UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

In re:	Chapter 11
MV REALTY PBC, LLC *et al.*,[1]	Case No. 23-17590-EPK
Debtors.	(Jointly Administered)

OBJECTION OF THE OFFICIAL COMMITTEE OF HOME BENEFITS AGREEMENT HOLDERS TO DEBTORS' MOTION FOR ENTRY OF ORDER AUTHORIZING CONTINUED USE OF CASH COLLATERAL

The Official Committee of Home Benefits Agreement Holders (the "Committee"), by its undersigned counsel Boies Schiller Flexner LLP ("Committee Counsel") respectfully submits this objection (the "Objection") to Debtors' *Motion for Entry of an Order Authorizing Continued Use of Cash Collateral* [ECF No. 550] (the "Motion").[2] In support of this Objection, the Committee states as follows:

INTRODUCTION

1. On December 29, 2023, Debtors filed their Motion seeking authorization for continued use of cash collateral under the terms and conditions set forth in the *Final Order*

[1] The last four digits of the Debtors' federal tax identification numbers are: MV Realty, PBC LLC (6755), MV Realty Holdings, LLC (3483), MV Receivables II, LLC (9368), MV Receivables III 6793), LLC, MV Realty PBC, LLC (Pennsylvania) (7301), MV Realty of South Carolina, LLC (7322), MV Realty of North Carolina, LLC (3258), MV of Massachusetts, LLC (0864), MV Realty of Illinois, LLC (8814), MV Realty of Arizona, LLC (2725), MV Realty of Connecticut, LLC (8646), MV Realty PBC, LLC (Georgia) (6796), MV Realty of New Jersey, LLC (5008), MV Realty of Washington, LLC (7621), MV Realty of Maryland, LLC (9945), MV Realty of Virginia, LLC (2129), MV Realty of Tennessee, LLC (7701), MV Realty of Wisconsin, LLC (2683), MV Realty of Nevada, LLC (0799), MV Realty of Oregon, LLC (3046), MV Realty of Utah, LLC (4543), MV Realty of Minnesota, LLC (1678), MV Realty of Indiana, LLC (3566), MV Realty of Missouri, LLC (6503), MV Homes of New York, LLC (2727), MV Realty of Idaho, LLC (8185), MV Realty of Alabama, LLC (6462), MV Realty of Colorado, LLC (1176), MV Realty of Oklahoma, LLC (8174), MV Realty of Louisiana, LLC (3120), MV Realty of Kansas, LLC (2304), MV Realty of Kentucky, LLC (2302), MV Realty of California (7499), MV Realty of Texas, LLC (7182), MV Realty of Michigan, LLC (5280), and MV Realty of Ohio, LLC (0728).

[2] Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion and the Final Order.

Authorizing Use of Cash Collateral [ECF No. 142] (the "Final Order"), which this Court approved before the Committee noticed an appearance in these proceedings. Exhibit A to the Motion proposes a 90-day Budget, spanning from January 1, 2024 to March 31, 2024, which, consistent with the Carveouts in paragraph 5 of the Final Order, allots $1,575,000 (or $525,000 per month) for Debtors' counsel and special litigation counsel, while allotting only $150,000 (or $50,000 per month) for the Committee's professionals.

2. The Committee objects to the Motion to the extent it seeks to maintain the $50,000 per month carveout for allowed fees and reimbursement of expenses of professionals employed by the Committee and any other official committee appointed in this Case. Given the investigatory work the Committee must undertake to adequately represent the claims and interests of its constituents—the existing and former counterparties to Debtors' alleged predatory Homeowner Benefit Agreements (the "HBA Holders")—a carveout of only $50,000 per month is unreasonable because it will significantly impair the Committee's ability to perform its powers and duties under 11 U.S.C. § 1103(c). Moreover, the respective Carveouts for the benefit of Debtors' professionals and the Committee's professionals are inequitable because Debtors' professionals' carveout is over 10 times that of the Committee's professionals.

3. The Court should not permit the Budget—and by extension, this bankruptcy process generally—to be unreasonably skewed to the detriment of the HBA Holders and in favor of Debtors and their senior secured lien holder/shareholder, who funded Debtors' massive scaling of its HBA portfolio. Accordingly, the Committee requests that the Court deny the Motion as presented, and order a modification of the Carveout provisions in the Final Order so that, going forward, all Court-approved professionals, including professionals retained by Debtors and the

Committee, receive equitable treatment and *pro rata* access to carved out proceeds, regardless of the Budget attached to the Motion as Exhibit A.

BACKGROUND

4. These jointly administered cases commenced on September 22, 2023, when Debtors filed their voluntary petitions for relief under chapter 11 of title 11, United States Code (the "Bankruptcy Code").

5. Debtors sought the protection of the Bankruptcy Code in response to the commencement of a half-dozen state level civil enforcement actions by the consumer protection divisions of Attorneys General in several states, including Florida, Massachusetts, North Carolina, New Jersey, Ohio, Indiana, and Pennsylvania. California and Georgia have since filed their own civil enforcement actions, bringing the total number of pending state AG actions to nine. The state AG actions allege that Debtors engaged in a scheme of deceptive and fraudulent practices to entice the HBA Holders to unwittingly encumber their homes and commit to pay unconscionable fees. Essentially, the state AGs allege that MV Realty was and is a predatory secured lending operation disguised as a real estate broker.

6. This scheme was designed to achieve outsized returns on invested capital by originating asset-backed obligations from consumers in exchange for nominal payments to those consumers. The national expansion and scaling of Debtors' asset-backed HBA portfolio was funded by the credit facility arranged by Monroe Capital Management Advisors, LLC ("Monroe Capital"), Debtors' senior lender that is also a holder of equity security interests issued to it by one of the Debtors—MV Realty Holdings LLC.[3] The use of cash collateral under that facility is the subject of the Motion.

[3] As part of the credit facility closing documentation dated July 28, 2021, Monroe Capital purchased 3,644 Ordinary Common Units issued by MV Realty Holdings ("Holdings") in exchange for a cash payment of $1,500,000. Monroe

7. With Monroe Capital's consent to Debtors' use of cash collateral to fund the further harvesting of HBAs and a carveout to facilitate (a) Debtors' defense against the state AG actions and (b) Debtors' adversary proceeding that seeks to enjoin those actions under section 105(a) of the Bankruptcy Code, Debtors are using the protections afforded under title 11 as a shield while wielding a litigation sword funded amply by Monroe Capital. It is simply inequitable for Debtors to ask this Court to approve a carveout agreement with Monroe Capital that discriminates so heavily against the professionals employed by a Committee that the United States Trustee appointed to assure adequate representation of the HBA Holders in this Case.

8. Two days after filing their petitions, on September 24, Debtors filed an *Emergency Motion for Entry of Interim and Final Orders Authorizing Use of Cash Collateral* [ECF No. 10], claiming "[i]t is essential to the continued operation of Debtors' businesses" for the Court to permit them to continue to use "[c]ash generated from the HBAs" to "fund among, other things, rent, payroll, servicing, and legal fees." [ECF No. 10 ¶ 46].

9. On September 26, Monroe Capital, filed a *Limited Objection to Debtors' Emergency Motion* [ECF No. 34], arguing that Debtors failed to meet their burden of showing that Monroe Capital's interest in the cash collateral was adequately protected.

10. After a hearing on September 27, the Court entered an *Interim Order Authorizing Use of Cash Collateral* on October 2. [ECF No. 48]. The Court subsequently entered a *Second Interim Order Authorizing Use of Cash Collateral* on October 24. [ECF No. 126]. These Orders provided for a "Professional Fee Carveout" that would apply to fees for any professionals retained by any party in interest without distinguishing between professionals retained by Debtors and professionals retained by other parties. [ECF No. 48 ¶ 2(E); ECF No. 126 ¶ 2(E)].

Capital also received Warrants to purchase 4.0% of Holdings. *Section 2 and Annex 1 of Equity Purchase Agreement, dated July 28, 2021.*

11. After entry of the Second Interim Order, also on October 24, Debtors filed their *Proposed Final Order Authorizing Use of Cash Collateral* (the "Proposed Final Order") [ECF No. 128]. Paragraph 5 of the Proposed Final Order provides: "The Adequate Protection Obligations, including, without limitation the Adequate Protection Liens shall be at all times subject and junior to: (i) all unpaid fees required to be paid to the Clerk of the Court and fees owed to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) (collectively, the 'Administrative Carveout'); (ii) the pre-petition retainer paid for the benefit of Seese, P.A., and the additional monthly carveouts for the benefit of Seese, P.A. in the amounts set forth in the Final Budget (collectively, the 'Debtors' Counsel Carveout'); and (iii) the amount of $50,000.00 per month for counsel retained by any statutory committee appointed in the Case, commencing from and after the date of such retention (the 'Other Professionals Carveout' and, together with the Administrative Carveout and Debtors' Counsel Carveout, the 'Carveouts')." While Section II(B)(6) of the Guidelines for Motions Seeking Authority to Use Cash Collateral provides that in any proposed order submitted with a cash collateral motion, "[p]rovisions that provide disparate treatment for the professionals retained by a creditors' committee from that provided for the professionals retained by the debtor with respect to a professional fee carveout" must be "either highlighted or bold as to make them more prominent than the remainder of the text," Paragraph 5 of the Proposed Final Order did not contain any highlighted or bold text.

12. On October 27, after a hearing on October 25, the Court entered the Final Order [ECF No. 142], which kept the carveout provisions set forth in Paragraph 5 of the Proposed Final Order intact.

13. One month after entry of the Final Order, on November 28, the United States Trustee ("UST") appointed the Committee to assure that HBA Holders' interests would be

adequately represented in this Case. [ECF No. 278]. Days later, on December 4, the Committee filed an *Application for Order Authorizing Employment of Boies Schiller Flexner as Counsel Effective November 28, 2023* [ECF Nos. 406, 412] (the "Application"), which explained that, if the allegations in the various state AG enforcement actions are true, the interests of the HBA Holders are directly in conflict with the pecuniary interests of Debtors and general unsecured creditors, who have an interest in the continued harvesting of revenue from the executory HBAs at the HBA Holders' expense. [ECF No. 412 ¶ 9]. Consequently, the Committee stated it would undertake an investigation of the acts, conduct, assets, liabilities, and financial condition of Debtors, including Debtors' actions and/or transactions involving certain non-debtor third parties in connection with the state AGs' allegations. [ECF No. 412 ¶¶ 18, 20, 23].

14. On December 11, Monroe Capital filed a Limited Objection opposing the Committee's Application to employ counsel. [ECF No. 430]. In support of its Limited Objection, Monroe Capital argued that the Committee's appointment "does not benefit any parties in interest or serve any other meaningful purpose in these Cases" and that consequently, the Committee "should be disbanded." [ECF No. 430 ¶¶ 1, 12]. Monroe Capital repeated these arguments during a hearing on the Committee's Application on December 13. [ECF No. 444 at 25:22-26:1]. Notwithstanding Monroe Capital's objection, the Court approved the Committee's Application during the December 13 hearing and entered an order on December 18 authorizing Committee's Counsel's employment, *nunc pro tunc* to November 28, 2023. [ECF No. 452].

15. On December 29, Debtors filed their pending Motion for continued use of cash collateral [ECF No. 550], which seeks to keep the Carveouts at their current levels. The Budget submitted with the Motion proposes funding for a 90-day period spanning from January 1, 2024 to March 31, 2024, and allots $1,575,000 (or $525,000 per month) for Debtors' counsel and special

litigation counsel, while only allotting $150,000 (or $50,000 per month) for the Committee's professionals.

OBJECTION

I. The Insufficient Size of the Carveout for Committee Professionals Unreasonably Impairs the Committee's Ability to Adequately Represent the Claims and Interests of HBA Holders.

16. Paragraph 5 of the Final Order provides for a $50,000 monthly carveout for all professionals "retained by any statutory committee appointed in the Case, commencing from and after the date of such retention." [ECF No. 142 ¶ 5]. The amount of the carveout—$50,000 per month—is insufficient.

17. Bankruptcy courts across the country have consistently recognized the importance of carving out a "reasonable sum" for professionals retained by creditors' committees in debtor-in-possession financing arrangements. *See, e.g.*, *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 38, 41 (Bankr. S.D.N.Y. 1990) ("[I]t has been the uniform practice in this Court . . . to insist on a carve out from a super-priority status and post-petition lien in a reasonable amount designed to provide for payment of the fees of debtor's and the committees' counsel and possible trustee's counsel in order to preserve the adversary system."); *In re Evanston Beauty Supply, Inc.*, 136 B.R. 171, 177 (Bankr. N.D. Ill. 1992) ("Negotiated 'carveouts' have been the subject of various decisions and are viewed as being necessary in order to preserve the balance of the adversary system in reorganization."); Letter of the Honorable Peter J. Walsh to Delaware Bankruptcy Counsel, dated April 2, 1998, at ¶¶ 11–12 ("Carveouts for professional fees should not be limited to the debtor's professionals, but should include the professionals employed by any official committee. . . . The carveout for committee professionals and the limited period to challenge the lender's prepetition secured position is important. In my view, ***it is the price of admission to the bankruptcy court to***

obtain the benefits of preserving the assets of the estate, which preservation typically first benefits secured parties." (emphasis added)).

18. "Absent [reasonable carveouts for committee professionals], the collective rights and expectations of all parties-in-interest are sorely prejudiced." *In re Ames Dep't Stores, Inc.*, 115 B.R. at 38. Indeed, cash collateral financing without reasonable carveouts "would remove incentives for professionals to provide essential chapter 11 services, hamper the adversary process . . . and thereby . . . hinder[] debtors' reorganization efforts." Alan Lepene et al., *Toll Charges or Free Access? Must a Secured Creditor "Pay to Play" in Chapter 11?*, *in* Com. Bankr. Litig. § 23:3 (Jonathan P. Friedland ed., Thompson Reuters Jan. 2024 update) (citing *In re Cal. Webbing Indus., Inc.*, 370 B.R. 480, 484 (Bankr. D.R.I. 2007)).

19. Here, the Committee is responsible for representing the interests of more than 38,000 HBA Holders—the alleged victims of a years-long, nationwide, deceptive scheme on the part of Debtors and others to encumber their homes. The Committee simply cannot ignore those allegations and still adequately represent those constituents. Undoubtedly, to carry out its mission to "promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders" (*UST Press Release*, cited below), the UST appointed the Committee to assure there will be adequate representation of HBA Holders due to the size and complexity of this Case and the fact that HBA interests are widely held.

20. Following the Court's ruling granting the UST's motion to extend the bar date for filing proofs of claim on November 30, 2023 [ECF No. 312], the UST issued a press release stating:

> More than 40,000 consumers allegedly lured into predatory 40-year listing agreements will have more opportunity to raise their claims in the bankruptcies of a Florida-based real estate company and its affiliates, thanks to efforts by the United States Trustee Program (USTP).

> On November 30, the Bankruptcy Court for the Southern District of Florida granted a motion by the USTP's Miami office to extend the deadline for creditors to file claims in the chapter 11 bankruptcies of MV Realty PBC LLC and its nearly three dozen affiliates. The court's order extends the original Dec. 1 deadline to Feb. 1, 2024. The court also directed the MV Realty entities to serve – at their expense – copies of the order on all parties to the bankruptcies, including roughly 38,000 homeowners whom MV Realty listed as current contract holders but not as creditors. Additionally, the companies must provide claim forms to about 2,850 other consumers who may have been forced to pay damages after terminating their agreements; those consumers were neither listed as creditors nor notified of the bankruptcy cases.
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> MV Realty opposed the USTP's motion, citing the costs of additional service. Its objection was overruled.
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> "This ruling protects the due process rights of thousands of people across the country who were affected by MV Realty's business practices," said Director Tara Twomey of the Executive Office for U.S. Trustees. "The U.S. Trustee Program does not represent consumers directly, but it is committed to ensuring that they have a fair chance to access the bankruptcy courts, whether as creditors or debtors. I commend our Miami field office for their work to safeguard the interests of justice by preserving consumers' rights to have their voices heard in these bankruptcy cases."

Press Release, U.S. Dep't of Justice, *U.S. Trustee Program's Advocacy Preserves Consumers' Rights in MV Realty Bankruptcies*, Dec. 18, 2023, available at: https://www.justice.gov/opa/pr/us-trustee-programs-advocacy-preserves-consumers-rights-mv-realty-bankruptcies.

21. At the *contested* December 13 hearing on the Committee's Application to employ Committee Counsel, this Court observed:

> *The United States Trustee appointed this Committee to represent the interests of a particular group of creditors, those who have signed homeowner benefit agreements. There are more than 30,000 such persons. I've heard a number as large as 38,000. Somebody said 40 today. That's the largest constituency in this case by far. The Committee thus serves an appropriate purpose under Section 1102. And as it was pointed out, this is a committee appointed by the United States Trustee, not at the request of a party after the filing of a motion.*

[ECF No. 444 at 38:24-39:8].

22. In furtherance of the Committee's duty to represent these HBA Holders' interests, the Committee needs to diligently investigate the merits of the allegations in the various state AG

actions to determine how to proceed in this Case. Conducting such an investigation will require Rule 2004 discovery, including document discovery, forensic accounting, and depositions of witnesses. It is unrealistic to expect that the scope of work that is required here can be accomplished within a budget of $50,000 per month given the nature and complexity of the factual allegations made in this Case, not to mention the number of HBA Holders affected.

23. The Committee has a duty to determine whether it should commence an adversary proceeding against Monroe Capital seeking to equitably subordinate its secured claims and/or recharacterize its claims as equity. The Committee has asked Monroe Capital to agree to an extension of the Challenge Period (in which the Committee has the right to commence an adversary proceeding) beyond January 28, 2024, but Monroe Capital has refused.

24. As of January 7, 2024, despite the transmittal of another notice of bar date form, a total of only 434 proofs of claim have been filed in this Case. But critically, the UST has received almost that number of inquiries from HBA Holders who communicated they do not understand the notice of the latest February 1, 2024 bar date and what it means for them. The Committee is working with Debtors on a means by which to better inform HBA Holders of the proof of claim process and the meaning of a bar date. The Committee has also asked Debtors to agree to another extension of the bar date so that the HBA Holders will be better informed before the new bar date. But the heart of the problem is the fact that the vast majority of HBA Holders apparently still do not realize there is an HBA lien on their home. Working with the Debtors to better inform HBA Holders, as well as responding to inquiring HBA Holders who have been and are continuing to be referred to Committee's Counsel by the UST, requires significant time (which should be accounted for in setting the carveout).

25. What is obvious from Debtors' Budget is that both Debtors and Monroe Capital seek to have the Committee serve as mere window dressing in this case, with its professionals having to incur undue risk of receiving compensation if they proceed to reasonably investigate Debtors' and Monroe Capital's conduct. An appropriate carveout for the Committee's professionals is particularly needed here because of the possibility that Debtors' HBA assets may be deemed worthless, as Monroe Capital pointed out in its Limited Objection [ECF No. 34], and the assets of the estate available for distribution could well be limited to recoveries based on avoidance actions and other causes of action against non-debtor third parties brought by the trustee. Monroe Capital may not have clean hands in this case, and it should not be permitted to chill and frustrate the legitimate exercise of the Committee's power and duty to investigate its conduct in knowingly funding Debtors' scheme to cause homeowners to agree, through alleged dishonest and deceptive practices, to asset-backed, forward-looking obligations that encumbered their homes.

II. The Extreme Disparity Between the Sizes of the Carveout for Debtors' Professionals and the Carveout for the Committee's Professionals Is Unwarranted and Inappropriate.

26. Debtors' Motion should be denied not only because of the inadequate *absolute* size of the Committee professionals' carveout, but also because of the unjustifiable *relative* size of the carveout compared to Debtors' professionals' carveout. Debtors' Budget allots $1,575,000 (or $525,000 per month) for Debtors' counsel and special litigation counsel, compared to only $150,000 (or $50,000 per month) for the Committee's professionals. In other words, the Committee's carveout is approximately 9.5% of Debtors' carveout. The Court should not approve a financing arrangement that provides for such disparate treatment.

27. Local Bankruptcy Rule 4001-2 provides that any motion "seeking authority to use cash collateral pursuant to 11 U.S.C. § 363" must comply with this Court's "Guidelines for Motions Seeking Authority to Use Cash Collateral and Motions Seeking Approval of Postpetition

Financing" (the "Guidelines"). Section II(B)(6) of the Guidelines provides that in any cash collateral or financing motion, "[p]rovisions that provide disparate treatment for the professionals retained by a creditors' committee from that provided for the professionals retained by the debtor with respect to a professional fee carveout" "***shall be*** in print either highlighted or bold as to make them more prominent than the remainder of the text." Guidelines § II(B)(6) (emphasis added). The Guidelines echo similar rules in other jurisdictions, which permit disparate treatment of debtors' professionals and committees' professionals only in extraordinary situations, and therefore subject requests for such disparate to careful scrutiny. *See* Bankr. S.D.N.Y. General Order No. M-274 ¶ 7 (carve-outs that "provide disparate treatment for the professionals retained by the Committee compared to professionals retained by the debtor" are "Extraordinary Provisions" which "ordinarily will not be approved in interim orders without substantial cause shown, compelling circumstances and reasonable notice"); *see also* Bankr. D. Del. Local Rule 4001-2; Bankr. N.D.Ill. Local Rule 4001-2.

28. Debtors' proposed Final Order did not present the carveout provisions in highlighted or bold text [*see* ECF No. 126 ¶ 5], and therefore did not comply with the Guidelines. This alone is sufficient to deny the Motion.

29. Beyond Debtors' failure to comply with the Guidelines, the lack of any justification for the disparate treatment of Debtors' professionals and the Committee's professionals requires denial of the Motion. It is critically important for the conduct of bankruptcy proceedings that the terms of debtor financing not be tilted in favor of one constituency while prejudicing another. *See, e.g.*, *In re Ames Dep't Stores, Inc.*, 115 B.R. at 37 ("[C]ourts have focused their attention on proposed terms that would tilt the conduct of the bankruptcy case; prejudice . . . the powers and rights that the Bankruptcy Code confers for the benefit of all creditors . . . ."); *In re Def. Drug*

Stores, Inc., 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992) ("While certain favorable terms may be permitted as a reasonable exercise of the debtor's business judgment, bankruptcy courts do not allow terms in financing arrangements that convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition lender."). Rather, "'[c]arveouts' are used in order to avoid skewing the necessary balance of debtor and creditor protection needed to foster the reorganization process" and should be "designed to accommodate all classes of creditors and equity interests" as opposed to "especially crafted for the benefit of the pre-petition lender . . . ." *In re Evanston Beauty Supply, Inc.*, 136 B.R. at 177.

30. In the bankruptcy context, a court has "inherent power" to "redistribute" fees "among all professionals" to "assure that none receives more than its pro rata share." *In re Channel Master Holdings, Inc.*, 309 B.R. 855, 860 (Bankr. D. Del. 2004).

31. Here, there is no justification for the extreme imbalance (a more than 10x differential) between the Carveouts for Debtors' professionals and the Committee's professionals. Instead, the imbalance proposed by Debtors' Motion would skew the bankruptcy process in Debtors' and Monroe Capital's favor by inhibiting a full and fair investigation into their conduct. Of course, if Debtors or Monroe Capital believe the Committee's fees and expenses are excessive, as they are incurred, they may raise objections to the Committee's interim fee applications and have the Court decide which services were necessary and whether the fees charged for such necessary services are reasonable. But limiting the Committee's *allowable* professional fees to $50,000 per month is grossly unfair and prejudicial to the Committee.

32. Accordingly, the Committee asks the Court to deny the Motion as presented and require that the Carveout for *all* professionals retained with the Court's approval in this case shall be: (a) $3,000,000 for the three month period of the Budget and (b) available to such professionals

equally and distributed *pro rata* among the professionals in the event that the Carveout proves insufficient to cover the fees and expense reimbursements approved by the Court.

RESERVATION OF RIGHTS

33. The Committee reserves its right to amend or supplement this Objection or contest any other requests for similar relief by Debtors in advance of the final hearing on the Motion.

CONCLUSION

34. The Committee respectfully requests that the Court deny the Motion as presented and issue an order requiring that:

a. Any order approving Debtors' use of cash collateral (a "Cash Collateral Order") during the three-month period covered by the Budget shall provide a carveout of Monroe Capital's cash collateral in the amount of $3,000,000 for the benefit of any and all professionals whose employment has been approved by the Court (the "Professionals' Carveout");

b. In the event the Professionals' Carveout is insufficient to cover the fees and expense reimbursements approved by the Court, the proceeds of the Professionals' Carveout shall be distributed equally on a *pro rata* basis to the professionals whose fees and expense reimbursements have been approved by the Court;

c. In any given month covered by the Cash Collateral Order, if Debtors do not have sufficient cash to pay the fee and expense reimbursement submissions by professionals in full, as provided under the *Court's Order Granting Debtors' Motion for Entry of Order Authorizing and Establishing Monthly Compensation Procedures for Professionals*, entered November 20, 2023 (the "Fee Order") [ECF No. 251], Debtors shall pay such submitted invoices equally on a *pro rata* basis; and

d. In the event any party timely objects to a monthly fee submission by another professional for whom monthly compensation payments have been authorized under the Fee Order, then Debtors shall not pay any professional's fee or reimburse any expense submission, unless and until the Court has ruled on that party's objection to payment of such fee and expense reimbursement objection.

Date: January 8, 2024

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