

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

ONH AFC CS INVESTORS LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11 (Subchapter V)

Case No. 23-10931 (CTG)

(Jointly Administered)

**Obj. Deadline: September 30, 2024, 4:00 p.m. (ET)**

**Hearing Date: October 7, 2024, 10:00 a.m. (ET)**

**MOTION TO WITHDRAW AS COUNSEL**

Pursuant to rule 9010-2(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), Jones Day and Richards, Layton & Finger, P.A. ("RLF" and, together with Jones Day, the "Movants") respectfully move the Court for permission to withdraw as counsel for Mr. Elchonon "Elie" Schwartz and Nightingale Properties LLC (together, the "Nightingale Parties") in the above-captioned cases and for the Court to terminate their appearances in these cases. In support of this Motion, the Movants state as follows:

**BASIS FOR RELIEF REQUESTED**

1. The Nightingale Parties retained Jones Day in May 2023. Jones Day's representation of the Nightingale Parties in connection with the above-captioned cases is within the scope of that representation.
2. After the Nightingale Parties decided to appear in the above-captioned cases, the Nightingale Parties retained RLF to serve as Delaware counsel in the above-captioned cases.

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<sup>1</sup> The last four digits of the Debtors' federal tax identification numbers are 1199 (ONH AFC CS Investors LLC) and 6326 (ONH 1601 CS Investors LLC). The Debtors' mailing address is 3445 Peachtree Road, Suite 1225 Atlanta, GA 30326.

3. On August 8, 2023, the Movants entered an appearance on behalf of the Nightingale Parties in the above-captioned cases. See ECF No. 75. That same day, Zachary Shapiro of RLF moved the Court to admit Matthew C. Corcoran and Thomas M. Wearsch of Jones Day *pro hac vice*. See ECF Nos. 76 & 77. The Court granted those *pro hac* motions on August 23, 2023. See ECF Nos. 94 & 95.

4. The Nightingale Parties presently owe (i) Jones Day a substantial amount, much of which is more than 120 days outstanding, and (ii) RLF fees for services performed, much of which is more than six months outstanding. The Nightingale Parties informed the Movants that they do not have funds or assets sufficient to pay the Movant's outstanding or future fees.

5. Jones Day advised the Nightingale Parties that the Movants could not continue to represent the Nightingale Parties in connection with the above-captioned cases and would seek to withdraw as counsel in these cases due to their failure and inability to pay for the Movants' services. In addition, Jones Day provided a draft of the Motion to the Nightingale Parties in advance of filing, and the Nightingale Parties told Jones Day that they do not oppose the relief requested in the Motion.

6. Good cause exists for the Movants to withdraw as counsel under Delaware Lawyers' Rule of Professional Conduct 1.16(b)(5) because the Nightingale Parties have failed "substantially to fulfill an obligation to the lawyer[s] regarding the lawyer[s]' services and ha[ve] been given reasonable warning that the lawyer[s] will withdraw unless the obligation is fulfilled." See also N.Y. Rule of Professional Conduct 1.16(a)(5) (allowing withdrawal when "the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees"); Ohio Rule of Professional Conduct 1.16(a)(5) (allowing withdrawal when "the client fails *substantially* to fulfill an obligation, financial or otherwise, to the lawyer regarding the lawyer's

services and has been given *reasonable* warning that the lawyer will withdraw unless the obligation is fulfilled" (emphases in original)).

**NOTICE**

7. Pursuant to Local Rule 9010-2, governing withdrawal of attorneys, the Movants have filed this Motion and served it upon the Nightingale Parties via registered or certified mail. In addition, a copy of this Motion was transmitted via email to the Nightingale Parties.

**CONCLUSION**

For the foregoing reasons, the Movants respectfully request the Court to enter an order substantially in the form of Exhibit A permitting the Movants to withdraw as counsel and terminating their appearances for the Nightingale Parties in the above-captioned cases.

Dated: September 19, 2024  
Wilmington, DE

Respectfully submitted,

/s/ Emily R. Mathews

Zachary I. Shapiro (No. 5103)

Emily R. Mathews (No. 6866)

**RICHARDS, LAYTON & FINGER, P.A.**

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*Withdrawing Counsel to Mr. Elchonon "Elie"  
Schwartz and Nightingale Properties, LLC*

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**ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL**

The Court having considered the motion (the "Motion") of Jones Day and Richards, Layton & Finger, P.A. (collectively, the "Movants") to withdraw as counsel for Mr. Elchonon "Elie" Schwartz and Nightingale Properties LLC (together, the "Nightingale Parties") in the above-captioned cases, and having considered any opposition filed in response to the Motion; and after due deliberation,

IT IS HEREBY ORDERED THAT:

- 1 The Motion is GRANTED.
- 2 Movants' appearances in the above-captioned cases and their respective representations of the Nightingale Parties in connection with those cases is hereby TERMINATED, effective IMMEDIATELY.
- 3 All notices and papers served or required to be served in the above-captioned cases shall be given and served on the Nightingale Parties at the following address unless the Nightingale Parties request in writing notices be given or papers be served at a different address:

512 West 22nd Street, 8th Floor  
New York, New York 10011

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- 4 The Court retains jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

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**NOTICE OF MOTION AND HEARING**

PLEASE TAKE NOTICE that, on September 19, 2024, Jones Day and Richards, Layton & Finger, P.A. ("RLF" and, together with Jones Day, the "Movants"), filed the *Motion to Withdraw as Counsel* (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court").

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing and filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **September 30, 2024 at 4:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before The Honorable Craig T. Jalbert at the Court, 824 North Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801 on **October 7, 2024 at 10:00 a.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH**

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**THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE  
MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: September 19, 2024  
Wilmington, DE

Respectfully submitted,

*/s/ Emily R. Mathews*

Zachary I. Shapiro (No. 5103)

Emily R. Mathews (No. 6866)

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*Withdrawing Counsel to Mr. Elchonon "Elie"  
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