

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MY JOB MATCHER, INC., et al.,¹

Debtors.

Chapter 11

Case No. 25-11280 (KBO)

(Jointly Administered)

Re: Docket Nos. 12 & 24

**OMNIBUS OBJECTION OF VENTURE DEBT, LLC AND SOJA VENTURES LLC TO
DEBTORS' (I) MOTION FOR ENTRY OF A FINAL ORDER APPROVING DEBTOR-
IN-POSSESSION FINANCING AND (II) MOTION FOR ENTRY OF AN ORDER
APPROVING BIDDING PROCEDURES AND STALKING HORSE AGREEMENT**

Venture Debt, LLC and SOJA Ventures, LLC (the "Secured Creditors"), by and through their undersigned counsel, hereby submit this omnibus objection (the "Objection") to:

- *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Senior Secured Superpriority Financing, (II) Authorizing the Debtors' Limited Use of Cash Collateral, (III) Granting Liens and Providing Claims with Superpriority Administrative Expenses Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief [Docket No. 12] (the "DIP Motion")*; and
- *Debtors' Motion for Entry of (A) an Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, and (III) Granting Related Relief; and (B) an Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, (III) Authorizing the Assumption and*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: My Job Matcher, Inc. (9880); Job.com-HV, Inc. (DE) (5873); Job.com-HV, Inc. (FL) (5873); Job.com-Fortus, Inc. (6145); Job.com-Endevis, Inc. (1956); Job.com-QCI, Inc. (4364); Princeton One-Job.com, Inc. (4752); and Princeton Search L.L.C. (6163).

Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [Docket No. 24] (the "Sale Procedures Motion").²

In support of this Objection, the Secured Creditors respectfully state as follows:

PRELIMINARY STATEMENT

1. There is one critical issue in these Chapter 11 Cases whose stench permeates through the Debtors' proposed postpetition financing and sale process and fundamentally taints the Debtor's DIP Motion and Sale Procedures Motion. Simply put: the Prepetition Secured Parties, the Debtors, the DIP Lenders, and the Stalking Horse Purchaser appear to be operating effectively as *one* entity. Accordingly, the relief sought in the DIP Motion and Sale Procedures Motion impermissibly serves to solely benefit the Prepetition Secured Parties.

2. As stated in the *Declaration of Robert J. Corliss in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 13] (the "First Day Declaration"), the Debtors' admit that, on May 7, 2025, the Prepetition Secured Parties purportedly "exercised [their] rights under the Stock Pledge to... remove all then existing members of the Debtors' board of directors with immediate effect," appointed a sole independent director to each of the Debtors' boards, and replaced the Debtors' then existing chief executive officer and other officers (the Debtors' new independent director and executive officers, collectively, the "Prepetition Secured Parties' Management"). First Day Declaration ¶ 39.

3. The Debtors make only cursory mention of this purported exercise of a stock pledge that directly led to the filing of these cases. As a threshold matter, therefore, the Debtors must demonstrate that the purported exercise of the Stock Pledge was valid and that therefore the Debtors' purportedly authorized parties had the requisite authority to file. *See, e.g., Price v.*

² Capitalized term used and not defined herein shall have the meanings ascribed to them in the DIP Motion and Sale Procedures Motion, as applicable.

Gurney, 324 U.S. 100, 106 (1945), which "stand[s] for the proposition that where a voluntary petition for bankruptcy is filed in behalf of a corporation, the bankruptcy court does not acquire jurisdiction unless those purporting to act for the corporation have authority under local law to institute the proceedings."); *In re Delta Starr Broadcasting, LLC*, 422 F. App'x 362, 368 (5th Cir. 2011) (if a filer "was not properly authorized . . . the bankruptcy court . . . would lack subject matter jurisdiction over the bankruptcy.").

4. Two months after the purported exercise of the stock pledge and the replacement of the directors and officers, the Prepetition Secured Parties' Management then directed the Debtors to engage "in discussions with the Prepetition Secured Lenders regarding the Sale Process and the commencement of these Chapter 11 Cases, which culminated in the execution of...[the Stalking Horse APA] by Job.com Acquisition Co., LLC, an affiliate of the Prepetition Secured Lenders", and a DIP Facility that is also provided by the Prepetition Secured Lenders. *Id.* at ¶ 41.

5. The Secured Creditors' primary objection is that the Prepetition Secured Parties have used their unique position as the primary beneficiaries of the Debtors' assets, which primarily consists of a robust and complex patent portfolio, to orchestrate a financing arrangement and proposed transaction that likely makes the proposed sale of the Debtors' assets to the Prepetition Secured Parties a *fait accompli* benefitting only the Prepetition Secured Parties, and grossly undervaluing the Debtors' assets. Significantly, the Prepetition Secured Parties, as the DIP Lenders, appear to be overleveraging the Debtors' estates by using the Debtors' assets as security while simultaneously acting as the Stalking Horse Purchaser to utilize its leverage as a credit bid. The nature of the proposed transaction—seemingly a “loan to own” maneuver—obviates the need for credit bidding rights, as such rights will have the attendant effect of depressing, rather than enhancing, the value of the Debtors' assets.

6. Based upon the foregoing, the Secured Creditors submit that the final DIP order and the current sale procedures should not be approved unless significant modifications are made to provide for a fair, transparent auction process for the Debtors' assets in order to make certain that a robust sales process is accomplished, and value is maximized for the Debtors' estates and all of their creditors.

BACKGROUND

A. Procedural Background

7. On July 6, 2025 (the "Petition Date"), the Debtors filed voluntary petitions for relief in this Court, commencing these cases (the "Chapter 11 Cases") under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under section 1107 and 1108 of the Bankruptcy Code. To date, no trustee or examiner has been appointed to these Chapter 11 Cases.

8. On July 6, 2025, the Debtors filed the DIP Motion seeking the entry of interim and final orders authorizing the Debtors to enter into a senior secured superpriority priming DIP delayed draw term loan facility with the Prepetition Secured Lenders, comprised of: (a) new money loans in the aggregate principal amount of approximately \$6,065,000, and (b) subject to entry of a Final DIP Order, roll-up loans in the aggregate principal amount of approximately \$3,865,148 representing a roll up and conversion on a dollar-for-dollar basis of a corresponding amount of the so-called Prepetition Bridge Loans. Of this amount, \$2,000,000 was requested to be made available on an interim basis upon entry of the Interim DIP Order and \$9,900,000 was requested to be made available on a final basis upon entry of the Final DIP Order. The DIP Facility would be secured by substantially all property of the Debtors as set forth in the DIP Orders.

Additionally, the DIP Orders seek approval of the consensual use of prepetition cash collateral to fund the Debtors' Chapter 11 Cases and to run the sale process.

9. On July 8, 2025, the Court entered the Interim DIP Order, which, among other things, authorized the Debtors to borrow up to \$2 million of DIP Loans.

10. On July 8, 2025, the Debtors filed the Sale Procedures Motion seeking entry of an order authorizing, among other things, (a) the Bidding Procedures and (b) the Stalking Horse APA with the DIP Lenders. The Bidding Procedures establish procedures for the sale of all or substantially all of the Debtors' assets, which includes the extensive Patent Portfolio. The Stalking Horse APA allows the Stalking Horse Purchaser (*i.e.* the Prepetition Secured Parties) to make a partial credit bid for a total purchase price of \$35 million.

11. To date, no official committee of unsecured creditors has been formed in these Chapter 11 Cases.

B. Venture Debt's Prepetition Claims

12. Venture Debt provided the Debtors four term loans as short-term financing in the original principal amount of approximately \$2,324,040 between certain of the Debtors, as borrower, and Venture Debt, as lender. As of the Petition Date, two of the loans were paid in full and approximately \$1,550,000 remains due and owing on two other loans. The Debtors admit in their motion that Venture Debtor is a secured creditor. First Day Declaration ¶ 29.

C. SOJA's Prepetition Claims

13. SOJA provided the Debtors with notes in the original amount of approximately \$4,000,000 pursuant to loan and security agreement between certain of the Debtors and non-debtor parent MJM Tech, as borrowers, and SOJA, as lender. SOJA's secured claim is in the approximate

amount of \$3,508,410.20 not including interest, fees, and other amounts pursuant to the loan documents.

14. The Debtors incorrectly assert that SOJA holds an *unsecured* claim of approximately \$2.5 million. Not only is the amount of the claim wrong, but the Debtors incorrectly assert that SOJA's note claims are unsecured because of a violation of the Prepetition Credit Agreement Documents executed between certain of the Debtors and the Prepetition Secured Parties. SOJA disputes this assertion and has proffered documentation clearly supporting that (i) the SOJA notes are valid and properly secured by all or substantially all of the Debtors' assets on a junior priority basis and (ii) there was no violation by the SOJA Notes of the Prepetition Credit Agreement Documents that would otherwise invalid SOJA's lien interests in the applicable collateral. *See SOJA Proof of Claim filed concurrently herewith on the Debtor's Claim Register.*

OBJECTION

I. The DIP Motion Prejudices the Secured Creditors and Unsecured Creditors

15. To obtain post-petition financing under the Bankruptcy Code, a debtor must prove: (i) it is unable to obtain unsecured credit or credit on less than a senior secured superpriority basis; (ii) the proposed credit is necessary to preserve the assets of the estate; and (iii) the terms of the financing are fair, reasonable and adequate. *See In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990). Financing provisions that “tilt the conduct of the bankruptcy case” or “prejudice, at the early stage, the powers and rights that the Bankruptcy Code confers for the benefit of all creditors” are disfavored. *Id.* The Debtors cannot carry their burden to approve the DIP Facility on business judgment alone. They must demonstrate the DIP Facility is in the best interest of all creditors, not just the DIP Lender. *Id.* at 40.

16. Moreover, a proposed financing should not be approved where “it is apparent that the purpose of the financing is to benefit a creditor rather than the estate.” *Id.* at 39. Post-petition

financing should not be authorized if its primary purpose is to benefit or improve the position of a particular secured lender. *See, e.g., In re Aqua Assocs.*, 123 B.R. 192, 195-98 (Bankr. E.D. Pa. 1991) (“[C]redit should not be approved when it is sought for the primary benefit of a party other than the debtor.”); *Tenney Village*, 104 B.R. 562, 568 (Bankr. D.N.H. 1989) (debtor in possession financing terms must not “pervert the reorganizational process from one designed to accommodate all classes of creditors and equity interests to one specially crafted for the benefit of [the secured creditor]”). Indeed, the law has long acknowledged the unequal bargaining power inherent in negotiations leading to proposed post-petition financing, as well as the very significant harm that can befall creditors if the proposed lender is permitted to exploit its position. *See, e.g., In re FCX, Inc.*, 54 B.R. 833, 838 (Bankr. E.D.N.C. 1985) (“[T]he court should not ignore the basic injustice of an agreement in which the debtor, acting out of desperation, has compromised the rights of unsecured creditors.”).

17. Here, the structure of the DIP Facility “stacks the deck” against other potential bidders with the attendant result of ensuring that the proposed sale to the Stalking Horse Purchaser, the Prepetition Secured Parties, is a foregone conclusion. The DIP Facility consists of up to \$9.9 million of financing, which is unnecessarily excessive in light of the Debtors' liquidity needs provided in the DIP Budget.³ The Debtors make no attempt to show that these amounts, let alone the DIP Facility provided by the Prepetition Secured Parties, are necessary to fund the Debtors' operation and sale process during the Chapter 11 Cases. The Debtors also provide no insight as to the prepetition marketing process for the DIP. The lack of showing for the need of the DIP Facility,

³ The DIP Budget provides that DIP financing of \$5.9 million is needed for the Debtors at the end of the projected thirteen weeks, approximately \$4 million less than what is offered in the proposed DIP Facility on a final basis. *See* DIP Motion, Annex 3. The Debtors also seek to pay “success fees for certain professionals” with the “new money” portion of the proposed DIP Loan without any showing of the necessity of such proposed success fees.

with its oppressive terms on the Debtor, which includes onerous sale milestones that are inappropriate, combined with the fact that the Prepetition Secured Parties took over control of the Debtors' management to facilitate a credit bid transaction with the Stalking Horse Purchaser (*i.e.* the Prepetition Secured Parties) on account of \$35 million of debt held by the Prepetition Secured Parties and the DIP Lenders (*i.e.* the Prepetition Secured Parties), clearly demonstrates that the DIP Facility is solely for the benefit of the Prepetition Secured Parties and not the Debtors' estates.

18. Accordingly, without the modifications discussed below, the DIP Facility does not satisfy the governing standards, and the DIP Motion should be denied on a final basis.

A. The Debtors Fail to Meet Their Burden to Show Entry into the DIP Facility is Necessary

19. While section 364(d) itself provides little guidance on what is sufficient for a debtor to establish an inability to obtain alternative financing, courts consistently require the debtor to provide clear evidence that the DIP was marketed to other lending institutions, other than the prepetition secured lender. *See Suntrust Bank v. Den-Mark Const., Inc.*, 406 B.R. 683 (E.D.N.C. 2009) (holding that section 364(d) was not satisfied where debtors did not identify any specific lenders that they had approached other than prepetition lender with blanket lien in most of their assets...); *see In re Phase-I Molecular Toxicology, Inc.*, 285 B.R. 494, 496 (Bankr.D.N.M.2002) (finding that although debtor reasonably may have believed it would be unable to obtain alternative financing, it made an insufficient showing that it attempted to do so but was unsuccessful); *see also In re Plabell Rubber Products, Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992) (stating debtor's conclusion after meeting with manager of a named bank that any further inquiries would be futile did not satisfy § 364(d)(1)(A)); *In re Crouse Group, Inc.*, 71 B.R. 544 (Bankr.E.D.Pa.1987) (holding, “[g]iven the relative ease of establishing this element and our expression that it had not been satisfied at [a hearing], we can make no other observation except

that, from the feeble showing made on this issue at [a later hearing], the Debtors are incapable of establishing that they are ‘unable to obtain’ credit ...”).

20. Here, the Debtors provide no modicum of evidence to show that lenders, other than the Prepetition Secured Parties, were approached, and simply make the conclusory, vague statement that “[i]t is unlikely that the Debtors could obtain this level of credit on more attractive terms.” As but one example that Debtors apparently made no efforts to obtain alternative DIP proposals, neither of the Secured Creditors were approached by the Debtors in the weeks leading up to the Petition Date to inquire about a willingness to provide DIP financing.

21. Failure to show any sort of DIP marketing process by the Debtors is not surprising when the First Day Declaration is read in its entirety. The Debtors highlight that their "Independent Director, with the assistance of the Company’s management and advisors, considered several potential restructuring alternatives before ultimately concluding that...[the Sale Process] was the only viable path to preserving and maximizing the value of the Debtors’ assets." First Day Declaration ¶41. At this time, the Independent Director and the Company's management had been appointed by the Prepetition Secured Parties after the Prepetition Secured Parties purportedly exercised the Stock Pledge. Mr. Corliss, being the newly installed chief executive officer of the Debtors, states in his declaration that "the Debtors engaged in discussions with the Prepetition Secured Lenders regarding the Sale Process...which culminated in...[the DIP Facility]" to be provided by the Prepetition Secured Parties.

22. The record shows no evidence of the Debtors approaching other potential DIP lenders, but there is ample evidence on the record to show that the Debtors are beholden to the Prepetition Secured Parties. There is no showing of any true good faith, arms’ length process; only conclusory statements that “negotiations . . . were conducted in good faith and at arms’

length.” Accordingly, the Court should not grant the Final DIP Order until the Debtors provide a showing that the DIP was sufficiently marketed in order to satisfy Section 364(d).

B. The Roll-Up is Inappropriate

23. Courts are generally reluctant to approve post-petition financing that converts pre-petition debt into post-petition obligations, because such conversions go against “the general bankruptcy principle favoring equal treatment of similarly situated creditors and disfavoring payment of pre-petition debt outside of a reorganization plan.” *See, e.g., Official Comm. of Unsecured Creditors of New World Pasta Co. v. New World Pasta Co.*, 322 B.R. 560, 569 n.4 (M.D. Pa. 2005) (noting that roll-up provisions “have the effect of improving the priority of a prepetition creditor”); *Tenney Vill. Co.*, 104 B.R. at 570 (holding that Bankruptcy Code section 364 does not authorize the granting of administrative expense priority for prepetition debt); *see also* 3 COLLIER ON BANKRUPTCY ¶ 364.06[2]. Roll-ups are not favored because they provide virtually no benefit to the debtor and act to circumvent the Bankruptcy Code’s priority structure for distribution.

24. Here, the Debtors have made no substantial showing in support of the proposed roll-up. Instead, the Debtors simply state that the roll-up is warranted because “the Debtors have been and continue to be unable to obtain Financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility.” First Day Declaration ¶ 50. Notwithstanding the Debtors’ failure to justify the roll-up, the weight of factors in this instance mitigates against permitting a roll-up. More specifically, any incremental cost savings achieved through the roll-up are negated by other onerous provisions of the DIP Facility. Furthermore, and most importantly, permitting a roll-up requested here will hand greater control of these cases to Prepetition Secured

Parties and impair the Debtors' ability to negotiate a plan of reorganization or develop a reasonable exit strategy.

25. Accordingly, for the foregoing reasons, the Secured Creditors object to the proposed DIP Facility to the extent that it seeks to include a roll-up component.

C. The Debtors have Not Met Their Burden of Showing that the Secured Creditors are Adequately Protected

26. Given the Secured Creditors' perfected security interests in and liens against the collateral, which comprises all the collateral to be encumbered by priming liens under the DIP Facility, the Debtors cannot enter into the DIP Facility without demonstrating that the Secured Creditors are adequately protected. Section 364(d)(1) of the Bankruptcy Code provides: "The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if ... there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." *See also In re LTAP US, LLP*, No. 10-14125 KG, 2011 WL 671761, at *3 (Bankr. D. Del. Feb. 18, 2011) ("Priming is extraordinary relief requiring a strong showing that the loan to be subordinated is adequately protected.... Bankruptcy judges are required to grant Section 364(d) financing only upon a tangible demonstration of adequate protection."). The Debtors bear the burden of proving adequate protection. *See In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (en banc) (debtor has burden to demonstrate that a proposal for post-petition financing provides adequate protection when the financing seeks to subordinate an existing lienholder); *see also In re R & H Inv. Co., Inc.*, 46 B.R. 114, 116 (Bankr. D. Conn. 1985) ("When a debtor relies solely on the existence of an equity cushion to provide adequate protection to a secured creditor, the debtor assumes a heavy burden to overcome the creditor's assertion that the secured interest is at risk.").

27. In this case, the Debtors assert that the Section 364(d)(1) is satisfied because the *Prepetition Secured Parties* support the priming of their collateral, therefore the "priming is consensual." DIP Motion ¶ 39. The Debtors, however, make no mention of the Secured Creditors offering consent to the priming, nor provide any admissible or credible evidence that the Secured Creditors would be adequately protected by the terms offered in the proposed DIP Facility. The Debtors' Interim DIP Order simply ignores the existence of the Secured Creditors.

28. Upon information and belief, the value of the Patent Portfolio greatly exceeds the Stalking Horse Purchaser's partial credit bid of \$35 million. The Secured Creditors are and should be (but for the value destructive provisions contained in both the DIP Motion and Sale Process Motion that the Secured Creditors are objecting) in the money.

29. Accordingly, for the foregoing reasons, the Secured Creditors object to the proposed DIP Facility to the extent that it seeks to prime the Secured Creditors' liens.

D. The Credit Bid and the Sale Milestones are Inappropriate

30. As further discussed below in ¶¶ 38-43 of this Objection, the Stalking Horse Purchaser's credit bid should not be allowed when the Prepetition Secured Parties are in control of the Debtors, and the proposed sale milestones are too brief and burdensome on the Debtors to allow for a meaningful competitive, value maximizing sale process that benefits all stakeholders, not just the Prepetition Secured Parties. Accordingly, the Secured Creditors object to the proposed DIP Facility to the extent that the credit bid and the sale timelines are not modified as provided herein.

E. Other Objectionable Provisions

31. In addition to the foregoing, the following provisions of the DIP Credit Agreement and the Final DIP Order are objectionable for the reasons stated below:

- a. **No Section 506(c)⁴ or Section 522 Waivers⁵**: Interim DIP Order at ¶ 12.
- b. **No Marshaling**: The equitable doctrine of marshalling should not be waived.⁶ Interim DIP Order at ¶ 13.
- c. **Good Faith Finding Premature**: The Secured Creditors submit that a finding of good faith is not yet supported, and may ultimately be contradicted by the evidentiary record.⁷ Interim Order at ¶ 24.

32. In sum, final approval of the DIP Facility must be denied unless and until the offending provisions of the proposed Final Order and DIP Documents have been revised and the Secured Creditors' objections have been adequately addressed.

II. **The Sale Procedures Motion Prejudices the Debtors' Estates and Should be Denied**

33. Although section 363 of the Bankruptcy Code does not specify a standard for authorization of a debtor's use, sale, or lease of property, bankruptcy courts authorize sales of debtor's assets only if the sale is based upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996).

⁴ Section 506(c) should not be waived because it ensures that the cost of preserving a lender's collateral is not impermissibly paid from unsecured creditor recoveries. *See In re Visual Indus., Inc.*, 57 F.3d at 325 ("[Section 506(c)] understandably shifts to the secured party, who has benefitted from the claimant's expenditure, the costs of preserving or disposing of the secured party's collateral, which costs might otherwise be paid from the unencumbered assets of the bankruptcy estate, providing that such unencumbered assets exist. Failing that, the costs of preserving the security for the secured party's benefit would otherwise fall on the warehouseman, auctioneer, appraiser, etc.").

⁵ *See* 11 U.S.C. § 552(b); *TerreStar Networks, Inc.*, 457 B.R. at 270 ("[Section 552(b)] is intended to prevent secured creditors from receiving windfalls and to allow bankruptcy courts broad discretion in balancing the interests of secured creditors against the general policy of the Bankruptcy Code, which favors giving debtors a 'fresh start.'") (quoting *In re Patio & Porch Sys. Inc.*, 194 B.R. 569, 575 (Bankr. D. Md. 1996)).

⁶ Marshalling should not be waived, as here, marshalling would "prevent the arbitrary action of a senior lienor from destroying the rights of a junior lienor or a creditor having less security." *Meyer v. United States*, 375 U.S. 233, 236 (1963).

⁷ The Debtors seek a "good faith" finding under section 364(e) of the Bankruptcy Code. It is fundamental that financing should not be authorized unless it is extended in good faith. *See In re EDC Holding Co.*, 676 F.2d 945 (7th Cir. 1982); *In re Colad Group, Inc.*, 324 B.R. 208, 225 (Bankr. W.D.N.Y. 2005) (finding that debtor failed to carry affirmative burden to establish good faith of the proposed financing transaction). As discussed herein, the Debtors fail to meet their burden for a good faith finding.

34. When determining whether a proposed sale satisfies this standard, courts typically consider: (i) whether a sound business justification exists for the sale; (ii) whether interested parties received adequate and reasonable notice of the sale; (iii) whether the sale produces a fair and reasonable price for the property; and (iv) whether the parties acted in good faith. *See Del. & Hudson Ry.*, 124 B.R. at 176; *In re Phx. Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987).

35. Here, the Debtors cannot satisfy the standards for approval of the Bidding Procedures or the proposed sale to the Stalking Horse Purchaser, as such sale process is not supported by a sound business judgment and is not reasonably calculated to maximize the value of the Debtors' estates, but instead only benefits the Prepetition Secured Parties, who benefit from the grant of senior priming liens on substantially all of the Debtors' assets, while also benefitting from the sought after ability to partially credit bid the purchase price of \$35 million, in part, deriving entirely from the total amounts owing under the DIP Facility.

36. The Debtors' desire to appease their lenders, who are also purportedly their owners, cannot, as a matter of law, justify the sale under the business judgment standard. *See, e.g., In re Encore Healthcare Assocs.*, 312 B.R. 52, 55 (Bankr. E.D. Pa. 2004) (requiring "some business justification, other than appeasement of major creditors" for the terms of an asset sale); *In re Pinnacle Brands*, 259 B.R. 46, 53-54 (Bankr. D. Del. 2001) ("A debtor's fiduciary duty is to maximize the value of the estate for distribution to creditors, not to minimize the exposure of an individual creditor").

37. Accordingly, without the modifications discussed below, the Bidding Procedures and the Stalking Horse APA will impermissibly inure to the benefit of the Prepetition Secured Parties and should not be approved.

A. The Proposed Timeline if Unnecessarily and Impermissibly Brief

38. The proposed Bid Deadline is September 17, 2025—a mere seventy-four (74) days after the Petition Date and fifty-eight days after the scheduled hearing on the Sale Procedures Motion—with a proposed Auction date of September 23, 2025. While it is possible to conceive of cases where a fast-tracked sale process might be appropriate, this is not such a case, particularly because of the complexities involved with properly marketing the Debtors' Patent Portfolio so that competitive and value maximizing bidding may occur, and the lack of support for the purported lack of sufficient DIP funding for a longer process.

39. Notwithstanding the Patent Portfolio-related complexities, if the Debtors' assets had been adequately marketed pre-petition (to which, the Debtors fail to show that such prepetition marketing process has actually occurred) and there is no expectation that post-petition marketing would bring any new bidders to the table, then a truncated sale process *might* be justifiable. That is simply not the case here. The post-petition marketing process will be crucially important to achieving maximum value for the Debtors' assets and needs to provide sufficient time to do so.

40. Notably, as of the filing of this Objection, the Debtors have not submitted any evidence to support that this sales process will result in the highest and best offer for the Debtors' assets. Nor can the Debtors do so, since the proposed sale timeline is designed to depress the value of the Debtors' asset so that the Prepetition Secured Parties may purchase the assets free and clear at a steep discount.

41. The Secured Creditors are not averse to moving quickly. However, more time is required so that value of the Debtors' assets, particularly the Patent Portfolio, may be maximized. To do so, the Secured Creditors request that the Court extend the proposed sale process to a reasonable period after input from the unsecured creditors committee.

B. Cause Exists to Limit the Credit Bid Rights of the Prepetition Secured Parties

42. It is well-established that a secured creditor is generally entitled to credit bid its allowed claim. *See* 11 U.S.C. § 363(k). The reasoning often articulated is to protect such creditor against the risk that its collateral will be sold at a depressed price. *Radlax Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2070 n.2 (2012). However, this right is not absolute, as a secured lender's right to credit bid exists "unless the court for cause orders otherwise." 11 U.S.C. § 363(k); *In re Phila. Newspapers, LLC*, 599 F.3d 298, 315-16 (3d Cir. 2010) (noting that the right to credit bid is not absolute and citing to a myriad of cases in which the right to credit bid has been denied). As one court recently explained:

The credit bid mechanism that normally works to protect secured lenders against the undervaluation of collateral sold at a bankruptcy sale does not always function properly when a party has bought the secured debt in a loan-to-own strategy in order to acquire the target company. In such a situation, the secured party may attempt to depress rather than to enhance market value. Credit bidding can be employed to chill bidding prior to or during an auction, or to keep prospective bidders from participating in the sales process.

In re The Free Lance-Star Publ'g Co., 512 B.R. 798, 806 (Bankr. E.D. Va. 2014). *In In re Fisker Automotive Holdings, Inc.*, 510 B.R. 55, 60 (Bankr. D. Del. 2014), the court limited a secured lender's right to credit bid for "cause", in part, because the secured creditor "engaged in inequitable conduct"; *see also Philadelphia Newspapers*, 599 F.3d at 316 n.14 (the right to credit bid may be denied "in the interest of any policy advanced by the [Bankruptcy] Code, such as to ensure the success of the reorganization or to foster a competitive bidding environment"); *Free Lance-Star*, 512 B.R. at 806 (limiting credit bid rights because the secured lender's loan-to-own strategy depressed enthusiasm for the bankruptcy sale in the marketplace).

43. The Prepetition Secured Parties are providing the DIP Facility as a mechanism to own the Debtors' Patent Portfolio at a significant reduced cost. This is not a situation in which the right to credit bid is needed to protect against the risk that the Debtors' assets will be sold at a depressed price. As indicated, the Prepetition Secured Parties took control of the Debtors prior to the launch of both the DIP and sales processes, giving the Prepetition Secured Parties significant control over the direction of such processes, as well as the underlying information on the Debtors and the Patent Portfolio. As detailed herein, the onerous terms of the DIP Facility and the brief timeline of the sales process, it's clear that the Prepetition Secured Parties are more interested in acquiring the Debtors' assets for pennies than to have its loans repaid. This is tantamount to inequitable conduct by the Prepetition Secured Parties, as they interfere with a sale process that ought to maximize the value of the Debtors' estates for the benefit of *all* stakeholders. *See In re The Free Lance-Star Publ'g Co. of Fredericksburg, VA*, 512 B.R. 798, 806 (Bankr. E.D. Va. 2014) (limiting the right to credit bid where prepetition secured lender engaged in inequitable conduct); *see also In re Aeropostale, Inc.*, 555 B.R. 369 (Bankr. S.D.N.Y. 2016) (allowing credit bid where there was no evidence of inequitable conduct by creditors and no evidence of inappropriate behavior by creditors in the bankruptcy, including no allegations of collusion, undisclosed agreements, or any other actions designed to chill the bidding or unfairly distort the sale process). Accordingly, to the extent the structure of the sale process is not otherwise modified, at a minimum, the Secured Creditors submit that cause exists to eliminate the credit bid rights of the Stalking Horse Purchaser and the Bidding Procedures must be modified to exclude such right.

C. Other Objections

44. The Bidding Procedures are objectionable on various other grounds as well. The Debtors fail to show that the “baseline” stalking horse bid sets an appropriate baseline that is

designed to maximize the value of the Debtors' assets, nor do they provide any information about how that decision was made, apparently by the Debtors' new Independent Director who they conclusorily assert "negotiated in good faith and at arms' length" with no other details. Indeed, upon information and belief, the value of the Debtors' assets *greatly* exceed what the Debtors allege, without any evidence, to be an appropriate "baseline." Upon information and belief, at least two third party appraisals, of the Debtors' patent IP portfolio alone, suggest valuations in the range of \$750 Million – \$1.25 Billion. The Debtors fall *far* short of their burden to demonstrate that their proposed sale process is appropriate, designed to maximize value, and is an exercise of sound business judgment.

45. While claiming that no releases are being provided, the Debtors propose to waive, pursuant to the Stalking Horse APA, "Avoidance Actions against current directors, officers, and advisors of the Debtors as of the Closing Date".

46. The Secured Creditors reserve their rights to supplement and amend this Objection with respect to these and other grounds for objection to the relief requested.

RESERVATION OF RIGHTS

47. The Secured Creditors expressly reserve all rights, claims, defenses, and remedies, including, without limitation, to supplement and amend this Objection, to raise further and other objections to the DIP Motion and Sale Procedures Motion and any proposed order in connection therewith, and to introduce evidence prior to or at any hearing regarding the DIP Motion or Sale Procedures Motion in the event that the Secured Creditors' objections are not resolved prior to such hearing. Additionally, the Secured Creditors expressly reserves all rights, claims, defenses, and remedies, including, without limitation, to seek dismissal or conversion of these Chapter 11 Cases or the appointment of a Chapter 11 Trustee on any available grounds, including but not limited to

lack of requisite authority to commence these cases and/or the pre-petition activities of the Debtors, the Prepetition Agent and DIP Agent, and the Stalking Horse Purchaser.

NOTICE

48. Copies of this Objection have been provided to: (a) Counsel to the Debtors, (b) counsel to the Prepetition Agent and DIP Agent, (c) counsel to the Stalking Horse Purchaser, and (d) the Office of the United States Trustee for the District of Delaware, and (e) all parties having formally requested notice in these proceedings electronically via the Court's CM/ECF System.

CONCLUSION

WHEREFORE, the Secured Creditors respectfully requests that the Court (i) deny the DIP Motion unless the proposed Final DIP Order is modified as set forth herein; (ii) deny the Sale Procedures Motion unless the proposed Bidding Procedures and Stalking Horse APA are modified as set forth Herein; and (iii) grant such other and further relief as the Court deems just and proper.

[signature page follows]

Dated: July 22, 2025

BAYARD, P.A.

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