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United States Trustee
District of Arizona

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re:	
LEGACY CARES, INC., an Arizona non-profit corporation,	Chapter 11
Debtor.	Case No. 2:23-bk-02832-DPC
	UNITED STATES TRUSTEE'S MOTION TO APPOINT CHAPTER 11 TRUSTEE OR, ALTERNATIVELY, TO DISMISS CASE

The United States Trustee, by and through the undersigned counsel, files this Motion to Appoint Chapter 11 Trustee pursuant to 11 U.S.C. § 1104(a) or, Alternatively, to Dismiss Case and respectfully shows the following:

MEMORANDUM OF POINTS AND AUTHORITIES

Debtor is an Arizona non-profit corporation that owns and operates a sports and entertainment complex known as Legacy Park in Mesa, Arizona (hereinafter "the Park"). *See Docket #9 (Declaration of Douglas Moss) (hereinafter "Moss Declaration"), at 2*

¶ 3. On May 1, 2023, Debtor filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code, Title 11 of the United States Code, (hereinafter "the Code"). *See Docket #1 (Petition)*.

Background

In June 2018, Randy J. Miller ("Randy Miller") created the entity Legacy Cares, LLC. *See, Exhibit 1*[1] *(ACC Statement of Conversion)*. On January 14, 2020, Legacy Cares, LLC was converted to a non-profit entity under Arizona law and renamed Legacy Cares, Inc. *See Exhibit 2 (ACC Articles of Incorporation), at 1; Docket #9 (Moss Declaration), at 2,* ¶ 3. Randy J. Miller and Chad Miller were the original Directors of Debtor. *See Exhibit 2 (ACC Articles of Incorporation), at 2*. Chad Miller is Randy J. Miller's son. The incorporator of the entity was J. Michael Baggett, Esquire ("Michael Baggett"). *See id.*

One month after the non-profit entity was created, in February 2020, Douglas Moss ("Moss"), Lawrence White ("White"), and Dan O'Brien ("O'Brien") replaced Randy Miller and Chad Miller as Debtor's Directors. *See Exhibit 25 (341 Transcript) at 8-11.* As of the petition date, the Board of Directors of the Debtor included Moss, White, O'Brien, and Natalie Alvarez. *See id.* On June 27, 2023, Debtor's counsel provided the UST documentation reflecting the resignation of White from the Board as of June 20, 2023. Notably, the Debtor's Statement of Financial Affairs does not disclose that Moss and White were members of the Board as of the petition date and instead identifies them

[1] Exhibits 1 through 18 and 20 through 24 are exhibits being submitted through the Declaration of Timberly Wolf, which is being filed concurrently herewith. Exhibits 19 and 25 through 27 are being submitted through the Declaration of the undersigned attorney, which is also being filed concurrently herewith.

only as officers of the Debtor. *See Docket #1 (Statement of Financial Affairs), at 135, Line 28.* Based on the testimony and documentation, the current management consists of Moss, O'Brien, and Alvarez (hereinafter "current management"). Prior management included White ("pre-petition management"), who remained on the Board post-petition until June 20, 2023.

In August 2020, Debtor sought financing to acquire, construct, and operate Legacy Park (hereinafter "the Project"). *See Docket #9 (Moss Declaration), at 6,* ¶ 17. On August 11, 2020, Debtor obtained financing for the Project through the issuance of tax-exempt bonds by the Arizona Industrial Development Authority ("AZIDA"). *See id.* The borrowing was memorialized in a Loan Agreement between the AZIDA and Debtor. *See id. at 7,* ¶ 19; *see also Docket #9-2 (Loan Agreement).* Representations regarding the Project were presented to prospective bond purchasers in a Limited Offering Memorandum dated August 11, 2020 (hereinafter the "Offering Memo"). *See Exhibit 3 (Excerpts of August 11, 2020, Limited Offering Memorandum & Supplements Thereto) (hereinafter "Offering Memo").*[2] The Offering Memo is accessible to the public through the Municipal Securities Rulemaking Board ("MSRB") via its Electronic Municipal Market Access ("EMMA") system. *See Declaration of Timberly Wolf,* ¶ 8.

The initial bond issuance in August 2020 raised more than $250 million in loan funds that were loaned by AZIDA to the Debtor for the Project. *See Docket #9 (Moss Declaration), at 7,* ¶ 18. The loan funds were to be advanced to Debtor pursuant to the

[2] In lieu of filing the entire 1029-page document, the UST is submitting only the relevant excerpts of the Offering Memo.

terms of the Loan Agreement with AZIDA. *See id.,* ¶ 19. The bond trustee is UMB Bank, N.A. ("UMB"). *See id.,* ¶ 17. A supplemental bond offering raised an additional $33 million in loan funds in June 2021. *See id.,* ¶ 23-24. Debtor thus had access to more than $280 million in bond funds to be used for its organizational purpose of constructing and operating Legacy Park. Construction on the Project purportedly began at least by September 2020. *See Exhibit 4 (9/30/20 Construction Report)* (reporting that a groundbreaking ceremony occurred on September 18, 2020). The Park officially opened in January 2022. *See Docket #9 (Moss Declaration), at 5,* ¶ 14.

The Offering Memo disclosed that the manager of the Project would be Legacy Sports USA, LLC ("Legacy Sports"). *See Exhibit 3 (Offering Memo), at 4.* Legacy Sports is owned by Randy Miller and Michael Baggett, *i.e.,* the original Director and incorporator of the Debtor, respectively. *See Exhibit 5 (ACC Legacy Sports AOO).* Debtor's management contract with Legacy Sports was terminated in March 2023. *See Docket #9 (Moss Declaration), at 5,* ¶ 14. After terminating the agreement with Legacy Sports, effective April 14, 2023, Debtor entered into a new management agreement with Elite Sports Group, LLC ("Elite"). *See id. at* ¶ 15. Elite is owned by Randy Miller's son, Brett Miller. *See Exhibit 6 (ACC Elite Foreign Registration Statement), at 2 &6.*

The Schedules reflect over $300 million owed to bondholders by the Debtor. *See Docket #1 (Schedule D).* In addition, more than $33 million of mechanics liens have been filed by contractors who worked on the construction of Legacy Park and who were not paid. *See Docket #9 (Moss Declaration), at 18,* ¶ 50. Debtor also owes over $13.4

million to general unsecured creditors representing debts arising from unpaid equipment leases and construction and trade payables. *See Docket #1 (Schedule E/F).*

LEGAL ARGUMENT

Code section 1104(a) provides the following:

> At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee –
>
> (1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause . . . or
> (2) if such appointment is in the best interest of creditors, any equity security holders, and other interests of the estate…or
> (3) if grounds exist to convert or dismiss the case under Section 1112, but the court determines that the appointment of a trustee or examiner is in the

11 U.S.C. § 1104(a).

In this case, as explained in detail below, there is evidence of dishonesty, incompetence, or gross mismanagement of the affairs of the Debtor by pre-petition management before the commencement of the case, and evidence of incompetence or gross mismanagement by current management after the commencement of the case. Accordingly, cause has been established for the appointment of a trustee in this case.

Improper Loans

The Loan Agreement contains specific instructions on how the Debtor was to utilize bond proceeds in connection with the Project. *See Docket #9-2 (Loan Agreement), Article IV, at 31-33.* Among other requirements, the Debtor was obligated to submit requisition certificates to obtain funds from the bond trustee for payment of costs of the Project. *See id.*, *Section 4.02, at 31.* The form requisition certificate required the Debtor

to certify that the funds being requested were properly incurred in connection with financing the Project. *See id.*, *Exhibit B, at 83.* Debtor's proposed use of the bond funds was also outlined in the Offering Memo. *See Exhibit 3 (Offering Memo), at 5.* Neither the Loan Agreement nor the Offering Memo authorized or contemplated the use of any bond proceeds to provide loans to insiders or third parties. Debtor's President, Moss, confirmed that loans by the Debtor were prohibited by the bond documents. *See Exhibit 25 (341 Transcript), at 77.*

Despite the lack of authorization to lend any funds to third parties, a loan was made to Legacy Sports in the amount of $3,234,076 by Debtor in 2021. *See Exhibit #26 (2021 Tax Return), at 11, Line 5*. This loan amount was explicitly reflected as a loan on Debtor's 2021 tax return. *See id.* Debtor's total revenue for 2021 was just $1,590,853. *See id., at 1, Line 12*. Therefore, it is likely that the $3.2 million loan provided to Legacy Sports was funded at least in part with bond proceeds.

Debtor's 2022 financials also reflect that Debtor's management authorized the Debtor to make loans to Legacy Sports and Randy Miller's affiliated entities in 2022. Debtor's 2022 balance sheet reflects that the Debtor loaned Legacy Sports the principal sum of $63,208.82 in the first quarter of 2022. *See Exhibit 7 (2022 Financials), at 12*. Debtor also loaned money to Randy Miller's entities, Legacy Sports TN, LLC and Legacy Sports TX, LLC. *See id.*; *see also Exhibit 8 (ACC Legacy Sports TN AOO); Exhibit 9 (ACC Legacy Sports TX AOO).* The Debtor's 2022 balance sheet reflects total combined principal loan balances of $26,744.61 from those entities in 2022. *See Exhibit 7 (2022 Financials), at 12.*

The 2022 financials reflect that the Debtor also made advances of some type to or on behalf of Legacy Sports of over $2.9 million in the first quarter of 2022. Debtor's 2022 balance sheet reflects "Accounts Receivable – LS USA" in the amount of $1,790.685.27 and an amount due from Legacy Sports labeled "LS USA Operating Activity Xfr" in the amount of $1,257,871.05. *See id.* Despite his role as President of the Debtor, Moss was unable to recall the nature of that receivable. *See Exhibit 25 (341 Transcript), at 69.* Nor was Moss able to definitively state whether or not the Debtor had in fact made a loan to Legacy Sports in the first quarter of 2022. *See Exhibit 25 (341 Transcript), at 72*.

Yet another advance was made when the Debtor paid a $1,120,000 obligation owed by Legacy Sports to JS Waltz Construction, LLC. *See Exhibit 7 (2022 Financials), at 14; Exhibit 25 (341 Transcript), at 80-81.* Debtor's President confirmed that this receivable represents the amount that the Debtor paid on behalf of Legacy Sports to settle claims that Waltz had against both the Debtor and Legacy Sports. *See Exhibit 25 (341 Transcript), at 81.* Notably, the bondholders were concerned about this settlement and had asked for details about the payment on an investor call on June 7, 2022. *See Exhibit 10 (June 24, 2022, Investor Call Follow-Up), at 3.* In the June 24, 2022, follow-up to the investor call, Debtor's pre-petition management failed to provide the requested details to the bondholders. *See id.* Instead, the Debtor claimed that the details of the Waltz settlement were subject to a confidentiality agreement. *See id.*

To the extent that the Debtor did provide the bondholders with any information regarding the Waltz settlement, that information was contradictory. In the June 24, 2022,

follow-up, Debtor represented to bondholders that Legacy Sports was expected to pay that obligation "after the Legacy Sports USA development agreement is released." *See Exhibit 10 (June 24, 2022, Investor Call Follow-Up), at 3.* In a subsequent follow-up, filed on August 5, 2022, Debtor stated that this debt "was repaid by Randy Miller in 2021." *See Exhibit 11 (August 5, 2022, Investor Call Follow-Up), at 3*. However, that statement is contradicted by the Debtor's balance sheet for the year ending 2022, which discloses the Waltz Construction Settlement as an asset with a total loan principal and interest balance due from Legacy Sports of $1,191,066.30 as of December 31, 2022. *See Exhibit 7 (2022, Financials), at 14.* The statement in the August 5, 2022, disclosure to bondholders was also contradicted by Moss's testimony in this case that the Debtor is still owed the $1.1 million receivable from Legacy Sports. *See Exhibit 25 (341 Transcript), at 81.*

To summarize, the Debtor's 2021 tax return and 2022 balance sheet reflect the following loans or advances by Debtor to Legacy Sports in 2021 and 2022:

Tax Return 2021 - Loan to Legacy Sports	$	3,234,076.00
Q1 2022 Accounts Receivable - LS USA	$	1,790,685.27
Q1 2022 LS USA Operating Activity Xfr	$	1,257,871.05
Q1 2022 Legacy Sports Loan Principal	$	63,208.82
Q1 2022 Legacy Sports TN LLC Loan Principal	$	20,330.99
Q1 2022 Legacy Sports TX LLC Loan Principal	$	6,413.62
Q1 2022 Waltz Construction Settlement on behalf of Legacy Sports	$	1,120,000.00

The Debtor's own tax returns and financial statements thus reflect that this Debtor – a non-profit entity whose mission was to create a youth sports facility – made millions of dollars of loans and advances to or on behalf of Legacy Sports during the 28-month period following the initial bond issuance. Such unauthorized use of the Debtor's assets,

i.e., diversion of assets, is a well-established ground for the appointment of a Chapter 11 trustee. *See, e.g., In re PRS Insurance Group, Inc.*, 274 B.R. 381, 385-86 (Bankr. D. Del. 2001).

Willful or Negligent Failure to Disclose Accounts Receivables on Schedules

It is unclear whether the Debtor was ever repaid the loans and other receivables from Legacy Sports and, thus, whether these are current assets of the bankruptcy estate. The Debtor was obligated to disclose whether it owned any receivables that arose more than 90 days before the petition date on Line 11b of Schedule B. *See Exhibit 12 (Official Form A/B)*. Whether by design or inadvertence, the Debtor here omitted Line 11b entirely from the Schedules. *See Docket #1 (Debtor's Schedule A/B), at 17*. Moss and Debtor's counsel were specifically advised of this omission on June 6, 2023, at the meeting of creditors conducted pursuant to Code section 341(a). *See Exhibit 25 (341 Transcript), at 68*. However, to date, Debtor has failed to amend Schedule B to include the required disclosure. Clearly, this is highly material information, as such receivables would constitute estate assets that may be recovered for the benefit of creditors in this case.

Significantly, Debtor's President, Moss, was evasive when asked whether the Debtor did in fact have any accounts receivables that arose more than 90 days before the petition date. Rather than answering unequivocally that there were or were not such accounts receivable, Moss ambiguously stated, "[w]e disclosed what we thought was accurate" and "there were some that were in dispute, and we were having our attorneys

look at it, and it wasn't really determined whether that was accurate or not." *See Exhibit 25 (341 Transcript), at 66-67.*

Issuance of False Certificate of Compliance

Section 8.05(f) of the Loan Agreement required the Debtor to file annual compliance certificates attesting that the Debtor had fulfilled all of its obligations under the Loan Agreement. *See Docket #9-2 (Loan Agreement), at 45*. On April 28, 2022, Debtor's President, Moss, signed a compliance certificate, certifying that he had reviewed the Debtor's activities pertaining to compliance with the Loan Agreement and had determined that there had been no defaults by the Debtor under that agreement in 2021. *See Exhibit 13 (2021 Annual Compliance Certificate).* Moss's certification was false.

The Loan Agreement required the Debtor to obtain and file on the EMMA system annual audits converting quarterly financial information into an audited report prepared in accordance with Generally Accepted Accounting Principles. *See Docket #9-2 (Loan Agreement), at 45*. Debtor has never complied with that basic reporting requirement. *See Exhibit 14 (Notice Failure to File Audits 2020-2022).* Yet, Moss falsely certified, on April 28, 2022, that the Debtor had been fulfilling all of its duties under the Loan Agreement.

Moss's certification was also false because the Debtor had breached the Loan Agreement by allowing mechanics liens to arise. The Loan Agreement explicitly states that Debtor will not permit any mechanics liens to be established for labor or materials furnished in connection with the Project. *See Docket #9-2 (Loan Agreement), at 38*. At least one mechanics lien was filed before Moss wrongly attested that the Debtor was in

full compliance with the Loan Agreement on April 28, 2022. *See Exhibit 15 (10-29-21 Mechanics Lien).* By April 2022, Moss, as President, knew or should have known of the existence of the mechanics lien and, thus, that the Debtor had defaulted under the terms of the Loan Agreement. Yet, Moss misrepresented to bondholders that Debtor was in full compliance with all terms of the Loan Agreement on April 28, 2022.

Failure to Initiate Required Audit Procedures

Significantly, the Debtor's managers failed to take even preliminary steps necessary to comply with Debtor's obligation to file yearly audited financial statements. As of August 2022, two years after the bond issuance, the Debtor had still not hired an auditor to conduct the required audits. *See Exhibit 11 (August 5, 2022, Investor Call Follow-Up).* In the August 5, 2022, follow-up to the June 7, 2022, investor call, the Debtor stated that it had interviewed and received proposals from four firms to undertake the required audits. *See Exhibit 11 (August 5, 2022, Investor Call Follow-Up), at 1.* Thus, from the beginning, the Debtor's managers were not taking the basic steps necessary to ensure that the terms of the Loan Agreement were strictly complied with.

Questionable Disclosures to Bondholders

Appendix A to the Offering Memo provided "Certain Information Regarding the Borrower" ("Appendix A"). *See Exhibit 3 (Offering Memo, Appendix A), at 6.* Section 2.4 of Appendix A sets forth the agreements that Debtor had entered into with respect to the Project. *See id. at 7-8*. Among those agreements was an agreement between the Debtor and KingDog Enterprises, LLC. *See id. at 160.* Appendix A states as follows: "KingDog Enterprises LLC is an *independent* company providing technology advisory

services under an agreement with LS-USA" and that KingDog would be paid an advisory fee of 0.5% of the total capital expenditures on the Project. *See id. (emphasis added).* KingDog is wholly owned by Debtor's President, Moss. *See Exhibit 16 (ACC King Dog AOO).* Therefore, the representation in the Offering Memo that KingDog was "independent" was plainly wrong.

When Moss was questioned about the representation in the Offering Memo that KingDog was independent, Moss took the position that the representation was not untrue because KingDog was not a subsidiary of the Debtor. *See Exhibit 25 (341 Transcript), at 54-55.* Notwithstanding Moss's misinterpretation of the term "independent" to justify the misleading characterization in the Offering Memo, the word "independent" has a commonly understood meaning.

"The plain meaning of 'independent' is 'not subject to control by others,' as in self-governed, or 'not subject to the control or influence of another." *Hahnenkamm, LLC v. United States,* 2022 WL 894968 *13 (Fed. Cir. Mar. 25, 2022) (*citing* Merriam-Webster's Collegiate Dictionary (10th ed. 1998); Black's Law Dictionary (8th ed. 2004)). To state that KingDog, an entity wholly owned by the Debtor's President, was "independent" from the Debtor is patently misleading under the plain meaning of the term independent. KingDog was under the exclusive control of Debtor's most prominent insider. And, to the extent that there was any question regarding this characterization, the Debtor's managers should have erred on the side of full disclosure of Moss's ownership of KingDog, especially since the disclosure was being provided to potential purchasers of $250 million worth of bonds.

Notably, the Offering Memo represents that Moss himself was to be paid a technology advisory fee of $912,500 at closing. *See Exhibit 3 (Offering Memo), Exhibit H, at 9.* Moss testified that this fee was never paid. *See Exhibit 25 (341 Transcript), at 60-61.* Still, it's unclear why this was an itemized payable at all, because a December 2020 construction report noted that another entity, Anthony James Partners, had been hired for technology systems design. *See Exhibit 17 (December 2020 Construction Report), at 3.*

It is also notable that Debtor's Schedule G discloses an executory contract between the Debtor and KingDog. *See Exhibit 1 (Schedule G), at 80.* The contract is referred to as a "fee agreement." It is unclear whether this agreement is being honored or will be assumed by the Debtor in this case.

Failure to Disclose Relationship with Construction Monitor

The Loan Agreement required the Debtor to retain an "Independent consultant" whose duties were to include monitoring construction of the Project. *See Docket #9-2 (Loan Agreement), at 45*. As reflected by the May 2021 construction monitor report filed on EMMA, the Debtor retained Jim Neal of Emmett Holdings, LLC to serve as the independent construction monitor. *See Exhibit 18 (May 31, 2021, Construction Monitor Report).*

As reflected in the Verified Complaint filed against Legacy Sports by RZ Capital, LLC, Jim Neal was actively involved in Legacy Sports' efforts to obtain financing to fund the Project as early as 2019. *See Exhibit 19 (RZ Capital Verified Complaint), at 6, 43-44*. According to that document, in 2019, Neal was directly engaged in negotiations

with CIG Capital, LLC for a loan to Legacy Sports in the amount of $204 million to fund development of the Project. *See id.* Despite Neal's involvement in these financing efforts on behalf of Legacy Sports, there appears to have been no disclosure of Neal's prior affiliation with the Project or the entities involved.

Issues Relating to Elite Sports

In an effort to effectuate a change in leadership of Park management, Debtor terminated its management contract with Legacy Sports on the eve of bankruptcy. *See Docket #9 (Moss Declaration), at 5,* ¶ 14; *Exhibit 25 (341 Transcript), at 23-24.* Instead of hiring a wholly new entity to manage the Park, Debtor entered into a contract with a company owned by Randy Miller's son, Brett, who had previously served as President of Legacy Sports. *See Exhibit 20 (Archive of Legacy Sports Leadership), at 9.*

Debtor and Elite executed a Qualified Management Agreement ("QMA") pursuant to which Elite took over as the Park manager in place of Legacy Sports in April 2023. *See Docket #9 (Moss Declaration), at 5,* ¶ 15. Page 1 of the QMA identifies Elite as a Delaware limited liability company. *See Exhibit 27 (Elite QMA)*. However, Elite's owner, Brett Miller, signed the QMA under a signature line stating that Elite is an Arizona limited liability company. *See id. at 53.* None of the Debtor's Directors detected and sought to correct this discrepancy.

At the time of the execution of the QMA with Elite, Elite had not filed documentation with the Arizona Corporation Commission ("ACC") to register as a foreign entity doing business in Arizona. Arizona Revised Statutes § 10-1501 states that a foreign corporation shall not transact business in Arizona until it is granted authority to

transact such business from the ACC. Before executing the QMA and allowing Elite to assume responsibility for management of the Park, the Debtor's Directors apparently never verified that Elite had filed all necessary legal documents to conduct business in Arizona.

When the absence of the appropriate ACC documentation was brought to Debtor's attention by the UST, Elite sought to register as a foreign entity with the ACC. *See Docket #208 (Debtor Response to UST Supplemental Objection), at 2.* In its pleading filed with the Court, Debtor states that Elite had "filed the necessary application with the [ACC] to be registered to do business *some time ago,* but that registration hit a snag because another party had unknowingly reserved the fictitious name*." Id. (emphasis added).* However, ACC records reflect that the name reservation by the other "party" had occurred on May 17, 2023, two and a half weeks after the petition date. *See Exhibit 21 (Elite Sports Name Reservation).* Therefore, Elite did not undertake to file the necessary ACC application until after May 17, 2023.

As a result of the "snag" referred to by Debtor, Elite has now filed the ACC registration under a fictitious name, Elite Sports Group AZ, LLC. Of particular concern are the possible ramifications with respect to the Debtor's insurance coverage resulting from Elite managing the Park before being authorized to conduct business in Arizona. In any event, these are matters that should have been but were not addressed by the Debtor's Directors before the QMA was signed and certainly before Elite began managing Park operations.

Ambiguity Regarding Elite Management Fee

Debtor has committed to paying Elite a management fee totaling $708,714 over a 26-week period. *See Docket #211 (Revised DIP Budget), at 4*. As indicated by the various pleadings in this case, the cost of all overhead arising from the operation of the Park is being paid by the Debtor, either directly by Debtor or through reimbursements to Elite, and Debtor is fully subsidizing Elite's payroll. Consequently, the entire $708,714 payment represents pure profit to Elite. That fact has never been clearly disclosed to creditors in this case but was only confirmed through informal emails with Debtor's counsel. Notably, the management fee that had been paid to Legacy Sports was an area of concern to bondholders. *See Exhibit 11 (August 5, 2022, Investor Call Follow-Up*), at 1.

The Debtor owes a fiduciary duty to ensure that estate assets are not wasted. *See In re Zimont,* 649 B.R. 784, 788 (Bankr. D. Ariz. 2020). In order for creditors to ensure that estate assets are not being wasted at their expense, the Debtor should have provided proof that the management fee being paid to Elite, along with the subsidization of Elite's salaries and wages, is reasonable and necessary. Debtor failed to do so. In all, Elite and its employees are projected to be paid over $5.2 million over the course of this case. Almost 30% of the Debtor's post-petition operating disbursements are being paid for Elite's employees and management fee. Without comparable data or other evidence to substantiate that this arrangement and the amount of the fee are reasonable and customary in the industry, it is impossible for creditors to assess the appropriateness of this substantial expenditure.

Ideally, full disclosure of the pertinent facts concerning the calculation and reasonableness of the management fee should have been made through a formal motion to retain Elite as the Debtor's management company. *See, e.g., In re Marion Carefree Ltd. Partnership*, 171 B.R. 584, 588-89 (Bankr. N.D. Ohio 1994). The Debtor, in the fulfillment of its fiduciary duties in this case, should have, by now, provided full disclosure on the record of the basis of the calculation of the Elite management fee and the specific data and evidence to support the reasonableness of that fee as part of its operating expenses. Where a debtor "fails to disclose material and relevant information to the Court and creditors, a Chapter 11 trustee is required." *In re V. Savino Oil & Heating, Inc.,* 99 B.R. 518, 526 (Bankr. E.D.N.Y. 1989).

Lack of Appropriate Standards of Governance

As a non-profit entity asserting tax-exempt status under Internal Revenue Code, 26 U.S.C. § 501(c)(3), the Debtor is subject to strict governance standards. In order to ensure that the non-profit remains in compliance with those standards, the Internal Revenue Service ("IRS") recommends that non-profits adopt a conflict-of-interest policy as a means to establish procedures that will offer protection against charges of impropriety involving officers, directors, or trustees. *See Exhibit 22 (IRS Conflict of Interest Policy).* The IRS deems such a policy so important that non-profits are specifically asked to state whether the non-profit has a written conflict of interest policy on their Form 990 tax returns. Not surprisingly, the Debtor's Board never adopted such a policy. *See Exhibit #26 (2021 Tax Return), at 6.*

The absence of a formal conflict-of-interest policy is particularly troubling because all members of the Debtor's Board were paid for their services, not by the Debtor, but by Legacy Sports. *See Exhibit #26 (2021 Tax Return), at 35.* In 2021, Legacy Sports paid Moss $350,000, White, $119,095, and O'Brien $120,000. *See id.* That compensation scheme created an inherent conflict of interest on the part of the Directors, who were obligated to oversee Legacy Sports' management while they were simultaneously reliant upon the same company to pay their salaries.

There also appears to have been insufficient policies in place to ensure that Legacy Sports was properly managing and expending funds advanced by the Debtor for legitimate Project related purposes. This is evident by the fact that contractors were not being timely paid.

In support of Debtor's first day motions, including the motion for debtor-in-possession financing, Moss testified that Legacy Sports "retained Loop Capital ("Loop") . . .to seek alternative financing sources and/or a restructuring of Cares' existing bonds and debt obligations." *See Docket #9 (Moss Declaration), at 19* ¶ 55. According to Moss, "Loop was ultimately not able to procure the additional financing under a timeline sufficient to allow the Park to continue to operate without material disruption to its operations." *Id.* This occurred in the summer of 2022, when Debtor's financial situation was rapidly deteriorating. *See Exhibit 25 (341 Transcript), at 82.* That Legacy Sports was undertaking these financing efforts demonstrates that Debtor's management tacitly allowed Randy Miller via Legacy Sports to pursue financing on behalf of the Debtor even though Miller was not an officer, director, or employee of Debtor.

Subsequently, when asked whether he authorized Legacy Sports to undertake those refinancing efforts, Moss answered, "no." *See id.* When asked who authorized Legacy Sports to act on the Debtor's behalf in undertaking the Loop Capital negotiations, Moss stated "Legacy Sports." *See id.*

Payment of Substantial Salaries While Contractors Unpaid

Debtor paid over $7.1 million of non-hourly salaries in 2022. *See Exhibit 7 (2022 Financials) at 8.* Among those being paid were a number of family members of the principals of Legacy Sports.

Both of Randy Miller's sons, Chad and Brett, were listed as CEO and President, respectively, and Legacy Sports' other member, attorney Michael Baggett, was on the payroll as Legal Counsel. *See Exhibit 20 (Archive of Legacy Sports Leadership), at 3.* Baggett's daughter, Layne, was also employed by Legacy Sports and is now employed by Elite. *See id.* Brett Miller's wife, Jennifer, currently holds herself out as Director of Community Outreach for Elite. *See Exhibit 23 (LinkedIn Profile).* The "Controller – Sports Revenue" was Ashley Simons. *See Exhibit 20 (Archive of Legacy Sports Leadership), at 3.* Ashley Simons is the wife of Tyler Simons, who had previously worked for the investment banking firm B.C. Ziegler & Company, which served as the underwriter of the bonds. *See Exhibit 24 (Ziegler Press Release).* At some point after the bond issuance, Tyler Simons left Ziegler and began working for Legacy Sports as the Chief Financial Officer. *See Exhibit 20 (Archive of Legacy Sports Leadership), at 3.*

As with Legacy Sports, the Debtor funds the salaries paid to employees of its management company, Elite. The Debtor's cash collateral budget in this case projects

that salaries and wages payable to Elite's employees will total over $4.5 million over the 26-week period between May 7, 2023, and the week ending October 29, 2023. *See Docket #211 (Revised Budget), at 4.* Debtor has filed no pleading specifically identifying the non-hourly salaried employees, their respective salary amounts, and the precise nature of the work they are performing. Without such disclosure, it's impossible for creditors and interested parties to accurately vet whether those salaries are reasonable and necessary and beneficial to the estate.

Potential Causes of Action Against Insiders

Based on the foregoing, there is a reasonable basis to conclude that there may exist causes of action against insiders based on, *inter alia,* gross mismanagement. For obvious reasons, "an independent trustee should be appointed under § 1104(a)(2) when the current management "cannot be counted on to conduct independent investigations of questionable transactions in which they were involved." *In re Ridgemour Meyer Properties, LLC,* 413 B.R. 101, 113 (Bankr. S.D.N.Y. 2008) (citations omitted). Debtor's current management has significant conflicts of interest preventing them from undertaking a truly impartial investigation of claims on behalf of the estate. Consequently, the appointment of a Chapter 11 trustee is in the best interest of the creditors and the estate.

Conclusion

The Debtor received over $250 million in bond proceeds for the specific charitable purpose of constructing and operating a public park facility. Despite the receipt of those substantial funds, within two and a half years, the Debtor defaulted on its bond obligations and racked up debt in excess of $40 million to over a hundred creditors who provided valuable labor, materials, equipment, and services without which the Park would never have been constructed or operational. During the same period, the Debtor was funding salaries in excess of $7 million and loaning or advancing millions of dollars to Legacy Sports. Add to that the false certification regarding compliance with the Loan Agreement, the chronic failure to submit required financial audits, numerous instances of questionable representations to bondholders, and lack of proper oversight of the Debtor's management company to which millions of dollars were being funneled throughout the Project and one can only conclude that the Debtor's pre-petition management was acting either dishonestly or with a level of ineptitude that renders them completely incompetent to manage the Debtor's affairs.

The suggestion that any pre-petition mismanagement has been cured by the replacement of Legacy Sports with Elite is belied by Debtor's post-petition conduct. Debtor either intentionally or negligently failed to disclose required information on Schedule B consisting of receivables more than 90 days old that were due from Legacy Sports as of the petition date. Debtor allowed Elite to commence Park management without having been properly authorized to conduct business in Arizona. Debtor has provided no data or proof to substantiate that the $708,000 management fee to Elite is

reasonable and customary. And, both before and after the petition date, Debtor has been evasive and unforthcoming in advising bondholders and creditors of material facts concerning the financials, receivables, and expenditures.

Under these circumstances, it would be both imprudent and unfair to creditors to presume that the gross mismanagement that occurred before the petition date will suddenly cease now that Legacy Cares is in bankruptcy. The only appropriate remedy to ensure that the Debtor's affairs are properly managed for the benefit of the estate and creditors is for the Court to appoint an independent Chapter 11 trustee. A trustee will unquestionably act as a true fiduciary to all creditors to preserve, protect, and pursue all assets of the estate. The Chapter 11 trustee will also be better suited to pursue causes of action against Legacy Sports and any insiders to ensure that all potential assets are recovered for the benefit of the estate and creditors.

Alternative Request for Dismissal

The UST submits that the evidence supports a finding of cause to appoint a trustee under Code § 1104(a). However, in the event that the Court determines that dismissal of the case would better serve the interests of the creditor and the estate, then the UST requests that, alternatively, the Court dismiss this case for cause pursuant to Code § 1112(b)(1). The evidence establishing cause for the appointment of a trustee also establishes cause for dismissal under § 1112(b)(1), as it demonstrates, *inter alia,* gross mismanagement of the estate and failure to timely provide information reasonably requested by the UST (*e.g.,* amendment of Schedule B, Line 11b).

WHEREFORE the UST respectfully requests that the Court grant this motion and immediately appoint a Chapter 11 trustee in this case or, alternatively dismiss the case.

RESPECTFULLY SUBMITTED this 28th day of June, 2023.

ILENE J. LASHINSKY
United States Trustee
District of Arizona

/s/ JAG (NY #2520005)
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JENNIFER A. GIAIMO
Trial Attorney

CERTIFICATE OF SERVICE

This is to certify that on June 28, 2023, a copy of the foregoing pleading was served on the Debtor by electronically mailing the same to the Debtor's counsel of record at the email address listed below:

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