UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

In Re:	§	**Chapter 7**
	§	
LITTLE RIVER HEALTHCARE HOLDINGS, LLC, *et al.*,	§	**Case No. 18-60526-rbk**
	§	
	§	
Debtors.[1]	§	**(Jointly Administered)**

JAMES STUDENSKY, CHAPTER 7 TRUSTEE,	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	**ADV. NO. _____**
	§	
PEGGY S. BORGFELD, RYAN H. DOWNTON, JEFFREY P. MADISON, and KEVIN J. OWENS,	§	
	§	
	§	
Defendants.	§	

ADVERSARY COMPLAINT

TO THE HONORABLE RONALD B. KING, CHIEF U.S. BANKRUPTCY JUDGE:

Plaintiff James Studensky, Trustee ("Trustee"), the duly appointed and acting Chapter 7 trustee in the above-captioned bankruptcy case, files this adversary complaint against Peggy S. Borgfeld, Ryan H. Downton, Jeffrey P. Madison, and Kevin J. Owens, former officers and managers of Debtors (collectively "Defendants").

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[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Compass Pointe Holdings, LLC (1142), Little River Healthcare Holdings, LLC (7956), Timberlands Healthcare, LLC (1890), King's Daughters Pharmacy, LLC (7097), Rockdale Blackhawk, LLC (0791), Little River Healthcare - Physicians of King's Daughters, LLC (5264), Cantera Way Ventures, LLC (7815), and Little River Healthcare Management, LLC (6688). Debtors' mailing address was 1700 Brazos Ave, Rockdale, TX 76567.

As of the Petition Date, the long-term debt obligations of Debtors totaled in excess of $40 million, excluding accrued and unpaid interest in excess of $4 million and capitalized leases of approximately $10 million.

Defendants Jeffrey P. Madison, Peggy S. Borgfeld, Ryan H. Downton, and Kevin J. Owens were officers and managers of one or more of the Debtors, and as discussed below, engaged in conduct which breached their fiduciary duties of loyalty and care to Debtors and contributed to those extreme losses. Even after Debtors began to suffer severe financial setbacks, those officers made several million dollars in distributions to themselves, over and above their salaries: between 2016-18, Madison received distributions totaling $12,898,156.96, Borgfeld received $4,080,277.46, Downton received $5,797,146, and Owens received $450,241. Among other acts described below, the self-interested authorization of the collective $23,225,821 in distributions by those four individuals to themselves contributed substantially to Debtors' insolvency.

In a parallel adversary class action before this Court, Debtors have been sued for alleged violations of the Warn Act. The Trustee contests the claims that have been asserted in that proceeding. Subject to and without waiver of his right to challenge the factual and legal merit to the Warn Act claims, but assuming for purposes of this pleading only that those claims have merit, the Trustee seeks here to hold Madison and Borgfeld responsible for their failures (if any) to act in compliance with the Warn Act, and liable for any resulting damages and for the cost of defending Debtors in the class action.

In support hereof, the Trustee would respectfully show the Court the following.

I. JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157.

2. This is a core proceeding under 28 U.S.C. § 157(b)(1). In the alternative, this proceeding is a "related to" proceeding under 28 U.S.C. § 157(a).

3. Venue is proper under 28 U.S.C. § 1409(a) because this adversary proceeding arises in and relates to the above-styled bankruptcy case currently pending in this District.

4. This Court has jurisdiction over each of the Defendants because each is a citizen of the United States and has conducted business giving rise to the claims asserted herein in the Western District of Texas.

II. PARTIES

5. The Trustee is the duly appointed and serving Chapter 7 trustee in Debtors' bankruptcy case. On July 24, 2018, each of the Debtors commenced proceedings under Chapter 11 of the Bankruptcy Code. The proceedings were converted to Chapter 7 on or about December 7, 2018. [Dkt. No. 547.]

6. Defendant Peggy S. Borgfeld ("**Borgfeld**") is an individual residing in Lexington, Texas, and during the events described in the Complaint served as Associate Chief Financial Officer, Chief Operating Officer, and Manager for Little River; and as Associate Chief Financial Officer and Manager for Little River Management, Rockdale Blackhawk, Timberlands, and King's Daughters Pharmacy; and as Member, Manager, and Associate Chief Financial Officer of Compass Pointe Holdings. Borgfeld may be served with process at 2378 County Rd., #320, Lexington, Texas 78947.

7. Defendant Ryan H. Downton ("**Downton**") is an individual residing in Austin, Texas, and during the events described in the Complaint served as the Chief Compliance Officer, Chief Legal Officer, Chief Business Development Officer, and Managing Member for Little River, Little River Management, Compass Pointe Holdings, King's Daughters Pharmacy, and Little River

Healthcare - Physicians of King's Daughters; and as Chief Compliance Officer, Chief Legal Officer, and Managing Member for Timberlands. Downton has appeared in this Chapter 7 matter, and may be served at 6607 Canon Wren Dr., Austin, Texas 78746.

8. Defendant Jeffrey P. Madison ("**Madison**") is an individual residing in Georgetown, Texas, and during the events described in the Complaint served as the Chief Executive Officer and Manager for Little River, Compass Pointe Holdings, King's Daughters Pharmacy, and Little River Healthcare - Physicians of King's Daughters; and as Chief Executive Officer and Manager for Little River Management, Rockdale Blackhawk, and Timberlands. Madison has appeared in this Chapter 7 matter, and may be served at 201 Dovetail Cove, Georgetown, Texas 78628.

9. Defendant Kevin J. Owens ("**Owens**") is an individual residing in Burnet, Texas, and during the events described in the Complaint served as a Managing Member for Little River Management, Compass Pointe Holdings, Timberlands, King's Daughters Pharmacy, and Little River Healthcare - Physicians of King's Daughters. Owens may be served with process at 5525 FM 2340, Burnet, Texas 78611.

III. FACTS

10. *Overview of Debtors' operations*. Debtors were in the business of providing healthcare services throughout Central Texas, operating at times a combination of over 20 hospitals, clinics, imaging centers, and other medical facilities. Through a management strategy of aggressive expansion, Debtors grew rapidly by adding many physician clinics, diagnostic imaging centers, and surgery centers to their facilities from 2011 through 2014. Debtors escalated their expansion activity in 2015 and 2016 by acquiring significant laboratory assets, acquiring the operations of the Crockett Hospital, and through now-dissolved subsidiaries, managing hospitals.

11. Although Debtors were organized as limited liability companies instead of corporations, the same fiduciary duties of loyalty, due care, and obedience applicable to corporate officers and directors governed the conduct of Debtors' officers and managers.[2]

12. *Interlocked structure of Debtors' ownership*. Debtors were structured so that any catastrophic losses suffered by one of those entities would ripple through to its affiliated entities in the same extended ownership chain.

13. Debtor Compass Pointe Holdings, for example, was the parent company of Little River Healthcare Holdings, LLC,[3] which in turn was the parent company of Debtor Rockdale Blackhawk, LLC, which in turn was the parent company of Debtors King's Daughters Pharmacy, LLC and Little River Healthcare - Physicians of King's Daughters, LLC. Debtor Little River Healthcare Holdings, LLC (owned by Debtor Rockdale Blackhawk, LLC) was also the parent company of Debtor Timberlands Healthcare, LLC. Debtor Little River Healthcare Management, LLC at various times was owned by either Debtor Little River Healthcare Holdings, LLC (in turn owned by Debtor Rockdale Blackhawk, LLC), and then by Debtor Compass Pointe Holdings, LLC (the parent for five of the Debtors through a vertical chain of ownership).

14. *Renegotiated contracts at unsustainable rates versus expenses*. Debtor Rockdale Blackhawk, LLC, doing business as Little River Healthcare, entered into a series of contracts with Blue Cross and Blue Shield of Texas ("BCBSTX") in 2003 and 2004, relating to the provision of healthcare services to BCBSTX members. [20-06006-rbk Dkt. 1-1 at 8.] [4]

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[2] *See, e.g.*, *In re Hardee*, No. 11-6011, 2013 WL 1084494, at *9 & n.40 (Bankr. E.D. Tex. 2013) (noting that the fiduciary duties of due care, loyalty, and obedience "applies to managers and/or members governing the activities of a limited liability company" under Texas law) (citations omitted).

[3] Prior to March 31, 2017, that parent-subsidiary structure was reversed: Compass Pointe Holdings was owned by Little River Healthcare Holdings, LLC, instead of the other way around.

[4] The 20-06006-rbk citations are to the adversary action between Little River and BCBSTX, and in particular to the Final Award issued by the arbitrator. [20-06006-rbk Dkt. 1-1.] This Court confirmed the

15. In 2015, BCBSTX received a number of member complaints concerning Little River's billing practices, in which patients stated "they had never been to the hospital to receive the services billed," and in other instances, stated that they "had been to the hospital but did not received the billed services." Those series of member complaints prompted BCBSTX to open an investigation into Little River's practices. [20-06006-rbk Dkt. 1-1 at 12.] In May 2016, BCBSTX notified Little River that it was being placed under a more stringent pre-payment review process, and shortly thereafter, BCBSTX gave notice on July 20, 2016 that it would be terminating its existing contracts with Little River. [20-06006-rbk Dkt. 1-1 at 11-12.] Effective November 15, 2016, BCBSTX entered into renegotiated contracts with Little River which "implemented a substantially reduced fixed-fee schedule for diagnostic services" at depressed rates which would allow Little River only "the thinnest of margins." [20-06006-rbk Dkt. 1-1 at 12, 64.]

16. Even before management's renegotiation and the resulting financial impact, Little River's Rockdale Hospital had "struggled with difficult market conditions" and with the "high costs" attendant to running a rural hospital. [20-06006-rbk Dkt. 1-1 at 9.] At least as early as June 3, 2016, Madison, Borgfeld, and Downton had actual awareness that BCBSTX's imposition of the pre-payment review, in itself, would "have a very significant impact on cash flow" for Little River. By July 23, 2016, those three officers and managers were aware that the cash flow was "becoming a really serious problem."

17. The new rates that BCBSTX negotiated with Little River's management toward the end of 2016 made Debtors' negative financial performance substantially worse. The renegotiated rates were well below Little River's expenses to provide those services, ensuring that Little River would thereafter operate at negative margins. Little River's provision of services under the

arbitration award. [20-06006-rbk Dkt. 9.].

substantially reduced rates that management negotiated, in combination with the high expense levels that management knew or should have known existed, ensured that Little River's downward financial spiral would only accelerate.

18. *Over-aggressive expansion worsened the spiral over time*. Overlapping that time period, Little River's management "embarked on an aggressive growth strategy between 2012 and 2016," adding locations in Georgetown, Austin, Bastrop, San Antonio, Waco, and Temple, "rapidly expanding" its provider network, and taking on the additional costs "involved in its aggressive expansion plans." [20-06006-rbk Dkt. 1-1 at 9, 42, 72.] 20.21. [5]

19. By February 2017, Debtors were already in such financial distress that they routinely missed paying on leases, bills, refunds, and other obligations. Little River's Chief Medical Officer (James M. Callas) e-mailed Little River's CEO and Chief Compliance Officer (Madison and Downton) in February 2017 that they "were blind to the fact that this company is [in] a horrible position," noting that "doctors lose staff, don't get bills paid, don't get leases paid," and cited recent history in which "people were fired again, supplies not available, leases not paid, etc.," and the Little River employees' perception that "Company is going down" while its management maintains high standards of living. Little River accumulated outstanding patient refund liability, outstanding debt owed to vendors, and failed to pay rent, as its financial situation continued to deteriorate.

20. *Defendants' excessive self-interested distributions and lavish expenses*. Against that backdrop — already existing financial struggles, renegotiated contractual terms which ensured

[5] This aggressive growth strategy also focused on promoting the use of reference lab services. Little River's contracts with insurers like BCBSTX and Aetna originally provided more favorable payments for certain lab services, which would help drive revenue growth. This strategy, however, was built on an unstable foundation; the insurance contracts at issue allowed the insurers to terminate and renegotiate the agreements without cause. By early 2017, these same insurers insisted on new agreements that prohibited Little River's lucrative laboratory and pathology services practices.

Little River would operate at a loss, and aggressive expansion with attendant debt and expenses — Madison, Borgfeld, Downton, and Owens authorized a series of excessive tax distributions for which they were the self-interested recipients.

21. As noted above, written communications among Madison, Borgfeld, and Downton, show that by June 3, 2016, those three officers were already aware that Little River was going to suffer a "very significant impact on cash flow." They nevertheless authorized another $6,963,715 in distributions to themselves *after* that date, in addition to the $15,715,772 they had already distributed to themselves earlier that year. [6] Between 2016-18, Madison received distributions totaling $12,898,156.96, Borgfeld received distributions totaling $4,080,277.46, and Downton received distributions totaling $5,797,146, at a time when they knew or objectively should have known that Little River was already in serious financial distress.

22. Owens, as Managing Member for Little River Management, Compass Pointe Holdings, Timberlands, King's Daughters Pharmacy, and Little River Healthcare - Physicians of King's Daughters, likewise had a fiduciary duty to monitor or oversee the operations of the companies he was managing, and to keep informed of risks or problems facing those companies. He knew, or objectively was required to keep apprised, of the serious financial problems that the companies were already facing by mid-2016. He nevertheless received $294,241 of his distributions even after management was already describing Debtors' serious financial problems in their written communications.

23. The vast majority of those millions — $23,129,728.69 — was paid to those four officers and managers in 2016, helping precipitate the financial crisis that was unfolding by mid-

[6] Moreover, several million dollars of that amount was distributed on August 26, 2016, even after BCBSTX had given notice on July 20, 2016, that it was terminating the original contracts.

2016. By February 2017, Debtors were in full downward spiral, unable to pay leases, make refunds, pay vendors, and other basic operational requirements. Their authorization of excessive and unwarranted tax distributions to themselves of over $23 million contributed to Little River's ultimate insolvency.

24. Madison, Borgfeld, and Downton also authorized lavish expenses on items to benefit themselves, despite their awareness that Debtors were in financial jeopardy, including pass-through expenses for private aircraft leases, six-figure holiday parties for executive management, and extravagant annual meetings in expensive and exotic locales, further draining the companies of resources.

25. The self-interested decision of Defendants Madison, Borgfeld, Downton, and Owens to approve distributions to themselves, in light of the financial condition they knew or should have known existed, breached their duties of loyalty and due care to Little River in that they were interested in that transaction, and they lacked independence to objectively consider whether it was in Little River's best interests to pay several million dollars in distributions to themselves at a time when the company was struggling.

26. *Hiring of CEO's brother*. In May 2015, Little River's CEO, Madison, breached his fiduciary duty of loyalty by compelling Little River to hire his brother, John Madison. John Madison's lack of any discernibly legitimate role at Little River is made clear in the May 12, 2015 offer letter he received: his "principle responsibility" during his first year was to "rotat[e] through most of the administrative departments of the organization" so that he can understand "the general operations and management of Little River Healthcare." John Madison was offered a substantial salary and a potential bonus for assuming that superfluous role for Little River, with no reference to any specific job duty or his qualification for same.

27. The so-called responsibility of rotating through departments and watching what they do is what Madison envisioned when he compelled his colleagues to hire his brother. Madison instructed Borgfeld to arrange interviews of his brother in early May 2015, but at the same time made clear that the outcome of the interviews was already determined: "I would first like him to get a broad perspective of the operations of the organization," and "[u]ltimately," would like for him to spend time with "each of you observing and working on special projects for you." Madison, as "organizer," sent interview invitations to Little River personnel as required attendees to interview "my brother John Madison." Borgfeld and Downton acquiesced in and aided and abetted hiring of John Madison, to perform a superfluous role at excessive compensation, in breach of their fiduciary duty of loyalty to Little River.

28. Over time, Madison and Borgfeld placed John Madison in a role in charge of revenue cycle, for which he lacked prior experience or qualification, because Madison wanted "family," with which Borgfeld and Downton also acquiesced, and then resisted calls from other officers to install qualified financial personnel to assist. The self-interested decision of Madison to pressure the hiring of his brother breached his duties of loyalty and due care to Little River in that he was interested in that transaction, and lacked independence to objectively consider whether it was in Little River's best interests to hire his brother for that role. Borgfeld and Downton breached those duties by acquiescing in that decision, and by aiding and abetting Madison's breach.

29. *Alternative relief for defense of Warn Act claims*. The Worker Adjustment and Retraining Notification Act of 1988 or "Warn Act," 29 U.S.C. §§ 2101, *et seq.*, is a federal labor law which requires employers with 100 or more employees to provide 60 calendar-days' advance notification of layoffs affecting 50 or more employees at a single site of employment, but with

certain exceptions to the notice requirement, including if the employer is actively seeking capital or business which if obtained would have enabled it to avoid or postpone the shutdown and the employer reasonably and in good faith believed that giving the notice would have precluded the employer from obtaining the needed capital or business, or if the business disruption was caused by business circumstances that were not reasonably foreseeable as of the time that notice otherwise would have been required. Unless an exception applies, employers who fail to give 60 days' notice are potentially liable to the terminated employees for back pay and benefits for each day of violation, civil penalties up to $500 per day, and discretionary attorney's fee awards — in addition to the extraordinary expense of litigating and defending against the Warn Act complaint.

30. Prior to December 2018, Debtors were engaged in efforts to reorganize, and were actively seeking capital or business which if obtained would have enabled them to avoid or postpone the shutdown of business and employee terminations. Debtors reasonably and in good faith believed that giving 60 days' notice would have precluded them from obtaining the needed capital or business. The collapse of those efforts to obtain capital or business in late 2018 was not reasonably foreseeable during the preceding 60 days before Warn Act notices were delivered to employees.

31. On November 30, 2018, a restructuring consultant sent a "WARN Act Notice" addressed to "Little River Healthcare Employee," stating that "we may need to close Rockdale Hospital, Rockdale Family Care Center, Rockdale Downtown Medical Clinic, Cameron Hospital and Cameron Clinic … and discontinue services," absent a financial commitment from Little River's lender or a transition of ownership by December 7, 2018, at which point it was anticipated that their employment would end. On December 3, 2018, he sent a similar notice for an additional 13 clinics and healthcare and surgery centers, again advising that they would discontinue services

on or before December 7, 2018, with termination of employees occurring no later than that date. Because of the statutory exceptions described above, 60 days' advance notice was not given to those employees, and they were terminated during the week of December 3, 2018. On December 7, 2018, this Court entered an Order converting Debtors' Chapter 11 bankruptcies to Chapter 7. [Dkt. 547.]

32. A terminated employee filed an adversary class-action complaint on January 23, 2019, asserting violations of the Warn Act on behalf of himself and a class of approximately 600 terminated employees of Debtors. [19-06001-rbk Dkt. 1]. The Court has certified that class, and trial of that adversary class-action matter is scheduled for the week of February 9, 2021. The Trustee has filed an answer to the adversary class-action complaint, and among other affirmative defenses has asserted that the statutory exceptions to advance notice applied to these employee terminations.

33. For the reasons described above, Debtors were not required to send advance notice to their employees, and are not liable under the Warn Act. Nonetheless, consistent with the Trustee's right under Rule 8(d) of the Federal Rules of Civil Procedure to plead statements of claims and defenses in the alternative, regardless of consistency, for purposes of this adversary complaint, the Trustee assumes (without conceding) that the notice was required and that Debtors are liable in damages, in view of the pendency of proceedings that would permit the Court to so find. Based on that alternative assumed fact, the Trustee alleges here that Madison and Borgfeld, as managers and officers during the preceding 60-day period before the terminations, are liable to Debtors for their intentional failure to cause those notices to be given and for any resulting Warn Act damages or penalties that the Court might award, and liable for the Trustee's attorneys' fees

and costs in defending Debtors against the adversary class-action Warn Act complaint. [7]

IV. CLAIMS

34. In his capacity as Chapter 7 Trustee, the Trustee hereby asserts the following claims on behalf of itself, each Debtor, and Debtors' creditors:

COUNT 1 – BREACH OF FIDUCIARY DUTY, AND AIDING AND ABETTING BREACH OF FIDUCIARY DUTY AS TO ALL DEFENDANTS

35. The Trustee incorporates by reference each of the factual allegations contained in the preceding paragraphs.

36. Each of Defendants Madison, Borgfeld, Downton, and Owens, as officers and managers of Debtors, owed fiduciary duties of loyalty and due care to Debtors. [8] In light of the self-interested nature of the conduct described above, their actions are held to a higher duty of care which required them to exercise an "extreme measure of candor, unselfishness and good faith," and a "higher level of scrutiny" as to whether they met those exacting standards. [9]

37. Moreover, the business judgment rule has no application and forms no defense to Defendants' conduct as detailed above, where each of them engaged in self-interested transactions.[10] Instead, each of them was required to exercise *independent* judgment for

[7] *See, e.g., Tow v. Bulmahn*, 2016 WL 1722246, at *14-15 (E.D. La. Apr. 29, 2016), *affirmed*, 711 Fed. Appx. 216 (5th Cir. 2017) (an intentional failure to act in the face of a known duty to act constitutes an actionable breach of fiduciary duty, citing cases which alternatively address it as a breach of the duty of loyalty or the duty of care).

[8] *In re Hardee*, *supra*, 2013 WL 1084494, at *9 & n.40 (Bankr. E.D. Tex. 2013) (fiduciary duties of due care, loyalty, and obedience "applies to managers and/or members governing the activities of a limited liability company" under Texas law).

[9] *See, e.g., In re H&M Oil & Gas, LLC*, No. 13-3066-BJH, 514 B.R. 790, 814-15 (Bankr. N.D. Tex. 2014) ("Further, 'interested' transactions are subject to a higher level of scrutiny. The duty of loyalty holds officers and directors to an 'extreme measure of candor, unselfishness and good faith,' particularly where there is an interested transaction. … Interested transactions include those in which officers or directors derive personal profit as well as those which deprive the corporation of an opportunity to profit.") (citations omitted).

[10] *Tow, supra*, 2016 WL 1722246 at *14-16 ("the Court finds that Texas courts would hold an officer or

transactions in which they were self interested, and in contrast to the business judgment rule, each of them is held to the *higher* strict and extreme measure of candor, unselfishness and good faith.[11]

38. As described in greater detail above, each Defendant failed to meet those exacting standards, and instead breached the fiduciary duties of loyalty and due care by taking actions and participating in conduct that was in their own self interest, and that they knew and reasonably and objectively should have known was detrimental to Debtors and not in the best interests of the companies. Madison, Borgfeld, Downton, and Owens put their own interests above the best interest of the Debtors by authorizing and accepting millions of dollars in self-interested distributions for personal gain, at a time when they had actual awareness that Debtors were struggling financially, and that Debtors were experiencing serious problems with cash flow and that actions by BCBSTX which would make Debtors' financial situation even worse. In addition to their actual knowledge, and particularly in light of the written admissions exchanged between Madison, Borgfeld, and Downton, Defendants objectively should have known that Debtors' financial positions would not justify making those self-interested distributions to themselves and would not be in the best interest of the Debtors. Madison, Borgfeld, Downton, and Owens, as officers and managers of Debtors, failed to take simple and reasonable steps in the face of overwhelming evidence of Debtors' financial distress, and instead took actions that lacked any

director liable for engaging in a transaction in which he or she lacked independence to exercise independent business judgment"); *Crescent Resources Litig. Trust v. Duke Energy Corp.*, 500 B. R. 464, 485-86 (W. D. Tex. 2013) (in case involving allegation of wrongful distributions, noting "the traditional rule holding the business judgment rule does not apply to self-dealing," and questioning whether "a self-interested director with a financial stake in the approval of the transaction, can even take advantage of the exculpation clause or the business judgment rule"); *LK Wray Family Ltd. P'ship v. Wizard Holding Corp.*, 2010 WL 11652168, at *4 (W.D. Tex. Aug. 23, 2010) ("However, Delaware clearly allows for the presumption of the business judgment rule to be rebutted when the majority of the board is self-interested. Thus, Defendants arguments are insufficient to carry their burden.") (citation omitted).

[11] *Id.*

rationally conceivable basis, reflecting an entire want of due care, including incurring excessive and extraordinary expenses for the Debtors that benefitted them personally, and that were not in the best interest of the financially distressed Debtors.

39. In addition, as described above, Madison breached his fiduciary duties of loyalty and due care by hiring and promoting his brother in transactions where Madison lacked the ability to exercise independent business judgment whether the transactions were in the Debtors' best interests, and to Debtors' financial detriment.

40. Further, Madison, Borgfeld, Downton, and Owens knowingly aided and abetted the breaches of fiduciary duties by each of the other Defendants, including the approvals of distributions to personally benefit all of the Defendants, approval of expenses to benefit them personally, and approving the hiring of Madison's brother for a superfluous job and then promoting him to a position of financial authority for which he was not qualified. As a result, Defendants are jointly and severally liable for the acts of each other.

41. Under the alternative additional ground for recovery set forth above relating the Warn Act, in the event the Court should determine in the parallel adversary class-action proceeding that Warn Act notices were required to be made 60 days in advance of the employee terminations during the week of December 3, 2018, despite the fact that Debtors were actively seeking capital or business which if obtained would have enabled them to avoid or postpone the shutdown and reasonably and in good faith believed that giving the notice would have precluded them from obtaining the needed capital or business, then Madison and Borgfeld as officers and managers of Debtors were the individuals who should have ensured that those notices were sent. If the Court finds that such notices were required to have been sent, then Madison's and Borgfeld's failure to act in the face of a known duty to act constitutes an actionable breach of their fiduciary duties of

loyalty and due care.

COUNT 2 – NEGLIGENCE AS TO ALL DEFENDANTS.

42. The Trustee incorporates by reference each of the factual allegations contained in the preceding paragraphs.

43. Trustee realleges the acts and omissions of Madison, Borgfeld, Downton, and Owens stated in Count I, and alleges the same constitute professional negligence and/or gross negligence. Each Defendant owed duties of care to the Debtors in his or her role as officer and manager which required them to conform to a high standard of candor, unselfishness and good faith. Each of them failed to exercise those standards of care and thereby breached their duty to the Debtors by engaging in the conduct detailed above, resulting in actual injury to Debtors, including the self-interested distribution of over $23 million to themselves.

V. CONDITIONS PRECEDENT

44. All conditions precedent to Trustee's right to recover have been performed or have occurred.

VI. DAMAGES, ATTORNEY'S FEES, AND COSTS

45. The Trustee incorporates by reference the factual allegations contained in the preceding paragraphs.

46. As a result of Defendants' conduct, the Trustee has been injured and is entitled to recover all resulting damages. The Trustee is also entitled to recover reasonable and necessary attorney's fees and costs of court, as well as pre- and post-judgment interest.

VII. PRAYER

WHEREFORE, the Trustee prays Defendants be cited to appear and answer herein, and that upon final hearing the Trustee be awarded a judgment against Defendants for actual damages

in an amount no less than $23,225,821, prejudgment interest, attorneys' fees, court costs, and post-judgment interest on the judgment at the highest rate allowed by law. The Trustee further requests such other and further relief to which the Trustee may be justly entitled.

Respectfully submitted,

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By:/s/ *Brian T. Cumings*
Brian T. Cumings

COUNSEL FOR JAMES STUDENSKY, CHAPTER 7 TRUSTEE

FORM 104 (10/06)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)

PLAINTIFFS	**DEFENDANTS**
James Studensky, Chapter 7 Trustee	Peggy S. Borgfeld, Ryan H. Downton, Jeffrey P. Madison, Kevin J. Owens
ATTORNEYS (Firm Name, Address, and Telephone No.) Graves Dougherty Hearon & Moody, PC 401 Congress Ave. Suite 2700 Austin, TX 78701	**ATTORNEYS** (If Known)
PARTY (Check One Box Only) □ Debtor □ U.S. Trustee/Bankruptcy Admin □ Creditor □ Other ☑ Trustee	**PARTY** (Check One Box Only) □ Debtor □ U.S. Trustee/Bankruptcy Admin □ Creditor ☑ Other □ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
Breach of Fiduciary Duty and Negligence

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – reinstatement of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☑ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☑ Check if this case involves a substantive issue of state law	□ Check if this is asserted to be a class action under FRCP 23
□ Check if a jury trial is demanded in complaint	Demand $ 23,225,821.00

Other Relief Sought

FORM 104 (10/06), Page 2

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Little River Healthcare Holdings, LLC et al		BANKRUPTCY CASE NO. 18-60526
DISTRICT IN WHICH CASE IS PENDING Western District of Texas	DIVISIONAL OFFICE Waco	NAME OF JUDGE Ronald B. King
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Brian T. Cumings		
DATE 07/24/2020	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Brian T. Cumings	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.