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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re: THRILL INTERMEDIATE, LLC, a Delaware limited liability company, Debtor.	Case No. 25-15714-MKN Chapter 11
THRILL INTERMEDIATE, LLC, a Delaware limited liability company, Plaintiff, v. U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Administrative Agent, PGIM, Inc., a New Jersey corporation, as Lead Lender Representative, PGIM NON-US INVESTORS / US SENIOR DEBT I FUND, PGIM NON-US INVESTORS / US SENIOR DEBT I FUND A, PGIM SENIOR LOAN OPPORTUNITIES (LEVERED) I, L.P., PGIM SENIOR LOAN OPPORTUNITIES MANAGEMENT FUND I, L.P., PRUCO LIFE INSURANCE COMPANY, PSLO I US INVESTORS LEVERED DEBT SPV LLC, BAYERNINVEST KAPITALVERWALTUNGSGESELLSCHAFT MBH on behalf of fund BayernInvest SDF 2-	Adv. Pro. No.

Fonds, THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, WINDHILL CLO 1, LTD., CION INVESTMENT CORPORATION, 34TH STREET FUNDING LLC, MGG US DIRECT LENDING FUND 2019 LP, MGG SF EVERGREEN LP, MGG SF DRAWDOWN UNLEVERED MASTER FUND III (CAYMAN) LP, MGG SF DRAWDOWN UNLEVERED OFFSHORE III SPV S.A.R.L., MGG SF EVERGREEN MASTER FUND (CAYMAN) LP, MGG SF EVERGREEN UNLEVERED MASTER FUND II (CAYMAN) LP,

Defendants.

COMPLAINT

Thrill Intermediate, LLC ("***Plaintiff" or "Debtor***"), by and through its undersigned attorneys, alleges, based upon knowledge, information, and belief, as follows:

I.
NATURE OF THE ACTION

1. Defendants, who are lenders to the Debtor, attempted to wrongfully take control of Plaintiff and its affiliates (who are Debtors) by delivering a patently defective notice. The intentional and egregious conduct was inconsistent with the express contractual terms negotiated between the parties, was done in violation of applicable law, and was done in violation of the covenant of good faith and fair dealing which is implied in all contracts. Specifically, the parties negotiated that any action by the lenders to enforce their rights must follow notice to Plaintiff (a requirement that is further required by the Uniform Commercial Code and is not waivable). In this instance, notice was required to be delivered to David Hirschfeld (and only David Hirschfeld). On the morning of Rosh Hashanah, a day expressly forbidden to be worked on by the Torah, Defendants attempted to deliver the advance "Notice" of their intent to act, but only after the underlying action had been completed. For the many reasons set forth herein, providing "Notice" after the fact is ineffective or has otherwise been undone by the filing of the bankruptcy cases and subsequent corporate action by the Debtor and its affiliates.

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II.
THE PARTIES

2. Plaintiff is a Delaware limited liability company with its principal place of business in Clark County, Nevada.

3. Defendant U.S. Bank Trust Company, National Association (the "***Administrative Agent***"), is a national banking association with multiple offices in Nevada and who caused the harm and damage to Plaintiff averred to herein.

4. PGIM, Inc., a New Jersey corporation, as Lead Lender Representative under the Credit Agreement (defined below).

5. PGIM NON-US INVESTORS / US SENIOR DEBT I FUND is a lender under the Credit Agreement (defined below).

6. PGIM NON-US INVESTORS / US SENIOR DEBT I FUND A is a lender under the Credit Agreement (defined below).

7. PGIM SENIOR LOAN OPPORTUNITIES (LEVERED) I, L.P. is a lender under the Credit Agreement (defined below).

8. PGIM SENIOR LOAN OPPORTUNITIES MANAGEMENT FUND I, L.P. is a lender under the Credit Agreement (defined below).

9. PRUCO LIFE INSURANCE COMPANY is a lender under the Credit Agreement (defined below).

10. PSLO I US INVESTORS LEVERED DEBT SPV LLC is a lender under the Credit Agreement (defined below).

11. BAYERNINVEST KAPITALVERWALTUNGSGESELLSCHAFT MBH on behalf of fund BayernInvest SDF 2-Fonds is a lender under the Credit Agreement (defined below).

12. THE PRUDENTIAL INSURANCE COMPANY OF AMERICA is a lender under the Credit Agreement (defined below).

13. WINDHILL CLO 1, LTD. is a lender under the Credit Agreement (defined below).

14. CION INVESTMENT CORPORATION is a lender under the Credit Agreement (defined below).

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15. 34TH STREET FUNDING LLC is a lender under the Credit Agreement (defined below).

16. MGG US DIRECT LENDING FUND 2019 LP is a lender under the Credit Agreement (defined below).

17. MGG SF EVERGREEN LP is a lender under the Credit Agreement (defined below).

18. MGG SF DRAWDOWN UNLEVERED is a lender under the Credit Agreement (defined below).

19. MASTER FUND III (CAYMAN) LP is a lender under the Credit Agreement (defined below).

20. MGG SF DRAWDOWN UNLEVERED is a lender under the Credit Agreement (defined below).

21. OFFSHORE III SPV S.A.R.L. is a lender under the Credit Agreement (defined below).

22. MGG SF EVERGREEN MASTER FUND (CAYMAN) LP is a lender under the Credit Agreement (defined below).

23. MGG SF EVERGREEN UNLEVERED MASTER FUND II (CAYMAN) LP is a lender under the Credit Agreement (defined below).

III.
JURISDICTION AND VENUE

24. On September 28, 2025, Plaintiff and its affiliated debtors filed for Chapter 11 bankruptcy relief, thereby commencing the above-referenced Chapter 11 Cases.

25. The affiliated debtors are Thrill Holdings, LLC ("***Holdings***"), Nitro RallyCross LLC, Nitrocross IP Holdings LLC, Superjacket Productions LLC, Conduit Post, LLC, Crown Media Entertainment, LLC, Perfect Feet Productions, LLC, Purple Shark, LLC (collectively with Plaintiff, the "***Debtors***").

26. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the order of reference set forth in Local Rule 1001(b)(1).

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27. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), including 28 U.S.C. § 157(b)(2), (A), (C), (E), (G), (K), and (O).

28. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409 because the Debtors' Chapter 11 Cases are pending before the Bankruptcy Court.

29. This adversary proceeding arises in the Debtors' Chapter 11 Cases pending in the District of Nevada.

30. Plaintiff consents to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

IV.
FACTUAL BACKGROUND

A. Plaintiff's Business.

31. Plaintiff, through its direct and indirect wholly owned subsidiaries, creates and produces television content, and has at times in its past produced live entertainment events. Most relevant to these proceedings, we produce *Ridiculousness* for MTV. Ridiculousness is a 30-minute studio clip show where host Rob Dyrdek (a former professional skateboarder and celebrity) and co-hosts riff on viral videos—stunts gone wrong, pratfalls, and everyday chaos—played on a giant video wall before a live audience. Generally, Ridiculousness constitutes approximately 50% of the programming on MTV, and often more. On September 30, 2025 (tomorrow), MTV is scheduled to air Ridiculousness thirty (30) separate times.

B. The Credit Agreement and Pledge Contain Specific Notice Requirements.

32. On or about May 27, 2022, Plaintiff, its wholly owned subsidiary, Holdings and certain of its subsidiaries and affiliates entered into the Credit Agreement dated May 27, 2022 (as amended, the "***Credit Agreement***") with Defendants.

33. Holdings is designated as the "Borrower" under the Credit Agreement.

34. Plaintiff and certain of Holdings' direct and indirect subsidiaries and other affiliates are guarantors of the loans ("***Loans***") memorialized by the Credit Agreement and certain other "Credit Documents" as defined in the Credit Agreement.

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35. The Credit Documents, among other agreements and documents, include a "Security Agreement" dated May 27, 2022 and a "Pledge Agreement" dated May 27, 2022 (the "***Pledge Agreement***"), granting security interests in certain collateral owned by Plaintiff or other guarantors to secure the Loans. A true and correct copy of the Pledge Agreement is attached hereto as **Exhibit 1.**

36. The Pledge Agreement, among other matters, expressly grants a "continuing security interest" in certain collateral (the "***Pledge Collateral***), which includes Plaintiff's One Hundred percent (100%) ownership in Holdings (the "***Holdings Interests***").

37. Section 10.01 of the Credit Agreement is titled "Notices" and provides very specific, and non-standard, requirements for how written notice must be provided to Borrower, stating:

> Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communication provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent to a valid e-mail address, as follows:
>
> (i) if to the Borrower c/o Fiume Capital, 10801 W. Charleston Boulevard, Las Vegas, Nevada, Attention: **David Hirschfeld, Chief Investment Officer, Email: dhirschfeld@fiumecapital.com**; with a copy (which shall not constitute notice or delivery) to: Milbank LLP, 55 Hudson Yards, New York, NY 10001, Attention: Antonio Diaz-Albertini, Email: ADiaz-Albertini@milbank.com;
>
> ***
>
> Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; **notices sent by e-mail shall be deemed to have been received upon receipt by the sender of confirmatory return e-mail or other written acknowledgment from the intended recipient (provided that use of the "return receipt requested" function shall not be sufficient);** provided that if such e-mail is not given during normal business hours of the recipient, such notice or other communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient. Notices delivered through electronic communications, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

38. Section 7.5 of the Pledge Agreement is even more narrow, referring to Section 10.01 of the Credit Agreement, but excluding service by email, stating:

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All notices and other communications provided for hereunder shall be in writing and addressed and delivered to (i) the Pledgors care of the Borrower at its address set forth in Section 10.01 of the Credit Agreement, and (ii) to the Administrative Agent at its address set forth in Section 10.01 of the Credit Agreement. Any notice, if mailed and properly addressed with postage prepaid or if properly addressed and sent by pre-paid courier service, shall be deemed given when received.

C. The Pledge Contains Two Conditions Precedent to the Administrative Agent's Exercise of Voting Rights.

39. Section 4.2 of the Pledge Agreement addresses Voting Rights, requiring two conditions precedent to the Administrative Agent exercising any voting rights under the Pledge Agreement: (1) that Event of Default has occurred and is continuing, and (2) that the Administrative Agent has provided notice to the pledgor of its intention to exercise its voting power under the Pledge Agreement ***prior to*** exercising its voting rights.

40. Section 4.2 of the Pledge Agreement states in pertinent part:

> **4.2 Voting Rights**. **If an Event of Default shall have occurred and be continuing and the Administrative Agent shall have notified the applicable Pledgor of the Administrative Agent's intention to exercise its voting power under this Section 4.2,** such notified Pledgor agrees:
>
> **(a)** that the Administrative Agent may exercise (to the exclusion of such Pledgor) the voting power and all other incidental rights of ownership with respect to the Pledged Collateral pledged by such Pledgor, and such Pledgor hereby grants the Administrative Agent, from the date hereof until the complete, full and final repayment of the Secured Obligations (other than contingent indemnification obligations for which no claim has been asserted) and the termination of the Revolving Commitments under the Credit Agreement, an irrevocable (until the termination of this Agreement) proxy, coupled with an interest exercisable under such circumstances, to vote such Pledged Collateral; and
>
> **(b)** promptly to deliver to the Administrative Agent such additional proxies and other documents as may be necessary to allow the Administrative Agent to exercise such voting power.
>
> All payments and proceeds which may at any time and from time to time be held by any of the Pledgors, but which such Pledgor is then obligated to deliver to the Administrative Agent on behalf of itself and the Secured Parties, shall be held by such Pledgor separate and apart from its other property in trust for the Administrative Agent and the other Secured Parties. **Unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given the notice referred to in this Section 4.2, the Pledgors shall have the**

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> **exclusive voting power with respect to the Pledged Collateral** and the Administrative Agent shall, upon the written request of any Pledgor, promptly deliver such proxies and other documents, if any, as shall be reasonably requested by such Pledgor which are necessary to allow such Pledgor to exercise voting power with respect to the Pledged Collateral; provided, however, that no vote shall be cast, or consent, waiver or ratification given or action taken by any Pledgor that would materially impair any Pledged Collateral or be materially inconsistent with or violate any provision of the Credit Agreement or any other Credit Document without the prior written consent of the Administrative Agent and the Required Lenders.

D. The Administrative Agent's July 3, 2025 Reservation Letter Did Not Exercise Any Proxy Rights.

41. On July 3, 2025, Defendants delivered to Plaintiff a letter regarding "Reservation of Rights in respect of Current Default" identifying two alleged events of default had occurred under the Credit Agreement, specifically that the June 30, 2025, principal installment due on term loans and the June 30, 2025, interest payment due on the Loans were not paid, which constituted defaults under the Credit Agreement (hereinafter, the "***July 3, 2025 Reservation Letter***").

42. The July 3, 2025 Reservation Letter does not reference the Pledge Agreement or Section 4.2 and does not contain a notice by the Administrative Agent of its intent to exercise its proxy rights under the Pledge Agreement.

E. The Administrative Agent's Proxy Notice on September 23, 2025 Was Defective.

43. As described above, pursuant to both Section 10.1 of the Credit Agreement and Section 7.5 of the Pledge Agreement, written notices to either Plaintiff or Holdings must be given in writing to David Hirschfeld, Chief Investment Officer, c/o Fiume Capital 10801 West Charleston Boulevard, Las Vegas, Nevada.

44. Rosh Hashanah is designated as a day set aside for the Jewish community to gather for sacred worship and reflection, rather than work. The Torah expressly forbids working on Rosh Hashanah.

45. As Defendants are well aware, Rosh Hashanah began September 22, 2025 at sundown, and ended at nightfall on September 24, 2025.

46. As Defendants are also well-aware, David Hirschfeld, the individual specifically identified for notice in the Credit Agreement, is Jewish, as is Plaintiff's Chief Restructuring

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Officer, Jeremy Rosenthal, and other key members of Debtors' leadership.

47. The Defendants' selected the middle of Rosh Hashanah, September 23, 2025, when they knew Mr. Hirschfeld would not be at the office, to deny the fundamental nature and obligation of the required notice prior to exercising their proxy rights.

48. Specifically, as confirmed by video recording, on September 23, 2025, at 9:56 a.m., a courier (acting as Defendants' agent) entered Fiume Capital's office at 10801 West Charleston Boulevard, Las Vegas, Nevada and **simultaneously** tendered two (2) envelopes to the receptionist, who accepted delivery. This was done at a time when Defendants knew that David Hirschfeld would be away from the office.

49. One of the envelopes contained a letter directed to David Hirschfeld and is dated September 23, 2025 regarding "Notice of Exercise of Remedies" (the "***September Notice Letter***"). The September Notice Letter stated in pertinent part that it "notified Thrill Intermediate LLC that the Administrative Agent intends to exercise (to the exclusion of Thrill Intermediate LLC) its voting power and all other incidental rights of ownership with respect to the Pledged Collateral pledged by Thrill Intermediate LLC."

50. The other envelope concurrently delivered contained three documents:

(i) a copy of the September Notice Letter;

(ii) a Written Consent of the Sole Member of Thrill Holdings LLC dated September 23, 2025, purportedly executed by Plaintiff by Alexandra Rhyne, the Vice President of U.S. Bank Trust Company, National Association "(acting as attorney-in-fact under the Pledge Agreement and by proxy)" (the "***Agent's Written Consent***"); and

(iii) the Amended and Restated Limited Liability Company Agreement of Thrill Holdings LLC purportedly executed by Plaintiff by Alexandra Rhyne, the Vice President of U.S. Bank Trust Company, National Association "(acting as attorney-in-fact under the Pledge Agreement and by proxy)" ("***Agent's ARA LLC***").

True and correct copies of the September Notice Letter, the Agent's Written Consent, and the Agent's ARA LLC are attached hereto as **Exhibits 2 through 4**.

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51. One of the recitals in the Agent's Written Consent states that "Events of Default are continuing under the Credit Agreement and the Administrative Agent **gave notice** to the Sole Member and the Company on the date hereof that the Administrative Agent was exercising its rights and remedies under the Pledge Agreement."

52. For the avoidance of doubt, the September Notice Letter was delivered to the receptionist for Plaintiff concurrently with the Agent's Written Consent and the Agent's ARA LLC. The Agent's Written Consent and Agent's ARA LLC were executed by the Administrative Agent prior to the time that they were delivered to Plaintiff.

53. A recital of the Agent's Written Consent further states that "on the date hereof, under and pursuant to the Credit Agreement and the Pledge Agreement, the Administrative Agent has…***exercised*** the proxy and power of attorney pertaining to the Equity Interests to exercise this written consent to, among other things (i) amend and restate the Company's limited liability company agreement, (ii) remove every existing member of the board of managers of the Company (the "Board", and each member thereof, a "Manager") and (iii) elect a new member of the Board, and written notice of the foregoing is being delivered to the Sole Member of the Company concurrently herewith." (Emphasis added).

54. Thus, the Administrative Agent exercised its proxy rights by executing the Agent's Written Consent and the Agent's ARA LLC before providing the September Notice Letter to Plaintiff.

55. Section 7.5 of the Pledge Agreement does not permit required notices by email, only by properly addressed mail, postage prepaid, or prepaid courier services.

56. Nonetheless, at 11:17 a.m. (Pacific Time) on September 23, 2025, the Administrative Agent sent an email to David Hirschfeld and two attorneys for Plaintiff (Gregory Garman and Antonio Diaz-Albertini) attaching the September Notice Letter.

57. At 11:18 a.m. (Pacific Time) on September 23, 2025, the Administrative Agent sent an email to David Hirschfeld and two attorneys for Plaintiff (Gregory Garman and Antonio Diaz-Albertini) attaching the September Notice Letter, the Agent's Written Consent, and the Agent's

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ARA LLC.

58. David Hirschfeld did not provide written acknowledgement or otherwise accept either of the Administrative Agent's emails sent on September 23, 2025; he was observing Rosh Hashanah.

59. Even if required notices under the Pledge Agreement could be provided by email as stated in Section 10.1 of the Credit Agreement, that section explicitly provides, "Notices sent by email shall be deemed to have been received upon receipt by the sender of confirmatory return e-mail or other written acknowledgement from the intended recipient (provided that the use of the "return receipt requested" function shall not be sufficient), provided that if such e-mail is not given during normal business hours of the recipient, such notice or other communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient."

60. The egregiousness of the Administrative Agent's conduct in seeking to execute on the proxy in the Pledge Agreement on Rosh Hashanah is underscored by the fact that Plaintiff had told counsel for the Administrative Agent that Holdings was preparing a settlement proposal for the Defendants' consideration.

F. <u>The Action by the Agent's Written Consent Concerning the Holdings Interests Was Ineffective as a Matter of Contract Under the Operative Loan Documents.</u>

61. The Pledge contractually conditions the Administrative Agent's right to exercise its voting power under Section 4.2 of the Credit Agreement on two precedent events. First, there must be an Event of Default that has occurred and is continuing. Second, the Administrative Agent must *have notified the applicable Pledgor of the Administrative Agent's intention* to exercise its voting power under Section 4.2 of the Credit Agreement.

62. As averred above, despite the parties' negotiated agreement to the contrary, the Administrative Agent exercised its voting rights prior to providing the contractually required notice to Plaintiff as clearly demonstrated by the simultaneous delivery of the two envelopes on September 23, 2025, delivering the September Notice Letter at exactly the same time as the previously executed Agent's Written Consent.

63. There is no provision in the Pledge Agreement that permits the Administrative

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Agent to act for Plaintiff under Section 4.2 by Written Consent.

64. As a result of the Administrative Agent's actions, taken at the direction of the other Defendants, in contravention of the Credit Agreement and/or the Pledge Agreement, Defendants improperly interfered with and/or sought to deprive Plaintiff of its right to vote its interests or otherwise control Holdings.

65. The Administrative Agent and other Defendants improper actions sought to deprive Plaintiff of its rights to manage and direct Holdings, and its direct and indirect subsidiaries in contravention of the Credit Agreement and/or the Pledge Agreement.

66. As a result of the Administrative Agent's actions, taken at the direction of the other Defendants, Plaintiff was harmed by an effort to cause of change in control of Holdings.

G. The Action By Written Consent Concerning the Holdings Interests Was Ineffective Under Statutory Law.

67. The Pledge Agreement explicitly states that it creates a security interest in the Pledged Collateral, which includes the Holdings Interests.

68. The Holdings Interests are the personal property of Plaintiff.

69. Section 7.9 of the Pledge Agreement makes the internal law of New York controlling when construing and enforcing the Pledge Agreement.

70. The Pledge Agreement is a security agreement under the internal law of New York, and particularly New York's version of Article 9 of the Uniform Commercial Code.

71. Section 4.2 of the Pledge Agreement contains the proxy relied in part upon by Defendants to empower the action taken in the Written Consent.

72. Section 4.2 states that it is coupled with an interest, to wit a property interest.

73. Section 4.2 would not be incorporated into the transaction, or the Pledge Agreement but for the purpose of, as relevant to this Complaint, providing Defendants with mechanism to cut off and dispossess Plaintiff from its voting rights associated with the Holdings Interests and associated rights to direct, manage, and control Holdings.

74. The mechanism in Section 4.2 of the Pledge Agreement to cutoff and dispossess Plaintiff from its voting rights, which is tantamount to a foreclosure of Plaintiff's voting rights,

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subject to a redemption.

75. The provision of a proper notice as required under Section 4.2 of the Pledge Agreement serves as a "notice of disposition" under Section 9-611 of the New York Uniform Commercial Code.

76. A notice required under Section 9-611 of the New York Uniform Commercial Code cannot be waived or be deemed waived as provided in Section 9—602(g) of the New York Uniform Commercial Code.

77. In any event, parties to an agreement covered by Article 9 of the New York Uniform Commercial Code cannot agree to a process for determining whether a secured party complies with a secured party's obligations under a rule set forth in Section 9-602 of the New York Uniform Commercial Code if that standard is manifestly unreasonable.

78. The express language of Section 4.2 the Pledge Agreement requires a specific notice of intention before action, and any other interpretation of the parties' agreement would have been an agreement that is manifestly unreasonable and proscribed by Section 9-603 of the New York Uniform Commercial Code.

79. As averred above, the Administrative Agent exercised its voting rights prior to providing statutory required notice as clearly demonstrated by the simultaneous delivery of the September Notice Letter and the Agent's Written Consent, whereby the notice of intention was delivered at exactly the same time as the Written Consent, which had previously been executed by the Administrative Agent.

80. As a result of the Administrative Agent's actions, taken at the direction of the other Defendants, Defendants, in contravention of the Credit Agreement, interfered with and/or deprived Plaintiff of its right to vote its interests or otherwise control Holdings.

81. As a result of the Administrative Agent's actions, taken at the direction of the other Defendants, Plaintiff was deprived of its rights to manage and direct Holdings, and its direct and indirect subsidiaries in contravention of the Credit Agreement and/or the Pledge Agreement.

82. As a result of the Administrative Agent's actions, taken at the direction of the other

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Defendants, Plaintiff was deprived of its ability to cure the defaults alleged in the July 3, 2025 Reservation Letter in contravention of the Credit Agreement and/or the Pledge Agreement.

H. Alternatively, If the Proxy is Not Governed By the Uniform Comercial Code it is Nothing More than Contractual Obligation

83. If required contractual notice and/or proper notice was given under Article 9 of New York's Uniform Commercial Code (or Article 9 of New York's Uniform Commercial Code's notice requirements as alleged herein do not apply under Section 4.2 of the Pledge Agreement, then then the post-petition action taken by Plaintiff in reference to the Written Consent is nothing more than a breach of contract by Plaintiff.

I. The Action Taken By Defendants In Connection With the Written Consent Concerning the Holdings Interests Breached the Implied Covenant of Good Faith and Fair Dealing.

84. Every contract imposes upon each party a duty of good faith and fair dealing in its performance.

85. The New York Court of Appeals recently wrote this summary:

> This implied 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". . . "Where the contract contemplates the exercise of discretion, this pledge includes a promise not to act arbitrarily or irrationally in exercising that discretion" . . . This Court has consistently observed that the covenant requires the parties to perform under the contract "in a reasonable way" . . . In discerning what is "reasonable," the Court looks to what the parties would have expected under the contract: the Court will infer that contracts "include any promises which a reasonable person in the position of the promisee would be justified in understanding were included" at the time the contract was made . . . ."

Cordero v. Transamerica Annuity Serv. Corp., 39 N.Y.3d 399, 409–10, 211 N.E.3d 663, 670 (2023). *See also Singh v. City of New York*, 189 A.D.3d 1697, 139 N.Y.S.3d 307 (2020).

86. The New York Uniform Commercial Code also imposes such a duty, Section 1-304 states that "[e]very contract or duty within [the Uniform Commercial Code] imposes an obligation of good faith in its performance and enforcement."

87. The New York Uniform Commercial Code, in turn, defines good faith by stating that "good faith" means: "honesty in fact in the transaction or conduct concerned."

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88. Defendant's conduct in timing the delivery of the Notice of Exercise Letters referred to Mr. Hirschfeld in the middle of Rosh Hashanaha, particularly in view of the lengthy period of time that had elapsed since the delivery of July 3, 2025 Reservation Letter and despite discussions just prior to September 23, 2025, that Plaintiff's equity owner had formulated a settlement proposal that Plaintiff would be delivering to the Administrative Agent, manifests Defendants' intention to (i) prevent Plaintiff from exercising its voting rights, (ii) interfere with and/or deprived Plaintiff of its right to vote its interests or otherwise control Holdings, and (iii) deprived Plaintiff of its rights to manage and direct Holdings, and its direct and indirect subsidiaries, all prior to Plaintiff being providing the contractual and statutory notice required by Section 4.2 of the Pledge Agreement.

89. In view of the time elapsed between the delivery of the July 3, 2025 Reservation Letter and September 23, 2025 (82 days), the fact that Rosh Hashanaha began on Monday, September 22, 2025 and ended on Wednesday, September 24, 2025, and Plaintiff's counsel's communications with the Administrative Agent's counsel just prior to September 23, 2025, that they had formulated a settlement proposal that they were delivering to the Administrative Agent, combined with the timing of delivery of the Notice of Exercise Letters and the action taken by the Administrative Agent in the Written Consent, is not consistent with the what was the justified understanding of Plaintiffs, particularly where the Written Consent, if valid, had the effect of preventing Plaintiff from curing the defaults alleged by the Administrative Agent.

J. <u>The Holdings Interests Are Property of the Estate and Protection By Section 362(a)'s Automatic Stay.</u>

90. Section 541(a)(1) of the Bankruptcy Code provides that, upon the petition date, the bankruptcy estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case," including membership and governance rights in a wholly owned subsidiary.

91. Plaintiff held 100% of the equity interest in Holdings immediately prior to the petition date (i.e. the Holdings Interests).

92. The operative loan documents confirm that Plaintiff granted only a security interest

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in those equity interests—not an absolute transfer. Article II of the Pledge Agreement expressly states it "creates a continuing security interest" in the "Pledged Equity," which includes the pledgor's equity interests and related voting and economic rights, and it does so solely "as security for" the loan obligations.

93. The Credit Agreement likewise identifies the Pledge Agreement as a "Collateral Document" securing the debt, not conveying ownership.

94. Because the Pledge Agreement did not divest Plaintiff of title, the Holdings Interests became estate property upon Plaintiff filing its petition. *See* 11 U.S.C. § 541(a)(1).

95. Section 362(a) of the Bankruptcy Code stays any act to obtain possession of, or exercise control over, the Holdings Interests.

96. The automatic stay bars, inter alia, "any act to obtain possession of property of the estate or … to exercise control over property of the estate," as well as "any act to … enforce any lien against property of the estate." 11 U.S.C. § 362(a)(3), (4), (6).

97. A secured party's post-default efforts to take or to exercise voting control over pledged equity are stayed because those efforts are acts to "exercise control" over an equity interest that is squarely within Section 541.

98. Here, the only rights the Defendants hold in the Holdings Interests arise from their collateral package—a lien and a conditional proxy embedded in the Pledge Agreement. Those rights cannot be exercised post-petition without relief from the stay.

99. The Pledge Agreement confirms the lender holds a lien and a conditional proxy—neither of which extinguishes the Debtor's ownership.

100. Article II of the Pledge Agreement "grants … a continuing security interest" in the "Pledged Equity," together with distributions and proceeds, to "secure" the loan obligations, and provides for termination and return upon payment. That is the hallmark of a lien, not an absolute conveyance.

101. Section 4.2 of the Pledge Agreement allows the Administrative Agent to exercise voting power only if (i) an "Event of Default" "has occurred and is continuing," and (ii) the Agent

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has notified the pledgor of its "intention to exercise" such voting power. Until both conditions are met, "the Pledgors shall have the exclusive voting power with respect to the Pledged Collateral." These terms confirm that (1) Plaintiff remained the owner; (2) any voting proxy was contingent and revocable upon satisfaction of debt; and (3) the Administrative Agent's remedy is an exercise of control over the debtor's equity interest—conduct squarely stayed by Section 362(a)(3).

102. Any purported prepetition "exercise of proxy" failed to divest estate ownership; any postpetition exercise is void (or voidable) for violating Section 362.

103. As averred above, on September 23, 2025, the Administrative Agent delivered a "Notice of Exercise of Remedies" concurrently with an already-executed written consent and amended operating agreement purporting to act "by proxy," i.e., the Agent exercised voting rights before it delivered notice. That sequence does not satisfy the Pledge Agreement's express condition precedent requiring prior notice of an intent to exercise voting power. Even apart from those contractual defects, to the extent any further acts to implement or continue that proxy took place after the petition date, they are stayed by Section 362(a)(3), (a)(4), and (a)(6) and are therefore void (or, at minimum, voidable) and should be unwound.

V.
FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

104. Plaintiff re-alleges and incorporates by reference the allegations set forth in all preceding paragraphs of this Complaint as though set forth fully herein.

105. Pursuant to the Declaratory Judgment Act, "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). Bankruptcy Courts, as units of the district court, have the authority to issue declaratory judgments.

106. Courts possess jurisdiction to issue declaratory relief where "the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory

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judgment." *MedImmune, Inc. v. Genetech, Inc*., 549 U.S. 118, 127 (2007).

107. The Credit Agreement, Security Agreement, and Pledge Agreement are contracts between Plaintiff and Defendants pursuant to which the Court can declare the parties rights and legal relations.

108. There is a substantial controversy between Plaintiff and the Administrative Agent and the other Defendants of sufficient immediacy and reality to warrant the issuance of a declaratory judgment, which is both necessary and appropriate.

109. Plaintiff seeks a declaratory judgment declaring the Parties rights under the Credit Agreement, Security Agreement and Pledge Agreement, and specifically with respect to the notice, proxy and foreclosure obligations arising thereunder. This includes a declaration regarding the means and manner in which Notice must be given and whether Defendants purported exercise of the Proxy prior to Notice was commercially unreasonable and in violation of New York's Uniform Commercial Code.

110. Plaintiff further seeks a determination that the equity interests pledged, and the attendant rights thereto are property of the estate under Section 541.

111. With respect to those declarations, Plaintiff seeks a declaration confirming that (1) the Administrative Agent's purported exercise of remedies detailed herein above under the Pledge Agreement and Credit Agreement in respect to the Holdings Interests are null and void; (2) that Section 4.2 of the Pledge Agreement is subject to the New York Uniform Commercial Code and that Defendants action prior to providing notice is manifestly unreasonable and proscribed by Section 9-603 of the New York Uniform Commercial Code; and (3) the Holdings Interests are property of Plaintiff's bankruptcy estate.

112. Plaintiff further seeks any other remedy determined by the Court to be just and necessary, including an injunction that prevents Defendants from acting inconsistently with the declaration.

VI.
SECOND CLAIM FOR RELIEF
(Enforcement of 11 U.S.C. § 362(a)'s Automatic Stay)

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113. Plaintiff re-alleges and incorporates by reference the allegations set forth in all preceding paragraphs of this Complaint as though set forth fully herein.

114. Section 541(a)(1) of the Bankruptcy Code provides that, upon the petition date, the bankruptcy estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case," including membership and governance rights in a wholly owned subsidiary.

115. As averred above, the Holdings Interests are property of Plaintiff's bankruptcy estate.

116. As established by the Article II of the Pledge Agreement and the Credit Agreement, Plaintiff granted only a security interest in the Holdings Interests—not an absolute transfer. Because the Pledge Agreement did not divest Plaintiff of title, the Holdings Interests became estate property upon Plaintiff filing its petition. *See* 11 U.S.C. § 541(a)(1).

117. Section 362(a) of the Bankruptcy Code stays any act to obtain possession of, or exercise control over, the Holdings Interests. The automatic stay bars, inter alia, "any act to obtain possession of property of the estate or … to exercise control over property of the estate," as well as "any act to … enforce any lien against property of the estate." 11 U.S.C. § 362(a)(3), (4), (6).

118. A secured party's post-default efforts to take or to exercise voting control over pledged equity are stayed because those efforts are acts to "exercise control" over an equity interest that is squarely within Section 541.

119. Section 4.2 of the Pledge Agreement allows the Administrative Agent to exercise voting power only if (i) an "Event of Default" "has occurred and is continuing," and (ii) the Agent has notified the pledgor of its "intention to exercise" such voting power. Until both conditions are met, "the Pledgors shall have the exclusive voting power with respect to the Pledged Collateral." These terms confirm that (1) Plaintiff remained the owner; (2) any voting proxy was contingent and revocable upon satisfaction of debt; and (3) the Administrative Agent's remedy is an exercise of control over the debtor's equity interest—conduct squarely stayed by Section 362(a)(3).

120. Any purported prepetition "exercise of proxy" failed to divest estate ownership;

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any postpetition exercise is void (or voidable) for violating Section 362.

121. Any acts to exert control over the Holdings Interest (or any of the Debtors' assets) after the petition date are stayed by Section 362(a)(3), (a)(4), and (a)(6) and are therefore void (or, at minimum, voidable) and must be unwound.

122. Because (i) Intermediate's 100% Holdings Interests are property of the estate under § 541; (ii) the Pledge Agreement conferred only a lien and a conditional proxy that does not change ownership; and (iii) any effort by the Agent or lenders to vote, replace managers, amend governance documents, or otherwise control Holdings is an act to "exercise control" over estate property and to enforce a lien, the Court should (i) confirm that the Holdings Interests are property of the estate; (ii) enforce Section 362(a) to prohibit any act to obtain possession of or exercise control over those interests, including any exercise of the proxy or governance changes; (iii) declare any postpetition acts purporting to exercise proxy or governance control void (or voidable) and order appropriate unwinding; and (iv) award such further relief as is necessary to restore the status quo and protect the Debtor's estate.

123. The Administrative Agent's continued attempt to exercise control over the Holdings Interests, which are part of the Debtors' estate, violates the automatic stay.

VII.
THIRD CLAIM FOR RELIEF
(Breach of Contract)

124. Plaintiff re-alleges and incorporates by reference the allegations set forth in all preceding paragraphs of this Complaint as though set forth fully herein.

125. Plaintiff entered into the Credit Agreement and certain of the Credit Documents with Defendants, including the Security Agreement and Pledge Agreement that are binding and enforceable agreements against Defendants.

126. Plaintiff performed under the agreements or were otherwise excused from performance.

127. Each of the Agreements provide clear and unambiguous notice provisions that were specifically negotiated and material terms of the parties' transaction. Notice was material, for

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among other reasons, to give Plaintiff notice of an intended action to provide it the opportunity to cure or reach a resolution with Defendants.

128. Defendants breached the Credit Agreements, when they failed to provide proper notice before purporting to take corporate action on behalf of certain Debtors.

129. Defendants' actions were specifically taken to deprive Plaintiff of its rights to operate Debtors and to otherwise coerce or cause Plaintiff harm. By secretly taking action—that is to intentionally take action **before** providing the required notice at a time where Plaintiff management was attending to religious matters—Defendants intent was deny Plaintiff and Debtors any opportunity to cure or otherwise prevent Defendants from exercising their right to file bankruptcy.

130. Illustrating Defendants egregious intent, before giving a scintilla of notice, Defendants attempted to terminate Debtors' board and instill a new operating agreement that purported, among other things, to deprive Plaintiff and its affiliates of the constitutional right to seek reorganization under the United States Bankruptcy Court. In other words, Defendants intentionally acting to neuter and obviate the purpose of the notice provisions of the Credit Agreements.

131. The Administrative Agent's and the other Defendants' conduct described herein, including its exercise of remedies under the Pledge Agreement, constitutes a breach of the Credit Agreement and other Credit Documents.

132. As a result of the breaches of the Credit Agreements, Defendants caused Plaintiff substantial harm that will be subject to proof at trial.

133. Plaintiff further seeks any other relief deemed equitable or necessary by the Court.

VIII.
FOURTH CLAIM FOR RELIEF
(Breach of Implied Covenant of Good Faith and Fair Dealing)

134. Plaintiff re-alleges and incorporates by reference the allegations set forth in all preceding paragraphs of this Complaint as though set forth fully herein.

135. The Credit Agreements are valid and enforceable agreements. Every contract under

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the relevant state's laws contain covenants of good faith and fair dealing which prevent a party from acting in a way that deprives the other parties of their justified expectations under the contract, even when those actions do not technically contravene the terms of the contract.

136. The Credit Agreements contain express and unambiguous notice provisions. The notice provisions were material and expressly negotiated to provide Plaintiff the opportunity, should it become necessary, to address any alleged breach and Defendants intent to exercise a remedy. These provisions, coupled with rights to cure and other rights afforded by law, are embodiments of the parties expectations. But for the provisions inclusions, Plaintiff would not have entered into the credit agreements.

137. Knowing Section 7.5 of the Pledge Agreement barred email notice and that Section 10.01 of the Credit Agreement required acknowledgment for any email to be effective, the Agent timed courier and email deliveries for the middle of Rosh Hashanah, when the specifically designated notice recipient, Mr. Hirschfeld, would not acknowledge receipt, and while Plaintiff was preparing a settlement proposal the Agent knew about. This calculated timing to manufacture "notice" and immediately claim voting power was arbitrary, self-serving, and designed to deprive Plaintiff of the contract's fruits (continued voting control absent satisfied conditions), thereby breaching the implied covenant.

138. The Administrative Agent pre-executed the Written Consent and A&R LLC Agreement and delivered them simultaneously with the purported notice of intent, effectively treating the notice condition as a nullity. Using a discretionary remedy in a manner that evades express notice conditions is, at minimum, unreasonable and frustrates Plaintiff's justified expectations under the Credit Documents.

139. Defendants acted to evade the notice requirements, for amongst other reasons, to deny Plaintiff of its justified expectations, including its right to cure any alleged default and to prevent Debtors from seeking protection under the United States Bankruptcy Code. Defendants intent in this regard is obvious from the timing of its actions, on a holiday where Plaintiff practically could not address the action and on the cusp of Plaintiff making a proposal to the

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administrative agent. Defendants then secretly acted to reconstitute the board of directors and amend the Debtors' governing documents, to furth deny Plaintiff the contractual right to cure or otherwise address the alleged default. This was again done with the express intent to deprive Plaintiff of its justified expectations and rights under the Credit Agreement.

140. As a direct and foreseeable consequence, Plaintiff (i) was prevented from exercising its voting rights and managerial control over Holdings; (ii) lost the practical ability to present and implement a cure; (iii) incurred disruption and expense in addressing the Agent's defective actions.

141. The Administrative Agent's and the other Defendants' conduct described herein, including its exercise of remedies under the Pledge Agreement, constitutes a breach of the Implied Covenant of Good Faith and Fair Dealing.

IX.
PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests relief as follows:

1. For a declaration of rights that:

i. The Administrative Agent's purported exercise of remedies detailed herein above under the Pledge Agreement and Credit Agreement in respect to the Holdings Interests are null and void;

ii. That Section 4.2 of the Pledge Agreement is subject to the New York Uniform Commercial code and that Defendants' action prior to providing notice is manifestly unreasonable and proscribed by Section 9-603 of the New York Uniform Commercial Code; and

iii. That the Holdings Interests are property of Plaintiff's bankruptcy estate.

iv. That this Court, pursuant to section 362 of the Bankruptcy Code, issue an order enforcing the automatic stay as to the Administrative Agent's and the other Defendants' attempts to exercise control of the Holding's Interests.

2. That that this Court, to the extent it determines that the automatic stay does not apply, exercise its broad discretionary powers under section 105 of the Bankruptcy Code and preliminary and permanently enjoin the Administrative Agent and the other Defendants from

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exercising remedies to exercise control of the Holding's Interests.

3. For an award of attorneys fees and costs.

4. For such further relief the Bankruptcy Court finds just and proper.

Dated this 29th day of September 2025.

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