

1 ILENE J. LASHINSKY (#3073)
2 United States Trustee
3 District of Arizona

4 JENNIFER A. GIAIMO (NY #2520005)
5 Trial Attorney
6 230 North First Ave., Suite 204
7 Phoenix, Arizona 85003-1706
8 Telephone: (602) 682-2600
9 Mobile: (202) 590-8699
10 Email: Jennifer.A.Giaimo@usdoj.gov

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

11 In re:)
12) Chapter 11
13 LEGACY CARES, INC., an Arizona)
14 non-profit corporation,) Case No. 2:23-bk-02832-DPC
15 Debtor.)
16) **UNITED STATES TRUSTEE’S**
17) **EMERGENCY MOTION TO**
18) **APPOINT CONSUMER PRIVACY**
19) **OMBUDSMAN AND SUPPLEMENT**
20) **TO MOTION TO APPOINT**
21) **CHAPTER 11 TRUSTEE**

22
23
24
25
26
27
28
On August 4, 2023, Debtor, Legacy Cares, Inc. (“Debtor”), filed a motion for order establishing bidding procedures for the sale of substantially all of Debtor’s assets (“Sale Motion”). *See Docket #335*. As explained below, the sale involves the transfer of “Personally Identifiable Information” (hereinafter “PII”) that requires the appointment of a consumer privacy ombudsman under Bankruptcy Code, 11 U.S.C. (“Code”), section 363(b)(1).

On August 9, 2023, this Court issued an “under advisement” ruling denying the United States Trustee’s (“UST”) motion to appoint a Chapter 11 trustee pursuant to Code

1 sections 1104(a)(1) and (2). *See Docket #368*. In that ruling, the Court noted that, in
2 order to grant the extraordinary relief of appointing a Chapter 11 trustee, the “Court must
3 be persuaded that Debtor’s current management should no longer be entrusted with
4 Debtor’s fiduciary duties.” *See Docket #368, at 4*. The Court also noted that both the
5 Court and the UST “intend to make sure any party engaged in wrongdoing before or after
6 the Petition Date will be held to account.” *See Docket #368, at 8*.

7
8
9 Two crucial new factual developments have come to light that make clear that the
10 Debtor should no longer be entrusted with its fiduciary duties. First, on August 17, 2023,
11 Debtor falsely stated that the Debtor had no privacy policy in effect as of the petition
12 date. Second, on June 21, 2023, Debtor filed its May 2023 monthly operating report
13 reflecting payments due to equipment lessors owned by Michael R. Kuntz, who was
14 found by the Securities Commissioner of the State of North Dakota to have engaged in
15 fraudulent activity involving both Legacy Sports USA, LLC (“Sports”) and its owners
16 and managers (Randy Miller, Chad Miller, and J. Michael Baggett). The fraudulent
17 activity and its ties to Sports and its owners are detailed in the April 24, 2023 Order by
18 the Securities Commissioner, which is attached as Exhibit B to the Declaration of
19 Timberly Wolf being filed herewith, (hereinafter “the Kuntz Order”).

20
21
22 Based on these developments, the UST requests that the Court order the
23 appointment of a consumer privacy ombudsman pursuant to Code section 363(b)(1) and
24 appoint a Chapter 11 trustee. In support of this request, the UST respectfully submits the
25 following points and authorities.
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Privacy Policy and Consumer Privacy Ombudsman**

3 1. As noted above, on August 4, 2023, Debtor filed the Sale Motion, which
4 states that PII will be among the assets transferred as part of the sale. *See Docket #335 at*
5
6 5.

7 2. Code section 363(b)(1) states that “if the debtor in connection with offering
8 a product or a service discloses to an individual a policy prohibiting the transfer of [PII] .
9 . . and if such policy is in effect on the date of the commencement of the case, then the
10 [Debtor] may not sell or lease [PII] to any person unless – (A) such sale or such lease is
11 consistent with such policy; or (B) after appointment of a consumer privacy ombudsman
12 in accordance with section 332, and after notice and a hearing the court approves such
13 sale or such lease. . . .” 11 U.S.C. § 363(b)(1).
14
15

16 3. On August 7, 2023, UST’s counsel emailed Debtor’s counsel and inquired
17 whether the Debtor had a privacy policy in effect as of the petition date for purposes of
18 Code section 363(b)(1).
19

20 4. On August 12, 2023, Debtor’s counsel responded and stated that the Debtor
21 does not have a privacy policy.
22

23 5. On August 16, 2023, UST’s counsel again emailed Debtor’s counsel and
24 asked for clarification whether the Debtor had a privacy policy *in effect as of the petition*
25 *date*.
26

27 6. On August 17, 2023, Debtor’s counsel responded stating, “[t]here was no
28 privacy policy in place as of the petition date for either Cares or Elite.”

7. On August 18, 2023, the UST conducted an internet archive website search, which revealed that, as of June 6, 2023 (more than one month after the petition date), the Debtor had disclosed a privacy policy to the public through its website, legacycaresinc.org/privacy-policy. *See Declaration of Timberly Wolf and Exhibit A attached thereto.*

8. Based on the UST's discovery, and pursuant to 11 U.S.C. § 363(b)(1), it is imperative that a consumer privacy ombudsman be appointed in order to ensure that PII and consumer data is adequately protected in the event such PII is transferred in the sale.

9. The discovery of the archived website reflecting that Debtor did have a privacy policy in effect as of the petition date signifies that the Debtor either intentionally or recklessly misrepresented that it did not have a privacy policy in effect as of the petition date.

10. Based on the misrepresentation described in the preceding paragraph, it is patently clear that the Debtor cannot be trusted to properly ensure that all statutory requirements are satisfied with respect to the proposed sale of its assets and, therefore, a trustee should be appointed.

NSOP, ICON, and Leftfield

11. On April 24, 2023, the North Dakota Securities Commissioner issued the Kuntz Order, which sets forth fraud findings against National Sports Opportunity Partners, LLC (“NSOP”) and Michael R. Kuntz (“Kuntz”). *See Declaration of Timberly Wolf, Exhibit B.*

1 12. Kuntz operates and controls NSOP, ICON Investment Group, LLC
2 (“ICON”), and Leftfield Development, LLC (“Leftfield”).

3 13. NSOP, ICON, and Leftfield are all listed as creditors in this case.

4 14. NSOP and Leftfield are identified as current equipment lessors, and NSOP
5 is currently being paid by the Debtor.
6

7 15. In the Kuntz Order, it was found that from between October 2021 and July
8 2022, Kuntz, along with another individual, raised over \$25 million from various
9 individuals and entities based upon the representation that the funds would be used in part
10 to purchase an equity interest in Legacy Sports USA, LLC (“Sports”).
11

12 16. According to the Kuntz Order, investor money fraudulently obtained by
13 Kuntz totaling \$12,500,000 was wired to Sports’ owners, Randy Miller (\$4.5 million), J.
14 Michael Baggett (\$4.5 million), and Chad Miller (\$3.5 million). Investor funds were also
15 funneled to Kuntz’ entities ICON and Leftfield.
16
17

18 17. Debtor’s May and June 2023 operating reports reflect assets leased from
19 NSOP and Leftfield and a \$21,000 payment by Debtor to NSOP during Week 9 of
20 Debtor’s budget. *See Docket #305, at 150.*
21

22 18. In light of the fraudulent activity that was established by the North Dakota
23 Securities Commissioner on the part of Kuntz and his entities NSOP, ICON, and
24 Leftfield, and in light of the involvement of Sports’ owners and managers in that
25 fraudulent activity, payments now from Debtor to Kuntz’s entities demand immediate
26 investigation to ensure that those payments are proper. That investigation can only be
27 accomplished by a neutral Chapter 11 trustee who has no prior involvement with these
28

1 entities and who can be entrusted with ensuring that estate assets are being properly
2 distributed for only legitimate, reasonable, and necessary expenditures.

3 WHEREFORE the UST respectfully requests that the Court order the immediate
4 appointment of a consumer privacy ombudsman and a Chapter 11 trustee and grant and
5 other relief that the Court deems just in this case.
6

7 RESPECTFULLY SUBMITTED this 21st day of August, 2023.
8

9 ILENE J. LASHINSKY
10 United States Trustee
District of Arizona

11 /s/ JAG (NY #2520005)
12

13 JENNIFER A. GIAIMO
14 Trial Attorney
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

This is to certify that on August 21, 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:

ROBERT H. MCKIRGAN

Papetti Samuels Weiss McKirgan LLP
16430 N. Scottsdale Rd., Ste. 290
Scottsdale, AZ 85254
480-800-3533
Email: rmckirgan@pswmlaw.com

J. HENK TAYLOR

Warner Angle Hallam Jackson & Formanek, PLC
2555 E. Camelback Rd.
Ste 800
Phoenix, AZ 85016
602-707-1480
Fax : 602-234-0419
Email: htaylor@warnerangle.com

/s/ Jennifer A. Giaimo

JENNIFER A. GIAIMO
Trial Attorney