Docket #0014 Date Filed: 7/23/2024

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

In re:	Chapter 11
LAVIE CARE CENTERS, LLC, *et al.*,	Case No. 24-55507 (PMB)
Debtors.[1]	(Jointly Administered)
LAVIE CARE CENTERS, LLC; 1010 CARPENTERS WAY OPERATIONS LLC; 1120 WEST DONEGAN AVENUE OPERATIONS LLC; 11565 HARTS ROAD OPERATIONS LLC; 12170 CORTEZ BOULEVARD OPERATIONS LLC; 1465 OAKFIELD DRIVE OPERATIONS LLC; 15204 WEST COLONIAL DRIVE OPERATIONS LLC; 1550 JESS PARRISH COURT OPERATIONS LLC; 1615 MIAMI ROAD OPERATIONS LLC; 1851 ELKCAM BOULEVARD OPERATIONS LLC; 216 SANTA BARBARA BOULEVARD OPERATIONS LLC; 2333 NORTH BRENTWOOD CIRCLE OPERATIONS LLC; 2826 CLEVELAND AVENUE OPERATIONS LLC; 3001 PALM COAST PARKWAY OPERATIONS LLC; 3101 GINGER DRIVE OPERATIONS LLC; 3735 EVANS AVENUE OPERATIONS LLC; 4200 WASHINGTON STREET OPERATIONS LLC; 4641 OLD CANOE CREEK ROAD OPERATIONS LLC; 518 WEST FLETCHER AVENUE OPERATIONS LLC; 5405 BABCOCK STREET OPERATIONS LLC; 6305 CORTEZ ROAD WEST OPERATIONS LLC; 6414 13TH ROAD SOUTH OPERATIONS LLC; 6700 NW 10TH PLACE OPERATIONS LLC; 702 SOUTH KINGS AVENUE OPERATIONS LLC; 710 NORTH SUN DRIVE OPERATIONS LLC; 741 SOUTH BENEVA ROAD OPERATIONS LLC; 777 NINTH STREET NORTH OPERATIONS LLC; 7950	Adv. Proc. No. 24-05127 (PMB) **Related to Adv. Docket Nos. 1, 2, 3, 10**

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

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LAKE UNDERHILL ROAD OPERATIONS LLC; 9311 SOUTH ORANGE BLOSSOM TRAIL OPERATIONS LLC; 9355 SAN JOSE BOULEVARD OPERATIONS LLC; BAYA NURSING AND REHABILITATION, LLC; BRANDON FACILITY OPERATIONS, LLC; CONSULATE FACILITY LEASING, LLC; EPSILON HEALTH CARE PROPERTIES, LLC; FLORIDIAN FACILITY OPERATIONS, LLC; JACKSONVILLE FACILITY OPERATIONS, LLC; JOSERA, LLC; KISSIMMEE FACILITY OPERATIONS, LLC; LIDENSKAB, LLC; LV CHC HOLDINGS I, LLC; MELBOURNE FACILITY OPERATIONS, LLC; MIAMI FACILITY OPERATIONS, LLC; NEW PORT RICHEY FACILITY OPERATIONS, LLC; NORTH FORT MYERS FACILITY OPERATIONS, LLC; ORANGE PARK FACILITY OPERATIONS, LLC; PORT CHARLOTTE FACILITY OPERATIONS, LLC; TALLAHASSEE FACILITY OPERATIONS, LLC; TOSTURI, LLC; AND WEST ALTAMONTE FACILITY OPERATIONS, LLC;

Plaintiffs,

v.

HEALTHCARE NEGLIGENCE SETTLEMENT RECOVERY CORP.

Defendant.

REPLY IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF ORDER (I) EXTENDING THE AUTOMATIC STAY AND/OR ENJOINING CLAIMS AND CAUSES OF ACTION AGAINST NON-DEBTOR DEFENDANTS AND (II) EXPEDITION

LaVie Care Centers, LLC ("LaVie") and certain of its affiliates and subsidiaries, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the "Debtors") and as plaintiffs in the above-captioned adversary proceeding (the "Adversary Proceeding"), hereby submit this reply (this "Reply") in support of the *Debtors' Motion for Entry of Order*

(I) Extending the Automatic Stay and/or Preliminarily Enjoining Claims and Causes of Action Against Non-Debtor Defendants and (II) Expedition [Docket No. 2] (the "Motion")[2] and in response to *Recovery Corp.'s Response In Opposition to Injunction Motion* [Docket No. 10] (the "Objection"). In further support thereof, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. Unable to rebut the Debtors' showing that Recovery Corp.'s claims against the Non-Debtor Defendants are automatically stayed under Bankruptcy Code sections 362(a)(1) and (3), Recovery Corp. instead submits its Objection replete with misstatements and misguided legal theories untethered to the relief requested in the Motion. Far from undermining the Motion, the Objection instead (a) includes critical concessions by Recovery Corp. that **support** the Debtors' requested relief and (b) fails to address many of the arguments in the Brief, highlighting that **Recovery Corp. simply has no answer** to the Debtors' demonstration that the claims against the Non-Debtor Defendants should be stayed.

2. Critically, Recovery Corp. concedes that its claims in the Recovery Corp. Action for fraudulent conveyances, successor liability, veil piercing, and breach of fiduciary duty **are** property of the Debtors' estate, including by stating that "standing to assert these causes of action is typically afforded only to the trustee or the debtor-in-possession" and arguing that it should have derivative standing to pursue such claims. In doing so, Recovery Corp. thus confirms that these claims fall squarely within the scope of actions prohibited by Bankruptcy Code section 362(a)(3) and must be stayed.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the *Brief in Support of Debtors' Motion for Entry of Order (I) Extending the Automatic Stay and/or Enjoining Claims and Causes of Action Against Non-Debtor Defendants and (II) Expedition* [Docket No. 3] (the "Brief"), as applicable.

3. Recovery Corp. also admits that it "will not attempt to prosecute" the Recovery Corp. Action "absent good faith conference and related follow up to build consensus or obtain an order of this Court[.]"[3] Recovery Corp. thus concedes that (a) **it will not be harmed** by the Debtors' requested relief, (b) the Debtors will experience greater harm absent an imposition of the stay and/or injunctive relief, and (c) the balance of the equities weighs heavily in favor of the Debtors.

4. Equally important is what Recovery Corp. fails to address. In contesting the application of Bankruptcy Code section 362(a)(1), Recovery Corp. simply ignores the Debtors' demonstration that Recovery Corp.'s claims against the Non-Debtor Defendants arise out of **the same facts and are inextricably intertwined with** Recovery Corp.'s claims against the Debtor Defendants. Each of Recovery Corp.'s claims against the Non-Debtor Defendants relies on purported wrongdoing by the Debtor Defendants in their prepetition restructuring efforts, and cannot be adjudicated against the Non-Debtor Defendants without substantial risk of collateral estoppel and *res judicata* for the Debtor Defendants. Allowing Recovery Corp. to pursue these claims against the Non-Debtor Defendants in the Recovery Corp. Action will require the Debtor Defendants to maintain an active role in the Recovery Corp. Action, resulting in additional time, fees, and attention that the Debtors cannot afford to waste at this stage of the Chapter 11 Cases. Recovery Corp.'s silence speaks volumes, and further illustrates further that the Debtors' requested relief is both necessary and warranted.

[3] Obj., ¶ 13. The problem, of course, is that Recovery Corp. contradicts itself in the very same pleading by "request[ing] entry of an order from this Court that . . . permits Recovery Corp. to proceed against the Non-Debtor Defendants in the Miami Action." Obj., p.18-19. Without absolute certainty that no further actions will be taken by Recovery Corp. in the Recovery Corp. Action (which Recovery Corp. was unwilling to provide), the Debtors require relief from the Bankruptcy Court.

5. Accordingly, for the reasons set forth herein and in the Brief, the Debtors respectfully submit that the Court should grant the Motion and stay Recovery Corp.'s claims against the Non-Debtor Defendants.

REPLY

I. RECOVERY CORP.'S CLAIMS ARE SUBJECT TO THE AUTOMATIC STAY UNDER BANKRUPTCY CODE SECTION 362(A)(3).

A. Recovery Corp. Concedes That Certain Claims and Causes of Action Are Property of the Estate, Mandating Extension of the Automatic Stay Pursuant to Bankruptcy Code Section 362(a)(3).

6. In its Objection, Recovery Corp. argues (erroneously) that the automatic stay is limited to actions only against a debtor,[4] ignoring that Bankruptcy Code section 362(a)(3) also operates to stay "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3); *see also Baillie Lumber Co., LP v. Thompson (In re Icarus Holdings, LLC)*, 413 F.3d 1293, 1294 (11th Cir. 2005). As set forth in the Brief, the Debtors established that at least five of Recovery Corp.'s causes of action—including those for fraudulent conveyances, successor liability, and veil piercing—constitute **estate** causes of action that belong to the Debtors as debtors-in-possession and are therefore automatically stayed under Bankruptcy Code section 362(a)(3). Recovery Corp. does not dispute that such claims are property of the estates, nor does it contest the applicability of Bankruptcy Code section 362(a)(3) or make any attempt to challenge or distinguish the case law cited in support thereof in the Brief. Rather, Recovery Corp. **concedes** this point by stating that "standing to assert these causes of action is typically afforded only to the trustee or the debtor-in-possession," confirming that these claims are in fact **estate** causes of action. Obj., ¶ 23.

[4] *See* Obj., ¶ 27.

Accordingly, Counts I–V of the Recovery Corp. Action are automatically stayed under Bankruptcy Code section 362(a)(3).

7. Recovery Corp. then detours to an argument about whether it merits derivative standing by stating that, "in the event that the Debtors fails to pursue" such causes of action, "either the Committee or the Recovery Corp. will presumably have standing [sic] [to] assert these causes of action." Obj., ¶ 26. As an initial matter, the Objection is not a standing motion[5] and Recovery Corp.'s arguments about whether it should be granted derivative standing to pursue claims in the Chapter 11 Cases are irrelevant to whether the Recovery Corp. Action—a prepetition action pending in state court and not Bankruptcy Court—should be permitted to continue. Putting aside the merits of this argument (and reserving the Debtors' rights in all respects), Recovery Corp. effectively concedes that this Court would need to grant derivative standing in order for a non-Debtor party in interest to pursue these **estate** causes of action. *See In re First Leads and Mktg, Inc.*, 2023 WL 4163478, at *4 (Bankr. N.D. Ga. June 23, 2023) ("[A] cause of action that a creditor could have pursued prior to commencement of a bankruptcy case becomes property of the estate once a case is filed if the claim derives from harm visited directly upon the debtor that the debtor could have pursued itself under applicable law."); *see also In re Clear the Air, LLC*, 631 B.R. 286, 294-95 (Bankr. S.D. Tex. 2021) ("It is fundamental that derivative claims are property of the debtor's estate . . . If a claim belongs to the estate, the trustee has exclusive standing to assert it."); *In re Am. Ins. Ctr., Inc.*, 620 B.R. 528, 535 (Bankr. D. N.J. 2020) ("Where a cause of action belongs

[5] Even if standing were ripe, which it is not, it is exceedingly rare for parties other than the debtor, particularly an individual creditor like Recovery Corp., to be granted standing. *See Smart World Techs., LLC v. Juno Online Servs. (In re Smart World Techs., LLC)*, 423 F.3d 166, 180 (2d Cir. 2005) ("As a general matter, other parties to a bankruptcy proceeding have interests that differ from those of the estate and thus are not suited to act as the estate's legal representative.").

to the estate, a creditor may bring such action *only if* the Trustee abandons it or otherwise allows the creditors to pursue it independently.").

B. The Objection Includes Several Misstatements That Do Not Support the Objection.

8. Recovery Corp. also makes several misstatements that the Debtors are compelled to correct to avoid further confusion.

9. ***First***, Recovery Corp.'s speculation that "the Debtors, as debtors-in-possession, do not intend to pursue these causes of action against the Transferees" is premature and baseless. Obj., ¶ 25. To the contrary, Mr. James Decker, the independent manager of Debtor LV Operations I, LLC, is currently overseeing a privileged investigation into issues and claims that are similar to those raised in the Recovery Corp. Action. *See* Docket No. 138. This investigation remains ongoing, and so any determination as to whether the Debtors will pursue these claims and causes of action—to the extent they have merit—has not been made.

10. ***Second***, Recovery Corp. asserts that there is a "conflict of interest stemming from the Debtors [sic] purported obligation to indemnify the Non-Debtor Defendants." Obj., ¶ 25. Not so. In deciding whether to assert claims or negotiate consideration in connection with any chapter 11 plan, the Indemnification Obligations must be taken into account along with many other factors, including the merits of the claims, the likelihood of success, the costs to pursue, etc. This would be equally true for any party other than the Debtors that sought to bring such claims (including Recovery Corp., in the event it sought and was granted derivative standing).

11. ***Third***, Recovery Corp. states that it "has been consistent that it will not attempt to prosecute the [Florida] Action absent good faith conference and related follow up to build consensus or obtain an order of this Court." Obj., ¶ 13. To support this contention, Recovery Corp attaches several lengthy email chains with Debtors' counsel regarding these statements. What

Recovery Corp. fails to acknowledge however is that prior to the filing of the Adversary Proceeding, Debtors' counsel provided an advance draft of the Complaint and offered an opportunity to stipulate that no further action would be taken by Recovery Corp. in the Recovery Corp. Action, which would have obviated the need to expend estate resources on these issues. Recovery Corp. refused, necessitating the Debtors' initiation of this Adversary Proceeding.

12. ***Fourth***, Recovery Corp. argues that "the relief sought by the [sic] Recovery Corp. against the Non-Debtor Defendants would also be beneficial to the estate because it would provide a recovery for a large portion of the Debtors' unsecured creditors that would otherwise not be achieved." This is wrong and misleading. Recovery Corp.'s claims, if successfully pursued in state court, would not provide **any** benefit to the estates or any creditors other than Recovery Corp. Indeed, such relief would deplete estate resources to the detriment of other creditors, thereby confirming the necessity of an extension of the automatic stay.

II. RECOVERY CORP.'S CLAIMS ARE SUBJECT TO THE AUTOMATIC STAY UNDER BANKRUPTCY CODE SECTION 362(A)(1).

13. The Debtors also established that Recovery Corp.'s remaining claims for unfair trade practices, civil conspiracy, and unjust enrichment are stayed under Bankruptcy Code section 362(a)(1) because "certain 'unusual circumstances' warrant applying the § 362(a)(1) stay to proceedings against a non-debtor defendant where such an application furthers the purposes behind the stay." *In re Jefferson Cnty., Ala.*, 491 B.R. 277, 284 (Bankr. N.D. Ala. 2013) (citing *A.H. Robins Co. v. Piccinin, (In re A.H. Robins Co.)*, 788 F.2d 994, 999 (4th Cir.), *cert. denied*, 479 U.S. 876, (1986)). In its Objection, Recovery Corp. misstates what "unusual circumstances" may fit the bill, instead citing a non-exhaustive list of instances in which an injunction may be warranted. Obj., ¶ 28. Courts in this circuit have found that "unusual circumstances" exist to apply the section 362(a)(1) stay to non-debtors (a) "when the proceeding would have a potential

preclusive effect that forces the debtor to participate in the proceeding as if the debtor were a party," and (b) "when an indemnification or contribution relationship creates an identity of interests between the debtor and the non-debtor defendant." *In re Jefferson Cnty., Ala.*, 491 B.R. at 284; Brief, ¶¶ 38–42, 52.

14. Recovery Corp. **does not address the first circumstance at all** in its Objection, let alone rebut it, and thus concedes the argument. *Jones v. Bank of Am., N.A.*, 564 F. App'x 432, 434 (11th Cir. 2014). This is not surprising, because **every claim** asserted in the Recovery Corp. Action, whether asserted against the Debtor Defendants or the Non-Debtor Defendants, is predicated on **the same allegations** regarding the Debtors' purported prepetition conduct, and the claims are therefore "inextricably interwoven." If Recovery Corp. is permitted to proceed against the Non-Debtor Defendants, the Debtors will have no choice but to maintain a role in the Recovery Corp. Action (notwithstanding the automatic stay) or risk facing collateral estoppel and *res judicata* concerns. Recovery Corp.'s concession on this point warrants a stay of its claims in the Recovery Corp. Action.

15. Just to further highlight the significance of this issue, one of the non-Debtor Defendants is Mr. Daniel Dias, whose law firm acted as litigation counsel to certain of the Debtor Defendants and Non-Debtor Defendants prior to the Petition Date in connection with underlying tort claims at the Debtors' facilities. Accordingly, the Debtors' attorney-client privilege is squarely at issue with any interactions with Mr. Dias, and the Debtors would be required to expend significant resources to preserve and protect that privilege to ensure that privilege waivers in the Recovery Corp. Action do not occur. Whether Mr. Dias is required to respond to document requests or provide testimony at any depositions or trial in the Recovery Corp. Action, the Debtors would be required to significantly participate in these matters to preserve the Debtors' privilege.

16. Recovery Corp. also fails to rebut the Debtors' showing that they are the "real party defendant" due to the Indemnification Obligations owed to the Non-Debtor Defendants. Brief, ¶ 40–41. Notably, Recovery Corp. does not contest whether the Indemnification Obligations apply to (a) the Non-Debtor Defendants, including in their capacity as managers and agents of the Debtors, or (b) the claims asserted against the Non-Debtor Defendants in the Recovery Corp. Action. Rather, Recovery Corp. raises vague arguments concerning "limitations" and "conditions precedent that must be satisfied to trigger any right to indemnification" and "the source of funds for any payments made to the Non-Debtors pursuant to the terms of the Indemnification Agreements." Obj., ¶ 29. These arguments fail.

17. In an argument devoid of any legal authority, Recovery Corp. appears to suggest that any limitation or contingency to indemnification defeats the Debtors' argument. There is no basis in law for this argument. To the contrary, courts extend the stay on the basis of indemnification obligations even where there is a potential the indemnification claim will be unsuccessful. *See, e.g.*, *In re Jefferson Cnty., Ala.*, 491 B.R. at 296 ("An indemnification claim against the debtor—even if it is ultimately unsuccessful—may fall within § 362(a)(3) because it has an 'immediate adverse economic consequence for the debtor's estate.'"); *A.H. Robins Co. v. Piccinin (In re A.H. Robins Co.)*, 788 F.2d 994, 1001-02 (4th Cir. 1986) (extending the stay to actions against "officers or employees of the debtor *who may be entitled to indemnification*[.]") (emphasis added).

18. For example, in *Jefferson Cnty., Ala.*, the Bankruptcy Court for the Northern District of Alabama enforced the automatic stay on the basis of indemnification obligations owed to non-debtors, without regard to whether the underlying indemnification claim would be successful. So too, here. The so-called "limitations" and "conditions precedent" alluded to by

Recovery Corp. are typical indemnification terms, including in certain instances, carve-outs for fraud and willful misconduct, Jones Decl., Ex. 3, § 8.1, a minimum indemnification threshold and liability cap ($25,000 and $500,000, respectively), Jones Decl., Ex. 3, Art. IX.D.2, and a notice requirement (that specifies that the failure to provide notice does not relieve the indemnitor of its obligations). Jones Decl., Ex. 4-A, § 8.2. These provisions do not refute the extension of the automatic stay, or the existence of potential indemnification claims. And Recovery Corp.'s suggestion that the Debtors must identify the "source of payment" for hypothetical payments to be made to the Non-Debtor Defendants has no support in any legal authority.

III. IF THE AUTOMATIC STAY IS NOT EXTENDED, THE COURT SHOULD ENJOIN THE RECOVERY CORP. ACTION AGAINST THE NON-DEBTOR DEFENDANTS PURSUANT TO BANKRUPTCY CODE SECTION 105.

19. In addition to its discretionary authority under Bankruptcy Code sections 362(a)(1) and (3), this Court has the equitable power under Bankruptcy Code section 105(a) to enjoin Recovery Corp.'s claims against the Non-Debtor Defendants. *See In re GMI Grp., Inc.*, 598 B.R. 685, 686–87 (Bankr. N.D. Ga. 2019). In the event that the automatic stay does not apply to Recovery Corp.'s claims against the Non-Debtor Defendants, the Debtors submit that the Court should preliminarily enjoin such claims to protect the Debtors' ability to successfully reorganize and avoid irreparable harm.

20. ***First***, the Debtors will suffer immediate and irreparable harm without injunctive relief because the continuation of the Recovery Corp. Action would (a) result in costly litigation fees and expenses as well as potential indemnification costs, unnecessarily depleting assets of the Debtors' estates to the detriment of all parties-in-interest; (b) divert time and resources away from the Debtors' restructuring efforts, which threatens the Debtors' ability to resolve their Chapter 11 Cases swiftly and efficiently; and (c) could adversely impact the Debtor Defendants under various preclusion doctrines, such as collateral estoppel and *res judicata*.

21. In response, Recovery Corp. offers two misguided arguments. First, it questions the applicability of the Indemnification Obligations. This is wrong because, as previously discussed, courts have granted similar relief in evaluating indemnification obligations subject to similar conditions. *See In re A.H. Robins Co.*, 788 F.2d at 1001–02. Second, Recovery Corp. argues that "the prosecution of the [Recovery Corp.] Action . . . rebounds to the benefit of the estate." Obj., ¶ 35. As also stated above, this is plainly wrong. Prosecution of the Recovery Corp. Action only provides (theoretical) benefit to Recovery Corp., and harms the Debtors' estates and other creditors. Given the substantial risk of harm to the Debtors, this first factor weighs in favor of granting injunctive relief.

22. ***Second***, the Debtors have shown a reasonable likelihood of a successful reorganization in these Chapter 11 Cases. The Debtors have commenced their marketing and sale process, are currently in the process of investigating the merit of various estate causes of action, and are negotiating the terms of their proposed chapter 11 plan. Though Recovery Corp. might view the foregoing as mere "buzzwords" or "talismanic incantations," Obj., ¶ 34, the Debtors have made real, substantial progress in these Chapter 11 Cases to date and have established that there is more than a reasonable likelihood of a successful reorganization. For its part, Recovery Corp. does not contest the Debtors' showing of a likely successful reorganization; to the contrary, it appears to endorse it in challenging "any causal nexus between the [Recovery Corp.] Action . . . and their own ability to reorganize." *See In re Steven P. Nelson*, D.C., P.A., 140 B.R. 814, 817 (Bankr. M.D. Fla. 1992) (granting injunction and stating "it should be noted that there is nothing in the record to indicate that the Debtor will not be able to successfully reorganize."). Accordingly, this second factor also weighs in favor of granting injunctive relief.

23. ***Third***, Recovery Corp. concedes that the balance of equities tips in favor of the Debtors by stating that it will not prosecute the Recovery Corp. Action "absent good faith conference and related follow up to build consensus or obtain an order of this Court[.]" *See* Obj., ¶ 13. In contrast to the immediate and irreparable harm the Debtors and their estates would face as a result of continued prosecution of the Recovery Corp. Action, the **only** potential harm faced by Recovery Corp. is mere delay of a lawsuit that, by its own admission, it does not seek to prosecute at this time. Thus, the balance of equities clearly and overwhelmingly favors granting the Debtors' requested injunctive relief.

24. ***Fourth***, the Debtors established that there is a strong public interest in preliminarily enjoining the Recovery Corp. Action. In addition to the financial impacts on the Debtors' estates discussed above, the continued pursuit of the Recovery Corp. Action against the Non-Debtor Defendants risks producing inequitable results, rewarding the winners in the proverbial "race to the courthouse" and disadvantaging all other creditors by draining valuable estate resources at this critical juncture in these Chapter 11 Cases. Recovery Corp. does not make any express arguments as to how the public interest somehow weighs against an injunction. At most, Recovery Corp. suggests that prosecution of the Recovery Corp. Action would benefit the Debtors' estates. *See* Obj., ¶ 35. This is inaccurate for the reasons state above, including prosecution of the Recovery Corp. Action would only serve to deplete critical estate assets and resources to the detriment of the Debtors, their estates, and all parties-in-interests. This factor, too, weighs in favor of enjoining the Recovery Corp. Action.

25. Accordingly, and as set forth in the Brief, the Debtors satisfy each of the foregoing factors for injunctive relief and, absent application of the automatic stay, a preliminary injunction

against Recovery Corp.'s continued prosecution of the Recovery Corp. Action against the Non-Debtor Defendants is warranted.

CONCLUSION

26. For the foregoing reasons, and the reasons set forth in the Brief, the Debtors respectfully request that the Court enter the Proposed Order, granting the relief requested in Motion and any such other and further relief as may be just and proper.

Dated: Atlanta, Georgia
July 23, 2024

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/s/ Daniel M. Simon

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CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing Reply was served by the Court's CM/ECF system on all counsel of record registered in these Chapter 11 Cases through CM/ECF. The Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC, will be filing a supplemental certificate of service on the docket to reflect any additional service of the foregoing Reply, including on the Limited Service List.

Dated: Atlanta, Georgia
July 23, 2024

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