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10 Attorneys for Defendants Elite Sports Builders,  
11 RH Dupper Landscaping, and JFK Electrical

7 **IN THE UNITED STATES BANKRUPTCY COURT**  
8 **FOR THE DISTRICT OF ARIZONA**

9 In re:

10 LEGACY CARES, INC.,

11 Debtor.

**Chapter 11**

**Case No. 2:23-bk-02832-DPC**

**Adv. Case No. 2:23-ap-00089-DPC**

**JOINDER IN WHOLESALE FLOORS'  
MOTION TO CONFIRM ABSENCE OF  
AUTOMATIC STAY**

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15 Mechanic's lien claimants Elite Sports Builders, LLC dba Sunland Sports  
16 ("Elite"), RH Dupper Landscaping, Inc. ("RH Dupper") and JFK Electrical Contracting  
17 Enterprises, Inc. ("JFK") hereby join in Wholesale Floors, LLC ("Wholesale")'s Motion  
18 to Confirm Absence of Automatic Stay [DE 218]. Elite, RH Dupper and JFK are  
19 defendants, cross-claimants, and/or counterclaimants in the lawsuit that Whole filed in  
20 Maricopa County Superior Court, Case No. CV2022-013494 and/or in the related cases  
21 listed in the caption that have been consolidated, which Wholesale refers to as the "State  
22 Court Cases." In addition to seeking foreclosure of the mechanic's liens against Debtor's  
23 leasehold interest in the Legacy Sports Park and Pacific Proving, LLC's fee title in the  
24 Legacy Sports Park, Elite, RH Dupper, and JFK have also asserted claims for relief for  
25 breach of contract and/or unjust enrichment against general contractor Okland  
26 Construction Company, Inc. ("Okland"), among others, and a Payment Bond Claim  
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1 against Okland and Liberty Mutual .

2 The Debtor removed the State Court Case to this Court *in part*. Specifically, the  
3 Debtor’s notice of removal states that “the Removed Case consists of all claims,  
4 counterclaims and cross-claims asserted in the State Court Case *except for*: (1) breach of  
5 contract, breach of the implied covenant of good faith and fair dealing, and unjust  
6 enrichment claims asserted against Okland Construction Company, Inc.; and (2)  
7 payment bond claims against Okland Construction Company, Inc. and/or Liberty Mutual  
8 Insurance Company.” [DE 127].  
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11 Elite, RH Dupper, and JFK herby join Wholesale’s motion under Local Rule of  
12 Bankruptcy Procedure 4001-1(a) for entry of an order confirming that the automatic stay  
13 of 11 USC § 362(a) does not apply to continued prosecution of Okland and Liberty  
14 Mutual that have not been removed to this Court (the “Non-Removed Claims”). As  
15 Wholesale has explained, regardless of whether the Non-Removed Claims have any  
16 connection to this bankruptcy case, “[t]he automatic stay of section 362(a) protects only  
17 the debtor, property of the debtor or property of the estate. It does not protect non-debtor  
18 parties or their property. Thus, section 362(a) does not stay actions against guarantors,  
19 sureties, corporate affiliates, or other non-debtor parties liable on the debts of the  
20 debtor.” *In re Advanced Ribbons & Office Prods., Inc.*, 125 B.R. 259, 263 (B.A.P. 9th  
21 Cir. 1991) (citations omitted).  
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25 The Debtor agreed to the relief requested in connection with Wholesale’s motion.  
26 It would be unfair to grant that relief to one mechanics’ lienholder and not to the others.  
27 Thus, any relief granted to Wholesale should likewise be granted to the similarly  
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1 situated claimants as well. This Motion is supported by the following Memorandum of  
2 Points and Authorities and the entire file in this matter, all of which are incorporated  
3 herein by this reference.  
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5 **MEMORANDUM OF POINTS AND AUTHORITIES**  
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7 **I. FACTS**

8 Elite, RH Dupper, and JFK incorporate the facts set forth in Whole's motion in  
9 paragraphs I(A) and I(B)(3), (6)-(11), and (13) as if fully set forth herein, and add the  
10 following additional facts relevant to their own claims that should be found not to be  
11 subject to the automatic stay.  
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13 1. On October 10, 2022, Wholesale Floors filed a Complaint in Maricopa  
14 County Superior Court, Case No. CV2022-013494, against Debtor, Pacific Proving, UMB  
15 Bank (the beneficiary under the construction deed of trust), Okland, Liberty Mutual, and  
16 the other contractors who had recorded mechanics' liens against the Legacy Sports Park.  
17 The case was eventually consolidated with lawsuits brought by other mechanics'  
18 lienholders.  
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21 2. On November 11, 2022, Elite and RH Dupper filed a joint Counterclaim /  
22 Crossclaim (attached hereto, without exhibits, as Exhibit A and incorporated herein by  
23 reference) asserting the following counterclaims/crossclaims:  
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- 25 a. **First Claim for Relief** – Elite's Breach of Contract claim against  
26 Okland.  
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- b. **Second Claim for Relief** – RH Dupper’s Breach of Contract claim against Okland.
- c. **Third Claim for Relief** – Elite & RH Dupper’s claim for lien foreclosure
- d. **Fourth Claim for Relief** – Elite & RH Dupper’s claims for unjust enrichment as to Legacy, Pacific Proving, and Okland.
- e. **Fifth Claim for Relief** – Elite & RH Dupper’s Payment Bond Claims against Liberty Mutual and Okland

3. On December 8, 2023, JFK filed its Counterclaim/Crossclaim and Third Party Complaint (attached hereto without exhibits as Exhibit B and incorporated herein by reference ) asserting the following:

- a. **First Claim for Relief** – Breach of Contract against National Sports Opportunity Partners, LLC.
- b. **Second Claim for Relief** – Breach of Contract against Legacy Sports USA.
- c. **Third Claim for Relief** – Lien foreclosure as to all Counterdefendants and Crossdefendants.
- d. **Fourth Claim for Relief** – Unjust enrichment as to Pacific Proving, National Sports Opportunity Partners, LLC and Legacy Sports USA.

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**II. LEGAL ANALYSIS**

Elite, RH Dupper, and JFK hereby adopt the analysis set forth in Section II of Wholesale’s motion as if fully set forth herein and join Wholesale’s request for entry of a “comfort order” confirming that the automatic stay does not apply to any non-removed claims in the State Court Case.

**III. RELIEF REQUESTED**

Elite, RH Dupper, and JFK request this Court to grant Whole’s requested “comfort order” and to make it clear that the requested order applies to the non-removed claims against Okland and/or Liberty Mutual asserted by any and all entities, including Elite, RH Supper, and JFK in the State Cour Case.

**DATED** this 30<sup>th</sup> day of June, 2023.

**PALECEK & PALECEK PLLC**

By: /s/ Karen A. Palecek  
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Attorneys for Defendants

COPY of the foregoing served via the Court’s ECF system this 30<sup>th</sup> day of June, 2023 to:

All parties that have entered appearances.

/s/ Sara Mills  
Sara Mills