IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CHAPTER 11
	)	
LAVIE CARE CENTERS, LLC, *et al.*,[1]	)	CASE NO. 24-55507-pmb
	)	
Debtors.	)	JOINTLY ADMINISTERED
	)	
	)	Related to Docket No. 433

RESPONSE OF THE OMEGA PARTIES IN OPPOSITION TO RECOVERY CORP.'S MOTION TO ESTABLISH STANDING TO CHALLENGE FINAL DIP FINANCING ORDER

The Omega Parties[2] submit this Response in Opposition ("Response") to *Recovery Corp.'s Motion to Establish Standing to Challenge the Final DIP Financing Order* ("Motion") [Docket No. 433], specifically urging the Court to deny the Motion, and in support thereof respectfully state as follows:

INTRODUCTION AND BACKGROUND

On June 28, 2024, the Court entered the *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*

[1] The last four digits of LaVie Care Centers, LLC's federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, for which the Debtors have requested joint administration. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.kccllc.net/LaVie. The location of LaVie Care Centers, LLC's corporate headquarters and the Debtors' service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.

[2] As used herein, the term "Omega Parties" shall mean the Prepetition Omega Secured Parties, which are the Omega Landlords and Prepetition Omega Term Loan Secured Parties, all as defined in the 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, dated June 28, 2024 [Docket No. 189].

Related Relief (the "Final DIP Financing Order") [Docket No. 189].[3] By the Motion, Healthcare Negligence Settlement Recovery Corp. ("Recovery Corp.") now requests that the Court grant it standing to bring the Proposed Adversary Complaint (the "Proposed Complaint") challenging the stipulations set forth in the Final DIP Financing Order (the "Challenge"). As discussed herein, the Motion should be denied for at least four (4) reasons. *First*, the Motion should be denied because it was not timely filed, and fixed date deadlines are not subject to the rules governing computation of time under Bankruptcy Rule 9006(a) as espoused by Recovery Corp. *Second*, Recovery Corp failed to obtain standing prior to the expiration of the Challenge Deadline as required by the Final DIP Financing Order.[4] *Third*, Recovery Corp. lacks standing to bring an adverse action as an individual creditor represented by the Official Committee of Unsecured Creditors (the "Committee") and, thus, cannot challenge the stipulations set forth in the Final DIP Financing Order. *Fourth*, the Challenge fails because it is defective and lacks the requisite specificity mandated by the Final DIP Financing Order. Accordingly, the Omega Parties request that the Court deny Recovery Corp.'s Motion to Establish Standing to Challenge the Final DIP Financing Order.

ARGUMENT

I. Recovery Corp.'s Motion Should Be Denied Because It Was Not Timely Filed.

Despite Recovery Corp.'s contention to the contrary, Rule 9006 does not apply to the Challenge Deadline set forth in the Final DIP Financing Order because the deadline to initiate a

[3] Unless otherwise stated, the capitalized terms included in this Response shall have the same meaning ascribed to them in the Final DIP Financing Order.

[4] Recovery Corp did not object to the entry of the Final DIP Financing Order at the hearing held before the Court on June 27, 2024, or by motion prior to the entry of the Final DIP Financing Order.

Challenge Proceeding was a specific date and not a period to be computed based on a number of days.

As set forth in the Final DIP Financing Order, the deadline to initiate a Challenge Proceeding expired on September 15, 2024 (the "Challenge Deadline"). *See* Final DIP Financing Order, ¶ 23(d). Recovery Corp. filed the Motion and the Proposed Complaint on September 16, 2024, and such filing was, therefore, untimely. *See* Docket No. 433. In the Motion, Recovery Corp. acknowledges that the Challenge Deadline was September 15, 2024, but maintains that the filing of the Motion on September 16, 2024, was timely pursuant to Federal Rule of Bankruptcy Procedure 9006 ("Rule 9006"). *Id.*, p. 17, n. 1. Rule 9006(a) provides:

> **(a) Computing Time.** The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time.
>
> (1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:
>
> (A) exclude the day of the event that triggers the period;
>
> (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
>
> (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Fed. R. Bankr. P. 9006(a)(1)(A)-(C). As amended in 2009, Rule 9006(a) expressly limits the extension of deadlines falling on non-business days only to a deadline determined by a period stated in days or hours. Fed. R. Bankr. P. 9006(a). The Advisory Committee Note to the 2009 Amendment provides:

> The time-computation provisions of subdivision (a) apply only when a time period must be computed. ***They do not apply when a fixed time to act is set.*** The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*,

> 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) "does not apply to situations where the court has established a specific calendar day as a deadline").

Fed R. Bankr. P. 9006 Advisory Committee Note—2009 Amendment (emphasis added).

While not binding on the Court, "the interpretations in the Advisory Committee Notes are nearly universally accorded great weight in interpreting federal rules […] The 2009 Amendments, therefore, provided that fixed dates are not subject to the rules governing computation of time articulated in Bankruptcy Rule 9006(a)." *Dillworth v. Obregon*, No. 12-20075-CIV, 2012 WL 3244683, at *2 (S.D. Fla. Aug. 9, 2012) (internal quotations omitted). Following the 2009 Amendment to Rule 9006(a) and its Advisory Committee Note, many courts have held that Rule 9006(a) does not extend fixed-date deadlines.[5] Thus, because Recovery Corp. failed to file the Motion prior to the expiration of the Challenge Deadline, the Motion should be denied for failure to comply with the deadline set forth in the Final DIP Financing Order.

II. The Motion Should Be Denied Because Recovery Corp Failed To Obtain Standing Prior To The Expiration Of The Challenge Deadline.

Even assuming, *arguendo*, that the Motion was filed timely (*i.e.*, on or before September 15, 2024), Recovery Corp. also failed to comply with the terms of the Final DIP Financing Order which required Recovery Corp. to obtain an order from the Court establishing standing before the expiration of the Challenge Deadline, or to move to extend or toll the Challenge Deadline for cause until the Court ruled on its Motion. The Final DIP Financing Order provides:

> 23. […] The Stipulations shall be binding upon all parties in interest […] ***unless an Official Committee, or a party in interest (in each case, to the extent requisite standing is obtained pursuant to an order of this Court entered prior to the***

[5] *See, e.g., In re Biggs*, No. 11-29249-EPK, 2012 WL 2974885, at *2–3 (Bankr. S.D. Fla. July 20, 2012); *Dillworth v. Obregon*, No. 12-20075-CIV, 2012 WL 3244683, at *3 (S.D. Fla. Aug. 9, 2012); *X/Open Co. v. Gray (In re Gray)*, 492 B.R. 923, 924 (Bankr. M.D. Fla. 2013) (finding that Bankruptcy Rule 9006(a) does not extend the deadline for filing a dischargeability complaint when a specific date is set by court order); *In re MF Glob. Inc.*, No. 11-2790 (MG) SIPA, 2014 WL 1320094, at *5 (Bankr. S.D.N.Y. Apr. 1, 2014); *In re Froiland*, 589 B.R. 309, 314 (Bankr. W.D. Tex. 2018); *In re Wright*, No. 15-43533-ELM-13, 2019 WL 5075941, at *4 (Bankr. N.D. Tex. Oct. 9, 2019); *In re Wortham*, No. 19-13349-SAH, 2020 WL 1696107, at *5 (Bankr. W.D. Okla. Apr. 7, 2020).

> ***Challenge Deadline (as defined below)) with respect to the Stipulations and a challenge has been filed with this Court (each, a "Challenge Proceeding") by the Challenge Deadline***, objecting to or challenging the amount, validity, perfection, enforceability, priority, or extent of any of the Prepetition Secured Obligations, the Prepetition Liens, or the Prepetition Secured Documents, or otherwise asserting or prosecuting any Avoidance Action or any other claim […]

Final DIP Financing Order, ¶ 23(a) (emphasis added).

The court in *In re Ion Media Networks, Inc.*, 419 B.R. 585, 596–97 (Bankr. S.D.N.Y. 2009), considered whether an individual creditor could bring a challenge to the secured party's liens as provided in the DIP Order. The court found that, to properly assert a challenge to the debtor in possession financing order, the creditor was required to first seek derivative standing, which it did not do. *Id.* at 596 ("In the case *sub judice*, the Court need not apply the factors utilized in determining whether a party has standing as Cyrus has failed to even seek standing prior to filing the Cyrus Adversary Proceeding.") The court added that the creditor was "fully aware that it needed to seek the right to pursue estate claims if it wanted to make a challenge in respect of the grant of rights under the DIP Order." *Id.* at 596–97. Accordingly, because the creditor did not first seek derivative standing before filing an adversary proceeding, the court held that the DIP Order prohibited the creditor from challenging the validity of the secured lender's liens. *Id.* at 596.

Here, Recovery Corp. was required to obtain an order from the Court establishing standing prior to the expiration of the Challenge Deadline but failed to do so. Thus, Recovery Corp. cannot, through the untimely Motion, seek standing to challenge the stipulations set forth in the Final DIP Financing Order when it failed to obtain an order of the Court granting it standing during the Challenge Deadline (prior to September 15, 2024).

Moreover, Recovery Corp. did not seek an extension to extend the Challenge Deadline. The Final DIP Financing Order provides that if requisite standing is not obtained prior to the expiration of the Challenge Deadline, the Court may extend the Challenge Deadline upon a motion

for cause. Specifically, the Final DIP Financing Order provides that the Court may order that the Challenge Deadline be extended to:

> (C) any such later date as has been ordered by this Court ***for cause upon a motion filed and served with a draft complaint attached to such motion prior to the expiration of the deadline to commence a Challenge***; provided, that the filing of a motion pursuant to subsection (C), supra, shall toll the Challenge Period only as to the party that timely filed such standing motion until such motion is resolved or adjudicated by this Court[…].

Final DIP Financing Order, ¶ 23(d)(C) (emphasis added).

Thus, knowing that it had not yet received an order establishing standing to bring a Challenge, Recovery Corp. had the opportunity to move the Court, for cause, to extend the Challenge Deadline, but elected not to do so. The Motion before the Court makes no request to extend the Challenge Deadline for cause or otherwise, nor does it state that there is good cause for the Court to do so.

III. Recovery Corp. Lacks Standing To Challenge The Stipulations Set Forth In The Final DIP Financing Order.

Even if the Motion had been timely filed and Recovery Corp. sought an order from the Court establishing standing, Recovery Corp. still lacks standing to challenge the stipulations set forth in the Final DIP Financing Order. Courts have generally only granted standing to individual creditors in rare or extreme circumstances. *See United Jersey Bank v. Morgan Guar. Trust Co. of N.Y. (In re Prime Motor Inns, Inc.)*, 135 B.R. 917, 920 (Bankr. S.D. Fla. 1992); *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Grusky,* 763 So. 2d 1206, 1208 (Fla. Dist. Ct. App. 2000); *In re Phillips*, 573 B.R. 626, 641 (Bankr. E.D.N.C. 2017); *In re Smith & Kelly Co.*, No. 92-4007, 1992 WL 12004005, at *5 (Bankr. S.D. Ga. June 11, 1992). The court in *In re Prime Motor Inns, Inc.* held that "[t]he qualified right of a committee to initiate an avoidance action on behalf of the estate may not, however, be extended to individual creditors or shareholders." 135 B.R. at 920. The court reasoned that:

> It is only under extreme circumstances in which courts have permitted an individual creditor to pursue avoidance actions on behalf of an estate. For example, courts have held that when a trustee or debtor-in-possession has unjustifiably failed to act and there is no other objective third party, i.e., an official committee, an individual creditor may be given leave to commence such an action. *See In re Shelby Motel Group, Inc.*, 123 B.R. 98 (N.D. Ala. 1990); *In re McKeesport Steel Castings Co.*, 799 F.2d 91 (3rd Cir. 1986). In this instance, however, it is undisputed that the Creditors' Committee has taken an active role in these cases. Thus, even if UJB could demonstrate that the Prime Debtors have unjustifiably refused to commence a preference action against Morgan Guaranty and First Fidelity, the Creditors' Committee would be fully capable of adequately protecting any rights of these estates. *See In re Feldhahn*, 92 B.R. 834, 836 (Bankr. S.D. Iowa 1988).

Id. at 920, n.4. Thus, a plaintiff bears the burden to show that its claim is colorable, and that there is a reasonable likelihood that the estate will benefit from proceeding with the action. *Id.* at 920.

The case at bar is not the type of rare or extreme circumstances which would permit Recovery Corp. to pursue a Challenge on behalf of the estate. It appears that Recovery Corp. is not bringing the Proposed Complaint on behalf of the entire estate, but rather on behalf of the DivestCo Debtors and, ultimately, itself. Recovery Corp. argues that, as written, the stipulations in the Final DIP Financing Order result in a situation where none of the DivestCo Debtors will "benefit in the least[,]" from the sale of the assets of the OpCo Debtors. *See* Motion, p. 6. In essence, Recovery Corp. alleges that the DivestCo Debtors, and ultimately their creditors, will receive a disproportionate benefit to that of the OpCo Debtors, and ultimately their creditors, without the slightest explanation as to how the subject stipulations bring about such a result.

However, the Committee exists to represent all creditors and benefit the estate as a whole. Recovery Corp. should not be granted standing to pursue a Challenge on behalf of the estate in an attempt to advance the sole interests of the DivestCo Debtors and itself. *In re Prime Motor Inns, Inc.*, 135 B.R. 917, 921 (Bankr. S.D. Fla. 1992) ("A single creditor should not have standing to advance its own parochial interests to the detriment of other creditors. Such a result would create a needless obstacle to reorganization in Chapter 11 cases."). During the July 24, 2024 Omnibus

Hearing, Recovery Corp. acknowledged that the Committee was responsible for investigating those claims and that the claims belong to the Debtors, stating:

> MR. ANTHONY: […] We understand the concept of 544(b) and 541(a) and the augmented estate and how those claims normally switch hands in connection with the filing of a Chapter 11.
>
> THE COURT: Right. They belong to the debtors. And in this case, we have a creditors committee, who is, among other things, investigating those kinds of claims.
>
> MR. ANTHONY: Right.
>
> THE COURT: And your client's on the creditors committee.
>
> MR. ANTHONY: Right.

Trspt. July 24, 2024 Omnibus Hearing, p. 19, ¶¶ 9-18, attached as Exhibit A hereto. *See also* Proposed Complaint, ¶ 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."); *and* see Proposed Complaint, ¶ 89 ("The Creditors' Committee has diligently sought to investigate the very claims that Recovery Corp. articulated first in the Miami Action . . . ."). Thus, Recovery Corp. cannot now bring a Challenge when its interests have been and are adequately represented by the Committee which has taken an active role in this case.[6]

In addition, Recovery Corp. has not made a demand upon the Debtors to assert the derivative claims, nor does it allege that it has. *See* Docket 433. To establish standing, Recovery Corp. would need to show that not only has it made a demand on the Debtors, but that the Debtors refused to pursue the claims, and Recovery Corp. received a determination by the Court that the

[6] Nothing contained herein shall be deemed a waiver of the OHI Parties' right to contest the standing of the Creditors' Committee to assert a Challenge or to contest any such Challenge by the Creditors' Committee, and such right is expressly reserved hereby.

refusal to pursue such claims is unreasonable. *See In re Wade*, 598 B.R. 34, 38 (Bankr. N.D. Ga. 2019). Even if Recovery Corp. could demonstrate that the Debtors have unjustifiably refused to assert the derivative claims, or that a demand would be futile, the Committee is fully capable of adequately protecting unsecured creditors' rights. Thus, because Recovery Corp. has not made a demand on the Debtors or shown that the Debtors have unreasonably refused to pursue the claim and has made no allegation that the Committee would be unable to protect its interests, it has no standing to assert the derivative claims or object to the stipulations in the Final DIP Financing Order.

Finally, for all of the reasons articulated in *Debtors' (A) Motion to Strike, (B) Cross-Motion to Compel, and (C) Opposition to Recovery Corp.'s Motion to Compel Discovery Responses* [Docket 464, ¶¶ 34-40] (which are incorporated herein by reference for all purposes), because Recovery Corp. lacks standing to assert the derivative claims under Florida law, it has no standing to object to the stipulations set forth in the Final DIP Financing Order.

IV. Recovery Corp.'s Challenge Must Fail Because It Lacks The Requisite Specificity Required By The Final DIP Financing Order.

Pursuant to the Final DIP Financing Order, Recovery Corp. was required to set forth the bases for its challenge with requisite specificity. *See* Final DIP Financing Order, ¶ 23(a). The Final DIP Financing Order expressly requires that "[…] any pleadings filed in any Challenge Proceeding shall set forth with the requisite specificity the basis for such Challenge (and any Challenges not so specified prior to the Challenge Deadline shall be deemed forever, waived, released and barred)[.]" *Id.*

First, Recovery Corp.'s proposed Challenge fails because it objects to stipulations relating to the Omega Parties, none of whom are named defendants in the Proposed Complaint. *See* Proposed Complaint, ¶¶ 6-56. Counts 1 through 4 of the Proposed Complaint are objections to

stipulations in the Final DIP Financing Order relating to the Prepetition Secured Obligations and Prepetition Liens. *See* Proposed Complaint, ¶¶ 101-117. However, the OHI Parties, to whom certain of the Prepetition Secured Obligations are owed and who hold certain of such Prepetition Liens that Recovery Corp. seeks to challenge, are not named as defendants in the Proposed Complaint. The only OHI entity named in the Proposed Complaint is the OHI DIP Lender, LLC ("OHI DIP Lender"). *See* Proposed Complaint, ¶ 55. Accordingly, Recovery Corp.'s Challenge is fatally defective for failure to name as parties the Omega Parties whose rights it seeks to challenge.

Second, Recovery Corp. alleges in Counts 1 through 5 that Recovery Corp. has not been provided sufficient evidence of the stipulations and demands proof thereof. To date, the Debtors have produced over 25,700 pages of documents. Recovery Corp. does not explain what additional information it would need to investigate or determine the validity of the stipulations beyond the deluge of information already provided by the Debtors. Further, Recovery Corp has not sought to serve discovery upon the OHI Parties or OHI DIP Lender. Recovery Corp. should not be allowed to proceed with a Challenge by merely alleging lack of information concerning the stipulations (and never seeking to extend the Challenge Period for "cause" due to its failure to obtain requisite evidence). At bottom, the Proposed Complaint lacks the requisite specificity mandated by the Final DIP Financing Order and, therefore, Recovery Corp's Challenge is deemed forever, waived, released and barred under the express terms of the Final DIP Financing Order.

Third, Recovery Corp. alleges in Count 6 of the Proposed Complaint that "[t]hese 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." *See* Proposed

Complaint, ¶ 122. Again, Recovery Corp. never objected to entry of the Final DIP Financing Order, including paragraph 34 therein, which provides that "the DIP Secured Parties and the Prepetition ABL Secured Parties have acted in good faith in connection with the DIP Facility, the DIP Loan Documents, the Interim Financing, and with this Final Order, and their reliance on this Final Order is in good faith." *See* Final DIP Financing Order, ¶ 34. In addition to the requirement pursuant to the Final DIP Financing Order that any pleadings filed in any Challenge shall be set forth with specificity, Federal Rule of Civil Procedure 9(b) requires that fraud be pleaded with specificity. *Cooper v. Blue Cross & Blue Shield of Florida, Inc.*, 19 F.3d 562, 568 (11th Cir. 1994) ("The plaintiff's complaint must allege the details of the defendants allegedly fraudulent acts, when they occurred, and who engaged in them.") (citing *Durham v. Business Management Assocs.*, 847 F.2d 1505 (11th Cir.1988). General conclusory allegations of fraud do not satisfy the requirements of Rule 9(b). *Id.*

Recovery Corp. offers no facts or details in support of its conclusory allegation that the stipulations and releases "were conceived to facilitate and obtain the Court's imprimatur of the fraudulent transfers [....]". Thus, Count 6 of the Proposed Complaint fails to comply with the Final DIP Financing Order, which requires that any pleadings filed in any Challenge shall set forth with specificity, as well as Federal Rule of Civil Procedure 9(b), which also requires that fraud be pleaded with specificity. Accordingly, all counts of Recovery Corp.'s Challenge must fail because the Proposed Complaint is defective, and the allegations set forth therein lack the requisite specificity in that Recovery Corp. makes only conclusory allegations without supporting facts.

WHEREFORE, for the reason set forth in this Response, the Court should deny Recovery Corp.'s Motion to Establish Standing to Challenge the Final DIP Financing Order.

This 30th day of September, 2024.

SCROGGINS, WILLIAMSON & RAY, P.C.

By: */s/ Matthew W. Levin*
MATTHEW W. LEVIN
Georgia Bar No. 448270

4401 Northside Parkway
Suite 230
Atlanta, Georgia 30327
T: (404) 893-3880
F: (404) 893-3886
E: mlevin@swlawfirm.com

and

Leighton Aiken (admitted *pro hac vice)*
Texas Bar No. 00944200
FERGUSON BRASWELL FRASER KUBASTA PC
2500 Dallas Parkway, Suite 600
Plano, Texas 75093
T: (972) 378-9111
E: laiken@fbfk.law

Robert J. Lemons (admitted *pro hac vice)*
New York Bar No. 3892734
Yelizaveta L. Burton (admitted *pro hac vice)*
New York Bar No. 5411681
GOODWIN PROCTOR LLP
The New York Times Building
620 Eight Avenue
New York, NY 10018
T: (212) 813-8800
E: rlemons@goodwinlaw.com
lburton@goodwinlaw.com

Counsel to the Omega Parties

EXHIBIT A

Transcript

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In Re:	
LAVIE CARE CENTERS, LLC, et al.,	Docket No. 24-55507-pmb
Debtors.	
	Atlanta, GA
	July 24, 2024
	9:44 AM
LAVIE CARE CENTERS, LLC, et al.,	
Plaintiffs,	Adv. Proc. 24-05127-pmb
-against-	
HEALTHCARE NEGLIGENCE SETTLEMENT RECOVERY CORP. LLC,	
Defendant.	

TRANSCRIPT OF HEARING

BEFORE THE HONORABLE PAUL M. BAISIER
UNITED STATES BANKRUPTCY COURT

Transcription Services:	eScribers, LLC 7227 N. 16th Street Suite #207 Phoenix, AZ 85020 (800) 257-0885

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE

Debtors' motion filed at adversary docket number 2 for an order extending the automatic stay and/or preliminarily enjoining the claims and causes of action

Transcribed by: River Wolfe

extent that we're bringing claims like that.

So when we brought our lawsuit, we had limited information in April of 2022. We didn't know everything that we know now, three months later. But we brought five counts that are either under the UFTA, Uniform Fraudulent Transfer Act, or as noted, mere continuation, de facto merger, and veil piercing.

And Your Honor, I do want to skip to the chase. It's true. We understand the concept of 544(b) and 541(a) and the augmented estate and how those claims normally switch hands in connection with the filing of a Chapter 11.

THE COURT: Right. They belong to the debtors. And in this case, we have a creditors committee, who is, among other things, investigating those kinds of claims.

MR. ANTHONY: Right.

THE COURT: And your client's on the creditors committee.

MR. ANTHONY: Right. And Your Honor, that's one of the reasons why this was a complete nonemergency is because as we wait, we're not waiting to kick the can down the road. We're waiting to figure out what to do next. The case that we commenced also had four other counts that are not -- that do not fall into that category, the Uniform Deceptive and Unfair Trade Practices Act claim, the civil conspiracy claim, the breach of fiduciary duty claim against Mr. Diaz, and the

CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing **Response of the Omega Parties in Opposition to Recovery Corp.'s Motion to Establish Standing to Challenge Final DIP Financing Order** using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to all parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program.

This 30th day of September, 2024.

SCROGGINS, WILLIAMSON & RAY, P.C.

By: */s/ Matthew W. Levin*
MATTHEW W. LEVIN
Georgia Bar No. 448270

4401 Northside Parkway
Suite 230
Atlanta, GA 30327
T: (404) 893-3880
F: (404) 893-3886
E: mlevin@swlawfirm.com

Counsel for the Omega Parties