IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

In re: GRUPO HIMA SAN PABLO, INC., Debtor.	Case No. 23-02510 (ESL) Chapter 11
In re: CENTRO MEDICO DEL TURABO, INC., Debtor.	Case No. 23-02513 (ESL) Chapter 11
In re: HIMA SAN PABLO PROPERTIES, INC., Debtor.	Case No. 23-02515 (ESL) Chapter 11
In re: PORTAL DE CAGUAS, INC., Debtor.	Case No. 23-02516 (ESL) Chapter 11
In re: GENERAL CONTRACTING SERVICE, INC., Debtor.	Case No. 23-02517 (ESL) Chapter 11
In re: IA DEVELOPERS, CORP., Debtor.	Case No. 23-02519 (ESL) Chapter 11
In re: CMT DEVELOPMENT, LLC, Debtor.	Case No. 23-02520 (ESL) Chapter 11
In re: JOCAR ENTERPRISES, INC., Debtor.	Case No. 23-02521 (ESL) Chapter 11
In re: JERUSALEM HOME AMBULANCE, INC., Debtor.	Case No. 23-02522 (ESL) Chapter 11

In re: HOST SECURITY SERVICES, INC., Debtor.	Case No. 23-02523 (ESL) Chapter 11 Jointly Administered[1]

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' EMERGENCY MOTION FOR ORDER: (I) APPROVING THE AMENDMENT TO THE DIP CREDIT AGREEMENT AND (II) GRANTING RELATED RELIEF

TO THE HONORABLE ENRIQUE S. LAMOUTTE,
UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors (the "Committee") of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), by and through its counsel, Porzio, Bromberg & Newman, P.C., hereby objects (the "Objection") to the *Debtors' Emergency Motion for Entry of an Order (I) Approving the Amendment to the DIP Credit Agreement and (II) Granting Related Relief* [ECF No. 392][2] (the "Amended DIP Facility" and the "Amended DIP Financing Motion").[3] In support of this Objection, the Committee respectfully represents as follows:

PRELIMINARY STATEMENT

1. While the Committee can appreciate the Secured Lenders'[4] continued participation in debtor-in-possession financing, it demands a process that includes, *inter alia*: (i) preservation of assets potentially available for unsecured creditors, (ii) an opportunity for the Committee to perform its statutory duties, which includes fair and equitable treatment of all professionals in the case, and (iii) the opportunity to achieve a confirmed plan in the case. None of the above Chapter

[1] On August 21, 2023, the Court entered an order granting the joint administration of the captioned cases. *See*, Bankruptcy Case No. 23-02510 (ESL) (the "HIMA Case").
[2] Unless otherwise noted, all ECF references are to the main case: Grupo HIMA San Pablo, Inc. (23-02510).
[3] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the DIP Financing Motion.
[4] "Secured Lenders" or "DIP Lenders" refer to Alter Domus (US) LLC, as agent, together with the DIP Lender and prepetition lender, Island Healthcare, LLC.

11 goals stand to be achievable if the Court approves the Amended DIP Financing Motion as it is currently proposed.

2. In exchange for approximately $2 million in additional funding, the Secured Lenders place themselves in a prime position to drain the remainder of the estate's rapidly diminishing resources. For a $2 million new money loan, the new money and rolled-up obligations combined would move from their current balance of $38.5 million to no less than $49.5 million (plus unpaid lender professional fees), leaving no room for new loans, at least out of asset sales.[5] The proposed 4:1 ratio of rolled-up loans to new money loans (the "Roll-Up") plus yet another commitment fee of 10% ($200,000) (the "Commitment Fee") would have this Court create an $8.8 million post-petition DIP senior lien and superpriority position in return for a $2 million loan and the Commitment Fee. Further, as stated by the Debtors, such a loan would give the Debtors only another two days of life *i.e.*, through Friday, October 27, 2023. Unless the Secured Lenders can agree to modified terms wherein this Chapter 11 process will be run in a manner that benefits more than just one party in interest, the Committee cannot support the Amended DIP Facility.

3. At the time the DIP Lenders agreed to an initial $7 million DIP Loan, only one of the asset sales was in prospect, i.e., Fajardo, for $7 million. At that time, a very different risk profile was presented to the parties and the Court. By contrast, today, with new money and rolled-up DIP Obligations now outstanding, in the amount of $38.5 million, there are five (5) asset sales

[5] The proposed sales, with total anticipated proceeds of $54.6 mm, are as follows:

- HIMA San Pablo-Bayamón (Bayamon) to AM Acquisition I LLC for a purchase price of $18 million;
- HIMA San Pablo-Caguas (Caguas) to Metro Caguas Inc. for a purchase price of $21 million
- HIMA San Pablo-Humacao (Humacao) to Eastern Health LLC for a purchase of $5.3 million;
- HIMA San Pablo-Fajardo (Fajardo) to Fajardo Integrated Medical Center LLC for a purchase price of $7 million;
- Nova Infusion (Nova Infusion) to Eleva Recovery LLC for a purchase price of $3.3 million..

anticipated, with proceeds of $54.6 million. The DIP Lender can now therefore look to real value to secure its DIP Loan.

4. Each of the five (5) Asset Purchase Agreements contains a MAC (materially adverse change) covenant such that if the Debtors do not "meet any internal or published projections, forecasts, estimates, performance metrics, operating statistics or predictions" each of the respective buyers can terminate their respective contracts. It is therefore in the Secured Lenders' interest, more so than perhaps in the interest of any other party in this case, to make this $2 million loan to maintain operations and ensure that this does not happen, so that the Secured Lenders can collect out of the full $54.6 million.[6]

5. The Committee interposes this Objection to two components of the proposed financing: (i) the Roll-Up, and (ii) the Commitment Fee. The Committee wants to support the Debtors' efforts to fund their operations while moving towards closings on the five (5) currently negotiated sales of their healthcare facilities and other assets, but not where outsized consideration is to be pledged to the Secured Lenders to the exclusion of all parties in interest. That outsized consideration is present in the Roll-Up and in the Commitment Fee.

FACTUAL & PROCEDURAL HISTORY

6. On August 15, 2023 (the "Petition Date"), the Debtors petitioned this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") commencing these cases in the United States Bankruptcy Court for the District of Puerto Rico (the "Bankruptcy Court").

[6] Indeed, these institutions must be operated for "at least two years after the closing" in order for the DIP Lenders to realize on the first $9.54 million out, otherwise CRIM will be entitled to enforce its senior statutory lien pursuant to the CRIM Stipulation [ECF No. 250]. If the Secured Lenders allow the Debtors to liquidate now, by not funding this $2 million, they forfeit that $9 million.

7. On September 7, 2023, the Office of the United States Trustee for the District of Puerto Rico appointed a five-member Committee consisting of:[7] (i) Grupo de Radioterapia del Norte, PSC; (ii) Herminio Colón, Elizabeth Amaro, José Miguel Amaro, Ivette Delgado, and minors Y.J.A., Z.S.G.A., and Y.M.G.A.; (iii) Grupo Intensivo Pediátrico, CSP; (iv) Neyza Crúz Cedeño and Savier Vázquez Oyola; and (v) Angelica Perez Garcia and Laura Davila Otero. *See Notice of Appointment of Official Committee of Unsecured Creditors* [ECF No. 163] & *Amended Notice of Appointment of Official Committee of Unsecured Creditors* [ECF No. 193].

8. The Committee has selected Porzio, Bromberg & Newman, P.C., ("Porzio") as its counsel. On October 18, 2023, the Court entered an Order authorizing Porzio as counsel for the Committee [ECF No. 368], and on October 23, 2023, entered Porzio's amended retention Order [ECF No. 389].

9. On August 15, 2023, the Debtors filed the *Urgent Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [ECF No. 9], as amended on August 16, 2023 [ECF No. 21] and as supplemented and amended by the *Supplement / Amendment to DIP Financing and Consented Use of Cash Collateral* [ECF No. 66]. (the "Initial DIP Financing Motion")

10. On August 17, 2023, the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF") filed a *Response and Preliminary Objection to Urgent Motion for Entry of Interim Order to Approve Postpetition Debtor in Possession Financing and Related Relief* [ECF

[7] As amended on September 13, 2023.

No. 35], and on August 22, 2023, filed an *Informative Motion Reiterating Position of the Government Entities as to Urgent Motion for Entry of Interim Order to Approve Post-Petition Debtor in Possession Financing and Related Relief, as Supplemented* [ECF No. 69] objecting to the Initial DIP Financing Motion as an impermissible *sub rosa* plan, among other reasons.

11. On the same day, the Municipal Revenue Collection Center's ("CRIM") filed a *Preliminary Objection to ECF 21: Debtor's Motion for Post-Petition Credit to Obtain Post Petition Financing to Use Cash Collateral and Other Remedies* [ECF Nos. 33 & 40] ("Crim Preliminary Objection") and later, on August 22, 2023, a *Preliminary Motion to Reiterate and Supplement CRIM's Objection Filed at ECF 40* [ECF No. 68] objecting to the Initial DIP Financing Motion on the grounds "that it seeks to subordinate [CRIM's] first rank statutory lien under Section 364(d)(1) without providing or meeting the adequate protection requirements of such Section." *See CRIM Preliminary Objection* [ECF Nos. 33 & 40], at 1.

12. On August 21, 2023, the Debtors filed, among other documents, *Debtors' Motion for an Order (i) Approving (a) Entry into the Fajardo Stalking Horse Agreement and Related Bid Protections and (b) Bidding Procedures and the Form and Manner of Notice Thereof, (ii) Scheduling the Sale Hearing, (iii) Establishing Assumption and Assignment Procedures and Approving the Manner of Notice thereof and (iv) Granting Certain Related Relief* (the "Sale Motion").

13. On August 22, 2023, the U.S. Trustee for Region 21 filed an objection to the Initial DIP Financing Motion noting that the proposed roll-up constituted extraordinary relief that was unsupported by the caselaw and that "may create an undesirable precedent in future cases." *See United States Trustee's Objection* [ECF No. 70], p. 6.

14. On August 24, 2023, the Court entered an Order denying the Initial DIP Financing Motion because the Debtors' "adequate protection analysis lacks crucial factual financial information on both the asset and liability side of the balance sheet." *See* Opinion & Order [ECF No. 91]. Specifically, the Court held that: "[a]mong the crucial and missing crucial factual financial information are the total and final amounts of the prepetition debt inclusive of interest, fees, costs, expenses owed to the Senior Lender and to the junior lienholder. The Court has not been provided with this crucial piece of financial information. There are no updated real estate appraisals that provide the necessary reasonable value determinations considering selling these assets under both a going concern and a liquidation analysis under Chapter 7 scenario." *See* Opinion & Order, at 17.

15. On August 24, 2023, the Court also entered an *Order* [ECF No. 92] (the "Cash Collateral Order") granting the Debtors the right to use cash collateral on an interim and non-consensual basis, on seven (7) day intervals, for a total of 28 days, through and including September 28, 2023. The Cash Collateral Order was appealed by Alter Domus on August 26, 2023.

16. On August 28, 2023, the Debtors filed a motion for reconsideration of the Court's order denying the Initial DIP Financing Motion [ECF No. 114].

17. On August 28, 2023, at the request of the Debtors, the Court entered a *Mediation/Settlement Order* [ECF No. 109] directing the Mediation Parties[8] to mediate their disputes with respect to the Cash Collateral Order.

18. Pursuant to the *Mediation Report* [ECF No. 249], the Mediation Parties reached a settlement of all issues referred to Mediation, including, *inter alia*, the treatment of CRIM's purported secured claims, and CRIM's objections to the DIP Financing and Sale Motion.

[8] As defined in the Modified Initial DIP Financing Motion.

19. In response to the Court's decision denying approval of the Initial DIP Financing Motion, on September 22, 2023, the DIP Lender and Debtors filed the *Urgent Motion of Debtors for an 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 Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [ECF No. 240] (the "Modified Initial DIP Financing Motion"), which included "improvements" to the DIP Facility identified in the Initial DIP Financing Motion, including:

a. Increasing the DIP Facility from $6 million to $7 million;

b. Decreasing the roll-up to a 4:1 basis;

c. Providing that the DIP Liens are junior to statutory liens in favor of CRIM with respect to CRIM Objections; and

d. Segregating proceeds of (i) the Molina Litigation and (ii) the Debtors' accounts receivable outstanding for more than 120 days.

20. On September 27, 2023, the Committee filed its *Objection to Urgent Motion of Debtors for an 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 Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [ECF No. 268] (the "Initial DIP Financing Objection").

21. The Debtors, the Committee and the Secured Lenders were able to reach a consensual resolution regarding the Committee's objections raised in the Initial DIP Financing

Objection, which resolution was embodied in the September 29th *Order* [ECF No. 286] granting the Debtors to, *inter alia*, obtain postpetition financing, and use cash collateral.

22. On October 23, 2023, the Debtors filed the *Debtors' Emergency Motion for Entry of an Order (I) Approving the Amendment to the DIP Credit Agreement and (II) Granting Related Relief* [ECF No. 392] (the "Emergency DIP Motion").

23. This Objection, filed this 25th day of October, 2023, addresses the Debtors' Emergency DIP Motion [ECF No. 392].

DISCUSSION

24. To obtain postpetition financing under section 364(d) of the Bankruptcy Code, a debtor must prove: (i) it is unable to obtain unsecured credit; (ii) the proposed credit is necessary to preserve the assets of the estate; and (iii) the terms of the financing are fair, reasonable and adequate.[9] The Committee will not challenge the Debtors on factors (i) and (ii). The analysis, rather, turns on factor (iii). And, with respect to factor (iii), financing provisions that "tilt the conduct of the bankruptcy case" or "prejudice, at the early stage, the powers and rights that the Bankruptcy Code confers for the benefit of all creditors" are disfavored.[10] In order to obtain approval, the Debtors must demonstrate that the DIP Facility, and here, the proposed Amended DIP Facility, is "in the best interest of creditors generally."[11]

[9] *See In re L.A. Dodgers LLC*, 457 B.R. 308, 312-13 (Bankr. D. Del. 2011) ("In seeking approval of [DIP financing], the Debtors have the burden of proving that … the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender."); *In re DB Capital Holdings, LLC*, 454 B.R. 804, 822 (Bankr. D. Colo. 2011) (court must determine that the proposed "financing is in the best interests of the estate and its creditors"); *In re Tenney Vill. Co.*, 104 B.R. 562, 568 (Bankr. D.N.H. 1989) (proposed financing must not "pervert the reorganizational process from one designed to accommodate all classes of creditors and equity interests to one specially crafted for the benefit of the … Debtor's principals who guaranteed its debt."); *In re Roblin Indus., Inc.*, 52 B.R. 241, 244 (Bankr. W.D.N.Y. 1985) ("The proposed financing is in the best interests of the general creditor body").

[10] *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 37-38 (Bankr. S.D.N.Y. 1990). (recognizing that "debtors-in-possession generally enjoy little negotiating power with a proposed lender, particularly where the lender has a pre-petition lien on cash collateral.").

[11] *In re Roblin Indus., Inc.*, 52 B.R. at 244 (citing *In re Vanguard Diversified, Inc.*, 31 B.R. 364, 366 (Bankr. E.D.N.Y. 1983)); *see also Tenney Village*, 104 B.R. at 569 ("The Debtor's pervading obligation is to the bankruptcy estate and, derivatively, to the creditors who are its principal beneficiaries").

25. Under both entered and proposed Sale Orders, repayment of DIP Loans, as contrasted with prepetition secured claims, is required to be made directly at closing. But by virtue of the Roll-Up, prepetition secured debt, in a 4:1 ratio to the actual moneys advanced under the DIP, is deemed to constitute DIP Loans. Thus, rather than the DIP Lender receiving directly at asset sale closings the $9 million it lent postpetition, it would receive an outsized $**50 million**, with the additional $41 million representing payment on account of its prepetition secured loans that are now "deemed" DIP Loans.[12] As a result, the Committee and the Court's discretion to consider repayment of prepetition secured debt pursuant to the Plan process is lost.

26. Without appropriate modifications to remedy this, the Amended DIP Facility serves the Secured Lender to the exclusion of other interests that are required to be protected under the Bankruptcy Code, and the Amended DIP Financing Motion should be denied unless appropriately modified.

A. <u>The Roll-Up Should Not Be Approved</u>

27. There is no question that in connection with the original DIP Loan, the 4:1 roll-up, which the Committee ultimately consented to following certain concessions made by the DIP Lenders, was considerably above market. *In re Vanguard Natural Resources, Inc.*, Docket No. 241 at 2-3, Case No. 19-31786 (Bankr. S.D. Tex. April 30, 2019) (approving roll-up of $65 million with a $65 million new money DIP); *In re Sheridan Holding Company II, LLC*, Docket No. 146 at 2, Case No. 19-35189 (Bankr. S.D. Tex. Oct. 15, 2019) (approving roll-up of $50 million with a $50 million new money DIP, in other words, a 1:1 ratio); *see also United States Trustee's*

[12] The Committee notes that in pursuit of its analysis of the Prepetition Lender's liens with respect to its Challenge Rights, the Committee has not received responses to its 2004 subpoenas from the Debtors, agent, or prepetition lenders, other than minimal informal document production from the agent it, including certain documents just received on Tuesday afternoon, October 24. Further, Debtors have not been available to produce witnesses until the week of October 30th, although such depositions cannot proceed unless and until the Committee has complete responses to its discovery requests.

Objection, [ECF No. 70] at p. 6 ("Even if the Court were inclined to grant the roll-up, none of the cases cited by Debtors appear to have granted a roll-up beyond a 3:1 ratio … As a result, even if the Debtors prove immediate and irreparable harm to the estate, the Court should be wary of granting anything beyond a 3:1 roll-up, as it may create an undesirable precedent in future cases."). Courts are generally reluctant to approve postpetition financing that converts prepetition debt into postpetition obligations, as it is viewed as a form of cross-collateralization[13] that circumvents the Bankruptcy Code's priority scheme.[14]

28. Here, the Secured Lenders are subjecting prepetition debts to the more favorable terms of the amended DIP Facility as well as attempting to sweep up collateral—that would otherwise be reserved for the benefit of unsecured creditors—to which their prepetition debt otherwise would have no recourse (such as avoidance actions and commercial tort claims, to name just two). Accordingly, the Roll-Up should be denied in its entirety. In the alternative, if the Court approves the Roll-Up, it should be limited in amount and should only be secured by liens in the existing collateral.

29. As proposed, the Roll-Up will convert a total of $8.8 million of prepetition debt ($11 million minus the $2 million in new money, minus the $200,000 Commitment Fee) into

[13] Cross-collateralization is disfavored and prohibited by a number of courts. *See, e.g., Shapiro v. Saybrook Mfg. Co., Inc. (In re Saybrook Mfg. Co., Inc.)*, 963 F.2d 1490, 1494-95 (11th Cir. 1992); *In re Monach Cir. Indus., Inc.*, 41 B.R 859, 861-62 (Bankr. E.D. Pa. 1984).

[14] *See, e.g., Official Comm. of Unsecured Creditors of New World Pasta Co. v. New World Pasta Co.*, 322 B.R. 560, 569 n.4 (M.D. Pa. 2005) (noting that roll-up provisions "have the effect of improving the priority of a prepetition creditor"); *In re Tenney Vill. Co.*, 104 B.R. 562, 570 (Bankr. D.N.H. 1989) (holding that Bankruptcy Code section 364 does not authorize the granting of administrative expense priority for prepetition debt); *see also In re Verasun*, No. 08-12606 (BLS), Hr'g Tr. 32:20-25, (Bankr. D. Del. Dec. 3, 2008) [Dkt. No. 316] (Judge Shannon noting that the Bankruptcy Court of the District of Delaware, the Southern District of New York, and other courts have found that "roll-ups are not favored. They are strongly discouraged on day one, and the bottom line is that for approval a substantial showing [of need for the financing] has to be made"). Judge Shannon further noted seeing "cases where you've had $15 million of pre–petition liability being rolled-up and another million and a half of new money coming in. That's, I think, the kind of circumstance that the proposed rules speak to and that I find to be an abuse of the system . . ." *Id.* at 34:4-8. All hearing transcripts cited in this Objection are available upon request.

postpetition secured debt allowed on a superpriority basis.[15] The Roll-Up will materially improve the Secured Lenders' position by lending similar amounts of funds that are being collected and applied against prepetition amounts owed instead of administering the estate, and then replacing their more limited prepetition collateral package with liens on previously unencumbered property, including the proceeds of avoidance actions, and potentially other assets that the Committee is currently uncovering.

30. Given the changed economic realities of the DIP Lenders' collateral package, *see* footnote 5, *supra.*, to the extent that the Court may feel compelled to allow any "roll-up," it should be limited to the amount of new money being provided to the Debtors,[16] *i.e.,* a 1:1 roll-up, which is closer to "market" given the circumstances here. Thus, for $2 million in new money, an additional $2 million of prepetition debt would be "deemed" part of the DIP Loan Obligation and rolled-up enjoy the priorities of the DIP Loan funds.

B. <u>The Proposed "Commitment Fee" is Substantially Above Market Conditions</u>

31. Notably, the Amended DIP Facility fails to provide any additional loan documentation from the Modified Initial DIP Facility. Instead, the Secured Lenders have simply redlined a handful of provisions of the Modified Initial DIP Facility. The Committee respectfully asks the Court to consider the following: the DIP Lenders receive interest at 5.3%, the DIP Lenders have their legal fees paid by the Debtors estates, and the documents the DIP Lenders are using here are the identical original DIP Loan documents with a couple of miniscule changes from the documents already drafted in connection with the original DIP Loans. And so, we would

[15] Similar to the Modified Initial DIP Facility, the Amended DIP Facility proposes a 4:1 calculation that includes $200,000 that the Debtors will not have use of since it is to be paid to the Secured Lenders as a "Commitment Fee."
[16] *See* the Initial DIP Financing Objection [ECF No. 268].

respectfully ask the Court to consider the following: what is the consideration for a substantial 10% "commitment fee" in addition to keeping all fees, all interest, and the Roll-Up?

32. The Commitment Fee percentage, even if this were a "new loan," made from scratch, is substantially above market, and would be the Secured Lenders' highest fee percentage since at least 2019. Specifically, the Committee has reviewed ten cases where Alter Domus was DIP Lender/Agent for the DIP Lender from 2019-2023 and not one of them (outside of this case) contemplated a commitment fee of 10%. Instead, half of those cases proposed commitment fees of 5% or lower. [17] Moreover, the Committee reviewed nine Silver Point cases from 2019-2023 (the Lender that owns Island Healthcare), and seven of those nine cases had commitment fees of 5% or less.[18]

33. The Secured Lenders have already received a substantially above-market commitment fee of 10% from the Initial DIP Facility in the amount of $700,000. They do not need to help themselves to a second fee via the Amended DIP Facility. Indeed, if the Commitment Fee were not paid for this $2 million amended loan, the Secured Lenders would be left with their original 10% commitment fee, which, measured against a now $9 million loan, would amount to 7.7%. This is still greatly above market and above what these particular Secured Lenders typically seek when providing DIP funding.

[17] *See, e.g.*, 5% commitment fee in *In re: Vesta Holdings LLC*, Case No. 22-11019-LSS [Final Order, ECF No. 141] (Alter Domus as agent); 4% in *In re: YouFit Health Clubs, LLC*, Case No. 20-12841-MFW [Final Order, ECF No. 231] (Alter Domus as agent); 5% in *In re: Wesco Aircraft Holdings, Inc*., Case No. 23-90611-DRJ [Final Order, ECF No. 396]; 2% in *In re: iQor Holdings Inc., et al*., Case. No. 20-34500-DRJ [Final Order, ECF No. 184]; 3.75% in *In re: Hertz Corporation, et al.*, Case No. 20-11218-MFW [Final Order, ECF No. 1661].

[18] *See, e.g.*, 3% commitment fee in *In re: Wesco Aircraft Holdings*, Inc., *et al.*, Case No. 23-90611 [Final Order, ECF No. 396]; 5% in *In re: Nielsen & Bainbridge, LLC, et al.*, Case No. 23-90071 [Final Order, ECF No. 549]; 2% in *In re: IQor Holdings inc., et al.*, Case No. 20-34500 [Final Order, ECF No. 184]; 3.75% in *In re: The Hertz Corporation, et al.*, Case No. 20-11218 [ECF No. 1661]; 2.5% in *In re: THG Holdings LLC et al.*, Case No. 19-11689 [Final Order ECF No. 233].

34. In sum, the extraordinarily high Commitment Fee, sought against a struggling healthcare facility, where all the work and loan documents were drafted and approved in connection with the original $7 million DIP Loan, should not be approved here.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court (i) deny the Amended DIP Financing Motion unless the Amended DIP Facility and Proposed Final Order are modified to remove and or substantially reduce the Roll-Up and the Commitment Fee; and (ii) grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: October 25, 2023

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing document through the CM/ECF system, which will send notification of such filing to the parties registered to receive Notice.

In San Juan, Puerto Rico, today October 25, 2023.

Respectfully submitted,

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