Congress recognized this tension and attempted to address it by affording priority treatment to administrative expenses under section 503 of the Bankruptcy Code. By doing so, Congress intended to encourage vendors and other third parties to continue furnishing goods and services critical to the debtor's ability to operate as usual while in bankruptcy.

2. M+H is exactly the type of vendor that section 503 of the Bankruptcy Code is designed to protect. It has a long standing business relationship with the Debtors, having sold them tens of thousands of oil filters and related filtration products since at least 2014. M+H delivered valuable goods critical to the Debtors' operations in the period leading up to the commencement of their bankruptcy, including within the twenty-day period immediately preceding the bankruptcy filings, and continued to do so even after the chapter 11 cases were filed. On that basis, M+H filed its Pre-Petition Claim, which includes its 20 Day Claim, and the 503 Claim.[3] The uninterrupted flow of millions of dollars' worth of M+H's goods unquestionably contributed to the Debtors' ability to confirm their chapter 11 plan of liquidation and maximize value for creditors.

3. Now that the Debtors have liquidated their business, the Wind-Down Debtor objected to the payment of the goods the Debtors so urgently required to get them through chapter 11 on three primary grounds. First, the Wind-Down Debtor argues that a portion of M+H's 20 Day

[3] Capitalized terms used but not defined herein shall have the meaning ascribed in the 503 Claim.

Claim ($84,192.86) is on account of goods received outside of the 20-day window. While M+H acknowledges that – following an additional review of its records – a portion of the delivered goods ($27,699.77) were delivered on January 10, 2023, M+H's records demonstrate that all remaining portions of the 20 Day Claim were in fact delivered to the Debtors within the 20-day period. Second, the Wind-Down Debtor contends that a portion of M+H's goods in the 20 Day Claim were "drop-shipped" to Auto Plus's customers, and therefore should be reduced by $242,267.04 because they were not "received" by the Debtors. Although M+H did in fact deliver certain goods to the Debtors' designated customers (who presented the Debtors' account information to M+H to complete the transactions), additional discovery is required to determine the nature of the customers' relationship to the Debtors and whether receipt by the customers was effectively receipt by the Debtors. Third, the Wind-Down Debtor attempts to offset the amount of the 20 Day Claim against rebates M+H allegedly owed to the Debtors prior to the 20-day window. Not only does M+H dispute that rebates are owed for 2021 and Q1 and Q2 2022 (as the applicable rebates were already taken by the Debtors in the ordinary course of business), but M+H disagrees that any rebates for Q3, Q4 2022 and the January 1-10, 2023 period may be applied to reduce the value of goods sold during the 20-day period. Rebates tied to sales of goods supplied by M+H in 2021, 2022 and January 1-10, 2023 do not apply to goods received by the Debtors from January 11-30, 2023. The parties' contract does not provide for setoff to be used in this fashion and even if it did, it would be unjust to allow the Wind-Down Debtor to use this equitable remedy to reduce the 20 Day Claim on a dollar–for–dollar basis when the Debtors owe M+H millions of dollars on its unsecured claim.

4. Finally, the Objection does not offer any concrete evidence or provide a meaningful explanation for why the Wind-Down Debtor disputes the post-petition 503 Claim. The conclusory

statement that more than $600,000 in credits may be applied to offset the 503 Claim is inadequate to rebut M+H's prima facie entitlement to an administrative claim on account of goods worth more than $800,000, which M+H delivered to the Debtors post-petition that benefited their estates.

5. For these reasons and those more fully set forth below, M+H respectfully requests that the Court overrule the Objection and allow both the 20 Day Claim and 503 Claim as administrative expenses, as adjusted herein.

Relevant Factual Background[4]

6. M+H is a U.S. company based in Gastonia, North Carolina. Linan Decl. at ¶ 3. It is part of the global, family-owned MANN + HUMMEL enterprise headquartered in Germany that has been in the business of developing and producing filtration solutions for over 80 years. *Id*. M+H specializes in the design, manufacture, and distribution of filtration products for the automotive, diesel, agricultural, industrial, and specialty filter markets. *Id*. at ¶ 4. It provides oil, air, cabin interior, fuel, coolant, transmission, and hydraulic filters for automobiles, trucks, and off-road equipment. *Id*. M+H's business relationship with the Debtors spans more than a decade. *Id*.

7. On May 1, 2023, M+H filed the Pre-Petition Claim in an amount not less than $16,995,921.94. Pursuant to the Bar Date Order,[5] M+H included the amount of the 20 Day Claim

[4] M+H respectfully refers the Court to the contents of the Administrative Claim for a fuller recitation of the factual background that gave rise to the claim, the contents of which are incorporated here by reference. The facts stated in this Response are limited to those necessary to respond to the Objection.

[5] *See Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(B)(9), (II) Establishing Amended Schedules Bar Date And Rejection Damages Bar Date, (III) Approving The Form of And Manner For Filing Proofs Of Claim, Including Section 503(B)(9) Requests, And (IV) Approving Notice of Bar Dates* (the "Bar Date Order") [Case No. 23-90054, Docket No. 222].

of $1,465,982.64[6] in the Pre-Petition Claim. On October 27, 2023, M+H filed its 503 Claim seeking payment in an amount not less than $841,737.38.[7]

8. On February 28, 2025, the Wind-Down filed the Objection together with the Declaration of Susanne Edwards ("Edwards Decl.") in support thereof.

9. Since filing the Objection, counsel to M+H and the Wind-Down Debtor have engaged in good faith settlement discussions regarding the 20 Day Claim, the 503 Claim, and Objection but have not reached a resolution as of the filing of this Response.[8] Based on the informal documents exchanged between the parties during those discussions, M+H agrees that its 20 Day Claim should be reduced by $27,699.77, to account for goods received by the Debtor prior to the 20-day period.[9] Linan Decl. at ¶ 5.

Argument

A. The Applicable Legal Standards

10. M+H's request for payment of the 20 Day Claim and the post-petition 503 Claim as administrative expenses are governed by different legal standards. On the one hand, M+H's 20 Day Claim is governed by section 503(b)(9) of the Bankruptcy Code, which requires a claimant to establish three elements "(1) the vendor sold goods to the debtor; (2) the goods were received by the debtor within twenty days prior to filing; and (3) the goods were sold to the debtor in the

[6] As explained in the 503 Claim, M+H included $402,796.06 of goods delivered after the Petition Date in the 20-Day Claim in the Pre-Petition Claim, and therefore has reduced the $1,868,778.70 stated in the Pre-Petition Claim to 1,465,982.64. *See* 503 Claim, at ¶ 7, n.2.

[7] The documentation supporting the 20 Day Claim and 503 Claim, is voluminous and in the possession of the Debtors; therefore, M+H has described and summarized such documents in the 20 Day Claim and 503 Claim rather than attaching copies of the supporting documents. M+H will provide copies of any supporting documents to the Wind-Down Debtor upon reasonable request and reserves all rights to offer such documents at any evidentiary hearing regarding the 20 Day Claim and/or 503 Claim.

[8] Despite M+H and the Wind-Down Debtor not being to resolve the Objection prior to the filing of this Response, M+H looks forward to continuing those discussions, including mediating the dispute if the Wind-Down Debtor is so agreeable.

[9] The $27,699.77 reduced from the 20 Day Claim must be reallocated and added to the Pre-Petition Claim.

ordinary course of business." *In re NE Opco, Inc.*, 501 B.R. 233, 241 (Bankr. D. Del. 2013). On the other hand, M+H's 503 Claim is governed by section 503(b)(1) of the Bankruptcy Code, which provides for the payment of the actual, necessary costs and expenses of preserving the estate, i.e. those that arise post-petition as a result of actions taken by the debtor and that benefit the bankruptcy estate. *See* 503 Claim at ¶ 11 (citing *Nabors Offshore Corp. v. Whistler Energy II, L.L.C. (In re Whistler Energy II, L.L.C.)*, 931 F.3d 432, 441 (5th Cir. 2019)).

11. The Bar Date Order required creditors to assert claims for payment arising under section 503(b)(9) of the Bankruptcy Code through a written proof of claim.[10] M+H did so by making its request for payment of the 20 Day Claim within the Prepetition Claim. Therefore, for the Wind-Down Debtor to rebut the prima facie validity and amount of the 20 Day Claim, as the objecting party it must "produce specific and detailed allegations that place the claim in dispute, by the presentation of legal arguments based upon the contents of the claim and its supporting documents, or by the presentation of pretrial pleadings, such as a motion for summary judgment, in which evidence is presented to bring the validity of the claim into question." *In re Northbelt, LLC*, 630 B.R. 228, 245 (Bankr. S.D. Tex. 2020) (quoting *In re High Standard Mfg. Co., Inc.*, 2016 WL 5947244, at *3 (Bankr. S.D. Tex. Oct. 13, 2016)); *see also In re Simmons*, 765 F.2d 547, 552 (5th Cir. 1985) (analogizing an objection to a proof of claim with an answer and finding that the objector must "produce evidence tending to defeat the claim that is of a probative force equal to that of the creditor's proof of claim…"). Only if the objecting party successfully presents sufficient evidence to satisfy that burden, does the burden shift to the claimant to prove its claim by a preponderance of the evidence. *Id*.

[10] *See* Bar Date Order, at ¶¶ 1, 8(e), 10 (b), 18.

12. The failure to refute an allegation that is essential to the claim's validity with sufficient specificity requires denial of an objection to the claim. *See, e.g., Brown v. IRS (In re Brown)*, 82 F.3d 801 (8th Cir. 1996) (holding that the debtors had failed to rebut a claim's presumptive validity due to a lack of evidentiary support); *In re Starnes*, 231 B.R. 903 (N.D. Tex. 1998) (affirming bankruptcy court's conclusion that debtors had failed to sustain their burden of proof with sufficient evidence to overcome the prima facie validity of the government's proof of claim).

13. Conversely, the Debtors' chapter 11 plan required creditors to request payment of administrative expenses incurred after the Petition Date by application rather than by filing a proof of claim.[11] Applications for administrative expenses are governed by different burdens than those for proofs of claim. *In re Taco Bueno Rests., Inc.*, 606 B.R. 289, 301 (Bankr. N.D. Tex. 2019). A prima facie case for payment of an administrative expense under section 503(b)(1) of the Bankruptcy Code may be established through evidence that (1) the claim arises from a transaction with the debtor-in-possession; and (2) the goods or services supplied enhanced the ability of the debtor-in-possession's business to function as a going concern. *In re Transamerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992). Once the movant has established a prima facie case, the burden of producing evidence shifts to the objecting party, here the Wind-Down Debtor. But the burden of persuasion remains with the movant. *Id.* Importantly, mere allegations, unsupported by evidence, are insufficient to rebut the movant's prima facie case. *Id*.

14. Although the Wind-Down Debtor purports to reserve its right to assert an unlimited number of additional and unspecified grounds to object to the entirety of the Administrative Claim,

[11] *See* Art. III.A.1.d. of the *Third Amended Combined Disclosure Statement and Joint Plan of Liquidation of IEH Auto Parts Holding LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan") [Case No. 23-90054, Docket No. 738] ("requests for payment of Administrative Expense Claims must be Filed and served on the Notice Parties pursuant to the procedures specified in the Confirmation Order.").

the Objection only offers evidentiary support to challenge the 20-Day Claim on three grounds: (1) M+H's 20-Day Claim should be reduced to account for goods received outside the 20-day period; (2) drop-shipped goods may not be included in the 20 Day Claim; and (3) the Wind-Down Debtor is entitled to setoff pre-petition rebates in 2021 and 2022 against the 20 Day Claim. Edwards Decl. at ¶¶ 4-7. With respect to the post-petition 503 Claim, the Wind-Down Debtor does not offer evidence to rebut any element of M+H's prima facie case though it generically alludes to an offset for "post-petition activity (about $600,000)." *Id*. at ¶ 8.

B. <u>M+H Has Demonstrated its Entitlement to a 20 Day Claim</u>

a. Only a Portion of the Challenged Deliveries Were Made Outside the 20-Day Period

15. The Wind-Down Debtor has objected to the 20 Day Claim on the grounds that $84,192.86 is on account of goods received on January 10, 2023 and thus outside of the 20-day window. Objection at ¶ 17. As mentioned above, M+H has determined that, based on the further review of the bills of lading for the goods, only $27,699.77 of the 20 Day Claim were for goods delivered to the Debtors on January 10, 2023, which is outside the 20-day period of January 11-30, 2023. Linan Decl. at ¶ 6. Therefore, M+H has agreed to reduce its 20 Day Claim by that amount subject to a corresponding increase in the Pre-Petition Claim. However, M+H's records show that the remaining amounts challenged by the Wind-Down Debtor ($56,493.09) were in fact delivered to the Debtors within the 20-day period. *Id*.

b. Additional Discovery is Required Regarding the Relationship of the Debtors to their Customers to Determine "Receipt" of the Purported Drop-Shipped Goods

16. The Wind-Down Debtor argues that M+H's 20 Day Claim should be further reduced by $242,267.04 because that amount is for goods that were not received by the Debtors, but "drop-shipped" to the Debtors' customers. Objection, at ¶¶ 18-19. While the Wind-Down Debtor concedes that the Debtors, not their customers, purchased the challenged goods from M+H,

Objection, ¶ 6 ("The vendor bills Auto Plus and Auto Plus subsequently bill the customer for the goods received"), the Wind-Down Debtor points to the Debtors' internal practice of marking invoices with a transaction code as its only evidence that certain goods were delivered by M+H directly to a customer. Edwards Decl. at ¶ 6.

17. M+H acknowledges that only "goods received by the debtor" qualify for treatment as administrative expenses under section 503(b)(9) of the Bankruptcy Code. *See* 11 U.S.C. § 503(b)(9). However, the consensus among the courts is that a debtor need not physically possess goods to have received them. Constructive possession, such as when a debtor's agent, sub-purchaser, or bailee physically possesses the goods, qualifies as "received by the debtor" within the meaning of the statute. *See*, *e.g., In re O.W. Bunker Holding North America Inc.*, 607 B.R. 32 (Bankr. D. Conn. 2019) (following an exhaustive review of the exiting law on the meaning of "received," the court held that the vendor was entitled to an administrative expense claim for the value of fuel delivered by the claimant to vessels designated by the debtor).[12]

18. A portion of the goods delivered by M+H during the 20-day period were deliveries directly to jobbers[13] who used the Debtors' direct customer number to purchase the goods from M+H. *See* Linan Decl. at ¶ 8. However, discovery is required to determine the nature of the jobbers' relationship to the Debtors, for example, whether any jobbers qualify as an agent of the Debtors in connection with the challenged transactions based on among other things, the jobbers'

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[12] *See also In re World Imports, Ltd.*, 862 F.3d 338, 346 (3d Cir. 2017) ("receipt as used in 11 U.S.C. § 503(b)(9) requires physical possession by the buyer or his agent."); *In re ADI Liquidation, Inc.*, 572 B.R. 543, 548 (Bankr. D. Del. 2017) ("Possession may be actual or constructive, and occurs when the seller can no longer stop delivery and is left only with the remedy of reclamation."); *In re Momenta, Inc.*, 455 B.R. 353, 359 (Bankr. D.N.H. 2011) (holding "the term 'received' in § 546(c) is the equivalent of 'received' in the U.C.C., and the term 'received' in § 503(b)(9) shall be interpreted identically."); U.C.C. § 2-705 at cmt 2 (including within the definition of receipt by the buyer "receipt by the buyer's designated representative, the sub-purchaser, when shipment is made direct to him and the buyer himself never receives the goods.").

[13] As explained in the Debtors' combined disclosure statement and plan, jobbers "are wholesalers that purchase larger quantities of automotive parts that they can distribute to their own customers" some of which "fly the Auto Plus banner" and others that do not. *See* Plan, II.A.1.c.

representation to M+H they had the authority to use the Debtors' account when ordering goods. *See, e.g., Gaines v. Kelly*, 235 S.W.3d 179, 182 (Tex. 2007) (apparent authority arises "either from a principal knowingly permitting an agent to hold himself out as having authority or by a principal's actions which lack such ordinary care as to clothe an agent with the indicia of authority, thus leading a reasonably prudent person to believe that the agent has the authority he purports to exercise") (cleaned up).

19. Even if the Wind-Down Debtor is correct that the 20 Day Claim should be reduced by M+H's deliveries of goods to the Debtors' customers, the Wind-Down Debtor has miscalculated the requested reduction by $35,559.92 by including (i) $27,699.77 of goods delivered by M+H on January 10, 2023, which should already be included in the reduced amounts above as outside of the 20 Day period, and (ii) $7,860.15 of goods delivered on the Petition Date, which are not limited by section 503(b)(9)'s requirement that goods be "possessed" by the Debtor. Linan Decl. at ¶ 7.[14]

c. The Wind-Down Debtor Has Not Stated a Valid Factual or Legal Basis to Setoff Vendor Support Funds ("VSF") Obligations Against the 20 Day Claim

20. The Wind-Down Debtor seeks a dollar-for-dollar reduction of the 20 Day Claim of at least $1,542,080.84 "based on VSF accrued in 2021 and 2022." Objection at ¶¶ 26-27.

21. For the following reasons, the Wind-Down Debtor's position is both factually and legally flawed. First, M+H's records reflect that it does not owe the Debtors any amounts on account of VSF for 2021 and Q1 and Q2 2022. Linan Decl. at ¶ 11. The Wind-Down Debtor may mistakenly believe that these credits were not received because under the agreements any credits owed to the Debtors were netted against amounts owed to M+H—not paid in cash. Indeed, M+H

[14] Any amounts reduced from the 20 Day Claim for "drop-shipped" deliveries must be reallocated and added to the Pre-Petition Claim.

credited the Debtors with these rebates (which aggregate to $3,353,767.62)[15] and the Debtors accepted and received these rebates when making payments to M+H. *Id.* Second, any alleged rebates attributable to the 1% MSF HQ Allowance, 1.17% Loyalty Program and 0.25% Data Warehouse expired on June 1, 2022. *Id.* at ¶ 12. Third, the agreements between M+H and the Debtors required the Debtors, in order to qualify for Fleet Reporting and National Account Rebates, report sales to M+H within sixty (60) days or the applicable rebate was disallowed. *Id.* Thus, to the extent the Wind-Down Debtor has included any Fleet Reporting and National Account Rebates within its calculation of VSF rebates, those rebates for sales reported late must be disallowed.[16] Fourth, as the Wind-Down Debtor acknowledges, VSF obligations accrued quarterly under the parties' contract, not on a carry forward basis. Objection at ¶ 26, Edwards Decl. at ¶ 7. In practice, VSF obligations were likewise applied quarterly. Linan Decl. at ¶ 13. Accordingly, even if VSF obligations remain outstanding (which they do not for 2021 and Q1 and Q2 2022), they should only be applied to the appropriate period, *i.e.* VSF obligations for Q3, Q4 2022 and January 1-10, 2023[17] should be applied to sales of goods or other activities during those respective periods, not to the 20-day period. Fifth, allowing the Wind-Down Debtor to setoff Q3 and Q4 2022 and January 1-10, 2023 VSF obligations on a dollar–for–dollar basis against the 20 Day Claim

[15] The VSF rebates credited and taken by the Debtors are as follows: (a) Q1 2021 ($549,559.40); (b) Q2 2021 ($610,622.29); (c) Q3 2021 ($547,233.39); (d) Q4 2021 ($684,322.43); (e) Q1 2022 ($603,459.12); and (f) Q2 2022 ($358,570.99). Linan Decl. at ¶ 10.

[16] In the Objection, the Wind-Down Debtor defines VSF as any "discount, cash rebate, or other consideration to the Debtors in exchange for purchasing, stocking, marketing, or engaging in another action related to" a particular vendor's goods. Objection at ¶ 24. Because it is unclear to M+H whether the Wind-Down Debtor has considered Fleet Reporting Rebates and National Account Rebates as part of the VSF rebates for which it seeks credit in the Objection, M+H raises this issue out of an abundance of caution.

[17] For Q3 2022, the Debtors were credited and took a VSF rebate in the amount of $424,326.38 when making payment to M+H. M+H believes, at most, that the Debtors are entitled to a VSF rebate in the amount of $43,797.80 for Q3 2022. M+H believes that the Debtors, at most, are entitled to a VSF rebate in the amount of $277,114.74 for Q4 2022. M+H continues to review its books and records to determine the amount of VSF rebates the Debtors are entitled to for the period January 1-10, 2023. Linan Decl. at ¶ 14.

rather than the Pre-Petition Claim would be inequitable. Because setoff is an equitable remedy, the Court may deny or limit its application where the result would be unjust. *See, e.g., Capital Concepts Properties 85-1 v. Mutual First*, 35 F.3d 170, 175-76 (5th Cir. 1994) (denying insolvent entity's exercise of setoff under Texas law on equitable grounds). Further, to allow the Wind-Down Debtor to exercise setoff in this fashion would undermine the objective of section 503(b)(9) of the Bankruptcy Code to protect vendors who have delivered valuable goods to a debtor on the precipice of bankruptcy and to incentivize them to continue providing goods to financially distressed customers.

d. The Wind-Down Debtor has Failed to Rebut Any Element of M+H's Prima Facie Case for the 503(b) Claim

22. The only evidence the Wind-Down Debtor offers regarding the post-petition 503 Claim is the Wind-Down Debtor's unsupported belief that a "debit balance exists for post-petition activity (about $600,000)" that "would more than offset any post-petition liability." Edwards Decl. at ¶ 7. This falls woefully short of the evidence necessary to rebut a creditor's prima facie entitlement to an administrative claim. *See Transamerican Natural Gas Corp.*, 978 F.2d at 1416. Moreover, a debit of "about $600,000" (even if proven) is not enough to completely offset the 503 Claim of $841,737.39.

23. To the extent the Wind-Down Debtor seeks to setoff VSF accrued pre-petition (which at most is Q3, Q4 2022 and January 1-10, 2023) against the 503 Claim, the request fails for lack of mutuality. In the Fifth Circuit, a debtor's exercise of setoff is subject to a mutuality requirement. *See In re Galaz*, 480 F. App'x 790, 793 (5th Cir. 2012) (citing *In re Braniff Airways, Inc.*, 42 B.R. 443, 452-53 (N.D. Tex. Bankr. 1984), and *Braniff Airways, Inc. v. Exxon Co., U.S.A.*, 814 F.2d 1030, 1036-37 (5th Cir. 1987)). This means that "even under § 558, pre-petition debt cannot be setoff against post-petition debt, because then they would not be mutual." *Id.*, n.3.

(recognizing that courts in other circuits have ignored the pre-petition/post-petition distinction when setoff is applied by a debtor under section 558 of the Bankruptcy Code but stating "that is not the law in this circuit."); *see also In re Acis Capital Mgmt., L.P.*, 2019 Bankr. LEXIS 1883, at *22-24 (Bankr. N.D. Tex., May 2, 2019) (denying the reorganized debtors' attempt under section 558 of the Bankruptcy Code to setoff prepetition claims against creditor's claim for an administrative expense due to lack of mutuality).

e. Other Defenses of The Wind-Down Debtor Fail

24. The Wind-Down Debtor indicated in its Objection that it may have other defenses to the 20 Day Claim and the 503 Claim. *See* Objection at ¶¶ 13, 23, 28. As noted above, M+H and the Wind-Down Debtor have been in discussion about potential resolution of the 20 Day Claim and the 503 Claim. During this process the Wind-Down Debtor has referenced potential deductions for contractual returns, customer rebate repayment obligations, and manufacturing credits. None of these defenses were raised with specificity in the Objection or supported with evidence, and, in any event, M+H does not believe these defenses have any merit,[18] do not entitle the Wind-Down Debtor to an offset to the 20 Day Claim and the 503 Claim, and should be overruled.

Conclusion

WHEREFORE, M+H requests this Court enter an order, substantially in the form attached to the 503 Claim, that (a) allows M+H an administrative expense claim in an amount not less than $841,737.38 for the 503 Claim, (b) an allowed administrative expense claim for the 20 Day Claim, in an amount not less than $1,438,282.87, which accounts for the reduction of $27,699.77 from the original 20 Day Claim amount of 1,465,982.64 for goods provided to the Debtors outside of

[18] M+H acknowledges that the Debtors were entitled to a credit of $52,237.31 for contractual returns related to periods in 2022, however those amounts were already credited to the Debtors and accounted for in the Pre-Petition Claim. Any alleged credits in excess of $52,237.31 were disallowed because the returns were not resalable and thus did not comply with the applicable return program. Linan Decl. at ¶ 16.

the 20-day period; (c) directs payment of these administrative expense claims in full in accordance with the terms of the Plan; and (d) granting M+H other relief as may be deemed appropriate by the Court.

Dated: August 8, 2025
Dallas, Texas

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

By: */s/ Kristian W. Gluck*

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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2025, a true and correct copy of the foregoing was filed and served electronically via the Court's CM/ECF System upon those who are registered to receive electronic notice. Additionally, in accordance with the *Procedures for Complex Cases in the Southern District of Texas*, those parties listed on the consolidated master service list that have not requested service by CM/ECF have been served by e-mail or regular mail as noted on the master service list.

/s/ Kristian W. Gluck
Kristian W. Gluck

Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
AUTO PLUS AUTO SALES LLC,[1]	)	Case No. 23-90055 (CML)
Wind-Down Debtor.	)	(Formerly Jointly Administered under Lead Case IEH Auto Parts Holding, LLC, Case No. 23-90054)

DECLARATION OF LUIS ENRIQUE LINAN ARAIZA IN SUPPORT OF MANN + HUMMEL FILTRATION TECHNOLOGIES US LLC'S RESPONSE TO THE WIND-DOWN DEBTORS' OBJECTION TO (1) THE NON-GUC PORTION OF PROOF OF CLAIM NO. 567 FILED BY MANN + HUMMEL FILTRATION TECHNOLOGIES US LLC; AND (2) MANN + HUMMEL FILTRATION TECHNOLOGIES US LLC'S MOTION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO SECTION 503(b) OF THE BANKRUPTCY CODE

I, Luis Enrique Linan Araiza, hereby declare under penalty of perjury:

1. I am a Director Finance & Controlling with MANN + HUMMEL Filtration Technologies US LLC ("M+H"), and have held this position since 2023. I submit this declaration in support of M+H's Response[2] in opposition to the Wind-Down Debtors' Objection to M+H's 20 Day Claim and the 503 Claim.

2. In my role as a Director Finance & Controlling, I am responsible for accounting and controlling for M+H. In this capacity, I am familiar with M+H's business dealings and practices with the Debtors and the facts and circumstances that give rise to the Pre-Petition Claim, the 20 Day Claim, and the 503 Claim. All facts set forth in this Declaration are based on my

[1] The Wind-Down Debtor's service address is 533 Carmel Crest Lane, Charlotte, North Carolina 28226. All pleadings related to these chapter 11 cases may be obtained from the website of the Wind-Down Debtor's claims and noticing agent at https://www.kccllc.net/autoplus.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed in *Mann + Hummel Filtration Technologies US LLC's Response to the Wind-Down Debtors' Objection to (1) the Non-GUC Portion of Proof of Claim No. 567 Filed by Mann + Hummel Filtration Technologies US LLC; and (2) Mann + Hummel Filtration Technologies US LLC's Motion for Allowance and Payment of Administrative Expense Claim Pursuant to Section 503(B) of the Bankruptcy Code* (the "Response"), filed contemporaneously herewith.

personal knowledge, my review of relevant documents, and information provided to me by M+H's advisors and employees working under my direct supervision.

3. M+H is a U.S. company based in Gastonia, North Carolina. It is part of the global, family-owned MANN+HUMMEL enterprise headquartered in Germany that has been in the business of developing and producing filtration solutions for over 80 years.

4. M+H specializes in the design, manufacture, and distribution of filtration products for the automotive, diesel, agricultural, industrial, and specialty filter markets. It provides oil, air, cabin interior, fuel, coolant, transmission, and hydraulic filters for automobiles, trucks, and off-road equipment. M+H's business relationship with the Debtors goes back to at least 2014.

5. I understand that the Wind-Down Debtor has objected to the 20 Day Claim on the basis that $84,192.86 goods sold by M+H were delivered to the Debtors outside the 20-day period of January 11-30, 2023.

6. Based on my review of documents, $27,699.77 of the 20 Day Claim accounts for goods delivered to the Debtors on January 10, 2023. However, M+H's records show that $56,493.09 of the amount challenged by the Wind-Down Debtor were in fact delivered to the Debtors within the 20-day period.

7. I also understand that the Wind-Down Debtor seeks to further reduce the 20 Day Claim by $242,267.04 on account of goods that were "drop-shipped" to the Debtors' customers. M+H's records show that the Wind Down Debtor has miscalculated the requested reduction by $35,559.92 by including (i) $27,699.77 of goods delivered by M+H on January 10, 2023, which should already be included in the reduced amounts above as outside of the 20-day period, and (ii) $7,860.15 of goods delivered on the Petition Date.

8. M+H regularly received orders directly from the Debtors' jobbers that used the Debtors' direct customer number to order goods from M+H. The goods the Wind-Down Debtor claims were drop-shipped, were ordered from M+H in this way. During all relevant times, M+H understood that the jobbers who ordered goods from M+H had the Debtors' permission to use their direct customer order to place orders.

9. I also understand that the Wind-Down Debtor has requested a dollar-for-dollar reduction of the 20 Day Claim of at least $1,542,080.84 based on VSF accrued in 2021 and 2022.

10. The VSF rebates credited, accepted, and received by the Debtors are as follows: (a) Q1 2021 ($549,559.40); (b) Q2 2021 ($610,622.29); (c) Q3 2021 ($547,233.39); (d) Q4 2021 ($684,322.43); (e) Q1 2022 ($603,459.12); (f) Q2 2022 ($358,570.99); and (g) Q3 2022 ($424,326.38).

11. M+H does not owe the Debtors any amounts on account of VSF for 2021 and the first and second quarters of 2022. M+H netted any amounts owed by giving the Debtors credit for the VSF and the Debtors' reduced their payments to M+H by the applicable VSF that was owed at that time. M+H did not make cash payments on account of any VSF credits.

12. In addition, any rebates attributable to the 1% MSF HQ Allowance, 1.17% Loyalty Program and 0.25% Data Warehouse expired on June 1, 2022. Under the agreements between M+H and the Debtors, the Debtors had to report sales to M+H within sixty (60) days to qualify for Fleet Reporting Rebates and National Account Rebates, or such rebates were disallowed.

13. Based on M+H's historical practice, VSF obligations accrued on a quarterly basis and were not applied on a carry-forward basis to future quarters.

14. M+H believes that the Debtors, at most, are entitled to a VSF rebate in the amount of $277,114.74 for Q4 2022. M+H continues to review its books and records to determine the amount of VSF rebates the Debtors are entitled to for the period January 1-10, 2023.

15. I understand that after the Objection was filed, the Wind-Down Debtor presented information to M+H about several possible defenses to the 20 Day Claim and 503 Claim that include deductions for contractual returns, customer rebate repayment obligations, and manufacturing creditors. Based on M+H's records, the Debtors are not entitled to those deductions.

16. While the Debtors were entitled to a credit of $52,237.31 for contractual returns related to periods in 2022, those amounts were already credited to the Debtors and accounted for in the Pre-Petition Claim. Any credits in excess of $52,237.31 were disallowed because the returns were not resalable and thus did not comply with the applicable return program.

[*Remainder of page intentionally left blank*]

Pursuant to 28 U.S.C. 1746, I declare under the penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information, and belief.

/s/ Luis Enrique Linan Araiza
Luis Enrique Linan Araiza
Director Finance & Controlling