Docket #0001 Date Filed: 2/7/2022

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
SPEEDCAST INTERNATIONAL	§	
LIMITED, et. al.,	§	**CASE NO. 20-32243**
	§	
Debtors.	§	**Chapter 11**
	§	
	§	**Jointly Administered**

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	§	
CATHERINE E. YOUNGMAN,	§	
in her capacity as Class 3 Trustee for	§	
the Speedcast SFA Lenders' Litigation	§	
Trust,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**ADV. PRO. 22-_____**
PETER SHAPER,	§	
	§	
Defendant.	§	

20322432202080000000000001

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1452(a), Southern District of Texas Local Rule LR81, Federal Rule of Bankruptcy Procedure 9027, and Bankruptcy Local Rule 9027-1, Defendant Peter Shaper ("Shaper"), files this Notice of Removal of the state court action styled *Catherine E. Youngman, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust v. Peter Shaper*, Cause No. 2022-01305 in the District Court of Harris County, Texas, 61st Judicial District (the "Action") to the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Bankruptcy Court").

1. The Action was brought by Catherine E. Youngman, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust (the "Trustee" or "Plaintiff"), which was created in the bankruptcy proceeding concerning SpeedCast International Limited and its debtor affiliates (collectively, "Speedcast"), jointly administered under Case No. 20-32243 in the Bankruptcy Court ("Bankruptcy Proceeding"). The Trustee alleges that Shaper breached fiduciary duties in his capacity as a manager of Speedcast while it was a debtor-in-possession in a Chapter 11 proceeding—i.e., after Speedcast filed its bankruptcy petition and before the Bankruptcy Court's confirmation of the Third Amended Joint Chapter 11 Plan of Speedcast ("Plan").

2. Federal courts have original jurisdiction over "all civil proceedings . . . arising in or related to a case under title 11." 28 U.S.C. § 1334(b). The Action meets this standard, as the Trustee complains of alleged conduct by Shaper in the Bankruptcy Proceeding and seeks to recover damages allegedly "inflicted by his fiduciary breaches on the Bankruptcy process." Orig. Pet. ¶ 12.

I. BACKGROUND

3. Speedcast filed a petition for bankruptcy relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on April 23, 2020. On January 22, 2021, the

Bankruptcy Court confirmed the Plan, which provided for the formation of the Class 3 SFA Lenders' Litigation Trust (the "Class 3 Trust"). The Plan provides that the Bankruptcy Court shall retain non-exclusive jurisdiction with respect to the causes of action belonging to the Class 3 Trust. *See* Plan [Dkt. 1397, Ex. A, in Case No. 20-32243] § 11.1(b).

4. The Trustee commenced the Action by filing an Original Petition in the District Court of Harris County, Texas, 61st Judicial District, on January 7, 2022. Shaper accepted service of the Original Petition on January 10, 2022. In the Action, the Trustee alleges that Shaper owed fiduciary duties to the Speedcast bankruptcy estate from April to August 2020, as a director of a debtor-in-possession in a Chapter 11 proceeding. *See* Orig. Pet. ¶ 99-101. The Trustee alleges that Shaper breached his duties—and aided and abetted the breach of similar duties owed by another Speedcast director—from April 2020 to January 2021, *id*. ¶ 101—by attempting to suppress the value of Speedcast during the pendency of the Bankruptcy Proceeding and obstruct the bankruptcy process in order to further an alleged personal agenda, *id*. ¶¶ 8-15, ¶¶ 49-97.

II. THE PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED

5. Venue is proper in this district under section 1452 because "any claim or cause of action" may be removed "to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title." 28 U.S.C. § 1452(a). The Action is pending in the 61st Judicial District Court of Harris County, a district court within the Southern District of Texas. Under Bankruptcy Rule 9027 the Notice of Removal shall be filed with the clerk for the Bankruptcy Court. Under Southern District of Texas General Order 2012-06, all cases and proceedings arising under, arising in, or related to a case under Title 11 of the United States Code are automatically referred to Bankruptcy Court.

6. Removal is timely under 28 U.S.C. § 1446(b) and Bankruptcy Rule 9027(a)(3) because Shaper filed this Notice of Removal within thirty (30) days of the date after receipt by or service on Mr. Shaper of the Original Petition. *See* Exhibit 1 (1/10/22 Email Accepting Service).

7. Pursuant to 28 U.S.C. § 1446(d) and Bankruptcy Rule 9027(b) and (c), Defendants are filing a copy of this Notice of Removal with the Clerk of the 61st Judicial District Court of Harris County, Texas and providing Plaintiff Trustee with written notice thereof.

8. True and correct copies of all materials in the Action that are required to be submitted with this Notice of Removal pursuant to S.D. Tex. Local Rule 81 and Bankruptcy Local Rule 9027 are attached and incorporated herein by reference, including the Docket Sheet, as Exhibits 1-9. The Unredacted Original Petition is attached as Exhibit 3.

9. The state court judge has signed only a single order in the Action, permitting the filing of the Original Petition under seal. It is attached as Exhibit 6. Shaper has not filed an Answer to the Trustee's Original Petition in state court.

10. In accordance with Bankruptcy Local Rule 9027-1(a), the names and addresses of the parties and counsel in the Action are as follows:

Attorneys for Plaintiff Catherine E. Youngman, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust	Bryce L. Callahan State Bar No. 24055248 Susanna Rychlak Allen State Bar No. 24126616 Yetter Coleman, LLP 811 Main Street, Ste. 4100 Houston, Texas 77002 (713) 632-8000 bcallahan@yettercoleman.com sallen@yettercoleman.com and Jeffrey H. Zaiger Judd A. Linden Zaiger LLC 2187 Atlantic Street, 9th Floor Stamford, CT 06902 (203) 347-7180 jzaiger@zaigerllc.com jlinden@zaigerllc.com
Attorneys for Defendant Peter Shaper	Eric M. English State Bar No. 24062714 Porter Hedges LLP 1000 Main Street, 36th Floor Houston, Texas 77002 (713) 226-6000 eenglish@porterhedges.com and Ayesha Najam State Bar No. 24046507 Ross MacDonald State Bar No. 24087956 Caitlin Halpern State Bar No. 24116474 Gibbs & Bruns, LLP 1100 Louisiana, Ste. 5300 Houston, Texas 77002 (713) 650-8805 anajam@gibbsbruns.com rmacdonald@gibbsbruns.com chalpern@gibbsbruns.com

III. SUFFICIENT GROUNDS FOR REMOVAL EXIST

11. Section 1452 allows defendants to "remove any claim or cause of action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title." 28 U.S.C. § 1452(a). Section 1334 provides district courts with original jurisdiction over "all civil proceedings arising under title 11 or arising in or related to a case under title 11." 28 U.S.C. § 1334(b). Sufficient grounds to remove the Action exist because the Action falls within both the Bankruptcy Court's "arising in" and "related to" jurisdiction under section 1334(b) of the Bankruptcy Code.

12. A proceeding "arises in" a bankruptcy case (and is considered a "core" proceeding) "if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case." *In re Wood*, 825 F.2d 90, 97 (5th Cir.1987). This includes claims, such as those asserted in the Action, against fiduciaries for mismanagement of the debtor's estate, where the alleged misconduct occurred post-petition and pre-confirmation—as these are "inseparable from the bankruptcy context." *In re Southmark Corp*., 163 F.3d 925, 931 (5th Cir. 1999). Here, the Trustee's claims center on Shaper's alleged misconduct in Speedcast's bankruptcy, in breach of duties owed as a director of a debtor-in-possession, which allegedly interfered (or attempted to interfere) with the bankruptcy process. *See, e.g*., Orig. Pet. ¶ 8 ("At the heart of this case are the actions taken by Shaper to achieve an attractive investment opportunity for himself and Genesis Park post-Bankruptcy."); *Id.* ¶ 13 ("Shaper's unabashed bias for a bidder that appeared willing to accept his self-serving objectives set the Bankruptcy into chaos, resulting in a depressed recovery and the incurrence of tens of millions in wasteful professional expenses."). The Action is inseparable from the bankruptcy context," *Southmark*, 163 F.3d at 931, and the claims would not exist but for Speedcast's bankruptcy, *see In re Simmons*, 205 B.R. 834, 840

(Bankr. W.D. Tex. 1997) ("While we cannot—and need not—define the precise parameters of 'arise in' jurisdiction, we do conclude that matters falling into the category must at the very least be of a sort that could not have occurred but for the bankruptcy.").

13. That the Action asserts state law claims does not disturb its "core" nature. *See Southmark Corp.*, 163 F.3d at 930 (5th Cir. 1999) (citing 28 U.S.C. § 157(b)(3)). "[W]hile state law standards continue to apply to post-petition fiduciary obligations, the rights and remedies of aggrieved shareholders and creditors during the post-petition/pre-confirmation period are regulated by the Bankruptcy Code which controls state law pursuant to the Supremacy Clause of the United States Constitution." *In re Schepps Food Stores,* Inc., 160 B.R. 792, 799 (Bankr. S.D. Tex. 1993). Plaintiff alleges that Shaper breached these federally imposed duties.

14. Additionally, the Action asserts claims "related to" bankruptcy jurisdiction because the allegations concern pre-confirmation, post-petition relations between Shaper and the Speedcast bankruptcy estate; the antagonism already existed as of the date of the confirmation; and the claims turn on facts related to the negotiation of the confirmation plan. *Newby v. Enron Corp. (In re Enron Corp. Secs.)*, 535 F.3d 325, 335–36 (5th Cir. 2008). Accordingly, the Action should be adjudicated in federal court.

IV. JURY DEMAND

15. Plaintiff Trustee demanded a jury in the Action.

16. Shaper also demands a jury trial. Shaper does not consent to final order or judgment by the bankruptcy judge, including jury trial in bankruptcy court.

V. CONCLUSION

17. For the foregoing reasons, Shaper has met the requirements for removal. By filing this Notice of Removal, Shaper does not waive the right to assert any defenses and/or objections to which he is entitled.

Dated: February 7, 2022

Respectfully submitted,

By: /s/ *Ayesha Najam*
Ayesha Najam
Attorney-In-Charge
State Bar No. 24046507
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and

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eenglish@porterhedges.com

ATTORNEYS FOR PETER SHAPER

Certificate of Service

I hereby certify that copy of the foregoing has been served on all counsel of record on this date, in accordance with the Federal Rules of Civil Procedure.

/s/ Ayesha Najam
Ayesha Najam

EXHIBIT 1

Ross MacDonald

From: Callahan, Bryce <bcallahan@yettercoleman.com>
Sent: Monday, January 10, 2022 4:16 PM
To: Ross MacDonald
Cc: Ayesha Najam
Subject: RE: Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust v. Peter Shaper

[EXTERNAL]
Ross: Agreed on an Answer date of February 7. Thanks for accepting service. We'll also note that you are unopposed on the sealing motion.

Thanks -

Bryce Callahan
Yetter Coleman LLP
713.632.8067 (office)
832.528.6866 (mobile)

From: Ross MacDonald <RMacDonald@gibbsbruns.com>
Sent: Monday, January 10, 2022 2:52 PM
To: Callahan, Bryce <bcallahan@yettercoleman.com>
Cc: Ayesha Najam <anajam@gibbsbruns.com>
Subject: RE: Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust v. Peter Shaper

Hi Bryce,

We are willing to accept service on Mr. Shaper's behalf if we can agree to an Answer date of Monday, February 7.

We have no objection to the filing of the unredacted petition under seal pursuant to TRCP 76a.

Thanks,

Ross

Ross MacDonald
Gibbs & Bruns LLP
1100 Louisiana Suite 5300 Houston, TX 77002
713.751.5231 direct | 713.650.8805 main | 713.750.0903 fax

From: Callahan, Bryce <bcallahan@yettercoleman.com>
Sent: Friday, January 7, 2022 7:15 PM
To: Barrett H. Reasoner <BReasoner@gibbsbruns.com>
Cc: Ross MacDonald <RMacDonald@gibbsbruns.com>
Subject: RE: Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust v. Peter Shaper

[EXTERNAL]
Thanks, Barrett.

Attached are two documents – the first is a redacted, file-stamped version of Plaintiff's Original Petition, filed in Harris County District Court today. The petition is redacted in accordance with the Class 3 Trust Agreement. The second document is an unredacted version of the petition.

Would you be willing to accept service on Mr. Shaper's behalf? Happy to agree to a suitable answer date.

Also, we'd like to file the unredacted version of the petition under seal pursuant to TRCP 76a. Would you be willing to agree to the sealing?

If you'd like to discuss, please let me know and we can set something up. Thanks -

Bryce Callahan
Yetter Coleman LLP
713.632.8067 (office)
832.528.6866 (mobile)

From: Barrett H. Reasoner <BReasoner@gibbsbruns.com>
Sent: Friday, January 7, 2022 3:49 PM
To: Callahan, Bryce <bcallahan@yettercoleman.com>
Cc: Ross MacDonald <RMacDonald@gibbsbruns.com>
Subject: Re: Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust v. Peter Shaper

Bryce - yes, my partner Ross MacDonald (copied above) and I do represent Peter Shaper. Thanks - Barrett

Barrett H. Reasoner
Gibbs & Bruns LLP
713-751-5244

On Jan 7, 2022, at 3:39 PM, Callahan, Bryce <bcallahan@yettercoleman.com> wrote:

[EXTERNAL]
Barrett: Hope all is well. I represent the Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust. I'm reaching out to confirm that you still represent Mr. Shaper. Would you please let me know? If so, I'll send you some materials. Thank you -

Bryce Callahan | Partner | Yetter Coleman LLP
811 Main Street, Suite 4100, Houston, Texas 77002
(D) 713.632.8067 | (M) 832.528.6866 | (O) 713.632.8000
bcallahan@yettercoleman.com | Bio | vCard

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EXHIBIT 2

1/7/2022 3:57 PM
Marilyn Burgess - District Clerk Harris County
Envelope No. 60619930
By: Maria Rodriguez
Filed: 1/7/2022 3:57 PM

CAUSE NO. 2022-01305

CATHERINE E. YOUNGMAN, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
v.	§	HARRIS COUNTY, TEXAS
PETER SHAPER,	§	
Defendant.	§	61ST JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Plaintiff Catherine E. Youngman, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust (the "**Trustee**"), by and through her undersigned counsel, hereby alleges against the above-named defendant, on personal knowledge as to all matters regarding herself and on information and belief as to all other matters, as follows:

I. INTRODUCTION

1. This action arises from Defendant Peter Shaper's complete disregard of fiduciary duties he owed while serving as a Director and CEO of a previously bankrupt satellite technology company called Speedcast International Limited.[1] Shaper's fiduciary breaches were undertaken in a wrongful effort to enrich himself and his Houston-based private equity firm, Genesis Park, LLC ("**Genesis Park**"). According to the Honorable Marvin Isgur, who oversaw Speedcast's bankruptcy, Shaper's wrongful actions included "refus[ing] to give equal treatment to offers [to acquire the Company] that did not work to his personal benefit" and "ma[king] threats to the [C]ompany of actions that he would take" if Speedcast entertained such offers and failed to cede to his demands.

[1] Speedcast International Limited, together with its affiliates, is referred to here as "**Speedcast**" or the "**Company**."

2. Defendant Peter Shaper co-founded Genesis Park and, at all relevant times, has served as Genesis Park's Co-Founder and Managing Partner.

3. In September 2019, Mr. Shaper agreed to simultaneously serve as a Director for Speedcast and joined Speedcast's board of directors (the "**Board**"). [redacted]

4. Shaper [redacted] — who each had experience in the satellite industry — promptly set their focus on taking over the top executive positions at Speedcast. In addition to leading a campaign to oust Speedcast's then CEO, Shaper [redacted] touted themselves to the Company's Chairman (Stephe Wilks) as being "truly a one of a kind solution" for Speedcast, who could lead a transformational turnaround of the Company. When Speedcast's then-CEO (PJ Beylier) resigned under pressure of this campaign, Shaper took the reigns as the Company's CEO [redacted] After assuming these executive roles, Speedcast's operational headquarters were effectively re-located to Houston.

5. Conflicts existed from the inception of Shaper's involvement at Speedcast. His service for the Company was subject to an understanding with his Genesis Park Co-Founder and Partner, Paul Hobby, that he would only remain with Speedcast *provided* he secured an attractive investment opportunity for Genesis Park. Shaper planned to use his [redacted] influence as executives and Board members to obtain this opportunity.

6. In March 2020, Speedcast's fortunes took a dramatic turn for the worse. The convergence of the COVID-19 pandemic and crashing oil prices created what Shaper referred to at the time as "a perfect storm for Speedcast." The Company found itself cash-strapped and saddled with approximately $600 million in outstanding secured debt obligations under its Credit

Agreement,[2] in addition to owing more than $100 million to Speedcast's unsecured creditors.

7. Unable to pay its debts, and with losses mounting, Speedcast filed for bankruptcy relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas on April 23, 2020 (the "**Bankruptcy**").

8. At the heart of this case are the actions taken by Shaper to achieve an attractive investment opportunity for himself and Genesis Park post-Bankruptcy. Shaper was duty bound to help the Company's Special Restructuring Committee of the Board (the "**SRC**") maximize the value of the Company *for the benefit of the Bankruptcy estates including their creditors* (collectively, the "**Estate**"). This duty, however, was at odds with Shaper's personal agenda. Faced with this conflict, Shaper chose to put his personal interests before the Estate's by, among other things, levying threats to suppress the value of Speedcast and obstructing a meaningful process to maximize value.

9. These fiduciary breaches reached an apex in late August 2020 when Shaper [redacted] each tendered conditional resignations — threatening to quit when Speedcast was at its most vulnerable — unless the SRC relented to their demands within 5 days. These demands included lucrative deals for themselves and an agreement that Genesis Park be allowed to invest in the Company on very favorable terms upon emergence from Bankruptcy.

10. Upon receipt of Shaper [redacted] conditional resignation letter, one SRC member aptly referred to it as a "ransom" demand.

11. [redacted] Shaper's resignation thus became effective on or about August 28, 2020.

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[2] The "**Credit Agreement**" or "**SFA**" refers to Speedcast's Syndicated Facility Agreement, dated as of May 15, 2018 (as amended, restated, supplemented, or otherwise modified from time to time).

12. Shaper's resignation, however, could not (and did not) reverse the damage already inflicted by his fiduciary breaches on the Bankruptcy process. According to Judge Isgur, Shaper wielded his influence over the SRC for so long that those interested in buying Speedcast believed that the Company could only be bought by buying Speedcast's management, and not by offering the best deal at the highest price.

13. Shaper's unabashed bias for a bidder that appeared willing to accept his self-serving objectives set the Bankruptcy into chaos, resulting in a depressed recovery and the incurrence of tens of millions in wasteful professional expenses. This was laid bare during a highly contentious confirmation hearing in late 2020 through January 2021 where Judge Isgur found "extensive evidence" that Shaper "repeatedly breached his fiduciary duties[.]"

14. In light of serious doubts that Speedcast was "really taking the highest bid or implemented its processes in a way to get the highest bid," Judge Isgur took the unconventional step of halting confirmation proceedings in an attempt to provide Speedcast's largest creditor, Black Diamond,[3] an opportunity to outbid Shaper's preferred acquiror, and Bankruptcy Plan sponsor, Centerbridge.[4] The exigency of the circumstances — including the long passage of time since Black Diamond's initial diligence and Speedcast's incurrence of tens of millions in wasteful professional fees in the intermittent months — made this impracticable. Thus, Speedcast eventually entered into a settlement resulting in confirmation of the Plan whereby Centerbridge took ownership of the reorganized Company.[5] The Plan, which incorporated the settlement

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[3] "**Black Diamond**" refers to funds managed directly or indirectly by Black Diamond Capital Management, L.L.C.. who, collectively, held the majority of the debt under the Credit Agreement.

[4] "**Centerbridge**" refers to funds managed by Centerbridge Partners, L.P. which were the second largest holders of debt under the Credit Agreement at this time.

[5] The "**Plan**" refers to the Third Amended joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates. *In re Speedcast International Limited, et al.*, Case No. 20-32243

agreement, resulted in SFA Lenders recovering a fraction of the value of their outstanding loans and it shielded Spytek, SRC members, and their advisors from potential liability through implementation of broad releases. Critically, the Trustee was assigned the Estate's claims in connection with Shaper's misconduct, which were expressly carved out of the settlement.

15. Shaper's persistent fiduciary breaches were egregious and resulted in hundreds of millions in damages to the Estate. Accordingly, the Trustee brings this action for breach of fiduciary duty against Shaper.

II. PARTIES

16. Plaintiff Catherine E. Youngman, Class 3 Trustee of the Speedcast SFA Lenders' Litigation Trust, is a citizen of the state of New Jersey. Plaintiff was appointed to serve as Trustee pursuant to the Class 3 Trust Agreement, dated March 11, 2021, and is authorized to prosecute Class 3 Trust Causes of Action as defined in the Plan approved in the Bankruptcy by Order dated January 22, 2021.

17. Upon information and belief, Peter Shaper is a citizen of the state of Texas and a Co-Founder and Managing Partner of Genesis Park.

III. DISCOVERY CONTROL PLAN

18. The Trustee intends that discovery be conducted under Level 2 pursuant to Texas Rule of Civil Procedure 190.3.

IV. STATEMENT OF RELIEF SOUGHT

19. Pursuant to Rule 47(c) of the Texas Rules of Civil Procedure, the Trustee seeks monetary relief of over $1,000,000, including damages of any kind, penalties, costs, expenses, and

(MI) (Bankr. S.D. Tex.) (ECF No. 1394). All terms not defined shall have the definitions ascribed to them in the Plan.

prejudgment interest, and non-monetary relief including a demand for judgment for all the other relief to which it is entitled.

V. JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction pursuant to Texas Government Code Sections 24.007, *et seq*., as this suit seeks relief in excess of the minimal jurisdictional limits of this Court, and the Trustee seeks monetary relief.

21. This Court has personal jurisdiction over the Defendant, Peter Shaper, because (i) upon information and belief Shaper is a resident of the State or Texas; and (ii) Shaper's conduct undertaken within the State of Texas forms the basis of the Trustee's allegations against Shaper.

VI. BACKGROUND

A. SHAPER [redacted] JOIN THE BOARD TO SECURE LUCRATIVE INCENTIVE PLANS AND AN ATTRACTIVE INVESTMENT OPPORTUNITY FOR SHAPER'S PE FIRM, GENESIS PARK

22. Speedcast is an international communications and information technology service provider. Through a multi-orbit network of more than 80 satellites, Speedcast enables its customers to communicate while operating in remote locations such as oil rigs or vessels in the open sea. In 2019, the Company served more than 3,200 customers in over 140 countries across a wide range of industries.

23. In September 2019, Shaper [redacted] were approached about the possibility of joining Speedcast's Board as non-executive Directors. At the time, Shaper was a Managing Partner of Genesis Park — a Houston-based private equity firm specializing in growth businesses, distress situations, and public company buyouts — and he had prior experience in the satellite communications industry. Among other positions, Shaper served for nearly a decade as the CEO of CapRock Communications ("**CapRock**"), a global network service provider that was among Genesis Park's portfolio companies prior to its sale to Speedcast in 2017. Shaper also served on

the board of directors of ITC Global, another satellite communications company.

24. [redacted]

25. The recruitment of Shaper [redacted] to serve on Speedcast's Board followed a string of bad news for the Company. Two months earlier, Speedcast warned its shareholders that its year-end earnings would fall far lower than management's forecast. Several companies that Speedcast paid significant sums to acquire reported underwhelming results, and the Company's auditors warned that its ability to continue as a going concern was at risk because of its massive debt load. Additionally, Speedcast's CFO resigned in August 2019. These events caused Speedcast's stock price to plunge approximately 70% from June to September of 2019.

26. On September 9, 2019, Shaper told Speedcast's Chairman, Stephe Wilks, in the course of negotiating board compensation and equity awards for himself, that he [redacted] were "going to convince good people to stay at [Speedcast] because they trust us. We are also going to convince other great people to leave their current jobs and come join [Speedcast] to help us build the winning team." Shaper added, that he "cannot mess with these peoples (who I have known for many years) lives by convincing them to stay/join if I am in a position where I might have to quit. I expect to be in this for the long haul and the full turn around and need to be able to give them this confidence."

27. Shaper [redacted] formally joined the Board on or about September 26, 2019.

28. As Speedcast would soon learn, Shaper's involvement at Speedcast was contingent on his ability to find Genesis Park an attractive opportunity to invest.

29. Genesis Park's Co-Founder, Paul Hobby considered Speedcast a business that Genesis Park "built" because its earlier portfolio company, CapRock, had been acquired by Speedcast in 2017 for $425 million. In correspondence to Genesis Park investors, Hobby explained that Shaper became involved with Speedcast "with the thought that this could become an opportunity to 'buy back' the business we built at an attractive price." Hobby considered Shaper's role at Speedcast the "perfect hedge," as Shaper could wait for the perfect time for Genesis Park to invest while being paid handsomely by the Company to serve as an officer and director. Shaper agreed. As he wrote in an email to Hobby in early 2021, his position at Speedcast gave Genesis Park "an opportunity that others do not [have]."

30. Shaper did not immediately reveal his full intentions at the outset of joining Speedcast's Board. Instead, Shaper waited to propose an investment opportunity for Genesis Park after further entrenching himself within the Company, as it became increasingly desperate for funding. This situation presented itself within months of Shaper joining the Board.

B. SHAPER [redacted] ASSUME TOP LEADERSHIP POSITIONS AT SPEEDCAST

31. Upon joining the Board, Shaper [redacted] concluded that the Company's problems were in large measure the fault of its then CEO, Pierre-Jean ("PJ") Beylier. They blamed Beylier for paying massive sums for companies and failing to properly integrate these acquisitions into Speedcast's existing business. Speedcast's acquisition of CapRock was just one example. Shaper [redacted] also believed that Beylier was resistant to instituting important organizational changes. [redacted] while Shaper bemoaned Beylier's lack of "basic process and discipline." As a result, they waged — in Shaper's words — a "war" to oust him.

32. To build their case against Beylier, Shaper [redacted] interviewed dozens of

Speedcast's employees to gather complaints about him. Beylier confronted Shaper about these meetings, but Shaper refused to stop holding them. In December 2019, Shaper [redacted] sent a letter to the Board laying out their findings and calling for an aggressive turnaround of Speedcast. They also proposed giving Beylier the option of resigning or remaining as CEO in name only.

33. Shaper [redacted] also accused Beylier of inflating Speedcast's year-end revenue projections for 2019. Remarkably, both men cheered for the Company to perform poorly to prove that Beylier's projections were wrong. [redacted] summarized their attitude in a December 2019 email to Shaper: "Its [sic] hard not to wish bad things upon the company to just prove that we are right." Shaper responded: "Hah! I am comfortable that we are right and it will be proven over time."

34. Shaper [redacted] hoped that Beylier would resign under pressure of their campaign against him, which would "make it look like PJ's decision, rather than ours." This soon came to pass. On or about February 4, 2020, Beylier resigned, citing the Company's recent performance and a failure to meet the Board's expectations.

35. Shaper [redacted] then sought leadership roles in the Company, with Shaper touting the duo as "truly a one of a kind solution for Speedcast" if the price was right. Working with colleagues at Genesis Park, Shaper was simultaneously analyzing models for an attractive investment in Speedcast.

36. In early March 2020, Shaper was formally appointed as Speedcast's Chief Executive Officer, [redacted] These roles earned both men additional income while they both continued to remain on the Board.

37. Hobby was thrilled. He considered Shaper's role at Speedcast a "perfect hedge" for Genesis Park as Shaper would be well compensated by the Company while waiting for a good

opportunity for Genesis Park to invest. Further, Shaper and Hobby agreed that finding an opportunity for Genesis Park to invest was a condition for Shaper to remain at the Company. Hobby emphasized this in an email to Shaper encouraging him to become Speedcast's CEO: "you are the right guy – you want to – good current comp at the time you need it…*all that assuming there is a security we can invest in!*"

C. SHAPER THREATENS TO JOIN A COMPETITOR UNLESS THE BOARD GIVES HIM, [redacted] AND GENESIS PARK "UPSIDE" IN SPEEDCAST

38. The Company's financial condition continued to worsen in 2020. By February, the Board determined that the Company needed to raise new capital to continue operating. It planned to sell new equity to raise the necessary funds.

39. On February 12, 2020, Chairman Wilks asked the Board for approval to engage a financial advisor to lead a public offering of new equity. Given the Company's precarious financial condition, Wilks recommended that the Board do so "ASAP" and asked the Board to email its "urgent approval." Wilks further represented that an agreement with a financial advisor had been extensively negotiated by Speedcast's General Counsel and was favorable to the Company.

40. As a Director of Speedcast, Shaper should have evaluated this transaction based on its value to Speedcast and all stakeholders. Instead, Shaper responded to Wilks by grousing that "[t]here is nothing in this for me." Shaper claimed that he [redacted] faced reputational "risks" by raising funds for Speedcast and that they deserved "upside" in return for accepting these risks in the form of (i) equity shares in Speedcast for Shaper [redacted] and (ii) an opportunity for Genesis Park to purchase Speedcast's new shares at a discount.

41. Shaper's correspondence with Wilks on this issue included a threat: if the Board refused his demands, he would leave Speedcast and acquire the Company with another partner. "RigNet, ITC [Speedcast's competitor] and others have approached me as well as PE [private

equity] firms to be the leader of acquisition vehicles to roll up the space." Shaper told Wilks that "[i]t does not make any sense from my position to take on all the turnaround work for not as much upside as I can get elsewhere (including my own PE firm)." Further, Shaper claimed that he was being "reasonable" by demanding that Genesis Park be allowed to invest at a discount and not asking for "much more" of Speedcast's equity to lead the equity raise.

42. Shaper's threat worked. [redacted]

43. The Board, however, aborted the equity raise in March 2020 when the developing COVID-19 pandemic froze capital markets. The offer to Shaper, [redacted] and Genesis Park was revoked. This sequence of events, however, foreshadowed the lengths that Shaper was willing to go to benefit himself, [redacted] and Genesis Park. [redacted]

D. SPEEDCAST FILES FOR BANKRUPTCY

44. On March 31, 2020, the Board formed the SRC, as a sub-committee of the Board, to make recommendations in connection with the Speedcast's evaluation of strategic alternatives. Wilks and another Speedcast Director were initially appointed by the Board to serve on the SRC. Wilks was also appointed as the Chairman of the SRC. They were later joined by three outside members with restructuring experience.[6] Among the strategic alternatives that the SRC and its advisors initially explored was an out of court restructuring with an ad hoc committee of the Company's largest secured lenders. These efforts failed.

[6] The SRC was initially comprised of Stephe Wilks (the Chairman) and his fellow Director Michael Malone. Effective April 23, 2020, Carol Flaton, Hooman Yazhari, and David Mack were also appointed to serve on the SRC and as directors of Speedcast Americans, Inc.

45. At this time, Speedcast's liquidity was extremely constrained. The marketplace disruption also impacted several critical vendors to Speedcast's business. In the spring of 2020, Speedcast's liquidity challenges placed the Company significantly behind on contractually required payments to creditors. Speedcast was also unable to reach agreements with these vendors.

46. On April 23, 2020, Speedcast filed the Company for bankruptcy protection under chapter 11 in the United States Bankruptcy Court for the Southern District of Texas citing declining revenue, difficulty integrating recent acquisitions and realizing projected synergies, and the COVID-19 pandemic, among other factors.[7] The Company's debt as of the petition date comprised approximately $600 million of secured loans under the Credit Agreement, plus certain ancillary asset financing arrangements and other liabilities.

47. At the outset of the Bankruptcy, Speedcast obtained debtor-in-possession ("**DIP**") financing led by Black Diamond. The DIP financing anticipated Speedcast emerging from bankruptcy in the fall of 2020. As debtors-in-possession in a chapter 11 proceeding, the Debtors and their managers each owed fiduciary duties to the Estate.[8]

48. Speedcast and its SRC engaged a team of professional advisors to assist in connection with the Bankruptcy. Michael Healy, a Senior Managing Director from FTI Consulting ("**FTI**"), was engaged to serve as Speedcast's Chief Restructuring Officer, and he was supported by a team of FTI consultants. Moelis & Company ("**Moelis**") served as the Company's financial

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[7] The bankruptcy petitions by Speedcast and its debtor affiliates (collectively, "**Debtors**") were consolidated in a case captioned *In re Speedcast International Limited, et al.*, Case No. 20-32243 (MI) (S.D. Tex.).

[8] *See, e.g.*, *In re Hous. Reg'l Sports Network, L.P.*, 505 B.R. 468, 481 (Bankr. S.D. Tex. 2014) ("[T]he Fifth Circuit (and every Circuit opinion located by the Court) treats the debtor-in-possession as a fiduciary . . . 'who is responsible for managing the debtor's estate in the best interest of the creditors'") (*quoting In re Southmark Corp.*, 163 F.3d 925, 931 (5th Cir. 1999).

advisor, and Weil, Gotshal & Manges LLP ("**Weil**") served as Speedcast's primary restructuring counsel.

E. SHAPER [redacted] ROUTINELY ABDICATE THEIR FIDUCIARY DUTIES TO THE ESTATE

49. [redacted] Shaper [redacted] played critical roles in the efforts to maximize value for the Estate. Maximizing value hinged in large measure on their ability to demonstrate that Speedcast's business was fundamentally strong, despite its recent performance and market conditions. As officers and directors of Speedcast, Shaper [redacted] were responsible for providing stability and fostering competition in the Bankruptcy process.

50. [redacted] however, endeavored to personally benefit themselves by taking actions contrary to fiduciary duties owed. Critically, while a higher value for Speedcast was beneficial to the Estate, Shaper [redacted] desired for the Company to have a *lower* valuation. This was because a lower valuation increased equity "upside" they sought for themselves and Genesis Park. As further discussed below, Shaper [redacted] wielded their influence with the SRC in an effort to achieve this result, derailing the Bankruptcy process, and causing serious harm to the Estate.

1. *Support of Genesis Park's Efforts to Set a Low-Ball Stalking Horse Bid*

51. Shaper initially planned for Genesis Park to submit a "stalking horse" bid to "buy back" Speedcast. In fact, Shaper told Genesis Park that Speedcast planned to file for bankruptcy *weeks* before it did so. This gave Genesis Park a head start on preparing a bid and identifying potential co-investors. Shaper also directed Moelis to assist Genesis Park in this effort. [redacted]

52. Shaper knew that any "stalking horse" bid from Genesis Park would attempt to undervalue Speedcast. On April 5, 2020, Hobby sent Shaper a draft letter to prospective

co-investors describing Genesis Park's plan. Hobby's letter emphasized Genesis Park's "deep knowledge of the company and its critical suppliers" as "giv[ing] [it] a critical edge to acquire a leading global franchise at a significant discount to historical and future value."

53. Shaper commented on and approved Hobby's letter to potential co-investors in advance of it being circulated.

2. ***Shaper's [redacted] Efforts to Find a Buyer Amenable to an Investment Opportunity for Them and Genesis Park on "Very Favorable Terms"***

54. Ultimately, Genesis Park was unable to find a co-investor for a "stalking horse" bid and abandoned its efforts. Instead, Shaper pivoted to identifying potential buyers for Speedcast amenable to favorable co-investment opportunities for Shaper, [redacted] and Genesis Park. Hobby summarized this initiative in an email to Genesis Park's investors in July of 2020: "Peter Shaper has been shepherding the company through Chapter 11," he wrote, "and we intend to be part of the private equity syndicate that will inject fresh capital *on very favorable terms*."

55. Less than a week after Speedcast's Bankruptcy filing, Shaper drafted a management incentive plan ("**MIP**") setting forth the benefits that he [redacted] would seek upon Speedcast's anticipated emergence. The MIP included above-market incentive compensation packages and co-investment opportunities for himself [redacted] It also included an investment opportunity for Genesis Park "subject to an attractive deal."

56. As Speedcast's Bankruptcy unfolded in the summer of 2020, Shaper [redacted] became convinced that if Centerbridge, a New York-based private equity firm, took majority ownership of Speedcast and its governance, it would grant them benefits laid out in the MIP (including bringing Genesis Park into the capital structure at an attractive price). Both men, therefore, sought to aid Centerbridge's efforts to acquire Debtors' businesses at a depressed price by avoiding a competitive auction or fair marketing process.

57. Centerbridge, however, did face competition to acquire Speedcast from, among others, the Company's largest creditor, Black Diamond. Critically, because Black Diamond held more than 50% of the outstanding secured debt, it constituted the "Required Lenders" under the Credit Agreement, giving it the right to direct the SFA Agent to "credit bid" for the collateral up to the face amount of the outstanding debt.

58. Black Diamond routinely urged the SRC to hold a marketing process and auction of the Company in an effort to ensure a value maximizing transaction for the Estate, including a transaction where Black Diamond may rely on its contractual right to direct a credit bid on behalf of SFA Lenders.

59. Behind the scenes, however, Shaper [redacted] lamented the notion of a fair auction process. Among other things, they feared that a third party could acquire the Company and remove them from their positions. [redacted]

60. Shaper [redacted] attempted to avoid this outcome by threatening that Speedcast would lose its management team if the valuation of the Company got too high. For example, on July 9, 2020, Shaper texted [redacted] about a discussion with SRC member Carol Flaton: "Carol likes having CB [Centerbridge] and BD [Black Diamond] compete to get the value up and I had to warn that if it goes up much more they were going to lose their management team and that will change the dynamic significantly." Shaper's comment apparently worked, as he told [redacted] that the conversation with Flaton "turned out pretty well." Days later, Shaper was spooked again by an unspecified development that "may bump the valuation up." "[W]e may need to figure out a way to nudge this," [redacted]

3. *Shaper [redacted] Used Their Influence Over SRC to Subvert Black Diamond's Interest in Acquiring Speedcast*

61. In addition to using their influence with the SRC and threats of resignation to avoid a legitimately competitive process, Shaper [redacted] took aim directly at Black Diamond. Shaper summarized his plan in a text message to Centerbridge's Jared Hendricks in early August 2020, stating: "I want to get the entire team behind us so BD has no options." Meanwhile, Shaper [redacted] debated whether to announce forthrightly that "we won't work with BD," but concluded that it was dangerous to relay their bias for one bidder so transparently: "[W]hile … we don't personally have any problem telling BD," Shaper explained to [redacted] "if we side with one party, then we are biased and off the restructuring committee and possibly the board when decisions come up. They require us to stay neutral."

62. Shaper [redacted] threats and influence over the SRC, however, resulted in what effectively became an "anti-Black Diamond effort." Shaper [redacted] first went about this by proposing an over market MIP with terms designed to scare off Black Diamond.

63. Initially, the SRC refused to support Shaper's MIP until he directly obtained the support of the SFA Lenders funding Speedcast's Bankruptcy. In a July 4, 2020, email to Shaper, Chairman Wilks explained that because the MIP would be "formally 'owned' by the Board" — rather than by Shaper personally — the Company's commercial advisors and Weil would advise *the Company* when it came to management's compensation and incentives. Shaper was free to retain his own counsel to negotiate the MIP, but it would be "at [his] expense."

64. Shaper (in his words) "blew up" at Wilks. During a subsequent call with Wilks on July 6, 2020, Shaper demanded that the SRC support the MIP because he [redacted] were "basically doing charity work" for Speedcast and that the Board "continues to want to get more from us for nothing." Shaper's outburst worked, and Wilks relented by agreeing to let Shaper

"work with the Weil folks … to prepare a company promoted MIP" that would not need pre-approval of the Company's lenders. Shaper summed up the call with Wilks in an email to [redacted] "Painful call with Stephe [Wilks] and I had to get pissed off but he understands now."

65. With the over market MIP backed by the SRC, it was then used as ammunition as part of Shaper [redacted] anti-Black Diamond campaign. [redacted] Shaper responded: "Yes. Can even throw in some egregious items that might scare one player off?" This "player" was Black Diamond.

66. Among the changes to the MIP, Shaper [redacted] increased their prospective salaries and the amount of equity they would receive in a reorganized entity. Their draft was sent to Weil, and they arranged a call to discuss "what has changed in the process that caused changes in our positions." [redacted][9] [redacted] This was a reference to Ethan Auerbach of Black Diamond.

67. At the same time, Shaper [redacted] worked to ensure that Centerbridge understood that the "egregious items" in the revised MIP were aimed at Black Diamond, not at them. Shaper wrote to attorneys at Weil asking whether they should "mention to [Centerbridge's] counsel our strategy here or should I mention it to Jared [Hendricks (of Centerbridge)] tomorrow

[9] [redacted].

before we send them…?" [redacted]

68. On July 16, 2020, Weil sent the MIP terms to Speedcast's lenders, including Black Diamond and Centerbridge. [redacted]

4. *Shaper Negotiates an Attractive Deal for Genesis Park with Centerbridge*

69. By early August, Shaper [redacted] had succeeded in convincing the SRC to pursue a deal with Centerbridge. [redacted]

70. The next day, Centerbridge sent the SRC a draft of a plan of reorganization it would sponsor. Negotiations between Speedcast and Centerbridge in the following days focused almost exclusively on the terms of Genesis Park's investment opportunity. [redacted] According to Shaper, the "key" to a deal between Speedcast and Centerbridge was "whether CB can convince GP that [Centerbridge's] valuation is still a smart investment."

71. To enhance Genesis Park's "upside," Shaper urged Centerbridge to *reduce* its valuation of the Company, even though it would result in a lower recovery to Speedcast's creditors. Centerbridge's valuation is "[m]uch too high for me so has to be discussed with CB quickly," he emailed [redacted] on August 5. Shaper followed up the next day with an email [redacted] Centerbridge's valuation "is too high and won't fly for GP [Genesis Park] or me." [redacted]

[redacted]

72. Once Genesis Park was comfortable with Centerbridge's valuation, Shaper turned to Genesis Park's rights — or "governance" — that would attach to its investment. On August 11, he wrote to [redacted] and Griffiths: "Governance is going to be a real problem . . . Just went through it and it is not close to acceptable for GP investment." Among other things, Shaper complained that Centerbridge "can declare non-pro rata dividends and distributions without approval," that "GP does not get board expenses covered," and that Centerbridge is "excluded from corporate opportunities but not GP or management investors." [redacted] Apparently satisfied with the Genesis Park's governance rights, Shaper wrote Hobby [redacted] "good with how they have included GP now."

73. On August 12, Speedcast filed Centerbridge's initial "Equity Commitment Plan" (the "**Initial ECA**") in the bankruptcy together with a motion to authorize payment to Centerbridge's lawyers in connection with developing the plan. The Initial ECA was filed on an "emergency" basis on the grounds that "[a] rapid exit from chapter 11 is critical to Speedcast's success."

74. Black Diamond professionals, who had been given the runaround by Speedcast and

its professionals for weeks prior to this "emergency" filing were astounded. Among other things, the Initial ECA (i) was proposed in direct contravention to a Final DIP Order entered by the Bankruptcy Court, (ii) called for senior secured SFA lenders to receive just $64.5 million (approximately 10% of Speedcast's then outstanding secured debt), (iii) gave Centerbridge the Company at an extremely low valuation, and (iv) purported to circumvent a marketing process as well as Black Diamond's contractual right to direct the SFA Agent to credit bid.

F. SHAPER [redacted] HOLD THE SRC "RANSOM"

75. On August 13, 2020, Black Diamond sent the SRC a competing bid for Speedcast, providing for three to four times more value for prepetition creditors than Centerbridge's Initial ECA. Black Diamond conditioned its bid on Speedcast holding a competitive process, which would allow Speedcast to accept an even higher offer than Black Diamond's. Thus, under Black Diamond's proposal, Speedcast's creditors would, at a minimum, recover multiples of Centerbridge's proposal.

76. According to Shaper, a "big fight" ensued between him and the SRC members during an SRC meeting on August 14. [redacted] Aware that the SRC would need to withdraw the Initial ECA in such a case, Shaper railed against a "full blown auction process." He relied on the same argument he made months earlier during the Company's attempt to raise new equity: the SRC was "just wanting us [Shaper [redacted]] to continue to extend our reputation for the SRC/companies [sic] benefit."

77. [redacted]

[redacted]

78. Unable to convince the SRC to continue backing the Initial ECA, Shaper [redacted] followed through on their threat. On or about August 24, 2020, Shaper [redacted] tendered their resignations while simultaneously offering to reassume their positions if, by August 28, Speedcast adopted a reorganization plan that (i) included management incentives, and (ii) an "agreement with Genesis Park to invest in the emerged company with acceptable governance." Before sending this letter to the SRC, Shaper sent a draft to Hobby, who reviewed it and approved of the strategy.

79. The letter forced the SRC into an impossible choice. It would either need to satisfy Shaper [redacted] demands at the expense of Speedcast and its creditors or lose the Company's top two executives — and face the instability and disruption that would follow — at the very moment that the Company was supposed to be maximizing its value. One SRC member accurately described the strategy as attempt to "ransom the SRC."

80. The SRC did not agree to Shaper [redacted] conditions by August 28. At the end of the day on August 28, Shaper's resignation became effective. [redacted]

81. At Speedcast's confirmation hearing months later, Speedcast's witnesses tried to

explain what drove Shaper to threaten harm to the Company to advance his personal agenda. [redacted] Carol Flaton, an SRC member, explained that Shaper was simply unfamiliar with the bankruptcy process but conceded that Shaper's conduct stemmed from a sense of entitlement. According to Flaton, Shaper "felt that his involvement was — was that valuable that he should get what he wanted."

82. Judge Isgur was unmoved by these excuses. "[I]t doesn't take sophistication about restructur[ing] law to know that when you're a member of the Board and an officer of a corporation that you can't demand things for your personal benefit at the expense of the corporation." As Judge Isgur correctly found, by threatening the SRC to benefit himself and Genesis Park, Shaper "was trying to breach his fiduciary duty." Shaper's antics "bother[ed]" him, "a lot."

G. THE SRC CONTINUES THE "ANTI-BLACK DIAMOND EFFORT" SHAPER SET IN MOTION

83. Shaper's effects on Speedcast's bankruptcy process survived his resignation. Through their influence over the SRC during the initial phase of Speedcast's bankruptcy, Shaper [redacted] set Speedcast's bankruptcy process on a course from which it never recovered. The enduring effects of Shaper [redacted] influence on the SRC were manifest in Speedcast's bankruptcy process in at least two ways.

84. [redacted]

[redacted]

85. [redacted] This offer, which exceeded Centerbridge's most recent offer by almost *$350 million* in value, included: (i) paying the Speedcast's then existing DIP facility in full in cash; (ii) the SFA Agent credit bidding — on behalf of the SFA Lenders — all of the Obligations under the Credit Agreement (totaling approximately $600 million); (iii) $300 million in acquisition financing fully backstopped by Black Diamond; (iv) general unsecured creditors' receipt of their *pro rata* share of a cash fund subject to their support of a chapter 11 plan; and (v) the Debtors' post-reorganization management team being afforded the opportunity to participate in a management-incentive plan on substantially the same terms contemplated by Centerbridge's most recent proposal.

86. [redacted] On September 7, 2020, Black Diamond revoked its August 31 offer, having received no substantive response from the SRC. Additional offers by Black Diamond in September 2020, each of which offered greater value to Speedcast and its stakeholders than the then-prevailing Centerbridge proposal, met the same fate.

87. [redacted]

[redacted] Judge Isgur referred to the latter as the "anti-Black Diamond provision," which was "directed at one and only one bidder in the whole world." [redacted]

88. [redacted] Notably, each of Black Diamond's proposals in October 2020 offered greater value to Speedcast and its stakeholders than the then-prevailing Centerbridge proposal.

89. At bottom, the SRC's selection procedures reflected that Shaper's plan to "get the entire team behind us so BD has no options" had succeeded. Following Shaper's resignation, his influence lingered. [redacted] Judge Isgur shared these concerns. "What gets communicated that says the committee has turned a new leaf? It's really taking charge now, even though it was supposed to have taken charge before? How does -- was that communicated to anyone?" [redacted]

90. On October 10, 2020, Speedcast and Centerbridge entered into the Amended and Restated Equity Commitment Agreement (the "**Revised ECA**"). The Revised ECA would give Centerbridge ownership of the reorganized entity in return for $150 million to Speedcast's secured creditors and $25 million to holders of a select group of "unsecured trade claims" who agreed to support the Revised ECA. This was incorporated into Speedcast's Second Amended Joint Chapter 11 Plan (the "**Revised Plan**"), which was filed with the Court on November 25, 2020. The hearing

to confirm the Revised Plan was scheduled for late December 2020.

91. At the confirmation hearing, Judge Isgur heard evidence regarding Shaper [redacted] roles throughout the Bankruptcy, including their efforts to secure investment opportunities for themselves and Genesis Park. The evidence left Judge Isgur "worried about whether the company is really taking the highest bid or implemented its processes in a way to get the highest bid." In particular, the evidence raised "serious questions as to whether Black Diamond was given a fair shake in this deal." Judge Isgur believed that the process had been "colored by the early summer activity" involving Shaper [redacted] "where I think people would have gotten the wrong message" about the SRC's willingness and ability to run a fair process.

92. [redacted] Judge Isgur tried to do what [redacted] advisors should have done at the outset of Speedcast's Bankruptcy, namely, giving Black Diamond and others "a real, full, fair opportunity" to acquire the Company which included recognizing Black Diamond's right to direct the SFA Agent to credit bid.

93. Judge Isgur took the unconventional step of halting the confirmation hearing to afford Black Diamond an opportunity to make a new offer for Speedcast that would not be subject to the SRC's arbitrary "anti-Black Diamond" conditions. The passage of almost two months since Black Diamond's last offer required it to update its due diligence (which required Speedcast's assistance) as well as attempting to re-engage financing partners. Black Diamond was given a compressed timeframe to complete these steps since, Judge Isgur emphasized, Speedcast was "suffering" in bankruptcy. Faced with these constraints, Black Diamond was not in a position to bid.

94. Thus, after 8 months in Bankruptcy, Speedcast was left with Centerbridge's proposal which originated from a patently unfair process tainted by Defendant's wrongdoing. At the time, the Bankruptcy had cost the Estate around $100 million in various expenses. In particular, Speedcast had paid over $30 million to Weil, approximately $15 million to FTI, approximately $3 million to Moelis, and over $20 million to the professional advisors of its creditors — including fees paid to Centerbridge's professional advisors in connection with the Initial ECA and Revised ECA.

95. On January 20, 2021, Speedcast filed its Plan, which incorporated a settlement agreement between Speedcast, Centerbridge and Black Diamond. Under the Plan, Centerbridge would acquire the reorganized Speedcast upon its emergence from bankruptcy. Additionally, Speedcast would waive any actionable claims it held against the SRC members, Spytek, and various professionals related to the bankruptcy process, including claims for breach of fiduciary duty. Critically, Shaper was excluded from this provision. The SFA Lenders, through the SFA Litigation Trust Agreement incorporated in the Plan, retained the right to pursue claims against Shaper for his wrongdoing.

96. At a hearing on January 21, 2020, on Debtors' motion to confirm the Plan, counsel for Shaper appeared. Shaper's counsel explained that he had been contacted that day after learning that Speedcast would not be waiving its claims against Shaper and that Shaper had "understood" that Weil had been representing him throughout the Bankruptcy. In light of Shaper's discovery that this was not accurate, his counsel requested the Court delay confirmation until Shaper had the opportunity to review and object to the Plan.

97. Judge Isgur responded:

> [T]here was extensive evidence throughout the case that Mr. Shaper, while serving as a fiduciary to [Speedcast] repeatedly breached his fiduciary duties and put his personal interests ahead of the company's interests and refused to give equal treatment to offers that were made that did not work to his personal benefit and made threats to the company of actions that he would take.

Judge Isgur was "shocked" at Shaper's behavior. The Court was also surprised that Shaper could ever believe that he was represented by Speedcast's counsel. "That statement by [Shaper]," the Court explained, "reflects perhaps his continuing inability to recognize that an insolvent entity has duties other than to Mr. Shaper and he should have known that all along."

VII. CAUSES OF ACTION

Breach of Fiduciary Duty by Shaper

98. The Trustee repeats and re-alleges the allegations in the foregoing paragraphs as if fully set forth herein.

99. Shaper had a fiduciary relationship with the Estate (including its creditors) and owed fiduciary duties to the Estate. From on or about April 2020 until August 28, 2020, Shaper was a director of a debtor-in-possession in a chapter 11 proceeding. As a director of a debtor-in-possession, Shaper owed fiduciary duties to the Estate. Moreover, as an officer and director of the Company serving as debtor-in-possession in a chapter 11 proceeding, a relationship of trust and confidence existed between Shaper and the Estate; the Estate justifiably placed trust and confidence in Shaper to act in the Estate's best interests.

100. Throughout this time period, Shaper owed fiduciary duties to Speedcast and its creditors to act in good faith, with honest governance, loyalty, care, and full and fair disclosure, toward Speedcast and its creditors and in furtherance of the best interests of Speedcast and its creditors.

101. Shaper violated his fiduciary duties as described in the above allegations by placing his own interests before the Company's and its creditors', including by taking actions to prevent Speedcast from entering into transactions that would not further his personal agenda of securing attractive investment opportunities for himself, [redacted] and Genesis Park. Among other inequitable acts, Shaper suppressed competition for Speedcast and threatened to resign if the Company failed to guarantee that his personal demands were met. Shaper further breached his fiduciary duty by using Speedcast's restructuring professionals — who owed fiduciary duties to Speedcast — to carry out his personal agenda.

102. Shaper's breaches of his fiduciary duties proximately caused injury to Speedcast and its creditors, including resulting in a depressed recovery and the incurrence of tens of millions in wasteful professional expenses.

103. Shaper's breaches of his fiduciary duties resulted in benefits to Shaper, including use of company assets and personnel to carry out Shaper's own agenda.

104. Speedcast and its creditors have suffered damages in an amount to be proven at trial as a result of Shaper's breaches of his fiduciary duties.

105. The damages sought are within the jurisdictional limits of this Court.

Knowing Participation in a Breach of Fiduciary Duty

106. The trustee repeats and re-alleges the allegations in the forgoing paragraphs as if fully set forth herein.

107. Defendant knowingly participated in a breach of fiduciary duty [redacted]

108. [redacted]

109. Defendant knew [redacted] fiduciary relationship.

110. [redacted]

a. [redacted]

b. [redacted]

c. [redacted]

d. [redacted]

111. Defendant participated and substantially assisted [redacted] in the breach of fiduciary duty, including by aiding [redacted] in suppressing competition for Speedcast and assisting [redacted] efforts to exert influence over the bidding process to favor Centerbridge for the benefit of Genesis Park.

112. Defendant was aware that he was participating in the breach of [redacted] fiduciary relationship.

113. Defendant's assistance and participation was a substantial factor in causing the breach of fiduciary duty.

114. Having knowingly participated in breach of [redacted] fiduciary duties, Defendant is jointly and severally liable for breaches of fiduciary duties by [redacted]

115. Speedcast and its creditors have been injured in excess of the minimum jurisdictional limits of this Court as the result of these breaches.

Aiding and Abetting Breach of Fiduciary Duty

116. The trustee repeats and re-alleges the allegations in the forgoing paragraphs as if fully set forth herein.

117. Defendant aided and abetted breach of fiduciary duty by [redacted]

118. [redacted]

e. [redacted]

[redacted]

f. [redacted]

g. [redacted]

h. [redacted]

[redacted]

119. Defendant had knowledge of the fiduciary relationship between [redacted] and the Estate.

120. Defendant had knowledge that [redacted] conduct constituted a tort.

121. Defendant acted with intent to assist [redacted] in committing the tort of breach of fiduciary duty.

122. Defendant gave [redacted] assistance or encouragement, including by working with [redacted] to exert influence over the bidding process to favor Centerbridge for the benefit of Genesis Park, Shaper, and [redacted] and aimed at preventing Black Diamond from emerging as Speedcast's owner.

123. Defendant's assistance and encouragement was a substantial factor in causing the tort of breach of fiduciary duty.

124. Having aided and abetted [redacted] Defendant is jointly and severally liable for breaches of fiduciary duties by [redacted]

125. Speedcast and its creditors have been injured in excess of the minimum jurisdictional limits of this Court as the result of these breaches.

Conspiracy To Breach Fiduciary Duties

126. The Trustee repeats and re-alleges the allegations in the foregoing paragraphs as if fully set forth herein.

127. Defendant, in combination with [redacted] Genesis Park, and Hobby ("Co-

Conspirators"), engaged in a conspiracy to breach Shaper's and [redacted] fiduciary duties to the Estate, including but not limited to, by creating a bidding process that refused to give equal treatment to offers to acquire Speedcast that did not work to Defendant's and Co-Conspirators' personal benefit.

128. Defendant and Co-Conspirators had a meeting of the minds and agreed to exert power and influence in the bidding process for the Company to favor acquisition by Centerbridge over Black Diamond or any other competing bidders for Company, which was a violation of Shaper's and [redacted] fiduciary duties to the Estate.

129. To accomplish the unlawful object of their agreement, Defendant and Co-Conspirators took one or more overt acts toward accomplishment of their wrongful goals, including but not limited to breaches of fiduciary duty by failing to adopt a truly competitive bidding process for the Company, seeking lower valuation for the Company in order to benefit Genesis Park at the expense of the Estate, and threatening the SRC to benefit Genesis Park, Defendant, and the other Co-Conspirators.

130. Defendant and Co-Conspirators acted with intent to harm the Estate.

131. The conspiracy proximately caused injury to the Estate, including resulting in a depressed recovery and the incurrence of tens of millions in wasteful professional expenses.

132. As described above, Defendant and Co-Conspirators engaged in a conspiracy to harm the Estate and to benefit themselves at the Estate's expense. Defendant and Co-Conspirators had a meeting of the minds and took one or more overt acts toward accomplishing their wrongful goals, which include, but are not limited to, breach of fiduciary duties and knowing participation in breach of fiduciary duties. The Estate was damaged as a result of this conspiracy.

133. As a conspirator, Shaper is jointly and severally liable for all acts done by any

member of the conspiracy in furtherance of the conspiracy and any and all harm caused by the conspiracy.

134. Speedcast and its creditors have been injured in excess of the minimum jurisdictional limits of this Court as the result of the conspiracy.

VIII. CONDITIONS PRECEDENT

135. All conditions precedent have been performed or have occurred.

IX. EXEMPLARY DAMAGES

136. Plaintiff's injury resulted from defendant's malice, fraud, or gross negligence. Pursuant to Chapter 41 of the Texas Civil Practice and Remedies Code, the Trustee seeks exemplary damages resulting from Shaper's wrongful actions. The Trustee requests that exemplary damages be awarded against Shaper in a sum within the jurisdictional limits of the Court.

X. PREJUDGMENT AND POST-JUDGMENT INTEREST

137. The Trustee further seeks recovery of prejudgment and post-judgment interest at the maximum rate allowed by law in connection with its claims.

XI. JURY DEMAND

138. The Trustee hereby demands a jury trial on all triable issues.

XII. PRAYER

WHEREFORE, Plaintiff Catherine E. Youngman, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust, prays that Defendant Peter Shaper be cited to appear and answer, and that after a trial or other final hearing the Trustee be awarded a judgment against Defendant Peter Shaper for the following:

- Actual damages in an amount to be proven at trial;

- Equitable relief, including forfeiture of any improper benefit; forfeiture of salary during the time Shaper breached his fiduciary duties; and/or disgorgement of all fees, financial benefits, profits, and any other remuneration derived from Shaper's wrongful acts;
- Exemplary damages as allowed by law;
- Pre- and post-judgment interest as allowed by law;
- Costs of court; and
- All such other relief as is available at law or in equity that this Court deems just, equitable and proper.

Dated: January 7, 2022

Respectfully submitted,

ZAIGER LLC

Jeffrey H. Zaiger
Judd A. Linden
2187 Atlantic Street, 9th Floor
Stamford, CT 06902
Telephone: (203) 347-7180
jzaiger@zaigerllc.com
jlinden@zaigerllc.com

Pro Hac Vice Applications Forthcoming

YETTER COLEMAN LLP

/s/ Bryce L. Callahan
Bryce L. Callahan
State Bar No. 24055248
Susanna Rychlak Allen
State Bar No. 24126616
811 Main Street, Suite 4100
Houston, Texas 77002
(713) 632-8000
bcallahan@yettercoleman.com
sallen@yettercoleman.com

Counsel for Speedcast SFA Lenders' Litigation Trustee

EXHIBIT 3

FILED UNDER SEAL

EXHIBIT 4

NO. 2022-01305

CATHERINE E. YOUNGMAN, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
v.	§	HARRIS COUNTY, TEXAS
PETER SHAPER,	§	
Defendant.	§	61ST JUDICIAL DISTRICT

NOTICE OF WRITTEN SUBMISSION

Please take notice that Plaintiff's Temporary Sealing Order, filed on January 13, 2022, is set for submission on January 24, 2022, at 8:00 a.m. in the 61st Judicial District of Harris County, Texas.

Dated: January 13, 2022

Respectfully submitted,

ZAIGER LLC

Jeffrey H. Zaiger
Judd A. Linden
2187 Atlantic Street, 9th Floor
Stamford, CT 06902
Telephone: (203) 347-7180
jzaiger@zaigerllc.com
jlinden@zaigerllc.com

Pro Hac Applications Forthcoming

YETTER COLEMAN LLP

/s/ Bryce L. Callahan
Bryce L. Callahan
State Bar No. 24055248
Susanna Rychlak Allen
State Bar No. 24126616
811 Main Street, Suite 4100
Houston, Texas 77002
(713) 632-8000
bcallahan@yettercoleman.com
sallen@yettercoleman.com

Counsel for Speedcast SFA Lenders' Litigation Trustee

Certificate of Service

I hereby certify that on January 13, 2022, the foregoing was served by email and/or by electronic filing service on all counsel of record.

/s/ Bryce L. Callahan
Bryce L. Callahan

EXHIBIT 5

NO. 2022-01305

CATHERINE E. YOUNGMAN, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
v.	§	HARRIS COUNTY, TEXAS
PETER SHAPER,	§	
Defendant.	§	61ST JUDICIAL DISTRICT

PLAINTIFF'S UNOPPOSED MOTION FOR TEMPORARY AND PERMANENT SEALING ORDER

Pursuant to Texas Rule of Civil Procedure 76a, Plaintiff Catherine E. Youngman, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust ("Trustee" or the "Plaintiff") files this Unopposed Motion for Temporary and Permanent Sealing Order ("Motion to Seal") and would respectfully show the Court as follows:

Plaintiff seeks leave to file under seal its unredacted Original Petition (the "Petition") filed on January 7, 2022. *See* Declaration of C. Youngman, attached hereto as Exhibit 1. The Petition has been redacted for public filing. This Motion to Seal has been set for hearing on February 24, 2022. Counsel for Plaintiff has conferred with counsel for Defendant Peter Shaper, and Defendant does not oppose this Motion to Seal.

I. Legal Standard.

A court may seal court records if there is a serious, specific, and substantial interest in sealing the record that clearly outweighs the presumption of openness and any probable adverse effect that the sealing will have on the public health or safety. TEX. R. CIV. P. 76a(1)(a); *In re Browning-Ferris Indus., Inc*., 267 S.W.3d 508, 512 (Tex. App—Houston [14th Dist.] 2008, no pet.). Without a complete, unredacted Petition, Plaintiff will suffer immediate and irreparable injury because the Trustee will not be able to fully marshal the evidence supporting the grounds

for its claims. *See* Ex. 1 ¶11. No less restrictive means than sealing records will adequately and effectively protect these specific interests. *Id.*; TEX. R. CIV. P. 76a(1)(b).

A movant must post a public notice of the motion to seal, and the court must conduct a hearing on the motion. TEX. R. CIV. P. 76a(3)-(4). Before the required notice is posted and a hearing is held, a court may enter a temporary sealing order if the movant shows a compelling need, by affidavit or verified petition, that immediate and irreparable injury will result to a specific interest of the movant. TEX. R. CIV. P. 76a(5). Additionally, any parties who have appeared in the lawsuit must have notice of the motion to seal before the temporary order can be entered. *Id.* If the movant meets its burden, the temporary order shall set the time for the public hearing and direct the movant to post and file notice of the hearing. *Id.* The court may inspect records to be filed under seal in camera. TEX. R. CIV. P. 76a(4).

The Trustee has filed a redacted version of its Petition and has served an unredacted version of the Petition on the Defendant through his counsel. Ex. 1 ¶13. After the temporary sealing order is granted, the Trustee will file an unredacted version of the Petition under seal with the Court. *Id*. The Court may review the documents to determine whether they should remain sealed. Although Defendant has not yet appeared in this lawsuit, Plaintiff has given notice of this Motion to Seal to Defendant, and Defendant does not oppose this Motion to Seal.

Plaintiff will promptly comply with Rule 76a(3) and post public notice at the place where notices for meetings of county governmental bodies are required to be posted. *Id.* The notice will state that a hearing will be held in open court on this motion; that any person may intervene and be heard concerning the sealing of court records; the specific time and place of the hearing; the style and number of the case; a brief but specific description of both the nature of the case and the records which are sought to be sealed, and the identity of the movant. *Id.*; TEX. R. CIV. P. 76a(3). Immediately after posting such notice, Plaintiff will file a verified copy

of the posted notice with the Harris County District Clerk and the Clerk of the Supreme Court of Texas. Ex. 1 ¶14.

This motion is not made for the purpose of delay or harassment, but only so that justice may be done, and any confidentiality interests of the parties to this lawsuit and third parties may be preserved and maintained. *Id.* ¶15.

II. Plaintiff and Third Parties Have a Substantial Interest in Keeping Released Party Information Confidential

In its Petition, the Trustee includes factual allegations related to parties who were released from liability in the Speedcast International Limited ("Speedcast") bankruptcy proceeding. The Bankruptcy Court in the Speedcast bankruptcy approved a settlement that instructed the Trustee to make best efforts that allegations against released parties be filed under seal.

The Petition brings claims against Peter Shaper, former Director and CEO of Speedcast, related to Shaper's wrongful conduct during Speedcast's bankruptcy. Speedcast filed for bankruptcy relief under chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of Texas on April 23, 2020. *In re: Speedcast Int'l Ltd.*, No. 20-32243 (Bankr. S.D. Tex.). By Order dated January 22, 2021, the Bankruptcy Court approved a Chapter 11 Plan and Plan Settlement Agreement. *In re Speedcast*, Order Approving Joint Ch. 11 Plan at 28 (Dkt. 1397) (Jan. 22, 2021) (the "Order"). The Plan Settlement Agreement released claims against a broad swath of "Released Parties," including but not limited to Speedcast and its affiliates (both as debtors and debtors in possession), various lenders, and the Creditors' Committee and all its members. Order Ex. A (Third Amended Joint Ch. 11 Plan) at 15–16; 62–68. Shaper was carved out as a "Non-Released Party," and the claims against Shaper were not released. *See* Order Ex.

A at 12. Claims against Shaper were instead categorized as Class 3 Trust Causes of Action subject to prosecution by the Class 3 Trustee. *See* Order Ex. A at 4–5.

The Bankruptcy Court's Order also approved the Class 3 Trust Agreement, which was then executed effective March 11, 2021.[1] Order Ex. B (Ex. 5 Form of Class 3 Trust Agreement attached to Settlement Agreement). Plaintiff was appointed to serve as Trustee pursuant to the Class 3 Trust Agreement and, under oversight of the Litigation Trust Committee,[2] is authorized to prosecute Class 3 Trust Causes of Action. *See* Order Ex. 5 to Ex. B at 7–8. The causes of action asserted against Shaper in the Petition are Class 3 Causes of Action. Order Ex. A at 4–5.

The Class 3 Trust Agreement provides that "[t]o the extent that the Class 3 Trustee makes any allegations against Released Parties as defined in the Plan, the Class 3 Trustee shall use best efforts to file such allegations under seal" and that the Class 3 Trustee should share this sealing agreement "with any court as necessary." Order Ex. 5 to Ex. B at 5. Although the Petition asserts causes of action against Shaper only, the factual assertions in the Petition include allegations of conduct by Released Parties, as the Released Parties were substantively involved in the Speedcast bankruptcy and several of the Released Parties' actions were closely linked to Shaper's relevant conduct. Thus, the Trustee must use best efforts to file these allegations under seal, in compliance with the Bankruptcy Court's Order.

Plaintiff has a serious, specific, and substantial interest in maintaining the confidentiality of these allegations in light of the approved Settlement and the Bankruptcy Court's Order.

---

[1] The unexecuted Class 3 Trust Agreement is Exhibit 5 to the Plan Settlement Agreement, which is Exhibit B to the Bankruptcy Court's Order; the Trustee will provide the executed version of the Class 3 Trust Agreement for inspection *in camera* if necessary. TEX. R. CIV. P. 76a(4).

[2] The Litigation Oversight Committee charged with "advising, assisting, supervising, and directing the Class 3 Trustee in the administration of the Class 3 Trust pursuant to th[e] Class 3 Trust Agreement." *See* Order at Ex. 5 to Ex. B.

Moreover, without a complete, unredacted Petition, Plaintiff will suffer immediate and irreparable injury because the Trustee will not be able to fully marshal the evidence supporting the grounds for its claims, as allegations against Released Parties are an important component of fully asserting the Trustee's claims in the Petition.

III. Sealing Will Have No Adverse Effect on Public Health or Safety

Sealing will not have any probable adverse effect upon the general public health or safety. The documents and allegations that the Plaintiff requests be sealed are information that the Class 3 Trust Agreement, which was approved by the Bankruptcy Court in its Order, instructed the Trustee to use best efforts to file under seal. The Bankruptcy Court has determined that the interest in confidentiality of released parties outweighs public interest in the allegations in a pending petition. There are also no less restrictive, available means of adequately and effectively protecting the parties' specific interests in sealing the documents and testimony at issue because public disclosure could not be undone and would effectively destroy those interests. The Petition should be sealed.

CONCLUSION

For these reasons, Plaintiff requests that this Court enter a temporary sealing order to ensure the parties are not damaged before this Court can enter a permanent order. Plaintiff further requests that this Court set a hearing pursuant to Rule 76a(4) to determine whether the confidential information contained in the Plaintiff's Petition should be sealed permanently or for some other length of time.

Plaintiff respectfully requests that this Court grant this motion and grant any other relief to which the Trustee may be justly entitled.

Dated: January 13, 2022

Respectfully submitted,

ZAIGER LLC

Jeffrey H. Zaiger
Judd A. Linden
2187 Atlantic Street, 9th Floor
Stamford, CT 06902
Telephone: (203) 347-7180
jzaiger@zaigerllc.com
jlinden@zaigerllc.com

Pro Hac Applications Forthcoming

YETTER COLEMAN LLP

/s/ Bryce L. Callahan
Bryce L. Callahan
State Bar No. 24055248
Susanna Rychlak Allen
State Bar No. 24126616
811 Main Street, Suite 4100
Houston, Texas 77002
(713) 632-8000
bcallahan@yettercoleman.com
sallen@yettercoleman.com

Counsel for Speedcast SFA Lenders' Litigation Trustee

Certificate of Service

I hereby certify that on January 13, 2022, the foregoing was served by email and/or by electronic filing service on all counsel of record.

/s/ Bryce L. Callahan
Bryce L. Callahan

Certificate of Conference

I hereby certify that on January 10, 2022, I conferred by email with Ross MacDonald, counsel for Defendant, regarding the relief requested in this motion, and he informed that Defendant is not opposed.

/s/ Bryce L. Callahan
Bryce L. Callahan

Exhibit 1

NO. 2022-01305

CATHERINE E. YOUNGMAN, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
v.	§	HARRIS COUNTY, TEXAS
PETER SHAPER,	§	
Defendant.	§	61ST JUDICIAL DISTRICT

DECLARATION IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY AND PERMANENT SEALING ORDER

1. My name is Catherine E. Youngman. My address is 49 Market Street, Morristown, New Jersey 07960, United States. I am over 18 years of age, of sound mind, and capable of making this declaration. I am the Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. Plaintiff seeks leave to file under seal its unredacted Original Petition (the "Petition").

3. The Petition has been redacted for public filing.

4. The Motion to Seal has been set for hearing on February 24, 2022.

5. The Petition includes factual allegations related to parties who were released from liability in the Speedcast International Limited ("Speedcast") bankruptcy proceeding; the Bankruptcy Court in the Speedcast bankruptcy approved a settlement that instructed the Trustee to make best efforts that allegations against Released Parties be filed under seal.

6. Speedcast filed for bankruptcy relief under chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of Texas on April 23, 2020. By Order dated January 22, 2021, the Bankruptcy Court approved a Chapter 11 Plan and Plan Settlement

Agreement. The Plan Settlement Agreement released claims against a broad swath of "Released Parties," including but not limited to Speedcast and its affiliates (both as debtors and debtors in possession), various lenders, and the Creditors' Committee and all its members. Peter Shaper was carved out as a "Non-Released Party," and the claims against Shaper were not released.

7. The Bankruptcy Court's Order also approved the Class 3 Trust Agreement, which was then executed effective March 11, 2021. Claims against Shaper were categorized as Class 3 Trust Causes of Action. I was appointed to serve as Trustee pursuant to the Class 3 Trust Agreement and, under oversight of the Litigation Trust Committee; I am authorized to prosecute Class 3 Trust Causes of Action.

8. The Class 3 Trust Agreement also provides that "[t]o the extent that the Class 3 Trustee makes any allegations against Released Parties as defined in the Plan, the Class 3 Trustee shall use best efforts to file such allegations under seal" and that the Class 3 Trustee should share this sealing agreement "with any court as necessary."

9. The Petition includes factual allegations related to parties who were released from liability in the Speedcast bankruptcy proceeding.

10. Although the Petition asserts causes of action against Shaper only, the factual assertions in the Petition include allegations of conduct by Released Parties, as the Released Parties were substantively involved in the Speedcast bankruptcy and several of the Released Parties' actions were closely linked to Shaper's relevant conduct.

11. Without a complete, unredacted Petition, Plaintiff will suffer immediate and irreparable injury, as allegations involving the Released Parties are an important component of fully asserting the claims in the Petition.

12. Sealing will not have any probable adverse effect upon the general public health or safety. The documents and allegations requested to be sealed are information that the Class 3 Trust Agreement, which was approved by the Bankruptcy Court in its Order, instructed the Trustee to use best efforts to file under seal. The Bankruptcy Court has determined that the interest in confidentiality of Released Parties outweighs public interest in the allegations in a pending petition.

13. A redacted version of the Petition has been publicly filed, and an unredacted version of the Petition has been served on the Defendant, through his counsel. After the temporary sealing order is granted, Plaintiff will cause to be filed an unredacted version of the Petition under seal with the Court.

14. Plaintiff will promptly comply with Rule 76a(3) and post public notice at the place where notices for meetings of county governmental bodies are required to be posted. The notice will state that a hearing will be held in open court on this motion; that any person may intervene and be heard concerning the sealing of court records; the specific time and place of the hearing; the style and number of the case; a brief but specific description of both the nature of the case and the records which are sought to be sealed, and the identity of the movant. Immediately after posting such notice, Plaintiff will file a verified copy of the posted notice with the Harris County District Clerk and the Clerk of the Supreme Court of Texas.

15. This motion is not made for the purpose of delay or harassment, but only so that justice may be done, and any confidentiality interests of the parties to this lawsuit and third parties may be preserved and maintained.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Morris County, State of New Jersey, on the 13th day of January, 2022.



Catherine E. Youngman

Declarant

NO. 2022-01305

CATHERINE E. YOUNGMAN, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
v.	§	HARRIS COUNTY, TEXAS
PETER SHAPER,	§	
Defendant.	§	61ST JUDICIAL DISTRICT

PERMANENT SEALING ORDER

The Court has considered the Motion for Temporary and Permanent Sealing Order (the "Motion") filed by Plaintiff Catherine E. Youngman, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust ("Trustee" or the "Plaintiff"). This Court has considered the Motion, the affidavit in support, and applicable law. The Motion for Permanent Sealing Order is GRANTED.

The Court finds that Original Petitions contains confidential information. The Court finds that sealing poses no threat to the general public health and safety, and that no less restrictive means than sealing will adequately protect the confidentiality and privacy of the information contained in the Petition. The Court finds that the specific, serious, and substantial interests in protecting the confidentiality and privacy of the information contained in the Petition clearly outweigh the presumption of openness. Accordingly, after public notice and a hearing, and in accordance with Texas Rule of Civil Procedure 76a, it is hereby:

ORDERED that the Court Records are SEALED.

SIGNED _____, 2022.

_____

JUDGE PRESIDING

NO. 2022-01305

CATHERINE E. YOUNGMAN, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
v.	§	HARRIS COUNTY, TEXAS
PETER SHAPER,	§	
Defendant.	§	61ST JUDICIAL DISTRICT

TEMPORARY SEALING ORDER

Pending before the Court is the Motion for Temporary and Permanent Sealing Order (the "Motion") filed by Plaintiff Catherine E. Youngman, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust ("Trustee" or the "Plaintiff"). This Court has considered the Motion, the affidavit in support, and applicable law. The Motion for Temporary Sealing Order is GRANTED.

It is therefore, ORDERED that Plaintiff has leave to file under seal temporarily an unredacted version of her Original Petition.

It is ORDERED that a public hearing on whether to seal permanently the records identified in this Order will be held on February 24, 2022, at 10:00am.

It is ORDERED that the records identified in this Order as sealed shall remain sealed until the conclusion of that hearing.

It is ORDERED that Plaintiff must immediately give public notice of the hearing in accordance with Texas Rule of Civil Procedure 76a(5).

SIGNED _____, 2022.

_____

JUDGE PRESIDING

EXHIBIT 6

1/13/2022 3:41:13 PM
Marilyn Burgess - District Clerk
Harris County
Envelope No: 60805804
By: System user, TexFile
Filed: 1/13/2022 3:41:13 PM
Pgs-1

SELDX

NO. 2022-01305

CATHERINE E. YOUNGMAN, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
v.	§	HARRIS COUNTY, TEXAS
PETER SHAPER,	§	
Defendant.	§	61ST JUDICIAL DISTRICT

TEMPORARY SEALING ORDER

Pending before the Court is the Motion for Temporary and Permanent Sealing Order (the "Motion") filed by Plaintiff Catherine E. Youngman, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust ("Trustee" or the "Plaintiff"). This Court has considered the Motion, the affidavit in support, and applicable law. The Motion for Temporary Sealing Order is GRANTED.

It is therefore, ORDERED that Plaintiff has leave to file under seal temporarily an unredacted version of her Original Petition.

It is ORDERED that a public hearing on whether to seal permanently the records identified in this Order will be held on February 24, 2022, at 10:00am.

It is ORDERED that the records identified in this Order as sealed shall remain sealed until the conclusion of that hearing.

It is ORDERED that Plaintiff must immediately give public notice of the hearing in accordance with Texas Rule of Civil Procedure 76a(5).

SIGNED _____, 2022.

Signed:
1/24/2022

JUDGE PRESIDING

EXHIBIT 7

1/25/2022 9:57 AM
Marilyn Burgess - District Clerk Harris County
Envelope No. 61112381
1462051 By: Brenda Espinoza
01/13/2022 PERSONAL 1/25/2022 9:57 AM
$9.00 MPR - NOTICE MTG

CAUSE NO. 2022-01305

CATHERINE E. YOUNGMAN, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
v.	§	HARRIS COUNTY, TEXAS
PETER SHAPER,	§	
Defendant.	§	61ST JUDICIAL DISTRICT

VERIFIED PUBLIC NOTICE OF HEARING ON PLAINTIFF'S UNOPPOSED MOTION FOR PERMANENT SEALING ORDER

Under Texas Rule of Civil Procedure 76a(3), Plaintiff Catherine E. Youngman, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust ("Trustee" or the "Plaintiff"), posts this Public Notice of the hearing in open court on Plaintiff's Unopposed Motion for Permanent Sealing Order as to Plaintiff's Original Petition, filed on January 13, 2022, in the above case. The hearing will be held on February 24, 2022, at 10:00 a.m. and will take place before the 61st Judicial District, located at the Harris County Civil Courthouse, 201 Caroline Street, 9th floor, Houston, Texas 77002. At the hearing, any person may intervene and be heard concerning the sealing of court records.

The records sought to be sealed are Plaintiff's Original Petition. The nature of the case is a claim that Defendant breached his fiduciary duties he owed while serving as a Director and CEO of a satellite technology company that was a debtor in possession in a Chapter 11 bankruptcy. The Petition also includes claims against Defendant for conspiracy to breach fiduciary duties, knowing participation in a breach of fiduciary duty, and aiding and abetting breach of fiduciary duty. The parties are not asking the Court to seal any court order or petition.

Plaintiff has served unredacted copies of the Court Records on the Defendant. To avoid exposing information that in the context of the bankruptcy settlement the Trustee agreed it would use

best efforts to keep sealed, however, Plaintiff now requests that the Court permanently seal the Court Records.

A verified copy of this Public Notice will also be filed with the clerk of the court in which the case is pending and with the Clerk of the Supreme Court of Texas.

DATE OF ORIGINAL NOTICE FILING: January 13, 2022

Dated: January 13, 2022

Respectfully submitted,

ZAIGER LLC

Jeffrey H. Zaiger
Judd A. Linden
2187 Atlantic Street, 9th Floor
Stamford, CT 06902
Telephone: (203) 347-7180
jzaiger@zaigerllc.com
jlinden@zaigerllc.com

Pro Hac Applications Forthcoming

YETTER COLEMAN LLP

/s/ Bryce L. Callahan
Bryce L. Callahan
State Bar No. 24055248
Susanna Rychlak Allen
State Bar No. 24126616
811 Main Street, Suite 4100
Houston, Texas 77002
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bcallahan@yettercoleman.com
sallen@yettercoleman.com

Counsel for Speedcast SFA Lenders' Litigation Trustee

FILED
2022 JAN 13 PM 4:36
COUNTY CLERK
HARRIS COUNTY, TEXAS

CAUSE NO. 2022-01305

CATHERINE E. YOUNGMAN, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
v.	§	HARRIS COUNTY, TEXAS
PETER SHAPER,	§	
Defendant.	§	61ST JUDICIAL DISTRICT

VERIFICATION OF NOTICE POSTING

1. My name is Samantha Richey, I am over 18 years of age, and my business address is 811 Main Street, Suite 4100, Houston, TX 77008. I am a paralegal at the law firm of Yetter Coleman LLP and have personal knowledge of the facts stated herein.

2. On January 13, 2022, I personally delivered to the Harris County Clerk's Office a true and correct copy of the forgoing Public Notice of the February 24, 2022 Hearing on Plaintiff's Motion to Seal Court Records. A $9.36 posting fee was paid to the Clerk's Office, which communicated to me that the Office will post, by following the regular procedures for posting for Harris County, Texas, Public Notices by the end of business day of January 14, 2022, at the place designated for posting.

3. The forgoing notice was filed with the Harris County District Clerk and with the Clerk of the Supreme Court of Texas.

I declare under penalty of perjury that the foregoing is true and correct. EXECUTED in Harris County, State of Texas, on January 25, 2022.

Samantha Richey

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Samantha Richey on behalf of Bryce Callahan
Bar No. 24055248
srichey@yettercoleman.com
Envelope ID: 61112381
Status as of 1/25/2022 10:30 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Bryce Callahan		bcallahan@yettercoleman.com	1/25/2022 9:57:38 AM	SENT
Samantha Richey		srichey@yettercoleman.com	1/25/2022 9:57:38 AM	SENT
Susanna R.Allen		sallen@yettercoleman.com	1/25/2022 9:57:38 AM	SENT

EXHIBIT 8

1/26/2022 11:31 AM
Marilyn Burgess - District Clerk Harris County
Envelope No. 61159826
By: Brenda Espinoza
Filed: 1/26/2022 11:31 AM

YetterColeman LLP

January 26, 2022

Via E-File

Honorable Judge Fredericka Phillips
61st Judicial District Court of Harris County
201 Caroline, 9th Floor
Houston, Texas 77002

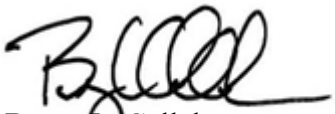
Re: Cause No. 2022-01305; *Catherine E. Youngman, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust v. Peter Shaper.*; in the 61st Judicial District Court of Harris County, Texas

Dear Judge Phillips:

On January 26, 2022, the document listed below was filed under seal and therefore is not displayed on the public docket. This letter is being e-filed with the Harris County District Clerk's office to make a record of the filings.

1. Unredacted version of Plaintiff's Original Petition (filed in redacted form on January 7, 2022).

Sincerely,



Bryce L. Callahan

cc: Counsel of Record

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Samantha Richey on behalf of Bryce Callahan
Bar No. 24055248
srichey@yettercoleman.com
Envelope ID: 61159826
Status as of 1/26/2022 11:34 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Bryce Callahan		bcallahan@yettercoleman.com	1/26/2022 11:31:00 AM	SENT
Samantha Richey		srichey@yettercoleman.com	1/26/2022 11:31:00 AM	SENT
Susanna R.Allen		sallen@yettercoleman.com	1/26/2022 11:31:00 AM	SENT

EXHIBIT 9

Harris County Docket Sheet

2022-01305

COURT: 061st

FILED DATE: 1/7/2022

CASE TYPE: OTHER CIVIL

YOUNGMAN, CATHERINE E (IN HER CAPACITY AS CLASS 3 TRUSTEE FOR THE

Attorney: CALLAHAN, BRYCE LEE

VS.

SHAPER, PETER

Docket Sheet Entries	
Date	**Comment**
1/24/2022	SELDX - ORDER SEALING DOCUMENT(S) SIGNED