IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re	:	Chapter 11
LAVIE CARE CENTERS, LLC, *et al.*,	:	Jointly Administered Under Case No. 24-55507-PMB
Debtors.	:	

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POST-PETITION FINANCING AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES, (III) MODIFYING THE AUTOMATIC STAY, (IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF

The Official Committee of Unsecured Creditors (the "Committee") of the above-captioned debtors and debtors-in-possession (the "Debtors"), by and through its proposed undersigned counsel, hereby files this objection (the "Objection") to the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 15] (the "DIP Financing Motion").[1] In support of its Objection, the Committee respectfully states as follows:

[1] Capitalized terms not otherwise defined herein have the meanings set forth in the DIP Financing Motion.

I. PRELIMINARY STATEMENT

1. This bankruptcy is largely about the highly unequal relationship between the Debtors and Omega, their largest landlord and secured lender. Over the past two years, Omega has apparently sold at least 48 properties that had been leased to the Debtors for total consideration of approximately $532.1 million, resulting in a net gain to Omega of over $50 million.[2] These single-use, skilled nursing facility properties would have had little value without the Debtors' going-concern businesses and the Debtors' cooperation in a consensual transition. Omega appears to have used its leverage over the Debtors to sever the properties from the master leases and to cause the Debtors to turn over the entirety of the businesses operated on those properties, including licenses and certificates of need, to Omega's new operators, while leaving all residual liabilities with the Debtors. In fact, as of the commencement of these chapter 11 cases, there is reportedly almost $500 million of unsecured debt and likely no insurance for resident-based litigation claims. Omega reportedly even required the Debtors to allow its new operators to use the Debtors' Medicare provider numbers to obtain payments from CMS, some of whom are still making use of those provider numbers today.

2. Although the Debtors' cooperation resulted in significant additional value in the sale of Omega's real property—value that Omega certainly would *not* have received had it been required instead to foreclose on its purported security interests—it appears that the Debtors received minimal or no consideration from the transactions, yet retained the liabilities discussed above leaving unsecured creditors of the divested Debtors almost entirely unpaid.

[2] *See* Omega Healthcare Investors, Inc. Form 10-K for the Year Ended December 31, 2023, *available at* https://www.omegahealthcare.com/investors/sec-filings/all-sec-filings/content/0000888491-24-000007/ohi-20231231x10k.htm, at pp. 37 and F-23.

3. Omega, along with an apparent affiliate of the Debtors' insiders (the "Insider Lender"),[3] now seeks to provide the Debtors with just barely enough DIP financing to keep the lights on at the Debtors' remaining facilities and preserve the value of Omega's underlying real estate long enough to accomplish a section 363 sale. The unequal relationship between the Debtors and their lender-landlord is clearly reflected in the proposed Final Order, which effectively ensures that Omega's prepetition conduct, including its appropriation of the Debtors' goodwill and going-concern value without consideration, can never seriously be challenged. This would be inappropriate under any circumstances, but is all the more so given that these cases are being run, not for the benefit of unsecured creditors, but rather almost entirely for Omega.

4. The Committee recognizes that every bankruptcy case involving a healthcare institution requires a delicate balancing of interests that include patient health, safety and welfare as well as the rights of creditors. The Committee acknowledges the realities of the Debtors' situation and that they likely require some DIP financing[4] if they are to continue operating in chapter 11. However, the relief requested in the DIP Financing Motion is excessive, inappropriate and designed to limit the path of these cases to a fast-paced sale outcome orchestrated by Omega and the Insider Lender for their exclusive benefit. Indeed, if approved in its current form, the proposed Final Order could effectively foreclose any serious review or consideration of the myriad

[3] The Debtors "have been advised that there is some commonality among the beneficial owners of TIX 33433 LLC, and the Debtors' ultimate parent entity, FC Investors XXI, LLC." DIP Financing Motion at 6, n.3. Despite the Committee's requests, the Debtors have not further elucidated the connections between the principals of TIX 33433 and the Debtors' insiders.

[4] As discussed below, it does not appear that the Debtors need *Omega's* share of the DIP financing at this time, since those funds are simply round-tripped back to Omega in the form of rent payments that the Debtors could, instead, defer until later or at the end of the case.

prepetition transactions or other issues involving Omega or the Debtors' insiders. It would also improperly reallocate unencumbered postpetition value generated in these cases from unsecured creditors to Omega and other secured parties.

5. Omega and other secured parties cannot be permitted to use these cases to further improve their position at the expense of unsecured creditors and possibly leave the estates unable to even fully pay administrative expenses. Accordingly, the Court should condition approval of any DIP financing as discussed below.

II. OBJECTION

A. The proposed stipulations, waivers and releases in favor of Omega and other secured parties in the Final Order are unwarranted and improper.

6. Paragraph E(ix) of the proposed Final Order grants extremely broad releases to Omega, not merely in its role as DIP lender and administrative agent, but as prepetition lender and landlord. It grants similarly broad releases to MidCap in its role as prepetition ABL lender.

7. Nothing in the record indicates that either MidCap or Omega is providing adequate consideration for those releases. The Debtors have not presented any evidence showing that they conducted any serious investigation of potential claims against MidCap or Omega or what the potential value of any such claims may be. The Prepetition Secured Parties are not entitled to sweeping releases of all potential liability merely for use of their cash collateral, as they are already receiving ample adequate protection for any diminution in the value of that collateral. The Committee expects that MidCap is protected by an equity cushion, since the Debtors' receivables alone exceed the amount of MidCap's senior secured claim. Both MidCap and Omega are also receiving ample additional adequate protection under the DIP Order in the form of replacement

liens, superpriority administrative expense claims, and adequate protection payments in the form of interest and/or expense reimbursements. *See* Final Order ¶ 9.

8. Furthermore, the Debtors are using cash collateral in a manner that preserves the value of the Prepetition Secured Parties' collateral, which in and of itself constitutes adequate protection. *See, e.g.*, *In re Salem* Plaza *Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that a secured creditor was adequately protected when cash collateral was used to pay necessary operating expenses); *In re Constable Plaza Assocs., L.P.*, 125 B.R. 98, 105-06 (Bankr. S.D.N.Y. 1991) (authorizing debtor to use cash collateral to operate and maintain office building, thereby protecting secured lender's collateral and existing equity cushion); *In re Pine Lake Village Apartment Co.*, 16 B.R. 750, 756 (Bankr. S.D.N.Y. 1982) ("The protection and maintenance of the plaintiff-mortgagee's collateral . . . clearly ensures that the plaintiff-mortgagee's investment is adequately protected."). Under the circumstances, the Prepetition Secured Parties are fully protected with respect the Debtors' use of their cash collateral; they are not entitled to releases on top of their adequate protection.

9. Nor should Omega be able to buy comprehensive releases of all prepetition liability for the bargain price of a $10 million DIP loan that effectively elevates its postpetition rent claim into a secured claim. *See* Final Order, ¶ E(vii) (stipulating that "[t]he Debtors and their estates have no valid Claims . . . objections, challenges, causes of action, and/or choses in action, including 'lender liability' causes of action, derivative claims, or basis for any equitable relief against any of the . . . DIP Lenders or any of their respective predecessors, affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees with respect to the Prepetition ABL Documents, the Prepetition Omega Term Loan Documents, the Omega Master Lease Documents, the

Prepetition Secured Obligations, the Prepetition Liens, the DIP Loan Documents, the DIP Liens, or otherwise. . . ."). While not termed a "release," this stipulation certainly functions as one by cutting off all estate claims against the DIP lenders or their affiliates, whether related to the DIP Loan Documents, DIP Liens, ***or otherwise***.[5]

10. As noted above, there is no evidence that the Debtors conducted any serious prepetition investigation into potential claims against Omega before bowing to the lender-landlord's demand for releases. And the Committee—which retained its financial advisor just a week ago and its counsel only days before that—has barely begun to scratch the surface of its investigation into Omega's prepetition dealings with the Debtors. There is no foundation on which the Court, at this nascent stage of the case, can determine whether releases in favor of Omega are fair, reasonable and in the best interests of the estates and their creditors. Accordingly, they should not be granted.

11. It is of no moment to argue (as the Debtors surely will) that the releases are subject to a Challenge Period that amounts to less than sixty days. There is no basis to approve the releases in the first place, particularly when the released claims may arise from transactions well beyond any lending relationship.

B. DIP liens and adequate protection liens should not attach to proceeds of avoidance actions or commercial tort claims, nor should superpriority claims be paid from such proceeds.

[5] Counsel for the Insider Lender represented to counsel for the Committee that the Final DIP Order contains no releases of claims against the Insider Lender. Paragraph E(vii) will need to be revised to make clear that no claims against the Insider Lender or any of its affiliates are being waived. Such revisions are particularly important given the lack of clarity around the relationship between the Insider Lender and the Debtors' insiders.

12. The Committee has already identified dozens of prepetition transactions with Omega that require further scrutiny and could potentially give rise to causes of action, including under chapter 5 of the Bankruptcy and tort law, against Omega, the Debtors' insiders and others. Those causes of action were unencumbered on the Petition Date. They should not now be encumbered by liens in favor of the very parties whose conduct may have given rise to the claims.

13. The grant of liens on or superpriority claims against the proceeds of avoidance actions is fundamentally at odds with the unique purposes served by avoidance actions. Avoidance actions are distinct creatures of bankruptcy law designed to benefit, and ensure equality of distribution among, general unsecured creditors. *See Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 244 (3d Cir. 2000), *rev'd en banc*, 330 F.3d 548 (3d Cir. 2003) (identifying underlying intent of avoidance powers to recover valuable assets for estate's benefit); *In re Tribune Co.*, 464 B.R. 126, 171 (Bankr. D. Del. 2011) (noting "that case law permits all unsecured creditors to benefit from avoidance action recoveries").

14. As an important potential source of recovery for general unsecured creditors, the avoidance actions and their proceeds should remain free of any encumbrance and instead should be preserved for the benefit of unsecured creditors. *See, e.g.* , *In re Excel Maritime Carriers, Ltd.*, Case No. 13-23060-RDD, [Dkt. No. 133], at pp. 14 & 16 (Bankr. S.D.N.Y. Aug. 6, 2013) (excluding avoidance actions and proceeds thereof from property that could be used to pay superpriority claims under § 507(b); excluding avoidance actions and proceeds from the scope of adequate protection liens); *In re Hostess Brands, Inc.*, Case No. 12-22052-RDD, [Dkt. No. 254], at pp. 17, 20 & 28-29 (Bankr. S.D.N.Y. Feb. 3, 2012) (same).

15. Commercial tort claims—including causes of action against lenders and statutory and non-statutory insiders—are another important potential source of recovery for general unsecured creditors. The Committee's preliminary investigation indicates that commercial tort claims were unencumbered on the Petition Date. Under UCC § 9-108(e), a description of collateral that purports to create a security interest in commercial tort claims is insufficient unless it describes each tort claim with particularity. The Committee's initial, high-level review of the prepetition security documents has not yet uncovered any such descriptions.

16. If Omega or the Insider Lender is granted liens on commercial tort claims and the proceeds of avoidance actions against themselves and other insiders, the Committee's opportunity to challenge the releases in the Final Order will be rendered meaningless. Such liens themselves would essentially function as releases: it would be an exercise in futility for the Committee to file an adversary proceeding, assert claims and obtain a judgment, just to see the proceeds potentially go on a round-trip right back into the lender-landlord's or insiders' pockets.

17. Given the specific circumstances presented in these cases, **no** commercial tort claims or proceeds of avoidance actions—and most certainly not claims or proceeds of claims against Omega, the Insider Lender or other insiders—should become part of the DIP Collateral.

C. The Court should not foreclose consideration of the "equities of the case" exception at this early stage.

18. The Final Order's proposed ruling that the "equities of the case" exception set forth in § 552(b) does not apply is premature. No one can yet predict what the outcome of the case will be, nor is there any evidence before the Court indicating what equity might warrant.

19. Section 552(b) was enacted to give courts broad discretion "to limit any post-petition security interest in proceeds where the equities of the case demand such a result"—

regardless of whether there has been any direct benefit to the secured creditor's collateral. *In re Topgallant Grp., Inc.*, 1992 WL 12004198, at *5 (Bankr. S.D. Ga. Dec. 23, 1992); *see also In re Village Properties, Ltd.*, 723 F.2d 441, 444 (5th Cir. 1984) (noting that although Congress has the power to restructure state created security interests post-petition, it chose not to exercise it with respect to post-petition proceeds across the board, but "Section 552(b) does permit a bankruptcy judge to deviate from state law 'based on the equities of the case'."); *In re Cross Baking Co., Inc.*, 818 F.2d 1027, 1032–33 (1st Cir. 1987) (explaining that "Section 552(b) states the rule regarding the post-petition treatment of *proceeds* and permits an adjustment of a creditor's security interest in *proceeds* if the equities of the case demand it" and does not permit a court to recognize a security interest in non-proceeds of prepetition collateral) (emphasis in original).

20. It is far too early in these cases for the Court to find (on no record whatsoever) that there is no role here for equitable considerations under § 552(b). This is particularly true with respect to Omega in light of the multiple hats it wears and its involvement in forcing the prepetition transfers of the Debtors' operations without consideration.

21. For the avoidance of doubt, even if the Court were to find it appropriate to preemptively determine that there are no "equities of the case" worth considering here, that does *not* mean that the Prepetition Secured Parties are entitled to all residual value of the Debtors. To the contrary, § 552(b) is only "intended to cover after-acquired property that is ***directly attributable to prepetition collateral***. . . ." *In re Residential Cap., LLC*, 501 B.R. 549, 612 (Bankr. S.D.N.Y. 2013) (internal quotation marks omitted) (emphasis added). In *Rescap*, the court explained:

> [E]ven if JSN Collateral was used to generate goodwill (either by maintaining or improving the value of assets or by diminishing liabilities), Debtor resources were used as well. The Debtors improved the value of the assets sold to Ocwen by negotiating

> settlements with government entities and RMBS Trustees. That involved time, effort, and expense by the Debtors' estates. The Debtors did not merely take some JSN Collateral and convert it into goodwill without any other resources. That means that the goodwill is not the proceeds of JSN Collateral.

Id.; *cf. In re Skagit Pacific Corp., 316 B.R. 330, 336* (B.A.P. 9th Cir. 2004) (secured lender's prepetition lien did not extend to debtor's postpetition labor).

22. Here, similarly, the Debtors are proposing to devote significant estate resources to a going-concern sale, utilizing all of the tools and benefits of chapter 11, to maximize value. Given the substantial number of prepetition property transfers that occurred, the Debtors and Omega knew how to do so outside of bankruptcy. Clearly, we are in chapter 11 now because they wish to benefit from the increased value the 363 process creates. Accordingly, the Committee expressly reserves the right to seek a ruling that any goodwill generated—whether by the efforts of the Debtors or simply by the "premium" afforded by the chapter 11 process itself—is unencumbered[6] because it does not constitute the "proceeds, products, offspring, or profits" of the Prepetition Collateral. That value should remain with the estates and nobody else.

D. The Debtors' decision to borrow $10 million in expensive, secured, superpriority DIP financing from Omega in order to pay administrative rent to Omega on a residential lease warrants additional scrutiny from the Court.

23. Under the proposed DIP budget, the entirety of Omega's $10 million DIP loan (and then some) will be returned to Omega in the form of rent. This has the effect of converting what would otherwise be an ordinary administrative expense claim against the estate into a secured, superpriority claim that accrues interest and fees and requires the Debtors to grant additional

[6] Indeed, though not an issue with respect to the DIP Financing Motion, the Committee believes (and reserves the right to raise, at the appropriate time) that goodwill generated *prepetition* likewise was unencumbered.

protections and liens to Omega that it would not have had otherwise and could trigger a DIP default, permitting foreclosure and effectively ending these cases.

24. This is entirely unnecessary because the Omega Master Lease is not a lease of nonresidential real property, and the requirement imposed by § 365(d)(3) to timely perform the lease obligations is therefore not applicable.

25. Under the majority approach—which has been followed by bankruptcy courts in this district—the determination of whether a leased property is nonresidential focuses on the nature of the leased property itself and whether people reside on such property. *In re PNW Healthcare Holdings, LLC*, 617 B.R. 354, 362 (Bankr. W.D. Wash. 2020) (describing the so-called "Property Test"). Applying the Property Test, the court in *Memory Lane of Bremen* held that senior long-term care facility leases are **not** nonresidential real property leases. *In re Memory Lane of Bremen, LLC*, 535 B.R. 901 (Bankr. N.D. Ga. 2015); *cf. Matter of Terrace Apts., Ltd.*, 107 B.R. 382, 383 (Bankr. N.D. Ga. 1989) (Kahn, Ch. J.) (agreeing that the nature of the property, rather than the nature of the lease, is relevant to determining whether section 365(d)(4) applies and holding that a lease of property upon which the Chapter 11 debtor provided low-cost rental housing was not a lease of nonresidential real property).

26. Numerous other courts have similarly held that leases of senior care facilities are not leases of nonresidential real property, need not be assumed until plan confirmation, and are not subject to timely performance of lease obligations. *See, e.g., PNW Healthcare Holdings*, 617 B.R. at 364; *In re Texas Health Enterprises, Inc.*, 255 B.R. 181 (Bankr. E.D. Tex. 2000); *In re Care Givers, Inc.*, 113 B.R. 263 (Bankr. N.D. Tex. 1989); *In re Indep. Vill., Inc.*, 52 B.R. 715 (Bankr. E.D. Mich. 1985).

27. The Debtors could, if they chose, simply defer the approximately $12 million in rent anticipated to be paid to Omega during the case out of DIP proceeds. Instead, they have elected to borrow $10 million from Omega, plus additional amounts from the Insider Lender, in order to make payments to Omega that the Bankruptcy Code ***doesn't require at this time***—all the while accruing hefty interest and fees and granting Omega (and the Insider Lender) liens on previously unencumbered assets as well as granting sweeping releases to Omega. One wonders: why?

28. Regardless of the reasons, as to which the Committee will not speculate at this time, this highlights the impropriety of granting Omega the releases, liens on proceeds of avoidance actions and tort claims, and "equities of the case" waiver it seeks.

E. The Committee must be enabled to conduct a meaningful investigation of Omega, the other secured parties and their claims and, if necessary, to assert challenges.

29. The Committee appreciates the Debtors' swift responsiveness in populating a data room with relevant documents for the Committee's review, with additional files being added on a daily, and sometimes hourly, basis. There are over 200 debtors with a highly convoluted structure, giving rise to hundreds of thousands of pages of leases, subleases, lease modifications, lease terminations, security documents, amendments, security terminations, intercreditor agreements, UCC-1 filings, continuation statements, DACAs, DAISAs, and organizational documents, among other things. It has become clear to the Committee even during its professionals' first week in these cases that untangling and evaluating the Debtors' prepetition liens and transactions is going to be a monumental task.

30. The Final Order places significant constraints on the Committee' ability to investigate potential claims against the prepetition lenders and landlord, including any bases to

challenge their claims and liens against hundreds of Debtor entities. For example, despite the enormous complexity of these cases and the massive volume of documents, the Final Order gives the Committee just 60 days to complete its investigation and file a timely motion seeking standing.[7] That period is inadequate. The Committee's challenge period should run at least 120 days from the date the Committee retained its financial advisors (i.e., until October 15, 2024).

31. Omega and the other secured parties also seek to constrain the Committee's investigation by sharply limiting the funds available for such investigation. Considering the number and factual complexity of the transactions at issue, there should be no cap on the cost of the Committee's investigation of prepetition liens and initiating a challenge to them[8]—particularly since all professionals will need to substantiate the reasonableness of their fees in light of the work performed and benefits obtained at the time of fee applications. In other complex cases, creditors' committees have not been subject to budgetary restrictions on their investigation of lender claims, a core component of a committee's fiduciary duties. *See, e.g.*, *In re TOUSA, Inc.*, Case No. 08-10928 (Bankr. S.D. Fla. Jan. 9, 2009) (Second Stipulated Final Order Authorizing Use of Cash Collateral) [D.I. No. 2355] (providing for no cap on use of cash collateral to conduct investigation); *In re Quebecor World (USA) Inc.*, Case No. 08-10152 (Bankr. S.D.N.Y. Apr. 1, 2008) (providing for no restriction on the use of post-petition loan funds to conduct investigations into claims against

[7] Such a motion seems to the Committee to be a waste of time and estate resources. The Debtors have already waived or released all claims against the MidCap, Omega and the Insider Lender. Accordingly, the Committee is the only party that feasibly *could* bring any colorable claims, and ought to have automatic standing to do so.

[8] For clarity, the Final Order does not purport to impose a cap on the Committee's investigation of insider transfers and transactions, which investigation is separate and apart from the Committee's investigation of claims and causes of action against MidCap, Omega and the Insider Lender. The Committee would object in the strongest terms to any attempt to impose such a cap.

pre-petition lenders); *see also In re Tropicana Entertainment, LLC*, Case No. 08-10856 (Bankr. D. Del. May 5, 2008); *In re Radnor Holdings Corp.*, Case No. 06-10894 (Bankr. D. Del. Sept. 2, 2006); *In re Delta Airlines, Inc.*, Case No. 05-17923 (Bankr. S.D. N.Y. Oct. 6, 2005).

32. In addition to being unnecessary, the caps on fees for investigating the prepetition liens deliberately forces the Committee's professionals to finance a critical aspect of the Debtor's reorganization and harms the adversary system characteristic of the chapter 11 process. *See In re Tenney Village Co., Inc.*, 104 B.R. 562, 568-69 (Bankr. D.N.H. 1989) (finding cap on fees created an economic incentive to avoid bringing actions against lenders in disregard of fiduciary duties toward the estate, and therefore refusing to approve post-petition financing that included the cap); *In re Channel Master Holdings, Inc.*, No. 03-13004, 2004 Bankr. LEXIS 576, at *8-9 (Bankr. D. Del. Apr. 26, 2004) (refusing to enforce a $75,000 cap on committee's professional fees under a postpetition financing facility, finding such cap unreasonable and, after a thorough review of all the actions of the committee's professionals, determining that the cap on the committee's fees was inadequate to compensate for such activities).[9]

33. Omega and the other secured parties have tried to shackle the Committee in another way: the Final Order makes it a "DIP Termination Event" for the Committee to actually exercise its challenge rights under the Final Order. *See* Final Order ¶ 17. That poison-pill provision must be stricken so that the Committee can perform its statutory duties in these cases.

F. The Court should not authorize the Debtors to make payments under the DIP budget that will result in the operating Debtors essentially funding non-operating Debtors.

[9] Similarly, Omega attempts to hamstring the Committee generally by allowing its counsel and financial advisor a shared budget of just $1.2 million for all activities in the case—while budgeting more than ***nine times*** that amount for the Debtors' professionals.

34. The Committee has significant concerns about the DIP budget—in particular, ensuring that no prepetition payments or payments on behalf of non-operating entities are made.

35. Other than the collection of de minimis prepetition accounts receivable, all of which are going directly to Midcap, the Committee is not aware of any other material source of revenue for the non-operating Debtors. On the other hand, the operating Debtors are collecting prepetition accounts receivable and also generating millions in revenues from post-petition services.

36. At this stage of the cases, the Committee is very concerned that, while postpetition intercompany transfers from the operating Debtors to the non-operating Debtors will have priority as administrative expenses, those claims ultimately may go unpaid.

37. These cases have not been substantively consolidated, and the Committee does not believe it is appropriate at this point for operating Debtors to finance non-operating Debtors. Moreover, the Debtors' budget is extremely tight and they should be taking all reasonable steps to conserve cash and ensure that they have a sufficient runway for a sale process for the operating Debtors and a wind-down.

38. There are several payments in the proposed DIP budget that raise questions in this regard that the Debtors must answer. For example, why does the DIP budget include $500,000 in property taxes for non-operating Debtors that no longer have any property leases? Why are non-operating Debtors paying $200,000 in franchise taxes? Why does the DIP budget have non-operating Debtors—which presumably have little to no accounts receivables to offset and operate under different provider numbers than the operating Debtors—paying cost report settlements that are merely unsecured prepetition claims? Why are non-operating Debtors incurring $400,000 per month in insider management fees? And how are those amounts going to be funded and repaid?

39. The Debtors and their DIP lenders should be required to provide clear and compelling reasons for making payments on prepetition amounts owed by operating Debtors, as well as *any* payments (whether for pre- or postpetition amounts) owed by non-operating Debtors, before the Court authorizes such payments.

III. CONCLUSION

40. For the foregoing reasons, the Committee respectfully requests that the Court condition approval of any DIP financing as set forth above.

Dated: June 24, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2024, all ECF participants registered in this case were served electronically with the *Objection of The Official Committee of Unsecured Creditors To The Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing The Debtors To (A) Obtain Post-Petition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (Iii) Modifying The Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "**Objection**") through the Court's ECF system at their respective email addresses registered with the Court.

I further certify that on June 24, 2024, I caused a true and correct copy of the Response to be served by e-mail on the following entity:

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I further certify that on June 24, 2024, I caused a true and correct copy of the Response to be served by first class mail and Federal Express (next day delivery) to the following entities:

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