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UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

IN RE CASHCALL, INC., Debtor.	Case No. 26-03102-JBM11 Chapter 11 **JUDGMENT CREDITOR EDUARDO DE LA TORRE'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM STAY AS TO ORANGE COUNTY UVTA CASE** RS No.: ADL-1 Date: October 28, 2026 Time: 11:00 a.m. Courtroom 2 Room 118 Hon. J. Barrett Marum

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INTRODUCTION

Judgment Creditor De La Torre is proposing that the Court grant him relief from stay to continue pursuit of his UVTA case—whether in federal court or in state court (the ultimate venue has not been finally determined)—as a remedy for the Debtor's disabling conflicts of interest in pursuing the fraudulent transfer claim based on CashCall's October 2021 $45 million distribution to Mr. Reddam. He is not proposing two parallel cases, one by CashCall and a second by De La Torre. He is proposing only one case, by De La Torre, that will remain subject to the jurisdiction of this Court. That is the appropriate, indeed necessary, resolution of the Debtor's disabling conflicts of interests.

ARGUMENT

A. The Debtor's Right to Pursue Fraudulent Transfer Claims Does Not Preclude Creditor Pursuit in the Appropriate Circumstances Here

The Debtor's right to sue on behalf of the estate is neither absolute or "exclusive." It is subject to well-recognized exceptions.

First, as the Debtor's brief and its cases recognize, the Debtor's right to sue does not preclude pursuit by a creditor when the Debtor abandons a claim. Opposition Brief at 6:5-8, citing *Estate of Spirtos v. One San Bernardino County Superior Court Case Numbered SPR 02211*, 443 F.3d 1172, 1176 (9th Cir. 2006); Opposition brief at 6:24-28, primarily citing *In re Manton*, 585 B.R. 630, 636 (Bankr. N.D. Ga. 2018).

Second, the debtor's right to sue does not preclude pursuit by a creditors' committee when authorized to sue. E.g., *Issa v. Royal Metal Indus. (In re X-Treme Bullets, Inc.)*, 2024 U.S. App. LEXIS 4641, 2-3 (9th Cir. 2024) (while "the Bankruptcy Code contains no explicit authorization for the initiation of an adversary proceeding by a creditors' committee, a qualified implied authorization exists under 11 U.S.C. § 1103(c)(5) … [s]o long as the bankruptcy court exercises its judicial oversight and verifies that the litigation is indeed necessary and beneficial, allowing a creditors' committee to represent the estate presents no undue concerns"); see also *Canadian Pacific Forest Products Ltd. v. J.D. Irving, Ltd. (In re Gibson Group, Inc.)* 66 F.3d 1436, 1446 (6th Cir. 1995) (same); *Official Comm. of Unsecured Creditors v. Clark (In re Nat'l Forge Co.)*,

304 B.R. 214, 222 (Bankr. W. D. Pa. 2004) (authorizing creditors' committee pursuit as a remedy for debtor conflicts on fraudulent conveyance claims).

Third, the Court may authorize a creditor to sue when the debtor has not sued or cannot sue. *In re Curry & Sorensen, Inc.*, 57 B.R. 824, 828 (B.A.P. 9th Cir. 1986)("If a creditor is dissatisfied with lack of action on the part of the debtor-in-possession, the creditor may move to replace the debtor-in-possession with a Chapter 11 trustee; or to convert the Chapter 11 case to one under Chapter 7; move to dismiss the Chapter 11 case; or petition the court to compel the debtor-in-possession to act *or to gain court permission to institute the action itself*", emphasis added); *In re Spaulding Composites Co., Inc.*, 207 B.R. 899, 903 (B.A.P. 9th Cir. 1997) (same).

None of the Debtor's cases purports to override these exceptions, or displace the potential that other, similar exceptions to debtor in possession standing become necessary to protect the integrity of the bankruptcy process and the interests of creditors.

Here, the Debtor has not abandoned the fraudulent transfer claim and no creditors' committee has been appointed. The Debtor has not "failed to act;" instead, the problem is that the Debtor *is acting*, to the detriment of creditors and in breach of its fiduciary duties to them. Because, as has been held, a "qualified implied authorization exists under 11 U.S.C. § 1103(c)(5)" to allow litigation by creditors' committees to pursue claims, and that an individual creditor may under appropriate circumstances "gain court permission to institute the action itself", De La Torre is likewise entitled to seek this Court's leave to pursue his UVTA claim as a remedy for the Debtor's disabling conflicts of interest.

B. The Filing of this Case Did Not Eliminate De La Torre's Standing to Sue

The filing of this bankruptcy does not eliminate De La Torre's standing to pursue his pre-petition UVTA claim.

> "Under Code § 544(b), the filing of a bankruptcy petition does not strip creditors of state-created rights to avoid transfers, it merely shifts that right to the creditors' representative." 4 Norton Bankruptcy Law & Practice § 30.06, at 12 (1988). The mere fact that Section 544(b) gave the Chapter 7 Trustee standing in a representative capacity to assert the Bank's [pre-petition fraudulent transfer] claim for a period of time did not act to destroy the Bank's rights…."

Hanlin v. Frazer (In re Vandevort), Nos. CC-09-1078-MoPaR, CC-09-1086-MoPaR, 2009 Bankr. LEXIS 4535, at *16 (B.A.P. 9th Cir. Sep. 8, 2009) (unpublished, underscoring in original), quoting *City Nat'l Bank v. Chabot*, 100 B.R. 18, 23 (Bankr. C.D. Cal. 1989).

In *Vandevort*, the court affirmed denial of the bank's motion for relief from stay as to its prepetition fraudulent transfer claim. That was the correct result under the facts of that case. Unlike here, the debtor had not actively opposed the bank's pre-petition litigation. This left the debtor in *Vandevort* in an unblemished position to pursue the bank's claim. Unlike here, the bank was not subject to CashCall's disabling conflicts.

C. The Debtor Lacks Power to Pursue De La Torre's UVTA Case Under § 544(b)

By reason of filing this bankruptcy, the Debtor gained a power to pursue fraudulent transfer claims under the "strong arm powers" conferred by 11 U.S.C. § 544. The Debtor had no § 544 powers pre-petition; the filing of the petition conferred those powers on the debtor. 5 *Collier on Bankruptcy* ¶ 544.01 (16th ed. 2026) ("*Collier on Bankruptcy*").

Section 544(b) creates altogether new post-petition claims arising under Title 11 for the Debtor. Section 544 itself does not authorize intervention in, or taking over, pre-petition fraudulent transfer claims already filed by creditors. Instead, section 544(b)(1) empowers the trustee to invoke the rights of an unsecured creditor in existence at the commencement of the case who may avoid the transfer under state law. 5 *Collier on Bankruptcy* ¶ 544.06.

The Debtor's right to exercise that power does not depend on the creditor having filed a pre-petition avoidance claim, as De La Torre did here. The power instead depends on the Debtor showing the existence of a "triggering creditor" who, at the time of the filing of the bankruptcy petition, *could have avoided* a transfer. *Kriegman v. Bigelow (In re LLS Am., LLC)*, Nos. 11-cv-00357-RMP, 09-06194-PCW11, 11-80299-PCW, 2013 Bankr. LEXIS 3714, at *4-5 (Bankr. E.D. Wash. Sep. 5, 2013).

The burden is on the trustee invoking section 544 to demonstrate that an "actual creditor" with an allowable claim against the debtor *exists*. 5 *Collier on Bankruptcy* ¶ 544.06. But the "actual creditor" need not have filed suit. By operation of law, section 544(b)(1) empowers the

debtor as a matter of federal law to pursue state law fraudulent transfer claims that an identified triggering creditor *would* have had.

Here, the Debtor cannot maintain a section 544(b) claim predicated on De La Torre as the "triggering" creditor and his UVTA claim as the predicate claim. That is because the UVTA statute of limitations had already expired on the UVTA claim by the time this bankruptcy case was filed. The predicate creditor claim must be timely under state law limitations as of the date the bankruptcy was filed. *Rund v. Bank of America*, 523 B.R. 680, 685-86 (B.A.P. 9th Cir. 2015) (limitations period on state law fraudulent transfer claim cannot have expired as of the date the bankruptcy was filed); *In re Dry Wall Supply, Inc.*, 111 B.R. 933, 936 (D. Colo. 1990) (same). Instead, the Debtor's sole right to pursue De La Torre's UVTA claim would be to take over De La Torre's pre-petition claim by substituting into the UVTA action.

D. The Debtor Has Not Substituted, and Cannot Substitute, in the Place of De La Torre on the UVTA Claim

The Debtor may only take over pre-petition claims by intervening in the pre-petition litigation.

> To the extent that the debtor is already a party to litigation when the trustee is appointed, and the cause of action belongs to the estate, Rule 6009(a) allows the trustee to take over the case without bankruptcy court approval. That does not mean, however, that permission to intervene or be substituted should not be obtained from the forum in which the litigation is pending. Thus, in tribunals other than the bankruptcy court, *the trustee should secure the consent of the court where the suit is pending in order to appear as plaintiff or defendant in place of the debtor. Of course, reference should be made to the rules and practice of the particular court*.

9A *Collier on Bankruptcy* ¶ 6009.03 (footnotes omitted, emphasis added).

Here, the Debtor has not obtained the consent of any court to intervene. And the Debtor is not contemplating substitution "in place of the debtor," but in the place of the adverse plaintiff, De La Torre. Even if it had properly substituted, the Debtor is disqualified from subbing in to switch from being simultaneously both a defendant to aligning with De La Torre as the plaintiff.

E. Removal Does Not Moot This Motion

A removal, whatever other consequences it may or may not have, does not moot the pendency of De La Torre's UVTA case or claim. De La Torre's motion for relief from stay was

pending at the time of removal, and removal does not affect his motion for relief from stay the UVTA claim that was the substance of that case. At the time this motion was made, the UVTA case was pending in state court. There was no other case from which De La Torre could seek relief from stay. Removal remained purely hypothetical at that time.

Removal simply changes the forum for the same case and claim from state to federal court; the federal court receives it just as it was where the state court left off. In *Jenkins v. Commonwealth Land Title Ins. Co.*, 95 F.3d 791, 795 (9th Cir. 1996), the defendant filed a request for extension of time to file an answer in state court. Defendant then removed the state case to federal court. This did not moot the extension request that had been made only to answer in state court, not in federal court:

> The longstanding principle is that "after removal, the federal court 'takes the case up where the State court left it off'", *Granny Goose Foods, Inc. v. Brotherhood of Teamsters Local 70*, 415 U.S. 423, 436, 39 L. Ed. 2d 435, 94 S. Ct. 1113 (1974) (quoting *Duncan v. Gegan*, 101 U.S. 810, 812, 25 L. Ed. 875 (1880)). *See also Butner v. Neustadter*, 324 F.2d 783, 785 (9th Cir. 1963); *Savell v. Southern Ry. Co.*, 93 F.2d 377, 379 (5th Cir. 1937) ("When a case is removed the federal court takes it as though everything done in the state court had in fact been done in the federal court"). Therefore Commonwealth's request for an extension in state court before the state deadline for Commonwealth's answer had passed was properly treated, upon removal, as a pending motion filed before the deadline for Commonwealth's answer in federal court.

Id. at 795.

Invoking this same principle, the Debtor is attempting to save itself from the statute of limitations by substituting in and taking advantage of De La Torre's timely filing of the UVTA lawsuit prior to removal. Opposition Brief at 18:23-19:3.

Courts approach mootness cautiously and with care to ensure that the party claiming the benefit of mootness has carried its burden of establishing that the claim is moot. *United States v. Larson*, 302 F.3d 1016, 1020 (9th Cir. 2002). Because "[i]t is no small matter to deprive a litigant of the rewards of its efforts," dismissing a case for mootness is "justified only if it [is] absolutely clear that the litigant no longer ha[s] any need of the judicial protection" it seeks. *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 224, 120 S. Ct. 722, 145 L. Ed. 2d 650 (2000) (per curiam) (emphasis added).

"The basic question in determining mootness is whether there is a present controversy as

to which effective relief can be granted." *Bayer v. Neiman Marcus Grp., Inc*., 861 F.3d 853, 862 (9th Cir. 2017) (citation and internal quotation marks omitted). An action "'becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.'" *Id*. (quoting *Chafin v. Chafin*, 568 U.S. 165, 172, 133 S. Ct. 1017, 185 L. Ed. 2d 1 (2013)).

Here, De La Torre continues to be in need of the same judicial relief he seeks by this motion. This Court can still grant him "effectual relief" with reference to a removed action, which (as explained above) continues the same issues simply in a different forum.

De La Torre's motion is not moot. No purpose is served by artificially treating his motion as a motion for relief from stay for a particular *case*, as opposed to a *claim*, and requiring him to refile his motion for the removed case.

F. The Debtor Fails Adequately to Address Its Conflicts

The Debtor attempts to distinguish *Dye v. Brown (In re AFI Holding, Inc.)*, 355 B.R. 139 (B.A.P. 9th Cir. 2006) on the ground that it applies to an appointed trustee, not a debtor in possession, and that the issue there was not whether the trustee was disabled from prosecuting an avoidance action. Here, the Debtor is purporting to act as trustee for creditors, and the decision is cited for the proposition that a trustee is disabled from representing creditors when its *pre-filing* conduct raises an interest adverse to creditors. The decision articulately explains how the Debtor's prefiling conduct in this case impairs its ability to represent creditors on the fraudulent transfer claim. *Id*. at 146.

The Debtor acknowledges that *Official Comm. of Unsecured Creditors v. Clark (In re Nat'l Forge Co.)*, 304 B.R. 214 (Bankr. W. D. Pa. 2004) approved creditors' committee pursuit of fraudulent transfer claims when the debtor was disabled due to conflicts with the targets. The Debtor attempts to distinguish the facts on the ground "There, the debtor resisted pursuit of the fraudulent transfer claims, and the redemption's beneficiaries would have controlled them." Opposition at 14:3-5. That is incorrect; the debtor argued that the committee "lacked standing" io pursue the claims, just as the Debtor here does. 304 B.R. at 221. The court overruled the debtor in possession's objections, citing its conflicts of interest. The case is cited for the proposition that courts may properly authorize non-debtor pursuit (e.g., by a creditors' committee) of fraudulent

transfer claims when conflicts disable the debtor in possession. *Id*. at 222. Here, as in *National Forge*, De La Torre is "is the only appropriate party to pursue the cause of action." *Ibid*.

In re SunCruz Casinos, LLC, 298 B.R. 821 (Bankr. S.D. Fla. 2003) is likewise appropriate for the Court's consideration. The court disqualified the debtor in possession due to its conflicts with the fraudulent conveyance targets. The case is cited for the proposition that significant conflicts of interest impede a debtor in possession's ability to fulfill its fiduciary duties to creditors. *Id*. at 832. De La Torre has not "asked the Court to remove the estate's principal asset from the bankruptcy process altogether." Opposition Brief at 15:9-10. He has requested relief from stay subject to this Court's administration and oversight, including jurisdiction over proceeds of the claim for the benefit of all creditors.

1. CashCall's Adverse Positions in the Pre-Petition UVTA Litigation

The Debtor proposes to take over De La Torre's UVTA case and switch from being a defendant aligned with the fraudulent transfer target, Mr. Reddam, to a plaintiff in substantive alignment with Mr. De La Torre. The Debtor seems to be suggesting that as a matter of law it can "stand in the shoes" of De La Torre entirely free of the multiple admissions and adverse statements it made in the UVTA case in the two years leading up to its bankruptcy petition, and that this switch can have no effect whatsoever on its prosecution of the UVTA claim.

The Debtor's sole authority for this position is *Cheng v. K&S Diversified Invs., Inc. (In re Cheng)*, 308 B.R. 448 (B.A.P. 9th Cir. 2004). *Cheng* does not hold that a debtor's pre-petition positions denying that it had engaged in a fraudulent transfer and favorable to the fraudulent transfer defendant are inadmissible against the debtor when the debtor later switches to the exact opposite position in the same litigation as debtor in possession.

Cheng instead addressed the narrow issue whether "judicial estoppel" applied. The Chengs successfully avoided a judicial lien by persuading the court that a creditor's claim was for over $268,000, warranting avoidance of the creditor's judicial lien. The Chengs then objected to the same creditor's proof of claim by arguing that the claim was far less than $156,000, which would have rendered the judicial lien unavoidable.

A "judicial estoppel" potentially applied as a complete defense for the creditor to the

Chengs' objection to the creditor's $151,000 proof of claim. Judicial Estoppel is a form of res judicata or claim or issue *preclusion*. *Cheng*, 308 B.R. at 455-56. As such, estoppel would have been a complete defense to the Chengs' objection to the creditor's claim and rendered the creditor's claim incontestable.

For judicial estoppel to apply, the court must have already accepted the prior inconsistent position. *Cheng*, 308 B.R. at 453. That has not happened here; no court has accepted CashCall's prior position that there was no fraudulent transfer.

Further, the Court did not hold that judicial estoppel did not apply to the debtor in possession. It narrowly held that the lower court might still apply judicial estoppel by addressing why it was appropriate to override the Restatement rule that only *presumptively* permits inconsistent positions by parties acting in different capacities and remanded the case to the lower court accordingly. *Cheng*, 308 B.R. at 453 ("we hold that the debtor's different capacities, as debtor and as debtor in possession performing duties of the trustee, must be considered when fashioning a judicial estoppel remedy and that a remedy must be calibrated so as not to harm bystanders"); *id*. at 462-63.

Here, De La Torre has not argued that the Debtor is precluded by judicial estoppel from pursuing the fraudulent transfer claim. He submits only that the Debtor is disqualified from doing so as a trustee for creditors. And the Debtor offers no "calibration" to prevent its pursuit of the UVTA claim from harming the creditors the Debtor has undertaken to represent.

The Court need not definitively prognosticate whether the record CashCall left behind it in the UVTA case will actually prejudice prosecution and settlement of the UVTA claim. It is sufficient that the Debtor's prior positions result in an *ex ante* adverse and disqualifying interest in pursuing the UVTA claim as debtor in possession.

2. Statute of Limitations Defenses

The debtor's § 544(b) claim predicated on the De La Torre UVTA litigation is time-barred. See pp. 4:23-5:3, above. The debtor's substitution into the pre-petition litigation is conflict-barred. Even if limitations defenses were merely arguable, potential limitations defenses *ex ante* impair the Debtor's pursuit of the UVTA claim as trustee for creditors.

3. DIP Conflicts

The Debtor does not address these conflicts.

G. The *Kronemyer* Factors Strongly Militate in Favor of Authorizing De La Torre to Continue Pursuit of the UVTA Claim For the Benefit of Creditors

"Judicial Economy"

A removal has nothing to do with judicial economy because removal simply transfers the state case "as is" to federal court.

That the work De La Torre's counsel performed in the UVTA case "will not be lost" does not render the removed case more economical. It will "not be lost" only if Allen Matkins spends hours reviewing and analyzing all the work done, including depositions, document requests, motions, legal analysis, etc.—critical and time-consuming work that De La Torre's counsel has already completed.

Nor does the Debtor contest that State Court Judge Vu is already intimately familiar with the issues, having ruled on CashCall's summary judgment motion. That the federal "Court will have the benefit of that record" does not mean that significant judicial resources will not be expended reviewing that record.

Debtor's "centralized adjudication" and "inconsistent judgments" arguments ignore that De La Torre is offering and requesting to pursue Mr. Reddam in the UVTA case as a remedy for the debtor's disabling conflicts of interest. There will be only one case subject to this Court's jurisdiction, not two.

"The Expertise of the State Court"

The Debtor focuses on *bankruptcy court* expertise, instead of the factor of the *state court's* expertise. The UVTA is a state law claim. Even if the Debtor could take it over, state law issues would continue to control. And even if section 544(b) were construed to support the Debtor's pursuit of the claim, the controlling law on the predicate claim remains state law.

There is a pervasive misconception in the Debtor's opposition that De La Torre is asking "the Court to remove the estate's principal asset from the bankruptcy process altogether" (Opposition Brief at 15:9-10), and that granting him relief from stay would "directly affect[] the

administration of the bankruptcy estate, the priority and administration of claims, and the Debtor's ability to formulate a plan" (*id*. at 11:23-26). De La Torre's motion hardly goes so far; he asks only leave to pursue the UVTA claim, subject to this Court's control and jurisdiction, and no more asks to usurp administration of this case than Allen Matkins would if it were pursuing the same claim.

"Prejudice to The Parties"

Ignoring its own conflicts of interest, the Debtor fails to account for the prejudice *to creditors* from allowing it to pursue the UVTA claim it has already opposed. Allowing "one creditor to pursue estate property" is therefore not only warranted, but essential to protect the interests of creditors and the integrity of the bankruptcy process. De La Torre's pursuit will not be "outside the bankruptcy process," but subject to this Court's jurisdiction. The Debtor itself has no interest in pursuit of the UVTA claim other than to benefit creditors.

"Whether Exclusively-Bankruptcy Issues are Involved"

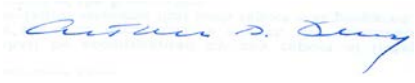
The UVTA claim remains a state law claim, regardless of where it is pursued and the statutory authorization for pursuing it. Again, UVTA liability is not "inextricably intertwined with bankruptcy issues."

CONCLUSION

De La Torre respectfully submits that allowing him relief from stay, and recognizing that CashCall is disabled from representing creditors, is the only resolution that protects the interests of creditors. He requests that the Court so rule and grant him relief from stay conditioned as requested.

Dated: October 16, 2026

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