

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

**EAST WEST BANK, a California
corporation,**

Plaintiff,

**MONROE CAPITAL PARTNERS FUND
LP, a Delaware limited partnership,**

Defendant.

JURY TRIAL DEMANDED

Case No. _____

**2018CH03301
CALENDAR/ROOM 13
TIME 00:00
General Chancery**

COMPLAINT

PLAINTIFF EAST WEST BANK, a California corporation ("Bank"), for its Complaint ("Complaint") against **MONROE CAPITAL PARTNERS FUND LP** ("Monroe"), alleges as follows:

INTRODUCTION

1. Defendant Monroe is what is known as an administrative agent under a syndicated credit agreement pursuant to which Bank and Monroe, as lenders, lent, and are now owed, in excess of \$34,500,000 by a borrower, which amounts were to be paid in full by December 31, 2017, but remain unpaid. Monroe, in its capacity as administrative agent is required to administer the credit agreement and collect the amounts now past due. Bank is informed and believes and thereon alleges that Monroe holds a direct, substantial majority equity interest in the borrower's parent holding company and, thereby, an indirect, substantial majority equity interest in the borrower, and for that reason, refuses to take any action to enforce the credit agreement and collect the substantial amounts due thereunder.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter as this Complaint derives from the Defendant Monroe's transaction of business in Illinois. In addition, pursuant to Section 15.19 of the Credit Agreement (as that term is hereinafter defined), Defendant Monroe agreed that any litigation arising out of, under or in connection with the Credit Agreement "SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS"

3. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 because the Defendant Monroe conducts business in Cook County, Illinois and/or maintains its principal place of business in Cook County, Illinois. In addition, venue is proper in this Court pursuant to Section 15.19 of the Credit Agreement in which Defendant Monroe contractually agreed to be subject to venue in this district.

THE PARTIES

4. At all times mentioned, Bank was, and now is, a California banking corporation authorized to do business in the State of California:

5. Bank is informed and believes and thereon alleges that Defendant Monroe is a Delaware limited partnership organized and existing under the laws of the State of Delaware with its principal place of business located at 311 South Wacker Drive, Suite 6400, Chicago, Illinois 60606.

FACTS COMMON TO ALL COUNTS

6. All capitalized terms not otherwise defined in this Complaint shall have the meanings ascribed to them in the Credit Agreement.

7. Bank, as Lender, Monroe, as Lender and Administrative Agent, and Evergreen Maintenance Center, Inc., now known as Marana Aerospace Solutions, Inc. ("Borrower"), et al., executed that certain Credit Agreement dated as of May 27, 2011, a true and correct copy of which is attached hereto as Exhibit 1 and incorporated herein by this reference as though set forth in full ("Original Credit Agreement").

8. Borrower executed that certain Revolving Loan Note in the principal amount of \$5,000,000.00 dated May 27, 2011, in favor of Bank as Lender ("Revolving Loan Note"), a true and correct copy of which is attached hereto as Exhibit 2, and that certain Term Loan Note in the principal amount of \$12,085,500.00 dated May 27, 2011, in favor of Bank as Lender ("Bank Closing Date Term Loan Note"), a true and correct copy of which is attached hereto as Exhibit 3. In addition, Borrower executed that certain Term Loan Note in the principal amount of \$11,364,500.00 dated May 27, 2011, in favor of Monroe as Lender ("Monroe Closing Date Term Loan Note"), a true and correct copy of which is attached hereto as Exhibit 4.

9. Pursuant to the terms of the Original Credit Agreement, Monroe was appointed as Administrative Agent, as more specifically set forth in Section 14 thereof.

10. Bank as Lender and Monroe as Lender and Administrative Agent executed that certain Agreement Among Lenders as of May 27, 2011 ("Agreement Among Lenders"), a true and correct copy of which is attached hereto as Exhibit 5.

11. Borrower, Bank as Lender, and Monroe as Lender and Administrative Agent, et al., executed that First Amendment to Credit Agreement and Limited Waiver and Consent Agreement as of January 20, 2012 ("First Amendment"), a true and correct copy of which is attached hereto as Exhibit 6.

12. Borrower, Bank as Lender, and Monroe as Lender and Administrative Agent, et al., executed that Limited Waiver and Second Amendment as of October 5, 2012 ("Second Amendment"), a true and correct copy of which is attached hereto as Exhibit 7.

13. Bank as Lender and Monroe as Lender and Administrative Agent executed that certain First Amendment and Reaffirmation to Agreement Among Lenders as of October 5, 2012 ("Reaffirmation"), a true and correct copy of which is attached hereto as Exhibit 8.

14. Borrower executed that certain Amended and Restated Closing Date Term Loan Note in the principal amount of \$12,085,500.00 dated October 5, 2012 ("Bank Amended and Restated Closing Date Term Loan Note"), in favor of Bank as Lender, a true and correct copy of which is attached hereto as Exhibit 9, which amended and restated the Bank Closing Date Term Loan Note. In addition, Borrower executed that certain Amended and Restated Closing Date Term Loan Note in the principal amount of \$11,364,500.00 dated October 5, 2012 ("Monroe Amended and Restated Closing Date Term Loan Note"), in favor of Monroe as Lender, a true and correct copy of which is attached hereto as Exhibit 10, which amended and restated the Monroe Closing Date Term Loan Note.

15. Borrower executed that certain Incremental Term Loan Note in the principal amount of \$1,000,000.00 dated October 5, 2012 ("Incremental Term Loan Note"), in favor of Monroe as Lender, a true and correct copy of which is attached hereto as Exhibit 11.

16. Borrower executed that certain Line of Credit Loan Note in the principal amount of \$1,500,000.00 dated October 5, 2012 ("Line of Credit Loan Note"), in favor of Monroe as Lender, a true and correct copy of which is attached hereto as Exhibit 12.

17. Monroe as Lender and Administrative Agent and Bank as Lender executed that certain Second Amendment and Reaffirmation to Agreement Among Lenders as of August 30, 2013 ("Second Reaffirmation"), a true and correct copy of which is attached hereto as Exhibit 13.

18. Borrower, Bank as Lender, and Monroe as Lender and Administrative Agent, et al., executed that certain Limited Waiver and Third Amendment as of August 30, 2013 ("Third Amendment"), a true and correct copy of which is attached hereto as Exhibit 14.

19. Borrower, Bank as Lender, and Monroe as Lender and Administrative Agent, et al., executed that certain Fourth Amendment as of January 21, 2014 ("Fourth Amendment"), a true and correct copy of which is attached hereto as Exhibit 15.

20. Borrower, Bank as Lender, and Monroe as Lender and Administrative Agent, et al., executed that certain Fifth Amendment to Credit Agreement as of February 26, 2014 ("Fifth Amendment"), a true and correct copy of which is attached hereto as Exhibit 16.

21. Borrower, Bank as Lender, and Monroe as Lender and Administrative Agent, et al., executed that certain Sixth Amendment to Credit Agreement as of August 18, 2014 ("Sixth Amendment"), a true and correct copy of which is attached hereto as Exhibit 17.

22. Borrower, Bank as Lender, and Monroe as Lender and Administrative Agent, et al., executed that certain Seventh Amendment to Credit Agreement as of October 24, 2014 ("Seventh Amendment"), a true and correct copy of which is attached hereto as Exhibit 18.

23. Borrower, Bank as Lender, and Monroe as Lender and Administrative Agent, et al., executed that certain Eighth Amendment to Credit Agreement as of May 5, 2015 ("Eighth Amendment"), a true and correct copy of which is attached hereto as Exhibit 19.

24. Borrower, Bank as Lender, and Monroe as Lender and Administrative Agent, et al., executed that certain Ninth Amendment to Credit Agreement as of November 19, 2015 ("Ninth Amendment"), a true and correct copy of which is attached hereto as Exhibit 20.

25. Borrower, Bank as Lender, and Monroe as Lender and Administrative Agent, et al., executed that certain Tenth Amendment to Credit Agreement as of May 5, 2016 ("Tenth Amendment"), a true and correct copy of which is attached hereto as Exhibit 21.

26. Borrower executed that certain Additional Term Loan Note in the principal amount of \$756,000.00 dated January 30, 2014 ("Additional Term Loan Note") in favor of Monroe as Lender. Subsequently, Borrower executed a series of amendments and restatements of the Additional Term Loan Note and those amended and restated notes, culminating in Borrower executing that certain Tenth Amended and Restated Additional Term Loan Note in the principal amount of \$6,410,233.56 dated May 5, 2016 ("Tenth Amended and Restated Additional Term Loan Note") in favor of Monroe as Lender, a true and correct copy of which is attached hereto as Exhibit 22.

27. Borrower, Bank as Lender, and Monroe as Lender and Administrative Agent, et al., executed that certain Eleventh Amendment to Credit Agreement as of December 12, 2016 ("Eleventh Amendment"), a true and correct copy of which is attached hereto as Exhibit 23.

28. Borrower, Bank as Lender, and Monroe as Lender and Administrative Agent, et al., executed that certain Twelfth Amendment to Credit Agreement as of May 26, 2017 ("Twelfth Amendment"), a true and correct copy of which is attached hereto as Exhibit 24.

29. Borrower, Bank as Lender, and Monroe as Lender and Administrative Agent, et al., executed that certain Thirteenth Amendment to Credit Agreement as of July 31, 2017 ("Thirteenth Amendment"), a true and correct copy of which is attached hereto as Exhibit 25.

30. Borrower, Bank as Lender, and Monroe as Lender and Administrative Agent, et al., executed that certain Fourteenth Amendment to Credit Agreement as of September 29, 2017 ("Fourteenth Amendment"), a true and correct copy of which is attached hereto as Exhibit 26.

31. The Original Credit Agreement, Agreement Among Lenders, First Amendment, Second Amendment, Reaffirmation, Second Reaffirmation, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, Seventh Amendment, Eighth Amendment, Ninth Amendment, Tenth Amendment, Eleventh Amendment, Twelfth Amendment, Thirteenth Amendment, and Fourteenth Amendment are hereinafter collectively referred to as the "Credit Agreement". The Revolving Loan Note, Bank Amended and Restated Closing Date Term Loan Note, Monroe Amended and Restated Closing Date Term Loan Note, Incremental Term Loan Note, Line of Credit Loan Note, Tenth Amended and Restated Additional Term Loan Note, and all documents and instruments executed in connection therewith, along with the Credit Agreement, are hereinafter collectively referred to as the "Loan Documents".

32. As of February 1, 2018, the outstanding obligations due and owing by the Borrower to the Bank pursuant to the Revolving Loan Note were the principal sum of \$3,950,000.00 plus accrued and unpaid interest as provided for in Section 4.1 of the Credit Agreement, plus attorneys' fees and costs.

33. As of February 1, 2018, the outstanding obligations due and owing by the Borrower to the Bank pursuant to the Bank Amended and Restated Closing Date Term Loan Note were the principal sum of \$10,292,375.00 plus accrued and unpaid interest as provided for in Section 4.1 of the Credit Agreement, plus attorneys' fees and costs.

34. The Bank is informed and believes and thereon alleges that the outstanding obligations due and owing by the Borrower to Monroe were as follows: (i) the principal sum of

\$11,364,500.00 pursuant to the Monroe Amended and Restated Closing Date Term Loan Note plus accrued interest (including pay-in-kind interest) at the rate set forth in Section 4.1 of the Credit Agreement, plus attorneys' fees and costs, (ii) the principal sum of \$1,500,000.00 pursuant to the Line of Credit Loan Note plus accrued interest (including pay-in-kind interest) at the rate set forth in Section 4.1 of the Credit Agreement, plus attorneys' fees and costs, (iii) the principal sum of \$1,000,000.00 pursuant to the Incremental Term Loan Note plus accrued interest (including pay-in-kind interest) at the rate set forth in Section 4.1 of the Credit Agreement, and (iv) the principal sum of \$6,410,233.56 pursuant to the Tenth Amended and Restated Additional Term Loan Note plus accrued interest (including pay-in-kind interest) at the rate set forth in Section 4.1 of the Credit Agreement, plus attorneys' fees and costs.

35. Section 13.2 of the Credit Agreement provides as follows:

13.2 Effect of Event of Default. If any Event of Default described in Section 13.1.4 shall occur in respect of Borrower, the Commitments shall immediately terminate and the Loans and all other Obligations hereunder shall become immediately due and payable and Borrower shall become immediately obligated to Cash Collateralize all Letters of Credit, all without presentment, demand, protest or notice of any kind; and, if any other Event of Default shall occur and be continuing, **Administrative Agent may** (and, upon the written request of the Required Lenders shall) declare, in a written notice to Borrower Representative, the Commitments to be terminated in whole or in part and/or declare all or any part of the Loans and all other Obligations hereunder to be due and payable and/or demand that Borrower immediately Cash Collateralize all or any Letters of Credit, whereupon the Commitments shall immediately terminate (or be reduced, as applicable) and/or the Loans and other Obligations hereunder shall become immediately due and payable (in whole or in part, as applicable) and/or Borrower shall immediately become obligated to Cash Collateralize the Letters of Credit (all or any, as applicable), all without presentment, demand, protest or notice of any kind (other than as expressly provided for above in this sentence). Administrative Agent shall promptly advise Borrower of any such declaration, but failure to do so shall not impair the effect of such declaration. Any cash collateral delivered hereunder shall be held by Administrative Agent (without liability for interest thereon) and applied to the Obligations arising in connection with any drawing under a Letter of Credit. After the expiration or termination of all Letters of Credit, such cash collateral shall be applied by Administrative Agent to any remaining Obligations hereunder and any excess shall be delivered to Borrower or as a court of competent jurisdiction may elect. (Emphasis added.)

36. Further, Section 14.6 of the Credit Agreement provides as follows:

14.6 Notice of Default. Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or Default **except with respect to defaults in the payment of principal, interest and fees required to be paid to Administrative Agent for the account of the Lenders**, unless Administrative Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Event of Default or Default and stating that such notice is a "notice of default". Administrative Agent will notify the Lenders of its receipt of any such notice. Administrative Agent shall take such action with respect to such Event of Default or Default as may be requested by the Required Lenders in accordance with Section 13; provided that unless and until Administrative Agent has received any such request, **Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default or Default as it shall deem advisable or in the best interest of the Lenders.** (Emphasis added.)

37. Bank is informed and believes and thereon alleges that Borrower failed to pay the monthly payments of interest required to be paid to Administrative Agent on the Closing Date Term Loans on September 30, 2017, October 31, 2017, November 30, 2017, and December 29, 2017.

38. The failure of Borrower to pay the first of those payments to Administrative Agent more than five days from the date that payment was payable was an Event of Default under Section 13.1.1 of the Credit Agreement. The successive failures of Borrower to pay the second and the third of those payments to Administrative Agent more than five days from the respective due dates thereof were further Events of Default under Section 13.1.1 of the Credit Agreement.

39. Consequently, pursuant to Section 4.1 of the Credit Agreement, the interest rate applicable to each Loan (other than Deferred Obligations), including the Closing Date Term Loans and the Revolving Loans, was automatically increased by 2% (for any Loan (other than Deferred Obligations), the otherwise applicable rate of interest with respect thereto plus that 2% increase, the "Applicable Default Rate") from and after October 6, 2017, as a result of the occurrence and continuance of those Events of Default.

40. Bank is informed and believes and thereon alleges that Administrative Agent has failed to accrue interest at the Applicable Default Rate as automatically provided for by Section 4.1 of the Credit Agreement on the Closing Date Term Loans and the Revolving Loans and has failed to give Borrower any notice that these Events of Default have occurred or that the Applicable Default Rate is now and has since October 7, 2017, been in effect.

41. December 31, 2017 was the Termination Date of the Revolving Loans and the Term Loan Maturity Date of the Closing Date Term Loans, and the Borrower has failed to pay all amounts due and owing to the Lenders pursuant to the Revolving Loans and the Closing Date Term Loans notwithstanding the occurrence of the Termination Date. Bank has not received any communications from Monroe as Administrative Agent with respect to its intentions to obtain payment of the Revolving Loans and the Closing Date Term Loans and other amounts due and owing by Borrower to Bank pursuant to the Loan Documents, and Bank is informed and believes and thereon alleges that Monroe as Administrative Agent has no present intention to take any actions to obtain payment of the Revolving Loans, the Closing Date Term Loans, and other amounts due and owing under the Loan Documents.

42. To date, Monroe as Administrative Agent has failed, notwithstanding the discretion available to it under the Credit Agreement, to send payment demand letters or even reservation of rights letters to Borrower in connection with the various defaults alleged in paragraphs 37 and 41 supra. Further, Monroe as Administrative Agent has failed, notwithstanding the discretion available to it under the Credit Agreement, to send a letter to Borrower advising it of the occurrence of the December 31, 2017, Termination Date of the Revolving Loans and the Term Loan Maturity Date of the Closing Date Term Loans and reserving all rights available to the Administrative Agent under the Credit Agreement, and has

also failed to take any steps to obtain payment of the Revolving Loans and Closing Date Term Loans and other amounts due and owing under the Loan Documents.

43. The failure of Monroe as Administrative Agent to take any enforcement action in connection with the December 31, 2017, Termination Date of the Revolving Loans and the Term Loan Maturity Date of the Closing Date Term Loans is, as to Bank, a de facto extension of these dates, or a de facto amendment, modification, or waiver of these provisions of the Credit Agreement, for which Bank's consent is required under Section 15.1 of the Credit Agreement, which consent Bank has not provided, and as a result of which the Administrative Agent has breached the Credit Agreement.

44. Bank is informed and believes and thereon alleges that Monroe, in addition to being a Lender and Administrative Agent, is also a direct, majority (approximately 80%) equity owner of Marana Holdco, Inc., a Delaware corporation ("Holdco"), which owns 100% of the equity in both Borrower and another aviation services-company and is a guarantor of Borrower's obligations under the Loan Documents, and, as a result of that equity ownership interest in Holdco, Monroe owns a substantial, indirect, majority equity interest in Borrower and has conflicting interests between its position as an equity owner and its position as a Lender and as Administrative Agent. Bank is informed and believes and thereon alleges that the reason Monroe as Administrative Agent has not taken any action to enforce the Loan Documents as a result of the defaults alleged in paragraphs 37 and 41 supra to obtain prompt repayment of the amounts due and owing to the Bank by the Borrower, or even to protect the rights of Lenders in respect thereof, is because Monroe is protecting its own interest as equity owner of Borrower and Holdco as guarantor of Borrower's obligations under the Loan Documents to the detriment of interest of Bank as a Lender.

COUNT I – DECLARATORY RELIEF

45. Bank repeats and realleges the allegations contained in paragraphs 1 through 44, inclusive, as if fully set forth herein.

46. An actual controversy has arisen and now exists between Bank, on the one hand, as Lender, and Monroe as Administrative Agent, on the other hand, concerning their respective rights under the Credit Agreement and the duties imposed on Monroe as Administrative Agent under the Credit Agreement.

47. Bank contends that Monroe's failure as Administrative Agent (i) to take any action to enforce the terms of the Loan Documents subsequent to the December 31, 2017, Termination Date of the Revolving Loans and the Term Loan Maturity Date of the Closing Date Term Loans; or (ii) to send reservation of rights letters and payment demand letters to Borrower in connection with the various defaults alleged in paragraphs 37 and 41 supra is grossly negligent or is willful misconduct, and therefore the exculpatory provisions of Section 14.4 of the Credit Agreement do not apply to Monroe as Administrative Agent. Bank is informed and believes and thereon alleges that Monroe as Administrative Agent denies that its administration of the Loan Documents has been grossly negligent or that it has engaged in willful misconduct.

48. An actual controversy has arisen and now exists between Bank, on the one hand, and Monroe as Administrative Agent, on the other hand, with respect to all the foregoing actions and non-actions of Monroe as Administrative Agent.

COUNT II – BREACH OF CONTRACT

49. Bank repeats and realleges the allegations contained in paragraphs 1 through 48, inclusive, as if fully set forth herein.

50. To the extent of Section 14.1 of the Credit Agreement purports to waive the implied covenant of good faith and fair dealing which is present in any contract governed by the

laws of the State of Illinois, it is unenforceable. The implied covenant of good faith and fair dealing requires Monroe as Administrative Agent to exercise the discretionary provisions of Sections 13.2 and 14.6 of the Credit Agreement, as hereinabove alleged, reasonably and with proper motive, not arbitrarily, capriciously, or in a manner inconsistent with reasonable expectations of the Bank as Lender, and Monroe as Administrative Agent.

51. As a result of the actions and non-actions of Monroe as Administrative Agent, as hereinabove alleged, Monroe has breached the Credit Agreement and the implied covenant of good faith and fair dealing and failed to perform its duties as Administrative Agent as set forth thereunder.

52. Bank has been damaged in an amount according to proof to be presented at time of trial or entry of judgment in excess of the jurisdictional minimums of this Court, as a result of the actions and non-actions of Monroe as Administrative Agent as hereinabove alleged.

53. Bank has performed all conditions precedent required to be performed under the Loan Documents.

COUNT 3—ACCOUNTING

54. Bank repeats and realleges the allegations contained in paragraphs 1 through 53, inclusive, as if fully set forth herein.

55. In the alternative, Bank alleges that complex mutual accounts exist between and among Bank and Monroe, and that Bank is in need of discovery regarding these accounts.

56. In the alternative to Count 2, Bank alleges it has no adequate remedy at law and requires an accounting by Monroe, as Administrative Agent, of all of the complex transactions which have taken place between Monroe and the Borrower in order to determine whether or not Monroe has properly exercised its duties as Administrative Agent under the Credit Agreement

and to determine the outstanding obligations owed by Monroe to the Lenders pursuant to the Credit Agreement

PRAYER

WHEREFORE, Bank prays for judgment as follows:

1. On Count I: For a declaration that Monroe as Administrative Agent has been grossly negligent or has engaged in willful misconduct with respect to its actions and non-actions in connection with the administration of the Credit Agreement;
2. On Count II: For damages in amounts to be presented according to proof at the time of trial or entry of judgment;
3. On Count III: For an accounting of all of the complex transactions which have taken place between Monroe as Administrative Agent and the Borrower pursuant to the Credit Agreement and of the outstanding obligations owed by Monroe to the Lenders pursuant to the Credit Agreement; and
4. On Counts I, II and III: For such other and further relief as the Court may deem just and proper.

Dated: March __, 2018

Respectfully submitted,

EAST WEST BANK

By:  One of its attorneys

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Firm No. ~~13471~~ **37472**

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