IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
EXIDE TECHNOLOGIES,	:	Case No. 13-11482 (KJC)
Reorganized Debtor.[1]	:	**Hrg. Date: TBD** **Obj. Due: TBD**

REORGANIZED DEBTOR'S (SUBSTANTIVE) OBJECTION PURSUANT TO BANKRUPTCY CODE SECTION 503(b) AND BANKRUPTCY RULE 3007 TO PROOF OF ADMINISTRATIVE EXPENSE CLAIM FILED BY THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (CLAIM NO. 4123)

The reorganized debtor in the above-captioned case ("Exide" or the "Reorganized Debtor") hereby files this objection (the "Objection") pursuant to section 503(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") to proof of administrative expense claim number 4123 (the "Administrative Claim") filed by the South Coast Air Quality Management District (the "District") and respectfully requests entry of an order in substantially the form of the proposed order (the "Proposed Order") filed concurrently herewith disallowing and expunging the Administrative Claim. In support of the Objection, the Reorganized Debtor relies on the Declaration of Thomas H. Strang in Support of the Reorganized Debtor's (Substantive) Objection Pursuant To Bankruptcy Code Section 503(b) And Bankruptcy Rule 3007 To The Administrative Expense Filed by the South Coast Air Quality District (Claim No. 4123), which will be filed under separate notice. In further support of the Objection, the Reorganized Debtor respectfully represents as follows:

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are 2730. The Reorganized Debtor's corporate headquarters are located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

PRELIMINARY STATEMENT

1. The District has made no attempt to meet its burden to plead (much less prove) that any of its claims are entitled to administrative expense priority treatment. Rather, in filing the Administrative Claim, the District has merely attached to a proof of claim form its Third Amended Complaint[2] from the California State Action (which alleges both pre- and post-petition non-compensatory claims for penalties). The District does not attempt to demonstrate which of the counts of the Third Amended Complaint are prepetition or postpetition or otherwise might qualify for administrative expense status (e.g., be incurred postpetition, be an actual and necessary expense, and directly and substantially benefit the estate). Ignoring its burden, the District leaves it to this Court and Exide to figure out. Because the District has not met its heavy burden, the purported Administrative Claim should be disallowed.

2. Putting aside its procedural defects, the District's claim also fails substantively. The District "seeks allowance of an administrative expense for **penalties** arising out of the [Debtor's] postpetition conduct at issue in the [District's] Lawsuit."[3] To support its position, the District simply cites the Supreme Court's Reading[4] decision and the Third Circuit's decision in Conroy,[5] and makes perfunctory references to sections 503(b)(1)(A) and 507(b) of the Bankruptcy Code and 28 U.S.C. § 959(b). The District's conclusory support for its administrative expense request is unavailing in light of the Third Circuit's ruling in Tri-State,[6] which held that postpetition non-compensatory criminal penalties are not entitled to

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2 Capitalized terms not otherwise defined in the Preliminary Statement shall have the meanings ascribed to them elsewhere in the Objection.

3 See Administrative Claim p. 7 (emphasis added).

4 Reading Co. v. Brown, 391 U.S. 471, 484-85 (1968).

5 Pa. Dep't of Envtl. Res. v. Conroy, 24 F.3d 568, 569-71 (3d Cir. 1994).

6 Pa. Dep't of Envtl. Res. v. Tri-State Clinical Labs., Inc., 178 F.3d 685 (3d Cir. 1999).

administrative expense priority because such penalties are "not ordinarily incident to [the] operation of a business."[7] The litany of penalties for which the District seeks allowance of an administrative expense priority are all of the non-compensatory, punitive variety—and indisputably not incidental to operation of Exide's business. Thus, as a matter of law, the District's asserted penalties should be denied administrative expense priority.

3. Independent of the holding in Tri-State, the overwhelming majority of penalties pursued by the District do not qualify for administrative expense status for other reasons—the postpetition continuation of an alleged prepetition regulatory violation cannot be bootstrapped into an administrative expense priority.[8] Most of the sought-after penalties arise out of Exide's alleged prepetition violations of District regulations. Indeed, the genesis of most of the penalties that the District seeks for postpetition periods is Exide's prepetition conduct—e.g., Exide's alleged postpetition non-compliance with the District's rules result from its operation of (i) equipment permitted by the District, installed, operated, and regularly inspected decades before Exide's bankruptcy filing that the District claimed—for the first time four months after the Petition Date—violated District rules because such equipment did not maintain negative pressure due to the furnace's open hatch design, and (ii) trucks used—before the filing and continuing after the filing—in the handling, storing, and transporting of plastic chips. If either of those activities was a violation of the District's rules, as the District claims, it was a continuation of conduct that was open, obvious and known by the District long before Exide's chapter 11 filing.

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[7] Id. at 698.

[8] See Ala. Surface Mining Comm'n v. N.P. Mining Co. (In re N.P. Mining Co.), 963 F.2d 1449, 1459-60 (11th Cir. 1992) ("[w]e exclude from consideration as an administrative expense any penalty assessed postpetition for the failure of the debtor in possession … to abate a prepetition violation of the statute.").

4. Moreover, penalties incurred after business operations had ceased are not entitled to administrative expense priority.[9] The District's broadly-worded Third Amended Complaint seeks penalties for periods in which Exide was not even operating the Vernon Facility postpetition (i.e., the Vernon Facility was shut down from April 24 to July 2, 2013 and ceased operations on March 14, 2014), which do not qualify for administrative expense priority.

5. For these reasons and the reasons set forth herein, the Administrative Claim should be disallowed and expunged in its entirety.

JURISDICTION AND VENUE

6. This Court has jurisdiction to consider the Objection under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of the case and the Objection in this District is proper under 28 U.S.C. §§ 1408 and 1409.

7. The statutory predicates for the relief requested herein are Bankruptcy Code section 503(b) and Bankruptcy Rule 3007.

8. Pursuant to Local Rule 9013-1(f), the Reorganized Debtor consents to the entry of a final judgment or order with respect to the Objection if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

BACKGROUND

9. On June 10, 2013 (the "Petition Date"), Exide, former debtor and debtor-in-possession in the above captioned case (the "Debtor"), filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") commencing this case (the "Bankruptcy Case").

[9] N.P. Mining, 963 F.2d at 1461.

10. On September 13, 2013, the Bankruptcy Court entered an order (the "Bar Date Order") setting December 9, 2013 at 5:00 p.m. (Eastern) (the "Bar Date") as the applicable deadline by which governmental units (including the District) were required to file proofs of claim to be considered timely.

11. On December 9, 2013, the District filed a proof of claim in the Bankruptcy Case, asserting a claim for penalties in the specific amount of $38,915,000 relating to five notices of violation.

12. On January 16, 2014, the District initiated an action (the "California State Action") against Exide by filing a complaint (the "Original Complaint") in the California state court seeking penalties for Exide's alleged non-compliance with certain District air quality regulations, including the alleged failure to maintain continuous negative pressure in Exide's smelting furnaces.

13. On March 6, 2014, the Bankruptcy Court entered the Stipulation and Agreed Order Regarding the Lawsuit Filed by the South Coast Air Quality Management District (the "March 2014 Stipulation"). The March 2014 Stipulation resolved a dispute between Exide and the District as to the applicability of the automatic stay to the Original Complaint and, as more specifically set forth in the March 2014 Stipulation, permitted the District to proceed in the California State Action.

14. On March 27, 2015, the Bankruptcy Court entered the Findings of Fact, Conclusions of Law, and Order Confirming the Fourth Amended Plan of Reorganization of Exide Technologies (Docket No. 3423) (the "Confirmation Order"), confirming the Fourth Amended Plan of Reorganization of Exide Technologies (Docket No. 3409) (the "Plan"). Pursuant to Article 2.1 of the Plan and paragraph 36 of the Confirmation Order, this Court

established 30 days after the Effective Date as the deadline (the "Administrative Claims Bar Date") for filing proofs of claim or requests for payment for asserting a claim for an administrative expense under section 503(b) of the Bankruptcy Code for the period from the Petition Date through April 30, 2015, when the Plan was substantially consummated (the "Effective Date") and became binding on all parties in interest, and Exide emerged from chapter 11 as a newly reorganized company. The Administrative Claims Bar Date was June 1, 2015.

15. On May 28, 2015, after filing two prior amendments, the District filed the Third Amended Complaint for Civil Penalties and Injunctive Relief in the California state court (the "Third Amended Complaint"). The Third Amended Complaint now asserts twenty-seven causes of action, as compared with the twelve in the Original Complaint, and seeks penalties of not less than $80 million, as compared with not less than $40 million in the Original Complaint.

16. On May 30, 2015, the District filed the Administrative Claim. The Administrative Claim is a cursory filing consisting of (i) a preprinted claim form, (ii) a brief statement claiming administrative expense treatment "for penalties arising out of the postpetition conduct at issue in the Lawsuit", and (iii) the Third Amended Complaint. The District makes no attempt to plead with specificity which of the allegations contained in the Third Amended Complaint relate to postpetition conduct or to the actual necessary cost and expense of preserving the estate, or explain how the alleged conduct directly and substantially benefited the Debtor's bankruptcy estate.

17. Through its Third Amended Complaint, the District seeks to expand its claims by alleging that the Debtor engaged in unlawful conduct with respect to its handling of plastic chips. Third Amended Complaint, ¶¶ 7-9. Although the Debtor has admitted to unlawful conduct as part of the non-prosecution agreement (the "Non-Prosecution Agreement") with the United

States Attorney's Office (the "USAO"), those acts were conducted openly by the Debtor for many years, with the knowledge of California regulators, before the Debtor filed its bankruptcy petition on June 10, 2013. The Debtor's plastic chip storage practices were obvious, open, and observable by the District's inspectors on a regular basis, but the District never ordered the Debtor to abate this practice or issued a notice of violation to the Debtor for this course of conduct. The District now alleges that this practice violated District rules, even though the District knew of this practice over the past two decades and never objected to it. This Court correctly observed at the July 7, 2015 hearing that this was merely an opportunity for the District to collect penalties for conduct that it had never sought to abate prior to the Debtor's settlement of these charges with the United States Attorneys' Office through the Non-Prosecution Agreement. The District's Third Amended Complaint seeks penalties for both prepetition and postpetition conduct.

18. This is not the first time in this action that the District has sought to collect penalties for alleged prepetition and postpetition conduct that the Debtor engaged in for years without a word of objection from the District. With respect to the so-called "negative pressure" requirement, the District first permitted the two smelting furnaces used at the Vernon Facility in 1980. For more than 30 years thereafter, through most of 2013: (i) the Debtor or prior owners of the Vernon Facility operated the furnaces without any requirement that negative pressure had to be maintained within the chambers of the furnaces; (ii) the District modified the Debtor's permits multiple times, and no modification or regulation ever required the Debtor or any prior operator to maintain negative pressure in the furnaces; (iii) the District issued multiple individual permits to construct and operate the Vernon Facility without requiring the Debtor to maintain negative pressure in the furnaces; and (iv) despite annual facility and equipment inspections, the District

never issued a notice of violation for failure to maintain negative pressure until December 4, 2013, or even required the Debtor to measure pressure within either furnace. In fact, the District never even required the Debtor to install a pressure monitor within the chamber of either furnace until it passed a rule revision in October 2013.

19. In October 2013 (approximately four months after the Bankruptcy Case commenced), for the first time ever, the District sought to enact a rule that required secondary lead smelters to maintain negative pressure within their furnaces. The rule was passed on January 10, 2014, and it became effective on April 10, 2014. Incredibly, on October 18, 2013, the District filed a petition for an administrative order for abatement against the Debtor (the "Petition for Order of Abatement"), alleging that the Vernon Facility could not maintain the negative pressure allegedly required sub silentio by other District rules. Then, in January 2014, the District filed its Original Complaint in the California State Action, essentially alleging that Exide had been in violation of the District's rules for years (both prepetition and postpetition) because Exide had not maintained negative pressure within its furnaces. Like its allegations pertaining to the plastic chips, the District's allegations of misconduct arising out of the lack of negative pressure within the furnaces sought to assess penalties against the Debtor for conduct that the District knew of and never sought to abate between 1982 and October 2013. Although it is difficult to tell for sure, likely not less than $40 million of the $80 million in penalties sought in the Third Amended Complaint relate to this issue.

20. In July of 2014, the Debtor settled the Petition for Order of Abatement with the District. As part of that settlement, the Debtor agreed to install an entirely new and redesigned air pollution control system at the Vernon Facility. This new system, which was described in the Debtor's risk reduction plan (the "Risk Reduction Plan"), was approved by the District on March

19, 2014 and permitted by the District in December 2014. . The Debtor spent over $7 million purchasing and permitting the new pollution equipment required to implement the Risk Reduction Plan. Thereafter, the District then also announced its intent to revise its rules, subsequently enacted, to reduce allowable lead emissions to a level that was impossible to achieve using the technology that the District had just approved in the Debtor's Risk Reduction Plan. The District did so with the knowledge that the Debtor's new equipment could not meet the revised requirements.[10]

21. On June 3, 2015, the Reorganized Debtor filed a motion (the "Motion to Enforce") (Docket No. 4023) seeking an order to enforce the Plan injunction in the Confirmation Order and other related relief as a result of the District's effort to prosecute, through the Third Amended Complaint, prepetition claims that the District failed to assert prior to the bar date. On July 23, 2015, this Court entered an order resolving the Motion to Enforce (the "Motion to Enforce Order") (Docket No. 4414). Pursuant to the Motion to Enforce Order, the District is required to file certain motions and the Reorganized Debtor is required to file this Objection by September 30, 2015.

[10] The intense political and public pressure that regulators faced regarding the Vernon Facility is evidenced by a public meeting held ten days prior to the filing of the Petition for Order of Abatement that was attended by representatives of the District. At the meeting, California politicians urged creative ways be found to shut down the Vernon Facility. "At one point in the raucous meeting, the crowd started screaming, 'Shut it down! Shut it down!' [Assembly Speaker John A.] Pérez and state Sens. Kevin de León (D-Los Angeles) and Ricardo Lara (D-Bell Gardens) clapped in time to the chant." Jessica Garrison, *Crowd Voices Anger Over Vernon Battery Recycler*, L.A. Times (Oct. 8, 2013), http://articles.latimes.com/2013/oct/08/local/la-me-dtsc-permits-20131009. At that same meeting, Sen. Kevin de León asked the District, "Do we have to move forward with state legislation that has clear, sharp teeth to shut them down?" *Residents Demand Closure of Vernon Battery Recycling Plant in Heated Town Hall Meeting*, CBS L.A., (Oct. 8, 2013), http://losangeles.cbslocal.com/2013/10/08/residents-demand-closure-of-vernon-battery-recycling-plant-in-heated-town-hall-meeting.

RELIEF REQUESTED

22. By this Objection, the Reorganized Debtor respectfully seeks entry of an order pursuant to Bankruptcy Code section 503(b) and Bankruptcy Rule 3007 disallowing and expunging the Administrative Claim in its entirety.

OBJECTION

A. Postpetition Non-Compensatory Penalties Are Not Entitled To Administrative Priority Status.

23. The Third Circuit has held that non-compensatory fines assessed against a debtor for postpetition conduct are not administrative expenses entitled to priority. See Tri-State, 178 F.3d at 698 ("we hold that punitive criminal fines arising from post-petition behavior are not administrative expenses under 11 U.S.C. § 503(b), and therefore, are not accorded priority status pursuant to § 507(a)(1).").

24. By contrast, in Conroy, the Third Circuit held that costs for cleanup that the government undertook were entitled to administrative expense claim priority because such governmental expenditures defrayed costs that the debtor otherwise would have had to incur. 24 F.3d at 569-71. However, the District has not asserted a claim for recovery of cleanup costs it incurred as a result of postpetition conduct. Indeed, the District makes no contention that its claim is for compensation for actual, pecuniary loss.

25. Rather, the District has asserted "allowance of an administrative expense for **penalties** arising out of the postpetition conduct at issue in the Lawsuit."[11] Thus, the situation here is unlike Conroy and is directly akin to Tri–State, since the purpose of the District's penalties is deterrence, retribution and punishment, as opposed to providing any benefit to the

[11] Administrative Claim p. 7 (emphasis added).

estate, such as relieving the debtor of paying for costs it otherwise would have had to incur. As this Court has noted with respect to Conroy, "only those costs incurred to cleanup property for which an estate has an interest in or owns may qualify as administrative expenses." In re Insilco Techs., Inc., 309 B.R. 111, 114 (Bankr. D. Del. 2004) (Carey, J.). Indeed, the Tri-State Court also distinguished Conroy, noting that in Conroy, the debtor would have been required to pay for clean-up of its property one way or the other because it could not abandon the property. By cleaning up the property, the regulator in Conroy provided a necessary service to the estate—thus, qualifying its clean-up costs as an administrative claim. Here, no such service was provided. The District is seeking to enforce punitive laws that provide no benefit to the estate.

26. As the Third Circuit noted in Tri-State, when the purpose of a non-compensatory fine is "deterrence, retribution, and punishment," such penalty has "nothing to do with compensation or proper business operations" and should therefore be excluded from administrative expense consideration. Id. at 693. The Tri-State holding is consistent with Congress' clear intention that no penalties (other than tax penalties), even compensatory penalties, should receive administrative expense priority because Section 503 only explicitly awards administrative priority to tax penalties. See In re Lazar, 207 B.R. 668, 686 (Bankr. C.D. Cal. 1997) ("This appears to be a case where it is appropriate to apply the rule, *inclusion unius est exclusio alterius*: 'where law expressly describes [a] particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded.' Black's Law Dictionary 763 (6th ed. 1990). For administrative expenses, Congress explicitly specified that fines relating to postpetition taxes qualified, and excluded all others." (Alteration in original)). Here, payment of the penalty would not

compensate for any damages; it would merely cause the Debtor to pay penalties to the District out of the pockets of the Debtor's other creditors.

27. Because the Administrative Claim is based solely on the District's claim for punitive penalties, it should be disallowed in its entirety.

B. The District Has Not Met Its Heavy Burden To Satisfy The Requirements For An Administrative Expense Claim.

(i) *The District has not pled entitlement to an administrative expense claim.*

28. To qualify for highest priority as an administrative expense, an unsecured claim must be incurred postpetition, be an actual and necessary expense, and directly and substantially benefit the estate. See 11 U.S.C. § 503(b). Specifically, Bankruptcy Code section 503(b)(1)(A) provides in pertinent part that:

> (b) [T]here shall be allowed, administrative expenses,... including—
>
> (1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, and commissions for services rendered after the commencement of the case

29. An administrative expense claimant bears the heavy burden of establishing that its claim qualifies for priority status by proving all of the elements by a preponderance of the evidence. For a claim to be given priority as an administrative expense under this provision of the Code, it must be (i) a "cost" or "expense" that is (ii) "actual" and "necessary" to (iii) "preserving the estate." In re Phila. Newspapers, LLC, 433 B.R. 164, 169 (Bankr. E.D. Pa. 2010); see also In re O'Brien Env'l. Energy, Inc., 181 F.3d 527, 532-33 (3d Cir. 1999) ("'For a claim in its entirety to be entitled to first priority under [503(b)(1)(A)], the debt must arise from a transaction with the debtor-in-possession … [and] the consideration supporting the claimant's right to payment [must be] beneficial to the debtor-in-possession in the operation of the business.'"(Alteration in original)(citation omitted)); Tri-State, 178 F.3d at 689. These

requirements are strictly construed to keep administrative expenses to a minimum and preserve estate assets. See, e.g., Lazar, 207 B.R. at 674.

30. The District has failed to establish that its Administrative Claim is entitled to administrative expense claim status. Indeed, the District's entire assertion for administrative priority is based on its conclusory statement that it "seeks allowance of an administrative expense for penalties arising out of the postpetition conduct at issue in the Lawsuit"[12] coupled with a perfunctory citation to inapposite legal decisions. Otherwise, the Administrative Claim merely attaches the Third Amended Complaint and fails to provide any information with respect to which of the District's allegations, if any, (i) arose postpetition, (ii) were actual and necessary for the preservation of the estate, and/or (iii) provided a benefit to the estate.

31. While the Administrative Expense Claim is devoid of allegations or evidence in many respects, what it does allege fails to satisfy the requirements for an administrative expense claim in that, on their face, the allegations do not allege postpetition acts by the Debtor, they are not actual and necessary expenses, and the penalties sought do not directly and substantially benefit the estate.

(ii) Most of the penalties at issue arose from alleged prepetition conduct or are not related to a benefit of the estate.

32. The first requirement for an administrative claim is that it be incurred postpetition. Lazar, 207 B.R. at 674; see also, O'Brien, 181 F.3d at 532-33. Prepetition claims do not qualify as administrative expenses, because there was no bankruptcy estate to administer until the petition was filed. Lazar, 207 B.R. at 674. Accordingly, all of the penalties sought in connection with causes of action 9 and 10 in the Third Amended Complaint, and portions of the

[12] Administrative Claim, p. 7.

penalties sought in causes of action 1-8, 12 and 19-27, allege on their face prepetition conduct and thus must be denied administrative expense status.

33. In addition, even in those courts outside of the Third Circuit that have allowed administrative expense priority status for non-compensatory postpetition penalties (e.g., N.P. Mining), the Administrative Claim still would be disallowed either to the extent it is based upon (i) prepetition conduct that continued postpetition ("Alleged Continuing Postpetition Violations") or (ii) alleged operational violations during time periods other than when the Vernon Facility was operating (the "Postpetition Period of Operation"). For example, in N.P. Mining, the Eleventh Circuit refused to allow administrative expenses for prepetition violations that continued postpetition.[13] Other courts are in accord holding that *per diem* civil fines for a continued prepetition violation are not entitled to administrative expense. See In re Chris-Marine, U.S.A., Inc., 321 B.R. 63, 65 (M.D. Fla. 2004) (*per diem* fines for postpetition conduct that is a continuation of prepetition violations are not treated as an administrative expense of the bankruptcy estate); see also Lazar, 207 B.R. at 686 (failure to conduct postpetition remediation of prepetition environmental contamination does not qualify as postpetition conduct for the purpose of determining administrative priority).

34. The vague and conclusory nature of the Administrative Claim makes specific objections difficult. However, it appears that most of the administrative claims that the District is attempting to assert fall into the prohibited categories described in N.P. Mining and the other cases set forth herein. For example, the two largest claims asserted by the District deal with Exide's alleged failure to maintain equipment in proper operation and in full use and to use

[13] See N.P. Mining, 963 F.2d at 1459-60 ("[w]e exclude from consideration as an administrative expense any penalty assessed postpetition for the failure of the debtor in possession … to abate a prepetition violation of the statute.").

"good operating practices" (i.e., the continuous negative pressure in the furnaces issue) (see Third Amended Complaint ¶¶ 29-31, 38, 112, 114-116, 202-210, and discussed herein at ¶¶ 18 through 20 supra) and its storage and transportation of plastic chips.[14] If there is anything that is clear from the Third Amended Complaint, it is that any postpetition occurrences of operating the furnaces and storage/transportation of chips were merely a continuation of Exide's prepetition conduct. Many of the other penalties sought in connection with the first eight causes of action, as well as causes of action 19-24 also fall into this category.[15]

35. In addition to the foregoing, an administrative expense cannot be allowed for operational violations during periods when Exide did not operate the Vernon Facility. See N.P. Mining, 963 F.2d at 1462 ("[p]enalties incurred by the estate after the appointment of the chapter 11 trustee, which in this particular case marked the ceasing of the business's operations, are not entitled to administrative-expense priority"). The Third Amended Complaint is broad (and vague) enough to be construed to seek penalties for postpetition periods when the Vernon Facility was not even operating. See, e.g., Third Amended Complaint, causes of action 1-8 and 19-24. If the Court does not disallow the Administrative Claim in its entirety as argued above, the Court should disallow the Administrative Claim to the extent it seeks administrative claim

[14] The District's allegations about Exide's handling of plastic chips that were added in the Third Amended Complaint were the subject of the Non-Prosecution Agreement with the United States Attorney for the Central District of California. (Third Amended Complaint, ¶¶ 6-10). Putting aside the fundamental legal flaw with the District's claims (i.e., an agency charged with regulating air emissions attempting to apply inapplicable regulations to Exide's transportation of plastic chips), these practices began well before the commencement of the Bankruptcy Case, and very little of the conduct occurred postpetition. Moreover, any alleged violations of the District's rules were first raised by the District in May 2015, some 14 months after the Vernon Facility closed, and they relate solely to past conduct.

[15] The Third Amended Complaint contains other instances where the District seeks penalties for postpetition time periods based on the continuation of alleged violations that existed on the Petition Date, asserting that on "each day" Exide "failed to comply with any District Rule," it "committed a separate violation that gave rise to civil penalties." See, e.g., Third Amended Complaint, causes of action 1-8 and 19-24 and Third Amended Complaint ¶25.

status for Alleged Continuing Postpetition Violations and/or for operating violations occurring outside of the Postpetition Period of Operations.

(iii) The expenses are not actual and necessary.

36. The second requirement for an expense to qualify for administrative priority under section 503(b)(1)(A) is that the claim must arise from the "actual, necessary costs and expenses of preserving the estate…." When determining whether a claim is entitled to administrative priority under Bankruptcy Code section 503, "[b]ankruptcy courts should s**trictly scrutinize** claims and **narrowly construe** the terms 'actual' and 'necessary.'" In re Moore, 109 B.R. 777, 780 (Bankr. E.D. Tenn. 1989) (emphasis added); see also In re ID Liquidation One, LLC, 503 B.R. 392, 399 (Bankr. D. Del. 2013) ("[i]n order to 'hold administrative expenses to a minimum and to maximize the value of the bankruptcy estate, section 503(b) is narrowly construed" (citation omitted)), reconsideration denied, No. 11-11046 (BLS), 2013 WL 6701911 (Bankr. D. Del. Dec. 19, 2013).

37. Again, the Administrative Claim largely leaves the Reorganized Debtor to set up a straw man and knock it down since the District provides no allegations regarding what it may claim the actual and necessary expenses are. While the Administrative Claim cites to Reading, the case has no application. Where (as here) there is no active postpetition wrongdoing by the debtor-in-possession, the Reading rule, which governs administrative expense priority of a business's postpetition tort liabilities, does not govern. See Lazar, 207 B.R. at 684-85 (denying administrative expense claim status to environmental fines and penalties because, among other reasons, claimant failed to satisfy requirement that fines be actual and necessary and noting that Reading did not apply because there was no active postpetition wrongdoing by debtor). The

penalties here largely result from the alleged prepetition conduct of the debtor, not from any new postpetition tort committed by the debtor-in-possession.

38. In addition, Bankruptcy Code section 503(b), read as a whole, suggests a *quid pro quo* pursuant to which the estate accrues a debt in exchange for some consideration necessary to the operation or rehabilitation of the estate. Tri-State 178 F.3d at 689-90. Priority, therefore, is afforded such expenses to compensate the providers of necessary goods, services or labor. Id. at 690. Absent the priority established under Bankruptcy Code section 503, a debtor could not keep its employees, or obtain services necessary to its operation as it attempts to reorganize, or wind-down pending ultimate liquidation. The Third Circuit noted that the Supreme Court's holding in Reading illustrated these principles. "The [Supreme] Court believed that those who continue to transact business with the debtor during the Chapter 11 case, **and who suffer financially as a result**, are entitled to priority over other creditors who have not affirmatively assumed such risk." Id. at 690-91 (emphasis added). In other words, under Reading, tort victims should be compensated for **injuries** they would not have suffered had the law not allowed the debtor to continue operating its business. Id. However, non-compensatory penalties do not remedy any injury and such penalties are subject to the stringent requirements of 11 U.S.C. § 503.

39. Here, the District has not expended any funds to clean up the Vernon Facility. Therefore, its reliance on Conroy is misplaced. In Conroy, the Pennsylvania Department of Environmental Resources, through a private contractor, cleaned up the debtor's facility and then filed an administrative expense claim seeking to recover the costs it had incurred. By cleaning up the site, the Third Circuit found that the agency provided a service to the debtor that the debtor otherwise would have had to perform and, therefore, the agency was entitled to be

compensated for the service. In contrast to Conroy, the District is simply imposing penalties that it will keep. The purpose of the penalties here is clear: deterrence, retribution and punishment. It is undisputed that the penalties are punitive in nature and unrelated to actual costs or expenses incurred by the District.

40. Section 959(b) of title 28 of the United States Code provides no help for the District either, because the statute fails to specify the priority of a claim arising from the liability it imposes. The instant dispute only involves the priority, if any, of the District's claim, not its allowability. The latter will be determined separately and is not before the Court at this time.

41. Accordingly, the penalties are not actual and necessary and thus are not entitled to administrative expense priority status.

(iv) The penalties provide no direct or substantial benefit to the estate.

42. The final prong of the administrative expense test requires that a qualifying expense provide an actual benefit to the estate. Lazar, 207 B.R. at 685. The Administrative Claim does not allege how the penalties it seeks provide any benefit to the estate, let alone a direct and substantial benefit. For good reason: the penalties are another attempt by the District to get money from the estate solely to support its own operations.[16] Benefit to the estate must be measurable in assets distributable to creditors, or the elimination of claims which otherwise would require creditors to share the assets with others. Lazar, 207 B.R. at 685. The only benefit that the penalties provide will accrue to the District, not the estate.

[16] Indeed, pursuant to separate settlements with the DTSC and the USAO, Exide has committed in excess of $50 million over the next several years to close and clean up the Vernon Facility as well as undertake required off-site industrial and residential property remediation; these financial commitments may well increase once all required residential investigation and action plan studies are finalized and approved by the DTSC, pursuant to orders already entered by this Court. Therefore, unlike Conroy, where the agency took over remediation for the debtor who was otherwise seeking to abandon the hazardous waste facility, here, the Debtor is funding the remediation.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

43. Because of the defects of the District's pleading—i.e., its failure to describe which of the allegations of the Administrative Claim support its claim for administrative expense treatment—it is impossible to answer specifically the District's administrative claims allegations. Indeed, the Administrative Claim fails to allege any damages or facts necessary to support a compensable claim and, thus, the District has no present right to payment under applicable law. Therefore, the Administrative Claim should be denied as a matter of law. Notwithstanding the foregoing, the Reorganized Debtor denies each, every and all of the allegations in the Third Amended Complaint that purportedly support the District's administrative expense claim and demands strict proof thereof. Moreover, the Reorganized Debtor denies all liability to the District and incorporates all other defenses that previously have been asserted or may be asserted in the California State Action, underlying litigation, or other proceedings.

44. Without limiting the foregoing, the Reorganized Debtor also responds as follows to the District's alleged administrative claims:

(a) Alleged failure to maintain "good operating practices" as defined in District Rule 1407(d)(5) (Cause of Action Nos. 1, 19-21): The Reorganized Debtor denies that it failed to use "good operating practices," which is a defined term in the District's rule. A maintenance program for the facility was submitted in compliance with District Rule 1407(d)(5), and the District approved such program on March 25, 2011. All measuring devices, temperature gauges, and pressure gauges required by Rule 1407(d)(5) and approved by the District were used.

(b) Alleged (i) failure to maintain equipment to ensure proper operation and (ii) use of equipment identified in the facility permit as being connected to air pollution control equipment unless vented to the identified air pollution control equipment which is in full use

(Cause of Action Nos. 2, 19-21): The Reorganized Debtor denies that it failed to maintain equipment to ensure proper operation or that it used equipment identified in the facility permit as being connected to air pollution control equipment without it being vented to the identified air pollution control equipment that was in full use.

(c) Alleged ambient air monitor exceedance at Northeast monitor (Cause of Action Nos. 12, 25-27): The Reorganized Debtor denies that it caused the air monitor exceedance, and alleges that a neighboring property owner caused such exceedance. The Reorganized Debtor also denies that it failed to curtail the furnace charge material in the amount required by the District.

(d) Alleged failure to curtail furnace charge material after exceedance (Cause of Action No. 13): The Reorganized Debtor denies that it caused the air monitor exceedance that triggered curtailment, and alleges that offsite work by a third party caused such exceedance. The Reorganized Debtor also denies that it failed to curtail the furnace charge material in the amount required by the District.

(e) Alleged ambient air monitor exceedance due to maintenance on the "A-pipe" protruding from the building's roof (Cause of Action Nos. 17-18, 25-27): The Reorganized Debtor denies the nature and extent of any alleged violation based on the reasonable steps it took to minimize fugitive dust during maintenance and its compliance with applicable District Rules during such activities.

(f) Alleged improper storage and transportation of plastic chips and alleged false certifications related thereto (Cause of Action Nos. 3-8, 22-24): The Reorganized Debtor denies that its activities were in violation of the District's Rules.

(g) Alleged operation of baghouse not in full use (Cause of Action No. 11): The Reorganized Debtor denies that its operation was a violation of its permit.

45. Moreover, the Reorganized Debtor expressly reserves the right to amend, modify, or supplement the Objection and to file additional objections to the Administrative Claim or any other claims (filed or not) which may be asserted against the Debtor or Reorganized Debtor including, without limitation, objections as to the liability, amount, or priority of the Administrative Claim. Should one or more of the grounds for the Objection be dismissed or overruled, the Reorganized Debtor reserves the right to object to the Administrative Claim listed on the Proposed Order on any other ground.[17]

NOTICE

46. The Reorganized Debtor has provided notice of the Objection to (i) the Office of the U.S. Trustee; (ii) counsel to the agent under the debtor in possession financing; (iii) counsel to the agent for the Debtor's prepetition secured lenders; (iv) the indenture trustee for each of the Debtor's secured and unsecured outstanding bond issuances; (v) counsel to the unofficial committee of senior secured noteholders; (vi) the GUC Trust Trustee, Peter S. Kravitz of Province, Inc., 9209 Canwood Street, Suite 210, Agoura Hills, CA 91301; (vii) all parties entitled to notice pursuant to Bankruptcy Rule 2002; and (viii) the District.

[17] The Administrative Claim should be denied as a matter of law for the reasons set forth above. If, however, the Administrative Claim is not disallowed in full, the District should be required to provide evidence to justify the allowance of an administrative claim, and the Reorganized Debtor should be allowed time to review and object to such evidence and conduct discovery, before setting a final evidentiary hearing on the Administrative Claim.

WHEREFORE, the Reorganized Debtor respectfully requests that this Court enter the Proposed Order attached hereto: (a) granting the relief requested herein; and (b) granting to the Reorganized Debtor such other and further relief as this Court may deem just and proper.

Dated: Wilmington, Delaware
September 30, 2015

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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Counsel for the Reorganized Debtor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
EXIDE TECHNOLOGIES,	:	Case No. 13-11482 (KJC)
Reorganized Debtor.[1]	:	**Hrg. Date: TBD** **Obj. Due: TBD**

NOTICE OF REORGANIZED DEBTOR'S (SUBSTANTIVE) OBJECTION PURSUANT TO BANKRUPTCY CODE SECTION 503(b) AND BANKRUPTCY RULE 3007 TO PROOF OF ADMINISTRATIVE EXPENSE CLAIM FILED BY THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (CLAIM NO. 4123)

SUBSTANTIVE RIGHTS MAY BE AFFECTED BY THIS OBJECTION AND BY ANY FURTHER OBJECTION THAT MAY BE FILED

PLEASE TAKE NOTICE that the reorganized debtor in the above-captioned bankruptcy case (the "Reorganized Debtor") filed today the attached Reorganized Debtor's (Substantive) Objection Pursuant To Bankruptcy Code Section 503(b) And Bankruptcy Rule 3007 To Proof Of Administrative Expense Claim Filed By The South Coast Air Quality Management District (Claim No. 4123) (the "Objection").

Your Claim(s) may be reduced, reclassified or disallowed and expunged as a result of the Objection. Therefore, you should read the enclosed Objection carefully.

PLEASE TAKE FURTHER NOTICE that a hearing on the Objection will be held on a date and time to be determined before the Honorable Kevin J. Carey, United States Bankruptcy Judge for the District of Delaware, in the United States Bankruptcy Court for the

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are 2730. The Reorganized Debtor's corporate headquarters are located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

District of Delaware, 5th Floor, Courtroom 5, 824 North Market Street, Wilmington, Delaware 19801 ("Hearing").

PLEASE TAKE FURTHER NOTICE THAT IF NO RESPONSES TO THE OBJECTION ARE TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THE ABOVE PROCEDURES, THE RELIEF REQUESTED IN THE OBJECTION MAY BE GRANTED WITHOUT FURTHER NOTICE OR HEARING.

Dated: Wilmington, Delaware
September 30, 2015

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

/s/ Anthony W. Clark

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Counsel for Reorganized Debtor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
EXIDE TECHNOLOGIES,	:	Case No. 13-11482 (KJC)
Reorganized Debtor.[1]	:	**Related Docket No. _____**

ORDER SUSTAINING REORGANIZED DEBTOR'S (SUBSTANTIVE) OBJECTION PURSUANT TO BANKRUPTCY CODE SECTION 503(b) AND BANKRUPTCY RULE 3007 TO PROOF OF ADMINISTRATIVE EXPENSE CLAIM FILED BY THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (CLAIM NO. 4123)

Upon the Reorganized Debtor's (Substantive) Objection Pursuant To Bankruptcy Code Section 503(b) And Bankruptcy Rule 3007 To Proof Of Administrative Expense Claim Number 4123 (the "Objection"),[2] and it appearing that notice of the Objection was good and sufficient upon the particular circumstances and that no other or further notice need be given; and this Court having considered the Objection, the Administrative Claim, and any responses thereto; and upon the Declaration of Thomas H. Strang in Support of the Reorganized Debtor's (Substantive) Objection Pursuant To Bankruptcy Code Section 503(b) And Bankruptcy Rule 3007 To Proof Of Administrative Expense Claim Filed By The South Coast Air Quality Management District (Claim No. 4123); and upon the record herein; and after due deliberation thereon and good and sufficient cause appearing therefor; it is hereby

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are 2730. The Reorganized Debtor's corporate headquarters are located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

[2] Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Objection.

ORDERED, ADJUDGED, AND DECREED that:

1. The relief requested in the Objection is GRANTED, as set forth herein.

2. Proof of administrative expense claim number 4123 is hereby disallowed and expunged in its entirety.

3. This Court shall retain jurisdiction over the Debtor, the Reorganized Debtor, and the District, whose Administrative Claim is the subject to the Objection, with respect to any matters related to or arising from the Objection or the implementation of this Order.

4. The Reorganized Debtor is authorized and empowered, to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

5. The Reorganized Debtor's Claims and Noticing Agent, Garden City Group, LLC, is hereby directed to serve this Order, including any relevant exhibits, and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

Dated: _____, 2015
Wilmington, Delaware

THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE