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13 **UNITED STATES BANKRUPTCY COURT**
14 **FOR THE DISTRICT OF NEVADA**

15 In re:) Case No.: 22-10540-GS
16)
17 STONERIDGE PARKWAY LLC,) Chapter 11
18)
19 Debtor.) Prior Hearing Date: April 29, 2022
20) Prior Hearing Time: 1:30 p.m.
21)
22)

23 **DEBTOR’S REPLY TO THE UNITED STATES TRUSTEE’S STATEMENT**
24 **OF OBJECTION AND RESERVATION OF RIGHTS WITH RESPECT TO THE**
25 **DEBTOR’S PROPOSED ORDER ON THE APPLICATION FOR THE ENTRY OF**
26 **AN ORDER UNDER 11 U.S.C. §§ 327(a), 328, 329 AND 331 AND FED. R. BANKR.**
27 **P. 2014 AND 2016 AUTHORIZING THE EMPLOYMENT AND RETENTION OF**
28 **SCHWARTZ LAW, PLLC AS ATTORNEYS FOR THE DEBTOR-IN-POSSESSION**

Stoneridge Parkway LLC, the debtor and debtor-in-possession in the above-captioned Chapter 11 case (the “Debtor”), by and through its counsel of record, Schwartz Law, PLLC, hereby files this reply (the “Reply”) to the *United States Trustee’s Statement of Objection and Reservation of Rights with Respect to the Debtor’s Proposed Order on the Application for the Entry of an Order Under 11 U.S.C. §§ 327(a), 328, 329 and 331 and Fed. R. Bankr. P. 2014 and 2016*¹ Authorizing

¹ Unless otherwise indicated, all chapter and section references are to the Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”). All references to a “Section” shall refer to the Bankruptcy Code. “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure Rules 1001-9037. “Civil Rule” references are to the Federal Rules of Civil Procedure 1-86. “Local Rule” or “L.R.” references are to the Local Rules of Bankruptcy Practice of the United States District Court for the District of Nevada.

1 *the Employment and Retention of Schwartz Law, PLLC as Attorneys for the Debtor-In-Possession*
2 (ECF No. 64) (the “**Objection**”). In support of this Reply, the Debtor respectfully states as follows:

3 **REPLY**

4 1. The United States Trustee (the “**UST**”) disapproved of the Debtor’s proposed order
5 (the “**Proposed Order**”)² on the Application (the “**Application**”)³ for the Entry of an Order Under
6 11 U.S.C. §§ 327(a), 328, 329 and 331 and Fed. R. Bankr. P. 2014 and 2016 Authorizing the
7 Employment and Retention of Schwartz Law, PLLC as Attorneys for the Debtor-In-Possession
8 (ECF No. 8) due to the following paragraph in the Proposed Order:

9 **ORDERED** that the Contingency Fee shall become due and owing upon the
10 recovery obtained by the Debtor from the sale or refinancing of its assets after
11 payment in full of the Debtor’s creditors allowed claims;....

12 *See* Objection, p. 4, ¶ 8 (emphasis added).

13 2. In support of its Objection, the UST argues that the Contingency Fee, when it
14 becomes payable, should be subject to the Court’s review and approval pursuant to 11 U.S.C. § 330
15 and Fed. R. Bankr. P. 2016(a). *Id.* at p. 5, ¶ 15. In support of this argument, the UST relies on the
16 language of Bankruptcy Rule 2016(a) that an entity seeking compensation or reimbursement **from**
17 **the estate** must submit to the court an application conforming to the requirements of Bankruptcy
18 Rule 2016(a). *See* Bankruptcy Rule 2016(a) (emphasis added).

19 3. The flaw in the UST’s argument, however, is that the Contingency Fee **will not be**
20 **payable from the estate**, but rather, from surplus funds which are revested in the Debtor. Indeed,
21 as set forth in the contested “**ORDERED**” paragraph above, the express language of the Proposed
22 Order indicates that the Contingency Fee is simply based on recoveries obtained by the Debtor
23 itself, not the Debtor’s estate.

24 _____
25 ² The Debtor’s counsel inadvertently uploaded an incorrect version of the Proposed Order
26 which did not have the “no alteration of *Baker Botts*” language in it. This paragraph in the
27 Proposed Order is not contested, and the Debtor has since lodged the correct version of the Proposed
28 Order (which includes the “no alteration of *Baker Botts*” language in the third to last “**Ordered**”
paragraph) with the Court.

³ This Application was approved by this Court at the hearing on April 29, 2022.

1 4. Prior to lodging the Proposed Order with the Court, counsel for the Debtor provided
2 counsel for the UST with a copy of the Ninth Circuit case of *In re Riverside-Linden Inv. Co.*, 925
3 F.2d 320 (9th Cir. 1991). While *Riverside-Linden* is a Chapter 7 case, the Ninth Circuit addressed
4 the very issue of the distribution of surplus funds back to the Debtor. Specifically, the Ninth Circuit
5 stated:

6 Section 726(b) states that payments on claims shall be made on a pro rata basis
7 among each of the classes. However, this pro rata distribution mandate does not
8 apply to § 726(a)(6). **Therefore, it seems clear that to the extent a surplus exists**
9 **after payment of claims, the funds revest in the debtor.** The Code goes no
10 further respecting the rights of parties who are owners of the debtor.

11 *In re Riverside-Linden*, 925 F.2d at 323 (emphasis added).

12 5. Simply put, the second sentence above discusses surplus estates and the surplus
13 revesting with the debtor. In the present case, if all creditors' allowed claims are paid in full, the
14 surplus will revest in the Debtor, not the Debtor's estate. Once the surplus reverts with the Debtor,
15 it is outside of the purview of this Court (like an exempt asset). It is this principal that applies to
16 the Contingency Fee in the Debtor's Chapter 11 case – it only comes from surplus funds returned
17 to the Debtor, if such surplus ever exists, taking it outside of the Court's supervision.

18 CONCLUSION

19 WHEREFORE, the Debtor requests that the Court: (i) denying the Objection; (ii) reject the
20 UST's Proposed Order; (iii) enter the Debtor's Proposed Order; and (iv) grant such other and further
21 relief as it deems just and proper.

22 Dated this 20th day of May 2022.

23 Respectfully Submitted,

24 SCHWARTZ LAW, PLLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent electronically via the Court's CM/ECF system on May 20, 2022, the following:

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