

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11  
 EXIDE TECHNOLOGIES, : Case No. 13-11482 (KJC)  
 Debtor.<sup>1</sup> : **Related Docket Nos.: 4507, 4528, 4558**  
 : **Hrg./Status Conference Date: February 2, 2016 at**  
 : **10:00 a.m. (Eastern)**  
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**OBJECTION TO THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT’S  
REQUEST FOR JUDICIAL NOTICE AND RESERVATION OF RIGHTS**

Exide Technologies, the reorganized debtor in the above-captioned case (“Exide” or the “Reorganized Debtor”) hereby submits this objection (the “Second Judicial Notice Objection”) to the request (the “Second Request for Judicial Notice”) (Docket No. 4563) of the South Coast Air Quality Management District (the “District”) for the court to take judicial notice of (i) the South Coast Air Quality Management District’s Final 2012 Air Quality Management Plan (the “2012 Report”), (ii) Appendix II to the 2012 Report, (iii) the Findings and Decision of the Hearing Board of the District, entered July 1, 2009 in Case No. 3151-21, (iv) a certified copy of the Declaration of Kenneth Copeland Regarding Petition for an Order for Abatement, dated June 9, 2009 and entered June 17, 2009 in Case No. 3151-21, and (v) a copy of the settlement agreement entered into between Exide and the District, dated June 15, 2009 (collectively, the “Judicial Notice Exhibits” or “Exhibits”).

Judicial notice should only be granted to the extent it is relevant in the pending action. See Doe v. Wohlgemuth, 1974 U.S. App. LEXIS 5709, at \*5 n. 5 (3d Cir. Dec. 10, 1974)

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<sup>1</sup> 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.

(“It is settled that this court may take judicial notice of developments since the taking of an appeal when they are relevant, and that we may further take judicial notice of pleadings in another case, especially where it presents a related issue.”) (emphasis added); Crimes v. RNI Wind Down Corp. (In re RNI Wind Down Corp.), 2008 U.S. Dist. LEXIS 71561, at \*6 (D. Del. Sept. 22, 2008) (granting judicial notice of pleadings and orders in Bankruptcy Court and Ninth Circuit that relate to issues presented in appeal).

It is unnecessary for this Court to take judicial notice of the Judicial Notice Exhibits because they have no relevance to the District’s claim for administrative expense priority. See Cavert Acquisition Co. v. N.L.R.B., 83 F.3d 598, 609-10 (3d Cir. 1996) (declining to take judicial notice of facts of public record deemed irrelevant); In re Privitera, 2003 Bankr. LEXIS 638, at \*5 n. 8 (Bankr. E.D. Pa. 2003) (declining to take judicial notice of irrelevant claim); In re W.R. Grace & Co., 2009 U.S. Dist. LEXIS 18545, at \*5 (D. Del. Mar. 11, 2009) (declining to take judicial notice of opposition briefs filed in separate action because the “Court fails to see the relevance of judicial notice.”). Each document of which the District requests judicial notice is a prepetition document (some dating back 4 years before the Petition Date) that has no bearing on whether any alleged postpetition Debtor conduct is entitled to administrative expense priority.

Further, the District provides no reason to support their request for judicial notice of the Exhibits and provides no argument for their relevance. Under Fed. R. Evid. 201(b)(2), “[t]he court may judicially notice a fact that is not subject to reasonable dispute because it...can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” The facts contained in the Exhibits cannot be “accurately and readily determined from sources whose accuracy cannot reasonably be questioned,” thus the District’s Request for

Judicial Notice should be denied. Fed. R. Evid. 201(b)(2); see also In re New Century TRS Holdings, Inc., 502 B.R. 416, 423 (Bankr. D. Del. 2013) (declining to take judicial notice of publication of certain articles where moving party provided no reason to support their request and the facts to be gleaned from the articles could not be “accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”) (quoting Fed. R. Evid. 201(b))).

However, if this Court does take judicial notice of the Judicial Notice Exhibits (which Exide believes is unnecessary), this Court should only take judicial notice not for the truth of the matter asserted, but rather only to establish the fact of the existence of the documents in the public realm. See U.S. ex rel. Spay v. CVS Caremark Corp., 913 F. Supp. 2d 125, 142 (E.D. Pa. 2012) (“[T]he Court's judicial notice is limited to what was known and in existence in the public realm at the time and not to demonstrate the truth of everything contained in those documents.”); In re Mervyn's Holdings, LLC, 426 B.R. at 104 (judicial notice of public records allowed for purpose of acknowledging facts existed in public realm, but “a court may not consider the information in the records as to whether or not these facts were true.”).

WHEREFORE, the Reorganized Debtor respectfully requests that the Court deny the Request for Judicial Notice as unnecessary or take judicial notice only for the limited purpose of proving their existence, not for the truth of the matter asserted.

Dated: Wilmington, Delaware  
December 18, 2015

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

/s/ Anthony W. Clark

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