

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

IN RE:

GRUPO HIMA SAN PABLO, INC.

Debtor

CASE NO. 23-02510 (ESL)

CHAPTER 11

IN RE:

PORTAL DE CAGUAS, INC.

Debtor

CASE NO. 23-02516 (ESL)

CHAPTER 11

GRUPO HIMA SAN PABLO INC.; PORTAL
DE CAGUAS, INC.

Plaintiff

v.

SL FUNDING 3, LLC; CENTER FOR
MUNICIPAL REVENUE COLLECTION;
UNSECURED CREDITORS COMMITTEE

Defendant

ADV. NO. 23-00097 (ESL)

SL FUNDING 3, LLC

Counter-Plaintiff

v.

GRUPO HIMA SAN PABLO INC.; PORTAL
DE CAGUAS, INC.; ALTER DOMUS (US)
LLC; ISLAND HEALTHCARE, LLC

Counter-Defendant

ADV. NO. 23-00097 (ESL)

OPINION AND ORDER GRANTING SUMMARY JUDGMENT

1 This case is before the court upon the *Partial Motion for Summary Judgment* (the “**Motion**
2 **for Summary Judgment**”, dkt. #22)¹ filed by SL Funding 3, LLC (“SL Funding”), as to Counts
3 I, III, IV and V of the amended *Complaint* (dkt. #7), which is unopposed.²³ Also before this court
4 is the *Joint Motion for Leave to File Second Amended Complaint* (“**Motion for Leave**”, dkt. #61)
5 filed by Debtors, Island Healthcare, LLC (the “DIP Lender”), and Alter Domus (US) LLC (“Alter
6 Domus”, and together with the DIP Lender, the “Lender Parties”), and the responses thereto.

7 For the reasons discussed below, the *Motion for Summary Judgment* (dkt. #22) is
8 GRANTED as to Counts I, III, IV and V. The *Motion for Leave* (dkt. # 61) filed by Debtors, and
9 the Lender Parties is DENIED, and the filing of the *Second Amended Complaint* is not allowed.

10 Factual and Procedural Background

11 I. The Bankruptcy Cases, Bankr. Cases No. 23-2510 and 23-2516

12 1. On August 15, 2023, Debtors filed voluntary petitions under Chapter 11 of the
13 Bankruptcy Code (“**Petition Date**”). See Bankr. Case No. 23-2510, dkt. #1; Bankr. Case No. 23-
14 2516, dkt. #1.

15 2. SL Funding was included in Debtors’ *Creditor Matrix* with the following
16 incomplete address: “500 WEST 5 TH STREET, AUSTIN, TX 78701” (“**Incomplete Address**”).
17 See *Creditor Matrix*, Bankr. Case No. 23-2516, dkt. #1, p. 17.

18 3. On August 16, 2023, the court issued a *Notice of Chapter 11 Bankruptcy Case*
19 (“**Chapter 11 Notice**”, Bankr. Case No. 23-2510, dkt. #16; Bankr. Case No. 23-2516, dkt. #15).
20 The docket does not reflect notice of the *Chapter 11 Notice* on SL Funding. See *Notice of*
21 *Electronic Filing* (Bankr. Case No. 23-2510, dkt. #16; Bankr. Case No. 23-2516, dkt. #15), and
22 *Certificate of Service* (Bankr. Case No. 23-2510, dkt. #49; Bankr. Case No. 23-2516, dkt. #39).

23 _____
24 ¹ The underlying bankruptcy cases are jointly administered. Unless otherwise stated, docket entries shall refer to the
adversary proceeding.

25 ² Debtors’ motion for extension of time to respond on April 11, 2024 (dkt. #48) was issued a notice of corrective
entry (dkt. #50) and they did not re-file. Consequently, the time to respond lapsed on April 25, 2024 (see dkt. #30,
32), and the *Motion for Summary Judgment* is unopposed, and deemed submitted.

26 ³ The court notes that in Count II, Debtors request a declaratory judgment as to the validity of SL Funding’s lien *vis a*
27 *vis* that of the Center for Municipal Revenue Collection (“CRIM”). It further notes the filing of a stipulation requesting
dismissal of Count II by and between SL Funding and CRIM on the basis of lack of standing (to which Debtors are
not a party to) (dkt. #33), and that Debtors sought to eliminate Count II in the *Motion for Leave*.

1 4. On August 15, 2023, Debtors filed an *Urgent Motion Of Debtors For Entry Of*
2 *Interim And Final Orders (I) Authorizing The Debtors To Obtain Postpetition Financing, (II)*
3 *Authorizing The Debtors To Use Cash Collateral, (III) Granting Liens And Providing*
4 *Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection To Prepetition*
5 *Secured Parties, (V) Modifying Automatic Stay, (VI) Scheduling A Final Hearing, And (VII)*
6 *Granting Related Relief* (“**DIP and Cash Collateral Motion**”, Bankr. Case No. 23-2510, dkt. #9;
7 Bankr. Case No. 23-2516, dkt. #9), as thereafter amended (Bankr. Case No. 23-2510, dkt. #21;
8 Bankr. Case No. 23-2516, dkt. #17). Notice of the *DIP and Cash Collateral Motion*, as amended,
9 was mailed to SL Funding at the Incomplete Address. *See Certificate of Service*, Bankr. Case No.
10 23-2510, dkt. #76, p. 10; Bankr. Case No. 23-2516, dkt. #62, p. 10.

11 5. Also on August 15, 2023, Debtors filed an *Urgent Motion Requesting Scheduling*
12 *Order with Expedite Deadlines Related to First Day Motions* (“**Scheduling Motion**”, Bankr. Case
13 No. 23-2510, dkt. #10; Bankr. Case No. 23-2516, dkt. #10), which was granted on August 17,
14 2023 (“**Scheduling Order**”, Bankr. Case No. 23-2510, dkt. #29, 34; Bankr. Case No. 23-2516,
15 dkt. #22, 26). Notice of the *Scheduling Motion* and *Scheduling Order* was mailed to SL Funding
16 at the Incomplete Address. *See Certificate of Service*, Bankr. Case No. 23-2510, dkt. #46, p. 8;
17 Bankr. Case No. 23-2516, dkt. #36, p. 8.

18 6. On August 21, 2023, Debtors filed a *Motion For An Order (I) Approving (A) Entry*
19 *Into The Fajardo Stalking Horse Agreement And Related Bid Protections And (B) Bidding*
20 *Procedures And The Form And Manner Of Notice Thereof, (II) Scheduling The Sale Hearing,*
21 *(III) Establishing Assumption And Assignment Procedures And Approving The Manner Of Notice*
22 *Thereof And (IV) Granting Certain Related Relief* (“**Bidding Procedures Motion**”, Bankr. Case
23 No. 23-2510, dkt. #65; Bankr. Case No. 23-2516, dkt. #54), which was granted on August 23,
24 2023 (“**Bidding Procedures Order**”, Bankr. Case No. 23-2510, dkt. #83; Bankr. Case No. 23-
25 2516, dkt. #66) to, among other things, (a) schedule a sale auction and hearing, (b) approve
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1 procedures for submitting competing bids, and (c) approve the manner and notice thereof.⁴ Notice
2 of the *Bidding Procedures Motion* and the *Bidding Procedures Order* was mailed to SL Funding
3 at the Incomplete Address. See Certificate of Service, Bankr. Case No. 23-2510, dkt. #129, p. 8,
4 and dkt. #188, p. 8.

5 7. Also on August 21, 2023, Debtors filed a *Supplement / Amendment to DIP*
6 *Financing and Consented Use of Cash Collateral at Docket No. 9 & 21* (“**DIP and Cash**
7 **Collateral Supplement**”, Bankr. Case No. 23-2510, dkt. #66; Bankr. Case No. 23-2516, dkt.
8 #55). Notice of the *DIP and Cash Collateral Supplement* was mailed to SL Funding at the
9 Incomplete Address. See Certificate of Service, Bankr. Case No. 23-2510, dkt. #188, p. 8.

10 8. On August 30, 2023, the court issued an *Amended Notice of Chapter 11*
11 *Bankruptcy Case* (“**Amended Chapter 11 Notice**”, Bankr. Case No. 23-2510, dkt. #131; Bankr.
12 Case No. 23-2516, dkt. #108). Notice of the *Amended Chapter 11 Notice* was mailed to SL
13 Funding at the Incomplete Address. See Certificate of Service, Bankr. Case No. 23-2510, dkt.
14 #198, p. 107; Bankr. Case No. 23-2516, dkt. #156, p. 107.

15 9. Also on August 30, 2023, Debtors identified SL Funding in *Schedule E/F* (Bankr.
16 Case No. 23-2516, dkt. #109, p. 12, item 3.2) as having a nonpriority, unsecured claim of
17 \$2,143,789.64, on account of a “note pay”. The address provided is the Incomplete Address (*id.*).
18 Notice of Debtors’ *Schedules* on SL Funding does not appear from the record. See Certificate of
19 Service, Bankr. Case No. 23-2510, dkt. #49; Bankr. Case No. 23-2516, dkt. #39.

20 10. On August 31, 2023, a *Notice of Auction and Sale Hearing* was published in the
21 San Juan Daily Star, in compliance with the *Bidding Procedures Order*. See Certificate of Service,
22 Bankr. Case No. 23-2510, dkt. #146; Bankr. Case No. 23-2516, dkt. #122.

23 11. On September 22, 2023, Debtors filed an *Urgent Motion of Debtors for Entry of*
24 *an Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the*
25 *Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative*
26

27 ⁴ Attached to the *Bidding Procedures* and *Sale Motion* are a proposed Notice of Action and Sale Hearing (Bankr. Case
No. 23-2510, dkt. #65-3, pp. 3-6; Bankr. Case No. 23-2516, dkt. #54-3, pp. 3-6), and a form asset purchase agreement
(Bankr. Case No. 23-2510, dkt. #65-6; Bankr. Case No. 23-2516, dkt. #54-6).

1 *Expense Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V)*
2 *Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief*
3 *(“**DIP Motion**”, Bankr. Case No. 23-2510, dkt. #240; Bankr. Case No. 23-2516, dkt. #187), as*
4 *amended (Bankr. Case No. 23-2510, dkt. #283; Bankr. Case No. 23-2516, dkt. # 219). Notice of*
5 *the DIP Motion was mailed to SL Funding at the Incomplete Address. See Certificate of Service,*
6 *Bankr. Case No. 23-2510, dkt. #329, p. 7.*

7 12. On September 29, 2023, the court entered the *Order (I) Authorizing the Debtors*
8 *to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III)*
9 *Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting*
10 *Adequate Protection to Prepetition Secured Parties, (V) Modifying Automatic Stay, (VI)*
11 *Scheduling a Final Hearing, and (VII) Granting Related Relief (“**DIP Order**”, Bankr. Case No.*
12 *23-2510, dkt. #286; Bankr. Case No. 23-2516, dkt. #222), as supplemented and/or extended*
13 *(“**First Supplemental DIP Order**”, Bankr. Case No. 23-2510, dkt. #417; Bankr. Case No. 23-*
14 *2516, dkt. #302) (“**Second Supplemental DIP Order**”, Bankr. Case No. 23-2510, dkt. #455;*
15 *Bankr. Case No. 23-2516, dkt. #341) (“**Third Supplemental DIP Order**”, Bankr. Case No. 23-*
16 *2510, dkt. #540; Bankr. Case No. 23-2516, dkt. #395).⁵ Notice of the DIP Order was mailed to*
17 *SL Funding at the Incomplete Address. See Certificate of Service, Bankr. Case No. 23-2510, dkt.*
18 *#329, p. 7.*

19 13. On October 3, 2023, Debtors filed a *Motion to Inform the Successful Bidder for*
20 *the Caguas Assets this Pursuant to the Bidding Procedures Entered on August 23, 2023 (“**Notice***
21 ***of Successful Bidder**”, Bankr. Case No. 23-2510, dkt. #304; Bankr. Case No. 23-2516, dkt.*
22 *#237). Notice of the Notice of Successful Bidder was mailed to SL Funding at the Incomplete*
23 *Address. See Certificate of Service, Bankr. Case No. 23-2510, dkt. #341, p. 9.*

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26 ⁵ The *Second Supplemental DIP Order* and *Third Supplemental DIP Order* read, in pertinent part, as follows: “[t]o
27 the extent that the Court finds that SL Funding ... did not receive proper notice of the DIP Motion, the Supplemental
DIP Liens shall be junior to any valid and perfected prepetition senior liens held by SL” (Bankr. Case No. 23-2510,
dkt. #455, p. 4, ¶ G, and dkt. #540, p. 4, ¶ F; Bankr. Case No. 23-2516, dkt. #341, p. 4, ¶ G, and dkt. #395, p. 4, ¶ F).

1 14. On October 12, 2023, Debtors filed a *Motion to Submit Documents: Asset*
2 *Purchase Agreement[sic] For Successful Bidder For The Caguas Assets* (“**Caguas Sale Motion**”,
3 Bankr. Case No. 23-2510, dkt. #344; Bankr. Case No. 23-2516, dkt. #258), as thereafter amended
4 and/or revised (Bankr. Case No. 23-2510, dkt. #429, 446, 454). A certificate of service
5 corresponding to the *Caguas Sale Motion* was not filed.

6 15. On October 18, 2023, SL Funding filed, and thereafter amended, Proof of Claim
7 No. 1 (“**POC #1**”) in the secured amount of \$2,192,377.95, with the following Fed. R. Bankr. P.
8 2002(g) notice address: “500 West 5th Street, Suite 1010, Austin, TX 78701” (“**Complete**
9 **Address**”). See Bankr. Case No. 23-2516, POC #1-2.

10 16. On October 19, 2023, at 10:00 AM (“**Caguas Sale Hearing**”), the court held a
11 hearing on the approval of the Caguas Assets. See *Order and Notice*, Bankr. Case No. 23-2510,
12 dkt. #301; Bankr. Case No. 23-2516, dkt. #234. Notice of the *Order and Notice* scheduling the
13 scheduling the Caguas Sale Hearing for October 19, 2024, was mailed to SL Funding at the
14 Incomplete Address. See *Certificate of Service*, Bankr. Case No. 23-2510, dkt. #345, p. 9; Bankr.
15 Case No. 23-2516, dkt. #246.

16 17. At the Caguas Sale Hearing, counsel for SL Funding stated that it held a secured
17 claim encumbering several medical offices and parking spaces and did not consent to the sale of
18 the Caguas Assets because they could not ascertain whether the sale price would cover their lien.
19 See *Minutes of Hearing Held on October 19, 2023*, Bankr. Case No. 23-2510, dkt. #397; Bankr.
20 Case No. 23-2516, dkt. #287. When inquired, Debtors stated that SL Funding was included in
21 Debtors’ schedules as an unsecured creditor, to which it had not objected, and that SL Funding
22 received notice (including by publication) as per certain certificates of service, specifically, dkt.
23 #129, 146, 299, 341, 345⁶ in the Lead Case. After hearing the parties’ positions, the Court stated
24 that: “at this moment the Court has no idea as to the rank of each lienholder, specifically as to SL
25 Funding... The Court stated that SL Funding alleges that they have been unable to assert how the
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27 ⁶ The court notes that the *Certificates of Services* identified at the Sale Hearing evince notice by publication or notice to the Incomplete Address.

1 sale affects the liens of its client to determine whether or not to halt or hold in abeyance the sale.
2 For that, the Court must then make a determination as to whether the position has been presented
3 late to the Court since there was due notice to the creditor. If there was due notice to the creditor
4 and it failed to file a prompt statement that is an issue. The Court further stated that it did not have
5 the specificity of the challenge at this moment. The Court noted that SL Funding ... has presented
6 this issue.” *Id.*, p. 14, lines 17-23.

7 18. On November 3, 2023, the court noted SL Funding’s *Motion to Vacate DIP*
8 *Financing Order and Objection to Sale of Caguas Assets* (Bankr. Case No. 23-2516, dkt. #316),
9 and clarified, *inter alia*, that “no order granting and/or expanding the DIP Order may affect senior
10 lien holder who have not received proper or adequate notice.” Bankr. Case No. 23-2510, dkt.
11 #437, p. 3; Bankr. Case No. 23-2516, dkt. #325, p. 3.

12 19. On November 9, 2023, to address SL Funding’s objection to the request for
13 additional DIP financing (Bankr. Case No. 23-2516, dkt. #377), Debtors, the Lender Parties, and
14 the Unsecured Creditors Committee (“UCC”) filed a *Joint Motion to Submit the Newly Revised*
15 *Caguas Sale Order with UCC Comments Providing for Appropriate Escrow and Request for*
16 *Entry of Order Granting Docket No. 304 & 344* (Bankr. Case No. 23-2510, dkt. #454; Bankr.
17 Case No. 23-2516, dkt. #340), which provided for a consignment of funds of SL Funding’s entire
18 claim.

19 20. On November 14, 2023, the court entered an *Order Approving Purchase and Sale*
20 *Agreements of Grupo Hima Caguas Assets Pursuant to Section 363 of the Bankruptcy Code, Free*
21 *and Clear of All Liens, Claims Interests and Encumbrances* (“**Caguas Sale Order**”, Bankr. Case
22 No. 23-2510, dkt. #476; Bankr. Case No. 23-2516, dkt. #353), which reads in pertinent part as
23 follows:

24 ... the amount of \$2,192,377.95 (the “SL Funding Disputed Funds”) will be
25 consigned by the Purchaser with this Court from the proceeds of the Sale (the “SL
26 Funding Disputed Funds Consignment”).

27 ...

The SL Funding Disputed Funds correspond to the assertions and arguments raised
by SL Funding ... at SL Funding 3, LLC’s Motion To Vacate DIP Financing Order

1 And Objection To Sale Of Caguas Assets (Docket No. 316 of Case No. 23-02516
2 (ESL)) and their Proof of Claim No. 1 of Case No. 23-02516 (ESL), which claims
3 are subject to a bona fide dispute pursuant to Section 363(f)(4) of the Bankruptcy
4 Code, including, but not limited to: (i) the validity and merits of SL Funding’s
5 position at Docket No. 316 of Case No. 23-02516 (ESL); (ii) SL Funding’s allowed
6 claim amount; (iii) the amount of SL Funding’s allowed secured claim, if any; (iv)
7 the extent, priority, and/or validity of SL Funding’s secured interest; and/or (iv) any
8 other related or applicable contested matters and/or adversary proceedings against
9 SL Funding in connection to the above (collectively, the “Disputed SL Funding
10 Claims”). The SL Funding Disputed Funds Consignment (which will be delivered
11 as part of the Purchase Price from the Purchaser’s funds) shall serve to preserve the
12 respective rights of the Debtors, SL Funding, the Committee and any other
13 applicable party-in-interest pending the adjudication and/or resolution of the
14 Disputed SL Funding Claims before the appropriate forum(s) (the “SL Funding
15 Dispute Adjudication Process”). Should SL Funding not prevail on its Disputed SL
16 Funding Claims in the SL Funding Dispute Adjudication Process, the SL Funding
17 Disputed Funds Consignment shall be released and distributed as provided in the
18 decision issues in the SL Funding Dispute Adjudication Process and/or this Order
19 for other Sale proceeds (as applicable), without further liability of the Purchaser. If,
20 however, should SL Funding be successful in the pursuit of its Disputed SL
21 Funding Claims in the SL Funding Dispute Adjudication Process, SL Funding shall
22 then have the right to collect on their claim only against the SL Funding Disputed
23 Funds Consignment in accordance with the decision that is issued in the SL Funding
24 Dispute Adjudication Process, which shall constitute the sole and exclusive
25 recourse that SL Funding will be entitled to on account of the Disputed SL Funding
26 Claims. In that connection: (i) the Purchaser shall have no liability or obligation of
27 any kind to SL Funding with respect to any claim SL Funding may have against the
Debtors, including any Disputed SL Funding Claim, and (ii) SL Funding shall have
no recourse of any kind against the Purchaser in respect of any claim SL Funding
may have against the Debtors, including any Disputed SL Funding Claim. The
Debtors, the Committee, SL Funding, and any applicable parties-in-interest shall
file a joint briefing schedule to this Court within a period of seven (7) days
following entry of this Order outlining the timetable and procedure for resolution
of the Disputed SL Funding Claims before the applicable SL Funding Dispute
Adjudication Process, and the SL Funding Disputed Funds will thereafter be
applied and distributed as ultimately determined in the SL Funding Dispute
Adjudication Process and/or the DIP Order, as applicable. The Committee reserves
all rights to pursue discovery from SL Funding and/or the debtor with respect to the
validity and extent of SL Funding’s alleged liens. This Sale Order shall be
interpreted in conjunction with the contents of this paragraph.

24 Id., pp. 18-19, ¶¶ 23, 25.

25 21. On November 20, 2023, SL Funding filed a *Motion for Partial Reconsideration of*
26 *[the Caguas Sale Order]* (Bankr. Case No. 23-2516, dkt. #361), to which Debtors filed an
27 objection (Bankr. Case No. 23-2516, dkt. #366).

1 22. On November 28, 2023, the court denied the motion for reconsideration for the
2 reasons stated in Debtors’ opposition, which the court adopted (Bankr. Case No. 23-2516, dkt.
3 #368).

4 23. On December 12, 2023, SL Funding filed a *Motion for Order Clarifying the SL*
5 *Funding Dispute Adjudication Process and for Status Conference* (Bankr. Case No. 23-2516, dkt.
6 #402) proposing a streamlined “bifurcated process whereby the threshold issue of notice is
7 resolved by way of a limited discovery period to conduct written discovery and depositions, which
8 will be completed by February 9, 2024, followed by supplemental briefing and an evidentiary
9 hearing to be held on or before February 29, 2024 wherein the Court will hear evidence regarding
10 the notice, if any, provided to SL in this case and determine whether SL was provided proper
11 notice of the bidding and sale process, the DIP financing motions, and the Sale Orders” (*id.*, p. 5)
12 (**“SL Funding Dispute Adjudication Process”**).

13 24. On December 14, 2023, the court entered an *Order* (Bankr. Case No. 23-2516, dkt.
14 #413) granting the streamlined SL Funding Dispute Adjudication Process, ordering the parties to
15 move the court with their respective positions by December 22, 2023, and scheduling a status
16 conference for March 5, 2024, at 10:00 AM (Bankr. Case No. 23-2516, dkt. #415).

17 25. In compliance with this court’s order, on December 22, 2024, SL Funding filed a
18 *Motion for Partial Resolution of the SL Funding Dispute Claims* (**“Motion for Partial**
19 **Resolution**”, Bankr. Case No. 23-2516, dkt. #449).

20 26. Also on December 22, 2023, the Debtors filed a (i) *Motion for Reconsideration of*
21 *December 14, 2023, Order (Docket No. 413) for lack of Jurisdiction or, in the Alternative, to Stay*
22 *the Application of the Order* (Bankr. Case No. 23-2516, dkt. #447), alleging the court lacked
23 jurisdiction to issue the December 14 *Order*, and (ii) this adversary proceeding (dkt. #1).

24 27. On December 26, 2023, SL Funding filed an objection to Debtors’ motion for
25 reconsideration (Bankr. Case No. 23-2516, dkt. #456).

26 28. On January 3, 2024, the court stayed the *Motion for Partial Resolution* pending
27 adjudication of the adversary proceeding, and ordering SL Funding to respond to Debtors’ motion

1 for reconsideration and address the jurisdictional issues raised therein. See Bankr. Case No. 23-
2 2516, dkt. #469.

3 29. On January 9, 2024, SL Funding filed a *Motion for Clarification and Scheduling*
4 *of Status Conference* (“**Motion for Clarification**”, Bankr. Case No. 23-2516, dkt. #480), seeking
5 clarification as to the status of the SL Funding Dispute Adjudication Process, averring that there
6 is no good reason to further delay the adjudication of the threshold issue of whether SL Funding
7 was provided sufficient notice, that discovery requests have already been issued by SL Funding,
8 and that in its January 3 *Order*, the court did not stay the December 14 *Order* nor the deadlines
9 set forth therein. SL Funding also stated that it addressed the jurisdictional issues in its objection
10 to Debtors’ motion for reconsideration (Bankr. Case No. 23-2516, dkt. #456).

11 30. On January 10, 2024, Debtors and the Lender Parties filed a *Joint Motion*
12 *Requesting Entry of a Mediation Order as to the SL Funding 3, LLC’s Disputes* [] (“**Motion for**
13 **Mediation**”, Bankr. Case No. 23-2516, dkt. #481), seeking entry of an order for mediation “to
14 determine if a consensual path forward for the resolution of the SL Funding disputes can be
15 achieved, and to stay the pending litigation deadlines until conclusion of the mediation.” Id., p. 4.

16 31. In its *Objection to [Motion for Clarification]* (Bankr. Case No. 23-2516, dkt.
17 #487), SL Funding stated as follows:

18 SL [Funding] is amenable to mediate **but only** after it is able to conduct meaningful
19 settlement discussions with the parties. This, in turn, can only occur after the narrow
20 and streamlined procedure approved by this Court in its December 14, 2023 Order
21 ... has concluded—as it is through that procedure that the parties will obtain full
22 knowledge of each party’s respective position regarding the threshold issue of
23 notice, and will be aware of all the evidence in their possession supporting their
24 respective positions regarding that gating issue. Only after those proceedings—
which will be completed, at the latest, by March 5, 2024, pursuant to the December
14 Order—will it be possible for the parties to meaningfully participate in
settlement discussions or a mediation with the knowledge of their respective
strengths and weaknesses.

25 Id., p. 1 (emphasis original)

26 32. On December 16, 2024, Debtors filed a *Response to SL Funding 3, LLC’s*
27 *Objection to Debtor’s Motion for Reconsideration Order at [ECF No. 413]* (Bankr. Case No. 23-

1 2516, dkt. #488), averring that the streamlined procedure is “in direct violation of the Caguas Sale
2 Order” and the Bankruptcy Code (*id.*, p. 4, ¶ 10).

3 33. On January 26, 2024, the court entered an order (Bankr. Case No. 23-2516, dkt.
4 #496)

5 clarify[ing] that the January 3 Order stays the Motion for Partial Resolution
6 pending adjudication of the adversary proceeding only. The January 3 Order does
7 not stay the discovery timetable proposed by SL Funding at dkt. #402 and approved
8 by this court in the December 14 Order. See Order(s), dkt. #413, 469. Accordingly,
9 the parties shall abide by the discovery deadline approved by this court. The Motion
for Mediation (dkt. #481) is hereby held in abeyance pending conclusion of
discovery.

10 *Id.*, p. 3.

11 34. On March 5, 2024, at 10:00 A.M, the court held a status conference to consider
12 the contested matter between Debtors and SL Funding, which is related to the adversary
13 proceeding. *See Minutes of Hearing Held on March 5, 2024*, Bankr. Case No. 23-2516, dkt. #632;
14 *Transcript of Hearing Held on March 5, 2024*, Bankr. Case No. 23-2516, dkt. #652.

15 II. The Adversary Proceeding, Adv. Proc. No. 23-00097

16 35. On December 22, 2023, Debtors filed and thereafter amended a *Complaint* (dkt.
17 #1, 7) against creditor SL Funding, CRIM, and the UCC, objecting to the amount, validity, extent
18 and/or priority of SL Funding’s claim, and seeking a declaratory judgment that such claim is
19 junior to that of the DIP Lender (dkt. #7, p. 10, ¶ 30) and junior to that of CRIM (*id.*, p. 11, ¶ 37),
20 each as a result of the DIP Order.

21 36. On February 26, 2024, SL Funding filed an *Answer, Affirmative Defenses, and*
22 *Counterclaims* (“**Counterclaim**”, dkt. #18), asserting claims against Debtors and the Lender
23 Parties.

24 37. On March 12, 2024, SL Funding filed the *Motion for Summary Judgment* (dkt.
25 #22), a *Memorandum in Support* (dkt. #22-1), and a *Supporting Statement of Material*
26 *Uncontested Facts* (dkt. #22-2) accompanied by an *Unsworn Declaration under Penalty of*
27 *Perjury per 28 U.S.C. § 1746 of Jim Barr Coleman* (“**Coleman Decl.**”, dkt. #22-3), *Deposition*

1 of Armando Rodriguez Benitez (“**Rodriguez Dep.**”, dkt. #22-4), and Unsworn Declaration under
2 Penalty of Perjury per 28 U.S.C. § 1746 of Francisco Fernández-Chiqués (“**Fernández-Chiqués**
3 **Decl.**”, dkt. #22-5, ¶ 2).

4 38. On April 5, 2024, SL Funding filed a *Pretrial Report* (dkt. #36) in compliance
5 with the court’s *Order and Notice Preliminary Pretrial and Scheduling Conference* (dkt. #8).

6 39. Also on April 5, 2024, Debtors and the Lender Parties filed an *Urgent Joint Motion*
7 *Requesting that the Preliminary Pretrial and the Pretrial Report be Held in Abeyance or*
8 *Rescheduled to a Later Date* (dkt. #38), which was granted, and the hearing was rescheduled for
9 July 12, 2024 (dkt. #39).

10 40. On April 11, 2024, new summons were issued (dkt. #44, 45).

11 41. On April 24, 2024, Debtors and the Lender Parties filed the *Motion for Leave* (dkt.
12 #61) to include the Lender Parties as co-plaintiffs “thus formally converting them into
13 indispensable parties in this litigation to take the lead on claims for relief related to their rights,
14 as well as to eliminate CRIM and the UCC as co-defendants to this action” (*id.*, p. 3, ¶ 9).

15 42. Also on April 25, 2024, Debtors and the Lender Parties filed a *Joint Motion to*
16 *Hold SL Funding’s Motion for Summary Judgment in Abeyance or, in the Alternative, Extension*
17 *of Time to Respond to the Same* (“**Motion to Stay Summary Judgment**”, dkt. #64). Among other
18 things, the parties aver that “Debtors have requested extensions to answer the MSJ. Principally,
19 Debtors were struggling to grasp or reconcile how to address matters which mostly involve the
20 Lenders Parties’ rights, without such parties’ involvement” (*id.*, p. 3), and “the MSJ needs to be
21 re-assessed because it is based on facts raised in a Complaint that has become superseded and
22 stale as a result of the filing of the Second Amended Complaint. Further, because the MSJ seeks
23 dispositive relief on its causes of action in the Amended Counterclaim and Third-Party Complaint
24 – which directly impacts the rights of the Lender Parties – any deadline to respond to the MSJ
25 should be stayed until the Lender Parties have had the opportunity to formally appear as co-
26 plaintiffs in this case and be heard on these matters” (*id.*, p. 4, ¶ 9).

1 43. On April 26, 2024, SL Funding filed a *Preliminary Opposition to Third Request*
2 *for Extension of Time to Respond to Motion for Summary Judgment* (dkt. #66) averring, in
3 pertinent part, that contrary to Debtors’ statements that the motion for summary judgment has
4 become stale as a result of the filing of the second amended complaint, “the facts of the case, as
5 supported by discovery, have not changed... Furthermore, the MSJ does act as a means to resolve
6 the topics of the Disputed SL Funding Claims, not just the notice issue ... SL’s MSJ as it stands
7 fully addresses and provides an opportunity to achieve a complete resolution of the Disputed SL
8 Funding Claims.” *Id.*, p. 3. SL Funding further states that “this Preliminary Opposition will be
9 followed by a supplemental opposition addressing the Movants’ new assertions regarding the
10 Second Amended Complaint”. *Id.*

11 44. On May 8, 2024, SL Funding filed an *Opposition to Joint Motion for Leave to File*
12 *Second Amended Complaint* (“**Opposition to Leave**”, dkt. #67) averring that the Lender Parties
13 seek to appear, take over, and openly lead this litigation while the Debtors step back. They point
14 out that the Lender Parties are already a party to this litigation, and Debtors may dismiss parties
15 or parts of the *Complaint* without amendments and further delays; that the *Motion for Leave* does
16 not discuss the actual substance of the proposed amendments (aside from adding and dismissing
17 parties) presumably because the proposed amendments are futile and raise no new issue that
18 would preclude the granting of the *Motion for Summary Judgment*; and that Debtors fail to meet
19 the required standard to justify the requested leave by failing to present any legal support or
20 provide any justification as to why the requested amendment is necessary and why it could not
21 have been made much sooner. They aver that the amendment to the *Complaint* is not necessary
22 for there is no change in circumstances, the Lender Parties are already parties in this litigation,
23 fully capable of asserting and protecting their own rights and free to assert whatever counterclaims
24 pursuant to Fed. R. Civ. P. 14; the *Motion for Leave* suggests the purpose of the proposed
25 amendment is to simplify the proceeding by naming the Lender Parties as co-Plaintiffs and
26 eliminating other parties, however, a comparison of the amended complaint with the second
27 amended complaint shows they also purport to add three new causes action against SL Funding,

1 which the *Motion for Leave* does not discuss in any way; the addition of the new allegations and
2 causes of action are unnecessary as these issues are already substantively asserted in the amended
3 complaint and thus superfluous; granting the *Motion for Leave* would unduly prejudice SL
4 Funding as it was filed *after* discovery has been completed and while a motion for summary
5 judgment was pending, and citing caselaw in support; and, the *Motion for Leave* was filed in bad
6 faith to stall the proceeding for, among other things, the Lender Parties were aware of this dispute
7 and its potential impact on their rights or recovery since late 2023 but have actively avoided any
8 participation in this case.

9 45. On May 13, 2024, the Lender Parties filed an *Urgent Joint Motion to Hold the*
10 *Lender Parties Answer to SL Funding 3, LLCs First Amended Third Party Complaint in Abeyance*
11 *or, in the Alternative, Extension of Time to Respond to the Same* (dkt. #71), which was denied
12 (dkt. #73).

13 46. On May 16, 2024, SL Funding filed a (I) *Motion in Compliance with Order and*
14 *Opposition to Request to Hold the Partial Motion for Summary Judgment in Abeyance; and (II)*
15 *Request that the Court Issue Partial Summary Judgment* (dkt. #75), averring that summary
16 judgment should not be held in abeyance because Debtors and the Lending Parties have not
17 carried their burden of showing why the *Complaint* should be amended.

18 47. On May 21, 2024, Debtors, the DIP Lender and Alter Domus filed a *Joint Reply*
19 *in Support of Joint Motion for Leave to File Second Amended Complaint* (dkt. #78)

20 48. On May 23, 2024, the DIP Lender filed an *Answer to SL Funding 3, LLC's First*
21 *Amended Counterclaim and Third-Party Complaint, and Third-Party Counterclaim* (“**DIP**
22 **Lender Counterclaim**”, dkt. #79).

23 49. Also on May 23, 2024, Alter Domus filed a *Motion to Dismiss Amended Third*
24 *Party Complaint for Failure to State a Claim Against Alter Domus* (dkt. #80), to which SL
25 Funding filed an *Opposition* on June 3, 2024 (dkt. #82), Alter Domus a *Reply* on June 10, 2024
26 (dkt. #86), and SL Funding a *Surreply* on June 12, 2024 (dkt. #88).

1 6. The “Hello/Goodbye Letter” reads as follows:

2 The above loan ("Loan") has been sold and conveyed to SL Funding 3, LLC ("New
3 Lender") by Condado 2, LLC. All of the terms and conditions of the Loan remain
4 in full force and effect and are now enforceable by the New Lender.

5 The New Lender has appointed Rossrock Servicing LLC as the servicer of the Loan
6 ("Servicer"). All future payments of interest, principal, escrows or other charges
7 payable by you under the Loan shall be made payable to the New Lender and shall
8 be sent to the Servicer as follows:

9 [...]

10 **Regular Mail & Overnight:**
11 SL Funding 3, LLC
12 c/o Rossrock Servicing LLC
13 446 East Meadow Avenue #172
14 East Meadow, NY 11554

15 **Make Check Payable to:**
16 SL Funding 3, LLC

17 Please note that any ACH or auto-debits that you had previously setup with
18 Condado 2, LLC are no longer in effect.

19 Please contact the New Lender at the address and phone number given below if you
20 have any questions.

21 SL Funding 3, LLC
22 500 West 5th Street, Suite 1010
23 Austin, TX 78701
24 212-584-6170

25 *Hello/Goodbye Letter*, dkt. #22-3, p. 7.

26 7. Following the issuance of the “Hello/Goodbye Letter” and prior to the Petition
27 Date, Debtors issued payments and correspondence to SL Funding’s Complete Address. See
28 *Statement of Material Uncontested Facts*, dkt. #22-2, ¶ 7; *Coleman Decl.*, dkt. #22-3, ¶ 9; *Exhibit*
29 *C to Coleman Decl.*, dkt. #22-3, pp. 9-10 (checks issued by Debtors bearing SL Funding’s
30 Complete Address); *Rodriguez Dep.*, dkt. #22-4, at 42:1-23.

31 8. Debtors knew SL Funding’s Complete Address prior to the Petition Date and had
32 such Complete Address in their books and records. See *Statement of Material Uncontested Facts*,

1 dkt. #22-2, ¶ 8; *Coleman Decl.*, dkt. #22-3, ¶ 9; *Rodriguez Dep.*, dkt. #22-4, at 42:1-23;
2 *Hello/Goodbye Letter*, dkt. #22-3, p. 7.

3 9. Prior to the Petition Date, SL Funding, through counsel Francisco Fernández-
4 Chiqués, Esq. (“Fernández-Chiqués”), had been in negotiations with Debtors’ in-house counsel,
5 Heidi Rodriguez, Esq. (“Rodriguez”), regarding a forbearance agreement related to the Loan. See
6 *Statement of Material Uncontested Facts*, dkt. #22-2, ¶ 10; *Fernández-Chiqués Decl.*, dkt. #22-
7 5, ¶ 2.

8 10. On August 15, 2023, Debtors filed voluntary petitions under Chapter 11 of the
9 Bankruptcy Code. See Bankr. Case No. 23-2510, dkt. #1; Bankr. Case No. 23-2516, dkt. #1.

10 11. SL Funding was included in Debtors’ *Creditor Matrix* and *Schedule E/F* with the
11 Incomplete Address, which omits its suite number. See *Statement of Material Uncontested Facts*,
12 dkt. #22-2, ¶ 12; *Rodriguez Dep.*, dkt. #22-4, at 33:14-19; *Creditor Matrix*, Bankr. Case No. 23-
13 2516, dkt. #1, p. 17; *Schedule E/F*, dkt. #109, p. 12, item 3.2.

14 12. On or about the Petition Date, Fernández-Chiqués was informed via telephone by
15 Rodriguez that Debtors had filed for bankruptcy. See *Statement of Material Uncontested Facts*,
16 dkt. #22-2, ¶ 11; *Rodriguez Dep.*, dkt. #22-4, at 99:4-100:9. *Fernández-Chiqués Decl.*, dkt. #22-
17 5, ¶ 2.

18 13. The docket does not reflect notice of the *Chapter 11 Notice* (Bankr. Case No. 23-
19 2510, dkt. #16; Bankr. Case No. 23-2516, dkt. #15) on SL Funding. See *Notice of Electronic*
20 *Filing* (Bankr. Case No. 23-2510, dkt. #16; Bankr. Case No. 23-2516, dkt. #15), and *Certificate*
21 *of Service* (Bankr. Case No. 23-2510, dkt. #49; Bankr. Case No. 23-2516, dkt. #39).

22 14. Notice of the *DIP and Cash Collateral Motion* (Bankr. Case No. 23-2510, dkt. #9;
23 Bankr. Case No. 23-2516, dkt. #9) was mailed to SL Funding at the Incomplete Address. See
24 *Certificate of Service*, Bankr. Case No. 23-2510, dkt. #76, p. 10; Bankr. Case No. 23-2516, dkt.
25 #62, p. 10.

26 15. SL Funding did not receive notice of the *DIP and Cash Collateral Motion*. See
27 *Statement of Material Uncontested Facts*, dkt. #22-2, ¶¶ 14, 17; *Coleman Decl.*, dkt. #22-3, ¶¶

1 12, 18-19; *Rodriguez Dep.*, dkt. #22-4, at 80:5-12; *Ex. 13 to Rodríguez Dep.*, dkt. #22-10 (email
2 from Debtors’ noticing agent to Debtors’ counsel stating that mail “was returned as
3 undeliverable”); *Certificate of Service*, Bankr. Case No. 23-2510, dkt. #76, p. 10; Bankr. Case
4 No. 23-2516, dkt. #62, p. 10 (Notice of the *DIP and Cash Collateral Motion* was mailed to SL
5 Funding at the Incomplete Address).

6 16. Notice of the *Scheduling Motion* (Bankr. Case No. 23-2510, dkt. #10; Bankr. Case
7 No. 23-2516, dkt. #1) and *Scheduling Order* (Bankr. Case No. 23-2510, dkt. #29, 34; Bankr. Case
8 No. 23-2516, dkt. #22, 26) was mailed to SL Funding at the Incomplete Address. See *Certificate*
9 *of Service*, Bankr. Case No. 23-2510, dkt. #46, p. 8; Bankr. Case No. 23-2516, dkt. #36, p. 8.

10 17. Notice of the *Bidding Procedures Motion* (Bankr. Case No. 23-2510, dkt. #65;
11 Bankr. Case No. 23-2516, dkt. #54) and the Bidding Procedures Order (Bankr. Case No. 23-2510,
12 dkt. #83; Bankr. Case No. 23-2516, dkt. #66) was mailed to SL Funding at the Incomplete
13 Address. See *Certificate of Service*, Bankr. Case No. 23-2510, dkt. #129, p. 8, and dkt. #188, p.
14 8.

15 18. SL Funding did not receive notice of the *Bidding Procedures Motion*. See
16 *Statement of Material Uncontested Facts*, dkt. #22-2, ¶ 15; *Coleman Decl.*, dkt. #22-3, ¶ 14;
17 *Rodriguez Dep.*, dkt. #22-4, at 80:5-12; *Ex. 13 to Rodríguez Dep.*, dkt. #22-10 (email from
18 Debtors’ noticing agent to Debtors’ counsel stating that mail “was returned as undeliverable”);
19 *Certificate of Service*, Bankr. Case No. 23-2510, dkt. #188, p. 8 (Notice of the *Bidding Procedures*
20 *Motion* was mailed to SL Funding at the Incomplete Address).

21 19. SL Funding did not receive notice of the *Bidding Procedures Order*. See *Statement*
22 *of Material Uncontested Facts*, dkt. #22-2, ¶¶ 15, 17; *Coleman Decl.*, dkt. #22-3, ¶¶ 14, 18-19;
23 *Rodriguez Dep.*, dkt. #22-4, at 80:5-12; *Ex. 13 to Rodríguez Dep.*, dkt. #22-10 (email from
24 Debtors’ noticing agent to Debtors’ counsel stating that mail “was returned as undeliverable”);
25 *Certificate of Service*, Bankr. Case No. 23-2510, dkt. #129, p. 8 (Notice of the *Bidding Procedures*
26 *Order* was mailed to SL Funding at the Incomplete Address).

1 20. SL Funding did not receive notice of the auction and bidding process and was not
2 provided an opportunity to participate in the bidding process. See *Statement of Material*
3 *Uncontested Facts*, dkt. #22-2, ¶¶ 18, 19; *Coleman Decl.*, dkt. #22-3, ¶¶ 18–19; *Rodriguez Dep.*,
4 dkt. #22-4, at 80:5-1.

5 21. Notice of the *DIP and Cash Collateral Supplement* (Bankr. Case No. 23-2510,
6 dkt. #66; Bankr. Case No. 23-2516, dkt. #55) was mailed to SL Funding at the Incomplete
7 Address. See *Certificate of Service*, Bankr. Case No. 23-2510, dkt. #188, p. 8.

8 22. Notice of the *Amended Chapter 11 Notice* (Bankr. Case No. 23-2510, dkt. #131;
9 Bankr. Case No. 23-2516, dkt. #108) was mailed to SL Funding at the Incomplete Address. See
10 *Certificate of Service*, Bankr. Case No. 23-2510, dkt. #198, p. 107; Bankr. Case No. 23-2516, dkt.
11 #156, p. 107.

12 23. Notice of Debtors' *Schedules* on SL Funding does not appear from the record. See
13 *Certificate of Service*, Bankr. Case No. 23-2510, dkt. #49; Bankr. Case No. 23-2516, dkt. #39.

14 24. On August 31, 2023, a *Notice of Auction and Sale Hearing* was published in the
15 San Juan Daily Star, in compliance with the *Bidding Procedures Order*. See *Certificate of Service*,
16 Bankr. Case No. 23-2510, dkt. #146; Bankr. Case No. 23-2516, dkt. #122.

17 25. Notice of the *DIP Motion* (Bankr. Case No. 23-2510, dkt. #240; Bankr. Case No.
18 23-2516, dkt. #187) was mailed to SL Funding at the Incomplete Address. See *Certificate of*
19 *Service*, Bankr. Case No. 23-2510, dkt. #329, p. 7.

20 26. Notice of the *DIP Order* (Bankr. Case No. 23-2510, dkt. #286; Bankr. Case No.
21 23-2516, dkt. #222) was mailed to SL Funding at the Incomplete Address. See *Certificate of*
22 *Service*, Bankr. Case No. 23-2510, dkt. #329, p. 7.

23 27. Notice of the *Notice of Successful Bidder* (Bankr. Case No. 23-2510, dkt. #304;
24 Bankr. Case No. 23-2516, dkt. #237) was mailed to SL Funding at the Incomplete Address. See
25 *Certificate of Service*, Bankr. Case No. 23-2510, dkt. #341, p. 9.

26 28. On or about October 18, 2023, SL Funding received a copy of the *Notice of*
27 *Successful Bidder* that had been mailed to the Incomplete Address and is the first document

1 received in the bankruptcy case. See *Statement of Material Uncontested Facts*, dkt. #22-2, ¶¶ 21,
2 22; *Coleman Decl.*, dkt. #22-3, ¶¶ 18-19.

3 29. On October 18, 2023, SL Funding filed POC #1 in the secured amount of
4 \$2,192,377.95. See Bankr. Case No. 23-2516, POC #1-1, 1-2.

5 30. A certificate of service corresponding to the *Caguas Sale Motion* (Bankr. Case No.
6 23-2510, dkt. #344; Bankr. Case No. 23-2516, dkt. #258) was not filed.

7 31. SL Funding did not receive notice of the *Caguas Sale Motion* or the Asset Purchase
8 Agreement attached thereto. See *Statement of Material Uncontested Facts*, dkt. #22-2, ¶ 20;
9 *Rodriguez Dep.*, dkt. #22-4, at 80:5-12.

10 32. Notice of the *Order and Notice* scheduling the Caguas Sale Hearing (Bankr. Case
11 No. 23-2510, dkt. #301; Bankr. Case No. 23-2516, dkt. #234) was mailed to SL Funding at the
12 Incomplete Address. See *Certificate of Service*, Bankr. Case No. 23-2510, dkt. #345, p. 9; Bankr.
13 Case No. 23-2516, dkt. #246.

14 33. SL Funding did not receive notice of the bankruptcy case prior to October 18,
15 2023. See *Statement of Material Uncontested Facts*, dkt. #22-2, ¶ 17; *Coleman Decl.*, dkt. #22-3,
16 ¶¶ 18–19; *Rodriguez Dep.*, dkt. #22-4, at 80:5-12; *Ex. 13 to Rodríguez Dep.*, dkt. #22-10 (email
17 from Debtors’ noticing agent to Debtors’ counsel stating that mail to SL Funding “was returned
18 as undeliverable”).

19 34. All notices mailed to SL Funding prior to October 18, 2023, were mailed to the
20 Incomplete Address, not received by SL Funding, and returned to Debtors’ noticing agent as
21 undeliverable. See *Statement of Material Uncontested Facts*, dkt. #22-2, ¶¶ 23, 27; *Rodriguez*
22 *Dep.*, dkt. #22-4, at 80:5-12; *Ex. 13 to Rodríguez Dep.*, dkt. #22-10 (email from Debtors’ noticing
23 agent to Debtors’ counsel stating that mail “was returned as undeliverable”).

24 35. All notices mailed to SL Funding following the October 19, 2023 hearing, are
25 being mailed to the Complete Address. See *Statement of Material Uncontested Facts*, dkt. #22-2,
26 ¶ 24; *Rodriguez Dep.*, dkt. #22-4, at 102:5-24.

27

1 36. On January 29, 2024, Debtors’ counsel emailed Debtors’ noticing agent
2 concerning the notices issued to SL Funding, at which time the noticing agent answered that such
3 notices were returned as undeliverable. See Statement of Material Uncontested Facts, dkt. #22-2,
4 ¶ 26; Rodriguez Dep., dkt. #22-4, at 106:12-15

5 POSITION OF THE PARTIES

6 In Count I, Debtors requests a declaratory judgment as to the validity, extent, and/or
7 priority of SL Funding’s lien over certain real property *vis a vis* the DIP Lender (dkt, #7, p. 9, ¶
8 26), that is, in the event that SL Funding had a valid and perfected secured interest in certain real
9 property at the Petition Date, such interest has been primed and is junior to that of the DIP Lender
10 as a result of the *DIP Order*, which they allege was notified to SL Funding “through direct phone
11 call to counsel, mailing service and/or notice by publication” (*id.*, p. 10, ¶¶ 28, 30). In Count III,
12 Debtors state that, although they waived any claim against the DIP Lender under 11 U.S.C §
13 506(c) as a result of the *DIP Order* (*id.*, p. 10, ¶ 40), in the event SL Funding is successful in
14 claiming a secured interest superior to that of the DIP Lender, Debtors “reserve the right and will
15 affirmatively claim amounts and surcharge per Section 506(c)” (*id.*, p. 10, ¶¶ 41-42). In Count IV
16 and Count V, Debtors object to the allowance of POC #1.

17 With respect to the issue of notice, Count I, SL Funding avers it did not receive proper
18 notice of any filing prior to October 17, 2023, including the *DIP Motion* or the *DIP Order*.
19 Consequently, the *DIP Order* does not prime or otherwise affect SL Funding’s lien, which SL
20 Funding asserts is grounds to set aside both the *DIP Order* (in as much as it related to SL
21 Funding’s status as a senior lienholder) and the *Caguas Sale Order* (as it relates to the sale of the
22 SL Funding Collateral free and clear of SL Funding’s liens, and any value ascribed therein to such
23 collateral) (dkt. #22-1, pp. 12-13). Citing Paging Network, Inc. v. Nationwide Paging, Inc. (In re
24 Arch Wireless, Inc.), 534 F.3d 76 (1st Cir. 2008), they argue that because they are a known creditor,
25 they have a right to assume proper and adequate notice would be given. They further argue that
26 notice by publication does not obviate the need for actual notice, as per Paragraphs 20 and 21 of
27 such *Bidding Procedures Order*, which read:

1 As soon as practicable after the entry of this [Bidding Procedures Order], the
2 Debtors shall serve the Sale Notice by email, if available, or otherwise by first class
3 mail upon the following; *provided, however*, that the Debtors need not serve the
4 Sale Notice on any party for whom the Debtors are unable to obtain, after
5 reasonable diligence, an email or physical address as of the entry of this [Bidding
6 Procedures Order]; *provided, further* that the Debtors shall not be obligated to
7 provide supplemental service of the Sale Notice to any addressee whose Sale Notice
8 is returned to the Debtors as undeliverable so long as the Debtors have confirmed
9 that such Sale Notice was sent to the applicable email or physical address in the
Debtors' books and records and no other email or physical address could be
obtained for such addressee after reasonable diligence ... (b) the holders of the 30
largest unsecured claims against the Debtors; ... (o) all parties who are known by
the Debtors to assert liens or encumbrances against the Assets, if any; ... (r) all of
the Debtors' other known creditors and equity security holders; ...

10 In addition, the Debtors shall publish the Sale Notice once in Periodico El Nuevo
11 Dia (or another publication with similar national circulation) as soon as practicable
12 after entry of this Order, and post the Motion, the Stalking Horse Supplement, the
Sale Notice, this Order, the Form APA, and the Form Sale Order on the case website
...

13 Bankr. Case No. 23-2510, dkt. #83, p. 11, ¶¶ 20-21; Bankr. Case No. 23-2516, dkt. #66, p. 11, ¶¶
14 20-21 (italics original). Consequently, Debtors were required to provide actual notice to SL
15 Funding. Because all notices issued to SL Funding were returned as undeliverable, Debtors were
16 required to provide supplemental notice to SL Funding. Further still, the *Bidding Procedures*
17 *Order* allows for service by publication “in addition” to service by e-mail or first-class mail, not
18 in lieu of (dkt. # 22, p. 19).

19 With respect Count III, the surcharge claim, SL Funding argues the claim “ fails, however,
20 because the Debtors “can present no evidence of any actual costs recoverable against SL
21 [Funding] and because the Debtor[s] [are] unable to meet the conditions necessary to claim such
22 amounts and surcharge against SL [Funding] under Section 506(c) of the Bankruptcy Code”,
23 including “evidence of any actual ‘necessary’ and ‘reasonable’ costs incurred to preserve or
24 dispose of the SL [Funding] Collateral (no such costs are even alleged)” or that “ any such costs
25 or expenses provided a benefit to SL [Funding]” (id., pp. 22-23). With respect Count IV, the
26 objection to claim, SL Funding avers that, as the objecting party, Debtors must proffer substantial
27 evidence to successfully challenge POC #1’s *prima facie* validity. Moreover, SL Funding states

1 they have a duly registered mortgage; that while Debtors now state the debt is disputed, contingent
2 and unliquidated, the *Schedules* (which incorrectly list the debt as unsecured) do not so state; that
3 a payoff is attached to POC #1; that the interest is as per the Loan documents; that Debtors
4 admitted the loan should have been listed as unsecured (*Rodríguez Dep.*, dkt. #22-4, at 91:14-
5 94:2), and that SL Funding acquired the debt from Condado 2, LLC, its predecessor in interest.
6 (*Id.*, at 38:12-19). They further argue that by “acknowledging the validity of SL [Funding]’s
7 claim, the Debtor[s] [have] waived the right to object” (dkt. 22-1, p. 15, citing *In re Rehman*, 479
8 B.R. 238, 242 (Bankr. D. Mass. 2012) (“a debtor may be estopped from objecting to a claim”
9 where it otherwise “acknowledged the claim’s validity”)). Consequently, “[t]here is no genuine
10 issue of material fact that SL [Funding] is owed a valid debt in the amount of \$2,192,377.95 as
11 of the Petition Date, has a valid security interest in the SL [Funding] Collateral, and has standing
12 as successor-in-interest to pursue that claim. SL [Funding] is entitled to summary judgment on
13 this claim” (*id.*, p. 15).

14 Lasty, and with respect to Count V, Debtors’ request that the secured status of SL
15 Funding’s claim be reduced, SL Funding argues that because notice was improper, they had no
16 opportunity to participate in or object to the sale, and any arbitrary value placed on the SL Funding
17 Collateral in SL Funding’s absence is not binding on SL Funding. SL Funding thus requests an
18 equitable remedy, including “a finding and declaration that the value of the SL [Funding]
19 Collateral is, at least, equal to the amount of SL [Funding]’s debt” (*id.*, p. 21) for “it would be
20 fundamentally unfair to either punish SL [Funding] by applying the arbitrarily assigned value of
21 the SL [Funding] Collateral in the APA or requiring SL [Funding] to prove the unprovable (i.e.,
22 what value could have been obtained if SL [Funding] had due notice of and opportunity to
23 participate in the sale)” (*id.*, p. 21). They also request a declaration that the value of the SL
24 Funding Collateral “was worth, at minimum, the amount of SL [Funding]’s debt”, and further
25 order that the SL Funding Disputed Funds be released to SL Funding immediately (*id.*, p. 22).

26 In sum, SL Funding avers that “[g]iven the Debtor’s admissions, whether in written
27 discovery responses or through its [Fed. R. Civ. P.] 30(b)(6) representative’s deposition

1 testimony, there are no genuine issues of material fact with respect to each of the Debtor’s asserted
2 causes of action,” and thus “[s]ummary judgment in SL [Funding]’s favor is appropriate: (1)
3 dismissing the Debtor’s first, third, fourth, and fifth causes of action; (2) finding that SL [Funding]
4 was not provided due and actual notice in this case prior to October 18, 2023; and (3) fashioning
5 an equitable remedy directing that SL [Funding] immediately receive, at minimum, the SL
6 Funding Disputed Funds (in the amount of \$2,192,377.95) currently consigned with the Court.”
7 (Id., p. 7).

8 APPLICABLE LAW AND ANALYSIS

9 (A) Leave to Amend Complaint in an Adversary Proceeding and Mootness of Motion for
10 Summary Judgment Filed Prior to Such Leave

11 Fed. R. Civ. P. 15, made applicable to adversary proceedings under Fed. R. Bankr. P.
12 7015, allows a party to amend a pleading “to which a responsive pleading is required” once “as
13 a matter of course” if filed within the time limits established therein, that is, the earlier of “21
14 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b)”.
15 Fed. R. Civ. P. 15(a)(1). In all other circumstances, a party may amend its pleadings “only with
16 the opposing party’s written consent or the court’s leave. The court should freely give leave when
17 justice so requires.” Fed. R. Civ. P. 15(a)(2).

18 Fed. R. Civ. P. 15 “allows for liberal amendments in the interest of resolving cases on the
19 merits.” In re Gonzalez, 2012 WL 5438957, at *4 (Bankr. D.P.R. 2012) (ESL), citing Foman v.
20 Davis, 371 U.S. 178, 181–182 (1962); O’Connell v. Hyatt Hotels of PR, 357 F.3d 152, 154 (1st
21 Cir. 2004); Wilson v. Mendon, 294 F.3d 1, 7, n. 16 (1st Cir. 2002); Mills v. Maine, 118 F.3d 37,
22 53 (1st Cir. 1997); USM Corp. v. GKN Fasteners Ltd., 578 F.2d 21, 23 (1st Cir. 1978). Although
23 Fed. R. Civ. P. 15 “reflects a liberal amendment policy ... [lower courts] enjoy[] significant
24 latitude in deciding whether to grant leave to amend”. Id., quoting ACA Fin. Guar. Corp. v.
25 Advest, Inc., 512 F.3d 46, 55 (1st Cir. 2008). “Grounds for denial include undue delay, bad faith
26 or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue
27

1 prejudice to the opposing party and futility of amendment.” Id., quoting ACA Fin. Guar. Corp.,
2 512 F.3d at 56, and Foman, 371 U.S. at 182.

3 A party may not thwart the granting of a motion for summary judgment by submitting an
4 amended complaint devoid of any evidentiary support. See Hatch v. Dep’t for Children, Youth &
5 Their Families, 274 F.3d 12, 19 (1st Cir. 2001); Somascan, Inc. v. Philips Med. Sys. Nederland,
6 B.V., 714 F.3d 62, 65 (1st Cir. 2013) (denying motion to amend filed after motion for summary
7 judgment due to not including evidentiary support).

8 In Hatch, the U.S. Court of Appeals for our First Circuit (“First Circuit”) stated as follows:

9 The appropriateness *vel non* of a district court decision denying a motion to amend
10 on the ground of futility depends, in the first instance, on the posture of the case. If
11 leave to amend is sought before discovery is complete and neither party has moved
12 for summary judgment, the accuracy of the “futility” label is gauged by reference
13 to the liberal criteria of Federal Rule of Civil Procedure 12(b)(6). See Glassman v.
14 Computervision Corp., 90 F.3d 617, 623 (1st Cir.1996). In this situation,
15 amendment is not deemed futile as long as the proposed amended complaint sets
16 forth a general scenario which, if proven, would entitle the plaintiff to relief against
17 the defendant on some cognizable theory. See Rose v. Hartford Underwriters Ins.
18 Co., 203 F.3d 417, 421 (6th Cir. 2000) (explaining that, in such a posture, “a
19 proposed amendment is futile only if it could not withstand a 12(b)(6) motion to
20 dismiss”). If, however, leave to amend is not sought until after discovery has closed
21 and a summary judgment motion has been docketed, the proposed amendment must
22 be not only theoretically viable but also solidly grounded in the record. Resolution
23 Trust Corp. v. Gold, 30 F.3d 251, 253 (1st Cir.1994). In that type of situation, an
24 amendment is properly classified as futile unless the allegations of the proposed
25 amended complaint are supported by substantial evidence. Id.

26 Hatch, 274 F.3d at 19.

27 (B) Standard of Motion for Summary Judgment

Under Fed. R. Civ. P. 56, made applicable to adversary proceedings under Fed. R. Bankr.
P. 7056, summary judgment is appropriate when “the movant shows that there is no genuine
dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
Civ. P. 56(a). See also Fed. R. Bankr. P. 7056; Celotex Corp. v. Catrett, 477 U.S. 317, 322-332
(1986); In re Colarusso, 382 F.3d 51 (1st Cir. 2004); Alicea v. Wilkie, 2020 WL 1547064, 2020
U.S. Dist. LEXIS 57213 (D.P.R. 2020).

1 “The summary-judgment procedure authorized by Rule 56 is a method for promptly
2 disposing of actions in which there is no genuine dispute as to any material fact or in which only
3 a question of law is involved.” Charles A. Wright, Arthur R. Miller, & Mary K. Kane, 10A Federal
4 Practice and Procedure § 2712 (4th ed., West 2022). “Rule 56 provides the means by which a
5 party may pierce the allegations in the pleadings and obtain relief by introducing outside evidence
6 showing that there are no fact issues that need to be tried.” Id. (footnotes omitted). “[S]ummary
7 judgment is not a substitute for the trial of disputed fact issues. Accordingly, the court ... is
8 empowered [only] to determine whether there are issues to be tried.” Id. (footnotes omitted). See
9 also Bernier v. Treasury Dep’t (In re Bernier), 2022 WL 17096264, at *5, 2022 Bankr. LEXIS
10 3283, at *17-18 (Bankr. D.P.R. 2022) (“the court may only determine whether there are issues to
11 be tried, and it is improper if the existence of a material fact is uncertain.”).

12 “A dispute is ‘genuine’ if the evidence about the fact is such that a reasonable jury could
13 resolve the point in favor of the non-moving party.” Thompson v. Coca-Cola Co., 522 F.3d 168,
14 175 (1st Cir. 2008), quoting Sánchez v. Alvarado, 101 F.3d 223, 227 (1st Cir.1996). See also
15 Andino-Oquendo v. Federal National Mortgage Association, 2023 WL 2245072, at *1, 2023 U.S.
16 Dist. LEXIS 34375, at *2 (D.P.R. 2023), quoting Alicea, 2020 WL 1547064, at *2, 2020 U.S.
17 Dist. LEXIS 57213, at *4. A fact is material only if it is determinative of the outcome of the
18 litigation. See Hahn v. Sargent, 523 F.2d 461, 464 (1st Cir. 1975), *cert. denied*, 425 U.S. 904
19 (1976); Maymí v. P.R. Ports Auth., 515 F. 3d 20, 25 (1st Cir. 2008); In re Financial Oversight
20 and Management Board for Puerto Rico, 650 B.R. 334, 353 (D.P.R. 2023), quoting Vineberg v.
21 Bissonnette, 548 F.3d 50, 56 (1st Cir. 2008) (“Material facts are those that ‘possess[] the capacity
22 to sway the outcome of the litigation under the applicable law,’ and there is a genuine factual
23 dispute where an issue ‘may reasonably be resolved in favor of either party.’”).

24 When considering a petition for summary judgment, the court must review the evidence
25 in the light most favorable to the nonmoving party. See Thompson, 522 F.3d at 172, citing
26 Franceschi v. United States VA, 514 F.3d 81, 83 (1st Cir. 2008). The moving party invariably
27 bears both the initial as well as the ultimate burden in demonstrating its legal entitlement to

1 summary judgment. See Adickes v. Kress & Co., 398 U.S. 144, 157 (1970); López v. Corporación
2 Azucarera de Puerto Rico, 938 F.2d 1510, 1516 (1st Cir. 1991); Alicea, 2020 WL 1547064, at *2,
3 2020 U.S. Dist. LEXIS 57213, at *4. It is essential that the moving party explain its reasons for
4 concluding that the record does not contain any genuine issue of material fact in addition to
5 making a showing of support for those claims for which it bears the burden of trial. See Bias v.
6 Advantage International, Inc., 905 F.2d 1558, 1560–61 (D.C. Cir. 1990), *cert. denied*, 498 U.S.
7 958 (1990).

8 To that end, L. Civ. R. 56(b) requires a movant to include a separate, short, and concise
9 statement of material facts and to support each factual assertion with a citation to the evidentiary
10 record. See L. Civ. R. 56(b), (e). “The court may disregard any statement of fact not supported
11 by a specific citation to record material properly considered on summary judgment,” and “shall
12 have no independent duty to search or consider any part of the record not specifically referenced
13 in the parties’ separate statement of facts.” L. Civ. R. 56(e).

14 The moving party cannot prevail if any essential element of its claim or defense requires
15 trial. See López, 938 F.2d at 1516. In addition, the moving party is required to demonstrate that
16 there is an absence of evidence supporting the nonmoving party's case. See Celotex, 477 U.S. at
17 325; Prokey v. Watkins, 942 F.2d 67, 72 (1st Cir. 1991); Daury v. Smith, 842 F.2d 9, 11 (1st Cir.
18 1988). In its opposition, the nonmoving party must show genuine issues of material facts
19 precluding summary judgment; the existence of some factual dispute does not defeat summary
20 judgment. See Kennedy v. Josephthal & Co., Inc., 814 F.2d 798, 804 (1st Cir. 1987); Kauffman
21 v. Puerto Rico Telephone Co., 841 F.2d 1169, 1172 (1st Cir. 1988); Hahn, 523 F.2d at 464. A
22 party may not rely upon bare allegations to create a factual dispute but is required to point to
23 specific facts contained in affidavits, depositions, and other supporting documents which, if
24 established at trial, could lead to a finding for the nonmoving party. See Over the Road Drivers,
25 Inc. v. Transport Insurance Co., 637 F.2d 816, 818 (1st Cir. 1980). The moving party has the
26 burden to establish that it is entitled to summary judgment; no defense is required where an
27 insufficient showing is made. See López, 938 F.2d at 1517. The nonmoving party need only

1 oppose a summary judgment motion once the moving party has met its burden. See Adickes, 398
2 U.S. at 159.

3 In an unopposed motion for summary judgment, as is the case here, “the court is still
4 obliged to consider the motion on its merits, in light of the record as constituted, in order to
5 determine whether judgment would be legally appropriate.” Oriental Bank v. Lopez (In re Lopez),
6 2017 Bankr. LEXIS 946, *3 (Bankr. D.P.R. 2017), citing Aguiar-Carrasquillo v. Agosto-Alicea,
7 445 F.3d 19 (1st Cir. 2006).

8 (C) Due Process and Notice Requirements

9 Lack of due notice is grounds to set aside an order. See e.g., United Student Aid Funds,
10 Inc. v. Espinosa, 559 U.S. 260, 271 (2010); In re Auto Master Express, Inc., 2021 WL 2020293,
11 2021 Bankr. LEXIS 1360 (Bankr. D.P.R. 2021); Suntrust Bank v. Den-Mark Const., Inc., 406
12 B.R. 683, 688 (E.D.N.C. 2009) (vacating a post-petition financing motion entered in violation of
13 Section 364(d)(1)(B)).

14 Section 342 of the Bankruptcy Code establishes the requisite notice for parties affected by
15 a debtor’s bankruptcy by providing that “[t]here shall be given such notice as is appropriate,
16 including notice to any holder of any community claim, of an order for relief in a case under this
17 title.” 11 U.S.C. § 342(a). To ensure that adequate notice is provided to creditors pursuant
18 to Section 342(a), Section 521(a)(1) and Fed. R. Bankr. P. 1007(a)(1) require a debtor to file with
19 the petition “a list containing the name and address of each entity included or to be included on
20 Schedules D, E/F, G, and H as prescribed by the Official Forms.” Fed. R. Bankr. P. 1007(a)(1).
21 See also PR LBR 1007-1(a); 11 U.S.C. § 521(a). “The purpose of statutorily requiring a debtor to
22 list its creditors with their mailing addresses is to provide them with basic due process notice.” In
23 re TEMSCO NC Inc., 537 B.R. 108, 120 (Bankr. D.P.R. 2015), citing In re Glenwood Medical
24 Group, Ltd., 211 B.R. 282, 285 (Bankr. N.D.Ill. 1997). See also 11 U.S.C. §§ 363 (sale of estate
25 property notice requirement), 364(d)(1) (DIP financing notice requirement).

26 The Federal Rules of Bankruptcy Procedure specify that known creditors must receive: (1)
27 notice of deadlines for filing proofs of claims (bar date) (Fed. R. Bankr. P. 2002(a)(7)); (2) a copy

1 of the reorganization plan (Fed. R. Bankr. P. 3017(d)); (3) notice of the confirmation hearing (Fed.
2 R. Bankr. P. 3017(d)); and (4) the confirmation order (Fed. R. Bankr. P. 2002(f)). See In re Arch
3 Wireless, Inc., 534 F.3d at 82. They further specify that known creditors must receive notice by
4 mail of a proposed use, sale, or lease of property of the estate other than in the ordinary course of
5 business, unless the court for cause shown shortens the time or directs another method of giving
6 notice, and of any hearing on the proposed sale of all or of substantially all of debtor's assets (Fed.
7 R. Bankr. P. 2002(a)(2), (c)(1), (d)).

8 It is the debtor's burden to establish that the creditor received adequate notice. See e.g.,
9 TEMSCO, 537 B.R. at 120, quoting In re O'Sullivan, 488 B.R. 510, 513 (Bankr. D. Mass. 2013),
10 quoting In re Massa, 187 F.3d 292, 296 (2nd Cir. 1999). "If a creditor does not receive reasonable
11 notice of a bankruptcy case and the particular bar dates, then its claim cannot be constitutionally
12 discharged." Id., citing In re O'Shaughnessy, 252 B.R. 722, 729 (Bankr. N.D.Ill. 2000), citing In
13 re Longardner & Associates, Inc., 855 F.2d 455, 465 (7th Cir. 1988), *cert. denied*, 489 U.S. 1015
14 (1989).

15 (D) Failure to Notice All Affected Lienholders under Section 364(d)(1)

16 Section 364 of the Bankruptcy Code authorizes a debtor-in-possession to obtain credit
17 secured by a lien on encumbered property that is senior or equal to any existing lien on the property,
18 commonly called a "superpriority lien" or a "priming lien." 11 U.S.C. § 364(d). Credit extended
19 or debt incurred under Section 364(d)(1) requires that a court order be entered only after notice to
20 current lienholders and a hearing. See Suntrust Bank, Inc., 406 B.R. at 688, citing In re First South
21 Sav. Ass'n, 820 F.2d 700 (5th Cir. 1987) (observing that Section 364(d) superpriority or priming
22 liens are impermissible absent adequate protection to existing lienholders).

23 In addition to notice to existing lienholders, Section 364(d) contains two requirements that
24 must be met before a priming lien may be approved. First, the debtor must demonstrate it is unable
25 to obtain financing in any other permissible manner. Second, the debtor must demonstrate that the
26 proposed post-petition financing arrangement adequately protects the interests of the property's
27 current lienholder(s) over which a senior or priming lien is proposed to be granted. See 11 U.S.C.

1 § 364(d)(1). “The court cannot authorize a priming lien unless the debtors have shown that *each*
2 *lienholder* whose rights would be impaired by the proposed priming lien are (sic) adequately
3 protected.” In re Eagle Creek Subdivision, LLC, 2008 WL 2761302, **2–3, 2008 Bankr.LEXIS
4 2412, *8 (Bankr. E.D.N.C. 2008) (emphasis added). See also In re Colad Group, Inc., 324 B.R.
5 208, 223 (Bankr. W.D.N.Y. 2005) (stating that, “in order to grant a priming lien, the court must
6 make a finding of adequate protection of all senior or equal interests”).

7 As stated, lack of due notice is grounds to set aside an order. See, e.g., Suntrust Bank, 406
8 B.R. at 689-690. In Suntrust, a Chapter 11 debtor sought court approval for a post-petition
9 financing arrangement with a priming lien pursuant to Section 364(d). The bankruptcy court
10 granted the debtor's financing motion. Following the bankruptcy court's entry of the financing
11 order, creditor SunTrust Bank learned that two lienholders had not received notice as required
12 by Section 364(d)(1). On appeal, the U.S. District Court for the Eastern District of North Carolina
13 found that lack of notice on lienholders was grounds to set aside the financing order, *inter alia*.

14 With respect to the issue of notice, the appellate court found and held as follows:

15 Whether SunTrust has standing ... is an issue that need not be resolved. Appellee's
16 admitted failure to notice all lienholders resulted in entry of an order in violation of
17 § 364(d)(1)(B), which requires the bankruptcy court to determine that all lienholders'
18 interests will be adequately protected by the terms of its order. See, e.g., In re Eagle
19 Creek Subdivision, LLC, 2008 WL 2761302, **2–3, 2008 Bankr.LEXIS 2412 at *8
20 (Bankr.E.D.N.C.2008) (“The court cannot authorize a priming lien unless the
21 debtors have shown that *each lienholder* whose rights would be impaired by the
22 proposed priming lien are (sic) adequately protected.”) (emphasis added); see also
23 In re Colad Group, Inc., 324 B.R. 208, 223 (Bankr.W.D.N.Y.2005) (stating “in order
24 to grant a priming lien, the court must make a finding of adequate protection of all
25 senior or equal interests”).

26 Furthermore, as SunTrust points out, in approving the Financing Motion, the
27 bankruptcy court relied in part on the support of a committee of [] lienholders for
Appellees' post-petition financing proposal. [] Because neither Ayscue nor Shoaff
received notice of the proposed post-petition financing arrangement, neither
lienholder had the opportunity to join—or reject—the [] lienholders' committee's
support of Appellee's proposal. Therefore, the bankruptcy court's findings of fact
and conclusions of law supporting its Financing Order were based on an incomplete
record.

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Because the undisputed facts of record reveal that the bankruptcy court entered the Financing Order without knowledge of, much less consideration for, the deeds of trust held by Ayscue and Shoaf, the Order was entered on a clearly erroneous factual basis, and must be vacated and remanded as a matter of law as violative of § 364(d)(1)(B).

...
The bankruptcy court's order ... is VACATED and SunTrust is restored to its pre-petition status in all respects except as to the sum of funds advanced by Capital Bank (and interest accruing thereon) prior to this court's November 19, 2008 oral order allowing SunTrust's Motion for Stay pending appeal. 31 11 U.S.C. section 364(e). The parties shall bear their own costs.

Suntrust Bank, Inc., 406 B.R. at 689-690.

In considering the facts of this case, the court finds the reasoning and holding in Suntrust to be persuasive.

(E) Claims Allowance Process

Sections 501 and 502 of the Bankruptcy Code govern the filing and allowance of claims in bankruptcy proceedings. See 11 U.S.C. §§ 501, 502. Section 501(a) provides that: “[a] creditor or an indenture trustee may file a proof of claim. An equity security holder may file a proof of interest.” 11 U.S.C. § 501(a). Section 502(a) provides that a proof of claim filed under Section 501 “is deemed allowed, unless a party in interest ... objects.” 11 U.S.C. § 502(a).

The Bankruptcy Code itself does not prescribe what documentation, if any, must accompany a proof of claim. Instead, the Federal Rules of Bankruptcy Procedure provide the procedural framework for the filing and allowance of claims, regulate the form, content, and attachments for proofs of claim. On that vein, Fed. R. Bank. P. 3001(a) requires that a proof of claim be a written statement that conforms substantially with “the appropriate Official Form”, Official Form 410, and Fed. R. Bank. P. 3001(c) directs creditors filing a proof of claim “based on a writing” to attach either the original or a duplicate of such writing. Official Form 410 further instructs the claimant to “[a]ttach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements.” Official Form 410, p. 1. It further requires the claimant to specify whether the claim includes any “interest or other charges” in

1 addition to the principal amount of the claim and, if so, to attach an “itemizing interest, fees,
2 expenses, or other charges.” Id., p. 2.

3 Fed. R. Bank. P. 3001(f) sets the evidentiary effect of a properly filed proof of claim (i.e.,
4 one that complies with the requirements of the rule and form), and states that a proof of claim
5 submitted in accordance therewith “shall constitute *prima facie* evidence of the validity and
6 amount” of such claim. Fed. R. Bankr. P. 3001(f). See also Juniper Dev. Grp. v. Kahn (In re
7 Hemingway Transp., Inc.), 993 F.2d 915, 925 (1st Cir. 1993); In re Plourde, 418 B.R. 495, 504
8 (B.A.P. 1st Cir. 2009).

9 To rebut the *prima facie* evidence presumption of a properly filed claim, the objecting
10 party must adduce “substantial evidence” in opposition to it. See *e.g.*, In re Plourde, 418 B.R. at
11 504 (citations omitted). If the objecting party produces “substantial evidence” in opposition and,
12 consequently, rebuts the *prima facie* evidence presumption, the burden shifts to the claimant to
13 establish the validity of its claim by a preponderance of the evidence. See id. (“If the objection is
14 substantial, the claimant is required to come forward with evidence to support its claims ... and
15 bears the burden of proving its claims by a preponderance of the evidence.”) (internal citations
16 and quotations omitted). Also see OneUnited Bank v. Charles St. Afr. Methodist Episcopal
17 Church of Bos., 501 B.R. 1, 10 (D. Mass. 2013) (“If an objection to the claim is filed, the objecting
18 party must adduce ‘substantial evidence’ to rebut the presumption in favor of the properly filed
19 claim, at which time the ultimate burden of persuasion rests with the party asserting the claim.”).
20 Thus, the “[r]esolution of an objection to a proof of claim in bankruptcy follows a burden-shifting
21 framework.” OneUnited Bank v. Charles St. Afr. Methodist Episcopal Church of Bos., 501 B.R.
22 1, 10 (D. Mass. 2013).

23 (F) Discussion

24 As an introductory matter, the court notes that it has undergone a thorough review of the
25 pleadings, certificates of service and evidence presented in order to make a complete and correct
26 assessment of the due notice issue.

1 In the instant case, Debtors and the Lender Parties aver that the *Motion for Summary*
2 *Judgment* “is based on facts raised in a Complaint that has[sic] become superseded and stale as a
3 result of the filing of the Second Amended Complaint” (dkt. #64, p. 4, ¶ 9). The court disagrees.
4 The *Complaint* (dkt. #7) is a pleading to which a responsive pleading is required. SL Funding
5 filed an answer (dkt. #18). The *Motion for Leave* was filed beyond the twenty-one (21) days
6 proscribed under Fed. R. Civ. P. 15(a)(1), and thus requires either SL Funding’s written consent,
7 which has not been given, or the court's leave. Among other things, SL Funding argues that the
8 *Motion for Leave* does not discuss the actual substance of the proposed amendments (aside from
9 adding and dismissing parties), that such amendments are futile and raise no new issue that would
10 preclude the granting of summary judgment, and that Debtors fail to meet the required standard
11 to justify the requested leave by failing to present any legal support or provide any justification
12 as to why the requested amendment is necessary (dkt. #67). SL Funding also argues that the
13 *Motion for Leave* was filed after discovery was completed and while the *Motion for Summary*
14 was pending.

15 Debtors and the Lender Parties aver that leave is sought to include the Lender Parties as
16 co-plaintiffs so they may “take the lead on claims for relief related to their rights, as well as to
17 eliminate CRIM and the UCC as co-defendants to this action” (dkt. #61, p. 3, ¶ 9). A review of
18 the proposed *Second Amended Complaint*, however, reveals that it faithfully reasserts a claim for
19 declaratory judgment as to validity of lien *vis a vis* the DIP Lender (proposed Count I; existing
20 Count I), objection to POC #1 on account of the amounts owned (proposed Counts VI; existing
21 Count IV), and claim for surcharge (proposed Count V; existing Count III), while eliminating a
22 claim for declaratory judgment as to validity of lien *vis a vis* CRIM (existing Count II), and
23 asserting the following additional causes of action: claims for declaratory judgments stating that
24 SL Funding waived any right to receive adequate protection beyond the *DIP Order* because notice
25 was proper (proposed Count II), or in the alternative, that such adequate protection is limited to
26 the value of its collateral (proposed Count III), and that SL Funding waived any right to credit
27 bid at the Caguas Sale Hearing (proposed Count IV).

1 At this juncture, that is, after discovery has concluded as per the timetable allowed under
2 the SL Funding Dispute Adjudication Process and the *Motion for Summary Judgment* is filed, the
3 court finds that the proposed amendments are not solidly grounded in the record. The *Motion for*
4 *Leave* is devoid of any evidentiary support for the amendments sought, including the purported
5 value of the collateral or proof of notice on SL Funding beyond that of publication or that of an
6 alleged phone call (record of which is not attached to the motion or otherwise supported therein).
7 More, the court is not swayed by the Debtors' statements that the amendments are necessary to
8 allow the Lender Parties to become indispensable parties to this action and take the lead on a
9 litigation initiated by the Debtors, and whose outcome shall be the result of a burden placed *solely*
10 on Debtors, i.e., that of proper notice on a known creditor. Further still, as third-party defendants,
11 the Lender Parties are already parties to this action with procedural vehicles available to them to
12 protect their rights. As of this date, the DIP Lender filed its own third-party counterclaim and is
13 now both a third-party defendant and third-party plaintiff. See dkt. # 79. Consequently, the *Motion*
14 *for Leave* is denied, and filing of the proposed *Second Amended Complaint* is not allowed.

15 With respect to the issue of notice, the record reflects that all pleadings and orders filed
16 prior to the hearing held on October 19, 2023, and for which certificates of service were filed by
17 either Debtors or Debtors' notice agent, were mailed to the Incomplete Address, which omitted
18 SL Funding's suite number. The record further reflects that a *Notice of Auction and Sale Hearing*
19 was published in the San Juan Daily Star, in compliance with the *Bidding Procedures Order*.
20 Notice by publication, however, falls short of the requisite due process requirements and does not
21 obviate the need for actual notice under the Federal Rules of Bankruptcy Procedure. The *Bidding*
22 *Procedures Order* allowed for the issuance of notice via publication, however, it specifically
23 called for notice by email or first-class mail on Debtors' 30 largest unsecured creditors (which, at
24 that time, SL Funding purportedly was per Schedule E/F), all parties who are known by the
25 Debtors to assert liens or encumbrances against the assets, and all other known creditors and
26 equity security holders (which SL Funding is). See Bankr. Case No. 23-2510, dkt. #83, p. 11, ¶¶
27 20-21; Bankr. Case No. 23-2516, dkt. #66, p. 11, ¶¶ 20-21. Having previously issued checks to

1 SL Funding bearing the Complete Address, the court notes that Debtors had the Complete
2 Address in its books and records. As such, they were obligated to provide supplemental service
3 when the notice was returned as undeliverable. See id.

4 As to the telephone call between Fernández-Chiqués and Rodriguez, it is settled law in
5 our First Circuit that “a known creditor’s general awareness of a pending Chapter 11
6 reorganization proceeding is insufficient to satisfy the requirements of due process”. See In re
7 Arch Wireless, Inc., 534 F.3d at 82 and 87. “[T]he fact that the creditor may ... be generally aware
8 of the pending reorganization, does not of itself impose upon him an affirmative burden to
9 intervene in that matter and present his claim ... [T]he [known] creditor has a right to assume that
10 proper and adequate notice will be provided before his claims are forever barred.” In re Cousins
11 International Food Corp., 553 B.R. 197, 203 (Bankr. D.P.R. 2016), quoting In re Arch Wireless,
12 Inc., 534 F.3d at 83 (standard for adequate notice to known creditors). See also In re Pick & Save,
13 Inc., 478 B.R. 110, 119 (Bankr. D.P.R. 2012). In Arch Wireless, the debtor argued that the
14 creditor’s general awareness of the debtor’s bankruptcy filing through news media reports known
15 to the creditor's president was sufficient to provide the creditor with adequate notice. On appeal,
16 the First Circuit court held that that the Bankruptcy Code required the debtor to provide the known
17 creditor with a wider breadth of notice, which includes knowledge of the claims bar date and of
18 the confirmation hearing. Known creditors are those actually known to the debtor or whose
19 identities are reasonably ascertainable to the debtor. The identity of a known creditor is reasonably
20 ascertainable if the debtor can uncover the identity of that creditor through reasonably diligent
21 efforts.

22 SL Funding was a known creditor and Debtors did not provide, and SL Funding did not
23 receive, actual notice as required under the Fed. R. Bank. P. and Section 364 of the Bankruptcy
24 Code. Having found that notice was insufficient to satisfy the requirements of due process, we
25 turn to the matter of whether summary judgment is appropriate.

1 (i) Count I: Declaratory Judgment on the Validity, Extent, and/or Priority of SL
2 Funding's Lien vis a vis the DIP Lender

3 This court warned that “[t]o the extent that the Court finds that SL Funding ... did not
4 receive proper notice of the DIP Motion, the Supplemental DIP Liens shall be junior to any valid
5 and perfected prepetition senior liens held by SL” (Bankr. Case No. 23-2510, dkt. #455, p. 4, ¶
6 G, and dkt. #540, p. 4, ¶ F; Bankr. Case No. 23-2516, dkt. #341, p. 4, ¶ G, and dkt. #395, p. 4, ¶
7 F). See also Order and Notice (Bankr. Case No. 23-2510, dkt. #437, p. 3; Bankr. Case No. 23-
8 2516, dkt. #325, p. 3) (“no order granting and/or expanding the DIP Order may affect senior lien
9 holder who have not received proper or adequate notice.”).

10 In approving the *DIP Order*, as supplemented and/or extended, the court found that the
11 Debtors satisfied the requirements of Section 364, including that of notice. See DIP Order, Bankr.
12 Case No. 23-2510, dkt. #286, p. 6, ¶ E, and p. 21, ¶ O; Bankr. Case No. 23-2516, dkt. #222, p. 6,
13 ¶ E, and p. 21, ¶ O. In doing so, it relied in part on the averments made by Debtors. It is now
14 apparent, however, that the court’s findings of fact and conclusions of law supporting the *DIP*
15 *Order* were based on an incomplete record. The undisputed material facts, as supported by the
16 record, reveal that the court entered the *DIP Order* without knowledge of, or consideration for,
17 the mortgage deed held by SL Funding. Failure to notice all lienholders resulted in entry of an
18 order in violation of Section 364(d)(1)(B). Having been entered on a clearly erroneous factual
19 basis, the *DIP Order* must be vacated as a matter of law inasmuch as it affects SL Funding’s lien.

20 (ii) Count III: Claim for Surcharge Under 11 U.S.C. § 506(c)

21 By Count III, Debtors reserve the right to affirmatively claim amounts and surcharge per
22 Section 506(c) of the Bankruptcy Code. The forgoing necessarily requires evidence of actual
23 ‘necessary’ and ‘reasonable’ costs incurred to preserve or dispose of the SL Funding Collateral.
24 To the extent no costs are supported by the record or even alleged, there are no material facts in
25 dispute and summary judgment dismissing Count III is appropriate.
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1 (iii) Count IV (Objection to Claim – Amounts Claimed) and Count V (Objection to
2 Claim – Valuation of Secured Status)

3 Debtors object to POC #1 on the following grounds: (a) claim is disputed, contingent and
4 unliquidated; (b) the amounts claimed for interest and legal fees are excessive and unwarranted;
5 (c) the amounts claimed are incorrect or do not conform to the payment history of the Loan, and
6 a detailed statement of account needs to be provided by SL Funding; (d) SL Funding lacks
7 standing and has failed to produce admissible evidence that will entitle it to prosecute its claim as
8 a successor; (e) SL Funding’s claims are barred in whole or in part by the doctrines of laches,
9 waiver, acquiescence and/or estoppel; (f) Debtors reserve the right to amend and/or add additional
10 answers, defenses and/or claims as they become available through discovery or other
11 investigation. Debtors also aver that “[a]ccording to information and belief, the value of the real
12 estate collateral which allegedly serves as collateral for SL [Funding]’s claim is less than the
13 amounts being claimed” (*id.*, p. 13, ¶ 49), and the secured claim status “must be reduced by the
14 deficiency in value in the properties being claimed ... as collateral” (*id.*, p. 13, ¶ 50).

15 SL Funding filed POC #1 in the amount of \$2,192,377.95, fully secured by real estate,
16 inclusive of interests and other charges, and on account of “Money Loaned”. See Bankr. Case No.
17 23-2516, POC #1-2. Attached thereto are: a payoff loan balance as of the Petition Date (Bankr.
18 Case No. 23-2516, POC #1-2, Part 2); the Loan Agreement and its amendments (*id.*, Part 3),
19 including descriptions of the SL Funding Collateral (*id.*, Part 3, pp. 18-32); the Mortgage Deed,
20 including descriptions of the SL Funding Collateral (*id.*, Part 4, pp. 41-56) and their corresponding
21 foreclosure valuation (*id.*, Part 4, pp. 59-60); Mortgage Note with allonges endorsed as payable
22 to the order of SL Funding (*id.*, Part 4, pp. 5, 15); Pledge Agreement (*id.*, Part 4); and various title
23 studies (*id.*, Part 5).⁷

24 ⁷ “It is well settled that the law incontrovertibly demands that federal litigation in Puerto Rico be conducted in
25 English”, in accordance with 48 U.S.C. § 864. Banco Popular de P.R. v. Santiago-Salicrup, 630 B.R. 374, 378 (D.P.R.
26 2021), citing Estades-Negrón v. Assocs. Corp. of N. Am., 359 F. 3d 1, 2-3 (1st Cir. 2004). See also 48 U.S.C. § 864
27 (“All pleadings and proceedings in the United States District Court for the District of Puerto Rico shall be conducted
in the English language.”); L. Civ. R. 5(c) (“All documents not in the English language which are presented or filed,
whether as evidence or otherwise, must be accompanied by a certified translation into English...”); P.R. LBR 9070-
1(c) (“All Exhibits and documentary evidence in Spanish or other language shall be fully translated to the English
language by a certified translator.”); In re Bernier, 2022 WL 17096264, at *6-7, 2022 Bankr. LEXIS 3283, at *17-18

1 POC #1 is supported by documentation filed therewith and relates to a pre-petition
2 mortgage note secured by a mortgage deed and the SL Funding Collateral. Consequently, POC
3 #1 was filed in accordance with Fed. R. Bank. P. 3001(c) and constitutes *prima facie* evidence of
4 the validity and amount of SL Funding’s claim. The *Complaint* does not adduce “substantial
5 evidence” in opposition to POC #1. Consequently, Debtors fail to rebut its *prima facie* evidence
6 presumption. Further, the court notes that, per the documents annexed to POC #1, the Mortgage
7 Deed was presented and is recorded at pages 1, 6, 12, 18, 24, 30, 38, 42, 48, 54, 60, 66, 72, 78,
8 84, 90, 96 and 120 of Volume 306, of the PR Property Registry, Section First of Caguas, property
9 numbers 46,225 to 46,242 and 42,245 (*id.*, Part 3, p. 12, ¶ (a)(ii); Part 4, p. 11). As such, SL
10 Funding has a valid and perfected pre-petition lien over the SL Funding Collateral. Thus,
11 summary judgment dismissing Counts IV and V is appropriate as there are no material facts in
12 dispute.

13 CONCLUSION

14 The *Motion for Leave* (dkt. # 61) filed by Debtors and the Lender Parties is DENIED, and
15 the filing of the proposed Second Amended Complaint is not allowed.

16 Summary judgment is appropriate under Fed. R. Civ. P. 56(a) and Fed. R. Bankr. P. 7056
17 for there are no material facts in dispute as to SL Funding having a valid and perfected pre-petition
18 lien over the SL Funding Collateral, SL Funding being a known lienholder, and notice not being
19 effective under the Federal Rules of Bankruptcy Procedure and 11 U.S.C. § 364(d). The court
20 thus concludes that SL Funding did not receive due notice prior to October 18, 2023. For the
21 reasons stated herein, the *Motion for Summary Judgment* (dkt. #22) filed by SL Funding is hereby
22 GRANTED as to Counts I, III, IV and V. Debtors’ claim for surcharge under 11 U.S.C. § 506(c)
23 (Count III) and objection to SL Funding’s POC #1 (Counts IV and V) are dismissed, and the *DIP*

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27 (Bankr. D.P.R. 2022) (holding that documents not in the English language should not be considered). POC #1 is
comprised of documents in the English language and documents in the Spanish language. SL Funding has not filed
certified translations, and thus failed to comply with 48 U.S.C. § 864, L. Civ. R. 5(c), and P.R. LBR 9070-1(c). This
court will only consider the merits of those documents filed in the English language.

1 *Order* is VACATED solely as it relates to SL Funding, whose lien is restored to its pre-petition
2 status in all respects (Count I).

3 Partial judgment shall be entered.

4 IT IS SO ORDERED.

5 In San Juan, Puerto Rico, this 3rd day of July 2024.

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Enrique S. Lamotte
United States Bankruptcy Judge

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