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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	Chapter 11
STG LOGISTICS, INC., *et al.*,	Case No.: 26-10258 (MEH)
Debtors.	(Joint Administration Requested)

PRELIMINARY OBJECTION AND RESERVATION OF RIGHTS OF AXOS FINANCIAL, INC. AND SIEMENS FINANCIAL SERVICES, INC. WITH RESPECT TO THE DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING AND FOR OTHER RELIEF

Axos Financial, Inc. ("Axos") and Siemens Financial Services, Inc. ("Siemens" and, together with Axos, the "Minority Lenders"), prepetition first lien lenders to certain of the Debtors who were improperly excluded from the unlawful October 2024 LMT (defined herein), by and through their undersigned counsel, hereby submit this preliminary objection and reservation of rights (the "Preliminary Objection") to the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final*

Hearing, and (VII) Granting Related Relief [Docket No. 19] (the "DIP Motion").[1] In support of this Preliminary Objection, the Minority Lenders respectfully state as follows:

PRELIMINARY STATEMENT

The Minority Lenders properly hold first-priority liens on a *pro rata* basis with other prepetition lenders against assets owned by certain of the Debtors. As described herein, in October 2024, certain of the Debtors and these other lenders secretly conspired and negotiated together, in an effort to improperly amend certain prepetition credit documents, transfer collateral to certain of the Debtors' unrestricted subsidiaries, and prepay these other lenders' loans, all in an effort designed to, *inter alia*, improperly strip the Minority Lenders of their contractual and economic rights and enhance these other lenders' (the "Favored Lenders") lien positions. As a result of this improper conduct, the Minority Lenders filed a lawsuit in New York Supreme Court (the "New York Lawsuit") against, *inter alia*, certain of the Debtors – Reception Purchaser, LLC and Reception Mezzanine Holdings, LLC (collectively, "STG") – and the Favored Lenders (including Antares, which served both as a Favored Lender and the administrative agent of the loans), which lenders include the proposed DIP lenders.

The defendants moved to dismiss the New York Lawsuit. After conducting a hearing in August 2025, on January 3, 2026, the court in the New York Lawsuit denied the defendants' motions to dismiss twelve out of the Minority Lenders' thirteen causes of action. In sustaining the Minority Lenders' claims, the court in the New York Lawsuit expressly found that the Minority Lenders properly:

> allege a calculated plot perpetrated by Defendants … to deprive Plaintiffs of their contractual rights. Plaintiffs allege that in October 2024, a slight majority of the loan holders essentially formed their own "syndicate-within-the-syndicate" through

[1] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the DIP Motion or the *Declaration of Tyler Holtgreven, Chief Financial Officer of STG Logistics, Inc., in Support of Debtors' Chapter 11 Petitions and First Day Motions ("Holtgreven Dec.")* [Docket No. 33].

> which they planned and executed an LMT (the "October Transaction" or the "Scheme"). AC at ¶¶ 73, 82. Plaintiffs allege that the LMT involved a complex series of inter-related steps including: (1) amending the credit agreement governing the loans held by Plaintiffs and Defendant lenders (the "Defendant Lenders"); (2) the creation of unrestricted borrower subsidiaries, Defendants STG Distribution LLC and STG Distribution Holdings LLC (together, "UnSub"); (3) the transfer of valuable collateral assets from STG to UnSub; (4) the full prepayment of loans held by Defendant Lenders; [5] the extension of loans by Defendant Lenders to UnSub, many of which were secured by the assets of UnSub and guaranteed by the assets of STG; and [6] the issuance of a secured intercompany loan from UnSub to STG in an amount equal to the new debt financing issued to UnSub.

See **Exhibit A**, January 3, 2026 Decision and Order.

In response to the New York court's denial of the defendants' motions to dismiss, the Debtors now file these Chapter 11 cases, in a transparent effort to avoid the New York court's ruling and to permanently extinguish the Minority Lenders' rights while transfering the Minority Lenders' bargained-for value to the Favored Lenders.

The DIP Motion is fraught with problems. Most critically, the Debtors and the Favored Lenders are seeking to finalize the October 2024 LMT's improper value transfer through a roll-up of certain prepetition debt that repays only a portion of the Favored Lenders' prepetition loans without also rolling up that *pro rata* portion of the Minority Lenders' prepetition secured loans, which would breach the Debtors' and the Favored Lenders' contractual obligations and further violate the Minority Lenders' rights. Additionally, the Favored Lenders seek to use the DIP Motion, along with the January 12, 2026 Restructuring Support Agreement (the "RSA"), as a vehicle to obtain substantially all of the Debtors' equity upon reorganization or sale. As a result, approval of the DIP Motion would prejudge the outcome of the central litigation dispute between the Minority Lenders and the Favored Lenders in these bankruptcy cases.

For these reasons and others described herein, the Minority Lenders respectfully request that this Court maintain the status quo and decline to approve any "first day" relief that would in any way prejudice the Minority Lenders' rights with respect to their collateral and/or prevent the

Minority Lenders from challenging the validity of the unlawful October 2024 LMT or from pursuing the Minority Lenders' claims against the Favored Lenders. In particular, the Minority Lenders request that the Court ensure that any of the proposed admissions, stipulations, releases, and other relief in the Debtors' proposed interim order approving the Debtors' postpetition financing and use of cash collateral (the "Proposed Interim DIP Order") preserve the Minority Lenders' rights and claims, including claims against the Favored Lenders. Finally, to the extent that the Court admits into evidence any declarations submitted by the Debtors in connection with the DIP Motion or in connection with any "first day" motions, the Minority Lenders request that those declarations be admitted into evidence solely for the limited and narrow purpose of supporting the specific requested interim relief, in order to avoid irreparable harm to the Minority Lenders and to preserve the Minority Lenders' rights.

BACKGROUND

A. The Minority Lenders' Pre-Petition Loans to STG

1. The Minority Lenders are first lien lenders to certain of the Debtors under a March 24, 2022 Credit Agreement (together with amendments thereto, the "Credit Agreement"), pursuant to which STG received term loans with total face value of $725 million (collectively, the "Term Loans") and two tranches of revolver loans totaling $150 million (collectively, the "Revolver Loans," and together with Term Loans, the "Loans") from certain syndicating banks. The Loans were then sold to a broad group of lenders that purchased the loans on the secondary market.

2. The Minority Lenders were among the original investors in the syndicated loans: Axos' predecessor-in-interest, Axos Bank, purchased Term Loans in May and June 2022, which it then assigned, along with all rights, interests, and obligations, to Axos in December 2024. Siemens purchased Term Loans and Revolver Loans in April 2022.

3. The Credit Agreement provided that in the event of a default, the Minority Lenders were among the lenders whose rights to collateral were contractually superior to all others. Pursuant to the Credit Agreement, all lenders were to bear the risks and benefits of the Loans equally – for example, the Credit Agreement required that any loan prepayments be applied to all lenders' Loans on a *pro rata* basis, and that any additional debt that STG incurred must be *pari passu* with or junior to the existing Loans in priority. The Credit Agreement also included a series of affirmative and negative covenants to safeguard lenders' rights, such as covenants restricting STG's ability to incur additional debt or liens, or to dispose of assets.

B. The May 2024 Transaction

4. In February 2024, the administrative agent for the Loans under the Credit Agreement, Antares Capital LP ("Antares" or the "Administrative Agent") began to organize a steering committee consisting of certain favored lenders holding a majority of the Loans to negotiate a solution to STG's liquidity concerns (the "May SteerCo"). Despite the Minority Lenders' efforts to join, they were excluded from the May SteerCo.

5. By May 2024, the May SteerCo reached a deal with STG's equity sponsors, Wind Point Partners ("Wind Point") and Oaktree Capital Management ("Oaktree", and together with Wind Point, the "Equity Sponsors"), which resulted in a fifth amended credit agreement (the "FAA").

6. Pursuant to the FAA, the Equity Sponsors agreed to inject $30 million in additional equity capital into STG, and the lenders on the May SteerCo agreed to place certain financial covenants – specifically, a maximum leverage ratio – on a seven-quarter holiday, through the quarter ending September 30, 2025. Given the fact that the parties negotiating the May 2024 transaction knew that it would only serve as a temporary "band-aid" for STG's financial issues

and that future action would be required to stabilize STG's liquidity and debt position, the FAA expressly included additional protections for all STG lenders, including additional protections for the Minority Lenders. Such protections were specifically aimed at preventing a future liability management transaction ("LMT") that would pit lenders against one another in the event that STG's liquidity problems continued. For example, the FAA expressly included several protections prohibiting STG from restructuring its debt through a non-*pro rata* transaction or a transaction that would transfer STG's assets that served as collateral to an unrestricted subsidiary.

7. Although the Minority Lenders learned of the specifics of the May 2024 transaction and the amendments reflected in the FAA only after the transaction was completed, the Minority Lenders were satisfied with the additional lender protections that were secured by the May SteerCo and the fact that the "sacred rights" in place since the original Credit Agreement were not adversely modified. The new protections, coupled with the Credit Agreement's sacred rights requiring adversely-affected lenders' consent to amendments that (among other things) have the effect of changing the priority of liens or collateral proceeds or subordinate in whole or in part the liens securing the Minority Lenders' Loans, gave the Minority Lenders a reasonable expectation that any future actions aimed at alleviating STG's liquidity issues would not involve a non-*pro rata* LMT or the use of unrestricted subsidiaries to strip credit support from the Loans.

8. The reality was, however, that STG had no intention of honoring the FAA's protections against abusive non-*pro rata* LMTs. Instead, STG intended to improperly strip and disregard lender protections as needed to further restructure its debt on better terms than those for which it had actually bargained.

C. The Scheme to Execute the October 2024 LMT

9. Not long after the May 2024 transaction was completed, the Minority Lenders and other lenders attempted to inquire about STG's financial performance and whether STG was contemplating any further refinancing or even a bankruptcy. Such inquiries were met with silence, but the Minority Lenders' concerns about STG's performance were confirmed when STG released its second-quarter financials on August 16, 2024. These financials showed a significant decline in adjusted EBITDA and revenue, after which time Antares, the Equity Sponsors, and STG refused to provide the Minority Lenders with any further information regarding their plans for addressing STG's continuing liquidity issues. The Minority Lenders later learned that Antares – which notably owed obligations to all of the lenders, as Administrative Agent under the Credit Agreement – had signed a non-disclosure agreement and engaged in secret negotiations with STG, the Equity Sponsors, and a new select group of lenders (the "Ad Hoc Group," and together with STG and the Equity Sponsors, the "LMT Participants") comprised of some of the lenders in the May SteerCo.

10. As a result of those secret meetings, on October 3, 2024, the LMT Participants improperly entered into a sixth amended credit agreement (the "SAA"), a dropdown credit agreement (the "Dropdown Credit Agreement"), and an intercompany credit agreement (the "Intercompany Loan Agreement," and together with the SAA and the Dropdown Credit Agreement, the "Scheme" or the "October 2024 LMT").[2]

11. Through the Scheme, the LMT Participants purported to execute the October 2024 LMT via several complex, fully-integrated steps.

[2] The Debtors represent to this Court that the Minority Lenders had an opportunity to be included in the October 2024 LMT but chose not to participate. See Holtgreven Dec. [Docket No. 33] at ¶ 6. This is patently false.

12. *First*, STG, the Ad Hoc Group, and Antares (which was both the Agent under the Credit Agreement and a lender that participated in the October 2024 LMT), purported to make an amendment to the Credit Agreement (via the SAA) that stripped away critical lender protections – including the provisions that had been added only months earlier in the FAA – that prohibited an LMT using unrestricted subsidiaries and removed other critical protections afforded to the Minority Lenders in the FAA, including negative covenants and substantially all of the affirmative covenants and events of default defined in the FAA. For example, the October 2024 LMT purportedly granted STG the right to refuse to make its required interest payments before maturity without triggering a default that would entitle the Minority Lenders and other lenders excluded from the October 2024 LMT (collectively, the "Excluded Lenders") to enforce remedies for such non-payment, thus eviscerating one of the core benefits of the Excluded Lenders' bargain.

13. *Second*, STG created an unrestricted subsidiary ("UnSub") that was not subject to the Credit Agreement's liens and guarantees. STG then improperly transferred substantially all of STG's assets (including substantially all of the critical collateral assets and guarantors supporting the Minority Lenders' Loans) to UnSub, such that those assets no longer provide credit support for the Minority Lenders' Loans (assuming the transfer was effective, which the Minority Lenders claim it was not).

14. *Third*, the October 2024 LMT provided a substantial non-*pro rata* benefit to the Ad Hoc Group in exchange for its participation in the October 2024 LMT by facilitating STG's prepayment in full of the Ad Hoc Group's loans at a premium to their trading price – at or near the face value of the Loans – in exchange for the Ad Hoc Group's simultaneous extension of new loans to UnSub via the new provisions of the Dropdown Credit Agreement. Specifically, the Ad Hoc Group extended to UnSub $137 million in new debt financing in the form of First Lien First

Out ("FLFO") loans, and also extended to UnSub a mix of FLFO loans and First Lien Second Out ("FLSO") term loans in exchange for STG's repayment of the Ad Hoc Group's Loans that STG prepaid. This $137 million loan was not intended to benefit UnSub but was instead intended to be loaned back to STG.

15. *Fourth*, STG and its advisors also offered a less favorable deal to certain lenders outside the Ad Hoc Group in exchange for a release. Specifically, STG and its advisors solicited agreements from certain lenders outside the Ad Hoc Group to have their Loans prepaid in exchange for extending UnSub a mix of FLSO and First Lien Third Out ("FLTO") term loans (the "FLTO Loans", together with the FLFO and FLSO Loans, the "UnSub Loans") on worse terms than the Ad Hoc Group received (the "Second-Class Offer"). The Second-Class Offer was obtained through non-disclosure agreements that precluded lenders from speaking to one another regarding the impending October 2024 LMT[3] or coordinating potential challenges to the October 2024 LMT. Moreover, lenders who accepted this offer were required to agree not to challenge the transaction in court (such lenders, who accepted the deal, together with the Ad Hoc Group, the "Participating Lenders").

16. The new UnSub Loans, which have an undisclosed aggregate face value of up to $941 million, are backed by the assets improperly transferred by STG to UnSub, as well as an up-to-$941 million first-lien guarantee from STG and an interest in an up to $941 million first-lien secured intercompany loan that UnSub extended to STG pursuant to the Intercompany Loan Agreement. However, the first lien guarantee and the first lien security interest in the intercompany loan sit *pari passu* with the liens held by the Minority Lenders and other Excluded Lenders. As a result, the Participating Lenders now enjoy the credit support of not only the

[3] See footnote 2.

material assets improperly transferred from STG to UnSub, but also the assets left behind at STG, diluting the credit support that the Excluded Lenders retain from those remaining assets.

17. Finally, after keeping the Excluded Lenders in the dark for months, STG extended to the Excluded Lenders (including the Minority Lenders) a still-worse deal in exchange for a release. Specifically, STG and its advisors offered to prepay those lenders' Term Loans in exchange for new UnSub loans on even worse terms than the Second-Class Offer (the "Consolation Prize") – $0.40 of FLSO UnSub Loans for every dollar of prepaid Term Loans, plus $0.30 of FLTO UnSub Loans for every dollar of prepaid Term Loans. Lenders accepting the Consolation Prize would therefore take a much deeper discount on their Term Loans than the Participating Lenders, with a worse mix of UnSub loan tranches than the Participating Lenders, meaning they would sit lower in priority than the Participating Lenders despite everyone starting from the same first-lien position. The Excluded Lenders holding Revolver Loans were offered to have those loans prepaid in exchange for 100 cents on the dollar of FLSO UnSub Loans, lower in priority than the FLFO UnSub Loans the Participating Lenders in the Ad Hoc Group now hold. Any lender that accepted this offer also had to agree not to challenge the transaction in court.

18. The October 2024 LMT had obvious winners and losers – the Participating Lenders in the Ad Hoc Group captured a premium on their Loans, and all Participating Lenders secured a superior credit position as compared to the other lenders who previously shared the same first-lien position. In particular, the Participating Lenders: (i) received improved priority on the collateral and guarantor assets transferred by STG to UnSub; (ii) retained the credit support of STG's remaining assets through new liens and guarantees on those assets; and (iii) received enhanced covenants in the Dropdown Credit Agreement that included materially tighter limitations on restricted payments, permitted investments, incremental debt capacity, and future LMTs (such as

a prohibition on the creation of unrestricted subsidiaries, thus protecting against the exact maneuver used to disadvantage the Excluded Lenders in the October 2024 LMT). Furthermore, despite the new UnSub Loans being less risky than Excluded Lenders' Loans because of their improved credit support, the UnSub Loans bear a higher interest rate than the Loans held by Excluded Lenders, who received no compensation for the much greater risk they faced as a result of the October 2024 LMT.

19. The Excluded Lenders were forced to choose between accepting the coercive Consolation Prize offer to prepay their Loans at a deep discount or being entirely excluded from the transaction and left with a significantly diminished collateral and guarantee pool – and the threat of STG discontinuing interest payments to anyone who did not agree to the October 2024 LMT. The Minority Lenders, who refused the coercive Consolation Prize offer, were harmed by the Scheme that transferred substantial value from the Excluded Lenders' pockets to the Participating Lenders by effectuating the October 2024 LMT.

20. Specifically, as a result of the October 2024 LMT, the Minority Lenders: (i) improperly lost all liens on, and guarantees provided by, the assets transferred to UnSub; (ii) had their liens on remaining STG assets improperly diluted by the *pari passu* first-lien guarantee of the UnSub Loans and UnSub's *pari passu* first-lien secured intercompany loan; and (iii) were left with a Credit Agreement improperly stripped of substantially all affirmative and negative covenants, substantially all events of default, mandatory prepayments, and any obligation to make pre-maturity interest payments. The Excluded Lenders therefore faced STG's likely refusal to make interest payments before maturity without triggering an event of default that would entitle the Excluded Lenders to seek remedies for STG's failure to abide by interest payment obligations, which represent one of the core benefits of the bargain to lenders. Furthermore, following the

October 2024 LMT, the seven-quarter holiday from compliance with leverage covenants that STG secured through the FAA became permanent, meaning that STG kept and improved upon the benefit it received in exchange for the added lender protections provided for in the FAA while simultaneously purporting to eliminate those protections through the SAA, without the consent of the adversely affected lenders.

21. The value of the Minority Lenders' Loans was significantly reduced as a result of the October 2024 LMT, as reflected by the Loans' trading prices – on August 26, 2024, shortly before rumors broke of a likely STG LMT, the Term Loans traded at approximately $0.72 on the dollar. By October 4, 2024, the day after the October 2024 LMT was executed and announced, the price of the Term Loans had plummeted to $0.47 on the dollar. Additionally, as a practical matter, the October 2024 LMT rendered the Minority Lenders' Loans essentially unsaleable, because there was only a small number and amount of Loans left behind after the October 2024 LMT, making them extremely illiquid.

D. The New York Lawsuit

22. On January 8, 2025, the Minority Lenders filed a complaint (as amended or otherwise modified from time to time, the "Complaint") in the Supreme Court of the State of New York, County of New York, Commercial Division (the "State Court") against STG, the Favored Lenders and others (collectively, the "Defendants"), thereby initiating the action captioned *Axos Financial, Inc. and Siemens Financial Services, Inc. v. Reception Purchaser, LLC, et al.*, No. 650108/2025 (N.Y. Sup. Ct. 2025). The Complaint sought to, among other things, a declaratory judgment that the October 2024 LMT was invalid, equitable relief, and damages for breach of contract in relation to the Scheme and the October 2024 LMT.

23. On March 31, 2025, certain of the Defendants filed with the State Court four motions to dismiss the Complaint (collectively, the "Motions to Dismiss").

24. On May 30, 2025, the Minority Lenders filed opposition to the Motions to Dismiss, and the State Court conducted a hearing on the Motions to Dismiss on August 12, 2025.

25. On January 3, 2026, the State Court issued a decision and entered an order regarding the Motions to Dismiss (the "State Court Decision"). See **Exhibit A**. Notably, the State Court Decision expressly acknowledged the existence of the Scheme and concluded that the Minority Lenders' allegations that the Defendants' unilateral, improper actions to strip the Minority Lenders' of their contractual and economic rights, had merit. The State Court decision specifically sustained each of the Minority Lenders' five theories for violation of sacred rights under the FAA and held that 12 out of 13 of the Minority Lenders' claims must proceed.

E. The Debtors' Bankruptcy Cases

26. In response to the State Court Decision, on January 12, 2026 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief with this Court under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

27. Among other things, on the Petition Date, the Debtors filed the DIP Motion, along with a series of additional first day motions and declarations.

28. The RSA annexed to the Holtgreven Dec. [Docket No. 33] reveals that the Ad Hoc Group is poised to obtain a substantial windfall at the expense of the Minority Lenders and all other stakeholders. Under the RSA, the Ad Hoc Group will be able to convert their FLFO and FLSO loans, wrongfully obtained via the October 2024 LMT, into reorganized equity in the Debtors. See Holtgreven Dec. ¶ 71. This would reward the Ad Hoc Group for the wrongful

October 2024 LMT by permitting the Ad Hoc Group to obtain controlling ownership of the Debtors at a deep discount to the Debtors' true value.

29. The objection to the DIP Motion filed by RenWave shows that the Debtors, under the influence of the Ad Hoc Group, have refused DIP financing offers that are superior for the Debtors and other stakeholders but which do not permit the Ad Hoc Group to capture the equity in the Debtors for less than fair value [Docket No. 71]. The conduct of the Debtors and the Ad Hoc Group is diametrically opposed to the Bankruptcy Code's paramount objective of maximizing recoveries for all stakeholders.

30. Now that the Debtors' bankruptcy cases have been filed, the claims and defenses asserted by the parties to the New York Action will likely be presented to this Court in some fashion, whether through a contested matter, an adversary proceeding or otherwise (the "Claim and Lien Dispute").

PRELIMINARY OBJECTION AND RESERVATION OF RIGHTS

31. As described above, the Minority Lenders submit this Preliminary Objection and reserve their rights to the extent the "first day" relief sought by the Debtors may prejudice in any way the Minority Lenders' procedural or substantive rights with respect to their claims against the Debtors, their collateral or against the Favored Lenders. The Minority Lenders further reserve the right to supplement and amend this Preliminary Objection and introduce evidence at any hearing on approval of the first day motions, on an interim or final basis, or such other hearings as may be scheduled in these cases from time to time. Further, the Minority Lenders reserve the right to respond, object to, join in, or amend anything herein with respect to any argument or objection made by any person relating to the "first day" motions or the other relief requested in these cases.

32. At an absolute minimum, the Minority Lenders also request that the Debtors' Proposed Interim DIP Order be modified to include the following mutual preservation of rights:

> Notwithstanding anything in this Interim Order to the contrary, nothing in this Interim Order shall be deemed to prejudice, limit, estop, preclude, or otherwise impair any legal or equitable claim, cause of action, counterclaim, defense, or remedy or any other substantive or procedural right (collectively, the "Claims & Rights") related to any Claims asserted or sought by any party in *Axos Financial, Inc. and Siemens Financial Services, Inc. v. Reception Purchaser, LLC, et al*., Case Index No. 650108/2025 (N.Y. Sup. Ct.), or removed or any other proceeding commenced prior to the Challenge Deadline (as defined herein).

33. This request is clearly warranted under Bankruptcy Rule 4001, which directs that interim DIP orders should preserve the status quo pending a hearing, and should not dictate the outcomes of disputes presented to the Court on an expedited basis at a first day hearing. See Fed. R. Bankr. P. 4001(c)(2)(A) ("After a preliminary hearing, the court may authorize obtaining credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.")

34. For the avoidance of doubt, the Minority Lenders do not consent to, or waive any defenses with respect to, *inter alia*, (a) the jurisdiction of this Court with respect to any claims, causes of action, disputes, proceedings, or other matters related to the October 2024 LMT, including any claims or causes of action asserted in the Complaint, or (b) any authority of this Court to finally adjudicate any claims, causes of action, disputes, proceedings, or other matters related to the October 2024 LMT, including any claims or causes of action asserted in the Complaint.

35. Additionally, the Minority Lenders submit that the proposed DIP Facility is defective as proposed, and, for the reasons set forth below, should not be entered in its current form.

I. The October 2024 LMT is Subject to Dispute and Does Not Provide a Legitimate Basis to Justify the Grant of Priming DIP Liens

36. The Debtors seek authority to obtain DIP financing secured by a lien pursuant to section 364(d)(1) of the Bankruptcy Code that would prime and rank senior in priority to the purported liens held by the Favored Lenders securing their FLFO and FLSO loans. The Debtors argue that a section 364(d)(1) priming lien is legally permissible because a simple majority of the Lenders under the SAA have consented to priming.

37. Section 364(d)(1) of the Bankruptcy Code authorizes postpetition financing secured by a senior lien on already-encumbered property "only if … there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior … lien is proposed to be granted." A priming lien constitutes extraordinary relief with constitutional implications. When authorized, it usurps an otherwise constitutionally-protected property interest, shifting value away from a secured creditor to another creditor.[4] Consequently, the Debtors "ha[ve] the burden of proof on the issue of adequate protection," by making a "strong showing" or "tangible demonstration" of adequate protection and the Court must be "cautious" in approving the "extraordinary relief" of a priming debtor-in-possession financing. *See* 11 U.S.C. § 364(d)(2); *In re LTAP US, LLLP*, No. 10-14125(KG), 2011 Bankr. LEXIS 667, at *9 (Bankr. D. Del. Feb. 18, 2011); *Resol. Tr. Corp. v. Swedeland Dev. Grp. (In re Swedeland Dev. Grp.)*, 16 F.3d 552, 567 (3rd Cir. 1994).

[4] "The concept of adequate protection is derived from the Fifth Amendment protection of property interests." S. REP. 95-989, 49, 1978 U.S.C.C.A.N. 5787, 5835. The Supreme Court has long recognized that the Bankruptcy Code's powers are subject to the Fifth Amendment. *See, e.g.*, *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 166–67 (1974) (elimination of secured creditors' rights in their collateral by bankruptcy statute in exchange for securities in new company of uncertain value constituted a taking of property requiring just compensation under the Fifth Amendment); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 589–90 (1935) ("The bankruptcy power, like the other great substantive powers of Congress, is subject to the Fifth Amendment" and cannot be used to effectuate "the taking of substantive rights in specific property"). Indeed, a "secured creditor has a constitutional right to have the value of its secured claim on the petition date preserved." *In re Keystone Camera Prods. Corp.*, 126 B.R. 177, 183–84 (Bankr. D.N.J. 1991) (citing *Wright v. Union Cent. Life Ins. Co.*, 311 U.S. 273 (1940)).

38. The Debtors take the position that the Minority Lenders expressly and validly waived the Debtors' statutory obligation to provide adequate protection and consented to the proposed priming DIP lien and the resulting reallocation of collateral value. To support this contention, the Debtors rely on the amended intercreditor agreement associated with the Dropdown Credit Agreement executed in connection with the October 2024 LMT. *See* DIP Motion ¶¶ 11, 57. However, the October 2024 LMT cannot credibly be the source of a clear and unambiguous waiver of a constitutionally-protected property interest when the very validity of the October 2024 LMT is the subject of a *bona fide* dispute.

39. It is well-settled under New York law that the "party seeking to enforce a contract bears the burden to establish that a binding agreement was made."[5] *Allied Sheet Metal Works, Inc. v. Kerby Saunders, Inc.*, 206 A.D.2d 166, 169 (1st Dep't 1994); *Paz v. Singer Co.*, 151 A.D.2d 234, 235 (1st Dep't. 1989) ("It is black letter law that the burden of proving the existence, terms and validity of a contract rests on the party seeking to enforce it"); *In re Motors Liquidation Co.*, 580 B.R. 319, 343 (Bankr. S.D.N.Y. 2018) ("[t]he party seeking to enforce a purported settlement agreement bears the burden of proving that such a binding and enforceable agreement exists.") (citation omitted).

40. This is especially necessary where, as here, the party seeking to enforce the contract seeks extraordinarily prejudicial relief and therefore must be held to an exacting standard to carry its burden. As a matter of fundamental fairness and equity, a party should not be allowed to enforce an agreement in a court of equity while the agreement's underlying validity is subject to a genuine dispute, particularly if enforcement of the agreement would have constitutional implications.

[5] The Credit Agreement, and therefore the validity of the October 2024 LMT, is governed by New York law. *See* FAA § 10.16(a).

41. The fix here is simple – the proposed DIP Facility should be modified to provide that the DIP Lien shall **not** prime the liens securing the Minority Lenders' claims (the "Disputed Liens") **unless and until** the dispute between and among the Minority Lenders, the Debtors' and the Favored Lenders is finally resolved in favor of the Favored Lenders. This simple carve-out from the proposed priming DIP lien will operate to safeguard Minority Lenders' litigation rights until the litigation is finally and fairly resolved.

42. Any other result would unfairly prejudice and prejudice the Minority Lenders' rights and result in an unlawful, irreversible reallocation of value. In short, the Debtors and the Favored Lenders should not be permitted to use the Debtors' need for liquidity as a sword against the Minority Lenders.

II. The Exclusion of the Minority Lenders from Roll-Up Payments Violates the Minority Lenders' *Pro Rata* Sacred Rights Under the FAA, Violates Section 364's Good Faith Requirements and Lacks a Valid Business Purpose

43. The substantive rights of debtors and creditors are created by state law unless a specific provision of the Bankruptcy Code requires different treatment. *See Butner v. U.S.*, 440 U.S. 48, 55 (1978) ("Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.").

44. For the reasons set forth above, the October 2024 LMT is void *ab initio* and the SAA is unenforceable. Accordingly, the substantive rights of the Debtors, the Favored Lenders and the Minority Lenders are governed by the FAA, and not the SAA.

A. The Roll-Up Violates the Minority Lenders' Sacred Rights Under the FAA

45. The ratable sharing provisions in Sections 2 and 10 of the FAA are intercreditor provisions and are enforceable under Section 510 of the Bankruptcy Code. *See, e.g., Stambaugh v.*

PNC Bank, N.A. (In re Stambaugh), 532 B.R. 572, 577 (Bankr. M.D. Pa. 2015) ("Where its language is plain and unambiguous, the terms of a subordination agreement are fully enforceable in a bankruptcy case."); *Rosenfeld v. Coastal Broad.Sys., Inc. (In re Coastal Broad. Sys., Inc.),* 2013 U.S. Dist. LEXIS 91469, at *13-14 (D.N.J. June 28, 2013) ("[B]y its plain terms, Section 510(a) provides for the enforcement of a subordination agreement as a whole…."). Accordingly, the DIP Loans should be approved only if they are consistent with the prepetition secured creditors' rights pursuant to the terms of the Credit Agreement. Unless the Minority Lenders are allowed to receive repayment on equal terms with the Favored Lenders in the proposed roll-up, the Debtors and the Favored Lenders will be in breach of the Minority Lenders' "sacred" contractual rights protecting against non-pro rata payments and distribution of proceeds under the FAA.

46. Courts have consistently characterized roll-ups as "the payment of a pre-petition debt with the proceeds of a post-petition loan." *See In re Capmark Fin. Grp., Inc.*, 438 B.R. 471, 511 (Bankr. D. Del. 2010). Here, the Debtors themselves acknowledge that upon entry of the proposed Interim DIP Order, "at least $87,975,000 of First-Out Term Loans and up to $9,775,000 of Second-Out Term Loans held by DIP Lenders that fund the Interim New Money DIP Loans shall be automatically deemed exchanged for the Roll-Up Loans" and upon entry of the proposed Final DIP Order, "at least $41,400,000 of First-Out Term Loans and up to $4,600,000 of Second-Out Term Loans held by DIP Lenders that fund the Final New Money DIP Loans shall be automatically deemed exchanged" for the Roll-Up Loans. *See* DIP Motion pp. 15-16.

47. Section 10.01(a)(iv) of the FAA unequivocally prohibits any amendment, waiver, or consent that would "change or have the effect of changing the priority or *pro rata* treatment of any payments" due under the FAA without the written consent of each Lender adversely affected thereby. Section 2.10(a) of the FAA, in turn, requires all payments to be made "for the ratable

account of" all lenders, while Section 2.10(c) provides that "[d]uring the continuance of an Event of Default ... all payments received by Agent ... shall be applied" in an order specified in Section 2.10(c). Pursuant to Section 8.1(f) of the FAA, the Debtors' bankruptcy filing constitutes an Event of Default. Further, Section 2 of the FAA establishes a mandatory waterfall for application of the funds. Taken together, the Minority Lenders submit that these provisions constitute fundamental creditor protections that cannot be circumvented through a DIP roll-up.

48. The proposed roll-up directly contravenes these sacred rights by converting up to $143.75 million of *prepetition* loans held by the Favored Lenders into the DIP Obligations. This disparate treatment constitutes a payment to select lenders in violation of the FAA's mandatory *pro rata* sharing provisions.

49. The bankruptcy court's recent ruling in *In re American Tire Distributors, Inc.* is directly on point. *See* **Exhibit B**. When confronted with a similar non-pro rata roll-up, the bankruptcy court stated that if a roll-up is "draw on the DIP to pay down the prepetition credit agreement," it must "pay down the prepetition debt in accordance with the prepetition agreement, including its pro rata sharing agreement." *See* Exhibit B, *In re American Tire Distributors, Inc.*, No. 24-12391 (CTG), (Bankr. D. Del.) (oral ruling), H'rg Tr. (Nov. 19, 2024), at 116:2-9 [Dkt. No. 312]. The court further held that reading the agreement to "provide[] for an exception to pro rata sharing" would turn every prepetition agreement into "a game of Russian roulette" and would be a "preposterous" overreach. *Id.* at 116:12-25.

50. The Minority Lenders never consented to this non-*pro rata* treatment. Section 10.01(a)(iv) of the FAA requires the written consent of each adversely affected lender for any alteration to *pro rata* sharing. No such consent was sought from or provided by the Minority

Lenders. Accordingly, the proposed roll-up should not be approved unless it provides for *pro rata* payment to the Minority Lenders.

B. The Proposed Roll-Up Violates the Good Faith Requirements of Section 364

51. The proposed roll-up impermissibly discriminates without justification, between the Favored Lenders and the Minority Lenders, who are identically situated but for the invalid October 2024 LMT. This selective treatment appears designed to retaliate against the Minority Lenders for exercising their contractual rights rather than to benefit the estate.

52. Section 364 of the Bankruptcy Code requires DIP financing to be negotiated in good faith and at arm's length. *See, e.g., In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003). Courts will not approve financing merely because "there's only one option available to the Debtor"; rather, the arrangement must "be fair and reasonable under the circumstances." *In re LandSource Communities Development, LLC*, No. 08-11111 (KJC) (Bankr. D. Del.) (oral ruling), Hr'g Tr. at 206:12-16 [Dkt. No. 331].

53. "Good faith" in the context of DIP financing means "honesty in fact in the conduct or transaction concerned." *See Unsecured Creditors' Comm. v. First Nat'l Bank & Trust Co. of Escanaba (In re Ellingsen MacLean Oil Co.)*, 834 F.2d 599, 605 (6th Cir. 1987) (citing UCC § 1201(19)). Good faith is lacking where, for example, lenders extend financing or credit for an improper purpose (*e.g.*, to gain advantage in litigation) or fail to reveal material facts to the court. *See In re EDC Holding Co.*, 676 F.2d 945, 948-49 (7th Cir. 1982) (credit extended with "ulterior purpose" is not in good faith); *In re Grand Valley Sport & Marine, Inc.*, 143 B.R. 840, 852 (Bankr. W.D. Mich. 1992) ("[T]his court will not authorize postpetition financing pursuant to § 364 where a creditor leverages a debtor in possession into making a concession unauthorized by, or in conflict with, the Bankruptcy Code as a condition for the requested credit.").

54. Moreover, financing arrangements that benefit a favored group of lenders at the expense of similarly-situated creditors fail the good faith standard. Indeed, courts recognize that postpetition loans should not "leverage the bankruptcy process and powers" and should not exist "to benefit a party-in-interest rather than the estate." *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37-40 (Bankr. S.D.N.Y. 1990) (approving DIP financing under § 364(c) only where debtor demonstrated unavailability of unsecured credit and terms were "fair, reasonable, and adequate," and holding that financing may not "leverage the bankruptcy process" or serve a party-in-interest rather than estate); *see also In re Tenney Vill. Co., Inc.*, 104 B.R. 562, 569-70 (Bankr. D.N.H. 1989) (denying approval of DIP financing and finding debtor violated fiduciary duty to act for the estate, noting "the general mandate of the Bankruptcy Code is clear. The Debtors' pervading obligation is to the bankruptcy estate and, derivatively, to the creditors who are its principal beneficiaries"). Further, courts, including those in this District, recognize that roll-ups constitute extraordinary relief that should be subject to market testing. *See In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. 2024).

55. The selective roll-up violates these good faith principles. While the Minority Lenders do not challenge the concept of a dollar-for-dollar roll-up, the issue here is the selective and discriminatory nature of this DIP Facility structure, which limits participation in the roll-up to the Favored Lenders and deprives the Minority Lenders of the rights accorded to similarly situated first-lien creditors. The exclusion of the Minority Lenders appears designed to punish the Minority Lenders for enforcing their contractual rights and to gain improper leverage in the parties' ongoing dispute, and the Minority Lenders submit that excluding the Minority Lenders from equal treatment as retaliation for asserting legitimate contractual rights exemplifies bad faith.

56. Courts apply heightened scrutiny when DIP financing terms appear designed to benefit controlling lenders rather than the estate. *See In re Laffite's Harbor Dev.. I, LP*, 2018 Bankr. LEXIS 2, at *6 (Bankr. S. D. Tex. Jan. 2, 2018) (denying DIP financing under § 364(d) where debtor failed to seek alternative credit or provide adequate protection and holding that financing terms benefiting one lender "convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition lender"). Discovery will demonstrate that the Favored Lenders and the Debtors are using the exclusionary DIP Facility to improperly transfer value from Minority Lenders to the Favored Lenders. This Court should not permit the bankruptcy process to be weaponized against a minority lender exercising legitimate contractual rights.

C. The Debtors Fail To Show that Excluding the Minority Lenders from the DIP Facility Has a Valid Business Purpose or is Otherwise Necessary

57. The Debtors have failed to demonstrate any valid business purpose for excluding the Minority Lenders from the DIP Loans while including the Favored Lenders with identical first lien claims under the FAA. The terms of the DIP Facility must "reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties and are supported by reasonably equivalent value and fair consideration." *In re Farmland Indus., Inc.*, 294 B.R. at 879-80. The targeted exclusion of the Minority Lenders violates this standard and serves no legitimate business purpose.

58. The Debtors cannot demonstrate that including the Minority Lenders in the DIP Facility would jeopardize the DIP Facility or harm the estate. The Favored Lenders' full backstop of the DIP facility ensures that the estate's liquidity is unaffected by the inclusion (or the exclusion) of Minority Lenders. The Favored Lenders would still receive the vast majority of both roll-up and new-money commitments and the Debtors' funding needs will be met regardless. The Debtors'

failure to offer any business justification for this disparate treatment among identically situated lenders confirms that the exclusion serves only to punish the Minority Lenders and benefit the Favored Lenders.

III. The Debtors have Failed to Obtain Consent or Offer any Adequate Protection for Non-Consensual use of Cash Collateral as Required Under Section 363(c)(2) of the Bankruptcy Code

59. The Debtors contend that their request to use cash collateral is consensual because they have obtained the consent of the Favored Lenders. *See* DIP Motion at ¶ 57. The Debtors are wrong. The Favored Lenders' consent is insufficient under the Bankruptcy Code and the Debtors have refused to provide any adequate protection for the Minority Lenders' interests.

60. In the absence of adequate protection, the Bankruptcy Code explicitly provides that a debtor cannot use cash collateral unless "each entity" with an "interest" in such collateral consents to the use of its cash collateral. *See* 11 U.S.C. § 363(c)(2)(A) (emphasis added). The Bankruptcy Code does not define "interest," but the term is commonly used in the Bankruptcy Code and broadly interpreted by the courts.[6]

61. The Minority Lenders are an "entity" with an "interest" in cash collateral because each has an interest in the prepetition collateral (which includes cash collateral) by virtue of their first priority liens under the FAA.

62. As with the proposed priming DIP lien, the Debtors may argue that under the SAA executed as part of the October 2024 LMT, a bare majority of lenders can bind all lenders including the Minority Lenders to their consent to the use of cash collateral. However, as noted above, under New York law, the October 2024 LMT cannot be the source of Minority Lenders' consent where

[6] *See, e.g.*, 11 U.S.C § 541 (defining "property of the estate" to include "all legal and equitable interests of the debtor in property"); 11 U.S.C. § 363(f) (authorizing sales "free any clear of any interest in property"); 11 U.S.C. § 548(a)(1) (providing for the avoidance of fraudulent transfers involving "any transfer … of an interest of the debtor in property").

the validity of the October 2024 LMT is the subject of a *bona fide* dispute. As such, unless and until the validity of the October 2024 LMT is resolved, section 362(c)(2)(A) of the Bankruptcy Code mandates that the content of Minority Lenders is required prior to the Debtors' use of cash collateral.

IV. The DIP Facility and the RSA Function As an Impermissible Sub Rosa Plan

63. A financing arrangement that predetermines recoveries or class treatment before plan confirmation constitutes a prohibited sub rosa plan. *See In re LATAM Airlines Grp. S.A.*, 620 B.R. 722, 815-16 (Bankr. S.D.N.Y. 2020) (noting that "courts will reject proposed DIP loans as improper sub rosa plans where the terms of the loan include concessions to creditors or parties in interest that are unauthorized under, or in conflict with, provisions under the Bankruptcy Code"); *see also In re Am. Capital Equipment, LLC*, 688 F.3d 145, 154-55 (3d Cir. 2012) (applying sub rosa plan in a disclosure statement context, noting "a bankruptcy court may address the issue of plan confirmation where it is obvious … that a later confirmation hearing would be futile because the plan … is patently unconfirmable"). Courts reject DIP loans that "convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition lender." *In re Laffite's Harbor Dev. I, LP*, 2018 Bankr. LEXIS 2, at *6.

64. The proposed roll-up impermissibly dictates plan treatment by splitting identically situated first-out lenders into separate classes. Through the roll-up mechanism, the Favored Lenders' first lien claims receive superpriority DIP status while the Minority Lenders' first-lien claims remain subordinated prepetition debt. Permitting the Favored Lenders to transform their prepetition lien claims into DIP lien claims while denying the same opportunity to the Minority Lenders imposes binding constraints on any plan of reorganization that can be proposed, ensuring the Favored Lenders will be treated more favorably than the Minority Lenders in any such plan.

This disparate treatment violates Section 1123(a)(4)'s requirement that plans provide "the same treatment for each claim or interest of a particular class." If the Debtors succeed in forcing through the DIP Facility, section 364(e) would cement the prepetition disparate treatment of the Favored Lenders and Minority Lenders, creating an irreversible *fait accompli*.

65. Still further, the DIP Facility provides that the Debtors will be in default if they seek entry of a confirmation order before a judgment is entered in favor of the Favored Lenders in the State Court Action or the Lien and Claim Dispute. *See* DIP Motion, Summary of Material Terms, Events of Default ¶ xii(v) at p. 20. Thus, the Favored Lenders seek through the DIP Facility to hold the Debtors hostage in Chapter 11 and prevent the Debtors from successfully confirming a plan of reorganization *unless* the Favored Lenders prevail in litigation with the Minority Lenders.

66. *In re LATAM Airlines Group S.A.* directly condemns lenders' attempts to pre-determine the contents of a plan by weaponizing DIP financing. 620 B.R. at 813-15. There, the court denied approval of a DIP financing where one tranche was funded exclusively by prepetition shareholders and could convert to equity at a 20% discount to plan value. *Id.* at 819-820. The court rejected the debtors' argument that Section 1129 "only applies in a plan-confirmation process" and not in a "pre-confirmation loan" context. *Id.* at 798. The court held that the DIP financing violated the absolute priority rule because it "necessarily determines plan terms" by giving the DIP lenders distribution rights "that will not be subject to court review." *Id.* at 819.

67. *LATAM Airlines* establishes that Section 1129's protections, including the equal treatment requirement of Section 1123(a)(4), cannot be circumvented by embedding plan-like distributions in a DIP financing. *Id.* at 819-20. The same principle applies here. The proposed DIP Facility and the RSA operate functionally as a plan distribution mechanism. The Minority Lenders' exclusion from the roll-up and DIP loan effectively splits the otherwise equal group of

lenders holding first lien loans into two separate classes by granting the Favored Lenders, as DIP lenders, the right to credit bid a substantial portion of their own funded obligations without having to share such recoveries with the Minority Lenders. It converts the Favored Lenders' claims to superpriority status while leaving the Minority Lenders' identical first lien claims subordinated. *See In re Washington Mutual, Inc.*, 442 B.R. 314, 360-61 (Bankr. D. Del. 2011) (holding that plan that excluded small creditors of class from participating in rights offering available to large creditors violated Section 1123(a)(4)); *In re Pac. Drilling S.A.*, 2018 WL 11435661, at *2 (Bankr. S.D.N.Y. Oct. 1, 2018) ("The theory of the Bankruptcy Code is that when the big creditors sit in a room and negotiate a deal, the little creditors who are in the same boat get the same deal.").

68. Recent rulings in disputes regarding debtors' discriminatory treatment of similarly situated lenders are instructive. For example, the court in *In re ConvergeOne Holdings Inc.* recently held that giving preferential treatment to similarly-situated settling parties over non-settling parties may be impermissible discrimination. No. 4:24-cv-02001 (S.D. Tex. Sept. 25, 2025) [Dkt. No. 54] (reversing confirmation under 11 U.S.C. § 1123(a)(4)). There, the court rejected a debtor's attempt to force through a pre-packaged, non-*pro-rata* refinancing that excluded certain lenders and was not market tested to establish that the debtor was receiving the best possible terms. The court disapproved of the debtor's "private allocation among a majority group." *Id.* at *8-10.

69. Similarly, in *In re Serta Simmons Bedding, LLC*, the Fifth Circuit warned against permitting debtors to pursue end-runs around the priority scheme set forth in the Bankruptcy Code. 125 F. 4th 555, 589-91 (5th Cir. 2024) (endorsing a functional approach to interpreting the Code that does not "allow the Code's clear requirements to be evaded by … sophistry.") The Fifth Circuit emphasized the importance of the Code's mandate that a plan of reorganization provide

equal treatment to claims within the same class. *Id.* at 591-92. The proposed DIP Loans, negotiated with and provided solely to a closed group of lenders holding identical first-lien claims as the Minority Lenders, are the same kind of unequal treatment of similarly-situated creditors prohibited under *ConvergeOne* and *Serta*.

70. As proposed, the Favored Lenders would receive the opportunity to issue a $293.75 million superpriority secured term loan facility consisting of (i) $150 million in New Money Term Loans and (ii) up to $143.75 million in Roll-Up Loans converting dollar-for-dollar portions of the Debtor's Prepetition First-Out Obligations. The DIP Facility grants the Favored Lenders sweeping liens and superpriority claims on substantially all of the Debtors' assets. Under the proposed Final DIP Order, the DIP lenders would also be entitled to credit bid the full amount of their DIP Loan claims, including the rolled-up prepetition debt, in any subsequent sale of the Debtors' assets. *See* Proposed Interim DIP Order ¶ 28.

71. By excluding the Minority Lenders from the proposed roll-up, the DIP effectively ensures that the Favored Lenders, notwithstanding their identical lien position under the FAA, will hold the only debt capable of credit bidding obligations incurred *pari passu*, leaving the Minority Lenders with no opportunity to credit bid. The approval of the Roll-Up Loan, as proposed, would lead to a gross inequity in the treatment of similarly-situated creditors.

72. The DIP Facility also proposes to deliver the Favored Lenders substantially all of the fully-diluted reorganized common equity of the reorganized Debtors. Further, the proposed Final DIP Order grants broad releases in favor of the Favored Lenders, including DIP lenders, with respect to not only the DIP Documents, but also the October 2024 LMT and the FAA. *See* Proposed Interim DIP Order at ¶ 27. By granting the Favored Lenders plan-like immunity from estate and creditor claims in relation to the DIP Motion, the Debtors improperly seek to predetermine

distributions and alter creditor rights in violation of the confirmation requirements. Once the Final DIP Order is entered, claims related to the DIP Documents and related transactions would be released and the Favored Lenders' enhanced position would be locked in, immune from challenge. The Minority Lenders submit that the Court should reject the Debtors' improper attempt to use the DIP Facility to preclude the Minority Lenders from receiving equal treatment under any plan of reorganization.

V. Section 363(k) Prohibits Credit Bidding Disputed Claims

73. Section 363(k) prohibits credit bidding a disputed secured claim. *See* 11 U.S.C. § 363(k) (allowing a creditor to credit bid its secured claim "[a]t a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim. . .) (emphasis added). As a result, paragraph 28 of the proposed Interim DIP Order, which addresses credit bidding, should be stricken. Further, the Court should find that the Minority Lenders' claims asserted in the New York Lawsuit, wherever litigated, constitute a "Challenge" as set forth in paragraph 14 of the proposed Interim DIP Order.

VI. There is No Legal Basis to Compel the Debtors to Pay the Favored Lenders' Litigation-Related Fees

74. As of the Petition Date, the Minority Lenders, the Debtors and the Favored Lenders were locked in expensive litigation. The parties have already incurred millions of dollars in legal fees and the professional fee burn is not likely to dissipate in a Chapter 11 case with multiple fast-tracked, contested, multi-party contested matters. Through the proposed DIP Facility, the Debtors again seek to advantage the Favored Lenders by agreeing to pay *all* of their legal fees, which would include their millions of dollars in litigation fees and expenses on a current basis under the guise of "adequate protection." *See* Proposed Interim DIP Order at ¶ 8(c). The Debtors' estates should not be burdened with this obligation for at least four reasons. *First*, the validity of the contractual

obligation to pay the fees of each member of the Favored Lenders under the indemnification provision of the SAA is disputed. *Second*, the Favored Lenders are not entitled to adequate protection because they have not demonstrated that there has been any diminution in value of their interests in the Prepetition Collateral. *Third*, the payment of legal fees for a secured creditor is governed by section 506(b) of the Bankruptcy Code, which provides for payment only "to the extent that an allowed secured claim is secured by property the value of which … is greater than the amount of such claim …" The economics of the DIP Facility make clear that the SAA is under-secured. ***Fourth,*** the Debtors cannot credibly argue that there is an immediate need for additional liquidity to pay legal fees for the Favored Lenders because such fees are not vital to preserve and maintain the Debtors' going concern value and successful reorganization. These fees should be stricken from the Budget, which will also reduce the size, and cost, of the proposed DIP Facility.

75. The proposed Final DIP Order also creates a new post-petition indemnity obligation (the "Post-Petition Indemnity") in favor of the Favored Lenders and others, and their respective affiliates, successors and assigns and the officers, director, employees, agents, attorneys, advisors, controlling persons and members of each of the foregoing (collectively, the "Indemnified Parties"), which broadly covers, among other things, legal fees and liabilities arising out of or related to the transactions, procedures and/or relief contemplated in the proposed Final DIP Order. See Proposed Interim DIP Order at ¶ 20(c). The Minority Lenders submit that the Post-Petition Indemnity should be stricken particularly because of the material risk that they could be interpreted to unfairly prejudice Minority Lenders' litigation claims.

VII. The Proposed DIP Fees Are Unreasonable

76. The Debtors seek authority to pay multiple (and seemingly duplicative) fees to the DIP Lenders in the form of (a) 5.55% Backstop Fee, (b) 5% Commitment Fee and (c) 5% Exit Fee. *First*, the Debtors fail to provide any evidence to demonstrate whether the fees are fair and

reasonable. *Second*, the Court should deny the Backstop Fee because it is unreasonable and unnecessary to approve a fee (even one payable in kind) for the DIP Lenders to backstop their own commitments. The case of *Momentive Performance Materials Inc.*, No. 14-22503-RDD, 2014 WL 443635 (Bankr. S.D.N.Y. June 19, 2014) is instructive. There, former New York Bankruptcy Judge Drain denied a similar request for the payment of backstop fees "as a matter of fairness" where the backstopping parties, like the DIP Lenders here, had already committed to purchase substantial portions of the debt they were backstopping. *Third*, the Court should deny the Exit Fee because there is no reasonable basis to charge a fee (even one payable in kind) for the credit bid of a DIP obligation.

Reservation of Rights

77. The Minority Lenders hereby reserve all their rights to (a) raise additional arguments at the Final Hearing in respect of the approval of the DIP Facility and the terms of any proposed form of final order approving the DIP Motion, (b) join in any other objections to the DIP Facility and the relief sought in the DIP Motion made by any other party in these Chapter 11 Cases, and (c) seek any other relief that is just and proper.

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CONCLUSION

WHEREFORE, for all the foregoing reasons, the Minority Lenders respectfully request that the Court (i) deny the DIP Motion absent appropriate modifications addressing the issues raised herein; and (ii) grant the Minority Lenders such other and further relief as the Court may deem just and proper.

January 13, 2026
Madison, New Jersey

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4929-2797-5816, v. 2

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

----------X

AXOS FINANCIAL, INC., SIEMENS FINANCIAL SERVICES, INC.,

Plaintiffs,

- v -

RECEPTION PURCHASER, LLC, RECEPTION MEZZANINE HOLDINGS, LLC, STG DISTRIBUTION, LLC, STG DISTRIBUTION HOLDINGS, LLC, ANTARES CAPITAL LP, ANTARES ASSETCO LP, ANTARES CREDIT OPPORTUNITIES VI LLC, ANTARES CREDIT OPPORTUNITIES FUNDING VI LLC, ANTARES CREDIT OPPORTUNITIES MA II LP, ANTARES CREDIT OPPORTUNITIES CA LLC, ANTARES CREDIT OPPORTUNITIES CA SPV III LLC, ANTARES CREDIT FUND II LP, ANTARES STRATEGIC CREDIT I MASTER LP, ANTARES STRATEGIC CREDIT I SPV LLC, ANTARES SENIOR LOAN EF MASTER II (CAYMAN) LP, ANTARES SENIOR LOAN EF II SPV LLC, ANTARES SENIOR LOAN MASTER FUND II LP, ANTARES SENIOR LOAN PARALLEL FUND II SPV LLC, ANTARES SENIOR LOAN PARALLEL MASTER FUND II LP, ANTARES CREDIT FUND I LP, ANTARES HOLDINGS LP, ALCOF III NUBT, L.P., AUDAX SENIOR DEBT (WCTPT) SPV II, LLC, AUDAX SENIOR LOAN FUND I (OFFSHORE) SPV II, LTD., AUDAX SENIOR DEBT CLO 4, LLC, AUDAX SENIOR DEBT CLO 6, LLC, AUDAX CREDIT OPPORTUNITIES (SBA) SPV LLC, AUDAX SENIOR LOAN FUND V, L.P., AUDAX SENIOR DEBT CLO 8, LLC, AUDAX SENIOR DEBT CLO 9, LLC, AUDAX CREDIT BDC INC., THORNEY ISLAND LIMITED PARTNERSHIP, KNIGHTS OF COLUMBUS PRIVATE CREDIT FUND, LP, AUDAX SENIOR LOAN IDF FUND-E SPV II, LLC, AUDAX SD-A SPV, L.P., AUDAX SENIOR DEBT (PT), LLC, BALLYROCK CLO 20 LTD., BALLYROCK CLO 2018-1 LTD., BALLYROCK CLO 2020-2 LTD.,

INDEX NO. 650108/2025

MOTION DATES 03/31/2025, 05/21/2025, 03/31/2025, 03/31/2025

MOTION SEQ. NOS. 004, 005, 006, 007

DECISION + ORDER ON MOTIONS

AUDAX SENIOR DEBT CLO 7, LLC, BALLYROCK CLO 14 LTD., BALLYROCK CLO 15 LTD., BALLYROCK CLO 16 LTD., BALLYROCK CLO 17 LTD., BALLYROCK CLO 19 LTD., BALLYROCK CLO 2019-2 LTD., BALLYROCK CLO 18 LTD., BALLYROCK CLO 2019-1 LTD., IOF II ONSHORE FIRST LIEN, LLC, IOF II OFFSHORE FIRST LIEN, LLC, DRAWBRIDGE SPECIAL OPPORTUNITIES FUND LTD, FORTRESS CREDIT BSL XVI LIMITED, FORTRESS CREDIT BSL XIX LIMITED, FORTRESS CREDIT BSL XV LIMITED, FORTRESS CREDIT BSL IX LIMITED, FORTRESS CREDIT BSL III LIMITED, FORTRESS CREDIT BSL VI LIMITED, FORTRESS CREDIT BSL VII LIMITED, FORTRESS CREDIT BSL VIII LIMITED, FORTRESS CREDIT BSL X LIMITED, FORTRESS CREDIT BSL XI LIMITED, FORTRESS CREDIT BSL XII LIMITED, FORTRESS CREDIT BSL XIII LIMITED, FORTRESS CREDIT BSL XIV LIMITED, FORTRESS CREDIT BSL XVII LIMITED, FORTRESS CREDIT BSL XVIII LIMITED, FORTRESS CREDIT OPPORTUNITIES IX CLO LIMITED, FORTRESS CREDIT OPPORTUNITIES XI CLO LIMITED, FORTRESS CREDIT OPPORTUNITIES XIX CLO LLC, FORTRESS CREDIT OPPORTUNITIES XV CLO LIMITED, FORTRESS CREDIT OPPORTUNITIES XXI CLO LLC, FORTRESS CREDIT OPPORTUNITIES VIII CLO LLC, FDF III LIMITED, FDF IV LIMITED, FDF V LIMITED, FLF III-IV MA-CRPTF HOLDINGS FINANCE L.P., FLF III AB HOLDINGS FINANCE L.P., FLF III BAM HOLDINGS FINANCE L.P., FIDELITY CENTRAL INVESTMENT PORTFOLIOS LLC, FIDELITY FLOATING RATE CENTRAL FUND, FIDELITY INCOME FUND, FIDELITY ADVISOR SERIES, FIDELITY SALEM STREET TRUST, VARIABLE INSURANCE PRODUCTS FUND, FIDELITY MERRIMACK STREET TRUST, FIDELITY PRIVATE CREDIT FUND, JNL/PPM AMERICA FLOATING RATE INCOME FUND, FIAM LEVERAGED LOAN LP, JNL/FIDELITY INSTITUTIONAL ASSET MANAGEMENT TOTAL BOND FUND, FIAM FLOATING RATE HIGH

INCOME COMMINGLED POOL, FIDELITY INFLATION-FOCUSED FUND, FIDELITY FLOATING RATE HIGH INCOME MULTI-ASSET BASE FUND, FIDELITY FLOATING RATE HIGH INCOME FUND, FIDELITY DIRECT LENDING FUND I JSPV LLC, BLUE EAGLE 2022-1B, LLC, BLUE EAGLE 2022 - 1C, LLC, HARBOURVIEW CLO VII-R, LTD., INVESCO CREDIT PARTNERS MASTER FUND III, LP, INVESCO SAKURA US SENIOR SECURED FUND, INVESCO SSL FUND LLC, INVESCO ZODIAC FUNDS - INVESCO EUROPEAN SENIOR LOAN ESG FUND, INVESCO ZODIAC FUNDS - INVESCO EUROPEAN SENIOR LOAN FUND, INVESCO ZODIAC FUNDS - INVESCO US SENIOR LOAN ESG FUND, INVESCO ZODIAC FUNDS - INVESCO US SENIOR LOAN FUND, INVESCO DYNAMIC CREDIT OPPORTUNITY, INVESCO FLOATING RATE ESG FUND, INVESCO FLOATING RATE INCOME FUND, INVESCO SENIOR FLOATING RATE FUND, INVESCO CLO 2022-1, LTD., INVESCO CLO 2022-2, LTD., INVESCO CLO 2022-3, LTD., INVESCO U.S. CLO 2024-1, LTD., INVESCO U.S. CLO 2021-2, LTD., INVESCO CLO 2021-3, LTD., ANNISA CLO, LTD., BARDOT CLO, LTD., BETONY CLO 2, LTD., MILOS CLO, LTD., RISERVA CLO LTD., VERDE CLO, LTD., ALINEA CLO, LTD., INVESCO CLO 2021- 1, LTD., RECETTE CLO, LTD., UPLAND CLO, LTD., INVESCO CREDIT PARTNERS OPPORTUNITIES FUND 2023, L.P., INVESCO PEAK NINE, L.P., DIVERSIFIED CREDIT PORTFOLIO LTD., SENTRY INSURANCE COMPANY, INVESCO TETON FUND LLC, ISQ INFRASTRUCTURE CREDIT FUND U.S. POOLING II, L.P., PA SENIOR CREDIT OPPORTUNITIES FUND, L.P. (ON BEHALF OF ITS UNLEVERED SERIES), PENNANTPARK INVESTMENT CORPORATION PENNANTPARK CREDIT OPPORTUNITIES FUND IV AGGREGATOR, LP, PENNANTPARK CLO III, LTD, PENNANTPARK CLO V, LLC, PENNANTPARK CLO VII, LLC, PENNANTPARK CLO VI, LLC, PRUDENTIAL HONG KONG LIMITED, JNL/PPM AMERICA FLOATING RATE INCOME FUND, A SERIES OF THE JNL SERIES

TRUST, BLUEMOUNTAIN CLO 2014-2 LTD.,
BLUEMOUNTAIN CLO 2015- 3 LTD.,
BLUEMOUNTAIN CLO 2015-4 LTD.,
BLUEMOUNTAIN CLO 2016-2 LTD.,
BLUEMOUNTAIN CLO 2016-3 LTD.,
BLUEMOUNTAIN CLO 2018-1 LTD.,
BLUEMOUNTAIN CLO 2018-2 LTD.,
BLUEMOUNTAIN CLO 2018-3 LTD.,
BLUEMOUNTAIN CLO XXII LTD.,
BLUEMOUNTAIN CLO XXIII LTD.,
BLUEMOUNTAIN CLO XXIV LTD.,
BLUEMOUNTAIN CLO XXIX LTD.,
BLUEMOUNTAIN CLO XXV LTD.,
BLUEMOUNTAIN CLO XXVI LTD.,
BLUEMOUNTAIN CLO XXVIII LTD.,
BLUEMOUNTAIN CLO XXX LTD.,
BLUEMOUNTAIN CLO XXXI LTD.,
BLUEMOUNTAIN CLO XXXII LTD.,
BLUEMOUNTAIN CLO XXXIII LTD.,
BLUEMOUNTAIN CLO XXXIV LTD.,
BLUEMOUNTAIN CLO XXXV LTD.,
BLUEMOUNTAIN FUJI US CLO I LTD.,
BLUEMOUNTAIN FUJI US CLO II LTD.,
BLUEMOUNTAIN FUJI US CLO III LTD., PA
SENIOR CREDIT FUNDING SPV, LLC,
PROSPECT CAPITAL CORPORATION, CITIZENS
BANK, NATIONAL ASSOCIATION, DEUTSCHE
BANK AG, LONDON BRANCH, DEUTSCHE
BANK AG, NEW YORK BRANCH,

Defendants.

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 63, 75–80, 82, 118, 147, 151, 158, 161 were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 64–70, 84–85, 95, 143–144, 150, 152, 159 were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 71–74, 123, 149, 153, 160 were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 81, 83, 86–94, 96–97, 148, 154, 157, 231–232 were read on this motion to DISMISS.

Seldom does a sponsor-financed debt restructuring contain as many discrete legal issues as the instant case both with respect to credit agreements generally, and with respect to the emerging body of jurisprudence related to Liability Management Transaction(s) ("LMT" or "LMTs") more specifically. This dispute involves STG Logistics ("STG"), a portfolio company of Oaktree Capital Management and Wind Point Partners (the "Equity Sponsors"), and the lending group which was originally united as lenders but became divided after a majority of the lenders (the "Majority Lenders") effectuated an LMT. An LMT comes in different permutations and refers to a series of financial maneuvers undertaken by a highly leveraged company in financial distress to restructure, refinance, or otherwise modify its existing indebtedness. Typically, LMTs are pursued to inject capital, improve liquidity, reduce near-term payment obligations, and provide covenant relief. An LMT disunites similarly situated lenders by dividing them into two or more classes, then structuring more favorable terms for one class of lenders—usually the majority—and transferring bargained-for value away from the unfavored class—usually the minority. The favored lenders obtain benefits such as senior secured priority in the capital stack, greater collateral protection, stronger guaranty protection, and repayment priority in a bankruptcy. Such actions have been referred to colloquially as "lender-on-lender violence," although a more appropriate—and less dramatic—description is "lender bullying." Accordingly, LMTs can give rise to fierce disputes and litigation among lender classes.

Here, Plaintiffs Axos Financial, Inc., and Siemens Financial Services, Inc. (collectively, "Plaintiffs" or "Axos") allege a calculated plot perpetrated by Defendants,[1] comprised of STG, the Majority Lenders, and Administrative Agent Antares Capital LP ("Antares Capital")[2], to deprive Plaintiffs of their contractual rights. Plaintiffs allege that in October 2024, a slight majority of the loan holders essentially formed their own "syndicate-within-the-syndicate" through which they planned and executed an LMT (the "October Transaction" or the "Scheme"). AC at ¶¶ 73, 82. Plaintiffs allege that the LMT involved a complex series of inter-related steps including: (1) amending the credit agreement governing the loans held by Plaintiffs and Defendant lenders (the "Defendant Lenders"[3]); (2) the creation of unrestricted borrower subsidiaries, Defendants STG Distribution LLC and STG Distribution Holdings LLC (together, "UnSub"); (3) the transfer of valuable collateral assets from STG to UnSub; (4) the full prepayment of loans held by Defendant Lenders; (4) the extension of loans by Defendant Lenders to UnSub, many of which were secured by the assets of UnSub and guaranteed by the assets of STG; and (5) the issuance of a secured intercompany loan from UnSub to STG in an amount equal to the new debt financing issued to UnSub.

Plaintiffs allege that the October Transaction was accomplished through the contemporaneous execution of three mutually dependent agreements: the Sixth Amendment to

[1] *See* NYSCEF Doc. No. 14 at 5–7 (Amended Complaint, "AC") for complete list of "Defendants".

[2] The Amended Complaint names Antares Capital LP ("Antares Capital") in its capacity as Administrative Agent. AC at ¶ 26. Plaintiffs also name 16 Antares-related entities in their capacity as lenders ("Antares Lenders," together with Antares Capital, "Antares"). *Id*. at ¶ 27.

[3] "Defendant Lenders" are all lenders listed in the Complaint except for Sentry Insurance Company and the Antares Lenders. Sentry and Antares retained separate counsel and filed their own Motions to Dismiss (Mot. Seqs. 005, 006). Unless explicitly stated, the facts and allegations against Defendant Lenders incorporate Sentry and Antares Lenders. Sentry and the Antares Lenders join the arguments submitted by the Defendant Lenders. NYSCEF Doc. No. 123 at 6, n.1. (Antares Mem. of Law); NYSCEF Doc. No. 95 at 4. (Sentry Mem. of Law).

Credit Agreement and Second Amendment to Guaranty and Security Agreement (NYSCEF Doc. No. 89) (the "SAA"), the Dropdown Credit Agreement (NYSCEF Doc. No. 91) (the "Dropdown Agreement"), and the Intercompany Credit Agreement (NYSCEF Doc. No. 93) (the "Intercompany Agreement"). Plaintiffs allege that the October Transaction breached the governing "Fifth Amendment to Credit Agreement and First Amendment to Guaranty [a]nd Security Agreement" (NYSCEF Doc. No. 87) (the "FAA")[4], including provisions expressly drafted to insulate Plaintiffs against such an LMT. Plaintiffs also allege that the Majority Lenders unlawfully adopted the SAA, which contained few protections for the other lenders (the "Minority Lenders"). Although Defendants argue that the October Transaction was executed pursuant to provisions in the validly adopted SAA, Plaintiffs argue that absent the guardrails of a meaningful credit agreement protecting all lenders, the Majority Lenders were left unpoliced with the ability to design self-serving loans without resistance. Ultimately, in a subsequent transaction, the Majority Lenders offered the Minority Lenders loans that had greater risk and a lower return than the loans held by the Majority Lenders.

Plaintiffs commenced this action by filing the Summons and Complaint on January 8, 2025, and an Amended Complaint on January 30, 2025. NYSCEF Doc. Nos. 1–2 (Summons and Complaint), 14 (Amended Complaint). Plaintiffs allege ten causes of action for breach of contract against STG (Counts II–XI); two causes of action for breach of contract against Antares (Counts II and XI); one cause of action for breach of the implied covenant of good faith and fair dealing against Antares, STG, and Defendant Lenders (Count XII); and one cause of action for violation of New York's Uniform Voidable Transactions Act against STG and its newly formed subsidiaries (Count XIII). Plaintiffs additionally seek a declaratory judgment that the SAA is not a valid and enforceable contract (Count I). AC ¶¶ 139–261. Plaintiffs ask this Court to either unwind the October Transaction by finding the SAA null and void, or, in the alternative, to remunerate Plaintiffs for damages to their loan holdings caused by the Scheme. *Id.*

Before the Court are four Motions to Dismiss the Amended Complaint pursuant to CPLR §§ 3211(a)(1), (3), and (7). The Court held oral argument on August 12, 2025. NYSCEF Doc. No. 196 (8/12/25 Tr.). Defendant Lenders move to dismiss Counts I and XII of the Amended Complaint (Mot. Seq. 004) arguing that (1) Plaintiffs lack standing pursuant to CPLR § 3211(a)(3) under the Agreement's No-Action Provision; (2) the allegations fail to state a claim because the October Transaction complied with all operative terms of the governing credit documents; (3) Count I is duplicative of the breach of contract claims; and (4) Count XII is duplicative of the breach of contract claims. NYSCEF Doc. No. 82 at 10–11 (Def. Lenders Mem. of Law).

Defendants STG and UnSub move to dismiss the entirety of the Amended Compliant (Mot. Seq. 007) arguing that (1) Plaintiffs lack standing pursuant to CPLR § 3211(a)(3); (2) the breach of contract claims fail to state a claim because the October Transaction complied with all operative terms of the governing credit documents; (3) Count I is duplicative of the breach of contract claims; (4) Count XII is duplicative of the breach of contract claims; and (5) Count XIII asserts claims under New York law instead of Illinois law and therefore must be dismissed. NYSCEF Doc. No. 96 at 7–8 (STG's Mem. of Law).

[4] This Decision and Order will refer to the "Agreement" where there is no material difference between the FAA or SAA as to the relevant term(s) referenced.

Defendant Antares moves to dismiss Counts I, II, XI, and XII of the Amended Complaint (Mot. Seq. 006) arguing that (1) Plaintiffs lack standing pursuant to CPLR § 3211(a)(3); (2) the allegations fail to state a claim because the October Transaction complied with all operative terms of the governing credit documents; (3) Count I is duplicative of the breach of contract claims; and (4) Count XII is duplicative of the breach of contract claims. NYSCEF Doc. No. 123 at 6–8 (Antares' Mem. of Law). Antares, as Administrative Agent, further argues that Plaintiffs exculpated them from all liability. *Id.* at 16.

Defendant Sentry Insurance Company ("Sentry") moves to dismiss Counts I and XII of the Amended Complaint (Mot. Seq. 005) both for the reasons cited by Defendant Lenders and because it cannot be held liable for breach of implied covenant of good faith and fair dealing where Invesco Senior Secured Management ("Invesco") acted as their discretionary investment advisor and was contractually responsible for all decisions related to the STG loans. NYSCEF Doc. No. 95 at 4–5 (Sentry Mem. of Law).

For the reasons set forth herein, Defendants' Motions to Dismiss are granted in part and denied in part. The Motions to Dismiss Count I for declaratory judgment are denied because the cause of action is not duplicative of any other cause of action pleaded in the Amended Complaint. The Motions to Dismiss Counts II–XI for breach of contract are denied because Plaintiffs pleaded those causes of action pursuant to violations of the FAA, and the Court cannot determine—at this juncture—whether the FAA or the SAA is the operative agreement governing the October Transaction. Notably, each breach of contract count involves a textual change between the relevant provisions of the FAA and the SAA.[5] The Motions to Dismiss Count XII for breach of the implied covenant of good faith and fair dealing are denied, as the cause of action rests on conduct separate from that underlying the breach of contract claims. The Motion to Dismiss Count XIII for violation of New York's Uniform Voidable Transactions Act (the "UVTA") is granted because the fraudulent transfer claims pleaded under New York Law do not apply to the October Transaction. The Court further holds that the exculpation provision of the Agreement with exceptions for "gross negligence and willful misconduct" does not support dismissal where the Amended Complaint sufficiently alleges that Antares, in its capacity as Agent, participated in the Scheme. Finally, the Court determines that, because the declaratory judgment and implied covenant claims arise out of a contractual relationship, the claims against Sentry cannot be dismissed.

[5] In adopting the SAA, the Majority Lenders revised language present in the FAA by either (1) removing the entire section; (2) making a direct change to the text in the allegedly breached section; or (3) making a direct change to the text of a section referenced by the allegedly breached section that is material to determining whether a breach occurred. *E.g.*, Section 2.10(c) provides that "[d]uring the continuance of an Event of Default . . . all payments received by the Agent . . . shall be applied" in an order specified within this Section. The text of Section 2.10 is unchanged in the SAA. Pursuant to Section 8.1(c) of the FAA, an "Event of Default" occurs upon any failure by a Credit Party to "perform or observe any term, covenant or agreement" reflected in Article VI. Plaintiffs allege that Events of Default occurred pursuant to Sections 6.1, 6.2, 6.3, 6.5, 6.6, and 6.18 of the FAA; however, each relevant section of Article VI containing those covenants is deleted in the SAA. Therefore, Plaintiffs claim that the failure of the Agent to make payments as specified in Section 2.10(c) constitutes a breach of contract under the FAA.

Relevant Factual[6] and Procedural Background

The Initial Loan

STG is a North American company that provides integrated transportation logistics services. STG entered into a syndicated lending transaction for acquisition financing governed by a March 24, 2002 Credit Agreement (the "Credit Agreement"). AC at ¶¶ 5–6. The transaction involved $725 million in term loans and two tranches of revolver loans totaling $150 million from syndicating banks, that were eventually sold to a broad group of investors. *Id.* In 2002, shortly after the initial syndication, Plaintiff Axos' predecessor-in-interest, Axos Bank, purchased term loans and Plaintiff Siemens purchased term and revolver loans governed by the Credit Agreement. *Id.* ¶ 5. During the relevant period, Defendant Antares Capital LP was the administrative and collateral agent pursuant to the Credit Agreement, and sixteen other Antares entities participated as lenders through secondary market transactions. *Id.* at ¶¶ 26–27.

Under the Credit Agreement, all the loans originally had a first-lien position and enjoyed equal collateral protection. *Id.* at ¶ 6. All lenders were to share equally in the risk and benefits of the loans. *Id.* Pursuant to the Credit Agreement, any loan pre-payments must be distributed *pro rata*, and any additional debt STG subsequently incurred must be either *pari passu* with, or junior to, the existing lenders in priority. *Id.* Additionally, the Credit Agreement contained affirmative and negative covenants including restrictions on STG's ability to incur new debt and dispose of assets. *Id.*

The May Transaction and Adoption of the FAA

In 2024, STG experienced a decline in financial performance resulting in liquidity constraints that required restructuring to provide temporary financial relief. *Id.* at ¶¶ 7–8. The Equity Sponsors enhanced STG's liquidity by infusing $30 million of additional equity capital. *Id.* at ¶ 8. On May 1, 2024, a majority of lenders voted to adopt the FAA (the "May Transaction") that relieved near-term pressure on STG by providing seven calendar quarters of relief[7] from their maximum leverage ratio covenant. *Id.* In return, STG added additional lender protections to the FAA including a prohibition on future debt restructurings *via* non-*pro-rata* transactions, and collateral transfers to unrestricted subsidiaries. *Id.* STG's lenders were sophisticated participants in the syndicated loan market and understood that continued financial deterioration might result in an LMT that would likely favor the holdings of Majority Lenders to the detriment of Minority Lenders. *Id.* at ¶¶ 1–3, 8–11. The May Transaction served as a temporary solution to avoid bankruptcy until the stakeholders could devise a long-term plan for STG's continued viability. *Id.* at ¶ 9.

The Majority Lenders approved several textual changes to the terms of the Credit Agreement in adopting the FAA, which, *inter alia*:

[6] The facts are taken from the AC and are accepted as true for the purposes of the Motions to Dismiss.

[7] Measured from the quarter ending March 31, 2024, through the quarter ending September 30, 2025.

- Prohibit "using unrestricted subsidiaries by removing 'Unrestricted Subsidiary' as a defined term in the Agreement", exclude certain STG subsidiaries from the definition of "Excluded Subsidiary" to ensure those subsidiaries are subject to obligations and requirements within the FAA, and remove exemptions for "Unrestricted Subsidiaries" from certain negative covenants. *Id.* at ¶ 76; *see* FAA §§ 6.1–6.6, 6.8–6.9, 6.12–6.14, 6.16.

- Place constraints on non-guarantor restricted subsidiaries that prevent their release as guarantors of existing loans and require that any transaction requiring the release of a subsidiary guaranty must be for "a bona fide business purpose", and the "primary purpose" could not be "to obtain the release of such obligations" to the existing loans. AC at ¶ 77; *see* FAA § 9.10.

- Provide that no "Credit Party shall . . . assign or transfer, any Material Property to a Subsidiary that is not a Credit Party" preventing the debtor from transferring valuable assets to unrestricted subsidiaries.[8] AC at ¶ 78; *see* FAA § 6.18.

- Tighten certain negative covenants to further restrict STG and any subsidiaries from engaging in activities that would increase lender risk such as incurring liens or additional indebtedness, disposing of assets, or making restricted payments. AC at ¶ 79; *see* FAA §§ 6.1–6.6, 6.8.

- Reaffirm and strengthen sacred rights provisions[9] protecting lenders from non-*pro-rata* LMTs, including prohibitions on non-*pro-rata* prepayments of existing loans or issuance of any obligations taking "priority over any of the [current loan] Obligations." Consent of all lenders "directly and adversely affected" is required to "change or *have the effect* of changing the priority or *pro-rata* treatment of any payments" including voluntary or mandatory pre-payments. AC at ¶ 80 (emphasis added); *see* FAA §10.1(a)(iv)(A); 8/12/25 Tr. at 4–16.

- State that lenders are "directly and adversely affected" if they do not "receive the most-favorable treatment . . . including the opportunity to participate on a *pro-rata* basis on the same terms in any new loans or other indebtedness permitted to be issued." AC at ¶ 80; *see* FAA § 10.1(a).

Plaintiffs allege that Section 10.1 of the FAA shields and enhances their sacred rights because STG could not, without the consent of all directly and adversely affected lenders: (1) postpone interest payments (§ 10.1(a)(ii)); (2) reduce the principal amount of the lenders' loans through non-*pro-rata* prepayments (§ 10.1(a)(iii)); (3) change, or have the effect of changing, the priority or *pro-rata* treatment of the loans (§ 10.1(a)(iv)(A)); (4) release substantially all collateral

[8] This provision is intended to thwart drop-down transactions and is commonly known in credit agreements as a "J. Crew blocker." *See Eaton Vance Mgmt. v. Wilmington Sav. Fund Soc., FSB*, No. 654397/2017, 2018 WL 1947405, at *6 (N.Y. Sup. Ct. N.Y. Cnty, April 25, 2018) ("*J. Crew*"), *aff'd*, 171 A.D.3d 626 (1st Dept. 2019).

[9] Although not defined in the FAA, a "sacred right", as used herein, refers to key lender protections in loan documents that require a super-majority or unanimous lender vote to remove or alter.

securing the loans; (§ 10.1 (a)(vii)); or (5) subordinate lenders' existing loans, liens, or any or all portion of the obligations for indebtedness (§ 10.1(a)(viii)). AC at ¶¶ 104–117.

Financial Condition of STG Continues to Deteriorate

Plaintiffs knew that the financial condition of STG had declined; however, they took comfort in their sacred right protections, coupled with the newly-enacted, lender-friendly FAA amendments that "explicitly restricted STG and the Equity Sponsors from launching certain types of LMTs in the future."[10] *Id.* at ¶¶ 75, 82. Although most provisions in the FAA could be changed with a Majority Lender vote, pursuant to FAA Section 10.1(a), any change in a sacred right that adversely impacted a lender required the consent of each "directly and adversely affected lender." *Id.* at ¶ 15; 8/12/25 Tr. at 4–16. In August 2024, STG released its second quarter financial results confirming the downward financial trajectory. AC at ¶¶ 10, 83. After the earnings release, it "became difficult" for Plaintiffs to get any information from STG, Antares Capital, or the Equity Sponsors. *Id.* at ¶¶ 10, 85. Antares Capital had previously "performed its obligations as Agent by keeping all lenders abreast of the company's performance . . ." *Id.* However, unbeknownst to Plaintiffs, STG, a majority of the lending group, Antares Capital, and the Equity Sponsors had signed a non-disclosure agreement ("NDA") and were devising the Scheme. *Id.* at ¶¶ 10–11, 86.

Plaintiffs allege that "STG had no intention of honoring the FAA's protections against non-*pro-rata* LMTs." *Id.* at ¶ 82. Instead, STG and other parties agreed to the newly granted lender protections under the FAA in bad faith to provide STG a "temporary financial runway" while it was secretly intending to eliminate those provisions as needed to restructure its debt in the future on "better terms than those for which it had actually bargained." *Id.* Upon communicating with Antares Capital, Plaintiffs discovered that Antares Capital had executed an NDA relating to "secret negotiation[s] occurring among STG, the Equity Sponsors, and certain Defendant Lenders." *Id.* at ¶ 86.

The October Transaction

On October 3, 2024, STG restructured its debt with a Majority Lender vote pursuant to the "three integrated, mutually dependent agreements . . . the [SAA], the Dropdown Credit Agreement, and the Intercompany Credit Agreement . . . ." *Id.* at ¶¶ 11–87. Only the Majority Lenders participated in the October Transaction, thereby excluding Plaintiffs and the other Minority Lenders, in violation of their bargained-for rights of ratable treatment for lenders holding similarly situated loans. *Id.* ¶¶ 92–93, 95. The Scheme involved multiple distinct, yet interconnected, steps. *Id.* at ¶ 11. First, the Majority Lenders removed lender protections by amending the text of the FAA, including changes to sacred rights. *Id.* at ¶ 11; 8/12/25 Tr. 59:11–19. Then, STG established unrestricted subsidiaries and subsequently transferred substantially all of STG's assets into them, thereby removing those assets from the existing collateral pool. AC at ¶ 11. The Majority Lenders exchanged their existing loans through a prohibited non-*pro-rata* transaction, at a premium to market trading prices of the loans. *Id.* Pursuant to the Dropdown Agreement, as the Majority Lenders exchanged existing loans, new loans were simultaneously issued by the Majority Lenders

[10] Plaintiffs allege that although they were not consulted during FAA negotiations, the additional lender protections adopted in the FAA were purposely drafted with precise language to foreclose any future possibility of an LMT. AC at ¶¶ 8, 11.

to UnSub, backed by the collateral and guarantees at both STG and UnSub. *Id.* This transaction refinanced all the outstanding debt of the Majority Lenders, and provided an additional $137 million of debt capital to STG. *Id.* Finally, all loan proceeds were lent upstream from UnSub to parent STG pursuant to the Intercompany Agreement. *Id*.

The Majority Lenders used two types of LMTs known as "dropdown" and "double dip" transactions. A dropdown transaction subordinates existing lenders by moving collateral assets to an unrestricted subsidiary outside the governance of the current credit agreement and beyond the reach of current lenders. Assets within the unrestricted subsidiary only provide collateral support for newly issued loans to favored lenders to the detriment of the original loan holders. *Id*. at ¶¶ 57–59. To create a "double dip", the unrestricted subsidiary transfers the loan proceeds received from the favored lenders to the parent company through an intercompany loan. *Id*. at ¶ 58. The result of the entire transaction situates the favored lenders with the benefit of a first-lien security interest in all unrestricted subsidiary assets, and two first-lien claims on the parent assets consisting of the intercompany loan and the guaranty of the parent company, thereby providing two secured lender claims against STG securing the loans issued to the Majority Lenders.

Plaintiffs allege that the October Transaction caused them direct harm and had an adverse impact on their loan holdings. In addition to a reduction in market value, the October Transaction (1) transferred assets to UnSub that resulted in existing loans held by the Minority Lenders losing their lien and guaranty on those assets; (2) diluted the Minority Lenders' liens on assets remaining at STG because of the *pari passu* first-lien guarantee of the UnSub loans and the UnSub first-lien intercompany loan; and (3) eliminated nearly all covenants, nearly all events of default, mandatory pre-payments, and STG's obligation to make scheduled pre-maturity interest payments. *Id.* at ¶¶ 13, 60.

The Scheme Violated Sacred Rights of Minority Lenders

Plaintiffs allege that the Scheme violated their "sacred rights" pursuant to Section 10.1(a) of the FAA by, *inter alia*, (1) depriving them of their right to receive pre-maturity interest payments (*id.* at ¶ 106); (2) pre-paying some existing loans, thereby reducing the principal of outstanding loans (*id.* at ¶ 108); (3) transferring existing loan collateral to newly created unrestricted subsidiaries (*id.* at ¶ 110); (4) subordinating Plaintiffs' loans to those of other lenders with respect to collateral priority (*id.* at ¶ 112); and (5) altering existing amendments with respect to *pro rata* lender treatment in a repayment waterfall (*id.* at ¶¶ 114). Additionally, Plaintiffs allege that the SAA eliminated almost every negative covenant, most affirmative covenants, and events of default. *Id.* at ¶¶ 88–89. Plaintiffs further allege that STG's obligation to make scheduled interest payments was replaced with STG's discretion to pay deferred interest at loan maturity without triggering an event of default. *Id.* at ¶¶ 105–106.

Specifically, Plaintiffs allege that the Scheme breached key provisions of the FAA, to wit:

- § 2.10(a) requiring "all payments (including prepayments) to be made by each Credit Party on account of principal, interest, fees and other amounts required … be made to the Agent and for the ratable account of the Persons holding the applicable Obligations." Plaintiffs allege that Defendants breached this provision by prepaying

loans of the Majority Lenders in a non-*pro-rata* transaction and then failing to make a ratable distribution to all lenders. *Id.* at ¶¶ 157–60.

- § 6.1 requiring that "[n]o Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to directly or indirectly, make, create, incur, assume or suffer to exist any Lien upon or with respect to any part of its Property." Plaintiffs allege that Defendants breached this provision prohibiting liens by allowing UnSub to both incur direct debt and to make an intercompany loan to STG. *Id.* at ¶¶ 88, 169–70.

- § 6.2 providing that "[n]o Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, directly or indirectly, Dispose of (whether in one or a series of transactions) any Property" unless such disposal is a permitted exception pursuant to Section 6.2. Plaintiffs allege that Defendants breached this provision by transferring two STG business units to UnSub. *Id.* ¶¶ 88, 177–78.

- § 6.3 providing that "[n]o Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to merge with, consolidate with or into, dissolve or liquidate into or convey, transfer, lease or otherwise dispose of . . . all or substantially all of its assets" unless an exception applies to the transaction pursuant to § 6.3. Plaintiffs allege that Defendants breached this provision by transferring two STG business units to UnSub "representing all or substantially all of its assets." *Id.* at ¶¶ 88, 185–86.

- § 6.5 requiring that "[n]o Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to create, incur, assume, permit to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness" other than for permitted purposes in § 6.5. Plaintiffs allege that Defendants breached this provision by allowing UnSub to incur direct debt from the Majority Lenders, and STG to incur direct debt from UnSub. *Id.* at ¶¶ 88, 193–94.

- § 6.6 providing that "[n]o Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to . . . enter into any transaction with any Sponsor or any Affiliate of any Sponsor, of the Borrowers or of any such Subsidiary" unless the transaction is permitted pursuant to § 6.6. Plaintiffs allege that Defendants breached this provision by transferring assets from STG to UnSub, loaning funds from UnSub to STG, and providing a guaranty from STG to UnSub. *Id.* at ¶¶ 88, 201–02.

- § 6.18 providing that "[n]o Credit party shall, and no Credit Party shall permit any of its Subsidiaries to make any Investment, Restricted Payment, or Disposition of, or otherwise assign or transfer, any Material Property to a Subsidiary that is not a Credit Party." Plaintiffs allege that Defendants breached this provision by transferring two valuable and material business units from STG to UnSub. *Id.* at ¶¶ 88, 209–10.

- § 2.7 providing that STG's "[o]ptional party prepayments of Revolv[er] Loans shall be applied . . . in accordance with Section 2.10(a)" (*pro rata*), and "[o]ptional partial prepayments of Term Loans shall, subject to § 2.10(a), be applied" (*pro rata*) according to STG's "notice of prepayment and, in the absence of such direction, in the manner set forth in Section 2.8(f)." Plaintiffs allege that Defendants breached this provision

by prepaying the Majority Lenders in violation of the waterfall provisions in Section 2.8(f). Additionally, the prepayments were not "Discounted Buybacks" as permitted under Section 2.7. *Id.* at ¶¶ 217–20.

- § 2.8(d) providing that "[p]romptly upon receipt by any Credit Party or any Subsidiary of any Credit Party of the Net Issuance Proceeds of the incurrence of indebtedness," STG must deliver "an amount equal to such Net Issuance Proceeds for application to the Loans in accordance with Section 2.8(f)." Plaintiffs allege that Defendants breached this provision by allowing UnSub to receive $137 million in net issuance loan proceeds and failing to distribute it to the original lenders. *Id.* at ¶¶ 227–28.

- § 2.10(c) providing that "[d]uring the continuance of an Event of Default . . . all payments received by the Agent . . . shall be applied" in an order specified in § 2.10(c). Pursuant to § 8.1(c), an Event of Default occurs upon any failure by a Credit Party to "perform or observe any term, covenant or agreement" reflected in Article VI. Plaintiffs allege that Defendants breached this provision by allowing Events of Default to occur pursuant to §§ 6.1, 6.2, 6.3, 6.5, 6.6, and 6.18, and failed to distribute payments as required by the waterfall mandated in Section 2.10(c). *Id.* at ¶¶ 88, 236–38.

Plaintiffs argue the Scheme materially changed most sacred rights in the FAA without the consent of all directly and adversely affected lenders as required under Section 10.1(a). *Id.* at ¶ 15. The Scheme could not have been accomplished without execution of the SAA because after adoption of the SAA, the Scheme participants engaged in actions that would have violated numerous provisions in the FAA. *Id.* at ¶¶ 102–103. The damage borne to Plaintiffs occurred incrementally after adoption of the SAA. Plaintiffs argue that, through each purposeful step, the Scheme participants systematically removed collateral protections, structurally subordinated their loans, and eliminated any official recourse Plaintiffs had to actively monitor STG through covenant compliance.

Second Loan Offering to Minority Lenders

Although barred from participating in the October Transaction alongside the Majority Lenders, Plaintiffs allege that they, and the other Minority Lenders, were instead invited to exchange their existing structurally subordinated loans for new loans in a second offering. *Id.* at ¶¶ 11, 93. Plaintiffs contend that the new loans offered had materially different, and inferior, terms to those held by the Majority Lenders, including, *inter alia*, a deeper exchange discount to par, less collateral coverage, inferior payment priorities, and a lower interest rate. *Id.* at ¶¶ 1, 6, 100–01. Plaintiffs allege that the Scheme forced the participating Minority Lenders to sign an NDA that precluded them from discussing either the October Transaction or the second loan offering with each other to curtail any coordinated challenges. *Id.* at ¶ 11. Plaintiffs also allege that the second loan offering contained a contingency whereby the participating Minority Lenders must represent

that they would release all legal claims related to the October Transaction. *Id.* at ¶ 11. All the Minority Lenders, except for Plaintiffs, participated in the second loan offering. *Id.* at ¶ 13.

Role of Antares Capital

Plaintiffs allege that Antares Capital, as Agent, owed obligations to the entirety of the lending group, including providing regular financial updates on STG, advising on STG's covenant compliance, sharing any material developments, and ensuring that loan parties abide by their respective obligations. *Id.* at ¶ 70. Antares Capital instead worked with a select group of lenders from which Plaintiffs were purposely excluded, despite expressing a desire to be part of any restructuring committee. *Id.* at ¶ 73. Plaintiffs argue that Antares Capital "abandoned the duty it owed to *all* lenders as Agent to instead collude with a select group of lenders and devise a Scheme at the expense of others." *Id.* at ¶ 86.

Legal Discussion

Pursuant to CPLR § 3211(a)(7), the "pleadings are to be afforded a liberal construction, allegations are taken as true, the plaintiff is afforded every possible inference, and a determination is made only as to whether the facts as alleged fit within any cognizable legal theory." *CSC Holdings, LLC v. Samsung Elecs. Am., Inc.*, 146 N.Y.S.3d 17, 18 (1st Dept. 2021) (internal citations omitted). Nevertheless, "[d]ismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137 (2017) (internal citations omitted). The test is "whether the proponent of the pleading has a cause of action, not whether he has stated one." *Leon v. Martinez*, 84 N.Y.2d 83, 87–88 (1994). Courts will grant a motion to dismiss where the plaintiff states a cognizable cause of action but fails to assert a material fact necessary to meet an element of the claim. *See, e.g., Arnon Ltd v. Beierwaltes*, 3 N.Y.S.3d 31, 33 (2015).

On a motion to dismiss, "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that a defense is founded upon documentary evidence." CPLR § 3211(a)(1). Documentary evidence, "such as an unambiguous contract," must "conclusively establish [ ] a defense to the asserted claims as a matter of law." *Behler v. Tao*, 43 N.Y.3d 343, 348 (2025) (quoting *Goldman v. Metropolitan Life Ins. Co.*, 5 N.Y.3d 561, 571 (2005)).

Dismissal pursuant to CPLR § 3211(a)(3) is warranted where "the party asserting the cause of action" does not possess "legal capacity to sue."

I. No Action Provision Does Not Bar Plaintiffs' Claims

Defendants argue, as a threshold matter, Plaintiffs lack standing to assert their claims pursuant to CPLR § 3211(a)(3) because the no-action clause in Section 9.3(c) of the Agreement vests Antares Capital, as the Administrative Agent, with the exclusive authority to enforce all

rights and remedies under the Agreement. *See* Antares Mem. of Law at 15–16; STG Mem. of Law at 14–17; Def. Lenders Mem. of Law at 11–13. The relevant language of Section 9.3(c) states:

> **Notwithstanding anything to the contrary** contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Agent in accordance with the Loan Documents for the benefit of all the Secured Parties . . . (emphasis added).

Defendant Lenders rely upon the "[n]otwithstanding anything to the contrary" language to establish that it was clear and unambiguous to all parties that "the No Action Provision applies to every covered claim, without exception." NYSCEF Doc. No. 161 at 7 (Def. Lenders Reply). It is undisputed that Plaintiffs did not make any demand upon Antares Capital to enforce their rights or seek any remedies that are the subject of this action. Therefore, Defendants contend that without the consent of Antares Capital, Plaintiffs lack standing to sue. The Court does not credit Defendants' argument.

Dismissal pursuant to CPLR § 3211(a)(3) is warranted where "plaintiffs lack standing to sue due to their failure to comply" with provisions of governing contracts, including no-action clauses. *Deer Park Rd. Mgmt. Co., LP v. Nationstar Mortg. LLC*, 233 A.D.3d 564, 565 (1st Dept. 2024). New York courts "read a no-action clause to give effect to the precise words and language used, for the clause must be 'strictly construed.'" *Quadrant Structured Prods. Co. v. Vertin*, 23 N.Y.3d 549, 560 (2014) (citations omitted). It is "well settled" law that "no-action clauses . . . are strictly enforced where applicable." *Eaton Vance Mgmt. v. Wilmington Sav. Fund Soc., FSB*, No. 654397/2017, 2018 WL 1947405, at *6 (N.Y. Sup. Ct. N.Y. Cnty, April 25, 2018) ("*J. Crew*"), *aff'd*, 171 A.D.3d 626 (1st Dept. 2019). "An agreement to be bound by such a 'collective design' applies where . . . litigation decisions are to be made by a designated Administrative Agent that must act at the direction of contractually defined Required Lenders, even where there is a risk of 'potentially unequal treatment.'" *Id.* at *13 (quoting *Beal Sav. Bank v. Sommer*, 8 N.Y.3d 318, 321–32 (2007). Where a no-action clause is present in a credit agreement that cedes authority to the administrative agent, "litigation decisions . . . [must] be made by a designated Administrative Agent." *Id.* Lenders' agreement to similar provisions in lending documents indicates that the syndicate participants agree to "be bound" by a "collective design" that precludes litigation claims initiated by a single plaintiff. *Id.*

However, compliance with the no-action clause is excused when demand futility requires that a party "commence an action against itself." *BlackRock Balanced Cap. Portfolio (FI) v. U.S. Nat'l Ass'n*, 165 A.D.3d 526, 528 (1st Dept. 2018); *Commerzbank AG v. U.S. Bank, N.A.*, 100 F.4th 362, 375–76 (2d Cir. 2024). A no-action clause requiring parties to bring their claims to the trustee will not bar litigation against the trustee itself because "it would be absurd to require the debenture holders to ask the Trustee to sue itself." *Cruden v. Bank of New York*, 957 F.2d 961, 968 (2d. Cir. 1992). Plaintiffs establish that demand upon Antares Capital to enforce their rights under the Agreement would have been "futile" because Antares is a named defendant and because Antares is alleged to have participated in the Scheme along with STG and the Defendant Lenders—including the Antares Lenders. "Any claims that Antares would bring against the defendant

lenders and STG would necessarily implicate its own liability not just as an agent but as a participating defendant lender." 8/12/25 Tr. 60:15–26, 62:10–15 (citing AC at ¶¶ 10, 11, 71–73, 84–87, 159–60, 236, 238 for allegations as to Antares' conflicts of interest as Agent).

The Court finds *Commerzbank* to be instructive. In *Commerzbank*, the Second Circuit extended the holding of *Cruden* to other parties with "close relationships with the breaching entities" and who are "directly implicated in the wrongdoing." *Commerzbank*, 100 F.4th at 375. *Commerzbank* instructs "courts determining whether a [no-action clause] requires pre-suit demands . . . [to] consider whether such requirements would entail potential conflicts of interest on the demanded party, and if so, whether the nature and extent of the conflicts would indicate that these parties would be sufficiently unlikely to bring claims if asked to do so, such that the demand would be futile." *Id.* at 375–76. Notably, on remand, the trial court determined that pre-suit demand on Citibank was futile because Citigroup—an affiliate of Citibank—was the breaching trust administrator and custodian, and its affiliate was a breaching sponsor. *Commerzbank A.G. v. U.S. Bank Nat'l Ass'n*, No. 16-CV-4569, 2024 WL 5089017, at *4 (S.D.N.Y. Dec. 12, 2024). Accordingly, these affiliates "were directly implicated in the wrongdoing alleged . . . ." *Id*.

Defendant Lenders' argument that demand futility would apply only to Antares Capital, and not to Defendant Lenders or STG, is therefore without merit as Antares Capital is alleged to have participated in the Scheme. *See* Def. Lenders Reply at 5 (citing *Deer Park*, 233 A.D.3d at 565). Taking the factual allegations as true, Antares Capital was far from a neutral Administrative Agent with the capacity to assess the merits of Plaintiffs' claims and decide whether to sue on behalf of the lending group. AC at ¶¶ 10, 11, 71–73, 84–87, 159–60, 236, 238.

Because Plaintiffs sufficiently allege that Antares Capital—to whom the parties had delegated litigation decisions—is implicated in the Scheme and conflicted, Defendants' arguments that the collective design of the Agreement also fail. Defendants rely upon *J. Crew* where, as here, a no-action clause in a syndicated lending credit agreement barred the plaintiff lenders from initiating claims without the consent of the administrative agent. The failure of the plaintiffs in *J. Crew* to make a demand upon the administrative agent prior to filing an action resulted in a dismissal of all claims where making such a demand was a predicate for establishing standing. 2018 WL 1947405, at *6. Defendants also cite to *Antara* for the proposition that Plaintiffs lack standing to initiate this litigation. *Antara Cap. Master Fund LP v. Bombardier, Inc.*, No. 650477/2022, 2023 WL 2566166 (N.Y. Sup. Ct. N.Y. Cnty, March 17, 2023). Both cases are inapposite, as neither case addressed allegations as to the agent's alleged bad faith, gross negligence, or willful misconduct. *See infra* at Section VI. Specifically, in *Antara*, the court determined that the amended complaint did not allege "particularized facts to suggest demand futility, including that the Trustee could face exposure for its own breach . . . ." *Antara*, 2023 WL 2566166, at *14. Absent a "non-exculpated act," a plaintiff "ha[s] no basis to contend that the [agent] could not have impartially considered a demand for permission to sue." *Id.* at **12–14. Here, by contrast, Plaintiffs have sufficiently alleged a non-exculpated act.

Accordingly, the Court determines that Plaintiffs have standing to commence this action.

II. Declaratory Judgment (Count I)

Plaintiffs seek a declaration that the SAA is not a valid and enforceable contract. Section 10.1(a) of the FAA requires the written consent from lenders "directly and adversely affected" by any "waiver, amendment, supplement (including any additional Loan Document) or consent" that "postpones interest payments, reduces the principal amount of any Loan, alters the priority or pro rata treatment of Loans, releases substantially all collateral backing the Loans, and/or subordinates lenders' existing Loans or liens securing these Loans to other loans or liens." AC at ¶ 143. Plaintiffs assert that because neither they, nor the Minority Lenders, gave their required consent to execute the SAA under Section 10.1(a), the SAA is invalid and unenforceable, and therefore void. *Id.* at ¶ 154.

Defendants seek to dismiss the claim for declaratory judgment based upon four general grounds: (1) the claim is duplicative of the breach of contract claims; (2) equitable relief is unavailable where Plaintiffs have adequate damages remedies for any alleged breach of contract; (3) the Sixth Amendment was validly adopted without Plaintiffs' consent; and (4) Plaintiffs do not allege any amendment to a sacred rights provision.

"A contract is unambiguous if the language it uses has a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion. A contract is ambiguous if 'on its face [it] is reasonably susceptible of more than one interpretation.'" *Telerep LLC v. U.S. Intern Media LLC*, 74 A.D.3d 401, 402 (1st Dept. 2010) (internal citations omitted). When determining the ambiguity of a contract, courts "should view the obligation as a whole and the intention of the parties as manifested thereby." *Duane Reade, Inc. v. Cardtronics, LP*, 54 A.D.3d 137, 141 (1st Dept. 2008) (internal citation omitted). Dismissal of a claim predicated on an alleged breach is therefore inappropriate if a court determines that the contract is ambiguous and cannot be construed as a matter of law. *Telerep*, 74 A.D.3d at 402.

A. Plaintiffs Allege that the Scheme Constituted an Integrated Transaction

Underpinning Plaintiffs' cause of action is the notion that the Scheme constituted "a single integrated transaction"—that is, the simultaneous execution of the SAA, the Dropdown Agreement, and Intercompany Agreement and the attendant, interrelated steps as alleged in the Amended Complaint, intended to "eviscerate protections for the [Minority] Lenders," AC at ¶ 41, Sec. B and ¶ 144; *see also id.* at ¶¶ 11, 87, 102–103, 108. Defendants argue that these steps and execution of agreements comprised a lawful "series of independent steps" made through "separate agreements." Def. Lenders Mem. of Law at n. 9. Defendants claim that "[n]othing in the [SAA] actually amended a sacred rights provision" and that "only provisions that could be amended with majority consent were touched" in adoption of the SAA. 8/12/25 Tr. 17:9–16.

New York courts consider multiple factors when determining whether a transaction is integrated, and "form is not conclusive" with respect to entering into agreements with single versus separate assents. *Rudman v. Cowles Commc's, Inc.*, 30 N.Y.2d 1, 13 (1972). "Whether the parties intended to treat [ ] [the] agreements as mutually dependent contracts, the breach of one undoing the obligations under the other, is a question of fact." *Id.* In determining whether contracts are separable or treated as one, the "primary standard is the intent manifested, viewed in the

surrounding circumstances." *Id.* Contracts that are "executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction will be read and interpreted together, it being said that they are, in the eye of the law, one instrument." *BWA Corp. v. Alltrans Express U.S.A., Inc.*, 112 A.D.2d 850, 852 (1st Dept. 1985).

Plaintiffs sufficiently allege that the SAA, the Dropdown Agreement, and the Intercompany Agreement had the same purpose, were executed at the same time, and are mutually dependent. Defendants do not dispute their reliance on the interconnection of all three contracts to execute the October Transaction. Additionally, the Court cannot determine at this juncture the intent of the parties when entering into the three contracts; however, absent the authority of any one of the three at-issue contracts, the October Transaction would fail. Accordingly, for purposes of this Motion, the Court reads and interprets the three contracts as one instrument as alleged by Plaintiffs.

B. Plaintiffs' Approval of the SAA and Breach of "Sacred Rights" Provisions

Plaintiffs sufficiently plead that the amendments to the FAA implicated their sacred rights under Sections 10.1(a)(ii), (iii), (iv)(A), (vii), and (viii), and therefore the SAA is void. The FAA requires consent of Plaintiffs, as directly and adversely affected lenders, to validly execute the SAA if a sacred right is implicated. Therefore, the breach of a single sacred right is sufficient to invalidate the SAA pursuant to the plain language of Section 10.1 (which requires consent of all lenders "directly and adversely affected" by the enactment of "*one* of the results enumerated under Section 10.1"). AC at ¶ 104 (emphasis added). Defendants argue that amendments to the sacred rights provisions occur only if a change is directly made to the sacred rights provisions within Section 10.1(a), and not where textual changes are made to provisions other than Section 10.1(a) that "*impact* the protections in Section 10.1(a)." STG Mem. of Law at 11–12 (emphasis added). Defendants rely on *Ocean Trails CLO VII v. MLN Topco Ltd.*, 233 A.D.3d 614, 615 (1st Dept. 2024) ("*Mitel*") for the proposition that "amendments otherwise permitted under the express terms of the Credit Agreement . . . cannot support a 'sacred rights' claim *even if* these amendments are alleged to 'effectively' impact Plaintiffs." *Id.* at 12 (emphasis in original). However, in the instant case, textual changes were made to Sections of the FAA in contrast to the unchanged credit agreement in *Mitel*. Defendants' narrow reading of Section 10.1(a) makes it ambiguous at best. For the reasons set forth herein, Plaintiffs sufficiently allege violations of multiple, specific sacred rights provisions.

Plaintiffs allege a violation of their sacred right to receive their entitled pre-maturity interest payments under Section 10.1(a)(ii) because the Majority Lenders amended Section 8.1, granting STG unilateral discretion to avoid any scheduled interest payments until maturity without triggering a default. *Id.* at ¶¶ 105–06, 146. Plaintiffs further allege that "an interest payment is only fixed and due on a particular date if it is not discretionary." 8/12/25 Tr. 68:13–15. Although Plaintiffs currently receive interest payments, they do so only at the will of STG. This alleged violation impacts the reasonable expectation of Plaintiffs when investing in these loans to receive a specified stream of cash flow on specific dates. Plaintiffs lost all contractual remedies to declare an event of default for missed interest payments during the life of the loan because instead of the contractually required quarterly payments in the original loans, the only fixed payment date in the UnSub loans is the 2028 maturity date. *Id.* at 68:3–21. Additionally, the elimination of an event of default for missed interest payments prohibits lender intervention and potential restructuring if

the financial condition of STG continues to deteriorate and they fail to make the voluntary quarterly interest payments.

Plaintiffs also allege a violation of their sacred right prohibiting other loan parties from pre-paying existing loans in a non-*pro-rata* loan exchange, thereby reducing the principal of outstanding loans. Plaintiffs allege the loans of the Majority Lenders were "cancelled by Antares, thereby reducing the principal of their Loans to zero" and these loans were replaced by newly issued loans that deprived Plaintiffs of their right to ratable treatment in violation of Sections 2.7, 2.8, 10.1(a)(iii), and 10.1(a)(iv)(A). *Id.* at ¶¶ 108, 147. Defendants, however, claim that the non-*pro-rata* transaction is not a "loan cancellation," but is a permitted "discounted buyback" transaction. Def. Lenders Mem. of Law at 18. Pursuant to FAA Section 2.7(d), discounted buybacks are permitted by use of "internally generated funds." Defendants posit that cash proceeds of loans made to UnSub, and subsequently transferred to STG, "qualify as being 'internally generated.'" *Id.* Defendants narrow their view to only one stage of the transaction—the internal movement of cash from UnSub to STG. Plaintiffs, however, succeed in alleging contractual ambiguity, and therefore a disputed fact pattern, by alleging that a "discounted buyback" is "intended to benefit all lenders by allowing the company to deleverage and retire debt when it had cash to spare," and is a term inapplicable to this transaction. 8/12/25 Tr. 52:5–7.

Plaintiffs sufficiently allege that STG transferred existing loan collateral to two newly created unrestricted subsidiaries in violation of Sections 6.2, 6.3, 6.6, 6.18, and 10.1(a)(vii). AC at ¶¶ 109–10. Plaintiffs allege that the two key business segments transferred from STG to UnSub constituted "substantially all of STG's collateral backing the Loans." *Id.* at ¶¶ 110, 148. Plaintiffs pleaded the breach of a sacred right because the Scheme involved the transfer of collateral to UnSub that effectively released it from the collateral pool available to Plaintiffs. NYSCEF Doc. No. 153 at 35–36 (Pl. Opp'n). Plaintiffs further assert that no mechanism existed in the FAA that would permit a release of collateral from STG to UnSub. 8/12/25 Tr. 77:2–6. Although Defendants argue that the textual amendments to the FAA did not directly impact terms permitting the transfer of collateral, they acknowledge the three individual contracts in the aggregate did impact, and allow for, the collateral transfer. Def. Lenders Mem. of Law at 21–23. Given the Court's reading of the three contracts as unified, Defendants' arguments fail because actions of Defendants pursuant to the Dropdown Agreement and the Intercompany Agreement did violate sacred rights in the FAA.

Finally, Plaintiffs allege that their existing loans, previously secured by first-priority liens on collateral, were subordinated when the UnSub loans received a higher senior secured priority in the collateral than Plaintiffs' loans in violation of Sections 2.7(d)(i) and 10.1(a)(iv)(A). AC at ¶¶ 110, 112, 116–17, 152. Plaintiffs and Defendants offer contradictory interpretations of the undefined term "subordinate" in the FAA. Pl. Opp'n at 39; STG Mem. of Law at 21. Plaintiffs assert that their loans were subordinated by the Scheme when their original liens became lower in priority than the new liens securing the UnSub loans. These new liens denied Plaintiffs collateral support for their loans from the assets transferred from STG to UnSub, and the loss of the guarantors on the original loans when they were exchanged for UnSub loans. Plaintiffs assert a textbook case of subordination because all lenders originally shared in the collateral on an equal and *pro-rata* basis, but after the Scheme, Defendants' loans to UnSub had improved collateral priority over the now-subordinated loans of Plaintiffs. AC at ¶¶ 117, 152; Pl. Opp'n at 38. Plaintiffs further argue that Section 10(a)(iv)(A) is drafted broadly and not only covers changes to

the FAA but also covers changes that have "the effect of changing the priority or *pro-rata* treatment of any payments."

In contrast, STG argues that Plaintiffs' liens were "not subordinated at all" and were supported by a "*pari passu* first-lien guarantee on the Collateral." NYSCEF Doc. No. 157 at 18 (STG Reply). STG asserts that the structural subordination, as it allegedly exists, was not part of any amendment to the credit agreement and therefore is not actionable. *Id.* Defendant Lenders proffer a third reasonable interpretation of "subordination." They concede that "certain creditors [had] primary rights to UnSub's assets, which must be satisfied before Plaintiffs [] can access the value of those assets." Def. Lenders Mem. of Law at 22. However, Defendant Lenders present a highly technical analysis of the October Transaction to assert that Plaintiffs' *liens themselves* were not subordinated, but the asset transfer from STG to UnSub resulted in *structural subordination* that was not prohibited under the loan documents. *Id.* Defendant Lenders ground this theory in their interpretation of Section 10.1(a)(viii) which requires consent of directly and adversely affected lenders for an amendment that "subordinates *the Liens*." *Id.* at 21 (emphasis added). Because the language of Section 10.1(a)(viii), and specifically the definition and application of "subordinate," is susceptible to two—possibly three—commercially reasonable interpretations, the Court declines to dismiss Plaintiffs' claim.

C. Plaintiffs' Request for Equitable Relief

Defendants argue that Plaintiffs' request for declaratory judgment should be denied because monetary damages constitute a sufficient remedy to redress any losses arising from the alleged breaches of contract. Defendants further argue that the request for equitable relief is duplicative of the breach of contract claims in the Amended Complaint. Additionally, because STG is a going concern, and still an operating company, it is impractical—if not impossible—to unwind the numerous individual transactions that occurred after adoption of the SAA, including changing the existing capital structure. *Id.* Plaintiffs allege that neither monetary relief, nor a ruling on the breach of contract causes of action, will provide an adequate remedy to resolve this dispute. Pl. Opp'n at 58–60. Plaintiffs assert their request for a declaratory judgment will establish finality with respect to whether the FAA or SAA governs. *Id.*

A claim for declaratory judgment is nonviable where it is "unnecessary and inappropriate [because] plaintiff[s] ha[ve] an adequate, alternative remedy in another form of action, such as breach of contract." *Apple Recs., Inc. v. Capitol Recs., Inc.*, 137 A.D.2d 50, 54 (1st Dept. 1988). "Courts frequently find that a declaratory judgment will not serve a purpose when the claim is duplicative of another claim in the same action." *MSR Tr. v. Nationstar Mortg. LLC*, No. 21-cv-3089, 2022 WL 3441613, at *12 (S.D.N.Y. July 28, 2022). Equitable relief is also nonviable when "it appears to be impossible or impracticable." *Sahu v. Union Carbide Corp.*, 418 F. Supp. 2d 407, 411–12 (S.D.N.Y. 2005).

The Court determines that the breach of contract claims will not settle the open issue as to whether the FAA or the SAA is the operative loan document. The declaratory judgment cause of action is forward-looking and cements clarity as to current and future rights and responsibilities of the loan parties. Although many LMT court actions occur post-bankruptcy and involve defaulted loans, this transaction impacts an operating company with performing loans. In comparison, the breach of contract claims hinge on past actions. Additionally, the request for declaratory judgment

is pleaded against all Defendants compared to the eight breach of contract claims that are pleaded only as to STG, and the two breach of contract claims that are pleaded only as to STG and Antares. Further, Defendants' speculation that it is impossible or impracticable to unwind the October Transaction is premature. This inquiry necessarily involves fact discovery and potentially expert testimony to assess the practicality and advisability of unwinding the October Transaction.

Accordingly, the Court denies the Motions to Dismiss the declaratory judgment claim by Defendants STG, Defendant Lenders, and Antares because it is not duplicative of the breach of contract claim. Further, issues of contractual ambiguity exist with respect to alleged violations of sacred right provisions, as discussed *supra*, and therefore requires, as a matter of law, the Court to deny the Motions at this juncture.

III. Breach of Contract (Counts II–XI)

Plaintiffs allege ten separate breach of contract causes of action in Counts II–XI. AC at ¶¶ 155–240. Each breach of contract claim in the Amended Complaint is pleaded as a violation of one or more sections of the FAA, specifically, Sections 2.10(a), 6.1, 6.2, 6.3, 6.5, 6.6, 6.18, 2.7, 2.8(d), and 2.10(c). Each breach of contract claims turns on whether the FAA or the SAA was the governing agreement (*see* n.5 *supra*). The Court has determined, pursuant to its ruling on the declaratory judgment claim, that Defendants have not established that the SAA was operative. Accordingly, Defendants STG's and Antares' Motions to Dismiss the breach of contract claims are denied.

IV. Breach of Implied Covenant of Good Faith and Fair Dealing (Count XII)

Plaintiffs assert a claim for breach of the implied covenant of good faith and fair dealing in the alternative, only if this Court determines that the "[FAA] granted Defendants the discretion to enter into the [SAA]" without Plaintiffs' consent. AC at ¶ 242. Plaintiffs allege that they "reasonably expected" their loans, as first-lien obligations, would receive "equal and fair treatment" in any future amendments, particularly when the amendments designed to protect lenders against an LMT were drafted into the FAA and executed a mere five months before the October Transaction. *Id.* at ¶¶ 16, 61, 91, 243. Plaintiffs allege that—even if the SAA was lawfully adopted—Defendants conspired to execute the Scheme with the intent to strip Plaintiffs of recently-added lender protections that violated Plaintiffs' reasonable expectations against "an abusive dropdown LMT that would structurally subordinate Plaintiffs through the use of unrestricted subsidiaries." *Id.* at ¶¶ 243, 245.

Defendants offer three arguments in opposition: (1) this claim should be dismissed as duplicative of Plaintiffs' breach of contract claims; (2) Plaintiffs impermissibly seek to impose entirely new terms in the Agreement; and (3) the alleged conduct is expressly permitted by the Agreement. STG Mem. of Law at 20–21; Antares Mem. of Law at 20; *see also* Tr. 8/12/25 at 36:13–18 ("[E]very action challenged by plaintiffs here was undertaken pursuant to specific provisions in the credit agreement . . . ."). Defendants rely on the First Department's ruling in *Mitel* which held that the implied covenant is not a vehicle for the creation of new contractual terms where sophisticated parties negotiated precise terms. If the parties in *Mitel* wanted to prohibit amendments such as those at issue here, "they could have done so, but they did not." *Mitel* at 617.

"In New York, all contracts imply a covenant of good faith and fair dealing in the course of performance." *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144, 153 (2002) (internal citations omitted). "This covenant embraces a pledge that 'neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.'" *Id*. (internal citations omitted). A claim for breach of the implied covenant warrants dismissal where such a claim arises from the same operative facts and seeks the same damages as a cause of action for breach of contract. *Mill Fin., LLC v. Gillett*, 122 A.D.3d 98, 104–105 (1st Dept. 2014). A breach of the implied covenant claim, however, is not duplicative of a breach of contract claim where the complaint alleges conduct that is separate from the conduct constituting the alleged breach of contract and such conduct deprived the other party of the benefit of its bargain. *Credit Agricole Corporate v. BDC Fin., LLC*, 135 A.D.3d 561, 561 (1st Dept. 2016). Pleading a breach of the implied covenant claim in the alternative to a breach of contract claim is further permissible "when there is a *bona fide* dispute over whether a contract covers the contested issue." *LCM XXII Ltd. v. Serta Simmons Bedding, LLC*, No. 21 CIV. 3987 (KPF), 2022 WL 953109, at *15 (S.D.N.Y. Mar. 29, 2022).

Plaintiffs sufficiently allege facts and conduct in support of their claim for breach of the implied covenant that are distinct from their breach of contract claims. Even if the SAA is deemed to be operative, Plaintiffs allege that Defendants acted in bad faith by secretly conspiring to execute the Scheme, which fundamentally undermined the bargained-for lender protections that the parties agreed to in the FAA. *See, e.g.*, AC at ¶¶ 9–11, 16, 82, 103, 144. Plaintiffs assert that they were denied the "fruits of their bargain" by the "draconian" actions taken by Defendants in executing the Scheme, whereby Defendants did not have to "bear the consequences" of the LMT after adoption of the SAA as Plaintiffs did. *Id.* at ¶¶ 244–45. Accordingly, Plaintiffs' allegations here do not arise from the same operative facts as those in support of the breach of contract claims, nor do Plaintiffs seek a "gap-filler" intending to re-write the contract or insert language that the lenders, in retrospect, should have included. For these reasons, the Court distinguishes the instant facts from those in *Mitel*: here, the crux of Plaintiffs' allegations are that Defendants' amendments to the FAA flew in the face of their reasonable expectations of negotiated lender protections in the FAA in contrast to *Mitel*, where the parties did not specifically negotiate amendments to prohibit the contested transaction.

The Court finds the decisions in *AEA Middle Market* and *Boardriders* to be instructive: both cases involved allegations, like those here, that the defendants acted in secret to execute a transaction that undermined the plaintiffs' reasonable economic expectations under the operative agreements. *AEA Middle Mkt. Debt Funding LLC v. Marblegate Asset Mgmt., LLC*, 214 A.D.3d 111 (1st Dept. 2023); *ICG Global Loan Fund 1 DAC v. Boardriders, Inc.*, No. 655175/2020, 2022 WL 10085886, at *9 (N.Y. Sup. Ct. Oct. 17, 2022). In *AEA Middle Market*, the First Department held that allegations of "bad faith conduct in conspiring to manufacture a restructuring process that deprived plaintiffs of the benefit of their bargain under the terms of the Credit Agreement" were sufficient to defeat dismissal of plaintiffs' good faith and fair dealing claims. 214 A.D.3d at 133–34. The court further held that because the plaintiffs sought redress for violations of their "reasonable expectations" under the credit agreement, the implied covenant claims were not contradicted by the essential terms of the agreement. *Id*. at 134. In *Boardriders*, the court sustained the breach of implied covenant claim based upon similar allegations that the "[t]ransaction was carried out in secret" while "plaintiffs made multiple attempts to gauge whether the Company needed additional capital, which plaintiffs allege they were willing to provide."

2022 WL 10085886, at *9; *cf.* AC at ¶¶ 10 ("Plaintiffs found it increasingly difficult to obtain any information from Antares (the lenders' Agent under the Credit Agreement), the Equity Sponsors, or the company regarding STG's financial status or the Equity Sponsors' plans for addressing STG's continuing liquidity issues"), 84 ("Plaintiffs and other Minority Lenders made numerous inquiries to Antares, Wind Point, Oaktree, and STG itself about the company's liquidity needs and any contemplated refinancing plans").

Accordingly, the Court denies the Motions to Dismiss Count XII by Defendants STG, Defendant Lenders, and Antares. The allegations are sufficient to allege that Defendants colluded in secret and in bad faith to deprive Defendants of their reasonable expectations and fruits of their bargain—*i.e.*, *pro rata* treatment of their loans.

V. Violation of New York Uniform Voidable Transactions Act (Count XIII)

Plaintiffs allege that Defendants STG and UnSub violated Section 273(a)(1) of New York's Uniform Voidable Transaction Act (UVTA) by transferring valuable STG business segments to UnSub with the "actual intent to hinder, delay, or defraud the Minority Lenders." AC at ¶¶ 253–55. Plaintiffs further allege that STG and UnSub violated Section 273(a)(2)(i) because "STG did not receive reasonably equivalent value for the transfer of its valuable business segments to UnSub," but instead received a "nominal amount of the Defendant Lenders' Loans that were prepaid in exchange for new UnSub Loans." *Id*. at ¶¶ 256–257. Plaintiffs assert that the Scheme to transfer valuable assets from STG to UnSub without receiving reasonably equivalent value, and the incurrence of additional obligations to STG, constitute fraudulent transfers in violation of Sections 273, 276, and 276-A of the UVTA, and are therefore voidable and should be unwound. *Id*. at ¶ 260.

STG Defendants argue that the UVTA claim fails because alleged violations of New York law do not apply to the October Transaction. STG Mem. of Law at 21. Plaintiffs rebut that the broad choice-of-law provision at Section 10.16(a) of the Agreement (which is unchanged in the FAA and SAA, and specifies New York Law) is sufficient to encompass tort claims. Pl. Opp'n at 46–47. The provision states that "[t]he laws of the State of New York shall govern all matters arising out of, in connection with or relating to this Agreement." FAA at §10.16(a); SAA at §10.16(a).

The UVTA replaced the former Uniform Fraudulent Conveyance Act ("UFCA") and became effective on April 4, 2020, thereby governing all transactions on or after that date. One of the key changes from the UFCA is the inclusion of Section 279, which provides clear guidance on the law applicable to an avoidance transaction. Section 279 prescribes that "a claim for relief . . . is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred," and if the debtor has more than one place of business, it "is located at its chief executive office." Because the Amended Complaint alleges that STG's principal place of business is in Illinois, AC at ¶ 25, New York law does not apply. *See Frontier Airlines, Inc. v. AMCK Aviation Holdings Ireland Ltd.*, 676 F. Supp. 3d 233, 256 (S.D.N.Y. 2023) ("[T]he UVTA's use of the debtor's location at the time of the transfer—and not inviting arguments as to the effect of contractual provisions whose application may be debatable—has the virtue of putting in place a 'clear rule' that 'eliminates the risk that the laws of multiple jurisdictions might be applicable to a single transfer involving property in multiple jurisdictions or

injuring creditors in multiple jurisdictions.'" (internal citations omitted)); *see also id.* at 256 n.12 ("[T]he UVTA 'minimizes unnecessary litigation regarding choice of law rules.'" (quoting Guide to New York's Uniform Voidable Transactions Act, Practical Law Practice Note w-030-0994)).

Plaintiffs argue that, notwithstanding the clear statutory language of Section 279, the parties agreed to a sufficiently broad choice-of-law provision that would encompass causes of action sounding in tort and thereby overcome the mandatory jurisdictional requirement of Section 279. Plaintiffs compare the language of the choice-of-law provision here to those that have been construed to apply to claims that sound in tort. *See Avnet, Inc. v. Deloitte Consulting LLP*, 133 N.Y.S.3d 553, 556 (1st Dept. 2020) (holding that choice-of-law provision stating "and all matters relating to this Agreement and each Work Order, shall be governed by . . . the laws of the State of New York (without giving effect to the choice of law principles thereof)" was sufficiently broad to cover a negligence claim); *Cap. Z Fin. Servs. Fund II, L.P. v. Health Net, Inc.*, 840 N.Y.S.2d 16, 23 (1st Dept. 2007) (holding that choice-of-law provision stating that Delaware law governed "all issues" concerning "enforcement of the rights and duties of the parties" applied to extra-contractual claims).

Plaintiffs' cited authority, however, does not stand for the proposition that parties may privately agree to override or circumvent the UVTA's jurisdictional requirements. *See Frontier Airlines*, 676 F. Supp. 3d at 256 ("First, '[t]he mere fact that an agreement, and disputes arising thereunder, are governed by the law of a particular jurisdiction does not transform all statutory requirements that may otherwise be imposed under that body of law into contractual obligations.'" (quoting *Skanska USA Bldg. Inc. v. Atl. Yards B2 Owner, LLC*, 31 N.Y.3d 1002, 1007 (2018))). Plaintiffs' attempt to distinguish *Frontier* based on a separate and distinct reason articulated by the decision—that the defendants were not parties to the agreement—is therefore unpersuasive. *Id.* at 255–256 (citing "multiple reasons" why New York law did not apply).

Accordingly, STD Defendants' Motion to Dismiss Count XIII of the Amended Complaint is granted.

VI. Exculpation of Antares Capital LP as Agent (Counts I, II, XI, XII)

Antares Capital denies liability with respect to actions taken in its capacity as Administrative Agent. It argues that the contractual role of the Agent is "entirely administrative in nature." Antares' Mem. of Law at 4; FAA at § 9.1(c); SAA at § 9.1(c). The Agreement provides broad general exculpation provisions applicable to any agent action "taken or omitted to be taken . . . under or in connection with any Loan Document." Antares' Mem. of Law at 5. However, the exculpation clause does not apply where Plaintiffs identify "gross negligence or willful misconduct" on the part of Antares Capital that is the primary source of the liability. *Id.* at 12; FAA at § 9.5(a); SAA at § 9.5(a). All parties waived and agreed not to assert "any right, claim, or cause of action based thereon except to the extent of liabilities resulting primarily from gross negligence or willful misconduct." FAA at § 9.5(a); SAA at § 9.5(a); 8/12/25 Tr. 39:20–24.

Plaintiffs allege Antares' "gross negligence" and/or "willful misconduct" through the participation of Antares Capital in the Scheme. Pls. Opp'n at 48–49; 8/12/25 Tr. 60:15–26. Specifically, Plaintiffs allege that "Antares [Capital] engaged in intentional and conflicted conduct to effectuate the Scheme that was designed to harm the Excluded Lenders for the benefit of the

Antares lenders and the other Defendant Lenders." Pls. Opp'n at 48; *see also* AC at ¶ 86 (Antares Capital "has signed a non-disclosure agreement in relation to a secret negotiation occurring among STG, the Equity Sponsors, and certain Defendant Lenders" and "abandoned the duty it owed to *all* lenders as Agent . . ." (emphasis in original)).

"[G]ross negligence is 'conduct that evinces a reckless disregard for the rights of others or smacks of intentional wrongdoing.'" *Greenapple v. Capital One, N.A.*, 92 A.D.3d 548, 550 (1st Dept. 2012) (quoting *Colnaghi, USA v. Jewelers Protection Servs., Ltd.*, 81 N.Y.2d 821, 823–24, (1993)). On a motion to dismiss a cause of action based on an exculpation clause with "gross negligence" and "willful misconduct" language, the court must deny the motion where, as here, Plaintiffs allege intentional participation in an unlawful scheme. *Id*. at 549 (allegations of the defendant's "intentional[ ] participation in the scheme" sufficiently alleged gross negligence to defeat exculpation on a motion to dismiss).

Defendant Antares' reliance on *J. Crew* is unpersuasive because, there, the plaintiff did not plead allegations suggesting the agent engaged in "gross negligence or willful misconduct," and the court determined that the agent's acceptance of a majority, rather than unanimous, vote in a credit agreement amendment may have amounted—at most—to ordinary negligence. *J. Crew* WL 1947405 at *5. Taking Plaintiffs' factual allegations as true (*i.e.*, that Antares Capital entered an NDA with select lending parties, their non-responsive stance as to Plaintiffs' requests for STG's financial information, the potential for conflict between their role as Administrative Agent and their relationship with the Antares Lenders, and their collusion in the Scheme), Antares cannot evade liability under Section 9.5(a) at this stage.

Accordingly, the Court denies Antares' Motion to Dismiss all claims against it in its capacity as Agent.

VII. Sentry's Motion to Dismiss (Counts I and XII)

Defendant Sentry argues that it should be dismissed from this action because it lacks liability for actions, decisions, or transactions related to the at-issue loans. In December 2013, Invesco began serving as Sentry's investment manager. Sentry Mem. of Law at 5–6. The parties entered into an Investment Management Agreement ("IMA") that granted Invesco "full power and authority to make and act upon all investment decisions with respect to [Sentry's] account." *Id.* at 6 (citing NYSCEF Doc. No. 66 at 4). Sentry refers to Invesco as a "non-servant agent" and claims their conduct cannot be imputed to Sentry for liability purposes. *Id.* at 4–5. Plaintiffs argue that by using a non-servant agent, Sentry is not liable for torts but is legally responsible for causes of action brought under contract law. Pl. Opp'n at 61.

In New York, a principal is not "responsible for torts committed by a nonservant [*sic*] agent." *Halpin v. Prudential Ins. Co. of Am.*, 48 N.Y.2d 906, 908 (1979). However, a "disclosed or partially disclosed principal is subject to liability upon contracts made by an agent acting within his authority if made in proper form and with the understanding that the principal is a party." Restatement (Second) of Agency § 144 (1958).

The legal authority upon which Sentry relies stands for the proposition that actions of a non-servant agent are not attributable to its principal as to tort liability. Sentry cites no legal

authority for extending this principal to contractual liability. Sentry acknowledges it is "bound by the Credit Agreement" and does not dispute that Invesco had authority to "sign documents related to the Subject Loans on its behalf." NYSCEF Doc. No. 159 at 8 (Sentry Reply). Sentry further relies on arguments focused on "acts" and "wrong acts" by a non-servant agent. *Id.* at 6. However, these two causes of action (declaratory judgment and breach of the implied covenant of good faith and fair dealing) are rooted in contract law. Sentry received the benefits of the loan contracts (*e.g.* interest payments) and must also assume the liabilities of owning them.

Accordingly, the Court denies Sentry's Motion to Dismiss Count I and Count XII.

* * *

The Court has considered the parties' remaining contentions and finds them to be unavailing.

Upon the foregoing, it is hereby

ORDERED that Defendant Lenders' Motion to Dismiss Counts I and XII of the Amended Complaint is DENIED (Motion 004); and it is further

ORDERED that Defendant Sentry's Motion to Dismiss Counts I and XII of the Amended Complaint is DENIED (Motion 005); and it is further

ORDERED that Defendant Antares' Motion to Dismiss Counts I, II, XI, and XII of the Amended Complaint is DENIED (Motion 006); and it is further

ORDERED that STG Defendants' Motion to Dismiss the Amended Complaint is GRANTED in part as to the dismissal of Count XIII, and DENIED in part as to the dismissal of Counts I–XII; and it is further

ORDERED that Defendants shall file their answers to the remaining claims of the Amended Complaint within twenty (20) days of the filing of notice of entry of this Decision and Order.

The foregoing constitutes the Decision and Order of this Court.

January 3, 2026
DATE

ANAR RATHOD PATEL, A.J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	X	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
	Case No. 24-12391 (CTG)
AMERICAN TIRE DISTRIBUTORS INC., *et al.*,	(Jointly Administered)
	Courtroom No. 7
	824 Market Street
Debtors.	Wilmington, Delaware 19801
	Tuesday, November 19, 2024
	2:00 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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business judgment, no heightened standard. I think we're going to skip all that and we're going to get to the crux of your view --

THE COURT: Yep.

MR. DUBLIN: -- with respect to --

THE COURT: Yeah, tell me --

MR. DUBLIN: -- the prepetition credit bid.

THE COURT: -- so, look, let me start by giving you a firmer target at which to shoot. The agreement has standard and ordinary pro rata sharing provisions, right, and there are I think three of them in the prepetition credit bid. And then there's a Serta blocker and that says, essentially, that on the one hand you can't do -- and this is paraphrasing, but in substance you can't do an up-tier transaction without offering it to everybody with the exception for DIP lending, right? And you're saying the DIP lending exception means you don't need to extend it to everybody. And I think that's correct in the sense you could have a priming DIP with some, but not all. So if we had exactly this loan without the rollup and it was offered -- and it was fabulous economics that everyone would have loved, but they wanted to do it only with your group and not the other seven percent, your answer would be that's fine, the DIP lending exception permits that.

So that far, I'd be with you. Where you lose me

is what the rollup is -- and, again, I'll hear you on this if I'm wrong about this, but it seems to me what the rollup is, is a draw on the DIP to pay down the prepetition credit agreement, and it seems to me that nothing in saying that you can have a priming DIP with some, but not all, means that when you pay down the prepetition debt you don't have to pay down the prepetition debt in accordance with the prepetition agreement, including its pro rata sharing agreement, and that's just from the language. Then you've got a layer on top of that, commercial rationality. And, the way I see it, it would be preposterous to enter into an agreement that provided for an exception to pro rata sharing in this context. It would turn every prepetition agreement into what is fundamentally a game of Russian roulette such that any time you find yourself standing when the music stops, you go to zero. And I don't see how anyone in their right mind would enter into such an agreement; it makes zero commercial sense to me.

So I think it's both not the best reading of the words, but to the extent there's any ambiguity in the words that would be informed by ordinary commercial common sense, all of that counsels strongly against this. This strikes me as a preposterous -- so the target you have to shoot at is that your reading of the document strikes me as a preposterous overreach.