IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWRE

In re Charge Enterprises, Inc., Debtor.	Chapter 11 Case No. 24-10349 (TMH) Objection Deadline: April 12, 2024 Hearing Date: April 23, 2024

JOINDER, OBJECTION AND RESERVATION OF RIGHTS OF SHAREHOLDER TIMOTHY KLINTWORTH TO THE DEBTOR'S DISCLOSURE STATEMENT AND PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION [CORRECTED]

Timothy Klintworth (the "Shareholder") for himself and on behalf of all others similarly situated shareholders of Charge Enterprises, Inc. ("Charge" or "Debtor" or the "Company")[1] respectfully submits this joinder, objection and reservation of rights (the "Objection") to the Disclosure Statement and Confirmation of the Prepackaged Plan of Reorganization of Charge Enterprises, Inc. In support of its Objection, the Shareholder states:

I. BACKGROUND

1. The Debtor's public filings prepetition and the filings in the Chapter 11 case suggest that it is solvent on at least a balance sheet basis. Its pre-packaged plan, negotiated with and agreed to by the principal lender, calls for payment of all unsecured debt in full and significant payments to insiders. Nonetheless, public equity is to be wiped out with the prepetition lender emerging as the Debtor's sole equity owner. Put simply, the only constituency harmed by the chapter 11 case is equity.

2. At the inception of the case, the Shareholder and others sought the appointment of an equity committee. Following an exchange of correspondence with the U.S. Trustee's office, the U.S. Trustee ("UST") declined to support the appointment of a committee.

[1] Mr. Klintworth owns 299, 241.75 shares of common stock of Charge Enterprises, Inc.. His business address is 2045 W. Grand Ave, PMB 84396, Chicago, IL, 60612

3. The Debtor is a publicly traded company that was listed on The Nasdaq Global Market under the symbol "CRGE" from April 12, 2022 to February 20, 2024, and is currently traded on the over-the-counter market. As of March 1, 2023, there were over 1,000 registered stockholders of record of Charge's common stock. This number does not include beneficial holders whose shares are held of record by banks, brokers, financial institutions, and other nominees.

4. The Debtor's assets and liabilities as reported can be summarized as follows:

- The Disclosure Statement represents that according to the most recent set of unaudited financial statements, there are assets with a book value of approximately $198,495,000 and liabilities totaling $119,667,000 as of January 31, 2024, a positive net worth of approximately $80,000,000. (Plan § 1.6)

- The assets include, among other things, cash and cash equivalents, accounts receivable, inventory, deposits on purchased inventory., property and equipment, investments in non-marketable securities, deferred tax assets, investments in subsidiaries, intercompany receivables, and intellectual property. (*Id.*)

- The liabilities include, among other things, accounts payable, deferred tax liabilities, and the Debtor's obligations under the Securities Purchase Agreements, the Notes, and the Exchange Agreement. (*Id.*)

- There is relatively little unsecured debt. The Debtor notes in § 1.8 of the Plan that there are or will be General Unsecured Claims of $1,782,308 - $2,407,308, which will be paid in full. (Plan § 1.8).

5. The Debtor's SEC Form 10Q for the quarter ended September 30, 2023, filed on November 8, 2023, reports that Charge had cash of $51,359,000, accounts receivable of $55,768,000, and total current assets of $126,035,000. Charge reported total current liabilities of $134,781,000, inclusive of accounts payable of $75,105,000, contract liabilities of $25,201,000

and $27,126,000 of long-term debt considered current. Charge also reported a gross profit of $23,059,000 on revenues of $473,412,000 for the nine months ended September 30, 2023, and a net loss of $24,460,000 for the same period.

6. The Company's SEC Form 10K for the year ended December 31, 2022, contained an unqualified opinion from Charge's auditors.

7. The Debtor's own Plan filed states that as of the end of January 2024, assets exceed liabilities by a significant amount.[2] In correspondence to the UST, the Debtor acknowledged that shareholders equity (after backing out the accrued dividends/liquidation preference for the Series D and E preferred stock) was a positive $32,915,040.25. However, according to the Debtor, that value is misleading because there is a large "Investments in Subsidiaries" asset on Charge's books that includes the acquisition cost of a subsidiary (Get Charged, Inc.) that has ceased operations and is worthless. The Debtor has not disclosed when Get Charged, Inc. became worthless, or why Charge's consolidated financial statements included value for a worthless asset.

8. Finally, three (3) Management Employment Agreements shall be included in a Rejection Schedule and Allowed Claims resulting from the rejection of such Management Employment Agreements Allowed in the amount of up to $782,308 will be paid in full on the Effective Date.[3] (Plan, § 5.1(d)).

9. This case is complex and it is moving quickly. With a Confirmation Hearing set for

[2] The Debtor's verified Voluntary Petition [D.I. 1] states that as of January 31, 2024, there are total assets of approximately $114,368,349 and total debts of $48,718,181, which would suggest the Debtor has substantially more assets than liabilities. Yet, the Plan contemplates paying the secured Arena parties $51 million in New Common Stock (100% of the New Common Stock), General Unsecured Creditors up to $2.4 million, and equity Interests $0.00.

[3] On a per Management Employment Agreement basis these Allowed amounts are $316,228 (Harper-Denson), $241,927 (Biehl), and $224,153 (Schweller).

April 23, 2024, all indications are that Arena and the Debtor are utilizing the tactics of speed and finality to achieve a quick transfer of secured debt to equity without considering the Debtor's true potential value to equity holders. Charge is a publicly traded corporation, with a capital structure of multiple layers of mezzanine preferred stock, some of which is held by the Prepetition and DIP Lenders.

10. The case has so recently been filed, there has been no chance to untangle the series of agreements and issuances of securities described in the Plan. No schedules or statements of financial affairs have been scrutinized either.

11. As a general matter, a debtor's officers and directors have a duty to maximize debtor's estates to the benefit of shareholders as well as creditors. See Commodity Futures Trading Comm'n v, Weintraub, 471 U.S. 343, 355 (1985); In re NNN 400 Capitol Ctr. 16 LLC, 632 B.R. 243, 268 (D. Del. 2021), aff'd sub nom. In re NNN 400 Capitol Ctr. 16 LLC., No. 21-3013, 2022 WL 17831445 (3d Cir. Dec. 21, 2022). That does not appear to have occurred in this case.

12. The deal that Management struck allows three (3) senior individuals to collect over $750,000 in severance on the Effective Date. Plus, the Plan contains provisions by which Arena and the directors and officers will release each other from claims, which includes D&O Claims. As such, it cannot be said that Management is incentivized to work with any party other than the Prepetition Lenders (who will be new equity holders of Charge) because of the cash and releases they receive under the Plan as currently drafted.

13. All of the dealings in this case have also occurred without the customary traditional notice to or involvement of equity Interest holders. As a result of the entry of the Equity Notice Order, many equity Interest holders may not have actual notice of the events occurring in the case and be unable to protect their rights because of the modified notice procedures.

14. It appears that there is at least one interested party who also believes that there is reason to pause the expeditious action, and to investigate the Debtor's prepetition dealings with Arena on behalf of shareholders. So far, Korr Acquisitions Group, Inc., Korr Value L.P. and Kenneth Orr (collectively "KORR") have sought to examine the Debtor and Arena's actions. The Shareholder understands that there are motions pending to compel discovery and to adjourn the date for confirmation along with the date to object to the Plan.

II. JOINDER IN KORR'S REQUEST FOR THE ADJOURNMENT OF THE CONFIRMATION HEARING AND DATE TO OBJECT TO THE PLAN

15. First, the Shareholder joins in the relief requested by KORR for an adjournment of the date for confirmation, and the time to object to Confirmation of the Plan. KORR's reasoning and discovery efforts support the requested relief, including the need for an investigation into the pre-petition activities of Arena, and whether the Debtor has fairly valued (or valued at all), and agreed to release claims against Arena for no value.

16. Similarly, the current directors and officers have negotiated for themselves releases of pre-petition fiduciary breaches other than claims that might be covered by existing directors and officers' insurance policies. There is no discussion whatsoever in the Disclosure Statement regarding the value of any potential claims or the cost of these releases.

17. The Shareholder and others similarly situated are also entitled to adequate disclosures regarding the Debtor's finances. While the correspondence shared with the UST shed some light on the reasons for reporting differences, there are still many questions unanswered.

18. The expedited manner in which the case was filed and has proceeded is undeniable, and equity holders should be given an opportunity to determine how the Company finds itself in the current predicament.

III. PRELIMINARY OBJECTION TO PLAN

19. As currently drafted Article 5, Sections 5.1 provides for a purported settlement of

claims and releases of claims between and among Arena and the Directors and Officers. The Disclosure Statement is largely silent as to the value being exchanged as part of this settlement. As explained above, the exchange of releases under the conditions set forth in this case reinforces the notion that those negotiating this proposed Plan considered their own interests ahead of the interest of equity holders.

20. In addition, Article 9, Sections 9.4, 9.5 and 9.6 of the Plan provide for broad releases, exculpation and an injunction for any claims by the Debtor of any derivative claims that might be asserted against any of the Release Partiers (Released Parties, defined in 2.1 (98) as Arena, the Arena Related Parties, and the D's &O's); (Exculpated Parties defined in Section 2.1 (57), as the Debtor, the Debtors post-petition directors and representatives, and Arena).

21. The Plan should not be approved with these releases. At a minimum, the claims against Arena, or the D&O's should be transferred to a trust for the benefit of equity holders.

22. Furthermore, the Injunction language in Section 9.6 is exceedingly broad, and should not be approved. The Injunction enjoins the commencement or prosecution of actions by Entities who hold Cause of Actions that have been released or exculpated pursuant to Section 5., 9.4 or 9.5, or claims or interest that have been discharged pursuant to Section 9.1. Causes of Action is broadly defined in Section 2.1(18) to include all claims of such Entities whether asserted or unasserted, and whether direct, indirect or derivative. The breadth of the definition may give rise to an argument that the D&O's and Arena are released from direct claims by shareholders. Any attempt to include a non-consensus release of third-party claims should be specifically rejected. *See In re Continental Airlines*, 203 F.3d 203, 217 (3d Cir 2000). *See also Purdue Pharma, L.P. v. City of Grande Praire (In re Pharma L.P),* 69 F.4th 45, 2023 U.S. App. LEXIS 13236 (2d Cir. 2023), *cert. granted, Harrington v. Purdue Pharma, L.P.*, 2023 U.S. LEXIS (U.S. Aug. 10, 2023).

23. The Debtor's Notice of Non-Voting Status With Respect to Impaired Classes Deemed to Reject the Plan of Reorganization states ambiguously that "..if the Plan of Reorganization is confirmed by the Court, the release, injunction, and exculpation provisions set forth in Article IX of the Combined Disclosure Statement and Plan may be binding on you. However, for the reasons set forth in *Continental Airlines*, none of these provisions, however, can release direct claims held by shareholders, and nothing in the Plan or in Confirmation should adversely affect claims that the shareholders may bring in the future.

24. Ultimately, the D&O's and Arena have done their best to create a plan that hands equity to Arena and attempts to protect both the D&O's and Arena against any asserted or unasserted claims to the detriment of other stakeholders, while squeezing out all equity holders without compensation at all.

25. The Proposed Plan of Reorganization should not be confirmed.

IV. RESERVATION OF RIGHTS.

26. The Shareholder reserves his right to supplement this Objection and to join in the Objections filed by others.

Dated: April 12, 2024
Wilmington, Delaware

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CERTIFICATE OF SERVICE

I, P. Brad deLeeuw, do hereby certify that on April 12, 2024, I caused a copy of the forgoing **Objection to Confirmation of Plan, Joinder, Objection and Reservation of Rights of Shareholder Timothy Klintworth to the Debtor's Disclosure Statement and Prepackaged Chapter 11 Plan of Reorganization,** to be served on the following Noticed Parties by electronic mail:

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