

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Leisure Investments Holdings LLC, *et al.*,

Debtors.

Tradewinds, Ltd. d/b/a Tradewinds Consulting, Ltd.

Plaintiff,

v.

Controladora Dolphin, SA de CV, *et al.*,

Defendants.

Chapter 11

Case No. 25-10606 (LSS)

Joint Administration Pending

Adv. Pro. No. 25-51024 (LSS)

November 25, 2025

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
PRUDENTIAL LEGACY INSURANCE COMPANY OF
NEW JERSEY, AND CIGNA HEALTH AND LIFE INSURANCE
COMPANY'S MOTION FOR SUMMARY JUDGMENT**

LEWIS BRISBOIS BISGAARD & SMITH LLP
500 Delaware Avenue, Suite 700
Wilmington, DE 19801
Tel: (302) 295-9400

Scott D. Cousins (DE Bar No. 3079)
Ann M. Kashishian (DE Bar No. 5622)

scott.cousins@lewisbrisbois.com
ann.kashishian@lewisbrisbois.com

BAKER & MCKENZIE LLP
830 Brickell Plaza, Suite 3100
Miami, Florida 33131
Tel: (305) 789-8900

Paul J. Keenan Jr. (*admitted pro hac vice*)
John R. Dodd (*admitted pro hac vice*)
Kevin Whittam (*admitted pro hac vice*)
Blair Cahn (*admitted pro hac vice*)
Benjamin Davis (*admitted pro hac vice*)

paul.keenan@bakermckenzie.com
john.dodd@bakermckenzie.com
kevin.whittam@bakermckenzie.com
blair.cahn@bakermckenzie.com
benjamin.davis@bakermckenzie.com



2510606251128000000000003

TABLE OF CONTENTS

STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING	1
PRELIMINARY STATEMENT AND SUMMARY OF ARGUMENT	3
STATEMENT OF FACTS	5
Relevant Debtors’ Background, Corporate Structure, and Florida Assets	5
The Secured Lenders and the Relevant Note Purchase Agreements	6
The Tradewinds’ Judgment, Domestication, and Recording	12
Tradewinds’ Additional Proceedings Supplementary as to Dolphin Leisure.....	13
This Adversary Proceeding	14
ARGUMENT.....	14
I. LEGAL STANDARD.....	14
II. TRADEWINDS’ JUDGMENT LIEN EXTENDS ONLY TO CONTROLADORA’S PERSONAL PROPERTY IN FLORIDA AND DOES NOT EXTEND TO THE ASSETS OF ANY AFFILIATED ENTITY NOR ANY OTHER PROPERTY.	15
A. Tradewinds’ Judgment Lien Extends Only to the Property of the Judgment Debtor(s) Identified in the Judgment, i.e. Controladora.	16
B. Tradewinds’ Judgment Lien Extends Only to Controladora’s <i>Personal</i> Property, and Does Not Extend to Any Other Asset Type.	19
1. The Judgment Lien does not extend to real property (the Florida Parks).	19
2. The Lien is Not Valid as to the Dolphin Leisure Stock Certificates.	20
III. TRADEWINDS’ JUDGMENT LIEN AS TO CONTROLADORA’S PERSONAL PROPERTY IS JUNIOR TO THE SECURED LENDERS.	22
A. The Second Amended & Restated NPA is Not a “New” Agreement and All Liens Arising Under the 2019 NPA, as Amended, Continued Uninterrupted.	23
CONCLUSION.....	28

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>4 Dakota Ventures, LLC v. Seger Com. Props., LLC</i> , 2021 WL 4444971 (N.D. Fla. Sept. 9, 2021).....	28
<i>Bull v. United States</i> , 528 B.R. 473 (Bankr. M.D. Fla. 2015)	23
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).....	20
<i>In re Cohen</i> , No. 09-16860, 2009 WL 3675400 (Bankr. S.D. Fla. Oct. 30, 2009).....	26
<i>Country Glen, L.L.C. v. Himmelfarb</i> , No. 603691-2003, 2004 N.Y. Slip Op. 50886(U) (Sup. Ct. N.Y. County Apr. 29, 2004)	32
<i>Dania Jai-Alai Palace, Inc. v. Sykes</i> , 450 So. 2d 1114 (Fla. 1984).....	22
<i>Gov't Empl's. Ins. Co. v. Mayzenberg</i> , 2023 WL 2524941 (S.D. Fla. Mar. 15, 2023).....	28
<i>Hastings v. Furr</i> , 177 B.R. 723 (S.D. Fla. 1995), <i>aff'd</i> , 77 F.3d 497 (11th Cir. 1996).....	26
<i>Hugh v. Butler Cnty. Family YMCA</i> , 418 F.3d 265 (3d Cir. 2005).....	20
<i>LB Judgment Holdings, LLC v. Boschetti</i> , 271 So. 3d 115 (Fla. Dist. Ct. App. 2019)	23
<i>Longo v. Associated Limousine Servs., Inc.</i> , 236 So. 3d 1115 (Fla. Dist. Ct. App. 2018)	23
<i>Martinez v. Reyes</i> , 405 So. 2d 468 (Fla. Dist. Ct. App. 1981)	25
<i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.</i> , 475 U.S. 574 (1986).....	20
<i>Meyersohn v. Bloom</i> , 259 A.D.2d 432 (N.Y. 1st Dep't 1999).....	32

<i>In re Parker</i> , 630 B.R. 653 (Bankr. S.D. Fla. 2021).....	22, 24
<i>Rashdan v. Sheikh, M.D., P.A.</i> , 706 So. 2d 357 (Fla. Dist. Ct. App. 1998)	23
<i>Regions Bank v. Hyman</i> , 2015 WL 1912251 (M.D. Fla. Apr. 27, 2015).....	22
<i>Segal v. Forastero, Inc.</i> , 322 So. 3d 159 (Fla. Dist. Ct. App. 2021)	23
<i>In re Shabanah</i> , 2020 WL 6799121 (Bankr. M.D. Fla. Oct. 26, 2020).....	26
<i>Shahid v. BancorpSouth Bank</i> , 2017 WL 11627990 (N.D. Fla. Oct. 19, 2017)	29
<i>In re Silva</i> , 2012 WL 2996742 (M.D. Fla. July 23, 2012)	25
<i>Steinbrecher v. Cannon</i> , 501 So. 2d 659 (Fla. Dist. Ct. App. 1987)	25
<i>In re Trodglan</i> , 155 B.R. 601 (Bankr. S.D. Fla. 1993).....	26
<i>United States v. Agnello</i> , 344 F. Supp. 2d 360 (E.D.N.Y. 2004)	32
<i>United States v. Marrero</i> , 2015 WL 12588934 (S.D. Fla. Sept. 17, 2015)	21, 24, 29
<i>United States v. O’Callaghan</i> , 805 F. Supp. 2d 1321 (M.D. Fla. 2011).....	25
Statutes	
28 U.S.C. § 1962.....	20, 21
28 U.S.C. § 1963.....	20
Fla. Stat. Chapter 56.....	26
Fla. Stat. § 55.10	9
Fla. Stat. § 55.10(1).....	24
Fla. Stat. § 55.202	8, 9, 22, 28

Fla. Stat. § 55.202(2).....	9, 22, 24
Fla. Stat. § 55.202(2)(a)(1)	28
Fla. Stat. § 55.202(2)(b).....	22
Fla. Stat. § 55.202(2)(d).....	21, 28
Fla. Stat. §§ 55.202(2)(d), (3)	9, 22
Fla. Stat. § 55.202(3).....	21, 28
Fla. Stat. § 55.203	17
Fla. Stat. § 55.203(1)(a)	22
Fla. Stat. § 56.29	23
Fla. Stat. § 678.317(1).....	26
Fla. Stat. § 678.1021(1)(d).....	25
Fla. Stat. § 678.1121	9, 25, 26
Fla. Stat. § 678.1121(1).....	26
Fla. Stat. § 679.3171	28
UCC Article 9	28
Other Authorities	
Fed. R. Civ. P. 56.....	19
Fed. R. Civ. P. 56(a)	20

STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING

On March 31, 2025, Leisure Investments Holdings LLC (the “**Debtor**”), a wholly-owned subsidiary of Controladora Dolphin S.A. de C.V. (“**Controladora**”), and certain of its affiliated entities (each also a “**Debtor**,” and collectively the “**Debtors**”),¹ filed voluntary petitions for relief under Chapter 11 of Title 11 of the U.S. Code in the U.S. Bankruptcy Court for the District of Delaware. *Voluntary Petition*, No. 25-10606, (D.I. 1). On April 16, 2025, Controladora also filed a voluntary petition for relief pursuant to Chapter 11. *See* Case No. 25-10715. The Debtors’ Chapter 11 cases have been consolidated for procedural purposes and are being jointly administered under Case No. 25-10606 (the “**Chapter 11 Cases**”). *Order Directing Joint Administration*, No. 25-10606 at (D.I. 32). The Chapter 11 Cases are ongoing.

Prudential Insurance Company of America, Prudential Legacy Insurance Company of New Jersey, and Cigna Health and Life Insurance Company (the “**Secured Lenders**”) are the secured lenders of Controladora pursuant to the terms of a *Note Purchase and Guarantee Agreement*, dated April 8, 2019 (the “**2019 NPA**”), as amended and restated on June 8, 2020 and June 27, 2022, and are the holders of those certain 8.5% Guaranteed Senior Secured Notes due April 8, 2026 issued by Controladora thereunder in the approximate amount of \$100,000,000 (the “**First Lien Notes**”). Controladora and its subsidiaries and affiliates are guarantors of the First Lien Notes.² On April 9, 2019, Wilmington Trust, predecessor collateral agent to GLAS Americas LLC (the “**Collateral Agent**”), for the benefit of the Secured Lenders, perfected their lien against Controladora.³

¹ Due to the large number of Debtors in these Chapter 11 Cases, which are being jointly administered, a complete list of the Debtors is not provided here. A complete list of the Debtors may be obtained on the website of the Debtors’ noticing and claims agent at <https://veritaglobal.net/dolphinco>, or by contacting counsel for the Debtors.

² The *Organizational Chart* attached as **Exhibit A** to the declaration referenced *infra* n.8, indicates the Debtors and non-debtors that are issuers and guarantors of the First Lien Notes and the Second Lien Debt (as defined below).

³ For ease of reference, this memorandum refers to the Secured Lenders as the lien holders given that they hold the beneficial interest in the Collateral Agent’s security interest in, and lien on, the collateral granted under the Collateral

Additionally, as of the petition date, the Debtors and related entities have principal outstanding debt obligations in the approximate amount of \$105.95 million pursuant to a *Second Lien Note Purchase and Guarantee Agreement* dated as of June 27, 2022, as amended (the “**Second Lien Debt**”). These obligations are guaranteed by various entities and secured by second-priority liens on collateral, as outlined in a related *Security Agreement*. A certain *Subordination and Intercreditor Agreement* dated as of June 27, 2022 governs the rights between the holders of the Second Lien Debt and the Secured Lenders with respect to the Debtors’ collateral.

On June 18, 2025, Tradewinds, Ltd., d/b/a Tradewinds Consulting, Ltd. (“**Tradewinds**”) commenced this adversary proceeding against the Secured Lenders⁴ by filing a *Complaint and Request for Declaratory Judgment to Determine Validity, Priority, and Extent of Liens on Debtors’ Property*, and subsequently amended its pleading on November 11, 2025. *See Amended Complaint and Request for Declaratory Judgment to Determine Validity, Priority, and Extent of Liens on Debtors’ Property* (D.I. 15) (the “**Amended Complaint**”). Tradewinds holds a judgment against Controladora dated June 7, 2017 issued by the U.S. District Court for the Central District of California (the “**Judgment**”). Although Tradewinds domesticated the Judgment in Florida on August 14, 2017, it did not record the Judgment until four (4) years later, on August 25, 2021 (the “**Judgment Lien**”).⁵ Am. Compl. ¶¶ 22, 26. Tradewinds now seeks a declaration that it holds a validly perfected, first-priority judgment lien superior to that of the Secured Lenders’ lien.

Documents (defined herein). Technically, however, the Collateral Agent holds the collateral, including the possessory interest of the physical collateral granted under the Collateral Documents.

⁴ GLAS Americas LLC is identified as a Defendant in the Complaint as “administrative agent” for the Secured Lenders, as are two of the Debtors, Controladora and Dolphin Leisure, Inc. Am. Compl. ¶ 4. As noted in the Collateral Agent’s motion to dismiss filed on October 28, 2025 (D.I. 10), the Collateral Agent is not the “administrative agent.”

⁵ The Judgment Lien does not identify the named Plaintiff in this adversary proceeding as the judgment creditor, but instead identifies a different entity: “Tradewinds Ltd. Belize, LLC.” *See* Statement of Facts at ¶¶ 24-25, *infra*.

(established in 2019), against not only Controladora’s personal property, but also all assets of Controladora’s subsidiaries in Florida, if any, including the assets of Dolphin Leisure, Inc. (“**Dolphin Leisure**”) and those four (4) Florida marine parks owned by Dolphin Leisure’s subsidiaries.⁶ See Am. Compl. ¶¶ 3, 14, 18.

PRELIMINARY STATEMENT AND SUMMARY OF ARGUMENT

Summary judgment is warranted because the material facts are not in dispute; the only issues before the Court concern the legal consequences of those facts under the governing law. Tradewinds’ Amended Complaint admits three dispositive facts: *first*, the Judgment is entered solely against Controladora and does not identify any of its Florida-based subsidiaries as judgment debtors; *second*, Tradewinds’ only act to perfect its Judgment Lien was to record the Judgment with the Florida Department of State (“**DOS**”) pursuant to Fla. Stat. § 55.202; and *third*, Tradewinds recorded the Judgment on August 25, 2021. See Am. Compl. ¶¶ 15, 26. Under Florida law, these admissions are dispositive. Tradewinds’ Judgment Lien attaches only to the *personal* property of Controladora in Florida, and any liens perfected prior to August 25, 2021—including those held by the Secured Lenders—are superior in priority. Nevertheless, Tradewinds now seeks a declaration from this Court that its Judgment Lien applies to the Collateral, which includes assets that do not belong to Controladora and are of a type not covered by its Judgment Lien. Tradewinds’ assertions find no support in the law, and they are not entitled to such a declaration.

Florida law is clear, recording a judgment with the Florida DOS creates a judgment lien valid only as to the “*judgment debtor’s* interest in all *personal* property in this state subject to

⁶ Although the Amended Complaint concedes that the Judgment Lien “[does] not attach to any real property located in Florida,” it nonetheless uses the defined term “**Collateral**” to refer to the assets it claims entitlement and priority to. Collateral includes another defined term, the “**Dolphin Park Assets**,” which includes (a) the equity (stock) issued by Dolphin Leisure and (b) the three (3) marine parks in Florida, which are Marineland in St. Augustine; Dolphin Connection in Duck Key; and Gulf World in Panama City Beach. See Am. Compl. ¶¶ 14 n.1, 17–19.

execution” Fla. Stat. § 55.202(2). Distinct statutory requirements govern the perfection of liens against other types of property, such as real property (*e.g.*, the Florida marine parks) and certificated securities (*e.g.*, Dolphin Leisure’s stock). Indeed, Tradewinds admits it has no lien against real property. Am. Compl. ¶ 14 n.1; *see* Fla. Stat. § 55.10 (requiring Tradewinds to record a certified copy of the Judgment “in the official records or judgment lien record of the county” where the property is located). Perfection of a lien over corporate stock requires “actual seizure of the security certificate.”⁷ Fla. Stat. § 678.1121. Tradewinds undertook neither of these steps; it perfected its Judgment only pursuant to Fla. Stat. § 55.202. Thus, the Judgment Lien is strictly limited to the personal property of Controladora in Florida and does not extend to (a) the assets of any subsidiary, nor (b) any other type of asset other than personal property. Moreover, the Judgment Lien only became valid and effective on August 25, 2021, *i.e.*, “at the date and time the judgment lien certificate [was] filed.” Fla. Stat. §§ 55.202(2)(d), (3). Thus, the Secured Lenders’ lien over Controladora’s assets, perfected in 2019, has priority. Tradewinds’ allegation that its Judgment Lien “relates back” to the original judgment in 2017, or that the Secured Lenders’ rights were somehow extinguished by subsequent amendments to the agreements under which those rights arise, are meritless and directly refuted by both the operative contracts and law.

There is no genuine dispute over the materials facts, which compel one result: Tradewinds is not entitled to a declaration that it holds a valid judgment lien against all of the Collateral, and that such lien is senior to the liens of the Secured Lenders. Am. Compl. ¶ 34. To the contrary, Tradewinds holds a valid lien only as to Controladora’s personal property in Florida, and the

⁷ Even to the extent Tradewinds’ held a lien on any corporate stock that was both valid and senior to the Secured Lenders’ lien, Tradewinds’ attempt to enforce such lien is a fool’s errand. Such equity is unlikely to hold any value whatsoever given Controladora—and all of its subsidiaries, including Dolphin Leisure, Inc.—are woefully insolvent and are, indeed, Debtors proceeding through these jointly administered Chapter 11 Cases.

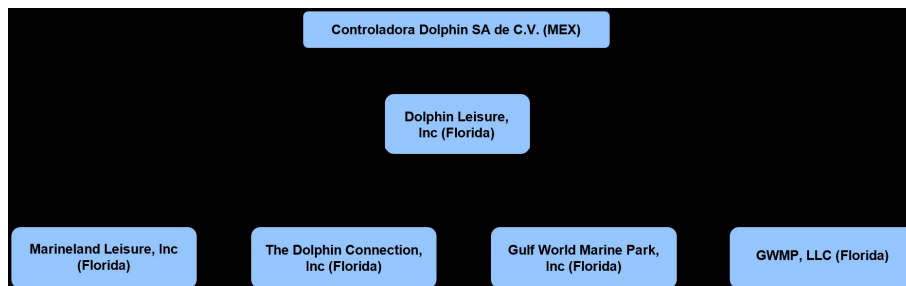
Secured Lenders' lien as to such assets is prior, perfected, and superior to Tradewinds' Judgment Lien. Accordingly, the Secured Lenders respectfully request that the Court grant summary judgment in their favor and against Tradewinds on Count I of the Amended Complaint.

STATEMENT OF FACTS⁸

Relevant Debtors' Background, Corporate Structure, and Florida Assets

1. Controladora is a corporation organized under the laws of Mexico, headquartered and with its principal place of business in Cancun, Mexico. *See Decl. of Robert Wagstaff, Chief Restructuring Officer of the Debtors* (“**CRO Decl.**”) ¶ 6. The vast majority of Controladora's assets are in Mexico, where it is domiciled and headquartered, but it does currently hold the following assets located in Florida: certain subsidiary stock certificates (discussed *infra*), along with reptiles, birds, rats, and a dog. *Id.* ¶ 8.

2. Dolphin Leisure is wholly owned by Controladora. *Consolidated Corporate Ownership Statement*, No. 25-10616, (D.I. 1) at 14. Marineland Leisure Inc. (“**Marineland**”), GWMP, LLC (“**GWMP**”), Gulf World Marine Park, Inc. (“**Gulf World**”), and The Dolphin Connection, Inc. (“**Dolphin Connection**,” and collectively, the “**Florida Park Entities**”) are each wholly owned by Dolphin Leisure. *Id.* A chart depicting this ownership is provided below:



⁸ All references to Exhibits in this Statement of Facts refers to those Exhibits attached to the November 25, 2025 Declaration of Benjamin Davis, Esq. unless otherwise stated.

3. The Florida Park Entities in turn own four (4) marine parks in Florida: the Miami Seaquarium in Miami; Marineland in St. Augustine; Dolphin Connection in Duck Key; and Gulf World in Panama City Beach (the “**Florida Parks**”). Am. Compl. ¶¶ 17–19.

The Secured Lenders and the Relevant Note Purchase Agreements

4. The Secured Lenders have a first priority lien on the assets of Controladora pursuant to the terms of the 2019 NPA, which was amended and restated on June 8, 2020 and again on June 27, 2022. A copy of the 2019 NPA is attached at **Ex. B**.

5. The 2019 NPA is by and between the Secured Lenders,⁹ Controladora, the parent entity of Controladora, Dolphin Capital Company, S. de R.L. de C.V. (“**Dolphin Capital**”), and those subsidiaries listed on Schedule B thereto. 2019 NPA, **Ex. B**.

6. Controladora and Dolphin Capital’s obligations under the 2019 NPA are guaranteed by them, as well as by those subsidiaries listed on Schedule B (the “**Original Guarantors**”). See Schedule B to 2019 NPA, **Ex. B**. Included among the Original Guarantors are three (3) of the four (4) Florida Park Entities—GWMP, Gulf World, and Dolphin Connection—along with the Florida Park Entities’ intermediate parent, Dolphin Leisure, Inc. (“**Dolphin Leisure**”). See *id.*

7. These obligations are further secured by those liens created pursuant to certain “**Collateral Documents**” (as defined in the 2019 NPA), including a *U.S. Security Agreement* dated April 8, 2019 (the “**2019 Security Agreement**”). See 2019 NPA, **Ex. B**, at Section 4.14. A copy of the 2019 Security Agreement can be found at **Ex. C**.

⁹ Life Insurance Company of North America (“**LICNA**”), a former subsidiary of Cigna Health and Life Insurance Company, is also a signatory and secured lender under the 2019 NPA. However, it is not named as a Defendant in this adversary proceeding given that Cigna sold it to New York Life Insurance Company in 2020. For this same reason, LICNA was removed as a party in the subsequent amendments to the 2019 NPA. See *infra* n.12.

8. Under the 2019 Security Agreement, each Original Guarantor unconditionally grants the Secured Lenders a continuing security interest in *all* the Original Guarantors' property, in whatever form it may take.¹⁰ *See* 2019 Security Agreement, **Ex. C**, at ¶ 2.

9. The Secured Lenders perfected their lien over Controladora's assets by filing a *UCC-1 Financing Statement* on April 9, 2019 (File No. 2019035935) with the Washington, D.C. Recorder of Deeds. *See* Controladora UCC Filings, included here as **Ex. D**. The filing covered all assets of Controladora, whether now owned or hereafter acquired. The effectiveness of this filing was continued by a *UCC-3 Continuation Statement* filed on March 6, 2024 (File No. 2024020640), and further amendments were filed on May 12, 2025 (File Nos. 2025046188 and 2025046484) to assign GLAS Americas LLC as collateral agent. *Id.*

10. The 2019 NPA permits amendment with the written consent of the parties. *See* 2019 NPA, **Ex. B**, at Section 19. Further, Section 9.7 of the 2019 NPA contemplates and requires the joinder of subsidiary guarantors. *See id.*, at Section 9.7(b)–(c).

11. On June 8, 2020, the 2019 NPA was amended and restated through the execution of an *Amended and Restated Note Purchase and Guarantee Agreement*, dated as of June 8, 2020 (the “**First Amended & Restated NPA**”), included here as **Ex. E**.

12. The First Amended & Restated NPA is by and between the same parties as the 2019 NPA—*i.e.*, the Secured Lenders,¹¹ Controladora, Dolphin Capital, and all of the Original

¹⁰ Section 4.13 of the 2019 NPA references that certain *Note Purchase Agreement*, dated as of October 8, 2015, by and among Controladora, Dolphin Capital, and certain of their affiliated entities (defined therein as the “**Existing Note Agreement**,” or the “**2015 NPA**” as defined in the Complaint). *See* 2019 NPA, **Ex. B**, at Section 4.13 and Schedule A (Definitions). Section 4.13 of the 2019 NPA confirms that any liens over the assets of Controladora and its subsidiaries created under or in connection with the Existing Note Agreement have been terminated and released by those relevant parties such that they can properly pledged to the Secured Lenders under the 2019 NPA and related documents executed contemporaneously therewith. *See* 2019 NPA, **Ex. B**, at Section 4.13.

¹¹ And LICNA. *See supra* n.9.

Guarantors—but also adds seven (7) of Controladora’s other subsidiaries as additional parties and guarantors (the “**First Amended Additional Subsidiary Guarantors**,” together with the Original Guarantors, the “**First Amended Guarantors**”). *Compare* 2019 NPA, **Ex. B**, at Signature Page *with* First Amended & Restated NPA, **Ex. E**, at Signature Page.

13. The First Amended and Restated NPA explicitly states that the parties are amending and restating the 2019 NPA, rather than executing a new agreement or creating a novation. It expressly acknowledges that the amendments “could have been effected through an amendment agreement or other instrument amending such agreement,” but that the parties elected to both amend *and restate* “for convenience.” First Amended & Restated NPA, **Ex. E**, at Section 1.2. Section 1.2 of the First Amended & Restated NPA makes this point clear:

Section 1.2 Amendment and Restatement of Existing Agreement. . . . the parties hereto hereby agree that, effective as of the Restatement Date, *this Agreement shall, and hereby does, amend, restate and replace in its entirety the Existing Agreement which, as so amended and restated by this Agreement, continues in full force and effect without rescission or novation thereof.* The parties hereto hereby acknowledge and agree that the amendments to the Existing Agreement set forth herein could have been effected through an amendment agreement or other instrument amending such agreement and, for convenience, the parties hereto have agreed to restate the terms and provisions of the Existing Agreement, as amended hereby, pursuant to this Agreement.

Id. (emphasis added); *id.*, at Cover (stating that it is “amending and restating [the 2019 NPA]”).

14. The First Amended & Restated NPA also expressly states that the guarantees provided by the Original Guarantors and liens established in connection with the Collateral Documents continue uninterrupted and remain in effect:

Section 1.7 Guaranties; Security. The obligations of the Obligors under the Finance Documents are guaranteed by the Guarantors as provided in Section 15 and are secured by the Liens created pursuant to the Collateral Documents. Without limiting the foregoing, each Obligor hereby (a) *acknowledges and agrees that all of its obligations under the Collateral Documents and each other Finance*

Document to which it is a party are reaffirmed and remain in full force and effect in accordance with the terms of such Collateral Document or other Finance Document and (b) acknowledges and confirms that the Liens created by the Collateral Documents secure and shall continue to secure the obligations of the Obligor under the Finance Documents after giving effect to this Agreement.

Id., at Section 1.7 (emphasis added).

15. On June 27, 2022, the 2019 NPA, as amended by the First Amended & Restated NPA, was further amended and restated through the execution of a *Second Amended and Restated Note Purchase and Guarantee Agreement*, dated as of June 27, 2022 (the “**Second Amended & Restated NPA**”). A copy of the Second Amended NPA can be found at **Ex. F**.

16. The Second Amended & Restated NPA is by and between the same parties as the First Amended & Restated NPA—*i.e.*, the Secured Lenders,¹² Controladora, Dolphin Capital, and the First Amended Guarantors—as well as four (4) holding companies that now serve as Controladora’s and Dolphin Capital’s intermediate and ultimate parents and affiliated entities¹³ as a result of a corporate restructuring (the “**Second Amended Additional Guarantors**,” together with the First Amended Guarantors, the “**Current Guarantors**”). *See* Second Amended & Restated NPA, **Ex. F**, at 1. The Second Amended & Restated NPA expressly states that a primary purpose of the amendment is to include the four (4) Second Amended Additional Guarantors as signatories and guarantors as a result of a “corporate reorganization.” *See id.*, Section 1.1(c)–(d)(i), (e) (noting that the obligors “intend to . . . effect a corporate reorganization” and that they “have requested that the [Secured Lenders] . . . agree to amend and restate the [First Amended & Restated

¹² With the exception of LICNA, who is not a party to the 2022 amendment for the reasons stated in n.9, *supra*.

¹³ The four (4) entities are: TDC Leisure Holdings LLC and Leisure Investments Holdings LLC, Controladora and Dolphin Capital’s ultimate and intermediate parent company, respectively; and Triton Investments Holdings LLC and Icarus Investments Holdings LLC, both also ultimately owned by TDC Leisure Holdings LLC.

NPA Obligors] to provide for, among other things” guarantees by the new ultimate and intermediate parent entities, as well as several affiliates).

17. The Second Amended & Restated NPA expressly confirms the parties’ intent to both amend and restate the First Amended & Restated NPA¹⁴:

Section 1.2 Amendment and Restatement of Existing Agreement. . . . the parties hereto hereby agree that, effective as of the Restatement Date, *this Agreement shall, and hereby does, amend, restate and replace in its entirety the Existing Agreement which, as so amended and restated by this Agreement, continues in full force and effect without rescission or novation thereof.* The parties hereto hereby acknowledge and agree that the amendments to the Existing Agreement set forth herein could have been effected through an amendment agreement or other instrument amending such agreement and, for convenience, the parties hereto have agreed to restate the terms and provisions of the Existing Agreement, as amended hereby, pursuant to this Agreement.

Id., at Section 1.2 (emphasis added).

18. Like its predecessor amendment, the Second Amended & Restated NPA makes clear that the guarantees provided by the First Amended Guarantors and liens established in connection with the Collateral Documents remain undisturbed by the amendment:

Section 1.5 Guaranties; Security. The obligations of the Obligors to the Secured Parties under the Finance Documents are guaranteed by the Guarantors as provided in Section 15 and are secured by the Liens created pursuant to the Collateral Documents. Without limiting the foregoing, each Obligor hereby (a) acknowledges and agrees that all of its obligations under the Collateral Documents and each other Finance Document to which it is a party *are reaffirmed and remain in full force and effect in accordance with the terms of such Collateral Document or other Finance Document and (b) acknowledges and confirms that the Liens created by the Collateral Documents secure and shall continue to secure the obligations of the Obligors to the Secured Parties under the Finance Documents after giving effect to this Agreement.*

¹⁴ Defined as the “Existing Agreement” under the Second Amended & Restated NPA. *See* Second Amended & Restated NPA, **Ex. F**, at Section 1.1 (further defining the 2019 NPA as the “**Original Agreement**”).

Id., at Section 1.5 (emphasis added).

19. The 2019 Security Agreement also amended and restated contemporaneously with the Second Amended & Restated NPA through the execution of an *Amended and Restated Security Agreement* dated June 27, 2022 (the “**Amended & Restated Security Agreement**”), attached here as **Ex. G**. This agreement is by and between those same parties as the 2019 Security Agreement but adds the Second Amended Additional Guarantors as parties and signatories thereto. *Id.*

20. Beyond the inclusion of the Second Amended Additional Guarantors, the Amended & Restated Security Agreement is nearly identical to the 2019 Security Agreement, with one notable exception: the Amended & Restated Security Agreement includes two new paragraphs that make clear the Amended & Restated Security Agreement is an amendment and restatement, and all liens and security interests granted under the 2019 Security Agreement “shall continue without interruption.” *Id.* ¶¶ 34–35. Those new paragraphs provide:

34. Amendment and Restatement. Effective immediately upon the execution of this Agreement, the terms and conditions of the Existing Security Agreement shall be amended and restated as set forth herein and the Existing Security Agreement shall be superseded by this Agreement. *The liens and security interests granted under the Existing Security Agreement by the Grantors party thereto shall continue without interruption under this Agreement. Nothing herein contained shall be construed as a substitution, novation, release or discharge of any of the obligations outstanding under the Existing Note Purchase Agreement or the Existing Security Agreement or any other Finance Document or any instruments relating to the same, each of which shall remain in full force and effect, except to any extent modified by the Note Purchase Agreement or by this Agreement. . . .*

35. Reaffirmation of Security. Each of the Grantors party to the Existing Security Agreement hereby *reaffirms all of the liens and security interests granted by such Grantor to the Collateral Agent securing the Secured Obligations and agrees and confirms that such liens and security interests shall extend to, and secure, all of the Secured Obligations.*

Id. (emphasis added).

The Tradewinds’ Judgment, Domestication, and Recording

21. On June 7, 2017, Tradewinds obtained the Judgment in California. Am. Compl. ¶ 21. A copy of the Judgment is not attached to Tradewinds’ pleading, but is here as **Ex. H**.

22. The Judgment is against two entities: Grupo Dolphin Discovery and Controladora. Am. Compl. ¶ 21; Judgment, **Ex. H**.

23. On August 14, 2017, Tradewinds registered the Judgment in the U.S. District Court for the Southern District of Florida. Am. Compl. ¶ 22; *see also Clerk’s Certification*, No. 17-cv-23070 (S.D. Fla.) (the “**FL Execution Case**”), (D.I. 1), included here as **Ex. I**.

24. On August 25, 2021 at 11:45 a.m. ET, “Tradewinds Ltd. Belize, LLC” recorded the Judgment with the Florida DOS pursuant to Fla. Stat. § 55.203, identifying itself as the judgment creditor.¹⁵ *See* Am. Compl. ¶ 26; *Electronic Judgment Lien Certificate*, **Ex. J** (the “**Judgment Lien**”). Like the Judgment, the Judgment Lien identifies the judgment debtors as Grupo Dolphin Discovery and Controladora. Judgment Lien, **Ex. J**.

25. Although the Judgment identifies the named Plaintiff in this adversary proceeding, “Tradewinds, Ltd. d/b/a Tradewinds Consulting, Ltd,” the Judgment Lien identifies a different entity as the judgment creditor: “Tradewinds Ltd. Belize, LLC.” *Compare* Judgment, **Ex. H** with Judgment Lien, **Ex. J**.

26. Tradewinds has not recorded the Judgment anywhere else in the State of Florida other than through the filing of the Judgment Lien with the Florida DOS.

27. On February 9, 2024, Tradewinds filed a motion in the Central District of California seeking, *inter alia*, to add Dolphin Leisure and two (2) of the four (4) Florida Park Entities (GWMP

¹⁵ The Secured Lenders assume, *arguendo*, that Tradewinds Ltd. Belize, LLC is affiliated with the named Plaintiff in this adversary proceeding and that it was perhaps assigned Plaintiff’s rights in the Judgment.

and Gulf World) to the Judgment. *See Motion to Amend Judgment to Add Correctly-Named Judgment Debtors*, No. 17-cv-01292 (D.I. 66), attached here as **Ex. K**. The motion also sought to substitute the judgment debtor “Grupo Dolphin Discovery” with “The Dolphin Company.” *Id.*

28. The Central District of California denied Tradewinds’ request. The court concluded that Tradewinds’ request to add such parties to the Judgment was “an improper attempt to add new parties to the Judgment.” *See Civil Minutes*, No. 17-cv-01292 (D.I. 83), **Ex. L**, at 4.

29. The court did, however, grant Tradewinds’ request to amend the Judgment to include “The Dolphin Company,” *id.*, and on May 4, 2024, entered an *Amended Judgment* (D.I. 83) (the “**Amended Judgment**”) against Grupo Dolphin Discovery, Controladora, and The Dolphin Company, as judgment debtors. Amended Judgment, **Ex. M**; *see also* Am. Compl. ¶ 22 n.2.

30. Tradewinds registered the Amended Judgment with the Southern District of Florida on May 9, 2024. *See Notice*, FL Execution Case, (D.I. 180), **Ex. N**; *see also* Am. Compl. ¶ 22 n.2. To date, Tradewinds has not recorded the Amended Judgment.

Tradewinds’ Additional Proceedings Supplementary as to Dolphin Leisure

31. On June 7, 2024, Tradewinds asked the District Court for the Southern District of Florida to compel Wilmington Trust Corporation (“**Wilmington Trust**”)¹⁶ to deliver, *inter alia*, the stock certificates of Dolphin Leisure (the “**Stock Certificates**”) to Florida for sale and execution to be applied towards satisfaction of the Judgment. *See Motion for an Order Directing Impleaded Party Wilmington Trust to Deliver Stock Certificates of Dolphin Leisure Inc.*, FL

¹⁶ Wilmington Trust was the collateral agent under the Second Amended & Restated NPA. In that capacity, it held certain assets pledged as collateral thereunder, including the Dolphin Leisure stock. As noted *supra*, GLAS Americas, LLC succeeded Wilmington Trust as the first lien collateral agent and currently serves in that role (*i.e.*, the Prepetition First Lien Collateral Agent), with possession of the pledged collateral.

Execution Action, (D.I. 181), **Ex. O**. The court granted Tradewinds’ motion and ordered Wilmington Trust to deliver the Stock Certificates to Florida until further proceedings. *Id.* at 18. The court expressly did not rule on any party’s claim of entitlement to the Stock Certificates, deeming any such request, or request to determine priority, as “premature.” *Id.* at 17–18.

32. Consistent with the Southern District of Florida’s order, the Stock Certificates were transferred to Florida, but remain in the possession of GLAS Americas, LLC, the Prepetition First Lien Collateral Agent. *See* CRO Decl., at ¶ 8.

This Adversary Proceeding

33. On June 18, 2025, Tradewinds filed this adversary proceeding. Tradewinds alleges that the Judgment Lien operates as a lien over Controladora’s assets in Florida, and that Controladora’s assets in Florida include: (1) Controladora’s ownership interest in Dolphin Leisure; and (2) the real property that is the four Florida Parks and all personal property in the Florida Parks. *See* Am. Compl. ¶¶ 14, 17–19, 30, 35. (Although Tradewinds “acknowledges that the [J]udgment [L]ien did not attach to any real property located in Florida,” *id.* ¶ 14 n.1, it nonetheless defines the “Collateral” as including the Florida Parks, *id.* ¶¶ 14, 19.) Tradewinds also contends the Judgment Lien is senior in priority to the liens asserted by the Secured Lenders. *Id.* ¶¶ 14, 30, 35. Based on these contentions, Tradewinds brings one claim seeking declarations to the same effect. *Id.* ¶¶ 31–35 (Count I).

ARGUMENT¹⁷

I. LEGAL STANDARD

Bankruptcy Rule 7056 provides that Fed. R. Civ. P. 56 applies in adversary proceedings. Under Rule 56, summary judgment is appropriate “if the movant shows that there is no genuine

¹⁷ Facts referenced in this Argument are cited by reference to the paragraphs of the Statement of Facts (“SOF”), *supra*.

dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A factual dispute is “genuine” only if the evidence is such that the trier of fact could return a verdict for the non-moving party; if the record as a whole could not lead a rational trier of fact to find for the nonmovant, there is no genuine issue for trial. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). The movant bears the initial burden of showing the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant satisfies this burden, the nonmovant must “do more than simply show that there is some metaphysical doubt as to the material facts[;]” it must produce specific facts showing a genuine issue for trial. *Matsushita*, 475 U.S. at 587. The Third Circuit has emphasized that summary judgment is appropriate against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case.” *Hugh v. Butler Cnty. Family YMCA*, 418 F.3d 265, 267 (3d Cir. 2005) (citation omitted).

II. TRADEWINDS’ JUDGMENT LIEN EXTENDS ONLY TO CONTROLADORA’S PERSONAL PROPERTY IN FLORIDA AND DOES NOT EXTEND TO THE ASSETS OF ANY AFFILIATED ENTITY NOR ANY OTHER PROPERTY.

Tradewinds registered its Judgment in the Southern District of Florida on August 14, 2017. SOF ¶ 23; *see also* 28 U.S.C. § 1963 (allowing a judgment entered in a U.S. district court to be “registered by filing a certified copy of the judgment in any other district”). That act was only the first step in enforcing the Judgment against any assets in Florida and did not create a valid lien. To determine how and when a judgment lien is created, federal law instructs courts to look to the law of the state in which the district court sits. *See* 28 U.S.C. § 1962 (providing that judgments of the district courts “within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State”). Thus, once the Judgment was registered, Tradewinds was required to

follow Florida law to establish a valid lien in Florida such that it could be enforced against property in Florida. *See id.* Tradewinds did so by filing a judgment lien certificate with the Florida DOS on August 25, 2021. SOF ¶ 24. At that point on August 25, 2021—and only after that point—did Tradewinds possess a valid judgment lien. *See* Fla. Stat. § 55.202(2)(d) (“[T]he effective date of a judgment lien is the date, including the time of day, of filing.”); *see also* Fla. Stat. § 55.202(3) (providing that “the priority of a judgment lien acquired in accordance with this section or s. 55.204(3) is established at the date and time the judgment lien certificate is filed”).

Florida law limits Tradewinds’ Judgment Lien in two (2) relevant ways. *First*, the Judgment Lien extends only to the property of the identified judgment debtors, *i.e.*, only to *Controladora’s* assets in Florida, and not to those of any other entity. *Second*, it is valid only as to *Controladora’s personal* property in Florida—it does not extend to real property or other asset types, liens upon which must be perfected through procedures that Tradewinds has not pursued. Thus, Tradewinds’ claim that it has a “valid, fully perfected, and enforceable lien” against *Controladora’s* property in Florida, personal property or otherwise, is patently false. *See* Am. Compl. ¶ 14, 17–19. The Secured Lenders are, therefore, entitled to judgment as a matter of law on Tradewinds’ declaratory claim that it has a “valid” lien over the property identified as the “Collateral” in the Amended Complaint. Under the law, it does not.

A. Tradewinds’ Judgment Lien Extends Only to the Property of the Judgment Debtor(s) Identified in the Judgment, *i.e.* Controladora.

“Under Florida law, a judgment creditor does not automatically become a ‘judgment lien creditor’ with a valid lien against third parties until the judgment creditor satisfies certain statutory requirements depending on the nature of the judgment debtor’s property interests.” *United States v. Marrero*, 2015 WL 12588934, at *5 (S.D. Fla. Sept. 17, 2015) (describing methods of

establishing valid liens against property in Florida); *In re Parker*, 630 B.R. 653, 659 (Bankr. S.D. Fla. 2021) (distinguishing between obtaining judgment liens on personal versus real property).

Section 55.202, Fla. Stat., provides the exclusive means of obtaining a judgment lien against *personal* property in Florida: “[a] judgment lien is acquired by filing a judgment lien certificate in accordance with s. 55.203 with the [DOS]” Fla. Stat. § 55.202(2)(b); *Parker*, 630 B.R. at 659. Recording with the Florida DOS creates a judgment lien “in all personal property in this state subject to execution”¹⁸ Fla. Stat. § 55.202(2); *see also Regions Bank v. Hyman*, 2015 WL 1912251, at *5 (M.D. Fla. Apr. 27, 2015) (citing Fla. Stat. § 55.202(2)) (“A judgment creditor obtains a judgment lien on a judgment debtor’s interest in all personal property throughout Florida . . . by filing a judgment lien certificate with the Florida [DOS].”).¹⁹ Tradewinds’ Judgment Lien was perfected and became effective when it was filed on August 25, 2021. *See* SOF ¶ 24; Fla. Stat. §§ 55.202(2)(d), (3).

However, that Judgment Lien is valid only as to the “*judgment debtor’s* interest in all *personal* property in this state.” Fla. Stat. § 55.202(2) (emphasis added); *see also* Fla. Stat. § 55.203(1)(a) (requiring the lien certificate to include “[t]he legal name of each judgment debtor”). The statutes respect corporate separateness, and a judgment lien against the named judgment debtor does not automatically reach the assets of affiliates, subsidiaries, or parent entities. *See id.* Only in instances where there is compelling evidence of improper conduct or fraud that justifies corporate veil piercing will a judgment lien extend to assets of affiliated entities. *See Dania Jai-*

¹⁸ Section 55.202 references the personal property included in § 56.061, *i.e.*, “[l]ands and tenements, goods and chattels, equities of redemption in real and personal property, and stock in corporations,” and further includes “all payment intangibles and accounts of a judgment debtor whose location is in this state.” Fla. Stat. § 55.202(2).

¹⁹ For the avoidance of doubt, the statute is also not extraterritorial and creates a lien only over those assets found within the State of Florida. *See* Fla. Stat. § 55.202(2) (“A judgment lien may be acquired on a judgment debtor’s interest in all personal property *in this state* subject to execution” (emphasis added)); *see also Hyman*, 2015 WL 1912251, at *5 (filing of lien certificate creates a lien on “personal property throughout Florida”).

Alai Palace, Inc. v. Sykes, 450 So. 2d 1114 (Fla. 1984) (piercing the corporate veil requires evidence of improper conduct and not merely the existence of a parent-subsidary relationship); *Longo v. Associated Limousine Servs., Inc.*, 236 So. 3d 1115 (Fla. Dist. Ct. App. 2018) (recognizing proceedings supplementary under Fla. Stat. § 56.29 as the appropriate mechanism for extending judgment liens to assets held by subsidiaries or related entities); *Segal v. Forastero, Inc.*, 322 So. 3d 159 (Fla. Dist. Ct. App. 2021) (same); *LB Judgment Holdings, LLC v. Boschetti*, 271 So. 3d 115 (Fla. Dist. Ct. App. 2019) (same); *Bull v. United States*, 528 B.R. 473, 488, 496–97 (Bankr. M.D. Fla. 2015) (declining to pierce the corporate veil where the subsidiary operated for legitimate business purposes); *Rashdan v. Sheikh, M.D., P.A.*, 706 So. 2d 357 (Fla. Dist. Ct. App. 1998) (reversing lower court’s decision allowing execution on the assets of a professional association to satisfy judgment against its owner because the corporate veil cannot be pierced absent evidence of improper conduct, fraudulent purpose, or misuse of the corporation).

It is undisputed that the Judgment—and, thus, the Judgment Lien—identifies only Controladora and Grupo Dolphin Discovery as the judgment debtors. SOF ¶¶ 22, 24. It is likewise undisputed that Tradewinds has never alleged—in this adversary proceeding nor in any other proceeding—that Dolphin Leisure and/or the Florida Park Entities are Controladora’s alter egos.²⁰ Accordingly, Tradewinds’ Judgment Lien is valid and perfected only as to *Controladora*’s property in Florida and does not operate as a valid and perfected lien on any other entities’ property—including, notably, the property of Dolphin Leisure and the Florida Park Entities. The Secured Lenders are, therefore, entitled to judgment as a matter of law on Tradewinds’ claim that

²⁰ Indeed, when seeking to amend the Judgment in California to add Controladora’s subsidiaries to the Judgment, Tradewinds elected not to assert any alter ego theory, despite acknowledging in their *Motion to Amend Judgment* that California law permits amendment of a judgment to add alter-ego entities. SOF ¶ 27; *see also Civil Minutes*, No. 17-cv-01292, **Ex. L**, at 4 (noting Tradewinds did not argue these entities were alter egos of Grupo Dolphin Discovery).

its Judgment Lien constitutes a valid and perfected lien against any of Dolphin Leisure’s and the Florida Park Entities’ property in Florida.

B. Tradewinds’ Judgment Lien Extends Only to Controladora’s *Personal* Property, and Does Not Extend to Any Other Asset Type.

The Florida statutes are also clear that recording a judgment lien in the manner executed by Tradewinds creates a judgment lien only in “*personal* property in [Florida] subject to execution.” Fla. Stat. § 55.202(2) (emphasis added); *see also Parker*, 630 B.R. at 659 (filing a certificate creates “a judgment lien on *personal* property” (emphasis added)). Nonetheless, Tradewinds also claims it is entitled to a declaration that it has a valid judgment lien against the Collateral, which includes *real* property—namely, the three (3) Florida Parks. *See* Am. Compl. ¶¶ 14, 17–19, 34. As a threshold point, the Florida Parks are not owned by the judgment debtor, Controladora, SOF ¶¶ 2–3, and for this reason alone Tradewinds has no lien over such assets, as discussed *infra*. But even if Tradewinds’ Judgment Lien extended to Controladora’s subsidiaries, the Judgment Lien applies only to personal property—it does not apply to any other property type.

1. The Judgment Lien does not extend to real property (the Florida Parks).

Tradewinds admits “that the [J]udgment [L]ien did not attach to any real property located in Florida.” Am. Compl. ¶ 14 n.1. And yet, Tradewinds nonetheless defines the “Collateral” as including the Florida Parks. *Id.* ¶¶ 14, 19. For the avoidance of doubt, a judgment debtor only obtains a lien on real property “*when a certified copy of it is recorded in the official records or judgment lien record of the county . . .*” Fla. Stat. § 55.10(1) (emphasis added). *Parker*, 630 B.R. at 659 (noting that a judgment lien on real property requires recording a certified copy of the judgement in the official records or judgment lien records of the county in which a judgment debtor’s real property is located”); *Marrero*, 2015 WL 12588934, at *5 (same). Tradewinds has not recorded its Judgment in the counties where the Florida Parks are located—Monroe County

(Duck Key), St. Johns County (St. Augustine), and Bay County (Panama City Beach)—nor in any other county where Controladora is alleged to have assets. Accordingly, Tradewinds has no lien against any real property in Florida. *See* Am. Compl. ¶ 14 n.1; *see also In re Silva*, 2012 WL 2996742, at *1 (M.D. Fla. July 23, 2012) (recording with Florida DOS insufficient to establish lien over real property, and failure to record it “in the county of the [d]ebtor’s residence or any other county where she might have an interest in real property” was dispositive); *United States v. O’Callaghan*, 805 F. Supp. 2d 1321, 1329 (M.D. Fla. 2011) (“In Florida, a judgment ‘in and of itself’ is not a lien on real property unless a judgment creditor records the judgment ‘in the official records or judgment lien record of [a] county.’”); *Martinez v. Reyes*, 405 So. 2d 468, 469 (Fla. Dist. Ct. App. 1981) (same); *Steinbrecher v. Cannon*, 501 So. 2d 659, 660 (Fla. Dist. Ct. App. 1987) (same). To the extent, despite its admission, that Tradewinds allegations assert a lien over real property, the Secured Lenders are entitled to judgment as a matter of law.

2. *The Lien is Not Valid as to the Dolphin Leisure Stock Certificates.*

Controladora holds only one piece of personal property in Florida: Dolphin Leisure’s Stock Certificates. SOF ¶¶ 31–32 (describing transfer of the Stock Certificates to Florida pursuant to court order). Tradewinds’ definition of Collateral includes “Dolphin Leisure,” presumably a reference to the Stock Certificates owned by Controladora. *See* Am. Compl. ¶¶ 2, 14, 18–19. But, again, the Florida statutes require more of Tradewinds, and the recording of the Judgment Lien with the Florida DOS did not create a valid lien over this type of asset.²¹

Dolphin Leisure’s Stock Certificates are “certificated securities” as defined under the Uniform Commercial Code (“UCC”). Fla. Stat. § 678.1021(1)(d). Section 678.1121, Fla. Stat.,

²¹ As noted *supra* n.7, Tradewinds’ pursuit of such assets is a wasted and pointless effort, as the equity in Dolphin Leisure is essentially of zero value due to its insolvency.

governs execution over securities and sets out what judgment creditors are required to do to perfect their liens over such securities. *See Hastings v. Furr*, 177 B.R. 723, 725 (S.D. Fla. 1995), *aff'd*, 77 F.3d 497 (11th Cir. 1996) (noting the distinction between Chapter 56, Fla. Stat., which applies to judgment liens on personal property, and Fla. Stat. § 678.317(1), now codified as § 678.1121(1), which applies to execution against corporate securities). As to certificated securities like the Stock Certificates, “[t]he interest of a debtor in a certificated security may be reached by a creditor *only by actual seizure of the security certificate*.” Fla. Stat. § 678.1121(1) (emphasis added); *Hastings*, 177 B.R. at 725 (perfection of a lien against certified stock “requires actual seizure”); *In re Trodglan*, 155 B.R. 601, 603 (Bankr. S.D. Fla. 1993) (confirming that actual seizure of the certificate(s) is required to perfect a lien over stock certificates under Florida law).

It is undisputed that Tradewinds has not actually seized the Stock Certificates. While Tradewinds managed to have the Stock Certificates transferred to Florida in anticipation of further proceedings, they remain in the possession of the Collateral Agent (f/b/o the Secured Lenders).²² *See* SOF ¶¶ 31–32. Because Tradewinds never “actually seized” the Stock Certificates, it lacks a valid, perfected lien over them. *See Hastings*, 177 B.R. at 725–27 (holding because the sheriff did not seize the stock, the judgment creditors never obtained a perfected lien over such assets); *In re Cohen*, No. 09-16860, 2009 WL 3675400, at *5 (Bankr. S.D. Fla. Oct. 30, 2009) (holding that judgment debtor “could not have obtained an interest in [] stock by filing a judgment lien certificate” with the Florida DOS because § 678.1121 requires actual seizure of the stock); *cf. In re Shabanah*, 2020 WL 6799121, at *3 (Bankr. M.D. Fla. Oct. 26, 2020) (holding that judgment lien was perfected against stock certificate when the sheriff actually seized the certificate). Judgment as a

²² *See supra* n.16.

matter of law is, therefore, appropriate as to Tradewinds’ claim that it has a valid, perfected Judgment Lien over the Dolphin Leisure Stock Certificates.

III. TRADEWINDS’ JUDGMENT LIEN AS TO CONTROLADORA’S PERSONAL PROPERTY IS JUNIOR TO THE SECURED LENDERS.

Tradewinds also seeks a declaration that its Judgment Lien is “senior in priority to the liens asserted by the Secured Lenders.” Am. Compl. ¶¶ 8, 14. As discussed, Tradewinds’ Judgment Lien is not valid as to any assets in Florida. *See* Section II, *supra*; *see also* SOF ¶ 31–32 (confirming that Controladora has no assets of consequence in Florida other than the Dolphin Leisure Stock Certificates). Accordingly, any claim that Tradewinds’ Judgment Lien is senior to the Secured Lenders’ lien in Florida assets is ultimately moot. Nonetheless—and only in an abundance of caution to the extent it is later discovered that Controladora does have personal property in Florida to which Tradewinds’ Judgment Lien would attach—Tradewinds’ Judgment Lien is junior to the Secured Lenders’ first-priority lien on Controladora’s personal property.

Tradewinds does not—because it cannot—dispute that the Secured Lenders have a valid and perfected lien over Controladora’s property. *See* Am. Compl. ¶¶ 33–34 (articulating the bases on which Tradewinds claims priority); *see also* SOF ¶ 9 (confirming the validity, extent, and timing of the Secured Lenders’ lien over Controladora’s assets). It also cannot genuinely dispute that the Secured Lenders’ lien over Controladora’s property was perfected in 2019, well before the Judgment Lien that became effective only as of August 25, 2021. *See* SOF ¶ 9. Accordingly, Tradewinds posits a novel argument in an attempt to leapfrog the Secured Lenders’ lien: the Second Amended & Restated NPA is a “new financing agreement” that, in effect, severs the chain between the Secured Lenders’ liens originating in the 2019 NPA as of the subsequent amendment in June 2022. *Id.* ¶ 27–28, 33. This argument is untenable under the applicable law, and the Secured

Lenders are entitled to judgment as a matter of law on Tradewinds’ declaratory judgment claim regarding the priority of the parties’ respective liens.

A. The Second Amended & Restated NPA is Not a “New” Agreement and All Liens Arising Under the 2019 NPA, as Amended, Continued Uninterrupted.

The Secured Noteholders maintain a valid and perfected security interest under Article 9 of the UCC with respect to Controladora’s assets. *See* SOF ¶ 9. Those liens arise under and in connection with—and thus date back to—the execution of the 2019 NPA. *Id.* ¶¶ 31–32 (confirming that Controladora’s assets, including Dolphin Leisure’s Stock Certificates, were pledged in connection with the 2019 NPA, and continued without interruption under subsequent amendments). The Secured Lenders’ lien takes priority over all later perfected liens—including Tradewinds’ Judgment Lien that did not become valid and effective until August 25, 2021. *See id.* ¶ 24; *see also* Fla. Stat. § 679.3171 (providing that existing UCC Article 9 security interests have priority over later-created judgment liens); *see also* Fla. Stat. § 55.202(2)(a)(1) (“The rights of a judgment lienholder under this section are subject to the rights under chapter 679 of a secured party, as defined in s. 679.1021(1), who has a prior filed financing statement encumbering such payment intangibles or accounts and the proceeds thereof.”); Fla. Stat. § 55.202(2)(d) (“[T]he effective date of a judgment lien is the date, including the time of day, of filing.”); Fla. Stat. § 55.202(3) (“[T]he priority of a judgment lien . . . is established at the date and time the judgment lien certificate is filed.”)²³; *Gov’t Emples. Ins. Co. v. Mayzenberg*, 2023 WL 2524941, at *10 (S.D. Fla. Mar. 15, 2023) (holding that a valid lien is created “as of the date [the judgment creditor] files the judgment lien certificate”); *4 Dakota Ventures, LLC v. Seger Com. Props., LLC*, 2021 WL 4444971, at *5

²³ Section 55.202 provides an inapplicable exception to this rule. *See* Fla. Stat. 55.202(2)(d), (3) (referencing § 55.208, which establishes different effective dates with respect to liens on payment intangibles and accounts existing before October 1, 2023 and liens on writs of execution delivered to a sheriff prior to October 1, 2001).

(N.D. Fla. Sept. 9, 2021), *adopted*, 2021 WL 4440402 (N.D. Fla. Sept. 28, 2021) (“[T]he priority of a judgment lien is established at the time and date the judgment lien certificate is filed.”); *Shahid v. BancorpSouth Bank*, 2017 WL 11627990, at *4 (N.D. Fla. Oct. 19, 2017) (same); *Marrero*, 2015 U.S. Dist. LEXIS 193971, at *14 (same).

Confronted with that obvious priority, Tradewinds attempts to rewrite history by recasting the Secured Lenders’ perfection as occurring *after* August 25, 2021. By rebranding the Second Amended & Restated NPA as a “new financing agreement,”²⁴ Am. Compl. ¶ 33, Tradewinds suggests that this 2022 amendment extinguished and re-started the Secured Lenders’ rights, thereby effectively manufacturing a brief gap in the Secured Lenders’ liens through which Tradewinds asserts its Judgment Lien takes priority. Tradewinds’ assertion is contrary to the express language of the Second Amended & Restated NPA and unsupported by any applicable law, and its attempt to rewrite a contract to which it is not a party must be rejected.²⁵

The terms of the Second Amended & Restated NPA unequivocally confirm that it does not create or constitute a “new” agreement between the parties. Instead, it expressly and repeatedly reaffirms that the obligations originally undertaken under the 2019 NPA, as amended through the

²⁴ It is worth observing that Tradewinds’ claim that the Second Amended & Restated NPA is “new” contradicts its prior pleadings. In other proceedings, Tradewinds admitted that both the Second Amended & Restated NPA—as well as the amendments that came before it, including the First Amended & Restated NPA, which is not referenced in the Complaint—were no more than “refinances.” For example, in seeking to move the Dolphin Leisure Stock Certificates to Florida, Tradewinds described the Second Amended & Restated NPA as “the latest of three refinancing deals.” *Motion for Order to Deliver Stock Certificates*, FL Execution Action, **Ex. O**, at 3 ¶ 7. Moreover, in its *Supplemental Complaint*, Tradewinds repeatedly referred to both agreements as “refinancings.” *Id.* ¶¶ 15–16, 26. Nothing has changed since, save for the realization that it must invent novel arguments to claim priority over the Secured Lenders.

²⁵ The Complaint’s allegation that the 2019 NPA was a “new financing agreement” is a red herring. Am. Compl. ¶ 24. The critical date is August 25, 2021, the date on which Tradewinds’ Judgment Lien became effective. *See supra*. Any security interests arising before that date indisputably have priority. For this reason, and notwithstanding the “Background” allegations referencing the 2019 NPA, Count I focuses solely on the Second Amended & Restated NPA, Am. Compl. ¶ 24. Only by rebranding the Second Amended & Restated NPA as a “new” agreement can Tradewinds claim priority. For this same reason, the First Amended & Restated NPA, executed in 2020 and plainly prior to Tradewinds’ Judgment Lien, is also irrelevant to the issue of priority.

First Amended & Restated NPA, remain in full force and effect. *See* SOF ¶ 16–20. This includes all covenants, undertakings, and security interests granted therein, which continue without interruption. *Id.* It states explicitly that the obligors’ obligations under those documents creating the Secured Lenders’ rights in any collateral—including Controladora’s assets—“are reaffirmed and remain in full force and effect,” and that all liens in the Collateral “secure and shall continue to secure the obligations of the [o]bligors to the Secured [Lenders].” *Id.* Thus, the language of the Second Amended & Restated NPA plainly reflects an intent to maintain continuity and preserve the integrity and enforceability of the security arrangements established at inception, rather than to alter or replace the preexisting contractual framework. *Id.*

Despite the express terms of the Second Amended & Restated NPA, Tradewinds attempts to recast the contracting parties’ stated intent and, in so doing, manufacture a fiction: that the Second Amended & Restated NPA is not an amendment at all, but effectively a novation. *See* Am. Compl. ¶ 28. Specifically, Tradewinds alleges that “the complete change in ownership of Controladora, and the changes in security, guarantors, and terms illustrate that the actual borrowers and obligors were new parties, and as such the [Second Amended & Restated] NPA is not a refinance but a new financing agreement.” *Id.* Not only do the relevant agreements and their amendments establish otherwise, but the assertion that an amendment to add parties and adjust terms yields a “new” agreement is contrary to and otherwise unsupported by the applicable law.²⁶ The law does not convert routine amendments into a novation without clear intent—an intent that is contrary to the agreements themselves and otherwise absent here.

²⁶ The Second Amended & Restated NPA—and all preceding versions, for that matter—are to be construed according to New York law. *See* Second Amended & Restated NPA, **Ex. F**, at Section 25.6.

First, the facts. The “actual borrowers and obligors” under the Second Amended & Restated NPA are not “new parties,” Am. Compl. ¶ 28. Controladora, who issued the First Lien Notes and obtained the loan pursuant to the 2019 NPA, as amended in June 2020, remains the borrower under the Second Amended & Restated NPA. SOF ¶ 16. Nor do the obligors change substantially. To the contrary, the Second Amended & Restated NPA is by and between the same parties as the First Amended & Restated NPA—*i.e.*, the Secured Lenders, Controladora, Dolphin Capital, and the First Amended Guarantors—and merely adds Controladora’s and Dolphin Capital’s intermediate and ultimate parents as guarantors. *Id.* Other than the addition of the four (4) Second Amended Additional Guarantors, the security pledged in connection with the Second Amended & Restated NPA—which includes Controladora’s assets that had already been pledged, secured, and perfected around the execution of the 2019 NPA—is largely unchanged. Indeed, the Amended & Restated Security Agreement executed contemporaneously with the Second Amended & Restated NPA contains few, if any, substantive amendments, save for two:

- 1) An express representation that it is, in fact, an amendment and restatement, and that “[n]othing [t]herein contained shall be construed as a substitution, novation, release or discharge of any of the obligations outstanding under the Existing Note Purchase Agreement or the Existing Security Agreement or any other Finance Document or any instruments relating to the same, each of which shall remain in full force and effect . . .”; and
- 2) Confirmation that all liens and security interests created and granted under the 2019 NPA, as amended by the First Amended & Restated NPA, and the 2019 Security Agreement “shall continue without interruption” and are expressly reaffirmed by those parties to the original agreements.

SOF ¶ 16–20. Finally, there are no substantive modifications to the “terms” of the Second Amended & Restated NPA as compared to its predecessors. The Second Amended & Restated NPA states that the primary purpose of the amendment is simply to bring the four (4) Second Amended Additional Guarantors into the already existing agreement. SOF ¶ 16 (citing Section 1.1(c)–(d)(i), (e)). Thus, Tradewinds’ contention that the Second Amended & Restated NPA

“illustrate[s] that the actual borrowers and obligors were new parties,” Am. Compl. ¶ 28, is incorrect.

Second, the law. Courts look to the intention of the parties and the substance of the contract to ascertain whether an agreement is an amendment or a novation (*i.e.*, new agreement). *Country Glen, L.L.C. v. Himmelfarb*, No. 603691-2003, 2004 N.Y. Slip Op. 50886(U) (Sup. Ct. N.Y. County Apr. 29, 2004) (noting that “whether a discharge [of prior obligations] is effected depends on the intention of the parties deduced from the documents and the circumstances of their execution” (internal quotations and citations omitted)); *Meyersohn v. Bloom*, 259 A.D.2d 432, 433 (N.Y. 1st Dep’t 1999) (holding that the language of the document and the conduct of the parties must demonstrate an “unequivocal intention to extinguish the prior obligation”). Here, the Second Amended & Restated NPA and the Amended & Restated Security Agreement expressly state that they are *not* “new agreements” (*i.e.*, novations). SOF ¶ 17 (the Second Amended & Restated NPA “amend[s], restate[s] and replace[s] in its entirety the [predecessor agreements] which, as so amended and restated by this Agreement, continues in full force and effect *without rescission or novation thereof*”); *id.* ¶ 20 (“Nothing [in the Amended & Restated Security Agreement “shall be construed as a substitution, *novation*, release or discharge of any of the obligations outstanding under the [prior agreements].”). The only relevant “change” reflected in both the Second Amended & Restated NPA and the Amended & Restated Security Agreement is the addition of the Second Amended Additional Guarantors. *See id.* ¶ 16. This simple addition does not yield a “new” agreement. *See United States v. Agnello*, 344 F. Supp. 2d 360 (E.D.N.Y. 2004) (holding that an amendment was a modification, not a new agreement, and therefore original security interest provisions remained intact and thereby preserved the claimant’s rights in heavy machinery over the government’s claim pursuant to criminal forfeiture). Moreover, Section 9.7 of the 2019 NPA

expressly contemplated and required the joinder of subsidiary guarantors as part of the original contractual framework. SOF ¶ 10. Thus, the original agreement anticipated that additional guarantors would be added over time, so their joinder through the subsequent amendments actually implements—not alters—the original 2019 NPA.

In sum, the Secured Lenders’ security interests in Controladora’s assets remained continuous and undisturbed notwithstanding the execution of the Second Amended & Restated NPA. Because the Second Amended & Restated NPA was, as it stated expressly, an “amendment and restatement”—and not a new contract somehow severing the parties’ rights and obligations under the original 2019 NPA, as amended in June 2020—the Secured Lenders’ liens trace back to the original grant. The Secured Lenders’ liens, therefore, take priority over Tradewinds’ Judgment Lien as it relates to Controladora’s property, and the Secured Lenders are entitled to judgment as a matter of law on Tradewinds’ priority claim in this respect as well.

CONCLUSION

For the foregoing reasons, the Secured Lenders respectfully request that the Court (1) grant this Motion and grant summary judgment in its favor and against Tradewinds on Count I of Tradewinds’ Amended Complaint; (2) issue an order declaring that Tradewinds does not hold a validly perfected, first priority lien on the Collateral (as defined in the Amended Complaint) that is prior in time and superior in right to the liens of the Secured Lenders; (3) deny all other relief sought in the Amended Complaint; and (4) grant such other and further relief as the Court deems just and proper.

[Signatures on following page.]

Dated: November 25, 2025

/s/ Ann M. Kashishian

Scott D. Cousins (No. 3079)
Ann M. Kashishian (No. 5622)
LEWIS BRISBOIS BISGAARD & SMITH LLP
500 Delaware Avenue, Suite 700
Wilmington, DE 19801
Telephone: 302-295-9400
Email: scott.cousins@lewisbrisbois.com
ann.kashishian@lewisbrisbois.com

-and-

Paul J. Keenan Jr. (admitted pro hac vice)
John R. Dodd (admitted pro hac vice)
Kevin Whittam (admitted pro hac vice)
Blair Cahn (admitted pro hac vice)
Benjamin Davis (admitted pro hac vice)
BAKER & MCKENZIE LLP
830 Brickell Plaza, Suite 3100
Miami, Florida 33131
Telephone: 305-789-8900
Email: paul.keenan@bakermckenzie.com
john.dodd@bakermckenzie.com
kevin.whittam@bakermckenzie.com
blair.cahn@bakermckenzie.com
benjamin.davis@bakermckenzie.com

*Attorneys for Defendants Prudential Insurance
Company of America, Prudential Legacy Insurance
Company of New Jersey, and Cigna Health and Life
Insurance Company*