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**COUNSEL FOR PLAINTIFF ALAN D. HALPERIN,
SOLELY IN HIS CAPACITY AS UNSECURED
CREDITOR TRUSTEE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

**SENIOR CARE CENTERS, LLC, *et al.*¹,

Debtors.**

Chapter 11

**Case No. 18-33967-sgj

(Jointly Administered)**

**ALAN D. HALPERIN, solely in his capacity
as Unsecured Creditor Trustee,**

Adv. Proc. No. _____

Plaintiff,

v.

MARK MCKENZIE,

Defendant.

COMPLAINT

COMES NOW, Alan D. Halperin, solely in his capacity as the Unsecured Creditor Trustee for Senior Care Centers, LLC, *et al.* (the "Plaintiff" or "Trustee"), and files this Complaint against Defendant Mark McKenzie ("McKenzie" or the "Defendant") as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the Order (I) Directing Joint Administration of Chapter 11 Cases, and (II) Granting Related Relief [Docket No. 569].

INTRODUCTION

1. The Defendant, who was the President and a director of the Debtors, was relieved of his duties by the Debtors' board of directors (the "Board") in July 2016 for cause, *i.e.*, due to his management and performance failures. Despite his termination for cause, the Debtors paid the Defendant millions of dollars in unwarranted bonuses and severance payments during the four years prior to the December 4, 2018 petition date (the "Petition Date").

2. Additionally, McKenzie breached his fiduciary duties to the Debtors through a series of transactions that favored the Debtors' indirect parent, Granite Investment Group ("GIG"), and its affiliates. This is not surprising, given that he was hired and employed by GIG while also being employed by the Debtors.

3. Accordingly, the Trustee files this litigation to avoid and recover the transfers received by the Defendant and to hold him responsible for his breaches of fiduciary duty.

PARTIES

4. The Debtors, including Senior Care Centers, LLC ("SCC"), filed chapter 11 bankruptcy cases in the U.S. Bankruptcy Court for the Northern District of Texas on the Petition Date.²

5. The Trustee was appointed pursuant to the *Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "Plan") confirmed in the Debtors' chapter 11 cases. Pursuant to the Plan and related Unsecured Creditor Trust Agreement, the Trustee holds causes of action against the Defendant.

6. Defendant McKenzie is an individual resident of the State of Texas and may be served by U.S. Mail pursuant to FED. R. BANK. P. 7004 at 6904 Shadow Creek Court, Fort

² Eight additional Debtors filed chapter 11 cases on January 28, 2019 and May 20, 2019.

Worth, Texas 76032. McKenzie was an insider of the Debtors at all times relevant to this Complaint because, without limitation, he was a director and an officer of SCC.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
8. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
9. This adversary proceeding is a “core” proceeding to be heard and determined by the Court pursuant to 28 U.S.C. § 157(b)(2)(B) and the Court may enter final orders for matters contained herein.

FACTUAL BACKGROUND

I. The Debtors’ Formation and Growth

10. The principals of GIG, a privately held real estate fund based in Irvine, California, incorporated SCC in 2009. GIG was the Debtors’ indirect majority equity owner. At or around the time of SCC’s formation, GIG acquired several skilled nursing facilities for the express purpose of leasing the facilities to SCC, and to profit from that leasing arrangement.

11. GIG owned approximately 73.5% of Silver Star Investments, LLC, the entity that formed and remained the majority owner of SCC until the Plan became effective. SCC owned, directly or indirectly, 100% of each of the other Debtors.

12. The Defendant was hand-picked by GIG to become President of the Debtors. The Defendant was the highest-ranking officer of the Debtors as they did not, at that time, have a Chief Executive Officer.

13. Notably, the Defendant was not employed by the Debtors alone, but also by GIG. Accordingly, from the outset of his employment and the Debtors’ formation, he had significant conflicts of interest, as he was wearing two hats—that of an employee of the Debtors and that of

an employee of GIG. These conflicts ultimately resulted in the Debtors' demise, as McKenzie was not acting in the Debtors' best interest.

14. Under McKenzie's management, the Debtors experienced a rapid, debt-fueled expansion after their formation. The Debtors became one of the largest providers of skilled nursing services in the country, providing care on a daily basis to approximately 9,000 patients. The Debtors were licensed operators of ninety-seven (97) skilled nursing facilities, nine (9) assisted living facilities, and six (6) hospice facilities (collectively, the "Facilities" and each, a "Facility") located throughout Texas and Louisiana. In addition, the Debtors provided rehabilitation, therapy, and other services.

15. Prior to the Petition Date, GIG also formed a series of holding companies (the "Granite Landlords") and caused the Granite Landlords to acquire and/or develop approximately 34 skilled nursing and assisted living facilities (the "Granite Facilities") and enter into various leases (the "Leases") with certain Debtors. As the controlling party of both SCC and the Granite Landlords, and with the aid of McKenzie who worked for both SCC and GIG, GIG negotiated both "sides" of the Leases, *i.e.*, on behalf of the Debtor-tenants and the landlords. Moreover, GIG was further able to exploit its insider relationship with the Debtors by extracting disguised, illegal dividends from the leasing of the Granite Facilities to the Debtors at above-market rates.

II. The Defendant's Role at the Debtors

16. SCC hired McKenzie as its President (*i.e.*, its highest-ranking officer) in 2009. McKenzie served in that role until he was terminated for cause in July 2016. McKenzie was paid millions of dollars a year in salaries and bonuses, which caused him to turn a blind eye to the Debtors' financial condition.

17. McKenzie presided over a period of rapid, debt-fueled growth at the Debtors. He also negotiated on behalf of the Debtors to enter into the Leases at the Facilities where GIG was

the landlord. These Facilities were not leased at arm's length. When the lease rents were agreed to, McKenzie was employed by both GIG and the Debtors. Accordingly, no one was looking out for the interests of the Debtors in negotiating those agreements and McKenzie allowed Debtors to commit to (and continuously pay) above-market rents wherein they did not receive reasonably equivalent value. McKenzie's actions in this regard hampered the Debtors' financial performance, yet he was unable to correct the above-market leases because he was beholden to GIG.

18. Additionally, while at the helm of the Debtors, McKenzie permitted the Debtors to miss their employees' payroll.

19. On the same day the Debtors missed their payroll, McKenzie was engrossed in the potential acquisition of additional skilled nursing facilities in the Dakotas—an unfamiliar market well outside of the Debtors' geographical footprint—when he should have been attending to the Debtors' affairs, including basic matters such as insuring that payroll was funded.

20. Despite this calamitous event, the day after McKenzie caused the Debtors to miss payroll, he remarked to a colleague that he felt better about the company than he had in six months. McKenzie made this statement despite the fact that the Debtors' liquidity position had been completely eroded under his command.

21. In general, from roughly 2014 forward, McKenzie was an aloof and often absent leader. He delegated many of his responsibilities to a junior officer and failed to hold her accountable when the Debtors did not perform well.

22. Further, in 2015 and 2016, when the Debtors were facing liquidity crises, McKenzie failed to participate in meetings with top management.

III. The Debtors' Financial Condition and Insolvency

23. At SCC's inception in 2009, it leased fourteen (14) Facilities from GIG and its affiliates and was capitalized with \$13.5 million in equity, with an additional \$5 million in debt financing.

24. Over the next eight years, the Debtors grew to one hundred and nine (109) Facilities. This expansion was financed exclusively through debt.

25. While the Debtors' finances were never stable given their lack of adequate capitalization, the Debtors began experiencing extensive financial difficulties in 2013 and 2014.

26. From at least 2014 forward (and likely earlier), the value of the Debtors' assets was exceeded by the value of their liabilities.

27. From their inception, the Debtors had a recurring problem in adequately accounting for uncollectible accounts receivable. At year-end 2015, their patient accounts receivable were reported as \$151.7 million. This issue ballooned to the point where the Debtors had approximately \$100 million in uncollectible accounts receivable beginning in 2015. The Debtors' management never made an adequate provision for these uncollectible accounts.

28. Moreover, the Debtors dramatically overstated their goodwill. In 2015 and 2016, the Debtors stated that the value of their goodwill was \$23.8 million. The actual value of their goodwill, at a fair valuation, was between \$0 and \$4.25 million.

29. In September 2016, the Debtors acknowledged that their "current level of working capital is below a prudent level for a company of SCC's size." Indeed, in 2016, the Debtors experienced a net loss of nearly \$9 million.

30. The Debtors' losses sharply accelerated in 2017, as they posted losses exceeding \$94 million.

31. Evaluation of the Debtors' solvency is best-viewed on a combined basis because of the manner in which the Debtors intertwined their business. The Debtors did not prepare financial statements on an entity-by-entity basis but rather on a combined basis. Reporting to third-parties, including the Debtors' annual audits, was also on a combined (or consolidated) basis. The Debtors' books and records, at a fair valuation, show that the Debtors were insolvent with insufficient assets to cover their liabilities from 2014 through the Petition Date.

32. In addition to the insolvency in Debtors' books and records, the following facts, among others, demonstrate the Debtors' undercapitalization and insolvency of which the Defendant, as an insider, was aware:

- (a) **The Board's Acknowledgment of "Financial Headwinds":** Upon review and discussion of Debtors' operational and financial reports, specifically the latest income statement, balance sheets, and cash flow, from 2015 through the Petition Date, the Board "questioned the decline in operations margin" at nearly each meeting.
- (b) **Credit Agreement Default:** In 2016, the Debtors began experiencing more acute financial distress. Specifically, in June 2016, SCC defaulted under their then-existing credit agreement with CIBC due to failure to maintain an EBITDA-related financial covenant. The Debtors' CEO confirmed this at the August 2016 Board Meeting, when he noted that "the Company failed to meet the minimum EBITDA covenant. . . pursuant to the Private Bank Loan" and "[s]everal landlord covenants, primarily rent coverage ratios, were also not met. . . ."

(c) **Debtors Were Unable to Meet Payroll:** Starting in 2016, the Debtors had difficulty paying their debts as they came due, among other things, the Debtors were unable to meet their payroll obligations on several occasions. Specifically, on July 11, 2016, the Debtors failed to make payroll payments to their employees.³ Failing to meet payroll was a recurring problem for the Debtors, which led to the Debtors obtaining sporadic cash injections (i.e., equity contributions) from GIG, which GIG would require the Debtors to repay to parties from whom GIG borrowed the money for the equity contributions, including the Bridge Lenders described below.

33. Accordingly, the Debtors were each insolvent from at least January 2014 forward, as the value of their assets was exceeded by the value of their liabilities, the Debtors were not generally paying their debts as they became due, and because the Debtors lacked adequate capitalization.

34. Despite the Debtors' obvious insolvency, the Defendant received inflated salary, bonuses, and severance payments.

IV. The Defendant's Compensation and Severance

35. For 2015, McKenzie received a bonus of \$1,991,672 (the "2015 Bonus Transfer"), which amount was paid in January 2016. This was on top of the annual base salary of \$575,000, resulting in total cash compensation of \$2,566,672 for McKenzie for 2015. In 2016 he received a bonus of \$421,363⁴ for the first half of 2016 (the "2016 Bonus Transfer" and, collectively with the 2015 Bonus Transfer, the "Bonus Transfers").

³ This failure was the triggering event for the termination of McKenzie.

⁴ McKenzie was paid this bonus on August 4, 2016 even though he had been previously terminated by the Board.

36. Following his termination, McKenzie received severance payments of \$575,000 (the “Severance Transfers”, and collectively with the Bonus Transfers, the “Transfers”) pursuant to an obligation in his severance agreement (the “Severance Obligation”).

37. The Severance Obligation was fraudulent. It was premised on McKenzie’s purported voluntary resignation, which was a sham.

38. In fact, McKenzie was terminated for cause.

39. His termination was discussed and approved at a special Board meeting on July 14, 2016. McKenzie was not invited to, and did not participate in, this Board meeting.

40. McKenzie was terminated on or about July 27, 2016.

41. The Board terminated McKenzie for, without limitation, the following reasons:

- (a) The poor financial performance of the Debtors;
- (b) The Debtors’ failure to fund payroll on, without limitation, July 11, 2016;
- (c) A lack of confidence in McKenzie’s leadership of the Debtors; and
- (d) A lack of confidence in McKenzie by the Debtors’ vendors because they were not being paid in a timely manner.

42. Accordingly, he was not entitled to any amount under the terms of his employment with the Debtors, including the Severance Transfers, the Severance Obligation, or the 2016 Bonus Transfer.

43. However, due to his assistance to GIG over the years, the GIG-dominated Board decided to provide McKenzie with significant severance amounts.

44. Indeed, even after his termination was announced, John Heller, a Granite employee and Board member, continued to provide McKenzie with advice on how to best

negotiate with the Board over his severance.⁵ Despite owing fiduciary duties to the Debtors as a member of the Board, Heller provided material assistance to McKenzie, advocated on McKenzie's behalf, and assisted him in maximizing his severance package (despite the fact that McKenzie had been terminated).

45. Prior to filing this litigation, the Trustee requested that the Defendant return the Transfers. The Defendant has failed to do so as of the date of this Complaint. Further, the Trustee entered into a tolling agreement with the Defendant, thereby making this adversary proceeding timely.

46. At all times material hereto, the Debtors had at least one general unsecured creditor holding an allowable claim who, but for the Debtors' bankruptcy filings, would have standing to bring claims to avoid and recover the Transfers and avoid the Severance Obligation (collectively, the "Predicate Creditors").

47. The Predicate Creditors of Debtor SCC that could have avoided the Transfers and the Severance Obligation as of the dates of the Transfers and the Petition Date include, without limitation: CIT Finance, LLC and the Estate of Sandra S. Hogue.

COUNT I – FRAUDULENT TRANSFERS AND OBLIGATION (11 U.S.C. §§ 544(b) and 550 and TUFTA § 24.001 *et seq.*)

(Constructive Fraud)

48. The Trustee realleges the allegations contained in paragraphs 1-47, which are incorporated by reference as if set forth fully herein.

⁵ McKenzie's actions in this regard are particularly egregious as, in the context of another individual's termination in 2014, he remarked that "I don't like parting gifts ..." when discussing that individual's severance pay. When dealing with his own termination, McKenzie insisted upon receiving amounts that he had no legal right to receive.

49. Pursuant to 11 U.S.C. § 544, the Trustee brings this claim on behalf of the Debtors' estates and their creditors under the Texas Uniform Fraudulent Transfer Act, §§ 24.001 *et seq.* ("TUFTA").

50. SCC has one of more creditors for whom the Trustee can act whose claim arose before or within a reasonable time after the obligation was incurred. TUFTA § 24.006(a).

51. SCC made the Transfers, and incurred the Severance Obligation, to or for the benefit of the Defendant within four (4) years of the Petition Date.

52. SCC (and the Debtors generally) did not receive reasonably equivalent value in exchange for the Transfers and the Severance Obligation because the consideration purportedly provided in exchange was either non-existent or not reasonably equivalent.

53. At the time the Transfers were made and the Severance Obligation were incurred, the Debtors (and SCC in particular) (a) were engaged in a business or a transaction, or were about to engage in a business or transaction, for which the assets remaining with the Debtors were unreasonably small in relation to the business or transaction and/or (b) intended to incur, or believed that they would incur, debts that would be beyond their ability to pay as such debts matured and/or (c) were insolvent or became insolvent as a result of the Transfers or the Obligations.

54. Pursuant to 11 U.S.C. § 550(a), the Transfers are recoverable against the Defendant as well as any mediate and immediate transferees.

**COUNT II – FRAUDULENT TRANSFERS AND OBLIGATION (11 U.S.C. §§ 544(B)
AND 550 AND TUFTA § 24.001 *et seq.*)**

(Actual Fraud)

55. The Trustee realleges the allegations contained in paragraphs 1-47, which are incorporated by reference as if set forth fully herein.

56. As stated above, SCC made the Transfers, and incurred the Severance Obligation, to or for the benefit of the Defendant within four (4) years of the Petition Date.

57. SCC made the Transfers, and incurred the Severance Obligation, with actual intent to hinder, delay, or defraud creditors.

58. SCC's actual intent is evidenced by, without limitation, the following badges of fraud:

a) the Debtors, including SCC, were insolvent at the time of the Transfers;

b) the Transfers were paid to, or made for the benefit of, an insider who was aware of the financial peril the Debtors were facing;

c) the Defendant was aware of the Debtors' insolvency, debt structure, and inability to recover;

d) the Transfers were paid occurred shortly before or shortly after a substantial debt was incurred;

e) in particular, the Severance Obligation, the Severance Transfer and 2016 Bonus Transfer were based upon a sham, namely that McKenzie resigned when, in fact, he was fired;

f) the Transfers were unreasonably high in light of the consideration rendered by the Defendant; and

g) the Debtors' management was in disarray at the time of the Transfers.

59. Pursuant to 11 U.S.C. § 550(a), the Transfers are recoverable against the Defendant as well as any mediate and immediate transferees.

COUNT III – BREACH OF FIDUCIARY DUTY OF CARE

60. The Trustee realleges the allegations contained in paragraphs 1-47, which are incorporated by reference as if set forth fully herein.

61. As a director and officer of SCC, the Defendant owed fiduciary duties of care to SCC.

62. The duty of care is breached: (a) when a fiduciary engages in an irrational decision-making process, and (b) when the conduct of a fiduciary rises to the level of “gross negligence.”

63. The Defendant was required to discharge his duties with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

64. The following acts and omissions constituting breaches of duties owed by the Defendant to the Debtors:

- (a) Accepting, or requiring, the Debtors to lease, and continue to lease, the Facilities from GIG and its affiliates at above-market rates;
- (b) The failure to correct the above-market rents paid by the Debtors for the GIG-owned Facilities;
- (c) The payment of the rents to GIG and its affiliates;
- (d) The payment of excessive compensation to insiders, including, without limitation, the 2015 Bonus;
- (e) Causing, directing, advising, influencing, authorizing and/or allowing Debtors to enter into transactions and undertakings including, without

limitation, transactions involving GIG and its affiliates, for which they were not adequately capitalized and which damaged the Debtors and their financial and business interests;

- (f) Improperly abdicating and/or delegating duties, and/or failing to exercise reasonable diligence in connection therewith, and failing to properly monitor the Debtors, their management, and their business and financial affairs;
- (g) Causing, directing, advising, influencing, authorizing and/or allowing Debtors to (i) engage in representations, disclosures, and/or public announcements and releases of false or misleading information, and/or (ii) fail to disclose material and/or required information concerning the financial condition and business of Debtors, all as a result of negligence and gross negligence and/or without the exercise of reasonable care and diligence, which damaged Debtors and its financial and business interests, including but not limited to material misrepresentations regarding Debtors' accounts receivable;
- (h) Causing, directing, advising, influencing, authorizing and/or allowing Debtors to enter into fraudulent transfers;
- (i) Negligence and gross negligence or other breach of the duties of loyalty and/or care in allowing and/or causing Debtors to fail to pay vendors and other creditors while incurring additional indebtedness with no reasonable prospect for repayment;

- (j) Causing, directing, advising, influencing, authorizing and/or allowing the Debtors to enter into self-dealing transactions with or benefiting the Defendant and which were not in the best interests of the Debtors and damaged Debtors and its financial and business interests;
- (k) Causing, directing, advising, influencing, authorizing and/or allowing the Debtors to enter into insider or related party transactions with or benefiting other insiders and affiliates which were not in the best interests of the Debtors and which damaged SCC and its financial and business interests;
- (l) Serving as an employee of GIG while also serving as an officer and director of the Debtors; and
- (m) Improper use of information obtained by the Defendant to gain advantage for related parties and/or third parties to the detriment of Debtors.

65. In doing so, the Defendant did not act with the requisite level of care and acted in bad faith.

66. The actions or inactions of the Defendant were taken in bad faith and constituted willful and wanton misconduct and/or gross mismanagement that caused Debtors to suffer damages.

67. As a result of the Defendant's conduct, the Debtors were harmed and suffered damages.

68. Accordingly, the Plaintiff is entitled to a judgment against the Defendant for his breach of duty of care and damages in an amount to be proven at trial.

COUNT IV – BREACH OF FIDUCIARY DUTY OF LOYALTY

69. The Trustee realleges the allegations contained in paragraphs 1-47, which are incorporated by reference as if set forth fully herein.

70. The duty of loyalty obligated the Defendant to commit himself to the business of the Debtors with the attitude of promoting the interests of the Debtors and not himself or another entity (in particular, GIG).

71. The duty of loyalty is breached: (a) when a fiduciary fails to act in the face of a known duty to act, thereby demonstrating a conscious disregard for his responsibilities; (b) when a fiduciary “abdicates” his fiduciary responsibilities; (c) when a fiduciary acts in bad faith; and/or (d) when a fiduciary engages in self-dealing.

72. The Defendant owed a fiduciary duty of loyalty, which included, among other things, a duty to act honestly and in the best interest of the Debtors, to avoid conflicts between his personal interests (including his personal interest as a GIG employee) and the Debtors’ interests, to exercise his power for a proper purpose, and not to fetter his discretion.

73. In particular, the Defendant had a conflict of interest due to his service as an officer and board member of the Debtors and his service as an employee of GIG.

74. The following acts and omissions constituting breaches of duties owed by the Defendant to the Debtors:

- (a) Accepting, or requiring, the Debtors to lease, and continue to lease, the Facilities from GIG and its affiliates at above-market rates;
- (b) The failure to correct the above-market rents paid by the Debtors for the GIG-owned Facilities;
- (c) The payment of the rents to GIG and its affiliates;

- (d) The payment of excessive compensation to insiders, including, without limitation, the 2015 Bonus;
- (e) Causing, directing, advising, influencing, authorizing and/or allowing Debtors to enter into transactions and undertakings including, without limitation, transactions involving GIG and its affiliates, for which they were not adequately capitalized and which damaged the Debtors and their financial and business interests;
- (f) Improperly abdicating and/or delegating duties, and/or failing to exercise reasonable diligence in connection therewith, and failing to properly monitor the Debtors, their management, and their business and financial affairs;
- (g) Causing, directing, advising, influencing, authorizing and/or allowing Debtors to (i) engage in representations, disclosures, and/or public announcements and releases of false or misleading information, and/or (ii) fail to disclose material and/or required information concerning the financial condition and business of Debtors, all as a result of negligence and gross negligence and/or without the exercise of reasonable care and diligence, which damaged Debtors and its financial and business interests, including but not limited to material misrepresentations regarding Debtors' accounts receivable;
- (h) Causing, directing, advising, influencing, authorizing and/or allowing Debtors to enter into fraudulent transfers;

- (i) Negligence and gross negligence or other breach of the duties of loyalty and/or care in allowing and/or causing Debtors to fail to pay vendors and other creditors while incurring additional indebtedness with no reasonable prospect for repayment;
- (j) Causing, directing, advising, influencing, authorizing and/or allowing the Debtors to enter into self-dealing transactions with or benefiting the Defendant and which were not in the best interests of the Debtors and damaged Debtors and its financial and business interests;
- (k) Causing, directing, advising, influencing, authorizing and/or allowing the Debtors to enter into insider or related party transactions with or benefiting other insiders and affiliates which were not in the best interests of the Debtors and which damaged SCC and its financial and business interests;
- (l) Serving as an employee of GIG while also serving as an officer and director of the Debtors; and
- (m) Improper use of information obtained by the Defendant to gain advantage for related parties and/or third parties to the detriment of Debtors.

75. The Defendant intentionally and/or recklessness disregarded and ignored the risks and consequences or did not consider the risks and consequences associated with the above acts or omissions.

76. Nor did the Defendant consider or undertake available alternative transactions or other courses of action that would not have unduly risked or jeopardized the recovery of the Debtors' creditors or the financial viability of the Debtors.

77. The actions or inactions of the Defendant constituted willful and wanton misconduct.

78. The Defendant's bad faith, negligence, gross negligence, or recklessness caused loss and damage to Debtors and their creditors.

PRAYER FOR RELIEF

FOR THESE REASONS, the Plaintiff is entitled to a judgment against the Defendant as follows:

- A. For the recovery of all actual and consequential damages, including pre- and post-judgment interest, and court costs, based upon the torts and other claims alleged herein, punitive damages, and all such other and further relief that the Trustee may be entitled to under law and equity;
- B. Avoiding the Transfers and the Severance Obligation;
- C. Awarding the Plaintiff a judgment against the Defendant, and any mediate or immediate transferees of the Defendant, for the value of the Transfers received by, or made for the benefit of, the Defendant;
- D. Awarding attorneys' fees and expenses pursuant to TUFTA § 24.013; and
- E. For such other and further relief as the Court deems just and equitable.

(Signature page immediately follows)

Respectfully submitted this 26th day of February 2021.

GREENBERG TRAUIG, LLP

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– and –

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**COUNSEL FOR PLAINTIFF ALAN D.
HALPERIN, AS UNSECURED CREDITOR
TRUSTEE**

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS Alan D. Halperin, solely in his capacity as Unsecured Creditor Trustee for Senior Care Centers, LLC, <i>et al.</i>	DEFENDANTS Mark McKenzie	
ATTORNEYS (Firm Name, Address, and Telephone No.) Greenberg Traurig, LLP 3333 Piedmont Road, NE, Suite 2500, Atlanta, GA 30305; Tel: (678) 553-2259; Fax: (678) 553-2269	ATTORNEYS (If Known)	
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Recovery of fraudulent transfers and obligations pursuant to 11 U.S.C. 544(B), 544(b), 550 and TUFTA 24.001 et seq., and breach of fiduciary duty		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input checked="" type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand: Not less than \$10 million	
Other Relief Sought Awarding attorneys’ fees and expenses pursuant to TUFTA § 24.013		

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Senior Care Centers, LLC, <i>et al.</i>		BANKRUPTCY CASE NO. 18-33967-sgj
DISTRICT IN WHICH CASE IS PENDING Northern	DIVISION OFFICE Dallas	NAME OF JUDGE Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) <i>/s/ John D. Elrod</i>		
DATE February 26, 2021	PRINT NAME OF ATTORNEY (OR PLAINTIFF) John D. Elrod	

INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.