IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
MARELLI AUTOMOTIVE LIGHTING USA LLC, *et al.*,[1]	)	Case No. 25-11034 (CTG)
	)	(Jointly Administered)
Debtor.	)	**Re: D.I. 22 & 109**

MIZUHO BANK, LTD.'S (I) OBJECTION AND RESERVATION OF RIGHTS WITH RESPECT TO THE DIP MOTION AND (II) EMERGENCY CROSS MOTION FOR ADJOURNMENT OF FINAL DIP HEARING

Mizuho Bank, Ltd., solely in its capacity as an Emergency Loan Lender and Senior Lender ("**Mizuho**"),[2] hereby files this (x) objection to the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Certain Prepetition Secured Parties; (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [D.I. 22] (the "**DIP Motion**") and (y) emergency cross motion to adjourn the Final Hearing on the DIP Motion by no fewer than 10 business days as is mandated by the Restructuring Support Agreement (the "**Objection and Cross-Motion**"). In support thereof, Mizuho respectfully states:

[1] 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/Marelli. The location of Marelli Automotive Lighting USA LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 26555 Northwestern Highway, Southfield, Michigan 48033.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the DIP Motion (as defined below) and/or that certain Restructuring Support Agreement, dated as of June 11, 2025, by and among the Debtors and the Consenting Stakeholders party thereto (the "**Restructuring Support Agreement**"), as applicable. A copy of the Restructuring Support Agreement is attached to the *Declaration of David Slump, Chief Executive Officer of Marelli Automotive Lighting USA LLC, in Support of First Day Motions* [D.I. 20] (the "**Slump Declaration**") as Exhibit B.

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PRELIMINARY STATEMENT

1. The Emergency Loan Lenders—*i.e.*, the lenders holding the Debtors' most senior prepetition secured debt[3]—have not consented to the priming contemplated in the DIP Motion. Moreover, the Debtors cannot demonstrate that the Emergency Loan Lenders are adequately protected from diminution of value of their collateral as a result of such priming. Without consent or establishing adequate protection, the DIP Facilities, on the terms proposed, cannot be approved.

2. Upon entry of the Interim Order, the Debtors received approximately $519 million of Tranche A Loans under the Senior DIP Facility on a priming basis from a syndicate of lenders (*i.e.*, the Senior DIP Lenders). The Debtors now seek, also on a priming basis, approval of an additional approximately $588 million of Tranche A Loans and Tranche B Loans under the DIP Facilities, the latter of which will be funded by the Ad Hoc Group of Senior Lenders—*i.e.*, the parties that stand to own Marelli upon the Debtors' emergence from chapter 11. The Debtors also seek approval of a roll-up of 47.5% of the Senior Loan Claims held by the members of the Ad Hoc Group of Senior Lenders, who are also the Junior DIP Lenders, into Tranche C Loans under the DIP Facilities. By the DIP Motion, the Debtors are proposing that Tranche A Liens, Tranche B Liens, and Tranche C Liens prime the Prepetition Emergency Loan Liens. *See* DIP Mot., Ex. 3 (*Lien/Claim Priorities Exhibit*) [D.I. 22-1].[4]

[3] *See* Slump Decl., ¶ 4 ("The Company's funded debt principally consists of two facilities: the approximately $350 million Emergency Loan Facility and the approximately $4.55 billion Senior Loan Facility. The Emergency Loan Facility is contractually senior to the Senior Loan Facility and has its own collateral.").

As noted on the Lien/Claims Priority Chart attached to the DIP Motion, while those certain VRA repayment claims are senior on a lien and payment priority basis to the Emergency Loan Claims, payment in full of the Emergency Loan Claims also satisfies such VRA repayment claims. *See* DIP Mot., Ex. 3 (*Lien/Claim Priorities Exhibit*) [D.I. 22-1].

[4] Mizuho understands that the roll-up, as part of Tranche C of the DIP Facilities, does not attempt to prime the Emergency Loan Facility on a claim priority basis, but does seek to prime the Emergency Loans on a lien priority basis. *See* DIP Mot., Ex. 3 (*Lien/Claim Priorities Exhibit*) [D.I. 22-1].

3. Mizuho holds 50% of the Emergency Loan Claims and approximately 30% of the Senior Loan Claims. Without Mizuho, the DIP Facilities are supported by 0% of the Emergency Loan Lenders and approximately 50% of the Senior Loan Facility Lenders.

4. The fact that the Emergency Loans were over-secured as of and prior to the Petition Date has never been in doubt nor disputed. Prior to the Petition Date, the Debtors provided a liquidation analysis to Mizuho (among others) that showed that, in a liquidation, the Emergency Loan Lenders would recover in full via the collateral securing the Emergency Loan Facility.[5] But if the hundreds of millions of dollars of additional priming is permitted, there is simply no guarantee, commitment, or evidence that the Emergency Loan Claims will be fully satisfied in the Chapter 11 Cases. The Ad Hoc Group of Senior Lenders have not committed to fund the Debtors upon an exit from chapter 11 and there is no valuation evidence in the record showing that the replacement liens—which the Debtors contend adequately protect the Emergency Loan Lenders notwithstanding that such liens would be junior to approximately $2.2 billion of DIP Liens—stand to recover. This constitutes diminution in value in its most obvious form.

5. Notwithstanding the foregoing, without the Emergency Loan Lenders' consent, without any collateral valuation evidence, and without an exit commitment that would allow for the Emergency Loan Claims to be fully satisfied in the Chapter 11 Cases, the Debtors nevertheless seek to prime the Emergency Loans by (a) approximately $2.2 billion on a lien priority basis and

[5] The Debtors' prepetition liquidation analysis is being filed contemporaneously herewith under separate notice. The separate notice containing the prepetition liquidation analysis is being filed under seal because the Debtors designated the document "privileged and confidential."

(b) more than $1.1 billion in Tranche A and Tranche B Loans on a claim priority basis, putting repayment of the Emergency Loans in jeopardy.

6. A simple resolution would be for the DIP Liens not to prime the Prepetition Emergency Loan Liens or for the Tranche A DIP Superpriority Claims and Tranche B Superpriority Claims not to prime the Prepetition Emergency Loan Priority Claims. As stated, the Debtors have failed to submit even an iota of evidence as to the value of the collateral securing the replacement liens that purportedly adequately protect the Emergency Loans, much less evidence that such value fully covers the Emergency Loans. Thus, the fact that the DIP Lenders refuse to take liens junior to the Prepetition Emergency Loan Liens is the only evidence of collateral value in the record. If the DIP Lenders viewed the replacement liens as "in the money," they should not take issue with funding the DIP Facilities junior to the Emergency Loans. However, without committed exit financing, the DIP Lenders do not want to wear the risk that exit financing is not ultimately provided and that the Debtors' asset value fails to support the replacement liens. The DIP Lenders are entitled to make such a risk assessment, but then for the same reasons, the DIP Facilities cannot prime the Emergency Loans.

7. In order to secure a priming lien under section 364(d) of the Bankruptcy Code, the Debtors bear the burden of proving that the Prepetition Secured Parties are adequately protected. Here, the principal adequate protection offered to the Prepetition Secured Parties against the substantial diminution in value that would be caused by the priming by the DIP Liens is "customary adequate protection liens, including replacement liens on the Prepetition Collateral and additional liens on unencumbered assets," Singh Decl. ¶¶ at 30–31,[6] and attorneys' fees of the Prepetition

[6] *See Declaration of John Singh in Support of the Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Certain*

Secured Parties. Nowhere in the Singh Declaration, the Grossi Declaration,[7] or the DIP Motion have the Debtors provided evidence of an equity cushion nor any valuation to support the assertion that the Emergency Loan Lenders are adequately protected.[8] Indeed, they do not even define what the "unencumbered assets" are, much less attempt to value them.

8. Additionally, as described below, the priming of the Emergency Loans is prohibited under the Emergency Loan ICA, as well as under the agreements governing the Emergency Loan Facility and the Senior Loan Facility, providing independent reasons why the DIP Motion must be denied.

9. Mizuho was initially supportive of the DIP Facilities as part in parcel of the Restructuring Support Agreement. Therefore, at the interim DIP hearing, it was a Consenting Stakeholder and did not object to entry of the Interim Order. However, the Debtors have materially changed the deal. Mizuho's support for such priming was premised on the term of the Restructuring Support Agreement and the DIP Motion which provided for repayment in full, from DIP funds, of the Emergency Loan Claims upon entry of the Final Order. The Restructuring Support Agreement expressly provides Mizuho with termination rights if the Emergency Loans

Prepetition Secured Parties; (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief [D.I. 23] (the "**Singh Declaration**").

[7] *See Declaration of Nicholas Grossi in Support of the Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Certain Prepetition Secured Parties; (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [D.I. 25] (the "**Grossi Declaration**").

[8] Indeed, given the changed circumstances of these Chapter 11 Cases with respect to the Debtors' liquidity, as well as the material changes to the Restructuring Support Agreement described in paragraph 11, *infra*, the DIP Motion up for final approval at the Final Hearing is a substantively different DIP Motion than the one the Court considered at the first-day hearing.

will not be fully satisfied upon entry of the Final Order.[9] And upon termination, of course, Mizuho's consent to priming is withdrawn.

10. By this Objection and Cross-Motion, Mizuho also requests that the Court uphold the parties' agreement in the Restructuring Support Agreement by adjourning the Final Hearing. The Restructuring Support Agreement provides that if, prior to the Final Hearing, the Debtors' delivered an Extended DIP Budget to Mizuho that showed the Company's "Adjusted Liquidity" falling below a Threshold of $250 million during the pendency of the Chapter 11 Cases, the Emergency Loan Claims would not be fully satisfied upon entry of the Final Order and the Final Hearing would be **automatically** adjourned by at least 10 business days to allow the parties to negotiate a consensual resolution. *See* Slump Decl., Ex. B, at § 6.02(i).

11. On July 16, 2025, the Debtors delivered an Extended DIP Budget to Mizuho that indicated that the Emergency Loans would not be repaid concurrently with final approval of the DIP Facilities. Incredibly, the Debtors also informed Mizuho that they would not agree to adjourn the Final Hearing as required under Section 6.02(i) of the Restructuring Support Agreement. The parties' agreement reflected in the Restructuring Support Agreement to automatically adjourn the Final Hearing to facilitate a consensual resolution was subject to lengthy negotiations between the parties. The inclusion of such provision in the Restructuring Support Agreement was key to Mizuho agreeing to sign the Restructuring Support Agreement, and Mizuho's support under the Restructuring Support Agreement singlehandedly allowed the Interim Order to be approved by the Court on a consensual basis, which included the approval of substantial consensual priming. Had

[9] The Restructuring Support Agreement provides, among other things, that the "proceeds of the DIP Facilities will be used [for] . . . (b) upon entry of the Final DIP Order, the payment of the Emergency Loan Claims in full." *See* Slump Decl., Ex. B, at p. 5. Accordingly, Mizuho submits that the relief requested herein is necessary to the extent the Debtors seek to convert the Final DIP Hearing into a further interim one without proposing to satisfy such milestone.

Mizuho known that, within only a few weeks, the Debtors would not honor their commitments, Mizuho would not have supported the Restructuring Support Agreement and the Interim Order could not have been entered on a consensual basis. Accordingly, Mizuho respectfully requests that the Court enforce the Debtors' obligation to adjourn the Final Hearing by no fewer than 10 business days.

ARGUMENT

A. The Court Should Adjourn the Final Hearing by No Fewer than 10 Business Days.

12. As set forth above, the Restructuring Support Agreement is crystal-clear that, upon delivery by the Debtors of an Extended DIP Budget showing Adjusted Liquidity below the Threshold, the Final Hearing is to be **automatically** adjourned by 10 business days. As such, Mizuho respectfully requests that the Court hold the Debtors to the bargain they struck in the Restructuring Support Agreement and adjourn the Final Hearing in order to allow the exact process that the parties contemplated just a few weeks ago, when they executed the Restructuring Support Agreement: giving the parties time, in light of the unfortunate delivery of an Extended DIP Budget now showing Adjusted Liquidity below the Threshold, to consensually negotiate a resolution pertaining to the repayment of the Emergency Loan Claims. If they are unable to do so, that will be the time for the Debtors to try to put on their nonconsensual priming case.

B. The Court Should Deny Entry of the Final DIP Order.

(i) The Bankruptcy Code Requires the Debtors to Demonstrate that the Prepetition Secured Parties are Adequately Protected.

13. When a debtor proposes to prime a secured creditor's existing liens or use a secured creditor's collateral, the Bankruptcy Code requires that the debtor provide the secured creditor with adequate protection of its interests in that collateral unless the secured creditor consents. *See* 11 U.S.C. §§ 361, 362, 363, 364. Here, the DIP Facilities should not be approved on a final basis

because the Debtors fail to establish the existence of a sufficient equity cushion or to otherwise provide adequate protection to the Prepetition Secured Parties against the diminution in the value of their collateral due to the imposition of the nonconsensual priming liens, the automatic stay, or the Debtors' use of the Prepetition Collateral.

14. As a general principle, the Bankruptcy Code recognizes the primacy of pre-petition contractual liens and seeks to preserve the financial interests created thereby.[10] The ability to prime an existing lien under section 364(d) of the Bankruptcy Code is extraordinary relief, as it displaces bargained-for lien rights, and should not be approved except as a last resort.[11]

15. Pursuant to section 364(d)(1)(B) of the Bankruptcy Code, to grant an equal or priming lien, the Debtors bear the burden of proof to establish that the Prepetition Secured Parties are adequately protected.[12] "Given the fact that super priority financing displaces liens on which creditors have relied in extending credit, a court that is asked to authorize such financing must be particularly cautious when assessing whether the creditors so displaced are adequately protected."[13]

16. "What constitutes adequate protection must be decided on a case-by-case basis."[14] "The focus of this requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use by the debtor."[15] "The whole purpose

[10] *In re Mosello*, 195 B.R. 277, 287 (Bankr. S.D.N.Y. 1996).

[11] *See In re Den-Mark Construction, Inc.*, 406 B.R. 683, 688 (E.D.N.C. 2009); *In re Planned Sys., Inc.*, 78 B.R. 852, 861 (Bankr. S.D. Ohio 1987) (holding that a secured creditor to be primed "is entitled to constitutional protection for its bargained-for property interest").

[12] *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *Mosello*, 195 B.R. at 287–88.

[13] *In re Fontainebleau Las Vegas Holdings, LLC*, 434 B.R. 716, 754 (S.D. Fla. 2010).

[14] *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 Bankr. LEXIS 5812, at *17 (Bankr. D. Del. Dec. 7, 2012).

[15] *Id.*

of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy."[16] The Debtors have the burden to prove the existence of adequate protection.[17] The fact that a secured creditor may be protected, in part, by the existence of an equity cushion is not, by itself, sufficient to adequately protect a prepetition creditor whose bargained for rights may be diminished by the granting of a priming lien to a DIP lender.[18]

17. Accordingly, the Debtors must prove that the value of the Prepetition Collateral will not decrease as a result of the Debtors' proposed priming liens or use of the Prepetition Collateral. However, satisfaction of the DIP Loans from the Prepetition Collateral would unquestionably diminish the recoveries of the Emergency Loan Lenders, as well as all other Prepetition Secured Parties. The Debtors' proposed use of the Prepetition Collateral in their business operations will further reduce the amount of the Prepetition Collateral available to satisfy the claims of the Prepetition Secured Parties. Accordingly, the Prepetition Secured Lenders are entitled to adequate protection to compensate for the Debtors' proposed use of the Prepetition Collateral, including cash collateral.

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[16] *Swedeland*, 16 F.3d at 564; *see also In re DeSardi*, 340 B.R. 790, 804 (Bankr. S.D. Tex. 2006) ("The purpose of adequate protection is to assure that the lender's economic position is not worsened because of the bankruptcy case.").

[17] 11 U.S.C. § 364(d)(2) ("In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection."); *Swedeland*, 16 F.3d at 564; *Mosello*, 195 B.R. at 287. *See also In re AMR Corp.*, 490 B.R. 470, 477–78 (S.D.N.Y. 2013) ("[T]he statute mandates that the [debtor] has the burden of proof on the issue of adequate protection . . . .") (internal quotation mark omitted); *In re MRI Beltline Indus., L.P.*, 476 B.R. 917, 925 (Bankr. N.D. Tex. 2012) (finding that "the parties requesting court approval to use cash collateral over the secured creditor's objection must prove there is adequate protection for that creditor."); *In Reading Tube Indus.*, 72 B.R. 329, 333 (Bankr. E.D. Pa. 1987) (explaining that the debtor must prove the value of the adequate protection offered to a secured creditor is sufficient before a court can find a secured creditor is adequately protected); *In re LTAP US, LLLP*, No. 10-14125 (KG), 2011 WL 671761, at *4 (Bankr. D. Del. Feb. 18, 2011) (same).

[18] *See In re Stoney Creek Techs.*, 364 B.R. 882, 891 (Bankr. E.D. Pa. 2007) (citing *In re Timber Prods., Inc.*, 125 B.R. 433, 436 n.11 (Bankr. W.D. Pa. 1990) and noting that the mathematical computation of the equity cushion in the automatic stay context, where the secured creditor's collateral is used in the reorganization, was inappropriate in the priming DIP financing context where the secured creditor's liens are being actively subordinated. See also *Swedeland*, 16 F.3d at 567 n.17 ("We do not, however, imply. . . that a creditor no matter how great its security can be adequately protected without receiving additional collateral or guarantees if the creation of a superpriority lien decreases its security").

(ii) The Debtors Cannot Establish that the Prepetition Secured Parties Will be Adequately Protected from Diminution in Value of their Collateral.

18. As an initial matter, the Debtors' purported evidence in support of the notion that the Prepetition Secured Parties are adequately protected falls well short of the aforementioned burden. The Singh Declaration—one of two declarations submitted by the Debtors in support of the DIP Motion—barely makes a passing reference to the adequate protection package offered by the Debtors, noting in cursory fashion that "the DIP Facility provides the Prepetition Secured Parties with customary adequate protection liens, including replacement liens on the Prepetition Collateral and additional liens on unencumbered assets." Singh Decl. at ¶ 30. The lack of evidence of an equity cushion on the Emergency Loan Facility is reason alone to deny entry of the Final Order.

19. Even assuming the Debtors intend to put forth new, last-minute evidence of an equity cushion at the Final Hearing, such evidence will likely be insufficient. It is well established that an equity cushion must be substantial, at least 20%, to constitute adequate protection.[19] When evaluating whether an equity cushion provides sufficient adequate protection, courts have adopted a holistic approach by analyzing all relevant facts "with a particular focus upon the value of the collateral, the likelihood that it will depreciate or appreciate over time," and the prospects for the successful reorganization of the debtor's affairs through a plan of reorganization."[20] Accordingly,

[19] *See, e.g.*, *In re JER/Jameson Mezz Borrower II, LLC*, 461 B.R. 293, 305 (Bankr. D. Del. 2011) (noting 20% cushion often adequate); *LNC Investments, Inc. v. First Fidelity Bank, Nat. Ass'n, New Jersey*, No. 92-cv-7584 (MBM), 1995 WL 231322 at *3 (S.D.N.Y. 1995); *see also Matter of Mendoza*, 111 F.3d 1264, 1272 (5th Cir. 1997) ("Case law has almost uniformly held that an equity cushion of 20% or more [above the total debt] constitutes adequate protection." (internal quotation omitted)); *In re Garcia*, 584 B.R. 483, 489 (Bankr. S.D.N.Y 2018) ("Courts may find that there is adequate protection for a secured creditor where there is equity in the property, but the equity cushion must be significant."). *See also In re Broadway Realty I Co., LLC*, Case No. 25-11050 (DSJ), slip op. at 11 (Bankr. S.D.N.Y. June 29, 2025) (denying priming DIP and stating that "the Court is concerned that leveling all equity cushions at 15% imposes serious risk on Flagstar given Debtors' seeming ongoing negative cash flow…").

[20] *See In re YL West 87th Holdings I LLC*, 423 B.R. 421, 441–42 (Bankr. S.D.N.Y. 2010).

even if the present value of the assets appears to cover the Prepetition Emergency Loan Liens on the date of the DIP hearing, an equity cushion likely to erode over time cannot, alone, constitute adequate protection.[21] To prove that an equity cushion will provide adequate protection to secured creditors to be primed by post-petition financing, the debtor must prove, among other things, that the equity cushion will exist into the future as the full post-petition loan is advanced to the debtor.[22]

20. Priming liens granted in connection with post-petition financing cannot substantially increase the risk of the prepetition lender to provide security for the post-petition lender.[23] Yet, the Debtors propose to do just that – force the Emergency Loan Lenders to take a recovery risk that lenders that currently are junior to the Emergency Loan Lenders are unwilling to take in extending the DIP Loans.[24] Where the proposed adequate protection appears to be too speculative,[25] priming liens under section 364 should not be authorized.[26]

21. Here, the Debtors have not put forward any valuation evidence in support of an equity cushion or the value of the assets that the proposed replacement liens secure.

22. Because Mizuho does not consent to the priming of the liens granted in connection with its Emergency Loan Claims, Mizuho respectfully requests that the Court deny entry of the Final Order.

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[21] *In re Shaw Indus.*, 300 B.R. 861, 856–66 (Bankr. W.D. Pa. 2003).

[22] *In re Packard Square*, 574 B.R. 107, 121 (Bankr. E.D. Mich. 2017).

[23] *In re Windsor Hotel, L.L.C.*, 295 B.R. 307, 314 (Bankr. C.D. Ill. 2003).

[24] *Cf. In re Swedeland,* 16 F.3d at 567 ("Congress did not contemplate that a creditor could find its priority position eroded and, as compensation for the erosion, be offered an opportunity to recoup dependent upon the success of a business with inherently risky prospects. We trust that in the future bankruptcy judges in this circuit will require that adequate protection be demonstrated more tangibly than was done in this case.").

[25] Notably, the Debtors inability thus far to secure exit financing to provide for the repayment of the Emergency Loan Claims indicates that the purported equity cushion is, at best, tenuous.

[26] *YL West 87th Holdings*, 423 B.R. at 441–42.

(iii) The DIP Facilities Are Not Permitted Under the Prepetition Debt Documents.

23. Even if, somehow, the Court were to entertain the notion that Mizuho is adequately protected (it should not), the priming attempt must fail for additional independent reasons: (a) the attempt to prime the Emergency Loan Lenders is prohibited by the Emergency Loan ICA among Mizuho and the members of the Ad Hoc Group of Senior Lenders (among others); (b) without Mizuho's support, the requisite consent thresholds under the Prepetition Secured Facilities Documents have not been satisfied by the administrative agents thereunder to consent to priming or the subordination of liens;[27] and (c) without requisite consent, the granting of security in connection with the DIP Loans violates the negative pledge provisions applicable to the Debtors under the Prepetition Secured Facilities Documents.[28]

24. As is relevant here, the Emergency Loan ICA provides the following:

(a) The Senior Lenders cannot "execut[e] . . . Senior Security Interests" until the Emergency Loan Claims are repaid in full. *See* D.I. 147-3 at Art. 2.3.1(1)(a). The Senior Lenders also may not engage in any "judicial acts" for purposes of collecting on their Senior Loan Claims until the Emergency Loan Claims are repaid in full. *See id.* at Art. 2.3.1(1)(b).

(b) In the event of the commencement of bankruptcy proceedings, the Senior Lenders shall follow the instructions of Mizuho and the Emergency Loan Lenders to "obtain the benefits that must be obtained . . . in the bankruptcy or private restructuring procedure . . .". *See id.* at Art. 2.5.1(1).

(c) Upon a bankruptcy filing, the Senior Lenders shall only exercise authority as a creditor in accordance with the instructions of the Emergency Loan Lenders and other senior creditors. *See id.* at Art. 2.5.2.

(d) In accordance with the payment waterfall, the Senior Lenders shall make every effort to ensure that the Emergency Loan Lenders (and other senior

[27] *See* Slump Decl. at ¶ 5 ("Unlike a typical U.S.-law-governed credit facility, the Senior Loan Facility requires a supermajority of lenders (at least 66.67% by principal amount) to direct the exercise of remedies and other material actions.").

[28] *See, e.g.*, Senior Loan Agreement [D.I. 147-5] at Art. 10.3.16(a); Emergency Loan Agreement [D.I. 147-3] at Art. 12.1.5.

creditors) can "receive dividends or payments in priority to the [S]enior [L]ender based on the priority order." *See id.* at Art. 2.5.5.

(e) The Senior Lenders shall provide the Emergency Loan Lenders with the "cooperation necessary . . . to obtain the benefits that should be obtained" based on the priority waterfall in bankruptcy. *See id.* at Art. 2.5.4(1).

25. Here, not only are the Debtors and the Ad Hoc Group of Senior Lenders not "follow[ing] the instructions of Mizuho and the Emergency Loan Lenders" and "only exercise[ing] authority as a creditor in accordance with the instructions of the Emergency Loan Lenders," they are expressly attempting to prejudice Mizuho's and the Emergency Loan Lenders' rights by priming them. Moreover, even though "the Senior Lenders also may not engage in any 'judicial acts' for purposes of collecting on their Senior Loan Claims until the Emergency Loan Claims are repaid in full," they are arranging for a roll-up, thereby satisfying certain of their prepetition claims, before the Emergency Loan Claims have been repaid in full.

26. Finally, the Debtors' granting of security in connection with the proposed DIP Facilities violates the "negative pledge" provisions in the Senior Loan Agreement and Emergency Loan Agreement. In relevant part, Article 10.3.16(a) of the Senior Loan Agreement provides that "[n]o Covenanting Group company may create or permit to subsist any Security Interest over all or part of its business or assets (current or future)" unless the Debtors have obtained the consent of a two-thirds majority of Senior Lenders. *See* D.I. 147-5 at Art. 10.3.16(a). The Emergency Loan Agreement (which itself added on to the Senior Loan Agreement, *see* D.I. 147-3 at Art. 4.1) likewise provides that the Debtors must comply with the covenants set forth in Article 10.3 of the Senior Loan Agreement. *See* D.I. 147-3 at Art. 12.1.5. Accordingly, because Mizuho does not consent to the creation of security interests in connection with the proposed DIP Facilities, any

such granting of liens by the Debtors would plainly violate the negative pledge provisions as set forth above.

27. In short, the proposed DIP Facilities are prohibited by the Emergency Loan ICA and lack sufficient consent under the Senior Loan Agreement, and violate the negative pledge provisions in the Senior Loan Agreement and Emergency Loan Agreement. Each of the Prepetition Debt Documents must be enforced. *See* 11 U.S.C. § 510(a).

RESERVATION OF RIGHTS

28. Mizuho reserves all rights to supplement and/or amend this Objection and Cross-Motion prior to or any the Final Hearing, including by objecting to priming in its capacity as a Senior Loan Facility Lender, the roll-up, and the priority of the Tranche C DIP Liens and Adequate Protection Liens. Nothing set forth in this Objection and Cross-Motion should be deemed a waiver of any objections or arguments that Mizuho may have with respect to the DIP Motion or any other motions filed by the Debtors in these Chapter 11 Cases.

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CONCLUSION

WHEREFORE, Mizuho respectfully requests that this Court (i) grant the Cross-Motion and adjourn the Final Hearing by no fewer than 10 business days; (ii) sustain the Objection in its entirety; (iii) deny the relief requested in the DIP Motion to the extent requested; and (iv) grant such other and further relief as the Court may deem just and proper.

Dated: July 22, 2025
Wilmington, Delaware

Respectfully submitted,

/s/ Russell C. Silberglied

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