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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Chapter 11
)	
REVLON, INC., <i>et al.</i> , ¹)	No. 22-10760 (____)
)	
Debtors.)	(Joint Administration Requested)
_____)	

**DEBTORS' MOTION 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 STATUS, (III) GRANTING ADEQUATE PROTECTION
TO PREPETITION SECURED PARTIES, (IV) MODIFYING AUTOMATIC STAY,
(V) SCHEDULING A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the "Debtors")
respectfully state as follows in support of this motion:

¹ The last four digits of Debtor Revlon, Inc.'s tax identification number are 2955. Due to the large number of debtor entities in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://cases.kroll.com/revlon>. The location of the Debtors' service address for purposes of these Chapter 11 Cases is: One New York Plaza, New York, NY 10004.

Relief Requested²

1. By this Motion, the Debtors seek entry of an interim order (the “Interim Order”),³ and a final order (the “Final Order” and, together with the Interim Order, the “DIP Orders”), that, among other things (a) authorizes Revlon Consumer Products Corporation (the “RCPC”) to obtain, and authorizes each of the other Debtors to guarantee, jointly and severally, certain of RCPC’s obligations in respect of, senior secured, superpriority, postpetition financing pursuant to the DIP Facilities (as defined below), (b) authorizes the Debtors to use Cash Collateral (as defined below) pursuant to section 363(c) of the Bankruptcy Code, Bankruptcy Rule 4001(b) and the Local Rules, including Local Rule 4001-2, (c) grants liens and affords superpriority claims status with respect to the DIP Facilities, (d) approves the form of adequate protection to be provided to certain of the Prepetition Secured Parties as set forth herein, (e) authorizes the Debtors, upon entry of the Interim Order, to immediately refinance a portion of the Prepetition ABL Obligations held by certain of the DIP Lenders and all of the Foreign ABTL Facility (as defined below) of certain of its non-debtor subsidiaries with the proceeds of borrowings under the DIP Facilities, (f) modifies the automatic stay to the extent necessary to effectuate the terms of the DIP Orders and the DIP Documents (as defined below), (g) schedules a final hearing (the “Final Hearing”) to consider entry of the Final Order and (h) grants related relief in connection with the DIP Facilities.

2. The DIP Facilities consist of:

- a. a superpriority, senior secured and priming debtor-in-possession term loan credit facility (the “Term DIP Facility”) in an aggregate principal amount

² A description of the Debtors’ businesses, the reasons for commencing these chapter 11 cases, the relief sought from the Court to allow for a smooth transition into chapter 11, and the facts and circumstances supporting this Motion are set forth in the *Declaration of Robert Caruso, Chief Restructuring Officer, (I) in Support of First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2* (the “First Day Declaration”), filed contemporaneously herewith.

³ Capitalized terms used but not defined shall have the meaning given to such terms in the Interim Order.

not to exceed **\$1.025 billion** (the “Term DIP Loans”). **\$575 million** of the Term DIP Facility of which is committed and **\$450 million** of the Term DIP Facility of which (the “Incremental Term DIP Loans”) is uncommitted and available in the sole discretion of the Term DIP Lenders exclusively for the purpose of refinancing all or a portion of the Prepetition ABL Credit Facility (as defined below). **\$375 million** of the Term DIP Facility will be available immediately upon entry of the Interim Order (including **\$76.875 million** available exclusively for the purpose of refinancing all or a portion of the Foreign ABTL Facility,⁴ and the remaining **\$200 million** will be available upon entry of the Final Order

- b. a superpriority, senior secured and priming debtor-in-possession asset-based revolving credit facility (the “ABL DIP Facility”) in an aggregate principal amount not to exceed **\$400 million**, consisting of (i) **\$270 million** in LIFO ABL DIP Commitments, of which **\$109 million** will be deemed drawn automatically upon entry of the Interim Order to satisfy the outstanding Prepetition LIFO ABL Obligations and (ii) **\$130 million** of SISO ABL DIP Loans, with the entire amount deemed drawn automatically upon entry of the Interim Order to satisfy the outstanding Prepetition SISO ABL Obligations; and
- c. a superpriority junior secured debtor-in-possession intercompany credit facility (the “Intercompany DIP Facility” and, together with the Term DIP Facility and the ABL DIP Facility, the “DIP Facilities”) in an aggregate principal amount not to exceed the amount of royalty payments owed by the BrandCo Entities (as defined in the Prepetition BrandCo Credit Agreement) that are licensors under the BrandCo License Agreements (each, as defined in the Prepetition BrandCo Credit Agreement) pursuant to the BrandCo License Agreements that become due and payable on or after the Petition Date.

3. The Debtors negotiated the DIP Facilities and the adequate protection to be afforded to certain of the Prepetition Secured Parties (as defined below) with the DIP Secured Parties (as defined below) in good faith and at arm’s length, and after evaluation by the Debtors’ board of directors and management with the input of the Debtors’ advisors, believe that the terms of the DIP Facilities and adequate protection are competitive and the best that could be obtained

⁴ The “**Foreign ABTL Facility**” refers to the credit facility consisting of “Term Loans” under that certain Asset-Based Term Loan Credit Agreement, dated as of March 2, 2021, by and among Revlon Finance LLC, as borrower, each other loan party, the several banks and other financial institutions or entities from time to time parties to the Foreign ABTL Facility as lenders, and Blue Torch Finance LLC, as administrative agent and collateral agent.

under the circumstances. For these reasons, and as more fully explained below, the Debtors request that the Court grant the relief requested herein. The Debtors believe that immediate and continuing access to the DIP Facilities and the other relief sought by this motion are critical to their ability to operate their business, fund necessary investments in inventory and the costs of these Chapter 11 proceedings, and successfully effect a value maximizing restructuring while managing the challenges described below.

4. In support of this Motion, contemporaneously herewith the Debtors have filed (a) the First Day Declaration, and (b) the *Declaration of Steven M. Zelin in Support of Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Provide Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying Automatic Stay, (IV) Scheduling A Final Hearing, and (V) Granting Related Relief* (the "Zelin Declaration" and, together with the First Day Declaration, the "Declarations"). Each of the Declarations is incorporated herein by reference.

Jurisdiction and Venue

5. The United States Bankruptcy Court for the Southern District of New York (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

6. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The bases for relief requested herein are sections 105, 361, 362, 363, 364, 503 and 507 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and Rules 2002, 4001, 6003, 6004, 9014, and 9018 of the Bankruptcy Rules and Rules 4001-2, 9006-1 and 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

Concise Statement Pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2

A. ABL DIP Facility and DIP Term Loan Facility

8. Pursuant to Bankruptcy Rules 4001(b), (c) and (d), and Local Bankruptcy Rule 4001-2, the following is a concise statement and summary of the proposed material terms of the DIP Facilities as provided in the ABL DIP Term Sheet and DIP Orders:⁵

	<u>DIP Facilities</u>
DIP Facilities / Borrowing Limits (Local Rule 4001-2(a)(1); Bankruptcy Rule 4001(c)(1)(B)) <i>Interim Order at Preamble</i>	<u>ABL DIP Facility</u> A superpriority, senior secured and priming debtor-in-possession asset-based revolving credit facility consisting of the roll-up and conversion of (i) the Prepetition LIFO ABL Obligations (the “ Prepetition LIFO ABL Roll-Up ”) and (ii) the Prepetition SISO Obligations (the “ Prepetition SISO ABL Roll-Up ”) and, together with the Prepetition LIFO ABL Roll-Up, the “ Roll-Up ”) but, for the avoidance of doubt, not any obligations to the Prepetition FILO ABL Secured Parties (collectively, the “ ABL DIP Facility ”) subject to the terms and conditions set forth in that certain Summary of Terms and Conditions (the “ ABL DIP Term Sheet ”) and, together with any credit agreement to be entered into reflecting terms consistent with the ABL DIP Term Sheet and as the same may be amended, supplemented, or otherwise modified from time to time, the “ ABL DIP Credit Agreement ”) and, together with the Term DIP Credit Agreement, the “ DIP Credit Agreements ”) by and among, RCPC, as borrower, Holdings, the several banks and other financial institutions or entities from time to time party thereto as “ Lenders ” (as defined in the ABL DIP Credit Agreement)

⁵ The summaries and descriptions of the terms and conditions of the DIP Credit Agreements and the Interim Order set forth in this motion are intended solely for informational purposes to provide the Court and parties in interest with an overview of significant terms thereof and should only be relied upon as such. This motion is qualified in its entirety by reference to the provisions of the DIP Credit Agreements and the Interim Order. In the event that there is a conflict between this Motion and the DIP Credit Agreements, the DIP Credit Agreements shall control in all respects, or in the case of a conflict between this Motion and/or the DIP Credit Agreements and the Interim Order, the Interim Order shall control in all respects.

	<u>DIP Facilities</u>
	<p>(collectively, the “ABL DIP Lenders,” the Prepetition LIFO ABL Lenders which are also ABL DIP Lenders, the “LIFO ABL DIP Lenders,” and the Prepetition SISO ABL Lenders which are also ABL DIP Lenders, the “SISO ABL DIP Lenders”), MidCap Funding IV Trust, as administrative agent and collateral agent (in such capacity, together with its successors and permitted assigns, the “ABL DIP Agent” and, together with the Term DIP Agent, the “DIP Agents”), Crystal Financial LLC, d/b/a SLR Credit Solutions, as administrative agent and collateral agent for the SISO DIP Lenders so long as Crystal Financial LLC or any of its affiliates is a SISO DIP Lender (collectively with the ABL DIP Lenders and the ABL DIP Agent, the “ABL DIP Secured Parties”), consisting of the roll-up and conversion of all Prepetition ABL Obligations (excluding any obligations to the Prepetition FILO ABL Secured Parties) and any unused Revolving Commitments or SISO Term Commitments (each as defined in the Prepetition ABL Credit Agreement) into a superpriority senior secured asset-based revolving credit facility consisting of (i) commitments of the LIFO ABL DIP Lenders in an aggregate principal amount equal to \$270 million (the “LIFO ABL DIP Commitments” and the loans in respect thereof, the “LIFO ABL DIP Loans”), of which an aggregate principal amount equal to \$109 million will be deemed drawn automatically upon the date of entry of the Interim Order, to be applied automatically in satisfaction of the outstanding Prepetition LIFO ABL Obligations, and (y) term loans made by the SISO ABL DIP Lenders in an aggregate principal amount equal to \$130 million (the “SISO ABL DIP Loans,” and together with the LIFO ABL DIP Loans outstanding from time to time, the “ABL DIP Loans”, with the entire amount of the SISO ABL DIP Loans to be deemed drawn automatically upon the date of entry of the Interim Order, to be applied automatically in satisfaction of the outstanding Prepetition SISO ABL Obligations, as applicable, and become ABL DIP Obligations.</p> <p><u>DIP Term Loan Facility</u></p> <p>A superpriority, senior secured and priming debtor-in-possession term loan credit facility (the “Term DIP Facility”) subject to the terms and conditions set forth in that certain Superpriority Senior Secured Debtor-in-Possession Term Loan Credit Agreement (as amended, supplemented, or otherwise modified from time to time, the “Term DIP Credit Agreement”) by and among, RCPC, as borrower, Revlon, Inc. (“Holdings”), the several banks and other financial institutions or entities from time to time party thereto as “Lenders” (as defined in the Term DIP Credit Agreement) (the “Term DIP Lenders”), Jefferies Finance LLC, as administrative agent and collateral agent (in such capacity, together with its successors and permitted assigns, the “Term DIP Agent” and, collectively, with the Term DIP Lenders, the “Term DIP Secured Parties”), in an aggregate principal amount not to exceed \$1.025 billion (the “Term DIP Loans”) from the Term DIP Lenders (as defined herein) (\$575 million of such amount being committed and \$450 million of</p>

	<p><u>DIP Facilities</u></p> <p>such amount being uncommitted and available in the sole discretion of the Term DIP Lenders exclusively for the purpose of refinancing all or a portion of the Prepetition ABL Credit Facility subject to the terms and conditions of the Term DIP Credit Agreement), of which \$375 million will be available immediately upon entry of this Interim Order (the “Initial Draw”) (including \$76.875 million of such Initial Draw amount available exclusively for the purpose of refinancing all or a portion of the Foreign ABTL Facility), and the remainder of \$200 million to be available upon the date of entry of the Final Order.</p> <p><u>Intercompany DIP Facility</u></p> <p>A superpriority junior secured debtor-in-possession intercompany credit facility (the “Intercompany DIP Facility” and, together with the Term DIP Facility and the ABL DIP Facility, the “DIP Facilities”) subject to the terms and conditions set forth in paragraph Error! Reference source not found. below, in an aggregate principal amount not to exceed the amount of the royalty payments (the “Royalty Payments”) owed to the BrandCo Entities (as defined in the Prepetition BrandCo Credit Agreement) that are licensors under the BrandCo License Agreements (each, as defined in the Prepetition BrandCo Credit Agreement) pursuant to the BrandCo License Agreements that become due and payable on or after the Petition Date (the “Intercompany DIP Loans and, together with the Term DIP Loans and the ABL DIP Loans, the “DIP Loans”), by and among, RCPC, as borrower, and the BrandCo Entities that are licensors under the BrandCo License Agreements, as lenders (the “Intercompany DIP Lenders” or the “Intercompany DIP Secured Parties” and, together with the Term DIP Lenders and the ABL DIP Lenders, the “DIP Lenders” and, collectively with the Term DIP Secured Parties and the ABL DIP Secured Parties, the “DIP Secured Parties”), which Royalty Payments shall be deemed to have been paid to the applicable BrandCo Entities in satisfaction of the obligation to make such payments to the BrandCo Entities as and when the Royalty Payments are due and then immediately loaned to RCPC.</p>
<p>Borrower</p> <p><i>DIP Credit Agreement preamble;</i></p> <p><i>ABL DIP Term Sheet: Borrower</i></p> <p><i>Interim Order preamble</i></p>	<p>Revlon Consumer Products Corporation shall be the Borrower under each of the DIP Facilities.</p>
<p>Guarantors</p> <p><i>DIP Credit Agreement, “Guarantors”;</i></p> <p><i>“Subsidiary Guarantors”;</i></p> <p><i>ABL DIP Term Sheet: Guarantors</i></p> <p><i>Interim Order preamble</i></p>	<p><u>ABL DIP Facility</u></p> <p>All the Debtors in these chapter 11 cases other than the Borrower and the BrandCo Entities.</p> <p><u>DIP Term Loan Facility</u></p> <p>All the Debtors in these chapter 11 cases other than the Borrower</p>

	<u>DIP Facilities</u>
	<u>Intercompany DIP Facility</u> All the Debtors in these chapter 11 cases other than the Borrower and the BrandCo Entities.
DIP Lenders <i>DIP Credit Agreement, "Lenders";</i> <i>ABL DIP Term Sheet: ABL DIP Lenders</i>	<u>ABL DIP Facility</u> Those certain banks, financial institutions and other entities party to the ABL DIP Credit Agreement from time to time as lenders. <u>DIP Term Loan Facility</u> Those certain banks, financial institutions and other entities party to the DIP Term Loan Credit Agreement from time to time as lenders. <u>Intercompany DIP Facility</u> The BrandCo Entities.
DIP Agent <i>DIP Term Credit Agreement,</i> <i>"Administrative Agent"</i> <i>ABL DIP Term Sheet: ABL DIP Agents</i>	<u>ABL DIP Facility</u> MidCap Funding IV Trust, as Administrative Agent and Collateral Agent Crystal Financial LLC d/b/a SLR Credit Solutions, as Administrative Agent and Collateral Agent for the SISO DIP Facility for so long as it or any of its affiliates is a ABL DIP Lender under the SISO DIP Facility. <u>DIP Term Loan Facility</u> Jefferies Finance LLC, as Administrative Agent and Collateral Agent
Material Conditions to Closing and Borrowing (Local Rule 4001-2(a)(2); Bankruptcy Rule 4001(c)(1)(B)) <i>DIP Credit Agreement Section 5</i> <i>ABL DIP Term Sheet: Conditions Precedent to Closing</i>	Each of the DIP Facilities include customary conditions of borrowing, the satisfaction of which are a condition precedent to the obligations of each DIP Lender to make DIP Loans.
Fees and Expenses (Local Rule 4001-2(a)(3)) <i>DIP Credit Agreement §§ 2.6, 2.9</i> <i>ABL DIP Term Sheet: Fees, Exit Fee</i>	<u>ABL DIP Facility</u> <u>Closing Fee:</u> 1.00% of the aggregate Tranche A ABL DIP Commitments as of the Petition Date. <u>Commitment Fee:</u> 0.50% of the Tranche A ABL DIP Commitments per annum <u>Exit Fee:</u> 0.50% of the Tranche A ABL DIP Commitments and the SISO ABL DIP Loans, payable in cash on the DIP Termination Date and (ii) payment of any fees payable pursuant to the Amendment Fee Letters and the MidCap Fee Letter (each as defined in the US ABL Credit Agreement). <u>Collateral Management Fee:</u> 1.00% of the average daily aggregate principal amount of outstanding Tranche A DIP Loans per annum.

	<p><u>DIP Facilities</u></p> <p><u>DIP Term Loan Facility</u></p> <p><u>Upfront Fee:</u> 1.00% of the aggregate principal amount of each DIP Term Lender's DIP Term Commitment, payable upon entry of the Interim Order in cash or another form of consideration to be mutually agreed among the DIP Term Lenders and the DIP Term Borrower.</p> <p><u>Repayment Fee:</u> 1.00% of the aggregate principal amount of the DIP Term Loans under the DIP Credit Agreement, which (i) in the case of DIP Term Loans outstanding on the DIP Termination Date, shall be payable on such date in cash, and (ii) in the case of DIP Term Loans repaid in whole or in part prior to the DIP Termination Date, shall be payable on the date of such repayment in cash.</p> <p><u>DIP Backstop Fee:</u> 1.50% of the aggregate DIP Term Commitments payable in the form of OID.</p> <p><u>Maturity Extension Fee:</u> 0.50% of the aggregate principal amount of the DIP Term Loans outstanding under the DIP Credit Agreement upon the initial Scheduled Maturity Date (as defined below) if, at the DIP Term Borrower's election, the initial Scheduled Maturity Date is extended by up to 6 months.</p> <p><u>Arrangement Fee:</u> An arrangement fee, payable in accordance with the Jefferies Fee Letter, dated June 15, 2022, a copy of which is being filed under seal.</p> <p><u>Other Fees of DIP Facilities</u></p> <p>The DIP Agents are entitled to reimbursement of all reasonable and documented out-of-pocket expenses, including reasonable fees and expenses of its counsel, in connection with the DIP Facilities, and such other fees and expenses as are contained in the DIP Documents, the Jefferies Engagement Letter and the Administrative Agent Fee Letter.</p>
<p>Interest Rate (Local Rule 4001-2(a)(3); Bankruptcy Rule 4001(c)(1)(B))</p> <p><i>DIP Term Credit Agreement, "Applicable Margin" and §2.15;</i></p> <p><i>ABL DIP Term Sheet: Type and Amount of the DIP Facility</i></p> <p><i>Interim DIP Order at ¶ 22</i></p>	<p><u>DIP Term Facility</u></p> <p>SOFR + 775 basis points (with a 1% SOFR floor)</p> <p><u>ABL DIP Facility</u></p> <p><u>LIFO ABL DIP Loans:</u> ABR + 2.50% (with a 1.5% ABR floor)</p> <p><u>SISO ABL DIP Loans:</u> ABR + 4.75% (with a 2.75% ABR floor)</p> <p><u>Intercompany DIP Facility</u></p> <p>ABR + 6.75% (with a 1% ABR floor), paid in kind</p>
<p>DIP Liens (Local Rule 4001-2(a)(4); Bankruptcy Rule 4001(c)(1)(B)(i))</p> <p><i>DIP Term Credit Agreement, §2.25;</i></p> <p><i>ABL DIP Term Sheet: Priority and Security under ABL DIP Facility</i></p> <p><i>Interim Order at ¶ 6</i></p>	<p>The DIP Term Facility will be secured by liens (the "DIP Term Liens") on substantially all assets and property of the Debtors, whether now existing or hereafter arising and wherever located (the "DIP Term Collateral").</p> <p>The ABL DIP Facility will be secured by liens (the "ABL DIP Liens") and, together with the DIP Term Liens, the "DIP Liens") on substantially all assets and property of the Debtors other than</p>

	<u>DIP Facilities</u>
	<p>the BrandCo Entities, whether now existing or hereafter arising and wherever located (the “ABL DIP Collateral” and, together with the DIP Term Collateral, the “DIP Collateral”).</p> <p>The DIP Liens shall be valid and automatically perfected, non-avoidable, senior liens subject only to (a) the Carve Out, (b) certain existing liens which are senior under applicable law, (c) with respect to DIP Collateral of Debtors other than the BrandCo Entities that constitutes Term Loan Priority Collateral (as defined below), the ABL DIP Liens shall be junior to the DIP Term Liens and the liens securing the BrandCo Facility and the 2016 Term Loan Facility, and (d) with respect to DIP Collateral of Debtors other than the BrandCo Entities that constitutes ABL Priority Collateral (as defined below), the DIP Term Liens shall be junior to the ABL DIP Liens and the liens securing the US ABL Facility.</p> <p>The Intercompany DIP Facility will be secured by liens (the “<u>Intercompany DIP Liens</u>”) on all Term DIP Collateral (other than of the BrandCo Entities) immediately junior and subject to the Term DIP Liens on each category of Term DIP Collateral.</p> <p>For the avoidance of doubt, the ABL DIP Facility and the Intercompany DIP Facility shall not be secured by the property or assets of the BrandCo Entities.</p>
<p>Modification of Non-bankruptcy Law Relating to Perfection of Liens on Estate Property (Bankruptcy Rule 4001(c)(1)(B)(vii))</p> <p><i>Interim Order at ¶ 7(a)</i></p>	<p>The Interim Order contains customary provisions providing that entry of the Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted therein, including the DIP Liens and the Adequate Protection Liens, without the necessity of any filings or recordings under non-bankruptcy law.</p>
<p>Superpriority Administrative Claims (Local Rule 4001-2(a)(4); Bankruptcy Rule 4001(c)(1)(B)(i))</p> <p><i>Interim Order at ¶ 5</i></p>	<p>The DIP Obligations shall constitute allowed superpriority administrative claims (the “DIP Superpriority Claims”) with priority over any and all administrative expenses and unsecured claims, including, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code Sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114, and any other provision of the Bankruptcy Code, as provided under Section 364(c)(1) of the Bankruptcy Code.</p>
<p>Adequate Protection Payments (Local Rule 4001-2(a)(4); Bankruptcy Rule 4001(c)(1)(B)(ii))</p> <p><i>Interim Order at ¶ 15, 18</i></p>	<p>As adequate protection in accordance with sections 361 and 363 of the Bankruptcy Code, the Debtors will pay (i) to the Prepetition BrandCo Agent, on behalf of the holders of Term B-1 Loans (as defined in the Prepetition BrandCo Credit Agreement), adequate protection payments equal to cash interest accrued since the last interest payment in respect of the Term B-1 Loans at the non-default interest rate, interest paid in kind under the Prepetition BrandCo Credit Agreement at the non-default rate, and default interest in respect of the Term B-1 Loans, and (ii) the professional fees and expenses of the</p>

	<u>DIP Facilities</u>
	Prepetition Secured BrandCo Parties.
<p>Adequate Protection Liens and Claims for Prepetition ABL Secured Parties (Local Rule 4001-2(a)(4); Bankruptcy Rule 4001(c)(1)(B)ii)</p> <p><i>DIP Credit Agreement definitions of Interim Order at ¶ 14-16</i></p>	<p><u>Adequate Protection Liens</u>: Each of the Prepetition Agents, for the benefit of itself and the applicable Prepetition Secured Parties, shall receive valid, perfected replacement security interest in and lien upon certain prepetition and postpetition property of the Debtors as adequate protection against any Diminution in Value of the interests of the Prepetition Secured Parties in the applicable Prepetition Collateral, which shall be in accordance with the priorities shown in <u>Exhibit 3</u> to the Interim Order and subject to the Carve Out.</p> <p><u>507(b) Claims</u>: As further adequate protection against any Diminution in Value of the interests of the Prepetition Secured Parties in the Prepetition Collateral, as applicable, each Prepetition Agent, on behalf of itself and the applicable Prepetition Secured Parties, shall receive an allowed superpriority administrative claim against each of the Debtors' estates with priority over any and all administrative expenses and priority or unsecured claims arising under sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to the entry of the Final Order, to the extent therein approved), 507(a), 507(b), 546(c), 726 (to the extent permitted by law), 1113, 1114 or any other provisions of the Bankruptcy Code or otherwise, and payable from and having recourse to certain prepetition and postpetition property of the Debtors (excluding Avoidance Actions, but including, subject to entry of Final Order, Avoidance Proceeds), as more fully set forth in the Interim Order; <i>provided</i>, however, that the 507(b) Claims shall be subject to the Carve Out and the DIP Superpriority Claims.</p>
<p>Carve Out (Local Rule 4001-2(a)(5))</p> <p><i>Interim Order at ¶ 4</i></p>	<p>(i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee (the "U.S. Trustee") under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate, if any, pursuant to 31 U.S.C. § 3717 (without regard to the notice set forth in (iii) below);</p> <p>(ii) all reasonable fees and expenses up to \$100,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below);</p> <p>(iii) subject, in each case, to application of any retainers that may be held and to the extent allowed at any time, whether by interim order, procedural order, final order or otherwise, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328 or 363 of the Bankruptcy Code and any statutory committee pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee") (collectively, the "Estate Professionals") (in each case, other than any restructuring, sale, success or other transaction fee of any investment bankers or financial advisors) at any time before or on the first business day following delivery by any DIP Agent of a Carve-Out Trigger Notice (as defined below), and without regard to whether such fees and expenses are provided for in any Approved Budget,</p>

	<u>DIP Facilities</u>
	<p>whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice (the amounts set forth in this clause (iii) being the “Pre-Carve-Out Trigger Notice Cap”); and</p> <p>(iv) Allowed Professional Fees of Estate Professionals in an aggregate amount not to exceed \$20,000,000 incurred after the first business day following delivery by any DIP Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, final order or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve-Out Trigger Notice Cap” and, together with the Pre-Carve-Out Trigger Notice Cap and the amounts set forth in clauses (i) through (ii), the “Carve-Out Cap”).).</p>
<p>Roll-Up of Prepetition Debt (Local Rule 4001-2(a)(7))</p> <p><i>Interim Order at ¶ H(vi), (vii)</i></p> <p><i>ABL DIP Term Sheet: Type and Amount of DIP Facility</i></p>	<p>Upon entry of the Interim Order, the outstanding amount of the Prepetition LIFO ABL Obligations in accordance with the ABL DIP Term Sheet. The roll-up shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the Prepetition LIFO ABL Lenders to provide new-money liquidity and permit access to Cash Collateral, and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Secured Obligations</p> <p>Upon entry of the Interim Order, the outstanding amount of the Prepetition SISO ABL Obligations shall be converted into ABL DIP Loans in accordance with the ABL DIP Credit Agreement. The roll-up shall be authorized as compensation for, in consideration for, and on account of (a) the agreement of the Prepetition SISO ABL Lenders to permit access to Cash Collateral and (b) the waiver of the SISO Buy-Out Option (as defined herein), and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Secured Obligations</p> <p>The roll-up of the Prepetition LIFO ABL Obligations and the Prepetition SISO ABL Obligations into ABL DIP Loans upon entry of the Interim Order will be subject to the reservation of rights in paragraph 30 of the Interim Order, will not prejudice the right of any party in interest.</p>
<p>Limitations on the DIP Lenders’ Obligations to Fund Activities of the Debtors (Local Rule 4001-2(a)(9))</p> <p><i>Interim Order at ¶ 29</i></p>	<p>The DIP Facilities, the DIP Collateral, the Prepetition Collateral, the Cash Collateral and the Carve Out may not be used in connection with certain activities, including: (a) preventing, hindering or delaying any of the DIP Secured Parties’ or Prepetition Secured Parties’ permitted enforcement upon the DIP Collateral or Prepetition Collateral, (b) using Cash Collateral or DIP Collateral without the consent of the DIP Agents, (c) incurring debt without the prior consent of the DIP Agents, (d) seeking to amend or modify the rights granted to the DIP Secured Parties or the Prepetition Secured Parties under the Interim Order, the DIP Documents or the Prepetition Documents, including seeking to use Cash Collateral or DIP Collateral on a contested basis; (e) objecting to or challenging the DIP Liens, DIP Obligations, Prepetition Liens, or Prepetition</p>

	<u>DIP Facilities</u>
	Secured Obligations, (f) asserting, commencing or prosecuting any claims or causes of action against the DIP Secured Parties or Prepetition Secured Parties, including under chapter 5 of the Bankruptcy Code, or (g) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the Prepetition Liens, the Adequate Protection Liens, the Prepetition Secured Obligations or any other rights or interests of any of the DIP Agents, the DIP Lenders or the Prepetition Secured Parties; provided that up to an aggregate of \$50,000 may be used by any Committee to investigate (but not to prosecute or initiate the prosecution of, including the preparation of any complaint or motion on account of) (A) the claims and liens of the Prepetition BrandCo Secured Parties or the Prepetition ABL Secured Parties and (B) potential claims, counterclaims, causes of action or defenses against the Prepetition BrandCo Secured Parties or the Prepetition ABL Secured Parties.
Events of Default (Local Rule 4001-2(a)(10); Bankruptcy Rule 4001(c)(1)(B)) <i>DIP Credit Agreement § 8.1</i> <i>ABL DIP Term Sheet: Events of Default</i>	<p>Usual and customary events of defaults for facilities of this type and purpose, including, among others:</p> <ul style="list-style-type: none"> • material breach of the Interim or Final Order approving the DIP, • failure to comply with Milestones, • nonpayment of obligations, • defaults under covenants, • breaches of representations and warranties, • attachment defaults, • judgment defaults, • failure to comply with ERISA rules and regulations, • invalidity of collateral documents, change of control, • invalidity of pre-petition loan documents, and • the occurrence of any number of adverse actions or consequences in any of the chapter 11 cases.
Change-of-Control Provisions (Local Rule 4001-2(a)(11)) <i>DIP Credit Agreement § 8.1(k)</i> <i>US ABL Credit Agreement, § 8.1(j)</i>	<p><u>DIP Term Facility</u></p> <p>An event of default shall occur if (i) Revlon, Inc. shall cease to own 100% of the capital stock of Revlon Consumer Products Corporation, (ii) any person or group shall become the beneficial owner, directly or indirectly, of greater than 35% of the outstanding voting securities of Revlon, Inc., or (iii) any BrandCo Entity shall no longer be a direct wholly-owned subsidiary of Beautyge I, an exempted company incorporated in the Cayman Islands, or Beautyge I ceases to be a direct wholly-owned subsidiary of Beautyge Brands USA, Inc.</p> <p><u>ABL DIP Facility</u></p> <p>To be negotiated, but consistent with the US ABL Credit Agreement, which provides for a change of control (i) Revlon, Inc. shall cease to own 100% of the capital stock of Revlon Consumer Products Corporation, (ii) any person or group shall become the beneficial owner, directly or indirectly, of greater</p>

	<u>DIP Facilities</u>
	than 35% of the outstanding voting securities of Revlon, Inc.
Prepayment Penalties (Local Rule 4001-2(a)(13)) <i>DIP Credit Agreement § 2.19</i> <i>ABL DIP Term Sheet: Prepayments</i>	<u>DIP Term Facility</u> <p>None. Subject to certain conditions, voluntary prepayments are permitted at any time without penalty; provided that such repayments shall be subject to the Repayment Fee set forth above equal to 2.00% of the aggregate principal amount of the DIP Term Loans subject to repayment.</p> <u>ABL DIP Facility</u> <p>None. Subject to certain conditions, voluntary prepayments are permitted at any time without penalty.</p>
Mandatory Prepayments (Bankruptcy Rule 4001(c)(1)(B)) <i>DIP Credit Agreement § 2.12</i> <i>ABL DIP Term Sheet: Prepayments</i>	<u>DIP Term Facility</u> <p>The DIP Term Borrower shall be required to repay the DIP Term Loans upon (i) any incurrence of Indebtedness not permitted under the DIP Term Credit Agreement, (ii) receipt of the net cash proceeds of any asset sale or recovery event (other than with respect to sales of ABL Priority Collateral) , (iii) receipt of certain extraordinary receipts.</p> <u>ABL DIP Facility</u> <p>The ABL DIP Facility shall be subject to customary prepayment provisions for similar debtor-in-possession financings, including from the proceeds of non-ordinary course sales subject to the ABL DIP Liens, insurance and condemnation proceeds and other extraordinary receipts, in each case to the extent such amounts are proceeds of ABL Priority Collateral.</p>
Covenants (Bankruptcy Rule 4001(c)(1)(B)) <i>DIP Credit Articles VI and VII</i> <i>ABL DIP Term Sheet: Reporting Covenants, Affirmative and Negative Covenants</i>	<p>Each of the DIP Facilities shall include:</p> <p><u>Affirmative Covenants:</u> Usual and customary for financings of this type, including, without limitation, (a) reporting requirements, (b) delivery of certain compliance certificates, notices, reports and filings, (c) preservation of existence, (d) compliance with applicable laws, (e) payment of post-petition obligations, (f) maintenance of property and insurance, (g) keeping of books and records, (h) use of proceeds, (i) further assurances regarding collateral and guarantors, (j) compliance with the Milestones (as defined below), and (k) delivery of the DIP Budget and variance reporting.</p> <p><u>Negative Covenants:</u> Usual and customary for financings of this type, including, without limitation, restrictions on: (a) indebtedness, (b) liens and guaranties, (c) investments, (d) disposal of assets, (e) restricted payments and payments in respect of other indebtedness, (f) transactions with affiliates, (g) use of proceeds, (h) post-petition claims, and (i) compliance with the DIP Budget (subject to permitted variances and exclusions).</p>
Reporting (Bankruptcy Rule 4001(c)(1)(B))	Each of the DIP Facilities requires compliance with certain periodic reporting covenants, including monthly and quarterly financial statements, the DIP Budget, variance reports, and, with

	<u>DIP Facilities</u>
<i>DIP Credit Agreement § 6.1</i> <i>ABL DIP Term Sheet: Reporting Covenants, Affirmative and Negative Covenants</i>	respect to the ABL DIP Facility, borrowing base certificates.
Payment of Prepetition Secured Parties' and DIP Secured Parties' Attorneys' Fees (Local Rule 4001-2(a)(16)) <i>DIP Credit Agreement § 10.5;</i> <i>ABL DIP Term Sheet: ABL DIP Agent Advisor</i> <i>Interim Order at ¶ 2(b)(iii)</i>	<u>DIP Term Loan Facility</u> The Borrower shall reimburse each Agent and each Lender for all reasonable and documented out of pocket costs and expenses incurred in connection with (a) the development, preparation, execution and delivery of this DIP Term Credit Agreement and the other DIP Term Loan Documents (including amendments and other modifications thereto) and (b) the enforcement of any rights under the DIP Term Credit Agreement and the other DIP Term Loan Documents, including the fees and disbursements of (i) Paul Hastings LLP as counsel to the agents and (ii) Davis Polk & Wardwell LLP, Centerview Partners LLC, Kobre & Kim LLP, as counsel to the ad hoc group of lenders party to the Prepetition BrandCo Credit Agreement. <u>ABL DIP Facility</u> All costs, fees and expenses incurred by the advisors to the ABL DIP Agent shall be paid by the Debtors (other than the BrandCo Entities).
Provisions Providing for the Reaffirmation of Prepetition Debt (Local Rule 4001-2(a)(18); Bankruptcy Rule 4001(c)(1)(B)(iii), (viii)) <i>Interim Order at ¶ G</i>	The Interim Order provides stipulations by the Debtor reaffirming the Prepetition BrandCo Facility Debt, the Prepetition BrandCo Liens, the Prepetition ABL Credit Facility Debt, the Prepetition ABL Credit Facility Liens, the Prepetition 2016 Term Loan Liens and a waiver of any right to challenge the foregoing. The Debtors' stipulations are binding on the Debtors as of the entry of the Interim Order, and shall only be binding on third parties if no proceeding has been commenced by the earlier of (a) with respect to any party in interest other than any Committee, 75 days after entry of the Final Order, and (b) with respect to any Committee, no later than 60 days after entry of the Final Order.
Use of Proceeds and Cash Collateral <i>DIP Credit Agreement § 6.9;</i> <i>ABL DIP Term Sheet: Use of Proceeds</i>	<u>DIP Term Loan Facility</u> Subject to any additional restrictions in the Interim DIP Order or the Final DIP Order, the proceeds of the DIP Term Loans shall be used in accordance with the Budget (subject to permitted variances and other permitted purposes set forth in the DIP Documents) and the DIP Orders, for (a) paying fees, costs and expenses related to the Chapter 11 Cases and the Canadian Recognition Proceedings, (b) working capital and general corporate purposes, (c) to make Adequate Protection Payments, (d) to refinance the Foreign ABTL Facility, and (e) to refinance the Tranche A ABL DIP Facility or the obligations under the Prepetition ABL Facility Agreement. The proceeds of the Incremental Term DIP Loans shall be used to refinance the ABL

	<p><u>DIP Facilities</u></p> <p>DIP Facility and/or the Prepetition ABL Obligations that remain outstanding following the Roll-Up.</p> <p><u>ABL DIP Facility</u></p> <p>Subject to any additional restrictions in the Interim DIP Order or the Final DIP Order, the proceeds of the ABL DIP Loans shall only be used (i) to refinance the Prepetition Tranche A Revolving Loans and the Prepetition SISO Term Loans, (ii) the payment of certain prepetition amounts in accordance with the Approved Budget and as authorized by the Bankruptcy Court, (iii) for working capital and general corporate needs of the Debtors in the ordinary course of business, (iv) for the payment of costs and expenses of the Chapter 11 Cases and the Canadian Recognition Proceedings, and (v) as otherwise set forth in the Approved Budget and in accordance with the terms of the ABL DIP Facility and the DIP Orders.</p>
<p>Entities with Interest in Cash Collateral</p> <p><i>Interim Order at ¶ F</i></p>	<p>The Prepetition Secured Parties.</p>
<p>DIP Repayment; Maturity (Bankruptcy Rule 4001(c)(1)(B))</p> <p><i>DIP Credit Agreement definition of “Maturity Date”, “Scheduled Maturity Date”, and §§2.6, 2.8</i></p> <p><i>ABL DIP Term Sheet: Maturity</i></p>	<p><u>DIP Term Loan Facility</u></p> <p>All unpaid principal on each outstanding Loan and all accrued and unpaid interest on unpaid principal shall be paid on the Maturity Date.</p> <p>The Maturity Date shall occur on the earliest of (a) the Scheduled Maturity Date, (b) the effective date of any Chapter 11 Plan for the Borrower or any other Debtor, (c) the consummation of a sale or other disposition of all or substantially all assets of the Debtors, taken as a whole, under section 363 of the Bankruptcy Code, (d) the date of acceleration or termination of the DIP Facility in accordance with the terms hereof and (e) July 20, 2022 (or such later date as agreed to by the Required Lenders), unless the Final Order has been entered by the Bankruptcy Court on or prior to such date.</p> <p>The Scheduled Maturity Date is 365 days after the closing date, subject to extension of up to 180 days upon satisfaction of certain conditions precedent, including (a) at least seven and not more than 60 days’ notice, (b) a 0.50% fee on the sum of (i) the unused commitments of each Lender and (ii) the aggregate unpaid principal amount of outstanding Loans on the initial Scheduled Maturity Date, (iii) no default or event of default, (iv) each of the representations made by any Loan Party being true and correct in all material respects (or if such representation or warranty is already qualified by materiality or a material adverse effect, then in all respects), (v) delivery of an officer’s certificate setting forth compliance with clauses (iii) and (iv), and (vi) delivery of a monthly budget covering the extension period.</p> <p><u>ABL DIP Facility</u></p> <p>Upon the maturity date, the principal of and interest on all ABL</p>

	<u>DIP Facilities</u>
	<p>DIP Loans and all other amounts due and owing under the ABL DIP Facility shall be due and payable.</p> <p>All obligations under the ABL DIP Facility shall be due and payable in full in cash on the earliest of (i) 365 calendar days after the Petition Date (subject to extension at the Borrower's sole option by 180 days), (ii) July 20, 2022 if the Final DIP Order has not been entered by such date, (iii) the effective date of any chapter 11 plan of reorganization for the Debtors, (iv) the consummation of any sale of all or substantially all of the Debtors' assets, (v) the date of acceleration of the ABL DIP Facility, (vi) the date upon which the Court orders the conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, (vii) the date upon which any of the BrandCo License Agreements are rejected or terminated, (viii) the date on which any of the Chapter 11 Cases are dismissed without the consent of the Required Tranche A DIP ABL Lenders.</p>
<p>Milestones (Bankruptcy Rule 4001(c)(1)(B)(vi))</p> <p><i>DIP Credit Agreement § 6.17</i></p> <p><i>ABL DIP Term Sheet: Milestones</i></p>	<ul style="list-style-type: none"> • June 15, 2022: Commence the Chapter 11 Cases • June 16, 2022: File the DIP Motion • June 17, 2022: Obtain entry of the Interim DIP Order • July 20, 2022: Obtain entry of the Final DIP Order • November 1, 2022: Entry into a restructuring support agreement relating to an Acceptable Plan of Reorganization • November 30, 2022: Filing of the Acceptable Plan of Reorganization and Disclosure Statement • April 1, 2023: Entry of an order confirming an Acceptable Plan of Reorganization • April 15, 2023: Substantial consummation of an Acceptable Plan of Reorganization
<p>Budget</p> <p><i>DIP Credit Agreement §§ 6.1(c)-(e); 7.17</i></p> <p><i>ABL DIP Term Sheet: Approved Budget</i></p>	<p>So long as the DIP Facilities have not been terminated, the Debtors shall operate generally in accordance with the latest rolling 13-week cash flow forecasts (the "<u>Budget</u>") in form and substance satisfactory to, with respect to the DIP Term Facility, the DIP Term Agent and, with respect to the ABL DIP Facility, the Required Tranche A ABL DIP Lenders. The Debtors shall deliver an initial budget on or prior to the Petition Date (the "<u>Initial Budget</u>"), and shall update such budget every four weeks thereafter, beginning on the fifth Thursday after the Petition Date (i.e., July 14, 2022), which updated budgets shall commence on the Saturday of the prior week of the date on which the Budget is delivered. Each updated Budget shall modify and supersede the existing Budget unless either of the ABL DIP Agent, acting at the direction of the Required Tranche A ABL DIP Lenders, or the DIP Term Agent, acting at the direction of the Required DIP Term Lenders, shall notify the Loan Parties in writing that such proposed Budget is not in form and substance satisfactory within five days of the receipt thereof, in which case the existing Budget shall remain in effect until superseded by an updated Budget approved pursuant to the foregoing procedures.</p> <p>The Budget variance covenant (the "<u>Budget Variance</u>"), shall be tested every week, beginning on the fifth Thursday after the</p>

	<u>DIP Facilities</u>
	Petition Date (such dates a “ <u>Testing Date</u> ”), on a cumulative basis from the beginning of the period covered by the applicable Budget, and shall require that the Debtors’ (i) actual receipts for the test period shall not be less than 80% of the forecasted actual receipts for such test period, (ii) actual disbursements for the test period (excluding professional fees and expenses) shall not be greater than 120% of the forecasted actual disbursements for such test period, and (iii) actual net cash flow (excluding professional fees and expenses) for the test period shall not be less than (A) if the forecasted net cash flow for such test period is greater than \$10,000,000, 85% of such forecasted results, (B) less than or equal to \$10,000,000 but greater than or equal to \$(10,000,000), \$1,500,000 less than forecasted results, and (C) less than \$(10,000,000), 115% of such forecasted results.
Indemnification (Bankruptcy Rule 4001(c)(1)(B)(ix)) <i>DIP Credit Agreement § 10.5</i> <i>ABL DIP Term Sheet: Indemnification</i> <i>Interim Order at ¶ 2(b)(iii)</i>	The Debtors shall indemnify and hold harmless the DIP Secured Parties and their respective affiliates, directors, officers, employees, agents, advisors, and other representatives in accordance with the DIP Term Loan Documents, subject to certain exceptions, including (i) the gross negligence or willful misconduct of such indemnitee, (ii) a material breach of the DIP Term Credit Agreement by such indemnitee (other than the DIP Term Agent or its related persons).
Governing Law <i>DIP Term Credit Agreement § 10.11;</i> <i>ABL DIP Term Sheet: Governing Law</i>	The DIP Documents will be governed by the law of New York, except to the extent that the provisions of (i) the Bankruptcy Code are applicable and (ii) in the case of the ABL DIP only, the Canadian Companies’ Creditors Arrangement Act, where applicable.
Governing Law <i>DIP Term Credit Agreement § 10.11;</i> <i>ABL DIP Term Sheet: Governing Law</i>	The DIP Documents will be governed by the law of New York, except to the extent that the provisions of (i) the Bankruptcy Code are applicable and (ii) in the case of the ABL DIP only, the Canadian Companies’ Creditors Arrangement Act, where applicable.

B. Intercompany DIP Facility

9. In addition to the ABL DIP Facility and the Term DIP Facility, the Debtors have also entered into an Intercompany DIP Facility whereby the BrandCo Entities have agreed to extend credit to RCPC on a senior secured superpriority basis. Prior to the Petition Date, the BrandCo entities entered into certain licensing agreements with RCPC related to the use of intellectual property of the BrandCo Entities by RCPC. Pursuant to those agreements, RCPC is required to make cash payments for the use of such intellectual property (the “Royalty”

Payments”). Historically the BrandCo Entities regularly returned such cash to RCPC as a dividend so that the proceeds could be used to fund the business.

10. Without continued dividends of the Royalty Payments from the BrandCo Entities during the Chapter 11 Cases, RCPC would not have sufficient liquidity to continue to operate its business in the ordinary course. Pursuant to the Intercompany DIP Facility, during the Chapter 11 Cases as and when Royalty Payments come due to BrandCo Entities, the BrandCo Entities will lend such Royalty Payments back to RCPC on a dollar-for-dollar basis. In short, without the Intercompany DIP Facility, the Debtors would need to increase the amount of post-petition financing that they seek from third-party sources.

11. The Intercompany DIP Facilities do not include any covenants or fees, and the maturity date is the same as the maturity date for the Term DIP Facility. The Intercompany DIP Facilities are secured on a junior basis vis-à-vis the DIP Term Loan Facility, as further detailed in Exhibit 3 to the Interim Order.

Additional Provisions to Be Highlighted Pursuant to Local Rule 4001-2(a)

12. As a condition to obtaining the proposed financing, the DIP Lenders have required, and the Debtors have agreed to, certain provisions that may be considered key provisions to be highlighted to the Court. These provisions include the following:

- a. Cross Collateralization (Local Rule 4001-2(a)(6)). Not applicable.
- b. Liens on Avoidance Actions (Bankruptcy Rule 4001(c)(1)(B)(xi)). The DIP Collateral shall not include, and the DIP Secured Parties shall not be granted a lien on, Avoidance Actions; *provided*, that, subject to the entry of the Final Order, the DIP Collateral shall include the proceeds of such Avoidance Actions and, consequently, the DIP Liens and the Adequate Protection Liens shall each encumber proceeds of such Avoidance Actions (other than actions brought pursuant to section 549 of the Bankruptcy Code) upon the entry of the Final Order to the extent granted therein. ***See Interim Order ¶ 6.***

- c. Automatic Stay Relief (Bankruptcy Rule 4001(c)(1)(B)(iv)). The Interim Order provides for the modification of the automatic stay to permit (i) each DIP Agent, upon the occurrence of an Event of Default and seven (7) days' prior written notice, to exercise under the DIP Documents or the Interim Order all rights and remedies under the DIP Documents. **See Interim Order ¶ 7(d).**
- d. 506(c) Waiver (Bankruptcy Rule 4001(c)(1)(B)(x)). Solely upon entry of the Final Order and to the extent granted therein, no costs or expenses of administration shall be surcharged or otherwise imposed against the DIP Collateral or the Prepetition Collateral under section 506(c) of the Bankruptcy Code or otherwise. **See Interim Order ¶ 8.**
- e. Provisions that Seek to Affect the Court's Power to Consider the Equities of the Case. Solely upon entry of the Final Order, the "equities of the case" exception of section 552 of the Bankruptcy Code shall not apply to (a) the Prepetition BrandCo Agent or the Prepetition BrandCo Secured Parties with respect to proceeds, products, offspring or profits of any Prepetition Collateral or (b) the Prepetition LIFO ABL Agent, the Prepetition SISO ABL Agent, the Prepetition LIFO ABL Secured Parties or the Prepetition SISO ABL Secured Parties with respect to proceeds, products, offspring or profits of any Prepetition Shared Collateral with respect to the proceeds, offspring or profits of any of the Prepetition Shared Collateral. **See Interim Order ¶ 9.**

The Debtors' Need for DIP Facilities and Development of the DIP Budget

13. To continue operating in the ordinary course and to make necessary investments in inventory to minimize value destruction, and to effectuate an efficient and expeditious restructuring, the Debtors need immediate access to liquidity. As described in greater detail below and in the Declarations, the Debtors, with the assistance of their advisors, analyzed their cash needs in order to determine the liquidity levels necessary to maintain the Debtors' operations during the pendency of these Chapter 11 Cases and avoid value destructive underinvestment in necessary inventory procurement and brand support. In undertaking this analysis, the Debtors and their advisors considered the Debtors' near-term projected financial performance, including demand for the Debtors' products and the cost of supplying such products, along with their current liquidity position. The Debtors' management also conferred

with key operational divisions to understand essential business metrics in both the near- and long-term.

14. As part of the Debtors' financial review and analysis, the Debtors, with the assistance of their financial advisor, Alvarez & Marsal North America, LLC ("A&M") developed an initial 13-week budget, a copy of which is attached as Exhibit 2 to the Interim Order (the "Initial Budget"). The Initial Budget incorporates a number of factors and reasonable assumptions, including the Company's substantial working capital requirements, the filing for Chapter 11 on the Debtors' operations, material cash disbursements, vendor relationships and required payments, cash flows from the Debtors' ongoing operations, and the cost of necessary goods and materials. Furthermore, the Initial Budget includes all of the expenditures for which the Debtors seek authority to pay pursuant to various "first day" pleadings, if approved by the Court.

15. Pursuant to Local Rule 4001-2(d), the Debtors believe that the Initial Budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the Initial Budget.

16. With the consent of the Prepetition Secured Parties, the Debtors will use Cash Collateral to fund working capital, capital expenditures, and other general corporate purposes. Cash Collateral, however, is insufficient to fund the costs associated with the Debtors' operations and restructuring. Therefore, the Debtors, with the assistance of their advisors, have determined that the additional postpetition financing provided by the DIP Facilities is immediately necessary to cover substantial shortfalls in working capital for the Debtors' businesses, make sufficient investments in inventory to avoid value destruction, fund adequate protection payments, and satisfy the costs associated with completing the Debtors' restructuring. As such, the DIP

Facilities are fundamental to the preservation and maintenance of the Debtors' going-concern value during these Chapter 11 Cases and critical for the Debtors' successful reorganization.

17. Unless the Debtors can demonstrate that they have the means available to operate in the ordinary course and procure goods and services that are vital to ongoing business operations, customers may seek alternatives and vendors and suppliers may refuse to do business with the Debtors. Moreover, absent access to the funds available under the DIP Facilities, the Debtors will promptly lack sufficient liquidity to continue their business operations in the ordinary course to the material detriment of customers, creditors, employees, and other parties in interest. Additionally without a substantial infusion of capital that the Debtors can rapidly deploy, the Debtors will lose significant value due to the seasonal nature of their business, the long procurement times associated with their manufacturing process, and the annual nature of retailer procurement. Therefore, the Debtors have an immediate need to access the DIP Facilities on an interim basis and throughout the pendency of these Chapter 11 Cases.

The Debtors' Efforts to Obtain Postpetition Financing

18. While evaluating possible financing sources for the Chapter 11 Cases, PJT Partners LP ("PJT") determined that no third-party lender would likely be willing to provide debtor-in-possession financing to the Debtors on terms more favorable than the DIP Facilities. *First*, PJT determined that no third party would likely lend on a junior basis to the Prepetition Obligations because the Debtors have insufficient unencumbered assets upon which to secure postpetition financing of the size needed to permit them to successfully operate their businesses throughout the pendency of these Chapter 11 Cases. *Second*, PJT determined that a third party would likely not propose a satisfactory nonconsensual, priming postpetition financing (as would be required here) given the contentious, costly, and uncertain litigation such a proposal would potentially involve.

19. The Debtors entered discussions with certain of their stakeholders and certain of their related parties regarding potential financing for the Debtors' chapter 11 process. Zelin Decl. at ¶ 13. Ultimately, these discussions did not result in any offer or combination of offers superior to the DIP Facilities. *Id.* The Debtors therefore elected to enter into the DIP Facilities instead of seeking alternative financing from third parties. *Id.* at ¶ 15.

Use of Cash Collateral

20. The DIP Facilities contemplate that the Debtors will have immediate access to the use of Cash Collateral on a consensual basis, subject to the terms and conditions of the DIP Documents and the DIP Orders. Coupled with the liquidity provided under the DIP Facilities, immediate access to the Cash Collateral will (a) ensure that the Debtors have sufficient working capital to, among other things, continue their business operations in the ordinary course by paying their employees, vendors, landlords, and service providers, (b) enable the Debtors to honor their prepetition obligations under and in accordance with the proposed "first-day" relief if approved by the Court, and (c) satisfy administrative expenses of these Chapter 11 Cases. By providing the Debtors with the immediate ability to use Cash Collateral, the DIP Facilities also ensure that the Debtors avoid unnecessary business disruptions that would otherwise be costly and potentially damaging to their businesses.

Forms of Adequate Protection

21. After arms' length, and good faith negotiations, the requisite Prepetition Secured Parties have agreed to consent to the use of the Prepetition Shared Collateral, including Cash Collateral, subject to the provision by the Debtors of adequate protection. Among other things, the adequate protection contemplated by the DIP Orders is designed to protect the Prepetition Secured Parties' interests in the Debtors' property from any diminution in value caused by the automatic stay, by the Debtors' use of the Prepetition Shared Collateral, including Cash

Collateral, during the pendency of these Chapter 11 Cases and by the priming of their liens by the DIP Liens. Specifically, the Debtors have agreed to provide the following forms of adequate protection:

- ***Adequate Protection Liens:*** As further described in the Interim Order, the Debtors will grant the Prepetition Agents, for the benefit of the applicable Prepetition Secured Parties, a security interest in and lien on certain DIP Collateral, subordinate only to the Carve-Out and with the priorities set forth in the Interim Order.
- ***Adequate Protection Superpriority Claims:*** As further described in the Interim Order, subject to the Carve-Out and the claims of the DIP Lenders, the Prepetition Agents, on behalf of the applicable Prepetition Secured Parties, will be granted adequate protection super-priority claims against the applicable Debtors as provided in sections 503(b) and 507(b) of the Bankruptcy Code with priority in payment over any and all administrative expenses and all other claims asserted against such Debtors.
- ***Adequate Protection Payments:*** The Debtors will pay certain reasonable fees and expenses of certain Prepetition Secured Parties.
- ***Prepetition BrandCo Term B-1 Loans Interest Payment:*** As (a) adequate protection and (b) consideration for their agreement to permit the BrandCos to provide the Intercompany DIP Facility, the Prepetition BrandCo Agent, on behalf of the holders of the Term B-1 Loans will receive quarterly payments (the “BrandCo B-1 Payments”) equal to (i) the interest payable in cash (including, as to the first such BrandCo B-1 Payment, amounts accrued prior to the Petition Date) at the non-default interest rate applicable to the Term B-1 Loans. During the Chapter 11 Cases, interest paid in kind under the terms of the Prepetition BrandCo Credit Agreement shall continue to accrue in respect of the Term B-1 Loans at the non-default rate that would otherwise be owed to the Prepetition BrandCo Lenders holding the term B-1 Loans and (iii) default interest due under the terms of the Prepetition BrandCo Credit Agreement shall accrue in kind in respect of the Term B-1 Loans.

22. The Adequate Protection Liens, Adequate Protection Superpriority Claims, Adequate Protection Payments, and Prepetition BrandCo Term B-1 Loans Interest Payment are conferred separately to each of the Prepetition Agents, for the benefit of the applicable Prepetition Secured Parties.

The DIP Facilities are Necessary to Preserve the Value of Debtors' Estates

23. Absent the liquidity infusion that the DIP Facilities will provide, the Debtors will not be able to continue as a going concern. First Day Decl. at ¶ 129. Even if the Debtors had the ability to access Cash Collateral, cash on hand and expected inflows would not be sufficient to fund their operations as a going concern in the near term. Without a new source of liquidity, the Debtors would not be able to continue operations, reassure vendors that business would continue, pay employees or continue to deliver goods to their customers, and without a substantial injection of immediately accessible liquidity, their businesses may be irreparably harmed by their inability to deliver products in time for the 2022 holiday season or in a fashion sufficient to earn retailer trust before the 2023 inventory procurement process concludes. *Id.* at ¶¶ 130-32. The Debtors project that, should the DIP Facilities be approved by this Court, they will generate \$146 million of EBITDA in the third and fourth quarters of 2022, and \$315 million of EBITDA during 2023. *Id.* at ¶ 135. Consequently, the DIP Facilities are necessary to preserve the value of the Debtors' estates.

Basis for Relief

I. The Debtors Should Be Authorized To Obtain Post-Petition Financing on a Senior Secured and Superpriority Basis.

24. The Debtors meet the requirements for relief under section 364 of the Bankruptcy Code, which permits a debtor to obtain post-petition financing and, in return, to grant superpriority administrative status and liens on its property. Specifically, section 364(c) of the Bankruptcy Code provides that the court may approve financing, "with priority over any or all administrative expenses. . . ." 11 U.S.C. § 364(c). Further, section 364(d) of the Bankruptcy Code provides that priming liens may be incurred to support postpetition financing if the debtor

is “unable to obtain such credit otherwise” and the primed lienholders are adequately protected.
11 U.S.C. § 364(d).

25. Provided that an agreement to obtain secured credit is consistent with the provisions of, and policies underlying, the Bankruptcy Code, courts grant considerable deference to a debtor’s exercise of its business judgment when evaluating their requests to incur postpetition credit. *See, e.g., In re Latam Airlines Grp. S.A.*, 2020 WL 5506407 at *27 (Bankr. S.D.N.Y. Sept. 10, 2020) (“Generally, in evaluating the merits of proposed post-petition financing, courts will defer to a debtor’s business judgment provided that the financing does not unduly benefit a party in interest at the expense of the estate.”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (deferring to a debtor’s “reasonable business judgment. . . so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest”).

26. In determining whether the Debtors have exercised sound business judgment in deciding to enter into the DIP Facilities, this Court may appropriately take into consideration non-economic benefits to the Debtors offered by a proposed post-petition facility. For example, in *In re ION Media Networks, Inc.*, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009), the Bankruptcy Court for the Southern District of New York explained that “noneconomic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization” may be properly considered by debtors when selecting post-petition financing, because the “business decision to obtain credit from a particular lender is almost never based purely on economic terms” due to the importance of those terms. *Id.*

27. Here, given all the facts and circumstances present in the Chapter 11 Cases, the Debtors have amply satisfied the necessary conditions under sections 364(c) and (d) of the Bankruptcy Code for authority to enter into the DIP Facilities. The Debtors exercised proper business judgment in securing the DIP Facilities on terms that are fair and reasonable and the best available to them under the circumstances and in the current market. Moreover, given the circumstances described above, the Debtors could not obtain credit on an unsecured or administrative expense basis or without the limited priming contemplated by the Interim Order. For all the reasons discussed further below, the Debtors respectfully submit that the Court should grant the Debtors' request to enter into the DIP Facilities pursuant to sections 364(c) and (d) of the Bankruptcy Code.

A. The Debtors Exercised Sound and Reasonable Business Judgment in Deciding to Enter into the DIP Facilities.

28. Based on the facts of the Chapter 11 Cases, the DIP Facilities represent a proper exercise of the Debtors' business judgment. As noted above, bankruptcy courts routinely defer to a debtor's business judgment on most business decisions, including decisions about whether and how to borrow money. *See, e.g., In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) ("Parties opposing the proposed exercise of a debtor's business judgment have the burden of rebutting the presumption of validity") (citing *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)); *In re Garrett Motion Inc.*, No. 20-12212 (Bankr. S.D.N.Y. October 23, 2020) (approving postpetition financing as "a sound and prudent exercise of the Debtors' business judgment"); *In re Metaldyne Corp.*, 409 B.R. 661, 667–68 (Bankr. S.D.N.Y. 2009) (noting "decisions in [the Southern District of New York] emphasizing that [bankruptcy courts] should not substitute [their] business judgment for that of the Debtors'." (citations omitted), *aff'd* 421 B.R. 620 (S.D.N.Y. 2009); *In re Ames Dep't Stores, Inc.*, 115 B.R. at 40 ("More exacting scrutiny would

slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially."); *Richmond Leasing Co. v. Capital Bank N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

29. Specifically, when evaluating whether a debtor's decision to obtain postpetition financing was an exercise of sound business judgment, courts need only "examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Dura Auto. Sys., Inc.*, 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007) (quoting *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006)). When evaluating whether a debtor's decision to enter into postpetition financing was an exercise of sound business judgment, bankruptcy courts consider the terms of the financing in light of the debtor's circumstances and the market for financing more generally. *See In re Farmland Indus., Inc.*, 294 B.R. at 886; *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard bargains" to acquire funds for its reorganization).

30. The Debtors' advisors actively negotiated the terms and provisions of the DIP Facilities, in good faith, in an effort to reach the best available material terms given the circumstances surrounding these Chapter 11 Cases. Zelin Decl. at ¶ 16. The fees, rates, and other economics provided for in the DIP Facilities, taken as a whole, are reasonable and in the Debtors' best interests and the DIP Facilities are the best and only reasonable financing option currently available to the Debtors under the circumstances. *Id.* at ¶¶ 17, 19. Consequently, the Debtors' determination to move forward with the DIP Facilities is a sound exercise of their business judgment, and accordingly, the Debtors respectfully request the Court authorize the

Debtors' entry into the DIP Facilities and the borrowings contemplated therein as a reasonable exercise of the Debtors' business judgment.

B. The Debtors Meet the Conditions Necessary Under Section 364(c) and (d) to Obtain Postpetition Financing on a Senior Secured and Superpriority Basis

31. The Debtors propose to obtain financing under the DIP Facilities by providing superpriority claims and liens pursuant to sections 364(c) and 364(d)(1) of the Bankruptcy Code. The Debtors propose to provide (i) the ABL DIP Secured Parties and the Intercompany DIP Lenders with liens on and security interests in the DIP Collateral of all the Debtors other than the BrandCo Entities and (ii) the Term DIP Secured Parties with liens on and security interests in all of the DIP Collateral, including the assets of the BrandCo Entities. In addition, the ABL DIP Secured Parties on the one hand and the Term DIP Secured Parties and the Intercompany DIP Lenders on the other hand have a customary crossing lien collateral package with respect to the assets of the Debtors other than the BrandCo Entities. The DIP Collateral includes the Prepetition Collateral, any other assets of the Debtors that were not subject to any validly perfected liens or security interest as of the Petition Date, and, subject to entry of the Final Order to the extent granted therein, the proceeds of avoidance actions (in each case subject to the Carve Out and certain permitted senior liens).

32. In evaluating proposed postpetition financing under sections 364(c) and 364(d)(1) of the Bankruptcy Code, courts act in their "informed discretion." *In re Ames Dep't Stores*, 115 B.R. at 37. Courts perform a qualitative analysis and consider factors including whether (a) the debtor made a reasonable effort to find financing with better terms, (b) the financing is necessary to preserve assets of the estate, and (c) the terms of the credit agreement are fair, reasonable, and adequate. *In re Republic Airways Holdings Inc.*, 2016 WL 2616717, at *11 (Bankr. S.D.N.Y. May 4, 2016).

(i) *The Debtors Are Unable To Obtain Financing on More Favorable Terms Than the DIP Facilities*

33. Debtors need to demonstrate that they made a reasonable effort to find alternative financing before a bankruptcy court will order superpriority liens. *In re Latam Airlines Grp. S.A.*, 2020 WL 5506407, at *26 (Bankr. S.D.N.Y. Sept. 10, 2020). But, the Bankruptcy Code “imposes no duty [on a debtor] to seek credit from every possible lender before concluding that such credit is unavailable.” *Id.* (citing *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986)); *In re Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584–85 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense); *In re Ames Dep’t Stores, Inc.*, 115 B.R. at 40 (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain superior terms after discussing possible postpetition financing with four lenders); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996).

34. Moreover, when only a few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989).

35. Here, the Debtors and their advisors entered discussions with certain of their stakeholders and certain of their related parties regarding potential financing for a chapter 11 process, shared diligence materials (including proposed budgets and projections), and engaged in discussions regarding potential financing for a chapter 11 process, but ultimately they did not receive any offer or combination of offers superior to the DIP Facilities. Zelin Decl. at ¶ 13.

The terms of the DIP Facilities are the product of extensive and good faith negotiations between the Debtors' advisors and the DIP Lenders. *Id.* at ¶¶ 16-17. Through these vigorous negotiations, the Debtors developed the terms of the DIP Facilities, which are the best and only reasonable financing option currently available under the circumstances. *Id.* at ¶ 19. The DIP Facilities are the Debtors' only viable source of funding, whether on an out-of-court or in-court basis, and no other, better alternative, taken as a whole, is currently available to the Debtors under the circumstances. *Id.* at ¶ 15. In sum, the DIP Facilities represent the Debtors' best available postpetition financing option.

(ii) *The DIP Facilities Are Necessary to Preserve the Value of the Debtors' Estates*

36. The Debtors have a fiduciary duty to protect and maximize their estates' assets. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004). The Debtors seek access to the DIP Facilities consistent with that duty. Without capital from the DIP Facilities, the Debtors would be unable to fund critical payments that are essential to the Debtors' operational viability. First Day Decl. at ¶ 129.

(iii) *The Terms of the DIP Facilities Are Fair, Reasonable, and Adequate under the Circumstances*

37. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. at 886; *see also In re Ellingsen MacLean Oil Co.*, 65 B.R. at 365. The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009), Hr'g Tr. 740:4-6 ("[B]y reason of present market conditions, as disappointing as the [DIP] pricing terms are, I find the provisions [of the DIP] reasonable here and now."). Here, the terms of the DIP Facilities are fair, appropriate,

reasonable, adequate under the circumstances, and in the best interests of the Debtors, their estates, and their creditors.

38. As noted above, the terms of the DIP Facilities were actively negotiated by the Debtor's advisors. Zelin Decl. at ¶ 16. Under the current circumstances, the fees, rates, and other economics provided for in the DIP Facilities, taken as a whole, are reasonable and in the Debtors' best interests, particularly in light of the absence of any more favorable alternatives. *Id.* at ¶1 17. The DIP Lenders also negotiated for milestones that provide the Debtors with adequate time to negotiate and implement a value-maximizing restructuring, such that agreeing to include these milestones as a condition to entering into the DIP Facilities was in the Debtors' best interests. *Id.* at ¶ 18..

C. The Prepetition Secured Parties are Adequately Protected

39. Although the Bankruptcy Code does not define "adequate protection," section 361 of the Bankruptcy Code delineates a non-exhaustive list of the available types of adequate protection, which include periodic cash payments, additional liens, replacement liens and the "indubitable equivalent of such entity's interest in such property." 11 U.S.C. § 361. *See also, In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("[T]he determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case.") The focus of the requirement is to protect a secured creditor from the diminution in the value of its interest in the particular collateral during a chapter 11 case. *See In re WestPoint Stevens, Inc.*, 600 F.3d 231, 257–58 (2d Cir. 2010) ("[T]he whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.") (quoting *In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir.1994)). When superpriority liens are sought under section 364(d), courts also examine whether the prepetition secured creditors are being provided adequate protection for the value of their liens. *See In re Beker Indus. Corp.*, 58

B.R. 725, 737 (Bankr. S.D.N.Y. 1986); *see also, In re Utah 7000, LLC*, No. 08-21869, 2008 WL 2654919, at *3 (Bankr. D. Utah July 3, 2008).

40. Under the relevant intercreditor agreements, the BrandCo Lenders, the 2016 Term Loan Lenders, and the ABL Lenders are all contractually obligated to not object to the DIP Facilities. Because the requisite First Lien BrandCo Lenders have directed Jefferies Finance LLC, the agent under the BrandCo Facility, to consent to the DIP Facilities, the lenders under the Second Lien BrandCo Facility and Third Lien BrandCo Facility cannot object due to their contractual commitments under the BrandCo Intercreditor Agreement. For the same reason, the 2016 Term Loan Lenders cannot object under the BrandCo Pari Passu Intercreditor Agreement. The consent provided by the ABL DIP Lenders similarly binds all other Prepetition ABL Lenders and the BrandCo Lenders and 2016 Term Lenders under the ABL Intercreditor Agreement.

41. Additionally, the Prepetition Secured Parties will receive adequate protection for, among other reasons, the use of Cash Collateral and other Prepetition Collateral and the consensual priming of their liens as contemplated in the Interim Order and by the Carve Out, to the extent of any aggregate diminution in value of their interest in the Prepetition Collateral, including Cash Collateral, from and after the Petition Date. The Prepetition Secured Parties will be granted superpriority claims and replacement liens secured by postpetition replacement security interests in and liens upon the collateral securing their existing claims against the Debtors.

42. In addition, the Prepetition BrandCo Agent, on behalf of the holders of the Term B-1 Loans (as defined in the Prepetition BrandCo Credit Agreement) will receive, both as adequate protection and as consideration for consenting to the Intercompany DIP Facility,

payment of cash interest at the non-default rate and paid-in-kind interest at the default rate, and the Prepetition BrandCo Agent and an ad hoc group of Prepetition BrandCo Lenders shall receive the payment of fees and expenses, including reasonable professional fees, that have or will hereafter accrue under the Prepetition BrandCo Loan Documents. These terms are fair and customary for debtor-in-possession financings of this type, and they adequately protect the Prepetition Secured Parties.

43. The DIP Facilities also adequately protect the Prepetition Secured Parties because they will improve the value of their collateral relative to the alternative scenario of not being able to obtain post-petition financing to fund ongoing operations. Bankruptcy courts have found primed lenders were adequately protected when the priming debt was used to improve the value of their collateral. *See, e.g., In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); *see also In re Hubbard Power and Light*, 202, B.R. 680, 685 (Bankr. E.D.N.Y. 1996). For a court to find that a secured creditor is adequately protected under similar facts, it looks to see if “projections grounded on a firm evidentiary basis” support the claim that the claim that nonconsensually priming debt improves the primed creditors’ position. *In re Mosello*, 195 B.R. 277, 292 (Bankr. S.D.N.Y. 1996).

44. Here, based on projections developed by the Debtors and their advisors that were thoroughly challenged and vetted during the negotiation of the DIP Facilities, the Debtors have concluded that access to the DIP Facilities will allow the Debtors to generate \$461 million of EBITDA in the next 18 months that they would not otherwise generate. First Day Decl. at ¶ 135. The significant degradation of the Company’s EBITDA that would result if such EBITDA was not generated would necessarily result in a significant decline in the value of the business and the 2016 Term Loan Lenders’ collateral. Zelin Decl. at ¶27. Therefore, the benefits to the 2016

Term Loan Lenders' collateral from the DIP Facilities will be in excess of the portion of the DIP Facilities that prime the 2016 Term Loan Lenders' Loans. *Id.*

D. The Refinancing of the Prepetition Revolving Debt Is Appropriate

45. The ABL DIP Term Sheet and the DIP Orders provide that upon entry of the Interim Order (and subject to the “challenge” rights of third parties), all outstanding Prepetition LIFO ABL Obligations and Prepetition SISO Obligations will be rolled into the ABL DIP Facility. Repayment of prepetition debt (often referred to as a “roll-up”) is a common feature in debtor-in-possession financing arrangements. The Roll-Up of certain Prepetition ABL Obligations is a sound exercise of the Debtors' business judgment and was justified under the circumstances.

46. *First*, the Prepetition LIFO ABL Lenders and the Prepetition SISO Lenders were not willing to provide the ABL DIP Facility without the Roll-Up. The Debtors, on the one hand, and the ABL DIP Secured Parties, on the other, engaged in arm's-length negotiations and ultimately agreed to the Roll-Up because the ABL DIP Facility is oversecured and the ABL DIP Secured Parties were offering to provide much-needed liquidity to the Debtors to fund their operations and these Chapter 11 Cases.

47. *Second*, The Roll-Up will not prejudice the Debtors' stakeholders. The Prepetition LIFO ABL Lenders and the Prepetition SISO Lenders are oversecured. As such, the ABL Refinancing does not harm the Debtors' stakeholders, including the general unsecured creditors, because the only variable is timing, not certainty, of repayment. Courts place particular importance on whether a prepetition secured creditor is oversecured in determining whether to approve a roll-up. *See, e.g., In re Real Indus., Inc.*, No. 17-12464 (Bankr. D. Del. Nov. 20, 2017), Hr'g Tr. 39:9-19 (“So, let's talk about the roll-up. I had the same issue on Friday and I did something that, as you might imagine, a Court would be reluctant to do, and I approved the

roll-up on the first day, and I did it in those circumstances in which there didn't seem to be any dispute over whether that lender that was the beneficiary of the roll-up was over-secured.”); *In re Velocity Holding Co., Inc.*, No. 17-12442 (Bankr. D. Del. Nov. 17, 2017), Hr’g Tr. 38:1-2 (remarking that whether a secured creditor is oversecured “directly affects whether they should have a roll-up”); *In re Pac. Sunwear of Cal., Inc.*, No. 16-10882 (Bankr. D. Del. April 8, 2016), Hr.’g Tr. 65:7-17 (“[A]s noted in the colloquia of counsel, Wells Fargo has the first [lien] on all the current assets and they are, it has been represented to me, over-secured. So in that event I don’t see the harm in letting this [roll-up of prepetition obligations] go out on first day.”). Furthermore, the ABL Refinancing is subject to a review and challenge under the Interim Order by any third party with requisite standing.

48. Finally, roll-ups and repayments of prepetition debt are a common feature of debtor-in-possession financings and have been approved in a variety of cases, including pursuant to interim financing orders, both in this and other districts. *See, e.g., In re Avianca Holdings*, No. 20-11133 (Bankr. S.D.N.Y. Oct. 5, 2020); *In re KB US Holdings, Inc. (Balducci's)*, No.20-22962 (Bankr. S.D.N.Y. Sept.18, 2020); *In re Lakeland Tours*, No. 20-11647 (Bankr. S.D.N.Y., Aug. 6, 2020); *In re Centric Brands Inc.*, No. 20-22637 (Bankr. S.D.N.Y. June 22, 2020); *In re Internap Technology Solutions Inc.*, No. 20-22393 (Bankr. S.D.N.Y. May 5, 2020); *In re OneWeb Global Limited*, No. 20-22437 (Bankr. S.D.N.Y. May 1, 2020); *In re Hollander Sleep Products, LLC*, No. 19-11608 (Bankr. S.D.N.Y. July 19, 2019); *In re Sears Holding Corporation*, No. 18-23538 (Bankr. S.D.N.Y. Nov. 30, 2018).

49. In addition, the Debtors seek authority to use the proceeds of the DIP Term Loan to refinance the Foreign ABTL Facility. The obligors on the Foreign ABTL are non-debtor

subsidiaries of the Debtors, and the refinancing of the Foreign ABTL by the DIP Lenders will simplify the Debtors' capital structure and without affecting the Debtors' existing constituents.

50. Given these circumstances, repayment of all outstanding Prepetition ABL Obligations with proceeds of the ABL DIP Facility, as set forth in the ABL DIP Term Sheet and the DIP Orders, is reasonable, appropriate, and a sound exercise of the Debtors' business judgment.

II. The Use of Cash Collateral Is Warranted and Should Be Approved

51. The Debtors' use of property of their estates, including the Cash Collateral, is governed by section 363 of the Bankruptcy Code, which provides in relevant part that if the debtor is authorized to continuing operating its business during its chapter 11 case, the debtor "may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1).

52. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may not use cash collateral unless "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses Cash Collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *See, e.g., In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (explaining that the "determination of whether there is adequate protection is made on a case by case basis").

53. Here, the DIP Secured Parties and the Prepetition Secured Parties consent or are deemed to consent to the Debtors' use of the Cash Collateral, subject to the terms and limitations set forth in the Interim Order. Further, as set forth above, the proposed adequate protection is appropriate, fair and customary for debtor-in-possession financings of this type.

III. The Scope of the Carve-Out Is Appropriate

54. The Interim Order subjects the security interests and administrative expense claims of the DIP Lenders and the Prepetition Secured Parties to the Carve Out. Such carve outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee appointed can reimburse their professionals in certain circumstances following an event of default under the terms of the debtor's postpetition financing. *See Ames Dep't Stores*, 115 B.R. at 40. Neither the Interim Order nor the DIP Facilities directly or indirectly deprives the Debtors' estates or other parties in interest of possible rights and powers by restricting the services for which professionals may be paid in these cases. *See id.* at 38 (observing that courts insist on carve-outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve Out protects against administrative insolvency during the course of the chapter 11 cases by ensuring that assets remain for the payment of the U.S. Trustee's fees and professional fees of the Debtors and any statutory committee notwithstanding the grant of priming liens, superpriority claims, and adequate protection liens and claims.

55. Courts routinely approve carve outs agreed to by the debtors and their DIP financing lenders. *See, e.g., In re Avianca Holdings*, No. 20-11133 (Bankr. S.D.N.Y. Oct. 5, 2020); *In re KB US Holdings, Inc. (Balducci's)*, No.20-22962 (Bankr. S.D.N.Y. Sept.18, 2020); *In re Lakeland Tours*, No. 20-11647 (Bankr. S.D.N.Y., Aug. 6, 2020); *In re Centric Brands Inc.*,

No. 20-22637 (Bankr. S.D.N.Y. June 22, 2020); *In re Internap Technology Solutions Inc.*, No. 20-22393 (Bankr. S.D.N.Y. May 5, 2020); *In re OneWeb Global Limited*, No. 20-22437 (Bankr. S.D.N.Y. May 1, 2020); *In re Deluxe Entertainment Services Group Inc.*, No. 19-23774 (Bankr. S.D.N.Y. Oct. 7, 2019); *In re New Cotai Holdings, LLC*, No. 19-22911 (Bankr. S.D.N.Y. July 19, 2019); *In re Stearns Holdings, LLC*, No. 19-12226 (Bankr. S.D.N.Y. July 11, 2019); *In re Aegerion Pharmaceuticals, Inc.*, No. 19-11632 (Bankr. S.D.N.Y. June 27, 2019); *In re Fusion Connect, Inc.*, No. 19-11811 (Bankr. S.D.N.Y. June 6, 2019).

IV. The Debtors Should Be Authorized to Pay the Fees Required by the DIP Agents and the DIP Lenders Under the DIP Documents

56. Under the DIP Documents, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agents and the DIP Lenders pursuant to the DIP Documents. Specifically, the Debtors have agreed to pay, in connection with the DIP Term Facility, (a) an upfront fee equal to 1.00% of the aggregate principal amount of each DIP Term Lender's DIP Term Commitment, payable upon entry of the Interim Order, (ii) a repayment fee of 1.00% of the aggregate principal amount of the DIP Term Loans payable upon the repayment of such obligations, (iii) a backstop fee of 1.50% of the aggregate DIP Term Commitments payable in the form of OID to certain DIP Term Lenders that backstopped the DIP Term Facility, and (iv) a fee of 0.50% of the aggregate principal amount of the DIP Term Loans outstanding under the DIP Credit Agreement upon the initial scheduled maturity date of 12 months after the closing of the DIP Term Facility if the DIP Term Borrower elects to extend the maturity date by 6 months. In addition, the DIP Term Borrower has agreed to pay an arrangement fee, payable in accordance with the Jefferies Fee Letter, dated June 15, 2022, a copy of which is being filed under seal.

57. In addition, the Debtors have agreed to pay, in connection with the ABL DIP Facility, (a) a closing fee equal to 1.00% of the aggregate Tranche A ABL DIP Commitments

outstanding as of the Petition Date, (b) a commitment fee equal to 0.50% per annum on the Tranche A ABL DIP Commitments, (c) an exit fee of 0.50% of the Tranche A ABL DIP Commitments, payable in cash on the maturity date, a collateral management fee equal to 1.00% per annum of the average daily aggregate principal outstanding amount of Tranche A DIP Loans and (e) any additional fees payable pursuant to the certain existing fee letters with the Prepetition ABL Agent.

58. The Debtors, in consultation with their advisors, believe that these fees are an integral component of the overall terms of the DIP Facilities, were required by the DIP Agents and the DIP Lenders as consideration for the extension of postpetition financing, are reasonable and customary for similar transactions and represent the best financing terms reasonably available to the Debtors. Accordingly, the Court should authorize the Debtors to pay the fees provided under the DIP Documents in connection with entering into those agreements.

V. The DIP Lenders Should Be Deemed Good-Faith Lenders Under Section 364(e)

59. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that such reversal or modification "does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith." 11 U.S.C. § 364(e).

60. The DIP Facilities are the result of (a) the Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain vital postpetition financing and (b) extensive arm's-length, good-faith negotiations between the Debtors and the DIP Lenders. Zelin Decl. at ¶¶ 15-18. The Debtors submit that the terms and conditions of the DIP Facilities are reasonable and appropriate under the circumstances, and the

proceeds of the DIP Facilities will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to the DIP Agent, the DIP Lenders, or any other party to the DIP Documents other than as described herein. Accordingly, the Court should find that the obligations arising under the DIP Facilities and other financial accommodations made to the Debtors have been extended by the DIP Agents and the DIP Lenders in “good faith” within the meaning of section 364(e) of the Bankruptcy Code and, therefore, the DIP Agents and the DIP Lenders are entitled to all of the protections afforded thereby.

VI. The Automatic Stay Should Be Modified on a Limited Basis

61. The Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to permit the DIP Agents to perform any act authorized or permitted under or by virtue of the Interim Order, the DIP Credit Agreement, or the other DIP Documents, as applicable, including, without limitation, (a) to implement the postpetition financing arrangements authorized by the Interim Order, (b) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the DIP Collateral, (c) to assess, charge, collect, advance, deduct, and receive payments with respect to the Prepetition Obligations and DIP Obligations (or any portion thereof), including, without limitation, all interests, fees, costs, and expenses permitted under any of the DIP Documents and apply such payments to the Prepetition Obligations, and (d) subject to the seven days’ notice, to take any action and exercise all rights and remedies provided to it by the Interim Order, the DIP Documents, or applicable law.

62. Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements and, in the Debtors’ business judgment, are reasonable and fair under the circumstances of these Chapter 11 Cases. *See, e.g., In re Avianca Holdings*, No.

20-11133 (Bankr. S.D.N.Y. Oct. 5, 2020); *In re KB US Holdings, Inc. (Balducci's)*, No.20-22962 (Bankr. S.D.N.Y. Sept.18, 2020); *In re Lakeland Tours*, No. 20-11647 (Bankr. S.D.N.Y., Aug. 6, 2020); *In re Centric Brands Inc.*, No. 20-22637 (Bankr. S.D.N.Y. June 22, 2020); *In re Internap Technology Solutions Inc.*, No. 20-22393 (Bankr. S.D.N.Y. May 5, 2020); *In re OneWeb Global Limited*, No. 20-22437 (Bankr. S.D.N.Y. May 1, 2020); *In re Deluxe Entertainment Services Group Inc.*, No. 19-23774 (Bankr. S.D.N.Y. Oct. 7, 2019); *In re New Cotai Holdings, LLC*, No. 19-22911(Bankr. S.D.N.Y. July 19, 2019); *In re Stearns Holdings, LLC*, No. 19-12226 (Bankr. S.D.N.Y. July 11, 2019); *In re Aegerion Pharmaceuticals, Inc.*, No. 19-11632 (MG) (Bankr. S.D.N.Y. June 27, 2019); *In re Fusion Connect, Inc.*, No. 19-11811 (Bankr. S.D.N.Y. June 6, 2019); *In re Sears Holding Corp.*, No. 18-23538 (Bankr. S.D.N.Y. Oct. 16, 2018); *In re Nine West Holdings, Inc.*, No. 18-10947 (Bankr. Apr. 9, 2018).

VII. Failure to Obtain Immediate Interim Access to the DIP Facilities and Cash Collateral Would Cause Immediate and Irreparable Harm

63. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. *See* Bankruptcy Rules 4001(b)(2) and 4001(c)(2) & Local Bankruptcy Rule 4001-2(g). Furthermore, section 363(c)(3) of the Bankruptcy Code authorizes the Court to conduct a preliminary hearing and to authorize the use of cash collateral "if there is a reasonable likelihood that the [debtor] will prevail at the final hearing under [section 363(e) of the Bankruptcy Code]." 11 U.S.C. § 363(c)(3).

64. Failure to obtain access to the DIP Facilities and access to Cash Collateral would result in immediate and irreparable harm to the Debtors and their stakeholders, and cause a diminution in value to the Debtors' estates. Without the approval of the DIP Facilities and the use of Cash Collateral, the Debtors likely would cease operating as a going concern. First Day Decl. at ¶ 129. The DIP Facilities provide the amounts necessary to maximize the Debtors' going concern value by allowing them to make the necessary investments in inventory to ensure that their businesses can capitalize on near-term opportunities. *Id.* at ¶¶ 130-33. Furthermore, the Debtors require access to additional liquidity provided under the DIP Facilities to fund their operations, pay their administrative expenses and implement the relief requested in the Debtors' other "first day" motions.

65. Accordingly, pursuant to section 363(c)(3) of the Bankruptcy Code, Bankruptcy Rule 4001(b), and Local Bankruptcy Rule 4001-2(g), the Debtors request that the Court conduct an expedited hearing on this DIP Motion, and enter the Interim Order authorizing the Debtors to obtain credit under the DIP Facilities, including the use Cash Collateral, all on an interim basis, pending approval on a final basis after the Final Hearing (if necessary).

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

66. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

67. Nothing contained in this motion or any order granting the relief requested in this motion, and no action taken pursuant to such relief requested or granted (including any payment made in accordance with any such order), is intended as or should be construed or deemed to be:

(a) an admission as to the amount of, basis for, or validity of any claim against a Debtor, under the Bankruptcy Code or other applicable nonbankruptcy law, (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds, (c) a promise or requirement to pay any particular claim, (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this motion or any order granting the relief requested by this motion, (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

Motion Practice

68. This Motion includes citation to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this Motion. Moreover, in addition to all entities otherwise entitled to receive notice, the Debtors have provided notice of this Motion to all entities believed to have or claiming an interest in the subject matter of the proposed order. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

Notice

69. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) Proskauer Rose LLP, as counsel to MidCap Funding IV Trust, in its capacity as (i) administrative agent and collateral agent under

the Debtors' prepetition asset-based lending facility, (ii) as administrative agent and collateral agent under the ABL DIP Facility, and (iii) ABL DIP Lender; (d) Morgan Lewis & Bockius LLP, as counsel to Crystal Financial LLC, in its capacity as administrative agent for the SISO Term Loan; (e) Alter Domus, in its capacity as administrative agent for the Tranche B; (f) Latham & Watkins, LLP, as counsel to Citibank N.A., in its capacity as 2016 Term Loan Agent; (g) Quinn Emanuel Urquhart & Sullivan, LLP, in its capacity as counsel to the putative 2016 Term Loan group; (h) Akin Gump Strauss Hauer & Feld, LLP, in its capacity as advisors to the Ad Hoc Group of 2016 Lenders; (i) Paul Hastings LLP, as counsel to Jefferies Finance LLC, in its capacity as BrandCo agent and DIP agent; (j) Davis Polk & Wardwell LLP and Kobre & Kim LLP, in their capacity as counsel to the ad hoc group of Term Loan DIP lenders and BrandCo lenders; (k) King & Spalding, LLP, in its capacity as counsel to Blue Torch Finance LLC, in its capacity as Foreign ABTL Facility administrative agent; (l) U.S. Bank National Association, as indenture trustee for the Debtors' pre-petition unsecured notes, and any counsel thereto; (m) the United States Attorney's Office for the Southern District of New York; (n) the Internal Revenue Service; (o) the Securities Exchange Commission; (p) the attorneys general for the states in which the Debtors operate; (q) any parties known after reasonable inquiry to have asserted a lien against the Debtors' assets, and (r) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

70. No prior request for the relief sought in this Motion has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request entry of the Interim Order (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

New York, New York

Dated: June 16, 2022

/s/ Paul M. Basta

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