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Attorneys for the Chapter 11 Debtors and Debtors In Possession

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

☒ Affects All Debtors
☐ Affects Verity Health System of California, Inc.
☐ Affects O'Connor Hospital
☐ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
☐ Affects St. Vincent Medical Center
☐ Affects Seton Medical Center
☐ Affects O'Connor Hospital Foundation
☐ Affects Saint Louise Regional Hospital Foundation
☐ Affects St. Francis Medical Center of Lynwood Foundation
☐ Affects St. Vincent Foundation
☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose Dialysis, LLC

Debtors and Debtors In Possession.

Lead Case No. 2:18-bk-20151-ER

Jointly Administered With:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Judge Ernest M. Robles

DEBTORS' REPLY TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS' (1) OPPOSITION TO THIRD AMENDED SUPPLEMENTAL CASH COLLATERAL STIPULATION; (2) OBJECTION TO THE ORDER THEREON; AND (3) REQUEST FOR HEARING

[Relates to Docket No. 4184, 4187, 4199, 4200]

Hearing:
Date: March 11, 2020
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street,
Los Angeles, California 90012

1820151200306000000000009

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Verity Health System of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the "Debtors") in the above-captioned Chapter 11 bankruptcy cases (the "Bankruptcy Cases"), hereby submit this reply (the "Reply") to the *Official Committee of Unsecured Creditors' (1) Opposition to Third Amended Supplemental Cash Collateral Stipulation, (2) Objection to Order Thereon, and (3) Request for Hearing* [Docket No. 4199] (the "Objection") filed by the Official Committee of Unsecured Creditors (the "Committee") related to the *Stipulation to (A) Amend the Second Amended Supplemental Cash Collateral Order, (B) Authorize Continued Use of Cash Collateral, (C) Grant Adequate Protection, (D) Modify Automatic Stay, and (E) Grant Related Relief* [Docket No. 4184] (the "Stipulation") by and between the Debtors and the Prepetition Secured Creditors (as that term is defined in the Stipulation) and the related order approving the Stipulation [Docket No. 4187] (the "Third Amended Supplemental Cash Collateral Order"). In support of the Reply, the Debtors respectfully state as follows:

I.

INTRODUCTION

The Debtors and the Prepetition Secured Creditors worked efficiently and collaboratively to enter into the two-month Stipulation authorizing the Debtors to use cash collateral in accordance with the budget (the "Budget") the Debtors submitted to the Prepetition Secured Creditors. The Stipulation mirrors the previous stipulation to which the Committee did not object in January 2020. Remarkably, the Committee has now objected to the Stipulation without identifying any issue with the terms of the Stipulation or the Budget. Instead, the thrust of the Committee's Objection is prospective, as the Committee argues that the cash collateral Stipulation must be denied because it does not expressly guaranty payment of *all* allowed administrative claims that may arise during the Bankruptcy Cases. This argument must fail because it raises hypothetical injury to a class of *postpetition* creditors that the Committee does not represent.

Similarly flawed is the Committee's attempt to re-raise objections to §§ 506 and 552 waivers that this Court previously rejected in the *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing*

Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief [Docket No. 409] (the "Final DIP Order"). The Committee has offered no reason or evidence why the Court should re-visit its prior ruling, particularly when the issues are on appeal at the Ninth Circuit Court of Appeals (after District Court ruled the Committee's appeal was moot). Simply put, there is no legitimate reason to deprive the Prepetition Secured Creditors of these waivers now, particularly given the finality of the Final DIP Order, the Debtors' success in timely satisfying postpetition operating expense claims, and the anticipated risks to their collateral. The Prepetition Secured Creditors are not required to be guarantors of these Bankruptcy Cases.

Also without merit is the Committee's assertion that the Stipulation allows the Bankruptcy Cases to be "run solely for the benefit of secured creditors." To the contrary, the Prepetition Secured Creditors' consent to cash collateral usage has enabled the Debtors to provide benefit to many constituencies by allowing them to continue life-saving health care at its remaining facilities, pay salaries, wages and benefits to employees, pay more than $20 million to critical vendors, cover fees and costs associated with finding potential buyers of assets, implement exit strategies, and fund the litigation against those parties who deliberately wreaked havoc on these Bankruptcy Cases in connection with the failed Strategic Global Management, Inc. ("SGM") sale transaction. The Committee supported, indeed advocated, that the Debtors leave behind renewal of the third party DIP Financing in favor of use of cash collateral. Thus, since the collapse of the SGM sale transaction, it is the Prepetition Secured Creditors—not the Committee or its prepetition, general unsecured constituency—who bear the risk of financing these Bankruptcy Cases.

Lastly, the Committee's assertion that it received inadequate notice of the Stipulation is legally and factually incorrect. For these and other reasons noted below, the Debtors respectfully request that the Court overrule the Objection and enter the Stipulation.

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II.

STATEMENT OF FACTS

A. General Background

1. On August 31, 2018 ("Petition Date"), the Debtors in the above-captioned chapter 11 bankruptcy cases, each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Bankruptcy Cases are currently jointly administered before the Court. [Docket No. 17]. Since the commencement of their Cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108 of title 11 of the United States Code (the "Bankruptcy Code").[1]

2. On the Petition Date, the Debtors filed the *Emergency Motion of Debtors for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing (B) Authorizing the Debtors to Use Cash Collateral and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108* (the "DIP Financing Motion"). Pursuant to the DIP Financing Motion, the Debtors sought, among other things, entry of an order authorizing the Debtors to enter into a senior secured, super priority debtor in possession financing facility with Ally Bank, a subsidiary of Ally Financial, Inc. under the Debtors In Possession Revolving Credit Agreement, dated as of September 7, 2018 ("DIP Financing").

3. On September 27, 2018, the Committee filed a limited objection [Docket No. 316] to the DIP Financing Motion. On October 4, 2018, the Court entered the Final DIP Order granting the DIP Financing Motion and overruling the Committee's objection.

B. The Appeal

4. On November 29, 2018, the Committee filed a notice of appeal [Docket No. 932] of the Final DIP Order. The Committee raised two issues on appeal: (i) whether the Bankruptcy Court erred in authorizing the Debtors to waive the estate's rights under § 506(a); and (ii) whether the Bankruptcy Court erred in authorizing the Debtors to waive the estate's rights under § 552(b).

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[1] Unless otherwise noted herein, all references to "§" are to sections of the Bankruptcy Code.

See Docket No. 1234. The United States District Court for the Central District of California dismissed the appeal as moot. *See* Case No. 2:18-cv-10675-RGK, Docket No. 40 (C.D. Cal. Aug. 2, 2019). On August 26, 2019, the Committee appealed (the "Appeal") to the United States Court of Appeals for the Ninth Circuit, *see id.* Docket No. 41, which appeal is currently fully briefed and pending oral argument. *See* Case No. 19-55997, Docket No. 41 (9th Cir. Feb. 7, 2020).

C. The Cash Collateral Motion

5. On August 28, 2019, the Debtors filed the *Debtors' Notice of Motion and Motion for Entry of an Order (A) Authorizing the Debtors to Use Cash Collateral and (B) Granting Adequate Protection to Prepetition Secured Creditors* [Docket No. 2962] (as modified by Docket No. 2968, the "Cash Collateral Motion"). As set forth more fully in the Cash Collateral Motion, the Debtors sought, pursuant to the terms of a consensual proposed order (the "Cash Collateral Agreement"), authority to, among other things, (i) continue use of "Escrowed Cash Collateral" (defined below), (ii) grant liens on postpetition accounts and inventory as adequate protection to the Prepetition Secured Creditors, and (iii) pay off the DIP Financing. On September 6, 2019, the Court entered the *Final Order (A) Authorizing Continued Use of Cash Collateral, (B) Granting Adequate Protection, (C) Modifying the Automatic Stay, and (D) Granting Related Relief* [Docket No. 3022] (the "Supplemental Cash Collateral Order") granting the Cash Collateral Motion and approving the terms of the Cash Collateral Agreement. The Committee objected [Docket No. 3000] to the Cash Collateral Motion, which the Court overruled subject to certain revisions to the Cash Collateral Agreement.

D. The First and Second Amended Stipulations

6. On December 28, 2019, the Debtors entered into a stipulation [Docket No. 3871] (the "First Amended Stipulation") with the Prepetition Secured Creditors to amend and supplement the Supplemental Cash Collateral Order and provide for the Debtors' continued use of cash collateral through January 31, 2020. The terms of the First Amended Stipulation were substantially similar to the terms of the approved Cash Collateral Agreement. On December 30, 2019, the Committee filed an objection [Docket No. 3880] to the First Amended Stipulation and

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the Debtors filed a reply [Docket No. 3882]. On December 30, 2019, the Court entered an order [Docket No. 3883] approving the First Amended Stipulation on a final basis.

7. On January 31, 2020, the Debtors filed a stipulation [Docket No. 4019] (the "Second Amended Stipulation") with the Prepetition Secured Creditors to amend and supplement the First Amended Supplemental Cash Collateral Order and provide for the Debtors' continued use of cash collateral through February 29, 2020. The terms of the Second Amended Stipulation were substantially similar to the terms of the approved First Amended Stipulation. The Committee did not file an objection to the Second Amended Stipulation. On January 31, 2020, the Court entered a final order [Docket No. 4028] approving the Second Amended Stipulation.

E. The Stipulation

8. On February 28, 2020, the Debtors entered into the Stipulation to amend and supplement the Second Amended Supplemental Cash Collateral Order and provide for the Debtors' continued use of cash collateral through May 1, 2020. The terms of the Stipulation are substantially similar to the terms of the approved Second Amended Stipulation. The Debtors provided the Committee a draft of the Stipulation as soon as the Debtors reached an agreement with the Prepetition Secured Creditors. On February 28, 2020, the Court entered the Third Amended Supplemental Cash Collateral Order.

9. On March 2, 2020, the Committee filed their Objection and the Court set a briefing schedule and set the Objection for hearing. *See* Docket No. 4200.

III.

ARGUMENT

A. The Committee's Demand for An Unlimited Carve-Out for All Potential Postpetition Administrative Expenses is Based Upon A Hypothetical Injury and Should Be Afforded No Weight.

The Committee's argument that the Prepetition Secured Creditors should be required to provide an unlimited carve-out for any ultimately allowed administrative claims should be denied for lack of standing and absence of actual injury.

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The Debtors recognize the general grant to parties-in-interest, including official committees of unsecured creditors, to weigh-in on issues that arise in a bankruptcy case. 11 U.S.C. § 1109(b). Notwithstanding this general grant, however, courts should take into account a party's actual stake when determining what, if any, weight to confer to it. *See In re James Wilson Assocs.,* 965 F.2d 160, 170 (7th Cir. 1992) ("[W]e do not think that [§ 1109] was intended to waive other limitations on standing, such as that the claimant be within the class of intended beneficiaries of the statute that he is relying on for his claim, although a literal reading of section 1109(b) would support such an interpretation. We think all the section means is that anyone who has a legally protected interest that could be affected by a bankruptcy proceeding is entitled to assert that interest with respect to any issue to which it pertains."). Here, the Committee's objection that the Stipulation does not provide an unlimited carve-out for administrative expenses should be given no weight since the Committee is not charged with the duty to advance the interests of postpetition, administrative claimants.

To the contrary, the Committee exists as a function of § 1102 solely to "represent the interests of unsecured creditors." *In re PG&E Corp.*, Case No. 19-3088-DM, 2019 WL 2482412, at *2 (Bankr. N.D. Cal. May 28, 2019) ("As required by section 1102, the UST appointed the OCUC to represent the interests of unsecured creditors."); *see also* 11 U.S.C. § 1102(a)(1). There is no question that postpetition, administrative claims are distinct from general unsecured claims, the holders of which are represented by the Committee. *See TreeSource Indus., Inc. v. Midway Engineered Wood Prods., Inc. (In re TreeSource Indus., Inc.)*, 363 F.3d 994, 995 (9th Cir. 2004) ("We must decide whether obligations . . . arose prior to . . . rejection of the lease, and thus should be treated as an administrative expense claim, or upon rejection such that [the] claims . . . are unsecured."). Indeed, if the Bankruptcy Court saw fit to appoint a committee to represent administrative claimants, it could do so under § 1102, an action that has not been taken in these Cases. *See* 11 U.S.C. § 1102(a)(1)-(2); *PG&E Corp.*, 2019 WL 2482412, at *2 ("Under section 1102(a)(2), the court may (but is not required to) appoint additional committees of creditors.") (emphasis removed). While the Debtors acknowledge that the Committee possesses general standing to be heard, the Court should be cognizant of the foregoing when deciding what, if any

weight, to afford the Committee's assertions in support of administrative claimants, a class of creditors that it does not represent.

In addition to being a flawed messenger, the argument itself is fundamentally flawed. Importantly, the Committee does not object to payments actually being provided under the Stipulation. Rather, the Committee offers a *prospective* objection to the *hypothetical* treatment of unidentified administrative claimants under a yet un-proposed plan. Stated more directly: the Committee's argument is predicated on hypothetical injury (rather than an injury in fact) to unidentified claimants it does not represent. As result, the argument should fail for lack of constitutional standing and subject matter jurisdiction. *See*, *e.g.*, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (finding that constitutional standing requires a showing of an "injury in fact" that is "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical") (internal citations and quotations omitted); *O'Shea v. Littleton,* 414 U.S. 488, 493-94 (1974) ("Plaintiffs in the federal courts must allege some threatened or actual injury resulting from putatively illegal action before a federal court may assume jurisdiction. [. . .] Abstract injury is not enough. It must be alleged that the plaintiff has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged statute or office conduct.") (citations omitted); *Cal. Energy Res. Conservation & Dev. Comm'n v. Johnson,* 807 F.2d 1456, 1463 (9th Cir. 1986) ("A decision at this juncture would resolve a dispute about hypothetical rates. Courts have no business adjudicating the legality of non-events.") (citation omitted); *Shuckett v. DialAmerica Marketing, Inc.,* Case No. 17-cv-2073, 2019 WL 3429184, at *3 (S.D. Cal. Jul. 30, 2019) ("[The] evidence here only supports a finding of conjectural or hypothetical injury, and does not give the Court subject-matter jurisdiction.").[2]

For these reasons, the Court should overrule the Objection.

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[2] Indeed, the Committee's brevity and imprecision in the Objection precludes anyone from determining exactly what administrative claimants, if any, face a risk of non-payment. The Debtors attempted to clarify the exact nature of the allegedly at-risk administrative claimants with counsel to the Committee before the Objection was filed, but received no further information beyond the hypothetical harms conjured in the Objection. As a result, the Objection requires that the Debtors prepare a response to a prospective confirmation objection without any meaningful opportunity to address the Committee's alleged concerns.

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B. The Issue of §§ 506(c) and 552(b) Waiver Has Been Litigated Previously And There Is No Reason To Revisit It.

The Objection is the Committee's latest iterated attempt to leverage the Debtors' short extensions of consensual cash collateral use to challenge the §§ 506 and 552 waivers that are currently the subject of the Appeal.[3] Under the Committee's premise, allowed administrative claims may not be paid in full at some future date because the §§ 506 and 552 waivers limit "typical" sources of recovery to the estates needed to ensure administrative claimant recoveries. *See* Obj. at 3 ("because the section 506 and 552 waivers eliminate the methods that the Debtors could typically use to address such a situation, it is imperative that provision be made here for the payment of allowed administrative claims"). The Committee claims that the carve-out for all administrative claims is appropriate because the Prepetition Secured Creditors must "pay[] the freight" for the benefits they received from the bankruptcy process. In essence, the Committee seeks to effectively deny previously-granted §§ 506 and 552 waivers in an effort to solve a speculative problem for stakeholders outside of the Committee's constituency. The Committee's argument was previously and repeatedly denied and there is no reason to revisit it here.

The Committee's challenge to the §§ 506 and 552 waivers has been unsuccessfully made throughout the Bankruptcy Cases, albeit now in a more abbreviated form. Such prior ruling should be binding as law of the case. As significant, the Final DIP Order continues to apply irrespective of the entry or non-entry of the Third Amended Supplemental Cash Collateral Order. *See* Final DIP Order, § 29 (governing survival of the provisions of the Final DIP Order). The Committee's continued citation to inapposite cases addressing the standard for approval of DIP financing does not (and cannot, given the Appeal) change the outcome. *See* Obj. at 3 n.3.[4] *See U.S. v. Alexander,* 106 F.3d 874, 876 (9th Cir. 1997) ("Under the law of the case doctrine, a court

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[3] The Committee admits as much in its Objection. *See* Obj. at 4 n.4 ("The Committee's current concern about the ongoing payment of administrative claims is similar to its prior complaints about the Final DIP Order and the adequate protection afforded to the Prepetition Secured Creditors thereunder.").

[4] The Debtors have addressed these arguments repeatedly in the Bankruptcy Cases and the Appeal. The Debtors reserve their rights with respect to the Committee's renewed argument.

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is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case.") (citation omitted); *Tinker v. Aurora Loan Servs.,* Case No. 11-cv-00642, 2015 WL 1540579, at *5 (E.D. Cal. Apr. 7, 2015) (applying law of the case doctrine when plaintiff cited additional case law that was one to two years old); *In re Thorp*, 655 F.2d 997, 998 (9th Cir. 1991) ("When a proper notice of appeal has been timely filed, the general rule is that jurisdiction over any matters involved in the appeal is immediately transferred from the district court to the court of appeals.").

Contrary to the Committee's suggestion, the Prepetition Secured Creditors cannot be forced to subsidize speculative harm to administrative claimants. *See In re Flagstaff Foodservice Corp.*, 739 F.2d 73, 77 (2d Cir. 1984) ("Saddling unconsenting secured creditors with [administrative expenses], such as are sought by appellees, would discourage those creditors from supporting debtors' reorganization efforts."); *In re S & S Indus., Inc.*, 30 B.R. 395, 399 (Bankr. E.D. Mich. 1983) ("it does not follow that in the event the estate has no unencumbered funds from which to pay [administrative] expenses, the secured creditor becomes obligated to satisfy these obligations"). Further, ignoring altogether the replacement lien issues, it simply is not the law that the unsecured creditors are automatically entitled to monetary relief under §§ 506(c) or 552(b) whenever unencumbered assets are consumed during a case in which other encumbered property is sold. *See, e.g.*, *In re Cascade Hydraulics & Utility Service, Inc.*, 815 F.2d 546, 548 (9th Cir. 1987); *see also* 4 Collier on Bankruptcy ¶ 506.05 (16th ed. 2019).

Again, the Objection should be overruled and the Stipulation granted.

C. <u>The Prepetition Secured Creditors Continue to Bear the Risk of Financing These Bankruptcy Cases</u>.

One of the Committee's repeated talking-points—that the Bankruptcy Cases cannot be run solely for the benefit of the Prepetition Secured Creditors—is misguided and contradicted by myriad facts that show the wide-ranging benefits provided by continued cash collateral usage.

Nor are the cases cited to by the Committee applicable. For example, the Committee cites to the Ninth Circuit Bankruptcy Appellate Panel's cautionary warning that a bankruptcy case cannot be "designed for the unwarranted benefit of the postpetition lender." *In re Defender Drug*

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Stores, Inc., 145 B.R. 312 (B.A.P. 9th 1992). However, in *Defender Drug Stores, Inc.*, the Panel actually affirmed the bankruptcy court's approval of an "enhancement fee" even where the "bankruptcy court erred in adopted wholesale the proposed findings" in the cash collateral order. *See id.* at 319. In *In re Tenney Village Co., Inc.*, 104 B.R. 562 (Bankr. D.N.H.), the bankruptcy court refused to approve a financing arrangement that eviscerated the Debtors' ability to prosecute its bankruptcy case independent of the secured creditor's influence and decision-making power. *See id.* at 568 ("Under the guise of financing a reorganization, the Bank would disarm the Debtor of all weapons usable against it for the bankruptcy estate's benefit, place the Debtor in bondage working for the Bank, seize control of the reins of reorganization, and steal a march on other creditors in numerous ways.").[5] The cases cited by the Committee are useful only as soundbites, and bear no semblance to the facts and circumstances of these Cases or the Court's approval of the Stipulation.

The Stipulation constitutes the negotiated consent by the Prepetition Secured Creditors to authorize the Debtors to withdraw and use Escrowed Cash Collateral (as defined in the Cash Collateral Order), pursuant to an agreed Budget, including an anticipated $3.135 million of the Santa Clara County sale (the "SCC Sale"). Those proceeds reside in special sale proceeds accounts (the "Escrow Deposit Accounts") established under the Final DIP Order to protect the Prepetition Secured Creditors. The proceeds of the SCC Sale are the collateral of the Prepetition Secured Creditors and do not include any of the bank accounts or postpetition Quality Assurance Fee payments being challenged by the Committee. *See* Final DIP Order at ¶ F. Given that the Debtors require cash beyond what the Debtors will generate from the collection of accounts receivable, an agreement from the Prepetition Secured Creditors to utilize proceeds from the SCC Sale is critical to the Debtors' operations. As evidenced by the agreed Budget, the Debtors are not able to survive on the use of current accounts receivable, even if they were not subject to the Prepetition Replacement Liens as defined the Final DIP Order.

[5] The Committee previously cited *Tenney Village Co., Inc.* for the same proposition in its unsuccessful objection to the First Amended Stipulation. *See* Docket No. 3880, at 8.

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Here, the terms of the adequate protection package in the Third Amended Supplemental Cash Collateral Order are essentially the same as the adequate protection packages provided to the Prepetition Secured Creditors in the Supplemental Cash Collateral Order, the First Amended Supplemental Cash Collateral Order, and the Second Amended Supplemental Cash Collateral Order (as those terms are defined in the Stipulation). It is not unreasonable for the Prepetition Secured Creditors to condition their consent to the use of additional cash collateral upon receipt of the full scope of the adequate protection package offered by these previous cash collateral orders, including preservation of the waivers under §§ 506(c) or 552(b). The Prepetition Secured Creditors will not consent if they are subject to §§ 506(c) or 552(b) litigation in the future, especially since they are effectively putting their existing cash proceeds at risk.

Again, the Objection must fail.

D. <u>The Committee's Objection—for the First Time—to the Notice of the Stipulation is Disingenuous and Irrelevant</u>.

As an attempted parting shot, the Committee asserts that the Stipulation should fail because the Committee did not receive proper notice. This assertion is flawed factually and legally.

First, the Debtors were not required to provide notice of the Stipulation. FED. R. BANKR. P. 4001(d)(4) ("[t]he court may direct that . . . the [relevant cash collateral] agreement may be approved without further notice if the court determines that a [prior] motion made pursuant to subdivisions (a), (b), or (c) of this rule was sufficient to afford reasonable notice of the material provisions of the agreement and opportunity for a hearing.").[6] The Stipulation represents the most recent extension of the Supplemental Cash Collateral Order, which was entered after notice and a hearing on the Cash Collateral Motion.

[6] The Committee's claim that LBR 9013-1(o) applies is misplaced. "The Local Bankruptcy Rules are to be construed consistent with, ***and subordinate to***, the FRBP and F.R.Civ.P. and to promote the just, speedy, and economic determination of every case and proceeding." LBR 1001-1(b)(1). Further, the LBRs "are not intended to limit the discretion of the court . . . [which] may waive the application of any Local Bankruptcy Rule in any case or proceeding." LBR 1001-1(d).

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Second, the Debtors provided the Committee with a draft version of the Stipulation, considered the "notes" and "concerns" presented by the Committee (which the Committee never represented as an "objection" or intent to object formally), and discussed the concerns with counsel to the Committee. The Committee received greater notice than to which it was entitled and consistent with the Debtors' prior practice to which the Committee had not objected.

IV.

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court overrule the Objection and grant such other and further relief as the Court deems just and proper.

Dated: March 6, 2020

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