WINSTON & STRAWN LLP
Daniel J. McGuire (*pro hac vice pending*)
35 West Wacker Drive
Chicago, Illinois 60601-9703
Telephone: (312) 558-5600
Facsimile: (312) 558-5700
Email: dmcguire@winston.com

Gregory M. Gartland
200 Park Avenue
New York, New York 10166-4193
Telephone: (212) 294-6700
Facsimile: (212) 294-4700
Email: ggartland@winston.com
Attorneys for Allerton Funding, LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, *et al.*[1]	)	Case No. 17-10466 (SCC)
	)	(Jointly Administered)
Debtors.	)	Related Dkt Nos. 3, 22, 48 and 69

ALLERTON FUNDING, LLC'S LIMITED OBJECTION TO DEBTORS' MOTION FOR ENTRY OF A FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION LENDERS, (V) MODIFYING THE AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: BCBG Max Azria Global Holdings, LLC (6857); BCBG Max Azria Group, LLC (5942); BCBG Max Azria Intermediate Holdings, LLC (3673); Max Rave, LLC (9200); and MLA Multibrand Holdings, LLC (3854). The location of the Debtors' service address is: 2761 Fruitland Avenue, Vernon, California 90058.

Allerton Funding, LLC ("Allerton" or the "New Tranche A Lender"), hereby objects (this "Objection") to the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 22] (the "DIP Motion"[2]). In support of its Objection, Allerton respectfully states as follows:

I. Summary of Objection

1. Allerton does not object to the Debtors' obtaining DIP financing, the amount of such financing or the general terms set forth in the DIP Motion. Allerton's sole objection to the DIP Motion is that it primes the New Tranche A Loans held by Allerton.

2. Allerton is a prepetition secured lender, having funded 100% of the Debtors' New Tranche A Loans, which, as among the Debtors' prepetition term loans are subordinated in right of payment to $35 million in Tranche A Loans (see paragraph 11, *infra*). The DIP Motion seeks to prime Allerton without providing Allerton adequate protection, increasing the amount by which it is subordinated from $35 million to *$80 million*. The Debtors claim they do not have to provide Allerton adequate protection, because all secured lenders consent to the DIP financing (*See* DIP Motion ¶¶42-43). This is simply not accurate: Allerton has not consented to being primed.

3. It is not a surprise that the Tranche A lenders and Tranche B lenders consent to the DIP Motion; they are funding (and primarily benefiting from) the DIP loans. The DIP Motion absolutely fails in seeking to prime Allerton without its consent, without providing Allerton with adequate protection, and without any evidence of the value of Allerton's collateral or of the

[2] Capitalized terms used but not defined herein have the meaning given to it in the Motion.

existence of an equity cushion. To the contrary, the Debtors' state they believe no equity cushion exists. *See* Finger Declaration at ¶19 [Docket No. 48].

4. Allerton agrees with the Debtors. Allerton estimates the value of the Debtors' intellectual property, the Term Lenders' primary collateral, is approximately $100 million. As of the Petition Date, the Tranche A Loans and the New Tranche A Loans aggregated approximately $87.5 million (see paragraph 11, *infra*), leaving Allerton with an equity cushion of approximately $12.5 million. The interim DIP order permitted $15 million of priming DIP loans, thereby erasing any equity cushion which existed at the Petition Date.

5. By virtue of the interim DIP order, Allerton has been changed from a fully secured creditor to one potentially at risk of being undersecured. Worse, the Debtors now propose to layer an additional $30 million in priming DIP loans on top of Allerton, without Allerton's consent or providing any adequate protection.

6. The Court needs evidence to determine whether any equity cushion exists now and after increasing the DIP as contemplated by the final order, and whether that equity cushion is ample enough for the Court to approve the extreme relief requested in the DIP Motion. None of that evidence has been presented, or even suggested to exist.

7. Unless and until that occurs, further priming loans under the DIP Motion must be denied.

II. Background

A. The Prepetition Term Loans

8. Allerton funded the New Tranche A Loans in August 2016. The New Tranche A Loans constitute a "sandwich" tranche of term loans, resting in priority between the Tranche A Loans and the Tranche B Loans, as is accurately described in paragraph 34 of Mr. Etlin's

declaration in support of the first day motions [Docket No. 3]. All of these loans are secured by the same collateral.

9. Unlike the New Tranche A Loans, the Tranche A Loans and Tranche B Loans are funded or controlled by affiliates of Guggenheim Partners Investment Management ("GPIM"), who through its network of affiliates hold, directly and indirectly, 80% of the Debtors' common equity. Thus, of the key prepetition parties in interest, GPIM controls and economically benefits from, directly or indirectly, all parties other than the New Tranche A Lenders.

10. The prepetition loans are a typical split lien structure: the term loans are collectively secured by a first priority lien on all of the Debtors' "fixed" assets, most notably, the Debtors' intellectual property, and a second priority lien on the ABL Lenders' primary collateral, the Debtors' current assets (accounts receivable, inventory, deposit accounts, security accounts, cash and cash equivalents).

11. Term debt as of the petition date is approximately $377 million, summarized as follows:[3]

Term Loan	Priority	Amount Outstanding	Lender
Tranche A Term Loan	First	$35,000,000	GPIM
Tranche A-1 Term Loan	Second	$4,200,000	Allerton
Tranche A-2 Term Loan	Second	$48,500,000	Allerton
Tranche A-3 Term Loan	Second	$0.00	Allerton
Tranche B Term Loan	Third	$289,400,000	GPIM

12. The Debtors do not dispute that the Tranche B Term Loans are junior to term loans the Debtors seek to prime; Ms. Etlin's declaration in support of the DIP Motion describes this priority accurately. *See* Etlin Declaration at ¶34.

[3] As amongst each other, the Tranche A-1, A-2 and A-3 loans are pari passu.

13. The Prepetition Term Loan Agreement includes "intercreditor" type provisions as amongst the three term tranches; this language permits the Tranche B Term Loan to support a DIP if such DIP has the consent of either the Existing Tranche A lenders or the New Tranche A Lenders, but does not include language by which the New Tranche A Lenders consent to being primed or agree to support any DIP terms.[4] In other words, the New Tranche A Lenders did not contractually consent to the relief requested in the DIP Motion.

B. The Proposed DIP Loans

14. The Debtors seek final approval of (i) $77,500,000 DIP ABL Credit Facilities and (ii) an $80 million DIP Term Loan. The DIP Term Loans will see $45 million in new money funded by the Tranche A lenders and the Tranche B lenders. $35 million of the Existing Tranche A Loans are to rollup into the ABL DIP upon entry of the final order.

15. The New Tranche A Lender is not funding any portion of the DIP and is not party to any of the DIP agreements.

[4] The relevant "intercreditor" language is as follows:

> Bankruptcy Matters: Until the Tranche A Discharge Date has occurred, the Tranche B Lenders hereby agree not to propose, support, pursue, vote to accept or consent to: (i) any DIP Financing or any agreement regarding the use of Cash Collateral that (x) not supported by the Existing Tranche A Requisite Lenders or the New Tranche A Requisite Lenders or (y) fails to provide for Tranche A Loan Payment In Full upon the approval thereof (it being understood that to the extent the Liens securing the Obligations in respect of the Existing Tranche A Loans or the New Tranche A Loans are subordinated to or are *pari passu* with such use of Cash Collateral or DIP Financing, the Tranche B Lenders will subordinate their Liens in the Collateral to the Liens securing such usage of Cash Collateral or DIP Financing) or (ii) any plan of reorganization that that does not effectuate Tranche A Loan Payment In Full upon emergence.

Prepetition Term Loan Agreement, Annex II

16. The Term DIP Loan, by its terms, is contingent on the Debtors receiving the consent of the Existing Tranche A Requisite Term Lenders (as defined in the Prepetition Term Loan Agreement[5]) and at least 50.1% of the Prepetition Term Lenders. *See* Section 3.1(k) of the Term DIP Credit Agreement. These consents mathematically or by definition exclude the New Tranche A Lender, and require only the approval of GPIM, which itself is funding the entirety of the DIP Term Loans and will see much of their pre-petition exposure rolled up into the DIP facilities. Their recovery of such amounts is almost assured.

17. The Debtors have expressly acknowledged that they are unable to illustrate any equity cushion can be shown on a priming DIP loan:

> Given the Debtors' high level of existing secured debt obligations and significant operating cash flow losses, the Debtors could not provide evidence or certainty of a sufficient equity cushion to allow for debtor-in-possession financing that would prime existing lenders' liens over their objections.

Finger Declaration at ¶19

18. Nowhere in the prepetition loan documents have the New Tranche A Lenders delegated their right to vote, or consented to be bound by the vote of, any other Prepetition Lender.

19. The New Tranche A Lender does not consent to being primed by the DIP.

III. Objection

20. The DIP loans benefit the Tranche B Lenders at the expense of the New Tranche A Lender. The reason for this is apparent. At the Petition Date, the Tranche A Loans and the New

[5] That definition is as follows; 100% of such the Existing Tranche A Loans are controlled by Guggenheim Partners; the New Tranche A Loans funded by Allerton are excluded from this definition:

> **"Existing Tranche A Requisite Lenders"** means one or more Existing Tranche A Lenders having or holding Existing Tranche A Loans representing more than 50% of the aggregate Existing Tranche A Loans of all Existing Tranche A Lenders.

Prepetition Term Loan Agreement, p. 16

Tranche A Loans were fully secured under every conceivable scenario, including a liquidation. In a liquidation, he value of the Debtors' IP is estimated to be more than enough to satisfy the Tranche A Loans and the New Tranche A Loans. The Tranche B Lenders, on the other hand, are expected to recover almost nothing[6]:

Term Loan	Priority	Amount Outstanding	Recovery %
Tranche A Term Loan	First	$35,000,000	100%
Tranche A-1 Term Loan	Second	$4,200,000	100%
Tranche A-2 Term Loan	Second	$48,500,000	100%
Tranche A-3 Term Loan	Second	$0.00	N/A
Tranche B Term Loan	Third	$289,400,000	4.25%

21. Given these expected recoveries, the Tranche B Lenders' greatest chance for enhancing their recovery is to preserve the going concern value of the IP collateral and identify a buyer who will pay a higher price for the Debtors as a going concern. That is a fine strategy, but the Tranche B Lenders should not be permitted to use this Court to explore this strategy at Allerton's expense. The DIP Motion would accomplish this, potentially crushing the recoveries of the New Tranche A Lender in the process in exchange for a minor investment by the Tranche B Lenders[7]:

Term Loan	Priority	Amount	Recovery %	Change
DIP Loan	First	$80 million	100%[8]	N/A
Tranche A Term Loan	Second	$0 (rolled to DIP)	N/A	No change
Tranche A-1 Term Loan	Third	$4,200,000	38%	(62%)
Tranche A-2 Term Loan	Third	$48,500,000	38%	(62%)
Tranche A-3 Term Loan	Third	$0.00	N/A	

[6] Calculations in this chart are based on petition date debt balances and projected recoveries of $100,000,000 in aggregate recoveries, without any DIP financing.

[7] Calculations in this chart are based on petition date debt balances and projected recoveries of $100,000,000 in aggregate recoveries, with $45 million in DIP financing and priming of the New Tranche A Loans.

[8] DIP funded by Tranche A lenders and Tranche B lenders.

Tranche B Term Loan	Fourth	$289,400,000	0%	(4.25%)

22. As shown in the above chart, the value of the intellectual property dictates that the DIP loan is not at risk. Instead, in exchange for the modest investment of risking a potential 4.25% liquidation recovery, the Tranche B lenders receive the ability to potentially enhance that minor liquidation recovery, at the expense of the New Tranche A Lender.

23. Allerton is undisputedly a secured creditor, with liens on substantially all of the Debtors' assets. *See generally*, DIP Motion ¶¶18-26; Etlin Declaration ¶¶33-44. As a secured creditor, Allerton is entitled to adequate protection if it is primed:

> The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on the property of the estate that is [already] subject to a lien only if –
> (A) The trustee is unable to obtain such credit otherwise; and
> (B) There is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. §364(d)(1)

24. In seeking to prime the New Tranche A Loans, the Debtors have the burden of establishing that Allerton is adequately protected. 11 U.S.C. §364(d)(2). The Code sets forth the means to provide Allerton with the adequate protection it is due:

> …. [A]dequate protection may be provided by—
> (1) … a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;
> (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or
> (3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an

> administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.
> 11 U.S.C. §361

25. Each of these alternatives rely on the value of Allerton's collateral. Absent the Debtors showing a substantial equity cushion exists (which, it is acknowledged, they cannot), the Debtors cannot show that the New Tranche A Lenders are adequately protected, and the Court cannot approve the DIP loans to the extent they prime the New Tranche A Lender. *See In re YL West 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) ("The exist[ence] of an equity cushion seems to be the preferred test in determining whether priming of a senior lien is appropriate under section 364.") (internal quotations omitted); *Wilmington Trust Co. v. AMR Corp.* (*In re AMR Corp.*), 490 B.R. 470, 478 (S.D.N.Y. 2013) ("[T]he existence of an equity cushion can be sufficient, in and of itself, to constitute adequate protection.") Absent a clear and sizeable equity cushion, the DIP proposals contemplated by the final order cannot be approved. *See In re James River Assocs.*, 148 B.R. 790, 796 (E.D. Va. 1992) ("Case law has almost uniformly held that an equity cushion of 20% or more constitutes adequate protection … Case law has almost as uniformly held that an equity cushion under 11% is insufficient to constitute adequate protection … Case law is divided on whether a cushion of 12% to 20% constitutes adequate protection …"); *In re McKillips*, 81 B.R. 454, 458 (Bankr. N.D. Ill. 1987) (same).

26. If the Debtors continue to seek to prime Allerton, the Debtors should be required to demonstrate to this Court the value of the Debtors' assets and the existence of a sufficient equity cushion.

27. The DIP Motion should be denied to the extent it primes Allerton without an adequate equity cushion, and any priming DIP loans approved by the Court should be limited to

that amount through which Allerton is clearly adequately protected pursuant to a significant equity cushion.

WHEREFORE, Allerton respectfully requests that the Court (i) deny the DIP Motion to the extent it seeks to prime the New Tranche A Loans and (ii) grant such other relief as the Court may deem proper.

Dated: March 21, 2017

Respectfully submitted,

/s/ Daniel J. McGuire

Daniel J. McGuire (pro hac vice pending)
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601-9703
Telephone: (312) 558-6154
Facsimile: (312) 558-5700
Email: dmcguire@winston.com

-and-

Gregory M. Gartland
200 Park Avenue
New York, NY 10166-4193
Telephone: (212) 294-2693
Facsimile: (212) 294-4700
Email: ggartland@winston.com

Counsel to Allerton Funding, LLC