

CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC ¹	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No:
2019-CA-2762

To:

Soneet Kapila,

Division L

Assignee.

**ASSIGNEE'S MOTION FOR ORDER AUTHORIZING
COMPROMISE OF CONTROVERSY WITH TEXAS CAPITAL
BANK, N.A. AS ADMINISTRATIVE AGENT FOR LENDER GROUP**

¹ On April 8, 2019, the Court entered an order administratively consolidating this case with the assignment cases of the following entities: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC.

Soneet Kapila, as assignee (“**Assignee**”) for the entities listed in footnote one below, by and through his undersigned attorneys, files this motion seeking the entry of an order approving the settlement reached between the Assignee and Texas Capital Bank, N.A., as Administrative Agent (“**TCB**” or “**Agent**”) for the Lenders (defined below) relating to TCB’s administrative expense claim and the Assignee’s claim of entitlement to surcharge. In support of this motion (the “**Motion**”), the Assignee states as follows:

Background

1. On March 14, 2019, Laser Spine Institute, LLC (“**LSI**”) executed and delivered an assignment for the benefit of creditors to the Assignee. The Assignee filed a Petition with the Court on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant to Chapter 727 of the Florida Statutes (the “**LSI Assignment Case**”).

2. Simultaneous with the filing of the LSI Assignment Case, the Assignee filed fifteen other Petitions commencing assignment for the benefit of creditors proceedings for 15 affiliates of LSI (the “**Affiliated Assignment Cases**,” and together with the LSI Assignment Case, the “**Assignment Cases**”): LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (each, an “**Assignor**” and collectively, the “**Assignors**”).

3. The Agent asserts properly perfected liens on substantially all personal property of the Assignors (the “**Collateral**”), including but not limited to accounts receivable and any proceeds

generated from accounts receivable, under a Credit Agreement (or any related documents or agreements) dated as of July 2, 2015 by and between certain of the Assignors, as borrowers and/or guarantors, and TCB, as lender (as amended, the “**Credit Agreement**”).² Pursuant to the Credit Agreement, and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time (the “**Loan Documents**”), the Lenders and the Agent provided revolving and term loan credit and other financial accommodations to, and issued letters of credit for the account of, the Borrowers pursuant to the Loan Documents (the “**Loan Facility**”).

4. According to its Proof of Claim filed with the Assignee,³ TCB asserts that the amount of the “Loans” outstanding under the Loan Facility totals \$154,984,093.95. This amount dwarfs the estimated value of the Lenders’ Collateral, and the Assignee expects that TCB will be left with a substantial deficiency claim. Accordingly, substantially all of the Assignors’ assets, including accounts receivable and any cash proceeds generated by accounts receivable, are fully encumbered by TCB’s liens. The only unencumbered assets of the estates created upon the commencement of the Assignment Cases (the “**Assignment Estates**”) appear to be litigation claims, certain vehicles, rights to insurance premium refunds, and rights to a business interruption insurance claim arising from Hurricane Irma.

5. In the early stages of the Assignment Cases, the Assignee was faced with the difficult task of securing funding for the wind-down. Because all cash and cash proceeds of accounts receivable, inventory, and disposition of any encumbered personal property constituted

² Capitalized terms not otherwise defined herein maintain the same meanings ascribed to them in the Credit Agreement.

³ TCB filed its Proof of Claim (the “**Lenders’ Claim**”) with the Court along with an Affidavit of Bruce Shilcutt Authenticating Business Records, on June 24, 2019.

the Lenders' collateral (the "**Cash Collateral**"),⁴ the Assignee had no unencumbered funds with which to pay critical and necessary expenses of the Assignment Estates for the securing and preservation of the assets. Thus, the Assignee discussed with TCB the ability of the Assignee to use the Cash Collateral, with the Agent's consent, to fund the expenses of the Assignment Estates as discussed below.

6. The first category of expenses are those of the Assignment Estates that directly benefit the Lenders. For example, the Assignee was required to fund expenses related to the administration and liquidation of the Lenders' Collateral, including furniture, fixtures, and equipment located in Tampa and other remote locations, accounts receivable recoveries, and interaction with and tracking of prospects for asset sales. In addition, the Assignee was required to fund personal property taxes, rent, utilities, insurance, and storage costs. These expenses are generally those that the Assignee maintains would clearly be subject to surcharge against the Lenders' Collateral. *See Fla. Stat. § 727.114(1)(a)* (providing secured creditors shall receive the proceeds from the disposition of their collateral, "less the reasonable, necessary expenses of preserving or disposing of such collateral to the extent of any benefit to such creditors"). This first category of expenses will be referred to as "**Lender Related Expenses.**" The Assignee and the Agent have agreed that Lender Related Expenses will be paid by the Lender.

7. The second category of expenses are those that overlap between expenses that benefit the Lenders and also confer general benefit to the Assignment Estates and the creditor body as a whole, which would otherwise be afforded priority as "[e]xpenses incurred during the administration of the estate," *see Fla. Stat. § 727.114(1)(b)*. This category of expenses will be

⁴ In bankruptcy, cash collateral is defined as "cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents," 11 U.S.C. § 363(a), in which a creditor has a lien.

referred to as “**Overlap Expenses.**” Examples of Overlap Expenses include claims administration, tax issues, services related to the wind-down of the Assignors’ 401K plan and other employee benefits, expenses related to wind-down of the Assignors’ operations, payment of critical employee wages, management, retention and maintenance of the Assignors’ information technology systems, preservation of patient records including electronic health and medical records, and responding to records requests. Additionally, Overlap Expenses include professional fees incurred by attorneys and accountants employed by the Assignee. Such professionals’ invoices invariably include services provided that directly benefit the Lenders, but also services rendered for the general benefit of the Assignment Estates and general unsecured creditors, such as those related to identifying and pursuing sources of recovery, particularly litigation claims, that will benefit all creditors, not just the Lenders.

8. The Assignee and the Agent agreed that some portion of Overlap Expenses should be paid by the Lenders, but some portion of Overlap Expenses should be treated as general administrative expenses payable by the Assignment Estates from any unencumbered funds pursuant to Section 727.114(1)(b) of the Florida Statutes. However, the process of allocating such Overlap Expenses proved difficult, particularly in the early stages of these Assignment Cases when future expenses were unknown.

9. Initially, the Assignee sought to obtain Court approval of a Cash Collateral arrangement between the Assignee and the Agent by filing a *Motion for Entry of an Order Pursuant to Fla. Stat. § 727.109(15): (I) Authorizing the Use of Cash Collateral; (II) Providing Adequate Protection to Lenders; (III) Establishing a Lien Challenge Deadline; and (IV) Granting Related Relief* (the “**Cash Collateral Motion**”). In the Cash Collateral Motion, the Assignee sought Court approval of an arrangement whereby (i) the Agent would allow the Assignee to use

its Cash Collateral to fund both Lender Related Expenses and Overlap Expenses; and (ii) as adequate protection for the depletion of the Agent's Cash Collateral caused by the Assignee's use of its Cash Collateral to fund Overlap Expenses, the Agent would be granted additional replacement liens on the only unencumbered assets of the Assignment Estates—primarily litigation claims—to secure repayment of a portion of the Cash Collateral used to fund Overlap Expenses. As an additional inducement for the Agent to allow the Assignee to use its Cash Collateral to fund Overlap Expenses (effectively providing the Assignee with an interest-free loan), the Assignee also asked the Court to establish a deadline for parties to file objections to the validity of Agent's liens.

10. On September 23, 2019, the Court entered its Order denying the Cash Collateral Motion, without prejudice, as having been filed prematurely. The Court's primary concern was that the Cash Collateral Motion did not illustrate or establish which expenses incurred by the Assignee constitute general administrative expenses. Until the Assignee could establish that Cash Collateral was used to fund general administrative expenses, the Court would not permit a lien on litigation recoveries to secure repayment of that Cash Collateral. The Court was also concerned that the request to fix a deadline to object to the Lenders' Claim was premature, as the Assignee had not yet completed his investigation of the Lenders' Claim.

11. At the time the Assignee filed the Cash Collateral Motion, the Assignee and TCB had not reached an agreement on the allocation of expenses among the Overlap Expenses. Put differently, they had not agreed on how Overlap Expenses would fall into each "bucket." The Assignee's intent in filing the Cash Collateral Motion without such agreement in place was to defer that issue to a later date, when the universe of such expenses was known with greater certainty, with all parties reserving their rights to object to such allocation.

12. As the Assignment Cases progressed, the Lenders continued to fund certain Overlap Expenses with a reservation of rights to seek allowance of an administrative expense claim in the Assignment Cases for a portion of funded Overlap Expenses that benefitted the Assignment Estates as a whole. Recently, in an effort to avoid litigation over a potential administrative expense claim asserted by the Lenders, the Assignee and the Agent have engaged in discussions in an attempt to resolve the issue of allocating the Overlap Expenses incurred from March 14, 2019 (the “**Petition Date**”) through July 31, 2020, subject to this Court’s approval.

13. This process involved allocating Overlap Expenses for each month between (a) the portion of Overlap Expenses the Lenders would assume responsibility to pay without seeking reimbursement through an administrative expense claim (the “**Lenders’ Portion of Overlap Expenses**”), and (b) the portion of Overlap Expenses the Assignment Estates should be responsible to pay (the “**Estates’ Portion of Overlap Expenses**”). Thus, in advancing funds to pay all Overlap Expenses, the Lenders advanced funds to pay not only the Lenders’ Portion of Overlap Expenses, but also the Estates’ Portion of Overlap Expenses, i.e., the latter portion of Overlap Expenses for which the parties have agreed that the Assignment Estates should otherwise bear responsibility.

14. The Assignee and the Agent have also entered into a Stipulation of Settlement (the “**Stipulation**”), attached hereto as **Exhibit A**, which acknowledges the validity and enforceability of the Agent and Lenders’ liens and sets forth the agreement between the Agent and the Assignee on the amount of the administrative expense claim to be provided to the Agent on account of funded Estates’ Portion of Overlap Expenses. [Attached to the Stipulation is a detailed chart summarizing the allocation of expenses between the Lenders’ Portion of Overlap Expenses and the Estates’ Portion of Overlap Expenses.]

15. As set forth in the Stipulation, the *total* amount of Overlap Expenses for the period from the Petition Date through July 31, 2020 equals \$1,707,691.00. Of this total amount, the parties have agreed that the Lenders' Portion of Overlap Expenses totals \$939,823.00. The Agent has already paid the Assignment Estates the Lenders' Portion of Overlap Expenses. The parties have agreed that the amount of the Estates' Portion of Overlap Expenses totals \$767,868.00. This amount has already been funded by the Agent, and pursuant to this proposed settlement, shall serve as the benchmark for establishing the amount of the Agent's administrative expense claim.

Relief Requested

16. As settlement of the Agent's administrative expense claim for funding the Estates' Portion of Overlap Expenses, the Assignee seeks the entry of an order approving the settlement reached between the Assignee and the Agent, as further set forth in the Stipulation (the "**Settlement**").

17. The key terms of the Settlement are summarized below:⁵

- A. **Administrative Expense Claim.** In return for funding the Estates' Portion of Overlap Expenses, the Agent shall receive an administrative expense claim in the amount of \$964,465 (the "**Agent's Administrative Expense Claim**"), subject to the Waterfall (defined below), which represents the Estates' Portion of Overlap Expenses funded by the Agent.⁶
- B. **Release by Lender for Lender Related Expenses and Lenders' Portion of Overlap Expenses.** The Agent shall not be entitled to an administrative expense claim for the Lenders' Portion of Overlap Expenses or the Lender Related Expenses. The Agent shall not have any further obligation to the Assignee or the Assignment Estates for any expenses other than those set forth in the Stipulation and the Assignee and the Assignment Estates hereby waive any further recovery or right to reimbursement from the Agent or the

⁵ The foregoing is a summary only of the terms of the Stipulation. The terms of the Stipulation shall control in the event of any inconsistencies.

⁶ In addition to the \$767,868 in fees attributable to the Estates' Portion of the Expenses, the Agent and Lenders are entitled to an additional \$196,597 administrative claim on account of the Assignment Estates' use of the Agent and Lenders' cash collateral to fund the Assignee and Assignee professional fees for services rendered to general unsecured creditors. Hence, the total amount of the Agent's Administrative Expense Claim is \$767,868 plus \$196,597, which equals \$964,465. The foregoing numbers are being reconciled and therefore are subject to change.

Lenders. The Agent, upon payment of the Agent's Administrative Expense Claim in full, shall be deemed to have released the Assignee and the Assignment Estates from any and all liability for or any claim for repayment of the Lenders' Portion of Overlap Expenses set forth in Recital L of the Stipulation or the Lender Related Expenses. The Assignee on behalf of himself and the Assignment Estates, as of the Effective Date, shall be deemed to have released the Agent and the Lenders from any and all liability for any claim for payment or right to reimbursement of the Lenders Expenses. Notwithstanding the foregoing, nothing herein shall prohibit the Agent, on behalf of itself and the Lenders, from timely seeking allowance and payment of additional administrative claims and expenses if the Agent hereafter expends money which confers a benefit to the estate in accordance with applicable legal principles, without prejudice to the right of the Assignee or any other party in interest to object to such additional administrative claims and expenses, it being agreed that nothing in this sentence shall either expand or diminish the respective rights that the Agent, the Assignee, or third parties would have with respect to such future administrative claim in the absence of this Stipulation.

- C. **Allocation of Sharing Amounts of Litigation Recoveries.** Recoveries of litigation shall be allocated as follows (the "Waterfall"): (i) to costs of litigation, including court-allowed fees and expenses of Assignee's contingency fee counsel; (ii) to court-allowed fees and expenses of Assignee and Assignee's professionals up to the amount of \$950,571.⁷; (iii) then to the Agent's Administrative Expense Claim until paid in full; (iv) then pro rata to any other administrative expenses until paid in full; and (v) then *pro rata* to general unsecured creditors.
- D. **Granting of Liens as Security for Agent's Administrative Expense Claim.** The Assignee shall grant security to the Agent and Lenders in the form of adequate protection, to the extent of any diminution in value of their Collateral, and replacement liens. These liens shall constitute a lien on all claims and causes of action of each Assignor or its respective Assignment Estate (including, without limitation, all commercial tort claims of every kind and description) and any and all proceeds therefrom, and any and all proceeds arising from insurance policies. The liens described herein shall be referred to as the "Agent's Adequate Protection and Replacement

⁷ Pursuant to the Stipulation, the Agent and Assignee have agreed that the Assignee's incurred professional fees shall be paid in full (subject to Court approval) through the fourth interim application period in an amount not to exceed \$1,695,578.00. Of this total amount, the Agent and Lenders have consented to the payment of \$745,007 from Cash Collateral, while the remaining amount, \$950,571, will be satisfied from unencumbered funds in accordance with the Waterfall.

Liens.” The Agent’s Adequate Protection and Replacement Liens shall be subject to the Waterfall.

- E. **Lien Challenge Deadline.** Upon considering the Assignee’s statements as to the validity of the Agent’s liens as set forth in the Stipulation, the Court shall establish a lien challenge deadline of no later than October 15, 2020, upon expiration of which, the claims, liens, and security interests of the Agent and Lenders granted in accordance with the Loan Documents shall be deemed valid, perfected, and enforceable as to all creditors and parties-in-interest, and shall be subject to no further challenge, unless a party in interest with standing: (x) shall have commenced a supplemental proceeding against the Agent for the purpose of challenging the validity, extent, priority, perfection, and enforceability of the Credit Agreement or Agent’s claims, mortgages, and security interests or otherwise asserting any claims or causes of action against the Agent, on or before October 15, 2020 (the “**Lien Challenge Review Period**”), and (y) the Court rules in favor of the plaintiff in any such timely filed supplemental proceeding. Any person or entity that fails to commence such a supplementary proceeding within the Lien Challenge Review Period shall be forever barred from doing so. For the avoidance of doubt, the Agent does not consent to the use of its Cash Collateral for any party to challenge in a supplemental proceeding or other litigation the Lenders’ claims or liens or to assert any claims against the Lenders in a supplemental proceeding or other litigation.

Basis for Relief

18. The statutory framework provided for assignment for the benefit of creditors cases authorizes the Court to approve the Settlement. Section 727.109 of the Florida Statutes specifically empowers the Court to enter an order approving “the compromise or settlement of a controversy” upon motion by the Assignee. Fla. Stat. § 727.109(7). Further, the Court is authorized to “[e]xercise any other powers that are necessary to enforce or carry out the provisions of this chapter.” Fla. Stat. § 727.109(15).

19. The settlement resolves issues regarding the Agent’s request for an administrative expense claim for previously advanced funding that covered Overlap Expenses, on the one hand, and the Assignee’s claim of entitlement to surcharge the Lenders’ Collateral for a portion of the Overlap Expenses, on the other hand.

20. The assignment statutes' priority scheme provides second-level priority to "[e]xpenses incurred during the administration of the estate," which are commonly referred to as administrative expense claims. Fla. Stat. § 727.114(1)(b). The assignment statutes also provide that secured creditors are entitled to receive the proceeds of their collateral, "less the reasonable, necessary expenses of preserving or disposing of such collateral to the extent of any benefit to such creditors." Fla. Stat. § 727.114(1)(a). An assignee's claim for payment of such reasonable and necessary expenses of preserving or disposing of a secured creditor's collateral is often referred to as a surcharge claim.

21. Thus, the heart of the issue is that some portion of the Overlap Expenses can arguably be considered "[e]xpenses incurred during the administration of the estate," (Fla. Stat. § 727.114(1)(b)), but the Assignee contends that a substantial portion of the Overlap Expenses provided benefit to the Lenders and constitute "reasonable, necessary expenses of preserving or disposing" of the Lenders' Collateral (Fla. Stat. § 727.114(1)(a)), which should be paid by the Agent.

22. At the outset of the case, had the Lenders decided to foreclose on and liquidate their Collateral themselves, they would themselves have to fund the legal costs associated with enforcing their liens and the actual costs of securing and preserving, protecting and insuring, and collecting and liquidating their Collateral. These kinds of costs are those included in the category of Lender Related Expenses, and the Agent has agreed to fund these costs. For the avoidance of doubt, amounts paid by the Agent to fund Lender Related Expenses are *not* included in the Agent's Administrative Expense Claim.

23. As a general rule, the alternatives available to secured creditors under Article 9 of the Uniform Commercial Code are inefficient and present numerous legal and practical challenges,

particularly where (as here) the Collateral is located in leased, as opposed to owned, facilities in different states. It is particularly difficult for secured creditors to maintain the underlying information technology system of the borrower, which in these Assignment Cases (and in many other cases) is essential to the maintenance of the collateral values—including the collection of accounts receivable.

24. Largely because the Assignment Cases offered a centralized forum to collect and dispose of assets, deal with landlords and other third parties, and identify prospective purchasers, the Agent consented to the Assignee's use of Cash Collateral to fund the costs associated with these Assignment Cases, including the Overlap Expenses. In turn, based upon the commitment of the Lenders to fund these costs, the Assignee undertook the duties as Assignee and, in addition, did not exercise his right under Fla. Stat. § 727.108(11) to abandon the Collateral to the Lenders. Indeed, the Agent and Lenders' commitment to fund Lender Related Expenses is consistent with the surcharge provision of the assignment statutes discussed above.

25. Approval of the Agent's Administrative Expense Claim and the Agent's Adequate Protection and Replacement Liens provides a mechanism to repay the Lenders a portion of the amount of funding they provided to pay expenses that typically would be afforded administrative expense priority. In effect, the Agent allowed the Assignee to use a portion of Cash Collateral as an interest-free credit facility to pay certain administrative expenses of the Assignment Estates.

26. Without the ability to use Cash Collateral to fund Overlap Expenses, the Assignee would have lost the opportunity to preserve value not only for the Lenders, but for the Assignment Estates' other stakeholders as well. The Assignee believes that the Settlement is fair, reasonable, and repays the Agent for its substantial contribution to these Assignment Cases in funding the Estates' Portion of Overlap Expenses.

27. Although the assignment statutes provide for court approval of settlements proposed by an assignee, the statutes do not set forth any specific criteria for approving settlements. The Assignee submits that analogous bankruptcy principles should guide this Court's evaluation of the Settlement. "State courts often look to federal bankruptcy law for guidance as to legal issues arising in proceedings involving assignments for the benefit of creditors." *Moecker v. Antoine*, 845 So. 2d 904, 912 n.10 (Fla. 1st DCA 2003).

28. It is generally recognized that the law favors compromise of disputes over litigation. *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993) (Paskay, C.J.). Some bankruptcy courts have held that a proposed settlement should be approved unless it yields less than the lowest amount that the litigation could reasonably produce. *In re Holywell Corp.*, 93 B.R. 291, 294 (Bankr. S.D. Fla. 1988) (Weaver, J.). In *In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir. 1990), *cert. denied* 498 U.S. 959, (1990), the court enunciated certain factors which must be considered in determining whether to approve a compromise. These factors include the following:

- (i) The probability of success in the litigation;
- (ii) The difficulties, if any, to be encountered in the matter of collection;
- (iii) The complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and
- (iv) The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id.

29. The terms of the Settlement satisfy the above *Justice Oaks* factors. The first factor—the probability of success in litigation—weighs in favor of approval. If the Assignee and the Agent were required to litigate the amount of the Agent's Administrative Expense Claim, it is possible the Court could conclude the Agent is entitled to receive a higher amount. The second

factor is inapplicable. The third factor—expense of litigation—weighs heavily in favor of approval. If the Assignee were required to litigate the amount of the Agent’s Administrative Expense Claim, precious estate resources would be siphoned towards fact-intensive litigation that, in all likelihood, would require a trial. Lastly, the Settlement is in the best interest of creditors, as it preserves the Assignment Estates’ resources and avoids costly, protracted litigation over allocating the Overlap Expenses between the Assignee and the Lenders.

30. The Settlement also includes a provision establishing a bar date for parties to assert any challenge to the validity of the Agent’s claims and liens. The setting of a bar date for the challenge of liens and claims of a secured creditor that allows for the use of its cash collateral is fairly customary in bankruptcy cases. *See In re AOG Entm’t, Inc*, 558 B.R. 98, 103 (Bankr. S.D.N.Y. 2016) (recognizing the setting of a lien challenge deadline in cash collateral and financing orders as “common practice in this Court” and refusing to extend challenge deadline at request of creditor); *see also In re DirectBuy Holdings, Inc.*, No. 16-12435 (CSS), 2017 WL 5496218, at *7 (Bankr. D. Del. Jan. 10, 2017) (setting lien challenge deadline in cash collateral order); *In re Central Beef Ind., LLC*, Case No. 8:16-bk-02366-CPM, Doc. No. 85, at ¶ 17 (Bankr. M.D. Fla. May 26, 2016); *In re Old Corkscrew Plantation, LLC*, Case No. 9:11-bk-14559-BSS, Doc. No. 101 (Bankr. M.D. Fla. Sept. 2, 2011).

31. As set forth in the Stipulation, the Assignee has reviewed the Loan Documents, including the applicable security agreements and UCC-1 financing statements. Based on the Assignee’s investigation and review, the Agent and Lenders’ liens are properly perfected in accordance with Article 9 of the Uniform Commercial Code, Fla. Stat. § 679.1011, *et seq.* Additionally, after extensive review and analysis, the Assignee has not found any legitimate basis upon which to object to the Agent’s proof of claim as filed.

WHEREFORE, the Assignee respectfully requests that this Court enter an order, in substantially the form as **Exhibit B**, (i) granting this Motion, (ii) approving the Settlement pursuant to Section 727.109(7) of the Florida Statutes, (iii) approving the Agent's Administrative Expense Claim pursuant to Sections 727.109(4) and 727.114(1)(b) of the Florida Statutes, subject to the Carveout, (iv) approving the Assignee's granting of the Agent's Replacement Liens pursuant to Section 727.109(15) of the Florida Statutes, (v) establishing a lien challenge deadline for parties to pursuant to assert any challenge to the validity of the Agent's claims and liens, and (vi) granting such other and further relief as is just and proper.

Dated: September 4, 2020

/s/ Edward J. Peterson
Edward J. Peterson (FBN 0014612)
Matthew B. Hale (FBN 0110600)
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Counsel for Assignee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Assignee's Motion for Order Authorizing Compromise of Controversy with Texas Capital Bank, N.A. as Administrative Agent for Lender Group* has been furnished on this 4th day of September, 2020 by the Court's electronic system to all parties receiving electronic service and by either U.S. mail or electronic mail to the parties listed on the Limited Notice Parties list attached.

/s/ Edward J. Peterson
Edward J. Peterson

MASTER LIMITED NOTICE SERVICE LIST

January 14, 2020

Assignors and Assignor's Counsel: (via the Court's electronic servicing system)

CLM Aviation, LLC
LSI HoldCo, LLC
LSI Management Company, LLC
Laser Spine Surgery Center of Arizona, LLC
Laser Spine Surgery Center of Cincinnati, LLC
Laser Spine Surgery Center of Cleveland, LLC
Laser Spine Surgical Center, LLC
Laser Spine Surgery Center of Pennsylvania, LLC
Laser Spine Surgery Center of St. Louis, LLC
Laser Spine Surgery Center of Warwick, LLC
Laser Spine Institute, LLC
Medical Care Management Services, LLC
Spine DME Solutions, LLC
Total Spine Care, LLC
Laser Spine Institute Consulting, LLC
Laser Spine Surgery Center of Oklahoma, LLC
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Secured Creditors:

CarePayment, LLC (MAIL RETURNED)
5300 Meadow Rd., #400
Lake Oswego, OR 97035

Steris Corporation
5960 Heisley Rd.
Mentor, OH 44060
CIT Bank, N.A.
10201 Centurion Pkwy., #400
Jacksonville, FL 32256

Medport Billing, LLC (MAIL RETURNED)
6352 S. Jones Blvd., #400
Las Vegas, NV 89118

U.S. Bank Equipment Finance
1310 Madrid St.
Marshall, MN 56258

Maricopa County Treasurer
c/o Peter Muthig, Esq.
222 N. Central Ave., #1100
Phoenix, AZ 85004
Email: muthigk@maco.maricopa.gov

Those Parties and Attorneys Formally Requesting Notice (via the Court's electronic servicing system unless otherwise noted)

Highwoods Realty Limited Partnership
c/o Eric E. Ludin, Esq.
Tucker & Ludin, P.A.
5235 16th Street North
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CLM Aviation, LLC
LSI HoldCo, LLC
LSI Management Company, LLC
Laser Spine Surgery Center of Arizona, LLC
Laser Spine Surgery Center of Cincinnati, LLC
Laser Spine Surgery Center of Cleveland, LLC
Laser Spine Surgical Center, LLC
Laser Spine Surgery Center of Pennsylvania, LLC
Laser Spine Surgery Center of St. Louis, LLC
Laser Spine Surgery Center of Warwick, LLC
Medical Care Management Services, LLC
Spine DME Solutions, LLC
Total Spine Care, LLC
Laser Spine Institute Consulting, LLC
Laser Spine Surgery Center of Oklahoma, LLC

Case No. 2019-CA-2762
Case No. 2019-CA-2764
Case No. 2019-CA-2765
Case No. 2019-CA-2766
Case No. 2019-CA-2767
Case No. 2019-CA-2768
Case No. 2019-CA-2769
Case No. 2019-CA-2770
Case No. 2019-CA-2771
Case No. 2019-CA-2772
Case No. 2019-CA-2773
Case No. 2019-CA-2774
Case No. 2019-CA-2775
Case No. 2019-CA-2776
Case No. 2019-CA-2777
Case No. 2019-CA-2780

Assignors,

Consolidated Case No.
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

EXHIBIT A

**ASSIGNEE'S MOTION FOR ORDER AUTHORIZING
COMPROMISE OF CONTROVERSY WITH TEXAS CAPITAL
BANK, N.A. AS ADMINISTRATIVE AGENT FOR LENDER GROUP**

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC ¹	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors, Consolidated Case No: 2019-CA-2762
To:

Soneet Kapila, Division L

Assignee,
_____ /

**STIPULATION OF SETTLEMENT BETWEEN ASSIGNEE AND TEXAS
CAPITAL BANK, N.A., AS ADMINISTRATIVE AGENT FOR LENDER GROUP**

This stipulation of settlement (the “Stipulation”) is entered into by and among Texas Capital Bank, N.A., administrative agent (the “Agent”) on behalf of the lender group (the “Lenders”), and the Assignee, Soneet Kapila (the Agent and the Assignee, collectively, the

¹ On April 8, 2019, the Court entered an order administratively consolidating this case with the assignment cases of the following entities: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC.

“Parties”) (i) acknowledging the validity and enforceability of the Agent and Lenders’ liens; (ii) compromising the allocation of Overlap Expenses (as defined below) between the Agent and the Assignment Estates (as defined below); and (iii) providing relief to the Agent on account of its prior payment of the Estates’ Portion of Overlap Expenses (as defined below).

A. On March 14, 2019 (the “Petition Date”), Laser Spine Institute, LLC (“LSI”) executed and delivered an assignment for the benefit of creditors to the Assignee. The Assignee filed a Petition with the Court on the Petition Date, commencing an assignment for the benefit of creditors proceeding pursuant to Section 727 of the Florida Statutes (the “LSI Assignment Case”).

B. Simultaneous with the filing of the LSI Assignment Case, the Assignee filed fifteen other Petitions commencing assignment for the benefit of creditors proceedings for 15 affiliates of LSI (the “Affiliated Assignment Cases,” and together with the LSI Assignment Case, the “Assignment Cases”): LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (each, an “Assignor” and collectively, the “Assignors”). Upon the filing of the Assignment Cases, estates were established for each of the Assignors comprising all assets of each Assignor (the “Assignment Estates”).

C. The Agent and Lenders have properly perfected liens on substantially all personal property of the Assignors, including but not limited to accounts receivable and any proceeds generated from accounts receivable, under a Credit Agreement (or any related documents or

agreements) dated as of July 2, 2015 by and between certain of the Assignors, as borrowers and/or guarantors, and the Agent and Lenders (as amended, the “Credit Agreement”).² Pursuant to the Credit Agreement, and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time (the “Loan Documents”), the Lenders and the Agent provided revolving and term loan credit and other financial accommodations to, and issued letters of credit for the account of, the Borrowers pursuant to the Loan Documents (the “Loan Facility”).

D. The Loan Facility provided the borrowers with, among other things, (i) \$15,000,000 in Revolving Loan Commitments, and (ii) \$131,250,000 in Term Loan Commitments. As of the filing of the LSI Assignment Case, the principal amount of “Loans” outstanding under the Loan Facility was not less than \$154,000,000 (collectively, together with accrued and unpaid interest, any fees, expenses and disbursements (including, without limitation, attorneys’ fees, accountants’ fees, auditor fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Loan Parties’ obligations pursuant to the Loan Documents, including all “Obligations” as defined in the Credit Agreement.

E. As more fully set forth in the Loan Documents, prior to the filing of the Assignment Cases, the Loan Parties granted to the Agent and the Lenders a security interest in and continuing lien on (the “Liens”) substantially all of their assets and property, including, without limitation, each category of collateral set forth in the Loan Documents (which, for the avoidance of doubt,

² Capitalized terms not otherwise defined herein maintain the same meanings ascribed to them in the Credit Agreement.
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includes Cash Collateral, as defined below) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (the “Collateral”).

F. Immediately prior to the filing of the Assignment Cases, the Assignors maintained their funds in sixteen different bank accounts at Texas Capital Bank, N.A. (the “TCB Accounts”). Most of the TCB Accounts were created to allow the appropriate Assignor to receive payments on accounts receivable payable to the specific Assignor, primarily insurance and Medicare reimbursements (the “Accounts Receivable”). All receipts flowed into the TCB Accounts. The Credit Agreement provides that the Agent holds a security interest in all funds held in the TCB Accounts.

G. After the filing of the Assignment Cases, the Assignee set up separate accounts with Signature Bank (the “Signature Accounts”). All receipts on account of the Accounts Receivable have continued to flow directly to the appropriate TCB Accounts, which remain subject to the liens of the Lenders. The proceeds from the sale of the FF&E and medical equipment, that was part of the Agent’s Collateral, were deposited into a Signature Account segregated specifically for asset sales (“Signature Account – Asset Sales”). The Agent also authorized certain transfers from the TCB Accounts to a Signature Account segregated to fund and pay approved costs of the Assignment Cases on an as-needed basis (“Signature Account – Operating”). The funds transferred from the TCB Accounts to the Signature Account – Operating and the Signature Account – Asset Sales constituted “Cash Collateral”³ of the Lenders.

H. With the Agent’s consent, the Assignee used Cash Collateral to fund expenses that fall under two categories. The first category of expenses are those that directly benefitted the

³ In bankruptcy, cash collateral is defined as “cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents,” 11 U.S.C. § 363(a), in which a creditor has a lien.
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Lenders. These expenses include those related to the administration and liquidation of the Lenders' Collateral, including furniture, fixtures, and equipment located in Tampa and other remote locations, accounts receivable recoveries, and interaction with and tracking of prospects for asset sales. In addition, the Assignee was required to fund personal property taxes, rent, utilities, insurance, and storage costs. This first category of expenses will be referred to as "Lender Related Expenses." The Assignee and the Agent have agreed that Lender Related Expenses will be borne by the Lender, and the Lender shall not be entitled to repayment of Lender Related Expenses from the Assignment Estates.

I. The second category of expenses are those that overlap between expenses that benefit the Lenders and also confer general benefit to the Assignment Estates and the creditor body as a whole. This category of expenses will be referred to as "Overlap Expenses." Examples of Overlap Expenses include claims administration, tax issues, services related to the wind-down of the Assignors' 401K plan and other employee benefits, expenses related to wind-down of the Assignors' operations, payment of critical employee wages, management, retention and maintenance of the Assignors' information technology systems, preservation of patient records including electronic health and medical records, and responding to records requests. Additionally, Overlap Expenses include professional fees incurred by attorneys and accountants employed by the Assignee. Such professionals' invoices invariably include services provided that directly benefitted the Lenders, but also services rendered for the general benefit of the Assignment Estates and general unsecured creditors, such as those related to identifying and pursuing sources of recovery, particularly litigation claims, that will benefit all creditors, not just the Lenders.

J. The Assignee and the Agent agree that some portion of Overlap Expenses should be paid by the Lenders, but some portion of Overlap Expenses should be treated as general

administrative expenses payable by the Assignment Estates from any unencumbered funds pursuant to Section 727.114(1)(b) of the Florida Statutes.

K. Accordingly, the Assignee and the Agent have agreed to an allocation of the Overlap Expenses incurred from the Petition Date through May 31, 2020. The Assignee and the Agent have agreed to allocate the Overlap Expenses between (a) the portion of Overlap Expenses the Lenders would assume responsibility to pay without seeking reimbursement through an administrative expense claim (the “Lenders’ Portion of Overlap Expenses”), and (b) the portion of Overlap Expenses the Assignment Estates should be responsible to pay (the “Estates’ Portion of Overlap Expenses”).

L. Attached as **Exhibit 1** to this Stipulation is a detailed chart summarizing the agreed allocation of expenses between the Lenders’ Portion of Overlap Expenses and the Estates’ Portion of Overlap Expenses (the “Allocation Summary”). As set forth in the Allocation Summary, the Assignee and the Agent have agreed to the following allocation of Overlap Expenses:

Lenders’ Portion of Overlap Expenses	\$939,823.00
Estates’ Portion of Overlap Expenses	\$767,868.00
<i>Total Overlap Expenses:</i>	\$1,707,691.00

M. As set forth in more detail below, the Assignee and the Agent have agreed, subject to Court approval, to a settlement that will provide the Agent with an administrative expense claim (subject to the Carveout, as defined below), equal to the Estates’ Portion of Overlap Expenses funded by the Agent, in addition to other relief.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Stipulation and with the intent to be legally bound, the Parties do hereby stipulate and agree as follows:

1. This Stipulation shall become effective upon the date (the “Effective Date”) on which each of the following conditions to the effectiveness of this Stipulation has been satisfied: (a) this Stipulation has been fully executed by the Parties; and (b) the entry of an order by the Court, which has not been stayed, approving this Stipulation (the “Approval Order”). The Parties shall use their commercially reasonable efforts to obtain entry of the Approval Order as soon as reasonably practicable, on such notice and hearing as the Court may require. In the event that the Court enters an order denying approval of this Stipulation, this Stipulation shall be void and of no force or effect.

2. The recitals stated above constitute and form an integral part of this Stipulation and are incorporated by reference as if set forth herein in full.

3. The undersigned are duly authorized and empowered to execute this Stipulation on behalf of the respective Parties, subject to Court approval as to the Assignee.

4. The Parties have participated in and jointly consented to the drafting of this Stipulation, and any claimed ambiguity shall not be construed for or against either of the Parties on account of such drafting.

5. This Stipulation and all of its terms shall be binding upon and shall inure to the benefit of the Parties and each of their respective permitted successors and assigns and all persons and entities claiming by or through the Parties.

6. The Assignee stipulates that the Liens created by the Credit Agreement and any other Loan Documents are valid, binding, enforceable, properly perfected, non-avoidable, first

priority liens on the Collateral with priority over any and all other liens, security interests or other interests and are not subject to any challenge or defense and that the Agent and the Lenders hold a valid, enforceable, and allowable claim against the Assignors, as of the Petition Date, in an aggregate amount equal to at least \$154,984,093.95 (the “Lenders’ Pre-Petition Claim”) of unpaid principal, plus any and all interest, fees, costs, expenses, charges and other claims, debts or obligations of the Assignors to the Agent and Lenders that has accrued as of the Petition Date under the Loan Documents and applicable law.

7. The Assignee stipulates that the Lenders’ Pre-Petition Claim is not subject to any offset, defense, counterclaim, avoidance, recharacterization, or subordination (whether equitable, contractual, or otherwise) pursuant to Section 727 of the Florida Statutes or any other applicable law and that the Assignee, on behalf of the Assignors and their estates, does not possess and shall not assert any claim, counterclaim, setoff, or defense of any kind, nature, or description which would in any way affect the validity, enforceability, allowance, and non-avoidability of the Lenders’ Pre-Petition Claim.

8. In return for funding the Estates’ Portion of Overlap Expenses, Agent shall receive an allowed administrative expense claim with the priority set forth in Fla. Stat. § 727.114(1)(b), subject and subordinate to the Carveout (defined below), in the amount of \$898,537 (the “Agent’s Administrative Expense Claim”)⁴, which represents the Estates’ Portion of Overlap Expenses funded by the Agent.

⁴ In addition to the \$767,868 in fees attributable to the Estates’ Portion of the Expenses, the Agent and Lenders are entitled to an additional \$196,597 administrative claim on account of the Assignment Estates’ use of the Agent and Lenders’ cash collateral to fund the Assignee and Assignee professional fees for services rendered to general unsecured creditors. Hence, the total amount of the Agent’s Administrative Expense Claim is \$767,868 plus \$196,597, which equals \$964,465. The foregoing numbers are being reconciled and therefore are subject to change.

9. The Agent shall not be entitled to an administrative expense claim for the Lenders' Portion of Overlap Expenses or the Lender Related Expenses. The Agent shall not have any further obligation to the Assignee or the Assignment Estates for any expenses other than those set forth in the Stipulation and the Assignee and the Assignment Estates hereby waive any further recovery or right to reimbursement from the Agent or the Lenders. The Agent, upon payment of the Agent's Administrative Expense Claim in full, shall be deemed to have released the Assignee and the Assignment Estates from any and all liability for or any claim for repayment of the Lenders' Portion of Overlap Expenses set forth in Recital L of the Stipulation or the Lender Related Expenses. The Assignee on behalf of himself and the Assignment Estates, as of the Effective Date, shall be deemed to have released the Agent and the Lenders from any and all liability for any claim for payment or right to reimbursement of the Lenders Expenses. Notwithstanding the foregoing, nothing herein shall prohibit the Agent, on behalf of itself and the Lenders, from timely seeking allowance and payment of additional administrative claims and expenses if the Agent hereafter expends money which confers a benefit to the estate in accordance with applicable legal principles, without prejudice to the right of the Assignee or any other party in interest to object to such additional administrative claims and expenses, it being agreed that nothing in this sentence shall either expand or diminish the respective rights that the Agent, the Assignee, or third parties would have with respect to such future administrative claim in the absence of this Stipulation.

10. The Agent's Administrative Expense Claim and the Agent's Replacement Liens (as defined below) shall be subject to the Waterfall (defined below).

11. The Assignee's budgeted professional fees shall be paid in full (subject to Court approval) through the fourth interim application period.⁵

⁵ The Agent and Assignee have agreed that the Assignee's incurred professional fees shall be paid in full (subject to Court approval) through the fourth interim application period in an amount not to exceed \$1,695,578.00. Of this total
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12. The Assignee shall assign the Assignment Estates' accounts receivable to the Agent and Lenders *via* a credit bid.

13. The Assignee shall move to abandon the Assignment Estates' intellectual property.

14. To secure repayment of the Agent's Administrative Expense Claim, the Assignee shall grant security to the Agent and Lenders in the form of replacement liens, the extent of which shall be equal to Agent's Administrative Expense Claim. These liens shall constitute a lien on all claims and causes of action of each Assignor or its respective Assignment Estate (including, without limitation, all commercial tort claims of every kind and description) and any and all proceeds therefrom, and any and all proceeds arising from insurance policies. The liens described herein shall be referred to as the "Agent's Replacement Liens." The Agent's Replacement Liens shall be subject to the Waterfall.

15. Settlement proceeds from estate causes of action and proceeds of other unencumbered assets shall be distributed in the following order (the "Waterfall"): (i) to costs of litigation, including court-allowed fees and expenses of Assignee's contingency fee counsel; (ii) to court-allowed fees and expenses of Assignee and Assignee's professionals up to the amount of \$950,571; (iii) then to the Agent's Administrative Expense Claim until paid in full; (iv) then pro rata to any other administrative expenses until paid in full; and (v) then *pro rata* to general unsecured creditors.

16. Upon considering the Assignee's statements as to the validity of the Agent's Liens as set forth in this Stipulation, a lien challenge deadline shall be established, upon expiration of which, the claims, liens, and security interests of the Agent and Lenders granted in accordance with the Loan Documents shall be deemed valid, perfected, and enforceable as to all creditors and

amount, the Agent and Lenders have consented to the payment of \$745,007 from Cash Collateral, while the remaining amount, \$950,571, will be satisfied from unencumbered funds in accordance with the Waterfall.

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parties-in-interest, and shall be subject to no further challenge, unless a party in interest with standing: (x) shall have commenced a supplemental proceeding against the Agent for the purpose of challenging the validity, extent, priority, perfection, and enforceability of the Credit Agreement or Agent's claims, mortgages, and security interests or otherwise asserting any claims or causes of action against the Agent, no later than October 15, 2020, and (y) the Court rules in favor of the plaintiff in any such timely filed supplemental proceeding. Any person or entity, that fails to commence such a supplementary proceeding by October 15, 2020 shall be forever barred from doing so. For the avoidance of doubt, the Agent does not consent to the use of its Cash Collateral for any party to challenge in a supplemental proceeding or other litigation the Lenders' claims or liens or to assert any claims against the Lenders in a supplemental proceeding or other litigation.

IN WITNESS WHEREOF, the undersigned have made and entered into this Stipulation as of the respective dates set forth below.

**SONEET KAPILA,
ASSIGNEE OF LASER SPINE INSTITUTE, LLC., *et al.***

By: _____
Soneet Kapila, as Assignee

Dated: _____

TEXAS CAPITAL BANK, N.A.

By: _____
Name: _____
Title: _____
Dated: _____

Laser Spine Institute ("LSI")

**Allocation of Overlap Expenses Actually Paid by the Secured Lender
For the Period 3/15/2019 - 7/31/2020**

Month Paid	Notes	A	B	C	D = A*B	E = A*C
		Overlap Expenses Paid	Secured Lender Allocation % (Note 1)	GUC Allocation % (Note 1)	Amount Paid by the Secured Lender FBO of the Secured Lender	Excess Amount Paid by the Secured Lender FBO of the GUCs
Apr-19		\$ 569,187	67.8%	32.2%	\$ 385,895	\$ 183,292
May-19		311,903	51.3%	48.7%	160,081	151,822
Jun-19		160,016	44.5%	55.5%	71,131	88,886
Jul-19		51,956	55.4%	44.6%	28,758	23,198
Aug-19		49,012	43.8%	56.2%	21,483	27,529
Sep-19		141,416	54.6%	45.4%	77,168	64,249
Oct-19		81,995	61.1%	38.9%	50,099	31,896
Nov-19		66,224	38.6%	61.4%	25,537	40,686
Dec-19		11,314	57.4%	42.6%	6,499	4,815
Jan-20		68,255	56.9%	43.1%	38,832	29,423
Feb-20		17,416	38.4%	61.6%	6,696	10,720
Mar-20		83,631	36.9%	63.1%	30,846	52,785
Apr-20		23,468	37.9%	62.1%	8,900	14,568
May-20		7,255	32.9%	67.1%	2,384	4,871
Jun-20		6,062	29.9%	70.1%	1,813	4,249
Jul-20		58,582	40.5%	59.5%	23,702	34,879
		<u>\$ 1,707,691</u>			<u>\$ 939,823</u>	<u>\$ 767,868</u>

Notes:

1) The Overlap Expense allocation percentages were based on the monthly fees for the Assignee, KapilaMukamal and Stichter, Riedel, Blain & Postler, P.A. ("SRBP") allocated between the Secured Lender and general administration of the estate or GUCs. The percentage allocation of fees were then applied to the Overlap Expenses to determine the Overlap Expenses paid by the Secured Lender for the benefit of the estate or GUCs.