

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: Case No.: 24-55507-PMB
LAVIE CARE CENTERS, LLC, et. Chapter 11
al., Cases Jointly Administered
Debtor.

**RECOVERY CORP.’S MOTION TO ESTABLISH
STANDING TO CHALLENGE FINAL DIP FINANCING ORDER**

Pursuant to this Court’s “Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief” (the “Final DIP Financing Order”), and other applicable law, Healthcare Negligence Settlement Recovery Corp. (“Recovery Corp.”), by and through its undersigned counsel, hereby requests the order of this Court establishing that Recovery Corp. has standing to object to the Final DIP Financing Order to challenge the binding nature of the stipulations, admissions, agreements, and releases contained therein, including without limitation, those in clauses (i) through (xii) of paragraph E of the Final DIP



Financing Order (the “Stipulations”) as they relate to or bind the fifty (50) chapter 11 debtors (collectively, the “Florida DivestCo Debtors”)¹ whose reorganizations are jointly administered and pending before this Court (collectively, the “Jointly Administered Reorganizations”) under the lead debtor, LaVie Care Centers, LLC (the “Parent Debtor”), and in support states as follows:

I. RELEVANT BACKGROUND

1. These Jointly Administered Reorganizations were filed by 282 chapter 11 debtors (collectively, the “Debtors”). However, only forty-three (43) of the Debtors are operating business entities (collectively, the “OpCo Debtors”), and the rest are completely inactive, most being business entities that previously operated a business but transferred its business operations and assets (the “DivestCo

¹ 1010 Carpenters Way Operations LLC, 1120 West Donegan Avenue Operations LLC, 11565 Harts Road Operations LLC, 195 Mattie M. Kelly Boulevard Operations, LLC, 12170 Cortez Boulevard Operations LLC, 1465 Oakfield Drive Operations LLC, 15204 West Colonial Drive Operations LLC, 1550 Jess Parrish Court Operations LLC, 1615 Miami Road Operations LLC, 1851 Elkcam Boulevard Operations LLC, 216 Santa Barbara Boulevard Operations LLC, 2333 North Brentwood Circle Operations LLC, 2826 Cleveland Avenue Operations LLC, 3001 Palm Coast Parkway Operations LLC, 3101 Ginger Drive Operations LLC, 3735 Evans Avenue Operations LLC, 3920 Rosewood Way Operations, LLC, 4200 Washington Street Operations LLC, 4641 Old Canoe Creek Road Operations LLC, 518 West Fletcher Avenue Operations LLC, 5405 Babcock Street Operations LLC, 6305 Cortez Road West Operations LLC, 6414 13th Road South Operations LLC, 6700 NW 10th Place Operations LLC, 702 South Kings Avenue Operations LLC, 710 North Sun Drive Operations LLC, 741 South Beneva Road Operations LLC, 777 Ninth Street North Operations LLC, 7950 Lake Underhill Road Operations LLC, 9311 South Orange Blossom Trail Operations LLC, 9355 San Jose Boulevard Operations LLC, Baya Nursing and Rehabilitation, LLC, Brandon Facility Operations, LLC, Consulate Facility Leasing, LLC, Epsilon Health Care Properties, LLC, Floridian Facility Operations, LLC, Jacksonville Facility Operations, LLC, Joseira, LLC, Kissimmee Facility Operations, LLC, Lidenskab, LLC, LV CHC Holdings I, LLC, Melbourne Facility Operations, LLC, Miami Facility Operations, LLC, New Port Richey Facility Operations, LLC, North Fort Myers Facility Operations, LLC, Orange Park Facility Operations, LLC, Port Charlotte Facility Operations, LLC, Tallahassee Facility Operations, LLC, Tosturi, LLC, and West Altamonte Facility Operations, LLC.

Debtors”).

2. The Florida DivestCo Debtors are a set of non-operating Florida-based entities that divested their business operations prior to the initiation of these Jointly Administered Reorganizations.² The Debtors’ reorganization goals are predicated upon satisfying the debt of the 282 Debtors from the sale of the businesses of OpCo Debtors. The catch for all involved is the Debtors’ expectation of a general release of all liabilities tied to the “divestiture” of the assets and/or businesses of all DivestCo Debtors, including the Florida DivestCo Debtors. Any claims relating to actionable transfer of operating assets a priori belong to DivestCo Debtors whose assets were transferred, not operating debtors whose assets are due to be sold in the context of these Jointly Administered Reorganizations.

3. Recovery Corp. is a Florida corporation that holds one hundred (100) claims originally asserted by as many Florida-based claimants (collectively, the “Florida Claimants”). The Florida Claimants’ claims originally arose from nursing home negligence at a series of skilled nursing facilities (“SNFs”) formerly owned and/or operated by one of the Florida DivestCo Debtors. The business operations of the relevant SNFs remain fundamentally unchanged from when the negligence

² Of the fifty (50) Florida DivestCo Debtors referenced above, forty-three (43) of them unquestionably operated a SNF that was involved in one or more of the incidents giving rise to the lawsuits filed by the Florida Claimants (the “Florida Lawsuits”), and the remaining seven (7) were apparently involved in the ownership or operation of the SNFs as affiliates of the others.

incidents occurred.

4. After their claims arose, each of the Florida Claimants ultimately negotiated separate settlement agreements with the corresponding Florida DivestCo Debtors. Dan Dias, Esquire, and the law firm of Dias & Associates (together, the “Dias Defendants”) represented all of the Florida DivestCo Debtors in the lawsuits and settlement negotiations. While the Dias Defendants were negotiating the settlements with the various Florida Claimants, they were also working with the Parent Debtor, and its affiliates Synergy³, NSPIRE⁴ and Aspire⁵ to “divest” the Florida DivestCo Debtors of their assets and operations (unbeknownst to the various Claimant Firms). FC Investors XXI, LLC (the “Ultimate Parent”), through a series of subsidiaries and affiliates, is the ultimate parent of the Parent Debtor, Synergy, NSPIRE, and Aspire, and the common thread that links these seemingly unrelated transfers involving the Florida DivestCo Debtors.

5. The Florida DivestCo Debtors predictably defaulted under each of their settlement agreements. The aggregate of all the settlement agreements was \$11,331,000, of which only \$2,144,623.04 was paid. It is no coincidence that the Florida DivestCo Debtors are no-asset empty shells: The Florida DivestCo Debtors

³ Pourlessoins, LLC, d/b/a Synergy Healthcare Services, a/k/a Synergy Healthcare Services, Inc.

⁴ NSPRMC, LLC, d/b/a NSPIRE Healthcare.

⁵ Aspire Healthcare, LLC.

divested their business operations precisely because they were being sued in connection with avoidable transfers and tortious misrepresentations.

6. Entities owned and controlled by the Ultimate Parent through Synergy, NSPIRE, Aspire and/or other subsidiaries of the Ultimate Parent (collectively, the “Florida SNF Transferees”) currently operate the relevant SNFs with impunity, with the same substandard care and lack of financial responsibility with zero or minimal insurance coverage, just as the Florida DivestCo Debtors used to have.

7. It now appears that the Florida SNF Transferees took title under dubious circumstances. No less than seventy (70) SNFs were transferred by DivestCo Debtors to related entities for little or no consideration under operations transfer agreements to entities under the umbrella of the Ultimate Parent.

II. PROCEDURAL HISTORY

8. On June 2 and 3, 2024, the Debtors commenced the Reorganizations and filed a series of requests for relief. Shortly thereafter, it became apparent that the Debtors would be seeking to consolidate, sell the assets of the OpCo Debtors, and obtain releases for the various transferees, affiliates, parents, fiduciaries, and other likely targets of fraudulent transfer and related claims (collectively, the “Litigation Targets”). This became apparent by the filing of the DIP Finance

Motion⁶ and the Bidding Procedures Motion⁷ on June 3 and 10, 2024, respectively. None of the Florida DivestCo Debtors have any assets to sell, nor do they have any need for post-petition finance. But while none of the Florida DivestCo Debtors will benefit in the least from the sale of assets by the Florida OpCo Debtors or post-petition financing, all are being asked to release the Litigation Targets.

9. On June 28, 2024, this Court entered the Final DIP Financing Order granting the relief requested in the DIP Finance Motion. Pursuant to the Final DIP Financing Order, the Stipulations are subject to the reservation of challenge rights of third parties. Paragraph 23 provides that a party in interest may challenge the binding nature of the Stipulations by filing a motion to establish standing, served with “a draft complaint attached to such motion”. [Doc. 189 at paragraph 23(d)]. Accordingly, the following argument and memorandum of law establishes Recovery Corp.’s standing to object to the Stipulations, and the corresponding proposed complaint (the “Proposed Complaint”) is attached hereto as Exhibit “A.”

⁶ “Debtors’ Emergency Motion For Entry Of Interim And Final Orders (I) Authorizing The Debtors To (A) Obtain Postpetition Financing And (B) Utilize Cash Collateral, (II) Granting Adequate Protection To Prepetition Secured Parties, (III) Modifying The Automatic Stay, (IV) Scheduling A Final Hearing, And (V) Granting Related Relief” [Doc. 15].

⁷“Debtors’ Motion For Entry Of An Order (I) Approving Bidding Procedures And Bid Protections, (II) Scheduling Certain Dates And Deadlines With Respect Thereto, (III) Approving The Form And Manner Of Notice Thereof, (IV) Establishing Notice And Procedures For The Assumption And Assignment Of Contracts And Leases, (V) Authorizing The Assumption And Assignment Of Assumed Contracts, And (VI) Authorizing The Sale Of Assets” [Doc. 104].

III. ALLEGATIONS RELATING TO RELIEF REQUESTED AND MEMORANDUM OF LAW

In order for Recovery Corp. to establish standing to challenge the Stipulations, it must meet the following requirements: (i) Article III’s Constitutional requirements, (ii) federal court prudential standing requirements, and (iii) Bankruptcy Code §1109(b)’s “party in interest” requirements. In re Old Carco LLC, 500 B.R. 683, 690 (Bankr. S.D.N.Y. 2013).

A. Article III Constitutional Requirements

To meet Article III’s Constitutional requirements for standing, “a claimant must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant’s challenged behavior; and likely to be redressed by a favorable ruling.” Davis v. Fed. Election Comm’n, 554 U.S. 724, 733 (2008).

As for the injury-in-fact requirement, a party meets this element of Constitutional standing with a specific, identifiable injury, or a personal stake in the outcome of the litigation. In re Global Indus. Technologies, Inc., 645 F.3d 201, 210 (3d Cir. 2011).

Here, Recovery Corp. holds one hundred (100) claims asserted by the Florida Claimants, arising out of the actions of SNFs formerly operated by the Florida DivestCo Debtors. These claims began with nursing home negligence actions, all of which were settled pursuant to separate settlement agreements negotiated by the Dias Defendants. However, Recovery Corp.’s claims evolved to

assert multiple theories of liability against the Florida DivestCo Debtors, the Parent Debtor, NSPIRE, Aspire, the Dias Defendants, and others, in large part for the fraudulent transfers of assets divesting the Florida DivestCo Debtors of any ability to fulfill the settlement obligations owed to Recovery Corp. on behalf of the Florida Claimants.

The Stipulations of the Final DIP Finance Order include binding the Florida DivestCo Debtors to the obligations of the postpetition financing and providing releases to the nondebtor post-petition finance lenders OHI DIP Lender, LLC TIX 33433 LLC (together, the “DIP Lenders”) . These Stipulations directly impact Recovery Corp.’s likelihood of recovery by establishing the postpetition financing as a secured obligation of the Florida DivestCo Debtors. Accordingly, Recovery Corp. has a personal stake in objecting to the Final DIP Financing Order as it effectively inhibits Recovery Corp.’s position in recovering from the Florida DivestCo Debtors.

In terms of causation and redressability, Recovery Corp.’s injury described above is traceable to the Final DIP Finance Order. The Final DIP Finance Order made binding the Stipulations and the resulting injury to Recovery Corp. in the diminished viability of recovery on Recovery Corp.’s claims against the Florida DivsetCo Debtors. Additionally, Recovery Corp.’s injury is easily redressable by a favorable ruling of this Court that either vacates, clarifies, or reforms the Final DIP

Finance Order to prevent the Florida DivestCo Debtors' obligations to Recovery Corp. from being subordinated unnecessarily and without value given.

B. Federal Prudential Requirements

The second aspect of establishing standing in bankruptcy court falls under the prudential standing doctrine, which generally requires that a litigant raise its own legal rights, not those of another. In re Pettine, 655 B.R. 196, 205 (10th Cir. BAP 2023). In this instance, Recovery Corp. is by no means raising the legal rights of another. Here, Recovery Corp. is challenging the Final DIP Finance Order in order to protect its right to collect on its claims. This is not an interest held by a third party that Recovery Corp. seeks to advance; accordingly, Recovery Corp. has prudential standing to challenge the Final DIP Finance Order.

C. Bankruptcy Code Requirements

The final requirement to establish standing in bankruptcy court is the "party in interest" requirement pursuant to Bankruptcy Code §1109(b). In re Carco, 500 B.R. at 690. Bankruptcy Code §1109(b) states: "A party in interest, including the debtor, the trustee, a creditor's committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter." The phrase "any issue in a case" has been interpreted as any issue, regardless of if it arises in a contested matter or adversary proceeding. In re Celsius Network LLC, 659 B.R.

850 at 863-64 (Bankr. S.D.N.Y. 2024). Importantly, this “party in interest” standing does not arise where a party seeks to assert a right that is purely derivative of another’s rights in a bankruptcy proceeding. Id.

A “party in interest” is often a party who has a pecuniary interest in the outcome of a case significant enough that it would require representation, and generally, a “party in interest” must have a financial or legal stake in the matter. Id. Recovery Corp. is challenging the Final DIP Finance Order as a creditor of the Florida DivestCo Debtors in these Jointly Administered Reorganizations whose rights will be diminished if the Final DIP Finance Order is allowed to stand, including the stipulations and releases contained therein.

Based on the foregoing, Recovery Corp. has standing to seek relief from the Final DIP Financing Order and this Court should authorize the filing of the Proposed Complaint.

WHEREFORE, Recovery Corp. respectfully requests the order of this Court:

- a. granting this motion,
- b. finding that Recovery Corp. has standing to challenge the Final DIP Finance Order;
- c. authorizing filing of the Proposed Complaint; and
- d. granting any other further relief this Court deems just and proper.

DATED this 16th day of September, 2024.

/s/ John A. Anthony

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished on September 16, 2024, by electronic means to:

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EXHIBIT “A”

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

Case No.: 24-55507-PMB

LAVIE CARE CENTERS, LLC, et.
al.,

Chapter 11

Cases Jointly Administered

Debtor.

HEALTHCARE NEGLIGENCE
SETTLEMENT RECOVERY CORP.,

Plaintiff,

Adversary Proceeding No.:

vs.

LAVIE CARE CENTERS, LLC, 1010
CARPENTERS WAY OPERATIONS LLC;
1120 WEST DONEGAN AVENUE
OPERATIONS LLC, 11565 HARTS ROAD
OPERATIONS LLC, 12170 CORTEZ
BOULEVARD OPERATIONS LLC, 1465
OAKFIELD DRIVE OPERATIONS LLC;
15204 WEST COLONIAL DRIVE
OPERATIONS LLC, 1550 JESS PARRISH
COURT OPERATIONS LLC, 1615 MIAMI
ROAD OPERATIONS LLC, 1851 ELKCAM
BOULEVARD OPERATIONS LLC, 216
SANTA BARBARA BOULEVARD

OPERATIONS LLC, 2333 NORTH BRENTWOOD CIRCLE OPERATIONS LLC, 2826 CLEVELAND AVENUE OPERATIONS LLC, 3001 PALM COAST PARKWAY OPERATIONS LLC, 3101 GINGER DRIVE OPERATIONS LLC, 3735 EVANS AVENUE OPERATIONS LLC, 4200 WASHINGTON STREET OPERATIONS LLC, 4641 OLD CANOE CREEK ROAD OPERATIONS LLC, 518 WEST FLETCHER AVENUE OPERATIONS LLC, 5405 BABCOCK STREET OPERATIONS LLC, 6305 CORTEZ ROAD WEST OPERATIONS LLC, 6414 13TH ROAD SOUTH OPERATIONS LLC, 6700 NW 10TH PLACE OPERATIONS LLC, 702 SOUTH KINGS AVENUE OPERATIONS LLC, 710 NORTH SUN DRIVE OPERATIONS LLC, 741 SOUTH BENEVA ROAD OPERATIONS LLC, 777 NINTH STREET NORTH OPERATIONS LLC, 7950 LAKE UNDERHILL ROAD OPERATIONS LLC, 9311 SOUTH ORANGE BLOSSOM TRAIL OPERATIONS LLC, 9355 SAN JOSE BOULEVARD OPERATIONS LLC, BAYA NURSING AND REHABILITATION, LLC, BRANDON FACILITY OPERATIONS, LLC, CONSULATE FACILITY LEASING, LLC, EPSILON HEALTH CARE PROPERTIES, LLC, FLORIDIAN FACILITY OPERATIONS, LLC, JACKSONVILLE FACILITY OPERATIONS, LLC, JOSERA, LLC, KISSIMMEE FACILITY OPERATIONS, LLC, LIDENSKAB, LLC, LV CHC HOLDINGS I, LLC, MELBOURNE FACILITY OPERATIONS, LLC, MIAMI FACILITY OPERATIONS, LLC, NEW PORT RICHEY FACILITY OPERATIONS, LLC, NORTH FORT MYERS FACILITY OPERATIONS, LLC, ORANGE PARK

FACILITY OPERATIONS, LLC, PORT CHARLOTTE FACILITY OPERATIONS, LLC, TALLAHASSEE FACILITY OPERATIONS, LLC, TOSTURI, LLC, AND WEST ALTAMONTE FACILITY OPERATIONS, LLC, OHI DIP LENDER, LLC, TIX 33433 LLC,

Defendants.

_____ /

ADVERSARY COMPLAINT

Plaintiffs, Healthcare Negligence Settlement Recovery Corp. (“Recovery Corp.”), by and through its undersigned counsel, hereby sues defendants, Lavie Care Centers, LLC (the “Parent Debtor”), 1010 Carpenters Way Operations LLC; 1120 West Donegan Avenue Operations LLC, 11565 Harts Road Operations LLC, 12170 Cortez Boulevard Operations LLC, 1465 Oakfield Drive Operations LLC; 15204 West Colonial Drive Operations LLC, 1550 Jess Parrish Court Operations LLC, 1615 Miami Road Operations LLC, 1851 Elkcam Boulevard Operations LLC, 216 Santa Barbara Boulevard Operations LLC, 2333 North Brentwood Circle Operations LLC, 2826 Cleveland Avenue Operations LLC, 3001 Palm Coast Parkway Operations LLC, 3101 Ginger Drive Operations LLC, 3735 Evans Avenue Operations LLC, 4200 Washington Street Operations LLC, 4641 Old Canoe Creek Road Operations LLC, 518 West Fletcher Avenue Operations LLC, 5405 Babcock Street Operations LLC, 6305 Cortez Road West Operations LLC, 6414 13th Road South Operations LLC, 6700 NW 10th Place Operations LLC, 702 South Kings

Avenue Operations LLC, 710 North Sun Drive Operations LLC, 741 South Beneva Road Operations LLC, 777 Ninth Street North Operations LLC, 7950 Lake Underhill Road Operations LLC, 9311 South Orange Blossom Trail Operations LLC, 9355 San Jose Boulevard Operations LLC, Baya Nursing And Rehabilitation, LLC, Brandon Facility Operations, LLC, Consulate Facility Leasing, LLC, Epsilon Health Care Properties, LLC, Floridian Facility Operations, LLC, Jacksonville Facility Operations, LLC, Josera, LLC, Kissimmee Facility Operations, LLC, Lidenskab, LLC, LV CHC Holdings I, LLC, Melbourne Facility Operations, LLC, Miami Facility Operations, LLC, New Port Richey Facility Operations, LLC, North Fort Myers Facility Operations, LLC, Orange Park Facility Operations, LLC, Port Charlotte Facility Operations, LLC, Tallahassee Facility Operations, LLC, and West Altamonte Facility Operations, LLC (collectively, the “Florida DivestCo Debtors”), OHI DIP Lender, LLC (“OHI DIP Lender”), TIX 33433 LLC (“TIX DIP Lender”), all of whom are collectively referred to herein as the “Defendants”, and alleges:

I. JURISDICTION AND VENUE

1. On June 2 and 3, 2024 (the “Petition Date”), 282 debtors (collectively, the “Debtors”) filed voluntary petitions for protection from creditors under chapter 11 of the Bankruptcy Code pursuant to Bankruptcy Code §301 and other applicable law, whose reorganizations are jointly administered and pending before this Court (collectively, the “Jointly Administered Reorganizations”) under the Parent Debtor

as lead debtor and parent entity of the remaining Debtors.

2. This is an adversary proceeding (this “Adversary Proceeding”)¹ governed by Federal Rule of Bankruptcy Procedure 7001, and other applicable law.

3. This is a “core” proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(D).

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1409 as this action arises and relates to the Bankruptcy Case.

II. PARTIES

6. Recovery Corp. is a Florida corporation and is a creditor of fifty (50) Florida-based Debtors (collectively, the “Florida DivestCo Debtors”)² in the Jointly Administered Reorganizations.

7. The Parent Debtor is a Delaware limited liability company with its principal place of business located in Atlanta, Georgia.

8. 1010 Carpenters Way Operations LLC, is a Florida limited liability company.

9. 1120 West Donegan Avenue Operations LLC, is a Florida limited

¹ The deadline set by this Court for filing this Adversary Proceeding was September 15, 2024, which fell on a Sunday. Pursuant to Federal Rule of Bankruptcy Procedure 9006, the deadline to initiate this Adversary Proceeding extended to September 16, 2024. This Adversary Proceeding is therefore timely.

² Of the 282 Reorganizations jointly administered by this Court, a schedule of each of the DivestCo Reorganizations is attached hereto as Exhibit “A.”

liability company.

10. 11565 Harts Road Operations LLC, is a Florida limited liability company.

11. 12170 Cortez Boulevard Operations LLC, is a Florida limited liability company.

12. 1465 Oakfield Drive Operations LLC, is a Florida limited liability company.

13. 15204 West Colonial Drive Operations LLC, is a Florida limited liability company.

14. 1550 Jess Parrish Court Operations LLC, is a Florida limited liability company.

15. 1615 Miami Road Operations LLC, is a Florida limited liability company.

16. 1851 Elkcam Boulevard Operations LLC, is a Florida limited liability company.

17. 216 Santa Barbara Boulevard Operations LLC, is a Florida limited liability company.

18. 2333 North Brentwood Circle Operations LLC, is a Florida limited liability company.

19. 2826 Cleveland Avenue Operations LLC, is a Florida limited liability

company.

20. 3001 Palm Coast Parkway Operations LLC, is a Florida limited liability

company.

21. 3101 Ginger Drive Operations LLC, is a Florida limited liability

company.

22. 3735 Evans Avenue Operations LLC, is a Florida limited liability

company.

23. 4200 Washington Street Operations LLC, is a Florida limited liability

company.

24. 4641 Old Canoe Creek Road Operations LLC, is a Florida limited

liability company.

25. 518 West Fletcher Avenue Operations LLC, is a Florida limited liability

company.

26. 5405 Babcock Street Operations LLC, is a Florida limited liability

company.

27. 6305 Cortez Road West Operations LLC, is a Florida limited liability

company.

28. 6414 13th Road South Operations LLC, is a Florida limited liability

company.

29. 6700 NW 10th Place Operations LLC, is a Florida limited liability

company.

30. 702 South Kings Avenue Operations LLC, is a Florida limited liability

company.

31. 710 North Sun Drive Operations LLC, is a Florida limited liability

company.

32. 741 South Beneva Road Operations LLC, is a Florida limited liability

company.

33. 777 Ninth Street North Operations LLC, is a Florida limited liability

company.

34. 7950 Lake Underhill Road Operations LLC, is a Florida limited

liability company.

35. 9311 South Orange Blossom Trail Operations LLC, is a Florida limited

liability company.

36. 9355 San Jose Boulevard Operations LLC, is a Florida limited liability

company.

37. Baya Nursing And Rehabilitation, LLC, is a Delaware limited liability

company.

38. Brandon Facility Operations, LLC, is an Ohio limited liability

company.

39. Consulate Facility Leasing, LLC, is a Florida limited liability company.

40. Epsilon Health Care Properties, LLC, is a Florida limited liability company.

41. Floridian Facility Operations, LLC, is a Florida limited liability company.

42. Jacksonville Facility Operations, LLC, is an Ohio limited liability company.

43. Joseira, LLC, is a Florida limited liability company.

44. Kissimmee Facility Operations, LLC, is an Ohio limited liability company.

45. Lidenskab, LLC, is a Florida limited liability company.

46. LV CHC Holdings I, LLC, is a Delaware limited liability company.

47. Melbourne Facility Operations, LLC, is an Ohio limited liability company.

48. Miami Facility Operations, LLC, is an Ohio limited liability company.

49. New Port Richey Facility Operations, LLC, is an Ohio limited liability company.

50. North Fort Myers Facility Operations, LLC, is an Ohio limited liability company.

51. Orange Park Facility Operations, LLC, is an Ohio limited liability company.

52. Port Charlotte Facility Operations, LLC, is an Ohio limited liability company.

53. Tallahassee Facility Operations, LLC, is an Ohio limited liability company.

54. West Altamonte Facility Operations, LLC, is an Ohio limited liability company.

55. OHI DIP Lender, LLC (“OHI DIP Lender”), is a Delaware limited liability company.

56. TIX 33433 LLC (“TIX DIP Lender”), is a Delaware limited liability company.

III. FACTUAL BACKGROUND

A. SNFS, OPCOS, PROPCOS, DIVESTCOS, and the Context of these Jointly Administered Reorganizations

57. These Jointly Administered Reorganizations fall within the term “SNF Reorganizations” (pronounced “snif”) following the argot of the business executives and lawyers who specialize in insolvencies pertaining to skilled nursing facilities (“SNFs”).

58. Large SNF businesses periodically shed accumulated tort liability through cyclical chapter 11 SNFs. The owners, landlords, and operators change title periodically; however, the (lack of) financial responsibility, lack of insurance coverage and substandard care remain unchanged.

59. The Debtors include the Parent Debtor, as well as a large number of its subsidiaries. Consulate and its successive subsidiaries have historically owned and/or operated numerous SNFs throughout the State of Florida, many of which are related to claims asserted presently by Recovery Corp.

60. Modern American business law is familiar with the distinction between “OpCo” entities and “PropCo” entities, and the distinction between business entities that operate a business and corresponding business entities that hold title to the place of business.³ These Jointly Administered Reorganizations also utilize a less familiar neologism, the “DivestCo”: This term is a euphemism for a business entity that previously operated a business or owned an asset, but transferred that asset on its way to bankruptcy court.

61. In these Jointly Administered Reorganizations, only forty-three (43) of the Debtors are confirmed OpCos (collectively, the “OpCo Debtors”), and the rest are completely inactive, most being DivestCos (the “DivestCo Debtors”).

62. There are a set of non-operating Florida-based entities (collectively, the “Florida DivestCo Debtors”) that are DivestCo entities.⁴

³ There is nothing inherently wrong with the distinction between an OpCos and a holding company. However, when OpCos are intentionally undercapitalized to render them judgmentproof, particularly when the conduct of their business is such that large liabilities are contemplated, whoever or whatever controls that undercapitalized OpCo may be at risk under several legal theories.

⁴ Of the fifty (50) Florida DivestCo Debtors referenced above, forty-three (43) of them unquestionably operated a SNF that was involved in one or more of the incidents giving rise to the

63. The Debtors are not substantively consolidated and are not good candidates for substantive consolidation under prevailing law. However, the Debtors' reorganization goals are predicated upon satisfying the debt of 282 Debtors from the sale of the businesses of OpCo Debtors.

64. Through the reorganization process, the Debtors seek a general release of all liabilities tied to the "divestiture" of the assets and/or businesses of all DivestCo Debtors, including the Florida DivestCo Debtors.

65. The claims relating to actionable transfer of operating assets a priori belong to DivestCo Debtors whose assets were transferred, not operating debtors whose assets are due to be sold in the context of these Reorganizations.

B. Pre-Petition Background Leading Up to the Petition Date

66. Recovery Corp. is a Florida corporation that holds one hundred (100) claims originally asserted by as many Florida-based claimants (collectively, the "Florida Claimants"⁵). The Florida Claimants' claims⁶ originally arose from nursing

law suits filed by the Florida Claimants (the "Florida Lawsuits"), and the remaining seven (7) were apparently involved in the ownership or operation of the SNFs as affiliates of the others.

⁵ The schedule of the Florida Claimants is attached hereto as Exhibit "B," and specifically identifies each such Florida Claimant, the Claimant Firm corresponding to that Florida Claimant, the amount of the liquidated claim, and other relevant information. The aggregate amount of all claims of Florida Claimants is \$9,186,376.96 and has been modified due to post-petition developments.

⁶ The Florida Claimants are all elderly and vulnerable nursing home residents (and/or their families) who suffered serious personal injuries including infected Stage 4 pressure sores down to the bone, falls, fractures, infections leading to sepsis, organ failure and death, dehydration and malnutrition, and wrongful death caused by neglect and Resident's Rights violations at SNFs owned and operated by these Florida DivestCo Debtors.

home negligence at a series of SNFs formerly owned and/or operated by one of the Florida DivestCo Debtors.

67. All the Florida DivestCo Debtors and their corresponding SNFs have historically operated under the name “Consulate.” Despite the Florida DivestCo Debtors’ transferring away their SNFs, the business operations of the relevant SNFs remain fundamentally unchanged from when the negligence incidents occurred.

68. After their claims arose, each of the Florida Claimants retained one of seventeen (17) law firms (collectively, the “Claimant Firms”)⁷ specializing in the representation of nursing home negligence victims with claims arising under Florida Statutes §§ 400.022, 400.023, (“The Residents’ Rights Act”) and other applicable law.

69. The Claimant Firms commenced lawsuits against corresponding Florida DivestCo Debtors; however, they each ultimately negotiated separate settlement agreements with the corresponding Florida DivestCo Debtors. In the lawsuits and settlement negotiations, all Florida DivestCo Debtors were represented by Dan Dias, Esquire and the law firm of Dias & Associates (together, the “Dias Defendants”)⁸.

⁷ Each of the Claimant Firms are listed on the schedule attached as Exhibit “C,” and lead trial counsel for each of the Claimant Firms is a director on the board of directors of Recovery Corp.

⁸ The Dias Defendants are currently representing the Debtors without complying with Bankruptcy Code §327(e), and are also purporting to represent Synergy.

70. While the Dias Defendants were negotiating settlement amounts and payment terms with the various Claimant Firms, the Dias Defendants were also working with the Parent Debtor, and its affiliates Synergy⁹, NSPIRE¹⁰ and Aspire¹¹ to “divest” the Florida DivestCo Debtors of their assets and operations (unbeknownst to the various Claimant Firms).

71. FC Investors XXI, LLC (the “Ultimate Parent”), through a series of subsidiaries and affiliates, is the ultimate parent of the Parent Debtor, Synergy, NSPIRE, and Aspire.

72. Although the Claimant Firms and the Dias Defendants negotiated scores of separate settlement agreements for all the Florida Claimants with all the Florida DivestCo Debtors, they all utilized the same basic settlement agreement and release form. All settlements were predicated upon payments made over time and avoided risk of the entry of a judgment against any of the Debtors.

73. The Florida DivestCo Debtors agreed to the negotiated liquidated amounts of every settlement with every injured or killed nursing home resident that now makes up the Recovery Corp group.

74. The Dias Defendants affirmatively represented to the Claimant Firms that if they were to agree to sums that were lower than the amount truly owed, and

⁹ Pourlessoins, LLC, d/b/a Synergy Healthcare Services, a/k/a Synergy Healthcare Services, Inc.

¹⁰ NSPRMC, LLC, d/b/a NSPIRE Healthcare.

¹¹ Aspire Healthcare, LLC.

spaced payments over time, then the SNFs in question would be able to fund settlements as a line-item expense going forward rather than seek chapter 11 protection. This was part of a very deliberate pattern of misrepresentation, that included categorical insistence that no judgment be entered against any of the Florida DivestCo Debtors or the Parent Debtor.¹²

75. The Florida DivestCo Debtors predictably defaulted under each of their settlement agreements.¹³ It is no coincidence that the Florida DivestCo Debtors are no-asset empty shells: The Florida DivestCo Debtors divested their business operations precisely because they were being sued in connection with avoidable transfers and tortious misrepresentations.

76. During early 2024, the Claimant Firms retained the undersigned on behalf of the Florida Claimants to collect on the settlement agreements that the Florida DivestCo Debtors had breached by failing to make the agreed payments.¹⁴ Recovery Corp. was formed to proportionately represent the Florida Claimants in the Florida DivestCo Reorganizations and enforce their settlement agreements.

77. With the information available, the Claimant Firms authorized and

¹² Attached as Exhibit “D” is an article that reports Consulate’s modus operandi shortly after the time that the Dias Defendants were negotiating with the Claimant Firms. Of course, at the time, nobody knew that the Dias Defendants were also facilitating SNF transfers from the Florida DivestCo Debtors.

¹³ The aggregate of all settlement agreements was \$11,331,000, of which \$2,144,623.04 was paid.

¹⁴ As Recovery Corp. was being formed, it was also ascertained that McDermott Will & Emery LLP (“McDermott”) had been involved in the process of decision-making for the Florida DivestCo Debtors.

directed counsel for Recovery Corp. to initiate the Miami Action¹⁵ to recover against the Florida DivestCo Debtors and against the Parent Debtor, NSPIRE, Aspire, the Dias Defendants, and others (collectively, the “Miami Defendants”). Causes of action alleged in Recovery Corp.’s complaint in the Miami Action (the “Miami Complaint”¹⁶) include (a) intentionally and constructively fraudulent transfers, (b) declaratory relief under Florida’s “mere continuation”, “de facto merger”, and “corporate veil piercing” doctrines, and (c) damages for deceptive and unfair trade practices, civil conspiracy, breach of fiduciary duty, and unjust enrichment.

78. All Florida DivestCo Debtors appeared through McDermott, while the remaining Miami Defendants appeared through the Dias Defendants.

79. The Miami Complaint contained the best information available at the time. However, substantial additional information now exists to support the proposition that entities owned and controlled by the Ultimate Parent through Synergy, NSPIRE, Aspire and/or other subsidiaries of the Ultimate Parent (collectively, the “Florida SNF Transferees”) currently operate the relevant SNFs with impunity, with the same substandard care and lack of financial responsibility with zero or minimal insurance coverage, just as the Florida DivestCo Debtors used

¹⁵ Styled Healthcare Negligence Settlement Recovery Corp. v. 5405 Babcock Street Operations, LLC, et al., Case No. 2024-007342-CA pending before the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

¹⁶ A copy of the Miami Complaint, dated April 22, 2024, (exclusive of exhibits) is attached hereto as Exhibit “E.”

to have.¹⁷

80. It now appears that the Florida SNF Transferees took title under dubious circumstances. No less than seventy (70) SNFs were transferred by DivestCo Debtors to seemingly related entities for little or no consideration under operations transfer agreements (“OTAs”) en masse during the months after McDermott was retained during February 2023.

81. These were clearly not arms-length good-faith transactions. For any of the transfers to have occurred, master lease agreements with common landlords would have required landlord consent.

82. The largest of the landlords in terms of the SNFs at issue, the “Omega Parties,” sold their SNFs at substantial profit in connection with the transfer of operations of their SNFs, presumably because the SNFs continued business as usual when passed from each Florida DivestCo Debtor to each Florida SNF Transferee.¹⁸

83. Although required under Florida Statutes § 400.024(2), neither the Ultimate Parent, nor its subsidiary the Parent Debtor, nor its subsidiaries the Florida DivestCo Debtors, nor any of the Florida SNF Transferees notified any of the Florida

¹⁷ Attached hereto as Exhibit “F” is a schedule that correlates each of the Florida Claimants with the liable Florida DivestCo Debtors, also identifying each corresponding SNF, and identifying the Florida SNF Transferee currently operating each such SNF, presumably in anticipation of yet another reincarnation of Consulate.

¹⁸ The Omega Parties are Litigation Targets, because the value received from permitting the SNFs to be transferred under the OTAs was greater because the SNFs remained occupied. It is a basic appraisal tenet that an operating commercial property sells for more than a vacant shell.

Claimants of the intended transfer.

84. Under Florida’s SNF transfer notice requirement, SNF owners and operators are required to notify any known or potential tort claimants prior to any change of ownership and change of operator applications are filed with the Agency for Healthcare Administration (“AHCA”).¹⁹ So, stealth was a part of the strategy of orchestrating substantial transfers in order to prevent the entry of judgments that might have interrupted the Ultimate Parent’s broader goal of divesting as many operational SNFs as possible before filing.

IV. PROCEDURAL HISTORY

85. On June 2 and 3, 2024, the Debtors commenced these Jointly Administered Reorganizations and filed a series of requests for relief.

86. Shortly thereafter, it became apparent that the Debtors would be seeking to consolidate, sell the assets of the OpCo Debtors, and obtain releases for the Omega Parties, the various transferees, affiliates, parents, fiduciaries, and other likely targets of fraudulent transfer and related claims (collectively, the “Litigation Targets”).

87. On June 10, 2024, the Debtors filed the Bidding Procedures Motion²⁰

¹⁹ As reflected in documentation attached hereto as Composite Exhibit “G” Recovery Corp has brought to the attention of AHCA the Debtors’ concealment of the transactions in question.

²⁰ See [Doc. 104]. The Bidding Procedures Motion seeks procedures for marketing and selling the SNFs of the OpCo Debtors, and once again contemplates giving releases from all Debtors in favor of Litigation Targets even though the creditors of non- OpCo Debtors will receive nothing on account of very valuable claims.

in which the Debtors sought authorization of this Court to sell assets of the OpCo Debtors. In connection with the Bidding Procedures Motion, the Debtors seek releases that would impact Recovery Corp.'s claims against Litigation Targets despite the fact that the sale of OpCo Debtor assets will be of no benefit to the Florida DivestCo Debtors.

88. On June 13, 2024, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors in the Reorganizations (the "Creditors' Committee"), that is now actively involved and represented by counsel.²¹

89. The Creditors' Committee has diligently sought to investigate the very claims that Recovery Corp. articulated first in the Miami Action; however, the Debtors have been extremely unwilling to provide succinct and informative responses to discovery pertaining to the circumstances under which the DivestCo Debtors were divested.

90. Even though McDermott was retained by the Debtors before many of the transfers occurred, the Debtors urge that they will be able to utilize a single independent director and another law firm to self-examine.

91. On July 23, 2024, the Debtors finished filing their schedules and

²¹ Recovery Corp. is a member of the Creditors' Committee; however, the composition of the Creditors' Committee leaves little doubt that there is a meaningful dichotomy as between creditors of OpCo Debtors and DivestCo Debtors.

statements of affairs, as well as the Combined Plan²², which falls far short of the requirements of both Bankruptcy Code §§1125(a) and 1129(a) and (b).

92. From a fair reading of the Combined Plan, there is no way to tell how the Debtors seek to reorganize, what if anything will emerge from confirmation, whether any claims belonging to the estates might be maintained, whether Litigation Targets will be released, and what distribution if any will be made to creditors of the DivestCo Debtors.

93. Making the most logical assumptions, Recovery Corp. and any other creditors of the vacuous Florida DivestCo Debtors will receive nothing from confirmation, but will be subject to release provisions in favor of Litigation Targets.

94. On June 3, 2024, the Debtors filed the DIP Finance Motion.²³

95. The DIP Finance Motion, inter alia, sought the order of this Court authorizing the Debtors to obtain post-petition financing (the “DIP Facility”) from the OHI DIP Lender and the TIX DIP Lender (together, the “DIP Lenders”) in the aggregate amount of \$20,000,000, with the Parent Debtor as borrower with the balance of the Debtors guarantying the DIP Facility.

²² “Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization” [Doc. 273].

²³ See [Doc. 15]. It is useful to note that the DIP Finance Motion seeks authority for all Debtors to borrow funds from the Omega Parties and non-debtor insiders of the Ultimate Parent even though the DivestCo Debtors have no need to borrow funds, illustrating a significant dichotomy separating the OpCo Debtors from the rest. And yet the DIP Finance Motion seeks insider releases even from Debtors that were “de-SNFed” pre-petition.

96. On June 5, 2024, this Court entered its Interim DIP Financing Order²⁴ and on June 28, 2024, this Court entered its Final DIP Financing Order²⁵ granting the relief requested in the DIP Financing Motion and authorizing the Debtors to enter into the DIP Facility.

97. Based on all available information, these Jointly Administered Reorganizations were contrived solely for purposes of facilitating the Ultimate Parent's gambit to transfer the Florida DivestCo Debtors' assets to the Florida SNF Transferees while shedding all liability to the Florida Claimants through the various release provisions sought in the DIP Financing Motion, Bidding Procedures Motion, and the Combined Plan.

98. None of the DivestCo Debtors have any assets to sell, nor do they have any need for post-petition finance. But while none of the DivestCo Debtors will benefit in the least from the sale of assets by the OpCo Debtors, all are being asked to release the Litigation Targets as part of the post-petition financing scheme devised by the Debtors and their insider creditors.

99. The release of Litigation Targets is inconsistent with Bankruptcy Code

²⁴ "Interim Order (I) Authorizing The Debtors To (A) Obtain Postpetition Financing And (B) Utilize Cash Collateral, (II) Granting Adequate Protection To Prepetition Secured Parties, (III) Modifying The Automatic Stay, (IV) Scheduling A Final Hearing For June 27, 2024, And (V) Granting Related Relief" [Doc. 49].

²⁵ "Final Order (I) Authorizing The Debtors To (A) Obtain Postpetition Financing And (B) Utilize Cash Collateral, (II) Granting Adequate Protection To Prepetition Secured Parties, (III) Modifying The Automatic Stay, And (IV) Granting Related Relief" [Doc. 189].

§§ 1123(b)(3) and (6), and the holding of the United States Supreme Court in Harrington v. Purdue Pharma L.P., 144 S.Ct. 2071 (2024) and, at least as conceptualized in the Debtors' filings.

100. The Final DIP Financing Order provides the mechanism invoked in this Complaint to challenge the stipulations and releases provided thereunder by the Debtors to the Financing Parties.²⁶

**COUNT I: OBJECTION TO STIPULATIONS UNDER
PARAGRAPH E.(V) OF FINAL DIP FINANCING ORDER**

101. This is an action objecting to the stipulations set forth in paragraph E.(v) of the Final DIP Financing Order.

102. Recovery Corp. realleges and incorporates by reference the allegations in paragraphs 1 through 100 as though fully set forth herein.

103. Recovery Corp. disputes that the Prepetition Secured Obligations²⁷ owing to the Prepetition Secured Parties constitute legal, valid, and binding obligations of the Florida DivestCo Debtors and their applicable affiliates, and that the same are enforceable against them in accordance with their respective terms and that no portion of the Prepetition Secured Obligations owing to, or any transfers made to any or all of the Prepetition Secured Parties is subject to avoidance,

²⁶ Final DIP Financing Order at ¶ 23.

²⁷ To the extent not otherwise defined herein, defined terms utilized in this Complaint shall have the same meaning provided under the Final DIP Financing Order.

recharacterization, reduction, set-off, offset, counterclaim, cross-claim, recoupment, defenses, disallowance, impairment, recovery, subordination (whether equitable or otherwise), or any other legal or equitable challenges pursuant to the Bankruptcy Code or applicable non-bankruptcy law or regulation by any person or entity and demands strict proof thereof.

104. Sufficient evidence of the validity of the stipulations set forth in paragraph E.(v) of the Final DIP Finance Order has not been provided to Recovery Corp. by the Debtors.

WHEREFORE, Recovery Corp. requests that this Court determine the validity and enforceability of the stipulations under paragraph E.(v) of the Final DIP Financing Order, and grant any other relief as is appropriate under applicable bankruptcy or non-bankruptcy law.

**COUNT II: OBJECTION TO STIPULATIONS UNDER
PARAGRAPH E.(VI) OF FINAL DIP FINANCING ORDER**

105. This is an action objecting to the stipulations set forth in Paragraph E.(vi) of the Final DIP Financing Order.

106. Recovery Corp. realleges and incorporates by reference the allegations in paragraphs 1 through 100 as though fully set forth herein.

107. Recovery Corp. disputes that the Prepetition Liens granted to the Prepetition Secured Parties respectively constitute legal, valid, binding, enforceable non-avoidable, and properly perfected liens on and security interests in the

Prepetition Collateral and were granted to, or for the benefit of, the applicable Prepetition Secured Parties for fair consideration and reasonably equivalent value, and are not subject to defense, counterclaim, recharacterization, subordination (equitable or otherwise), avoidance, or recovery pursuant to the Bankruptcy Code or applicable non-bankruptcy law or equity or regulation by any person or entity and demand strict proof thereof.

108. Sufficient evidence of the validity of the stipulations set forth in paragraph E.(vi) of the Final DIP Finance Order has not been provided to Recovery Corp. by the Debtors.

WHEREFORE, Recovery Corp. requests that this Court determine the validity and enforceability of the stipulations under paragraph E.(vi) of the Final DIP Financing Order, and grant any other relief as is appropriate under applicable bankruptcy or non-bankruptcy law.

**COUNT III: OBJECTION TO STIPULATIONS UNDER
PARAGRAPH E.(VII) OF FINAL DIP FINANCING ORDER**

109. This is an action objecting to the stipulations set forth in Paragraph E.(vii) of the Final DIP Financing Order.

110. Recovery Corp. realleges and incorporates by reference the allegations in paragraphs 1 through 100 as though fully set forth herein.

111. Recovery Corp. disputes that no offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition

Liens or Prepetition Secured Obligations exist, no facts or occurrence supporting or giving rise to any offset, challenge, objection, defense, claim or counterclaim of any kind or nature to any of the Prepetition Liens or Prepetition Secured Obligations exist, and no portion of the Prepetition Liens or Prepetition Secured Obligations are subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law or equity and demands strict proof thereof.

112. Recovery Corp. also disputes that the Florida DivestCo Debtors and their estates have no valid Claims (as such term is defined in § 101(5) of the Bankruptcy Code), objections, challenges, causes of action, and/or choses in action, including “lender liability” causes of action, derivative claims, or basis for any equitable relief against any of (i) the Prepetition Secured Parties or any of their respective predecessors, affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees with respect to the Prepetition ABL Documents, the Prepetition Omega Term Loan Documents, the Omega Master Lease Documents, the Prepetition Secured Obligations, or the Prepetition Liens, or otherwise, or (ii) the DIP Lenders or any of their respective predecessors, affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees with respect to the DIP Loan Documents or the DIP Liens, whether arising at law or at equity, including,

without limitation, any challenge, recharacterization, subordination, avoidance, recovery, disallowance, reduction, or other Claims arising under or pursuant to sections 105, 502, 510, 541, 542 through 553, inclusive, or 558 of the Bankruptcy Code or applicable non-bankruptcy law equivalents and demands strict proof thereof.

113. Sufficient evidence of the validity of the stipulations set forth in paragraph E.(vii) of the Final DIP Finance Order has not been provided to Recovery Corp. by the Debtors.

WHEREFORE, Recovery Corp. requests that this Court determine the validity and enforceability of the stipulations under paragraph E.(vii) of the Final DIP Financing Order, and grant any other relief as is appropriate under applicable bankruptcy or non-bankruptcy law.

**COUNT IV: OBJECTION TO STIPULATIONS UNDER
PARAGRAPH E.(VIII) OF FINAL DIP FINANCING ORDER**

114. This is an action objecting to the stipulations set forth in Paragraph E.(viii) of the Final DIP Financing Order.

115. Recovery Corp. realleges and incorporates by reference the allegations in paragraphs 1 through 100 as though fully set forth herein.

116. Recovery Corp. disputes that the Prepetition Secured Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code and demands strict proof thereof.

117. Recovery Corp. objects to the Florida DivestCo Debtors, or their estates, waiving, discharging, and releasing any right to challenge any of the Prepetition Secured Obligations, including the amount, allowance, character and priority of the Florida DivestCo Debtors' Obligations thereunder and the validity, binding, legal, enforceability, allowance, amount, characterization, extent and priority as to the Prepetition Secured Liens.

WHEREFORE, Recovery Corp. requests that this Court determine the validity of the stipulations under paragraph E.(viii) of the Final DIP Financing Order, and grant any other relief as is appropriate under applicable bankruptcy or non-bankruptcy law.

**COUNT V: OBJECTION TO STIPULATIONS UNDER
PARAGRAPH E.(IX) OF FINAL DIP FINANCING ORDER**

118. This is an action objecting to the stipulations set forth in Paragraph E.(ix) of the Final DIP Financing Order.

119. Recovery Corp. realleges and incorporates by reference the allegations in paragraphs 1 through 100 as though fully set forth herein.

120. Recovery Corp. disputes that the DIP Agents, DIP Lenders, and Prepetition Secured Parties have acted in good faith, and without negligence or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining the requisite approvals of the DIP Facility and demands strict proof thereof.

121. Recovery Corp. has not been provided with sufficient evidence of that the DIP Agents, DIP Lenders, and Prepetition Secured Parties acted in good faith and without violating any public policy or law in engaging in seeking approval of the DIP Facility and the releases provided in connection with the same.

122. These Jointly Administered Reorganizations, including the DIP Facility and the stipulations and releases provided under the Final DIP Financing Order were conceived to facilitate and obtain the Court's imprimatur of the fraudulent transfers of the Florida DivestCo Debtors' assets.

WHEREFORE, Recovery Corp. requests that this Court determine the validity of the stipulations under paragraph E.(ix) of the Final DIP Financing Order, and grant any other relief as is appropriate under applicable bankruptcy or non-bankruptcy law.

**COUNT VI: OBJECTION TO RELEASES UNDER
PARAGRAPH E.(X) OF FINAL DIP FINANCING ORDER**

123. This is an action objecting to the stipulations set forth in Paragraph E.(x) of the Final DIP Financing Order.

124. Recovery Corp. realleges and incorporates by reference the allegations in paragraphs 1 through 100 as though fully set forth herein.

125. Recovery Corp. objects to the releases provided under Paragraph E.(x) of the Final DIP Financing Order. These Jointly Administered Reorganizations, including the DIP Facility and the stipulations and releases provided under the Final

DIP Financing Order were conceived to facilitate and obtain the Court's imprimatur of the fraudulent transfers of the Florida DivestCo Debtors' assets.

126. Accordingly, the releases provided for under paragraph E.(x) should not be enforceable with respect to the Florida DivestCo Debtors.

WHEREFORE, Recovery Corp. requests that this Court determine the validity and enforceability of the releases under paragraph E.(x) of the Final DIP Financing Order, and grant any other relief as is appropriate under applicable bankruptcy or non-bankruptcy law.

V. **RESERVATION OF RIGHTS**

The Debtors have held up discovery in these Jointly Administered Reorganizations in part on grounds that the Debtors believe that discovery is premature despite the pending deadlines that in some cases have passed and in other instances will expire imminently. However, as discovery is ongoing, Recovery Corp. reserves the right to amend this Complaint.

The Debtors have challenged the standing of Recovery Corp. to bring claims on behalf of its constituent Florida Claimants based upon their contention that Florida Statutes § 626.99269, applies to the assignment of the Florida Claimants' claims to Recovery Corp. To the extent that this tenuous allegation was to prevail, all 100 constituent assignors of Recovery Corp. expressly reserve the right to be substituted in the place of Recovery Corp. as plaintiffs herein.

DATED this 16th day of September, 2024.

/s/ John A. Anthony

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Attorneys for Recovery Corp.

Exhibit “A”

	Florida DivestCo Debtors Schedule	BK Case No.
1	1010 Carpenters Way Operations, LLC	24-55558 (PMB)
2	1120 West Donegan Avenue Operations, LLC	24-55575 (PMB)
3	11565 Harts Road Operations, LLC	24-55725 (PMB)
4	12170 Cortez Boulevard Operations, LLC	24-55730 (PMB)
5	1465 Oakfield Drive Operations, LLC	24-55579 (PMB)
6	15204 West Colonial Drive Operations, LLC	24-55734 (PMB)
7	1550 Jesse Parrish Court Operations, LLC	24-55589 (PMB)
8	1615 Miami Road Operations, LLC	24-55596 (PMB)
9	1851 Elkcarn Boulevard Operations, LLC	24-55605 (PMB)
10	195 Mattie M. Kelly Boulevard Operations, LLC	24-55512 (PMB)
11	216 Santa Barbara Boulevard Operations, LLC	24-55514 (PMB)
12	2333 North Brentwood Circle Operations, LLC	24-55624 (PMB)
13	2826 Cleveland Avenue Operations, LLC	24-55634 (PMB)
14	3001 Palm Coast Parkway Operations, LLC	24-55653 (PMB)
15	3101 Ginger Drive Operations, LLC	24-55656 (PMB)
16	3735 Evans Avenue Operations, LLC	24-55660 (PMB)
17	3920 Rosewood Way Operations, LLC	24-55675 (PMB)
18	4200 Washington Street Operations, LLC	24-55680 (PMB)
19	4641 Old Canoe Creek Road Operations, LLC	24-55684 (PMB)
20	518 West Fletcher Avenue Operations, LLC	24-55521 (PMB)
21	5405 Babcock Street Operations, LLC	24-55689 (PMB)
22	6305 Cortez Road West Operations, LLC	24-55693 (PMB)
23	6414 13th Road South Operations, LLC	24-55696 (PMB)
24	6700 N.W. 10th Place Operations, LLC	24-55700 (PMB)
25	702 South Kings Avenue Operations, LLC	24-55542 (PMB)
26	710 North Sun Drive Operations, LLC	24-55546 (PMB)
27	741 South Beneva Road Operations, LLC	24-55550 (PMB)
28	777 Ninth Street North Operations, LLC	24-55554 (PMB)
29	7950 Lake Underhill Road Operations, LLC	24-55704 (PMB)
30	9311 South Orange Blossom Trail Operations, LLC	24-55711 (PMB)
31	9355 San Jose Boulevard Operations, LLC	24-55717 (PMB)
32	Baya Nursing and Rehabilitation, LLC	24-55551 (PMB)
33	Brandon Facility Operations, LLC	24-55563 (PMB)
34	Consulate Facility Leasing, LLC*	24-55508 (PMB)
35	Epsilon Health Care Properties, LLC*	24-55668 (PMB)
36	Floridian Facility Operations, LLC	24-55714 (PMB)
37	Jacksonville Facility Operations, LLC	24-55531 (PMB)
38	Josera, LLC*	24-55539 (PMB)
39	Kissimmee Facility Operations, LLC	24-55569 (PMB)
40	Lidenskab, LLC*	24-55595 (PMB)
41	LV CHC Holdings I, LLC*	24-55639 (PMB)
42	Melbourne Facility Operations, LLC	24-55691 (PMB)
43	Miami Facility Operations, LLC	24-55695 (PMB)
44	New Port Richey Facility Operations, LLC	24-55719 (PMB)
45	North Fort Myers Facility Operations, LLC	24-55736 (PMB)
46	Orange Park Facility Operations, LLC	24-55545 (PMB)
47	Port Charlotte Facility Operations, LLC	24-55697 (PMB)
48	Tallahassee Facility Operations, LLC*	24-55777 (PMB)
49	Tosturi, LLC*	24-55548 (PMB)
50	West Altamonte Facility Operations, LLC	24-55654 (PMB)
	*Signifies Florida DivestCo Debtors not expressly tied to a particular Florida SNF Transferee.	

Exhibit “B”

Law Firm	Attorney	Client Last Name	Client First Name	O/S Claim A	Settlement Amount	Defendant	Additional Defendants
Baron & Herskowitz	Jon Herskowitz	Joseph	Maria L.	100000	100000	4200 Washington Street Operations, LLC	CMC II, LLC
Baron & Herskowitz	Jon Herskowitz	Sampson	Marguerite	210000	210000	710 North Sun Drive Operations, LLC	Epsilon Health Care Properties, LLC; Florida Health Care Pr
Baron & Herskowitz	Jon Herskowitz	Burdieri	Theresa Mary	250000	250000	North Fort Myers Facility Operations, LLC	Consulate Facility Leasing, LLC
Bounds Law Group	J. Clancey Bounds	Poarch	Erin	125000	125000	1851 Elkcam Boulevard Operations, LLC	
Bounds Law Group	J. Clancey Bounds	Milsap	Carmen	200000	200000	3001 Palm Coast Parkway Operations, LLC	CMC II, LLC
Coker Law Firm	Steve Watrel	Barrow	Rebecca	250000	250000	Baya Nursing and Rehabilitation, LLC	
Colling Gilbert Wright	Melvin Wright	Mazza	Alfonso	100000	100000	12170 Cortez Boulevard Operations, LLC	Epsilon Health Care Properties, LLC; Tosturi, LLC
Colling Gilbert Wright	Melvin Wright	Guelich	Judy	100000	100000	2333 North Brentwood Circle Operations, LLC	Josera, LLC; Independence Living Centers; Tosturi, LLC; Ep
Colling Gilbert Wright	Melvin Wright	Cherba	Nancy	85000	85000	710 North Sun Drive Operations, LLC	Lavie Care Centers, LLC
Colling Gilbert Wright	Melvin Wright	Norris	Dorothy	125000	125000	710 North Sun Drive Operations, LLC	Lidenskab, LLC
Dellecker, Wilson, King	Kenneth McKenna	Lane	Ingrid K.	100000	100000	1550 Jess Parrish Court Operations, LLC	Epsilon Health Care Properties, LLC; LV CHC Holdings I, L
Dellecker, Wilson, King	Brian Wilson	Solash-Reed	Linda	125000	125000	710 North Sun Drive Operations, LLC	Epsilon Health Care Properties, LLC
Distasio Law Firm	Scott Distasio	Holt	Mary	225000	225000	6305 Cortez Road West Operations, LLC	CMC II, LLC
Dommick Cunningham & Yaffa	Lindsey E. Gale	Ashley	Mary	150000	150000	777 Ninth Street North Operations, LLC	
Dommick Cunningham & Yaffa	Lindsey E. Gale	Celestin	Sylvia	175000	175000	Miami Facility Operations, LLC	
Ford, Dean & Rotundo	William Dean	Perez	Suzanne	75000	75000	1465 Oakfield Drive Operations, LLC	
Ford, Dean & Rotundo	William Dean	Knight	Mae	75000	75000	1615 Miami Road Operations, LLC	
Ford, Dean & Rotundo	William Dean	Foster	Mary	75000	75000	3001 Palm Coast Parkway Operations, LLC	
Ford, Dean & Rotundo	William Dean	Griffin	John	75000	75000	3920 Rosewood Way Operations, LLC	
Ford, Dean & Rotundo	William Dean	Antoine	Philomene	75000	75000	4200 Washington Street Operations, LLC	
Ford, Dean & Rotundo	William Dean	Manuel	Anthony	75000	75000	4200 Washington Street Operations, LLC	
Ford, Dean & Rotundo	William Dean	Mompoin	Juliette	75000	75000	4200 Washington Street Operations, LLC	
Ford, Dean & Rotundo	William Dean	Oegar	Avram	75000	75000	4200 Washington Street Operations, LLC	
Ford, Dean & Rotundo	William Dean	Pina	Mirelle	75000	75000	4200 Washington Street Operations, LLC	
Ford, Dean & Rotundo	William Dean	Tillman	Linda	100000	100000	4200 Washington Street Operations, LLC	
Ford, Dean & Rotundo	William Dean	Vargas	Gerado	75000	75000	4200 Washington Street Operations, LLC	
Ford, Dean & Rotundo	William Dean	Gibson	Benny	75000	75000	4641 Old Canoe Creek Road Operations, LLC	
Ford, Dean & Rotundo	William Dean	Rodriguez	Delia	75000	75000	6414 13th Road South Operations, LLC	
Ford, Dean & Rotundo	William Dean	Thenor	Rosita	75000	75000	6414 13th Road South Operations, LLC	
Ford, Dean & Rotundo	William Dean	Aker	Kevin	75000	75000	6700 N.W. 10th Place Operations, LLC	
Ford, Dean & Rotundo	William Dean	Garrett	Donald	75000	75000	6700 N.W. 10th Place Operations, LLC	
Ford, Dean & Rotundo	William Dean	McCray	Gwendolyn	75000	75000	6700 N.W. 10th Place Operations, LLC	
Ford, Dean & Rotundo	William Dean	Wilkie	Barbara	75000	75000	6700 N.W. 10th Place Operations, LLC	
Ford, Dean & Rotundo	William Dean	Cummingham	Jeffrey	75000	75000	741 South Beneva Road Operations, LLC	
Ford, Dean & Rotundo	William Dean	Higgins	Joan	75000	75000	777 Ninth Street North Operations, LLC	
Ford, Dean & Rotundo	William Dean	Zayas	Edwin	75000	75000	7950 Lake Underhill Road Operations, LLC	
Ford, Dean & Rotundo	William Dean	Gates	Shirley	75000	75000	9311 South Orange Blossom Trail Operations, LLC	
Ford, Dean & Rotundo	William Dean	Stover	Machrell	75000	75000	9311 South Orange Blossom Trail Operations, LLC	
Ford, Dean & Rotundo	William Dean	Meyer	Veron	75000	75000	Baya Nursing and Rehabilitation, LLC	
Ford, Dean & Rotundo	William Dean	Padron	Marina	75000	75000	Floridian Facility Operations, LLC	
Ford, Dean & Rotundo	William Dean	Donald	Charles	75000	75000	Jacksonville Facility Operations, LLC	
Ford, Dean & Rotundo	William Dean	Hall	James	75000	75000	Jacksonville Facility Operations, LLC	
Ford, Dean & Rotundo	William Dean	Brown-Smith	Anna	75000	75000	Miami Facility Operations, LLC	
Ford, Dean & Rotundo	William Dean	Fardales	Sonia	0	0	Miami Facility Operations, LLC	
Ford, Dean & Rotundo	William Dean	Rojas	Aldermaro	75000	75000	Miami Facility Operations, LLC	
Ford, Dean & Rotundo	William Dean	Martinez	Luz	75000	75000	New Port Richey Facility Operations, LLC	
Ford, Dean & Rotundo	William Dean	Jones	Juanita	75000	75000	Port Charlotte Facility Operations, LLC	
Ford, Dean & Rotundo	William Dean	Nielsen	Martin	75000	75000	West Altamonte Facility Operations, LLC	
Ford, Dean & Rotundo	William Dean	Seranksy	Roy	0	0		
Fulgencio Law	Chris Mathena	Lizardi	Miriam	75000	75000	1120 West Donegan Avenue Operations, LLC	
Fulgencio Law	Chris Mathena	Ash	Avery	200000	200000	9311 South Orange Blossom Trail Operations, LLC	
Fulgencio Law	Chris Mathena	Collins	Gerald	35000	35000	Baya Nursing and Rehabilitation, LLC	
Hughes Law Firm, P.A.	Cameron Barnard	O'Berry	Barbara	175000	175000	7950 Lake Underhill Road Operations, LLC	

Law Firm	Attorney	Client Last Name	Client First Name	O/S Claim A	Settlement Amount	Defendant	Additional Defendants
Hughes Law Firm, P.A.	Cameron Barnard	Graham	Madeline	150000	150000	Jacksonville Facility Operations, LLC	
Hughes Law Firm, P.A.	Cameron Barnard	Clavijo	Rosenda	150000	150000	Kissimmee Facility Operations, LLC	
Mallard Perez	Sara Mallard	Thomson	Michael	206000	206000	North Fort Myers Facility Operations, LLC	
Morgan & Morgan	Spencer Payne	Rousseau	Daniel	145000	145000	West Altamonte Facility Operations, LLC	CMC II, LLC
Paul & Perkins	Jason Paul	Rigas	Gail	16000	160000	1120 West Donegan Avenue Operations, LLC	Lavie Care Centers, LLC and Epsilon Health Care Properties
Paul & Perkins	Jason Paul	McHenry	Vickie	35000	35000	11565 Harts Road Operations, LLC	
Paul & Perkins	Jason Paul	Kolbe	Richard	37500	100000	1851 Elkcam Boulevard Operations, LLC	Epsilon Health Care Properties, LLC; Lavie Care Centers, LLC
Paul & Perkins	Jason Paul	Knicley	Peggy	14000	140000	195 Mattie M. Kelly Boulevard Operations, LLC	Epsilon Health Care Properties, LLC
Paul & Perkins	Jason Paul	Abel	Bebee	32875	125000	5405 Babcock Street Operations, LLC	Epsilon Health Care Properties, LLC; CMC II, LLC; Lavie C
Paul & Perkins	Jason Paul	Howard	Don	25000	175000	710 North Sun Drive Operations, LLC	
Paul & Perkins	Jason Paul	Rojas	Gloria	12500	125000	7950 Lake Underhill Road Operations, LLC	
Paul & Perkins	Jason Paul	Abramson		0	0		
Paul & Perkins	Jason Paul	Jackson		0	0		
Paul & Perkins	Jason Paul	Jean Noel		0	0		
Paul & Perkins	Jason Paul	King		0	0		
Paul & Perkins	Jason Paul	Stern		0	0		
Paul & Perkins	Jason Paul	Williams	Nessa	60000	150000	9311 South Orange Blossom Trail Operations, LLC	
Paul & Perkins	Jason Paul	Owens	Lular	37500	100000	Kissimmee Facility Operations, LLC	Laive Care Centers, LLC
Paul & Perkins	Jason Paul	Taylor		125000	125000	West Altamonte Facility Operations, LLC	
Senior Justice Law Firm	Michael Brevda	Powell	Tereather	75000	75000	3101 Ginger Drive Operations, LLC	Tallahassee Facility Operations, LLC; Josera, LLC; Tosturi,
Senior Justice Law Firm	Michael Brevda	Miller	Eileen	0	0	9400 SW 137th Avenue Operations LLC	NSPRMC, LLC
Terry S. Nelson PA	Terry S. Nelson	Ortiz	Crispin	65000	65000	216 Santa Barbara Boulevard Operations, LLC	
Terry S. Nelson PA	Terry S. Nelson	Barry	John	50000	50000	2826 Cleveland Avenue Operations, LLC	
Terry S. Nelson PA	Terry S. Nelson	Skow-Barr	Delano	90000	90000	2826 Cleveland Avenue Operations, LLC	
Terry S. Nelson PA	Terry S. Nelson	Woodard	Chester	30000	50000	2826 Cleveland Avenue Operations, LLC	
Terry S. Nelson PA	Terry S. Nelson	Malcomb	Buddy	100000	100000	3735 Evans Avenue Operations, LLC	
Terry S. Nelson PA	Terry S. Nelson	McGhee	David	65000	65000	3735 Evans Avenue Operations, LLC	
Terry S. Nelson PA	Terry S. Nelson	Rucker-Fluellen	Mildred	50000	50000	3735 Evans Avenue Operations, LLC	
Terry S. Nelson PA	Terry S. Nelson	Bershadski	Nelia	85000	85000	777 Ninth Street North Operations, LLC	
Terry S. Nelson PA	Terry S. Nelson	Davis	Larry	85000	85000	777 Ninth Street North Operations, LLC	
Terry S. Nelson PA	Terry S. Nelson	Davis	Larry	65000	65000	North Fort Myers Facility Operations, LLC	
Terry S. Nelson PA	Terry S. Nelson	Murison	David	75000	75000	Port Charlotte Facility Operations, LLC	
The Lawrence Law Group, P.A.	Greg Lawrence	Sullivan	Timothy	260000	320000	9355 San Jose Boulevard Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Cobb	Doneatha	81666.76	140000	1010 Carpenters Way Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Acevedo	Sharon	81666.76	140000	1120 West Donegan Avenue Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Mackey	George	81666.76	140000	1120 West Donegan Avenue Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	McKinnion-Murphy	Netti	81666.76	140000	1120 West Donegan Avenue Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Barrett	Harry Wayne	81666.76	140000	11565 Harts Road Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Foster	Levi	81666.76	140000	15204 West Colonial Drive Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Walker	Lula Mae	81666.76	140000	1615 Miami Road Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Blair	Bobby	81666.76	140000	3001 Palm Coast Parkway Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Moran	Doris	81666.76	140000	3735 Evans Avenue Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Diaz	Jose R.	100000	100000	518 West Fletcher Avenue Operations, LLC	Epsilon Health Care Properties, LLC; Lidenskab LLC;
Your Insurance Attorney	Nathaniel Carter	Hill	Roosevelt	81666.76	140000	518 West Fletcher Avenue Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Druelle	Catherine	81666.76	140000	6305 Cortez Road West Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Whitcomb	Susan	81666.76	140000	702 South Kings Avenue Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Vega	Rafel	81666.76	140000	7950 Lake Underhill Road Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	McKenzie	Stanley	81666.76	140000	9311 South Orange Blossom Trail Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Scott	Moses	81666.76	140000	9355 San Jose Boulevard Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Paul-Bennett	Karen	81666.76	140000	Baya Nursing and Rehabilitation, LLC	
Your Insurance Attorney	Nathaniel Carter	Mitchell	Doris	81666.76	140000	Brandon Facility Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Gager	Ehud	81666.76	140000	Kissimmee Facility Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	Hause	Mary	81666.76	140000	Melbourne Facility Operations, LLC	

Law Firm	Attorney	Client Last Name	Client First Name	O/S Claim A	Settlement Amount	Defendant	Additional Defendants
Your Insurance Attorney	Nathaniel Carter	Walker	Louise	81666.76	140000	Miami Facility Operations, LLC	
Your Insurance Attorney	Nathaniel Carter	White	Jessie Mae	81666.76	140000	Orange Park Facility Operations, LLC	
				9186376.96	11331000		

Exhibit “C”

CLAIMANT FIRMS			
	Law Firm	Attorney	Law Firm Address
1	Baron & Herskowitz	Jon Herskowitz	9100 S Dadeland Blvd., Suite 1704, Miami, Florida 33156
2	Bounds Law Group	J. Brent Smith	1751 N. Park Avenue, Maitland, Florida 32751
3	Coker Law Firm	Steve Watrel	136 East Bay Street, Jacksonville, Florida 32202
4	Colling Gilbert Wright	Melvin B. Wright	801 N. Orange Avenue, Suite 830, Orlando, Florida 32801
5	Dellecker, Wilson, King	Kenneth J. McKenna	719 Vassar Street, Orlando, Florida 32804
6	Distasio Law Firm	Scott P. Distasio	1112 Channelside Drive, # 5, Tampa, Florida 33602
7	Dommick Cunningham & Yaffa	Lindsey E. Gale	2401 PGA Blvd., Suite 140, Palm Beach Gardens, Florida 33410
8	Ford, Dean & Rotundo	William Dean	3323 NE 163rd Street, Suite 605, N. Miami Beach, Florida 33160
9	Fulgencio Law	Chris Mathena	105 S Edison Ave, Tampa, FL 33606
10	Hughes Law Firm, P.A.	Cameron B.S. Barnard	500 Maplewood Drive, Suite 5, Jupiter, Florida 33458
11	Mallard Perez	Sara B. Mallard	889 N. Washington Blvd., Sarasota, Florida 34236
12	Morgan & Morgan	Spencer Payne	20 N. Orange Ave., Suite 1600, Orlando, Florida 32801
13	Paul & Perkins	Jason A. Paul	711 N Orlando Avenue, Suite 202, Maitland, Florida 32751
14	Senior Justice Law Firm	Michael Brevda	7700 Congress Avenue, Suite 3216, Boca Raton, Florida 33487
15	Terry S. Nelson PA	Terry S. Nelson	2401 First Street, Suite 102, Fort Myers, Florida 33901
16	The Lawrence Law Group, P.A.	Greg Lawrence	610 Boating Club Road, St. Augustine, Florida 32084
17	Your Insurance Attorney	Nathaniel P. Carter	2300 Maitland Ctr Pkwy, Suite 122, Maitland, Florida 32751

Exhibit “D”

Nursing home chain's tangled corporate structure and bankruptcy threats stymied litigation

By Jared Whitlock Aug. 5, 2022



Molly Ferguson for STAT

After a hospital stay in 2016 for a brain tumor, Regina Romero was transferred to a nursing home in New Mexico. Her “medications were withheld” and she was neglected and “subjected to an assault,” her family alleges in a wrongful death lawsuit filed in 2017 against the facility, Paloma Blanca Health and Rehabilitation.

Romero died less than four months after arriving at the home; she was only 59 years old, states the complaint, which doesn’t detail the allegations.

In March 2021, the case was nearing a settlement when negotiations suddenly halted.

That month, a unit of Consulate Health Care — which owned 140 nursing homes, including Paloma Blanca — filed for Chapter 11 bankruptcy protections. Romero’s stepdaughter said Consulate attorneys leveraged the pending bankruptcy as a bludgeon: either accept a significantly reduced settlement, or risk getting little or nothing from a bankrupt entity. The family begrudgingly took the much smaller offer, an amount that cannot be disclosed under the settlement terms.

“It’s horrible because I think they got away with what they did,” said the stepdaughter, Lisa Robichaud, who had moved near Romero when she entered Paloma Blanca. The two women had bonded over cooking together and grown closer when Robichaud’s father had been diagnosed with colon cancer — and Romero cared for him before his death. “She was really good to him,” Robichaud said in an interview.

Romero's family is one of many who faced similar hardball tactics, plaintiffs' lawyers said. In the six-year run-up to the bankruptcy filing of six Consulate affiliates, at least 137 plaintiffs across a half-dozen states had sued the affiliates on allegations ranging from negligence and wrongful death to Medicare fraud, according to an online search of legal databases; many cases were settled and the outcome of others was unclear.

A STAT investigation found that in many of these cases, lawyers for Consulate affiliates leveraged the threat of bankruptcy in seeking to lower settlements, and that the companies' actions fit a larger pattern. Before bankruptcy, the company used a convoluted corporate structure that stymied litigation, including dividing up ownership of its nursing homes and keeping paltry liability insurance. Taken together, Consulate left families like the Romeros with little chance of recourse for alleged wrongdoing.

Such tactics, while legal, have prompted calls for holding nursing home chains more accountable, and the Biden administration has [announced it will take steps](#)³ to make homes' ownership and finances more transparent. Nursing home watchdogs say the Consulate affiliates' bankruptcy case set a troubling precedent. When a company files for bankruptcy, all ongoing legal actions are frozen and plaintiffs must seek relief from the bankruptcy court. Under the bankruptcy order, which was approved last December, unsecured creditors, including the families with pending legal actions, are expected to recover only 0.7 percent of their claims.

Charlene Harrington, professor emeritus of social and behavioral sciences at the University of California, San Francisco, said Consulate's bankruptcy strategy and its corporate structure have proven successful in protecting itself from legal responsibility.

"If it was just a tiny nursing home chain in Indiana no one would care," said Harrington, who specializes in the nursing home industry. But Consulate was the sixth largest nursing home chain at the time of the bankruptcy declaration. "Other companies will look at how they managed bankruptcy to get out from under it."

Consulate and Synergy Health Care Services, a nursing home management company employing many of Consulate's past executives, did not respond to phone calls and emails requesting comment. Nor did Formation Capital, the private equity firm that owns Consulate.

Paloma Blanca denied the Romero family's allegations, court documents show. "If the plaintiff was injured and damaged as alleged, which is specifically denied, the injuries and damages resulted from an unavoidable medical complication," states the home's reply to the complaint. Other Consulate affiliates named in the lawsuit denied the allegations or argued they have nothing to do with the case.

In a bankruptcy declaration, Consulate cited financial hardship from the pandemic as the reason for seeking protection from creditors. With fewer intakes, the number of people in its care dropped from 14,000 to 12,000.

The company also said it was unable to pay a \$258 million judgment levied in 2020 against the company. The judgment was the result of a federal whistleblower complaint filed in 2011 by Angela Ruckh, a former charge nurse at the chain's Florida nursing homes, who alleged that Consulate defrauded taxpayers by overbilling government programs.

Last December, Judge John Dorsey approved a bankruptcy order that reduced the \$258 million judgement to \$4.5 million.

Echoing the ultimatum Robichaud faced, lawyer Nathan Carter said that leading up to the affiliates' Chapter 11 filings, Consulate attorneys cited the whistleblower judgment and the potential for bankruptcy in arguing for lower plaintiff payouts in dozens of lawsuits represented by his Florida-based firm.

Carter, who declined to discuss specific cases or settlements, said Consulate used the tactic to a much greater extent than other nursing home chains that have considered or filed for bankruptcy. His assessment was based on his experience and conversations with other Florida law firms.

“They definitely played the bankruptcy card harder than other chains,” Carter said.

In pursuing litigation against Consulate, families and their attorneys faced a maze of related businesses that obscured where profits went, government cost reports show. The company’s many subsidiaries became a recurring theme in the bankruptcy.

The bankrupt entities — which had a stake in Consulate’s nursing homes — were sold to a company made up of Consulate insiders, called CPSTN Operations, in what’s known as a stalking-horse bid.

Early in the bankruptcy proceedings, a creditor committee argued that Consulate used the stalking-horse bid to avoid litigation while pleading poverty in isolation from the larger corporate structure. Consulate placed six affiliates in bankruptcy, but not itself or its private equity owner.

The bankruptcy will “do nothing more than allow Consulate to cleanse or launder a continually evolving corporate, capital, transactional and governance structure much larger than the now isolated debtors,” stated the [creditor filing](#)⁵. Attorneys representing CPSTN did not return emails seeking comment.

The committee later sought to examine why a bankrupt Consulate management company [transferred \\$1.6 billion](#)⁶ to a parent entity in 2020. The motion was later withdrawn for unclear reasons, court records show. Robert Schechter, an attorney who represented the creditors committee in the bankruptcy, declined to comment on the withdrawn motion. But overall, he said the committee struck a balance between creditor recovery and the risk of a drawn-out bankruptcy that potentially affects the care of nursing home residents.

“For any business that’s in the zone of insolvency, there’s a potential big change happening, whether it’s the purchase of the homes or maybe a new operator. Those are things that affect residents,” Schechter said.

Robert Lawless, a professor at the University of Illinois College of Law who specializes in bankruptcy law and has no ties to the case, said Consulate’s size and byzantine ownership structure likely imperiled the committee’s attempts to probe the conglomerate’s finances.

Lawless urged stricter federal limits on the ability of nursing home chains to divide ownership — and adoption of a rule that to be eligible for Medicare funding, companies in a wider corporate structure be liable for each other.

“You can’t blame the bankruptcy court,” said Lawless. “The law should be different.”

Arnold Whitman – the chairman of Formation Capital, the private equity firm behind Consulate – told [The New York Times](#)⁹ in 2007 that chopping up nursing home ownership into separate companies is a crucial legal maneuver that rehabilitated a struggling industry. He did not respond to emails requesting comment.

Formation has also held a majority stake in Trident USA Health Services, a diagnostics provider that the [Justice Department accused in 2019](#)¹⁰ of filing for bankruptcy protection to “extinguish the government’s ability to collect any damages or penalties.” Ultimately, Trident in 2019 agreed to pay the federal government \$8.5 million to resolve claims that it provided kickbacks to nursing homes in exchange for referring lucrative business to Trident.

Because Consulate is a privately held company, its financial health remains shrouded. But according to the bankruptcy filings, Consulate paid then-CEO Christopher Bryson \$2.004 million in bonuses eight months before bankruptcy — nearly one-third of which came days before the declaration. The bonuses were on top of \$1.062 million in salary during the period.

More visible was that Consulate and the Department of Justice agreed to reduce the whistleblower judgement in the Florida nursing home case to just \$4.5 million. The Department of Justice declined to comment.

Toby Edelman, a senior policy attorney for the Center for Medicare Advocacy, said the steeply reduced settlement amount undermines whistleblower litigation under what's known as the False Claims Act.

“That’s a message to other chains that are charged with violations of the False Claims Act,” Edelman said. “They can take their chances in court and if they lose, try to settle for far less.”

Aretha Bradham is one of the plaintiffs whose suit against Consulate affiliates remains unresolved. She faces the likelihood of recovering little.

A bike accident in 2017 paralyzed her brother, Thomas Bradham, from the neck down. After a hospital stay, he was transferred to Marshall Health and Rehabilitation Center. At the Florida nursing home, his health declined rapidly.

He developed severe bed sores and suffered from malnutrition, and ultimately died from negligence, alleges her 2020 lawsuit against Consulate subsidiaries. Bradham seeks damages for the alleged fatal neglect.

“Normally you say in bankruptcy you get pennies on the dollar,” said her attorney, Morgan Streetman. “This is not even expected to be one penny on the dollar.”

As another means of recovery, Streetman is pursuing the facility’s liability insurance policy that’s supposed to cover when someone is injured on the premises. A copy has yet to be provided to him, he said.

But draft financials obtained through a records request to a Virginia health regulator state that Consulate facilities’ insurance covers only \$100,000 per negligent incident in Florida — and that can amount to little or nothing after legal fees. Consulate’s insurance often deducts attorneys’ fees from the payout.

Each Florida home carries \$300,000 in total liability coverage, the records show. Consulate’s skimpy liability insurance is widely known and deters litigation, attorneys say.

Florida law requires that nursing homes carry liability insurance but doesn’t specify a minimum. In 2018, [state legislation](#)¹³ sought to require that nursing homes maintain liability insurance covering \$2 million per incident, with \$4 million in total coverage. The bill failed.

Bradham’s lawsuit against Marshall Health and Rehabilitation Center names five LLCs that it alleges make up “an amalgamation of interests creating a blurred corporate identity.”

Attempting to pierce the corporate veil, Bradham’s attorneys negotiated the ability to pursue litigation against Consulate entities that didn’t declare bankruptcy. But that’s an uphill battle. “Those third parties will no doubt assert all kinds of legal defenses,” wrote bankruptcy attorney Benjamin Keck in an email.

Meanwhile, Bradham presses on in memory of her older brother, a concrete finisher who died at 58 years old. He expressed love by fixing up her house, while she baked for him. He was easy to talk to, whatever the subject. “We

had a special bond,” she said.

In response to the Bradham lawsuit, three Consulate affiliates filed a motion to dismiss the complaint, pointing to a 2014 Florida law that shields “passive investors” from being named as defendants in nursing home negligence lawsuits.

“None of the entities provided any direct care to Thomas Bradham,” states the response from Epsilon Health Care Properties, Consulate Management Company, and LV CHC Holdings.

Two other affiliates, 207 Marshall Drive Operations and CMC II, denied the allegations. “Thomas Bradham’s injuries, if any, were the result of pre-existing or congenital problems or conditions and not caused by, exacerbated, nor aggravated by any actions or omissions on the part of defendants,” states the response.

The Romero family’s attorneys, too, were frustrated by the complicated corporate structure, writing in a court filing that they were “forced to try to untangle the everchanging web of companies and entities.”

Lawyers for Paloma Blanca, a 119-bed facility that advertises care for medically complex patients, disputed Consulate’s role in the nursing home’s operations when plaintiff attorney Wesley Jackson moved to include other corporate entities in the Romero family’s lawsuit. The Romero family’s lawsuit ultimately named 16 LLCs under the umbrella of Consulate.

Much of the same team that ran Consulate nursing homes before the bankruptcy still runs them. The nursing homes in April 2022 shared 45 percent of the same officers and managers as the month before bankruptcy. That’s according to a STAT analysis of federal ownership data for 133 Consulate nursing homes, with a few homes omitted because of incomplete data.

The most common name that popped up in the STAT analysis was Kenneth Ussery, who was listed on more than 120 of the nursing homes before and after the bankruptcy. He was Consulate’s senior vice president of revenue cycle and treasury management, before holding the same title at Synergy Healthcare Services, a nursing home management company that launched in December with former Consulate executives.

Among [Synergy’s clients](#)¹⁵: Consulate Health Care.

This story was produced with the support of [Freelance Investigative Reporters and Editors \(FIRE\)](#)¹⁶. The late Wallace Roberts contributed reporting and Ben Arnoldy and Brandon Meyer contributed data reporting.

About the Author

Jared Whitlock

[@Jared_Whitlock](#)¹⁷

STAT encourages you to share your voice. We welcome your commentary, criticism, and expertise on our subscriber-only platform, [STAT+ Connect](#)²⁰

To submit a correction request, please visit our [Contact Us page](#)²¹.

Links

1. <https://www.parsintl.com/publications/stat/>

2. <https://www.statnews.com/2021/04/19/for-profit-nursing-homes-hospices-bad-deal-older-americans/>

3. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/>
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16. <http://www.firenewsroom.org/>
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18. <https://www.statnews.com/topic/aging/>
19. <https://www.statnews.com/topic/legal/>
20. <https://connect.statnews.com/>
21. <https://www.statnews.com/contact/>

Exhibit “E”

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIVIL DIVISION**

HEALTHCARE NEGLIGENCE SETTLEMENT RECOVERY
CORP.,

Plaintiff,

v.

Case No.:

5405 BABCOCK STREET OPERATIONS, LLC, EPSILON HEALTH CARE PROPERTIES, LLC, CMC II, LLC, LAVIE CARE CENTERS, LLC, 6700 N.W. 10TH PLACE OPERATIONS, LLC, 4200 WASHINGTON STREET OPERATIONS, LLC, 2826 CLEVELAND AVENUE OPERATIONS, LLC, BAYA NURSING AND REHABILITATION, LLC, 1465 OAKFIELD DRIVE OPERATIONS, LLC, 777 NINTH STREET NORTH OPERATIONS, LLC, 3101 GINGER DRIVE OPERATIONS, LLC, TALLAHASSEE FACILITY OPERATIONS, LLC, JOSERA, LLC; TOSTURI, LLC, MELBOURNE FACILITY OPERATIONS, LLC, NORTH FORT MYERS FACILITY OPERATIONS, LLC, CONSULATE FACILITY LEASING, LLC, 1010 CARPENTERS WAY OPERATIONS, LLC, MIAMI FACILITY OPERATIONS, LLC, 741 SOUTH BENEVA ROAD OPERATIONS, LLC, 3735 EVANS AVENUE OPERATIONS, LLC, 7950 LAKE UNDERHILL ROAD OPERATIONS, LLC, 518 WEST FLETCHER AVENUE OPERATIONS, LLC, LIDENSKAB LLC, JACKSONVILLE FACILITY OPERATIONS, LLC, 3001 PALM COAST PARKWAY OPERATIONS, LLC, KISSIMMEE FACILITY OPERATIONS, LLC, 9311 SOUTH ORANGE BLOSSOM TRAIL OPERATIONS, LLC, 4641 OLD CANOE CREEK ROAD OPERATIONS, LLC, 2333 NORTH BRENTWOOD CIRCLE OPERATIONS, LLC, 710 NORTH SUN DRIVE OPERATIONS, LLC, 1851 ELKCAM BOULEVARD OPERATIONS, LLC, 6414 13TH ROAD SOUTH OPERATIONS, LLC, 1120 WEST DONEGAN AVENUE OPERATIONS, LLC, 12170 CORTEZ BOULEVARD OPERATIONS, LLC, 9400 SW 137TH AVENUE OPERATIONS LLC, NSPRMC, LLC, 1550 JESS PARRISH COURT OPERATIONS, LLC, LV CHC HOLDINGS I, LLC, CONCOURSE PARTNERS, LLC, CONCURRENT PARTNERS, LLLP, PORT CHARLOTTE FACILITY OPERATIONS, LLC, WEST ALTAMONTE FACILITY OPERATIONS, LLC, 216 SANTA BARBARA

BOULEVARD OPERATIONS, LLC, FLORIDIAN FACILITY OPERATIONS, LLC, 1615 MIAMI ROAD OPERATIONS, LLC, 6305 CORTEZ ROAD WEST OPERATIONS, LLC, 15204 WEST COLONIAL DRIVE OPERATIONS, LLC, NEW PORT RICHEY FACILITY OPERATIONS, LLC, 11565 HARTS ROAD OPERATIONS, LLC, BRANDON FACILITY OPERATIONS, LLC, 9355 SAN JOSE BOULEVARD OPERATIONS, LLC, 702 SOUTH KINGS AVENUE OPERATIONS, LLC, ORANGE PARK FACILITY OPERATIONS, LLC, SYNERGY HEALTHCARE SERVICES, INC., NSPIRE HEALTHCARE INC., ASPIRE HEALTHCARE, LLC, and DANIEL E. DIAS, ESQUIRE,

Defendants.

COMPLAINT

Healthcare Negligence Settlement Recovery Corp. (the “Recovery Corp.”), by and through its undersigned counsel, hereby sues 5405 Babcock Street Operations, LLC, Epsilon Health Care Properties, LLC, CMC II, LLC, Lavie Care Centers, LLC, 6700 N.W. 10th Place Operations, LLC, 4200 Washington Street Operations, LLC, 2826 Cleveland Avenue Operations, LLC, Baya Nursing and Rehabilitation, LLC, 1465 Oakfield Drive Operations, LLC, 777 Ninth Street North Operations, LLC, 3101 Ginger Drive Operations, LLC, Tallahassee Facility Operations, LLC, Joseira, LLC, Tosturi, LLC, Melbourne Facility Operations, LLC, North Fort Myers Facility Operations, LLC, Consulate Facility Leasing, LLC, 1010 Carpenters Way Operations, LLC, Miami Facility Operations, LLC, 741 South Beneva Road Operations, LLC, 3735 Evans Avenue Operations, LLC, 7950 Lake Underhill Road Operations, LLC, 518 West Fletcher Avenue Operations, LLC, Lidenskab LLC, Jacksonville Facility Operations, LLC, 3001 Palm Coast Parkway Operations, LLC, Kissimmee Facility Operations, LLC, 9311 South Orange Blossom Trail Operations, LLC, 4641 Old Canoe Creek Road Operations, LLC, 2333 North Brentwood Circle Operations, LLC, 710 North Sun Drive Operations, LLC, 1851 Elkcam Boulevard

Operations, LLC, 6414 13th Road South Operations, LLC, 1120 West Donegan Avenue Operations, LLC, 12170 Cortez Boulevard Operations, LLC, 9400 SW 137th Avenue Operations LLC, NSPRMC, LLC, 1550 Jess Parrish Court Operations, LLC, LV CHC Holdings I, LLC, Concourse Partners, LLC, Concurrent Partners, LLLP, Port Charlotte Facility Operations, LLC, West Altamonte Facility Operations, LLC, 216 Santa Barbara Boulevard Operations, LLC, Floridian Facility Operations, LLC, 1615 Miami Road Operations, LLC, 6305 Cortez Road West Operations, LLC, 15204 West Colonial Drive Operations, LLC, New Port Richey Facility Operations, LLC, 11565 Harts Road Operations, LLC, Brandon Facility Operations, LLC, 9355 San Jose Boulevard Operations, LLC, 702 South Kings Avenue Operations, LLC, Orange Park Facility Operations, LLC, (collectively, the “Consulate Entities”), Synergy Healthcare Services, Inc., NSPIRE Healthcare Inc., and Aspire Healthcare, LLC (collectively, the “Transferees”), and Daniel E. Dias, Esquire (the “Control Individual”), all of which are collectively referred to herein as the “Defendants,” and alleges:

A. PRELIMINARY ALLEGATIONS

1. The Recovery Corp. is a Florida corporation, doing business in Hillsborough County, Florida.
2. Each of the Consulate Entities is a business entity, doing business in Miami-Dade County, Florida, or elsewhere in the State of Florida.
3. Each of the Transferees is a business entity, doing business in Miami-Dade County, Florida, or elsewhere in the State of Florida.
4. The Control Individual is an individual, sui juris, doing business in Miami-Dade County, Florida that has subjected himself to the jurisdiction of this Court.
5. Pursuant to Florida Statutes §26.012(2)(a), and other applicable law, jurisdiction

for each count alleged in this complaint (this “Complaint”) lies with this Court because this Complaint seeks damages in excess of \$50,000, exclusive of attorneys’ fees, court costs, and related expenses arising from acts that occurred or had impact in Miami-Dade County, Florida.

6. Pursuant to Florida Statutes §47.011, and other applicable law, venue is proper in Miami-Dade County, Florida.

7. All requirements and conditions precedent to the bringing of this action have been satisfied, performed by the Recovery Corp. or its predecessors-in-interest, or waived by the applicable Defendants.

8. The Recovery Corp. has retained the undersigned law firm as counsel of record herein and has agreed to compensate and reimburse it for services rendered and costs incurred in connection with enforcement of the rights and remedies more fully set forth below.

B. THE CONTRACTUAL BASIS FOR THE CLAIMS

9. The Consulate Entities have owned and operated a series of skilled nursing facilities (the “SNFs”) throughout the State of Florida and beyond. The Consulate Entities have been the frequent targets of claims for nursing home abuse and related causes of action.

10. With respect to each of the SNFs, and all residents including the Claimants, the Consulate Entities owed a duty to exercise reasonable care in the operation pursuant to Florida Statutes §400.023. Moreover, each of the Consulate Entities was subject to the provisions of 42 Code of Federal Regulations, Part 483, Chapter 400, Florida Statutes, and Chapter 59 A-4, Florida Administrative Code.

11. On March 28, 2024, the Recovery Corp. was formed by a set of claimants (collectively, the “Claimants”), all of whom had a set of undisputed claims (the “Claims”) against one or more of the Consulate Entities.

12. In all instances, the Claimants originally asserted Claims based upon failure to maintain the required level of care for residents is imposed pursuant to Florida Statutes §400.022. Each of the Claims arose on the date that injuries were experienced by the residents in question.

13. The Claims were all reduced to Settlement Documents evidenced by release documents that were substantially identical to one another (collectively, the “Settlement Documents”). An exemplar of a Settlement Document is attached hereto as Exhibit “A,” and the Settlement Documents are so voluminous that it would be inappropriate to include the same as exhibits to this Complaint, as provided under Florida Rule of Civil Procedure 1.130.

14. In connection with the formation of the Recovery Corp., the Claimants executed an assignment (collectively, the “Assignments”) that assigned the Claims to the Recovery Corp. in exchange for equity ownership interests commensurate with their respective Claims. An exemplar of an Assignment is attached hereto as Exhibit “B,” and the Assignments are so voluminous that it would be inappropriate to include the same as exhibits to this Complaint, as provided under Florida Rule of Civil Procedure 1.130.

15. A schedule of ninety-seven (97) Claimants, and their Claims amounting to \$8,678,877 (collectively, the “Aggregate Outstanding Balance”), is attached hereto as Exhibit “C.” The Aggregate Outstanding Balance is calculated as the sum of settlement payments promised but not made under the Settlement Documents, exclusive of interest, attorneys’ fees, costs, punitive damages, or other claim components that may be due based upon the underlying nucleus of operative facts.

16. All the Settlement Documents provided for the payment by applicable Consulate Entities of settlement payments over time to the Claimants on account of their respective Claims. Many but not all of the Claims have been the subject of nursing home negligence actions

(collectively, the “Negligence Actions”), with Courts presiding over the Negligence Actions each reserving jurisdiction to enforce the underlying settlements.

17. At least three (3) Courts presiding over Negligence Actions brought by Claimants have entered judgments in favor of the applicable Claimants and against the applicable Consulate Entity (collectively, the “Final Judgments”), for failure to make payments as agreed. Copies of the Final Judgments are attached as Composite Exhibit “D.”

18. The Final Judgments remain due and owing to the Recovery Corp., as successor to all Claimants. The judgment amounts set forth therein are subject to adjustment upward to include statutory interest, attorneys’ fees, and costs. Pursuant to Florida Statutes §57.111 and other applicable law, attorneys’ fees and costs incurred in connection with the collection of a judgment are properly awarded as an additional form of relief.

19. Because the Final Judgments are final, the Recovery Corp. as assignee is now entitled as a matter of law to assert his rights and remedies against the Consulate Entities. Because the Consulate Entities have operated as a single unit, and because numerous payment obligations previously due to the Claimants are in a state of uncured default, it is undisputable that the Consulate Entities are insolvent in that they are not paying their debts as they come due and owing in the ordinary course. It is also clear that the Consulate Entities are unable or unwilling to pay the Aggregate Outstanding Balance, and all sums due and owing under the Settlement Documents are therefore properly accelerated.

20. As of the date that the Claims arose that were asserted against the Consulate Entities in the events leading up to the execution of the various Settlement Documents, the Claimants each became a “creditor” of the Consulate Entities, for purposes of obtaining relief under Florida’s codification of the Uniform Fraudulent Transfer Act, codified at Florida Statutes §726.101 et seq.

(“FUFTA”) and other applicable law. The Recovery Corp. now stands in the Claimants shoes as successor.

C. DEFENDANTS’ PLANNED DEFAULTS UNDER SETTLEMENT DOCUMENTS

21. The defaults of the Consulate Entities under the Settlement Documents were not accidental or unexpected, they were engineered.

22. As noted above, the Claimants are part of a larger universe of nursing home negligence victims who were nursing home residents, or survivors of residents, who suffered serious neglect, injuries, and/or death at SNFs operated by the constituent Consulate Entities.

23. The Claims and other similar claims by victims, were analyzed by the Control Individual, who is both an executive for some of the Defendants and a defense attorney who worked as counsel of record opposite a set of fifteen (15) law firms throughout the State of Florida (collectively, the “Plaintiffs Firms”), for purposes of negotiating the settlements in question.

24. Although the Consulate Entities attributed payment defaults under under the Settlement Documents to cash flow problems, neither the Claimants nor the Plaintiffs Firms were aware that the Consulate Entities were experiencing cash flow difficulties was because they were transferring SNFs and other valuable assets (collectively, the “Assets”) as part of corporate restructurings. For purposes of this Complaint, the actions of transferring Assets from the Consulate Entities to the Transferees are collectively referred to herein as the “Transfers.” The Transfers had the effect of enabling the Consulate Entities to avoid liabilities they knew of at the time that the Transfers were occurring.

25. When payments fell into arrears under the Settlement Documents, it became obvious to the Plaintiffs Firms and the Claimants that the Consulate Entities had adopted a business plan intended to maximize profits by (a) skimping on the expenses normally associated with the

quality level of care required under Florida law for licensed skilled nursing home facilities, (b) failing to carry appropriate insurance coverage on any of the SNFs, and (c) utilizing a shifting shell game of business entities to place core business assets beyond the reach of anticipated tort claimants, the victims of negligent care. The gravamen of this Complaint focuses upon the third element of this business plan.

26. The Claimants clearly fall within the universe of creditors that the Consulate Entities were intending to avoid paying by migrating Assets from the Consulate Entities to the Transferees. Other such victims include those who never brought a lawsuit, brought a lawsuit but did not reach a conclusion, or who have a settlement that has been breached but are not parties to this action. However, because the Claimants fall within a unique set of creditors with acknowledged claims based upon statutory violations of care referenced above, with liquidated sums owed, their Claims were all very similar.

27. As defense counsel and corporate executive for the Consulate Entities, the Control Individual is upon information and belief most responsible for the calculated decision to negotiate settlements with the Plaintiffs Firms while simultaneously effectuating the Transfers in order to avoid the liabilities memorialized thereunder. He (a) represented the Consulate Entities as counsel in dealings with Plaintiffs Firms and other similarly situated law firms representing other nursing home negligence victims, (b) migrated to management of the Consulate Entities for purposes of planning a specific strategy of transferring assets such as SNFs to the Transferees, and (c) formulated and implemented the transfers pursuant to which Assets were transferred to the Transferees leading to payment defaults under the Settlement Documents.

28. The existence of the Transfers, and the strategy of the Consulate Entities in placing the Assets beyond the reach of creditors such as the Claimants, can hardly be considered a secret.

The Tampa Bay Times recently reported that “In the wake of a bankruptcy filing and a slew of bad press over the last few years, the privately held chain — the sixth-largest nursing home company in the nation — has quietly divided its Florida facilities into three separate companies. All three appear to still be affiliated with Consulate.” A copy of the referenced article is provided as Exhibit “E.” And yet the corporate machinations are very difficult to trace, and deliberately so.

29. In connection with any change of ownership of the Consulate Entities responsible to the various Claimants under the corresponding Settlement Documents, the Claimants and the Plaintiffs Firms were entitled to notice. Florida Nursing Home Residents Rights statutes were recently amended to require nursing homeowner/operators and licensees to provide proper written notice of any proposed change or ownership or change of operator before any such transactions could be approved. See Florida Statutes §400.024, Florida Agency for Health Care Administration (“ACHA”).

30. Notwithstanding the mandatory notice provisions set forth above, none of the Consulate Entities provided any notice to any of the Claimants or any of the Plaintiffs Firms that changes of ownership were contemplated, even though the purpose of the change of ownership was quite obviously to make it impossible for the Claimants to recover on their Settlement Documents.

31. Separately, each of the Claimants were virtually powerless to face the corporate behemoth that had perpetrated this cruel trick on victims and families of nursing home abuse that has tacitly been acknowledged in Settlement Documents amounting to \$10,763,500 in original settlement liability. However, as a group, the Claimants have formed the Recovery Corp. were to pursue (a) all the Consulate Entities for the Aggregate Outstanding Balance, (b) all Claims against the Transferees who appear to be operating the SNFs and holding the Assets beyond the reach of

the Claimants, and (c) the Control Individual for all claims arising from his role in orchestrating the Consulate Entities' defaults under the Settlement Documents that he personally negotiated with the Claimants and the Plaintiffs Firms while signing on with the Transferees.

COUNT I: INTENTIONALLY FRAUDULENT TRANSFERS

32. This is an action by the Recovery Corp., as successor-in-interest to the Claimants, against the Consulate Entities and the Transferees (collectively, the "UFTA Defendants"), for damages pursuant to Florida Statutes §§726.105(1)(a) and (b), 726.108, and 726.109(2) and (3) and other applicable law.

33. The Recovery Corp. realleges and incorporates by reference paragraphs 1 through 30 of this Complaint as fully set forth herein.

34. With respect to the Transfers:

- a. the Transfers were made with the actual intent to hinder, delay, and defraud creditors of the Consulate Entities, and specifically the Claimants;
- b. the Transfers were made for less than reasonably equivalent value of the assets transferred, primarily the going concern value of the Consulate Entities;
- c. the Transfers were concealed, as evidenced by the failure to give required statutory notice to the Claimants and the Plaintiffs Firms;
- d. the Transferees are insiders of the Consulate Entities;
- e. the Consulate Entities were insolvent, undercapitalized, or became insolvent shortly after the Transfers were made; and
- f. the Transfers occurred in connection with changes in the status of significant debt of the Consulate Entities, including a veritable "litigation pandemic" against the Consulate Entities for their incorrigible nursing home negligence

violations of Florida Statutes §400.022, 400.023, and Chapter 59 A-4 of the Florida Administrative Code.

35. Other “badges of fraud” are also present in this fact scenario including:
- a. The Control Individual has retained control of the Assets through the Transferees;
 - b. before the Transfers were made, the Consulate Entities had been sued by the Claimants, among others, and serious liability was evident; and
 - c. the Transfers occurred shortly before or shortly after a substantial debt to the Recovery Corp. was identified in connection with the Settlement Documents placing payment requirements on the applicable Consulate Entities.

36. Based upon the foregoing, the Transfers constitute fraudulent transfers to the Transferees and unjustly inured to the benefit of the Transferees in that the Transfers were made, as a matter of law, with actual intent to hinder, delay, and defraud the Recovery Corp. and others having claims or interests in the Transfers.

WHEREFORE, the Recovery Corp. requests relief in her favor and against the UFTA Defendants that shall provide for:

- a. entry of a judgment for damages against the UFTA Defendants for the full value of the Assets, including the going concern value of the operating businesses that has been transferred without a day of operations having been interrupted, subject to appropriate adjustment as the equities may require as set forth pursuant to Florida Statutes §§726.109(2) and (3), which equities should specifically include the recognition of any appreciation or other income generated from the Assets since the time of the Transfers;

- b. the recovery of all of the Recovery Corp.'s attorneys' fees, court costs, and related expenses incurred as a result of the Transfers, to the extent recoverable under applicable law; and
- c. such other or additional relief as is necessary and appropriate.

COUNT II: CONSTRUCTIVELY FRAUDULENT TRANSFERS

37. This is an action by the Recovery Corp. for damages against the UFTA Defendants pursuant to Florida Statutes §§726.105(1)(b), 726.108(1)(a) and (2), and 726.109(2) and (3) and other applicable law.

38. The Recovery Corp. realleges and incorporates by reference paragraphs 1 through 30 of this Complaint as fully set forth herein.

39. With respect to the Transfers:

- a. the relevant Consulate Entities made the Transfers to the Transferees and the Transferees were the recipients of the Transfers;
- b. the value of the consideration received by the Consulate Entities in exchange for the Transfers was not reasonably equivalent to the value of the Assets; and
- a. the Transfers constituted a transfer of all the meaningful assets of the Consulate Entities at the time of the Transfers.

40. At the time of the Transfers, because the Consulate Entities transferred to the Transferees all Assets and the ability to continue operating the SNFs:

- a. the Consulate Entities were engaged or were about to engage in a business and in a transaction for which their remaining assets were unreasonably small in relation to the Transfers; and/or
- b. the Consulate Entities intended to incur, believed, or reasonably should have

believed that they would incur debts beyond their ability to repay them as they came due.

41. Based upon the foregoing, the Transfers constitute constructively fraudulent transfer and unjustly inured to the benefit of the Transferees in that the Transfers were made, as a matter of law, for less than reasonably equivalent value and are constructively fraudulent as to the Recovery Corp., as successor-in-interest to the Claimants.

WHEREFORE, the Recovery Corp. requests relief in his favor and against the Defendants that shall provide for:

- a. entry of a judgment for damages against the UFTA Defendants for the full value of the Transfers, subject to appropriate adjustment as the equities may require as set forth pursuant to Florida Statutes §726.109(2) and (3), which equities should specifically include the recognition of any appreciation or other income generated from the Transfers since the time of the Transfers;
- b. the recovery of all the Recovery Corp.'s attorneys' fees, court costs, and related expenses incurred as a result of the Transfers, to the extent recoverable under applicable law; and
- c. such other and additional relief as is necessary and appropriate.

**COUNT III: DECLARATORY RELIEF REGARDING
CONTINUATION OF BUSINESS LIABILITY AGAINST TRANSFEREES**

42. This is an action by the Recovery Corp. against the Transferees for declaratory relief, based upon a controversy pertaining to the Transferees' liability under a continuation of business theory based upon their continuation of the respective business of the respective Consulate Entities (the "Transferees Liability Controversy").

43. The Recovery Corp. realleges and incorporates by reference paragraphs 1 through

30 of this Complaint as fully set forth herein.

44. The Recovery Corp. asserts, as successor-in-interest to the Claimants, that the threshold liability of the Transferees is established in the preceding paragraphs as a threshold for adjudicating the merits of the Transferees Liability Controversy.

45. Under Florida law, the pattern of business activity as between the Consulate Entities and the corresponding Transferees leaves no doubt that in substance and in form, by intent and in effect, the Transferees represent nothing more than a continuation of the business SNFs, without any change to any business dynamic or attribute whatsoever. Without any defining moment separating the extinguishment of the Consulate Entities and the emergence of the corresponding Transferees, (a) the same name of the business remains unchanged, (b) the same website, phone number, domain names, and other intellectual property associated with the business remain the same, (c) all executory contracts and going concern assets remained intact, and (d) profit margins, financial governance, and fraudulent intent continued uninterrupted.

46. The relief requested herein relates to the Transferees Liability Controversy, that must be adjudicated pursuant to Florida Statutes §86.011 et seq. By way of background, it is noted that successor liability is imposed when there is a continuity of the successor entity evidenced by such things as the same management, personnel, assets, location, and ownership.

47. The rationale for successor liability is rooted in the notion that no business entity should be permitted to commit a tort or breach a contract and avoid liability through corporate transformation in form only. Here, as much as the Transferees may claim otherwise, all of the elements of a mere continuation are present.

48. There is a bona fide, actual, present practical need for a declaration of the rights and duties of the Recovery Corp. and the Transferees (collectively, the “Parties”) with respect to

the Transferees Liability Controversy.

49. The facts surrounding the Transferees Liability Controversy are readily ascertainable and can be readily established. The Parties require timely adjudication of the Transferees Liability Controversy as the status of current business, financial, and legal affairs continue to create an unacceptable situation for all involved.

50. The Recovery Corp. seeks declaratory relief regarding the Transferees Liability Controversy.

51. The rights of the Parties, and other interested parties, are dependent upon the adjudication of the Transferees Liability Controversy.

52. The Parties are all before this Court, and thus this is the correct forum in which to determine the rights of the Parties.

53. A range of equitable considerations, including a weighing of the relative burdens on the Parties to this proceeding, and the equitable nature and authority of this Court, dictate that declaratory relief regarding the Transferees Liability Controversy is appropriate currently.

54. The Transferees Liability Controversy presented in this Court is ripe. The Parties are unsure as to their relative rights and remedies as to the Transferees Liability Controversy. The Parties require this Court's declaratory relief to proceed.

55. Against the foregoing alleged facts, the Transferees refuse to take responsibility for the pattern of conduct perpetrated at the expense of the Recovery Corp., as successor-in-interest to the Claimants. Accordingly, all the Transferees should be deemed liable for the Aggregate Outstanding Balance, as if each executed the underlying Settlement Documents from the outset.

WHEREFORE, the Recovery Corp. requests declaratory judgment regarding all aspects of the Transferees Liability Controversy, in its favor and against the Transferees, finding the

Transferees to be liable for all the same liabilities of the Consulate Entities as set forth above, and finding that the Aggregate Outstanding Balance is owed by the Transferees, on a continuation of business theory, and all other appropriate relief.

**COUNT IV: DECLARATORY RELIEF REGARDING
DE FACTO MERGER LIABILITY AGAINST TRANSFEREES**

56. This is an action by the Recovery Corp. against the Transferees for declaratory relief, based upon a controversy pertaining to the Transferees liability under a de facto merger theory based upon their continuation and absorption of the respective business of the respective Consulate Entities (the “Transferees Merger Controversy”).

57. The Recovery Corp. realleges and incorporates by reference paragraphs 1 through 30 of this Complaint as fully set forth herein.

58. The Recovery Corp., as successor-in-interest to the Claimants, asserts that the threshold liability of the Transferees is established in the preceding paragraphs as a threshold for adjudicating the merits of the Transferees Merger Controversy.

59. Under Florida law, the pattern of business activity as between the respective Consulate Entities and the corresponding Transferees leaves no doubt that in substance and in form, by intent and in effect, the Transferees represent nothing more than a dissolution and merger of the Business into that of the Transferees, without any change to any business dynamic or attribute whatsoever.

60. Without any defining moment separating the extinguishment of the each of the Consulate Entities and the emergence of the corresponding Transferees, (a) the same name of the business remains unchanged, (b) the same website, phone number, domain names, and other intellectual property associated with the business remain the same, (c) the Control Individual fully controls and maintains all Assets, (d) the business essentially ceases to operate as it previously did

under the control of each of the Consulate Entities, and (e) profit margins, financial governance, and fraudulent intent have continued uninterrupted.

61. The relief requested herein relates to the Transferees Merger Controversy, that must be adjudicated pursuant to Florida Statutes §86.011 et seq. By way of background, it is noted that de facto merger liability is imposed when one corporation is absorbed by another, i.e., there is a continuity of the selling corporation evidenced by such things as the same management, personnel, assets, location, and stockholders.

62. There is a bona fide, actual, present practical need for a declaration of the rights and duties of the Parties with respect to the Transferees Merger Controversy.

63. The facts surrounding the Transferees Merger Controversy are readily ascertainable and can be readily established.

64. The Parties require timely adjudication of the Transferees Merger Controversy as the status of current business, financial, and legal affairs continue to create an unacceptable situation for all involved.

65. The Recovery Corp. seeks declaratory relief regarding the Transferees Merger Controversy.

66. The rights of the Parties, and other interested parties, are dependent upon the adjudication of the Transferees Merger Controversy.

67. The Parties are all before this Court, and thus this is the correct forum in which to determine the rights of the Parties.

68. A range of equitable considerations, including a weighing of the relative burdens on the Parties to this proceeding, and the equitable nature and authority of this Court, dictate that declaratory relief regarding the Transferees Merger Controversy is appropriate currently.

69. The Transferees Merger Controversy presented in this Count is ripe. The Parties are unsure as to their relative rights and remedies as to the Transferees Merger Controversy. The Parties require this Court's declaratory relief to proceed.

70. Against the foregoing alleged facts, the Transferees refuse to take responsibility for the pattern of conduct perpetrated at the expense of the Recovery Corp.

WHEREFORE, the Recovery Corp. requests declaratory judgment regarding all aspects of the Transferees Merger Controversy, in its favor and against the Transferees, finding the Transferees to be liable for all the same liabilities of each of the Consulate Entities as set forth above, and finding that the Aggregate Outstanding Balance is owed by the Transferees, on a de facto merger theory, and all other appropriate relief.

**COUNT V: DECLARATORY RELIEF REGARDING
CORPORATE VEIL PIERCING AGAINST TRANSFEREES**

71. This is an action for declaratory relief by the Recovery Corp. against the Transferees, based upon a controversy as to whether the Control Individual's improper use and manipulation of the Consulate Entities has occurred in a context that justifies piercing the corporate veil so as to hold the Transferees accountable for the liabilities of the respective Consulate Entities (the "Veil Piercing Controversy").

72. The Recovery Corp. realleges and incorporates by reference paragraphs 1 through 30 of this Complaint as fully set forth herein.

73. The Recovery Corp. asserts that the threshold liability of the Consulate Entities is established in the preceding paragraphs as a threshold for adjudicating the merits of the Veil Piercing Controversy.

74. The Recovery Corp. has described how the Control Individual deliberately structured the Transfers as part of the standard operating procedure to prevent any scenario in

which the ongoing business activities of the Transferees' enterprise would be held financially accountable for tort liability reduced to the Settlement Documents.

75. The Control Individual, first through the Consulate Entities and then through the Transferees, (a) maintain a set of nursing home businesses, including the SNFs, that are deliberately operated in a manner that would cause one to expect tort claims like those of the Claimants, (b) carry insufficient insurance coverage on the SNFs, (c) employ a shifting shell game strategy to place the Assets beyond the reach of creditors, and (d) maintain a structure that purports to shield the Control Individual from personal liability because their own management practices and corporate structure, and that of the Consulate Entities.

76. Relevant licensure and corresponding notice requirements to the Claimants and other prejudiced creditors were disregarded to effectuate the Transfers so as to place the Assets out of the reach of the Claimants and other creditors. Then, the Transferees took their places in continuing any obligations that the Control Individual deemed necessary to maintain profitability while evading the practical consequences of tort liability.

77. As part of the Consulate Entities standard operating procedure throughout the business matrix, the Control Individual deliberately orchestrated a scenario in which (a) residents of each of the SNFs receive substandard care, (b) the Control Individual acted to place Assets in the name of the Transferees, (c) the Transferees became the new owners of the SNFs and Assets, beyond the reach of the Claimants, and (d) the negligent operation of the SNFs will continue without economic ramifications proportionate to the negligence committed. None of this is acceptable, as a matter of law.

78. The relief requested herein relates to the Veil Piercing Controversy, that must be adjudicated pursuant to Florida Statutes §86.011 et seq. By way of background, it is noted that

justification for piercing the corporate veil requires proof that (a) there was a lack of separateness between a business entity and its true owner, (b) improper conduct occurred in the use and manipulation of the business entity directed by its true owner, and (c) the improper conduct conducted through the business entity was the proximate cause of the alleged loss. These circumstances are present as relating to the Transferees, and justify the relief requested by the Recovery Corp.

79. There is a bona fide, actual, present practical need for a declaration of the rights and duties of the Parties with respect to the Veil Piercing Controversy.

80. The facts surrounding the Veil Piercing Controversy are readily ascertainable and can be readily established. The Parties require timely adjudication of the Veil Piercing Controversy as the status of current business, financial, and legal affairs continue to create an unacceptable situation for all involved.

81. The Recovery Corp. seeks declaratory relief regarding the Veil Piercing Controversy, piercing the veils of all of the Consulate Entities, such that the corporate separateness of the Consulate Entities should be ignored, and the Transferees held liable for the same liabilities of the Consulate Entities. Accordingly, the Recovery Corp. seeks to pierce the veils of the Transferees both vertically and horizontally as appropriate within the Control Individual's business matrix.

82. The rights of the Parties, and other interested parties, are dependent upon the adjudication of the Veil Piercing Controversy.

83. The Parties are all before this Court, and thus this is the correct forum in which to determine the rights of the Parties.

84. A range of equitable considerations, including a weighing of the relative burdens

on the Parties to this proceeding, and the equitable nature and authority of this Court, dictate that declaratory relief regarding the Veil Piercing Controversy is appropriate currently.

85. The Veil Piercing Controversy presented in this Count is ripe. The Parties are unsure as to their relative rights and remedies as to the Veil Piercing Controversy. The Parties require this Court's declaratory relief to proceed.

86. Against the foregoing alleged facts, the Transferees will not accept financial responsibility for the corporate artifice that the Control Individual has created.

WHEREFORE, the Recovery Corp. requests declaratory judgment regarding all aspects of the Veil Piercing Controversy, in its favor and against the Transferees, finding that the Aggregate Outstanding Balance is owed by the Transferees, on a veil piercing theory, and all other appropriate relief.

COUNT VI: UNFAIR AND DECEPTIVE TRADE PRACTICES

87. This is an action for damages by the Recovery Corp. against all of the Defendants, pursuant to the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), as amended, codified at Florida Statutes §501.201, et. seq.

88. The Recovery Corp. realleges and incorporates by reference paragraphs 1 through 88 of this Complaint as fully set forth herein.

89. The Recovery Corp. is a successor to the Claimants, who are "consumers" as defined by Florida Statutes §501.203.

90. The Defendants are actively engaged in trade and commerce in the State of Florida, and specifically in the Middle District of Florida.

91. The Defendants have engaged in unfair, deceptive, and unconscionable acts or trade practices in their trade and commerce.

92. Such acts and practices offend public policy and are immoral, unethical, oppressive, and unscrupulous. The facts accurately described above reflect that the Defendants' conduct is unconscionable.

93. The conduct of the Defendants has been materially injurious to the Claimants.

94. The conduct of the Defendants was the actual and proximate cause of the damages sustained by the Claimants.

95. The Defendants' unfair and deceptive acts have caused the Claimants to sustain damages.

WHEREFORE, the Recovery Corp. demand judgment in its favor and against the Defendants for damages for its unfair and deceptive trade practices, plus attorneys' fees and costs pursuant to Florida Statutes §501.211(2), and all additional relief that is just and proper.

COUNT VII: DAMAGES FOR CIVIL CONSPIRACY

96. This is an action by the Recovery Corp. against the Control Individual and the Transferees for damages as a result of the civil conspiracy to interfere with the Settlement Documents.

97. The Recovery Corp. reincorporates by reference the allegations contained in paragraphs 30 above as though fully set forth herein.

98. The Claimants and the Consulate Entities were parties to a set of Settlement Documents, and the Consulate Entities were due to perform by paying the Aggregate Outstanding Balance.

99. The Control Individual and the Transferees collectively committed fraudulent and otherwise avoidable transfers as described above, for their own lucre, at the expense of the Claimants, the predecessors-in-interest to the Recovery Corp.

100. As a result of the foregoing overt acts, among others perpetrated in collusion by the Control Individual and the Transferees, the Recovery Corp. has sustained damages because the Aggregate Outstanding Balance remains outstanding and the Assets and SNFs are owned and controlled by the Transferees.

WHEREFORE, the Recovery Corp. requests judgment in its favor and against the Control Individual and the Transferees, jointly and severally, for the Aggregate Outstanding Balance, together with such other and further relief deemed just, equitable, and proper.

**COUNT VIII: BREACH OF FIDUCIARY
DUTY AGAINST THE CONTROL INDIVIDUAL**

101. This is an action by the Recovery Corp. against the Control Individual for damages relating to his breach of fiduciary duty post-closing with respect to the operations of the Consulate Entities following negotiation and execution of the Settlement Documents.

102. The Recovery Corp. realleges paragraphs 1 through 30 of this Complaint as though fully set forth herein.

103. As noted above, it cannot be reasonably disputed that the Control Individual, in his own right and on behalf of Consulate Entities, deliberately caused the Claimants to repose trust in him, in achieving each of the Settlement Documents.

104. The Control Individual knowingly accepted the Claimants' trust, only to betray it while mismanaging the Consulate Entities. Specifically, by orchestrating the Transfers, the Control Individual ensured that the Consulate Entities would be unable to meet their commitments and pay the Aggregate Outstanding Balance.

105. In addition to the foregoing, upon information and belief, the Control Individual held corporate positions in one or more of the Consulate Entities at times during which the Consulate Entities were insolvent. Under applicable law, officers and directors of a solvent

business entity have a statutory fiduciary duty to equity; however, officers and directors of an insolvent business entity have a duty to creditors: Engineering fraudulent transfers is inconsistent with the fiduciary duty owed to creditors of an insolvent enterprise.

106. The Recovery Corp.'s interest in the Consulate Entities has been substantially diminished as a result of the aforementioned actionable misconduct, including reduction commensurate with the value of the Assets as transferred.

107. The Recovery Corp. has been harmed as a result of all the foregoing aforementioned actionable misconduct.

WHEREFORE, the Recovery Corp. requests judgment for damages against the Control Individual, together with costs, and granting such other and further relief deemed just, equitable, and proper.

COUNT IX: UNJUST ENRICHMENT

108. This is an action for damages by the Recovery Corp. against the Control Individual and the Transferees for unjust enrichment.

109. The Recovery Corp. realleges and incorporates by reference paragraphs 1 through 30 of this Complaint as fully set forth herein.

110. The Consulate Entities transferred the Assets to the Transferees and the Transferees are now controlled by the Control Individual, who negotiated the Settlement Documents and then orchestrated the Transfers to make it impossible for the Consulate Entities to pay the Aggregate Outstanding Balance.

111. The Control Individual and the Transferees were aware of and appreciated the fact that the Assets were transferred clandestinely, for insufficient value, in an insolvency scenario, and with other circumstances indicative of bad faith and fraudulent intent.

112. The totality of the circumstances makes it inequitable for the Transferees to retain the Assets without paying the value thereof.

113. The Control Individual and the Transferees fully knew that the value received was inequitable under the totality of the circumstances.

WHEREFORE, the Recovery Corp. demands judgment against the Control Individual and the Transferees, for the aggregate value of the Aggregate Outstanding Balance, together with interest, costs and such other relief as this Court deems appropriate.

D. JURY TRIAL DEMANDED

114. The Recovery Corp. demands a trial by jury on all issues so triable.

Dated this 22nd day of April 2024.

/s/ John A. Anthony

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