IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC,[1] Debtors.	Chapter 11 Case No. 20-10343 (LSS) (Jointly Administered)
BOY SCOUTS OF AMERICA, Plaintiff, v. A.A., *et al*.,[2] Defendants.	Adv. Pro. No. 20-50527 (LSS) **Related Adv. Docket Nos. 6, 7, 32**

THE BSA'S REPLY BRIEF IN FURTHER SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION PURSUANT TO SECTIONS 105(A) AND 362 OF THE BANKRUPTCY CODE

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtors' federal tax identification number, are as follows: Boy Scouts of America (6300) and Delaware BSA, LLC (4311). The Debtors' mailing address is 1325 W. Walnut Hill Ln., Irving, Texas 75038.

[2] A full list of the Defendants in this adversary proceeding is included in redacted form on Exhibit A to the BSA's Verified Complaint for Injunctive Relief [A.D.I 14-1] to protect the privacy interests of abuse victims.

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PRELIMINARY STATEMENT

A preliminary injunction temporarily staying the Pending Abuse Actions[3] as against the BSA Related Parties is a critical step in advancing these chapter 11 cases. In order to equitably compensate survivors of abuse and ensure the BSA is able to continue its vital mission, a breathing spell from the ongoing litigation across the country, which will allow for the negotiation of a consensual plan of reorganization, is essential.

The issuance of a preliminary injunction is both a necessary and appropriate exercise of this Court's well-settled authority to enjoin claims against non-debtor third parties that are sufficiently related to a debtor's bankruptcy case. Continuation of the Pending Abuse Actions against the BSA Related Parties, who share an inextricable identity of interest with the BSA due to their shared pursuit of the BSA's mission, would irreparably harm the BSA and its prospects for reorganization by, among other things, drawing down on the proceeds of substantial shared insurance policies, forcing the BSA to divert its limited financial resources, time and efforts into monitoring and participating in litigation in dozens of jurisdictions across the country, and prejudicing the BSA through the application of preclusive doctrines.

The BSA recognizes the harm survivors of abuse have suffered and does not seek to shield abusers from accountability; nor is the preliminary injunction a means for the BSA or the BSA Related Parties to escape liability in the Pending Abuse Actions. To the contrary, and as evidenced by the support of the TCC (as defined below), the preliminary injunction is intended to allow all parties to focus their resources and attention on the important work of consensually resolving the Pending Abuse Actions to equitably compensate survivors through a timely,

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the BSA's Opening Brief in Support of Motion for a Preliminary Injunction Pursuant to Sections 105(a) and 362 of the Bankruptcy Code (the "Opening Brief") [A.D.I. 7].

organized and supervised reorganization rather than piecemeal nationwide litigation in a variety of state and federal courts.

To that end, the BSA has engaged in extensive and productive good-faith negotiations with the TCC, the outcome of which is a Consent Order (as defined below) whereby the parties have agreed, subject to Court approval, to the entry of a limited preliminary injunction with certain conditions and subject to the parties' rights to seek further extensions thereof. In addition, since the Petition Date, the BSA has also granted advisors to the TCC and the UCC access to a data room with substantial documentation relating to, among other things, the BSA's shared insurance policies and financial information regarding the Debtors and the BSA Related Parties. Finally, the Debtors and the TCC continue to engage in good faith negotiations with respect to the appointment of a mediator. In light of these post-petition steps, and the BSA's commitment to continued progress, the BSA is hopeful that the parties will be able to reach a global resolution leading to a consensual plan of reorganization.

Five objections to the Motion, representing a total of twelve of the approximately three hundred Defendants in this adversary proceeding, were filed. The BSA has worked diligently and in good faith with each of these objecting parties and has resolved four of the five objections. Despite these extensive good-faith efforts, however, the BSA was unable to resolve the final remaining objection: Laraine Kelley, Esq.'s Affidavit in Opposition to the BSA's Motions for a Preliminary Injunction and the Appointment of a Judicial Mediator (the "Outstanding Objection", and such objection party, the "Objector") [A.D.I. 32].[4] Notably, the Objector's own

[4] The four objections that have been resolved are: 1) Ronald Hernandez Hunter's Opposition to the BSA's Motion for a Preliminary Injunction Pursuant to Sections 105(a) and 362 of the Bankruptcy Code [A.D.I. 17]; 2) Defendants A.S., B.L., C.F., E.B., F.A., K.W., and N.C.'s First Memorandum in Opposition to Plaintiff's Motion for a Preliminary Injunction Pursuant to Sections 105(a) and 362 of the Bankruptcy Code [A.D.I. 25]; 3) Defendant Jane Doe's Objection to the BSA's Motion for a Preliminary Injunction Pursuant to Sections 105(a) and 362 of the Bankruptcy Code and Joinder in Objection of Defendants A.S., B.L., C.F., E.B., F.A., K.W., and N.C. to Same [A.D.I. 33]; and 4) Defendants R.L. and C.L., His Wife's Objection to BSA's Motion for a Preliminary Injunction

case was just filed in December 2019, there is no litigation activity that would be materially affected by entry of the Consent Order and the harm to the Objector caused by a brief pause in the litigation—which is already stayed as to the BSA—and his pending remand action is minimal.

BACKGROUND

I. KEY POST-PETITION DEVELOPMENTS IN THE CHAPTER 11 CASES

On March 3, 2020 the Ad Hoc Committee of Local Councils of the Boy Scouts of America (the "Local Council Committee") comprised of certain BSA Related Parties filed its notice of appearance. [D.I. 135]. On March 5, 2020, the United States Trustee appointed (1) an Official Committee of Unsecured Creditors (the "UCC") [D.I. 141], and (2) an Official Committee of Tort Claimants (the "TCC"). The Debtors have since communicated and negotiated with these key constituencies on a daily basis.

II. THE SECURE DATA ROOM

The BSA has established a secure data room that has been populated with relevant documents concerning the BSA's shared insurance policies and financial information of the BSA and the BSA Related Parties. Advisors to the TCC and UCC currently have access to the data room, and other parties will be provided access upon execution of a protective order, the terms of which are currently being actively negotiated.

III. THE CONSENT ORDER

Immediately upon the TCC's formation, the BSA and the TCC commenced negotiations with respect to the preliminary injunction sought in the Motion. As a result of these extensive negotiations, the BSA and the TCC, in consultation with the UCC and the Local Council

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Pursuant to Sections 105(a) and 362 of the Bankruptcy Code and Joinder to Objection of Defendants A.S., B.L., C.F., E.B., F.A., K.W., and N.C. to Same [A.D.I. 38].

Committee, reached an agreement, reflected in the *Consent Order Pursuant to 11 U.S.C. §§ 105(a) and 362 Granting the BSA's Motion for a Preliminary Injunction* [A.D.I. 46-1] (the "Consent Order"), that, subject to Court approval, provides for a limited injunction staying the Pending Abuse Actions as against the BSA Related Parties. The key terms of the Consent Order include:

- A stay as to each of the Pending Abuse Actions identified in Schedule 1 attached thereto through and including 11:59 p.m. (prevailing Eastern time) May 18, 2020 (as may be extended, the "Termination Date"). Consent Order at ¶ 3.

- The stay provided for in the Consent Order shall not prohibit or enjoin, among other things: (1) the service of a complaint in a Pending Abuse Action that was filed but not served after the Petition Date; (2) any plaintiff in a Pending Abuse Action from seeking reasonably necessary preservation discovery from witnesses determined by mutual agreement of the BSA and the Tort Claimants' Committee, or by the Court, to be aging or infirm witnesses; and (3) the filing or service of a complaint for purposes of commencing a claim or cause of action against a BSA Related Party alleging claims substantially similar to those asserted by plaintiffs in the Pending Abuse Actions (the "Further Abuse Actions"). *Id.* at ¶¶ 6-7.

- The period beginning on the Petition Date and ending on the Termination Date (the "Standstill Period") shall not be included in computing the running of any time periods with respect to any deadline in any Pending Abuse Action or Further Abuse Action, and all claims, defenses, rights and privileges with respect thereto shall be preserved and remain viable to the same extent as they existed as of the Petition Date. *Id.* at ¶ 9.

- The Standstill Period shall apply to any defendant that is a BSA Related Party listed on Schedule 2 thereto and the plaintiffs in the Pending Abuse Actions and Further Abuse Actions. Additional parties may be added to Schedule 2 hereto only with consent of the BSA and the TCC (such parties, "Additional BSA Related Parties"). *Id.* at ¶ 10.

The entry of the proposed Consent Order is without prejudice to the BSA's right to seek further extensions of the Termination Date and any party's right to object thereto. Moreover, the Termination Date may be extended by mutual written agreement between the BSA, the TCC and the UCC in the form of a stipulation filed with the Court and properly served.

ARGUMENT

The Objector raises three principal arguments against the Motion: (1) that the preliminary injunction would contravene the purpose of the New York State Child Victim's Act (the "Child Victims Act"); (2) that there are no "unusual circumstances" warranting an extension of the automatic stay; and (3) that the traditional four-factor test does not support the issuance of preliminary injunctive relief. Each of these arguments is without merit.

I. EXTENSION OF THE CONSENT ORDER DOES NOT VIOLATE OR CONTRAVENE THE PURPOSE OF THE CHILD VICTIMS ACT.

The relief requested in the Motion, and provided for in the Consent Order, is entirely consistent with all applicable bankruptcy and nonbankruptcy law. First, as the Objector admits, the Child Victims Act was designed to enlarge the statute of limitations for certain child sexual abuse claims. *See* N.Y. C.P.L.R. §§, 208, 214-g; *see also* Outstanding Obj. at ¶ 17. However, nothing in the Motion, the Opening Brief, or the Consent Order purports to deprive any survivor of abuse, including the Objector, of whatever rights they may have under this, or any other, statute. To the contrary, the Consent Order expressly protects the rights of abuse survivors by permitting any person with an abuse claim against any BSA Related Party to file and serve complaints with respect thereto against such BSA Related Party. *See* Consent Order at ¶¶ 6-7. As the BSA noted at the outset of this case, the BSA encourages anyone who has suffered abuse as a Scout to come forward, and the Consent Order preserves any such abuse survivors' rights to do so.

Second, the Objector's claim that the BSA seeks to prevent abuse survivors from "pursuing litigation against any responsible party" including perpetrators of abuse is categorically wrong, and ignores the clear statements the BSA has repeatedly made in its papers, and in discussions with abuse survivors, including the Objector. *Compare* Outstanding Obj. at ¶

16 *with* Motion at 1-2 (noting that BSA only seeks an injunction with respect to claims against parties specifically identified as "BSA Related Parties), Verified Complaint at ¶ 2 n.2 (same); Opening Br. at 1 (same). As the BSA has made clear, the BSA seeks a temporary stay of the Pending Abuse Actions only *as against the BSA Related Parties* identified on Schedule 2 to the Consent Order. The BSA Related Parties are comprised of (1) Learning for Life; (2) all Local Councils; and (3) certain Chartered Organizations. For the avoidance of doubt, perpetrators of abuse are *not* BSA Related Parties, and the BSA does not seek, and has never sought, to enjoin the prosecution of abuse survivors' claims against such perpetrators of abuse.

Finally, the Objector's argument that the removal and potential transfer of their claims to the United States District Court for the District of Delaware (the "Delaware District Court") would somehow contravene the Child Victims Act is both wrong as a matter of law and, in any event, completely unrelated to the relief provided in the Consent Order. *See* Outstanding Obj. at ¶ 21. As noted above, the Child Victims Act extends the applicable statute of limitations for certain child sexual abuse claims; it says nothing about the necessary forum for such claims or the bankruptcy implications thereof.

Most importantly, the Motion plainly and unequivocally does *not* seek to have any Pending Abuse Action transferred to the Delaware District Court. The Objector conflates the difference between the Motion and Consent Order on one hand, which seek to temporarily stay the Pending Abuse Actions only against the specifically identified BSA Related Parties, and the removal and transfer of their claims as part of the nationwide transfer motion filed in the Delaware District Court on the other. With respect to the former, the BSA has been clear that the purpose of the preliminary injunction is to allow all parties in interest a breathing spell to

negotiate a consensual resolution to these chapter 11 cases.[5] As to the latter, which is not before this Court, the Debtors have voluntarily moved to stay all briefing on the nationwide transfer motion so that the parties are able to productively utilize the breathing spell provided by the proposed Consent Order to move towards a global consensual resolution of these chapter 11 cases.

II. THE COURT SHOULD ENJOIN THE PENDING ABUSE ACTIONS AGAINST THE BSA RELATED PARTIES

A. The Automatic Stay Should be Extended to the Pending Abuse Actions as Against the BSA Related Parties.

As described in the Opening Brief, because the BSA and the BSA Related Parties share an identity of interests, and the continuation of the Pending Abuse Actions as against the BSA Related Parties would adversely impact the BSA's reorganization, the Court should extend the protections of the automatic stay to the BSA Related Parties. *See* Opening Br. at 20-32. With respect to identity of interests, the Objector does not argue that the BSA Related Parties are not essential to the delivery of Scouting or the continuation of the BSA's mission. Rather, the Objector appears to argue that there cannot be an identity of interests because the BSA Related Parties, and in particular the Local Councils, are independent entities that are separately incorporated under the laws of their respective states. *See* Outstanding Obj. at ¶¶ 36-41.

While the BSA Related Parties are certainly independent legal entities, they each operate under the BSA's federal charter to deliver Scouting. In other words, regardless of their

[5] The Objector asserts that the "BSA's explicit goal in this bankruptcy proceeding is to force the victims of sexual abuse to agree to a 'global resolution' of all sexual abuse claims." Outstanding Obj. at ¶ 20. This is a mischaracterization of the BSA's position. First, the BSA has been clear since the outset of these chapter 11 cases that the BSA's bankruptcy filing was "to achieve the dual objectives of (1) timely and equitably compensating victims of abuse in Scouting and (2) ensuring that the BSA emerges from bankruptcy with the ability to continue its vital charitable mission." Opening Br. at 3. Second, the Objector ignores the BSA's emphasis, reiterated no fewer than ten times in its Opening Brief, on bringing parties together to negotiate a *consensual* resolution of these cases. *See* Opening Br. at 5, 20, 33, 35, 37-38, 46. Indeed, the BSA's ability to achieve wide consensus with the major creditor constituencies, including the TCC and UCC, on the proposed Consent Order, and its resolution of every other objection to the Motion are clear examples of the BSA's intentions and good faith in working towards a consensual, and equitable, resolution of these cases.

independent corporate existence, the BSA and the BSA Related Parties share an identity of interest because the BSA's conduct and the delivery of Scouting are "at the core" of the Pending Abuse Actions. *W.R. Grace & Co. v. Chakarian (In re W.R. Grace & Co.),* 386 B.R. 17, 30-32 (Bankr. D. Del. 2008); Transcript of August 16, 2017 Hearing at 14:22-15:4, *TK Holdings, Inc. v. Hawaii (In re TK Holdings, Inc.)*, Adv. Pro. No. 17-50880 (BLS) [ECF No. 64-3] ("*In re TK Holdings* Hr'g Tr.") (granting preliminary injunction over claims against nondebtors where "literally everything here begins with the delivery and installation of a defective part manufactured by the debtors"). Indeed, as described in the Opening Brief and the Whittman Declaration, it is for precisely this reason that the BSA has taken the lead in defending the vast majority of Pending Abuse Actions by, among other things, (1) retaining national coordinating counsel to oversee and monitor the Pending Abuse Actions; (2) retaining local defense counsel to represent itself and many of the named BSA Related Parties in each Pending Abuse Action; (3) coordinating with insurers to the extent the claims in the Pending Abuse Actions may be subject to insurance coverage; (4) authorizing and funding settlements on behalf of itself and many of the named BSA Related Parties in the Pending Abuse Actions or similar, previously resolved claims; and (5) responding to the majority of discovery requests in the Pending Abuse Actions and producing the relevant documents related to the defense thereof. *See* Opening Br. at 24-26; Whittman Decl. at ¶¶ 17-19.

The Objector's arguments are belied by their own allegations in the underlying complaint, attached as Exhibit A to the Outstanding Objection, and the BSA's answer thereto, attached as Exhibit C. In their underlying complaint, the Objector (1) defines the Greater Niagara Frontier Council, Inc. (the "GNF Council") and the BSA collectively as the "Boy Scouts of America," *see* Outstanding Obj., Ex. A. at ¶ 6; (2) refers to the "Boy Scouts of America" as a

singular defendant through the remainder of the complaint without any differentiation or acknowledgement of the GNF Council; and (3) asserts seven out of eight causes of action against "defendant, Boy Scouts of America" without any differentiation or acknowledgement of the GNF Council, *see generally* Outstanding Obj., Ex. A. Moreover, the BSA and the GNF Council filed a joint Verified Answer and are represented by the same defense counsel, who was selected and paid by the BSA pre-petition. *See* Outstanding Obj., Ex. C.

With respect to the adverse impact on the BSA's ability to reorganize absent a stay, the Objector again largely misstates the BSA's arguments. First, regarding the BSA's shared insurance program, the Objector does not argue that a draw on the BSA's shared insurance policies would not adversely impact the BSA's ability to reorganize. Instead, the Objector largely argues that the BSA has not provided specific evidence that shared insurance policies would deplete estate assets as a result of the specific claims made by the Objector because the BSA has not produced insurance policies covering the specific years of the Objector's claims. *See* Outstanding Obj. at ¶¶ 43-46.

The BSA has been clear from the outset that its shared insurance program with the BSA Related Parties largely began in 1978, with certain Local Councils listed as additional insureds on policies beginning in approximately 1971, and therefore does not cover claims for abuse that occurred prior to that time. *See* Opening Br. at 10; Whittman Decl. at ¶¶ 12-15. In addition, while the BSA has also acknowledged that a limited number of these policies have been exhausted or settled, or are otherwise unavailable, there is still substantial excess insurance coverage available to the BSA and the BSA Related Parties for bodily injury claims (including

the Pending Abuse Actions) for any given policy year. *See* Opening Br. at 12; Whittman Decl. at ¶¶ 10-11.[6]

With regard to the Objector's specific claim, pursuant an agreement between the BSA and Insurance Company of North America and Century Indemnity Company ("INA") (and certain other insurers), the only year of insurance coverage available to the Objector's claim is 1983 – the year of first alleged abuse. *See* Declaration of Adrian C. Azer in Support of the BSA's Reply Brief in Support of a Preliminary Injunction Pursuant to Sections 105(a) and 362 of the Bankruptcy Code dated February 18, 2020 (the "Azer Decl."), ¶ 6. In 1983, only one insurance policy has limits of liability available – an excess insurance policy issued by INA, XCP 144961. Azer Decl., Ex. A. That INA excess policy specifically provides that the BSA and the GNF Council share the insurance coverage available. *See id.*, Named Insured Endorsement (Endorsement No. 2). As such, the BSA and the GNF Council share the limits of liability for the remaining partially eroded insurance policy in 1983, and once the limits of liability are exhausted, no insurance coverage will be available for any other sexual-abuse claimant(s) alleging abuse against the BSA that commenced in 1983, thereby resulting in a meaningful diminution in value of property of the estate.[7] Azer Decl, ¶¶ 8-9, *see also ACandS, Inc. v. Travelers Cas. & Surety Co.*, 435 F.3d 252, 260 (3d Cir. 2006) ("It has long been the rule in this Circuit that insurance policies are considered part of the property of a bankruptcy estate."); *see*

[6] Because the BSA's shared insurance program, which dates back almost fifty years, is comprised of hundreds of different insurance policies, the BSA provided the Court with a representative sample of insurance policies from different periods of time to demonstrate both the scope of the coverage and the BSA Related Parties protected thereby. The BSA understands the specific concerns of the Objectors, and, for that reason, has populated its data room with every relevant insurance policy so that the parties may fairly evaluate the extent of the insurance assets available to compensate survivors of abuse.

[7] To the extent the Objector asserts that there is no adverse effect on the BSA's ability to reorganize because the BSA has not proven that the GNF Council does not have its own insurance to pay claims against it, the Objector's argument should be rejected. Outstanding Obj. at ¶ 43-45. The Objector has asked to BSA to effectively prove a negative. That is not, and never has been, the appropriate test. Rather, the BSA has unquestionably proven the existence of shared insurance policies, and available coverage, between the BSA and the GNF Council for the relevant years, which would be drawn on and diminished if claims against the GNF Council go forward.

also Quigley Co. v. Law Offices of Peter G. Angelos (In re Quigley Co.), 676 F.3d 45, 58 (2d Cir. 2012); *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986).

Second, with respect to the diversion of critical resources away from the Debtors' reorganization efforts should the Pending Abuse Actions go forward against the BSA Related Parties, the Objector argues that the burdens that would likely be imposed on the BSA as a result thereof are insufficient to justify an extension of the automatic stay. Specifically, citing *Stanford v. Foamex L.P.*, No. CIV. A. 07-4225, 2009 WL 1033607 (E.D. Pa. Apr. 15, 2009), the Objector primarily argues that discovery burdens do not warrant a stay of the Pending Abuse Actions. Outstanding Obj. at ¶¶ 32-34. The Objector's reliance on *Foamex*, however, is misplaced. In that case, the court declined to extend the automatic stay to a single pending action against nondebtors that raised legally and factually similar issues as the automatically stayed claims against the debtor in part because the court found that the discovery burdens imposed by such action would benefit "the non-bankrupt co-defendants, not the debtor." *Id.* at *4. By contrast, the facts of this case are drastically different including, for example, here: (1) the BSA would be faced with discovery requests in nearly 300 Pending Abuse Actions in dozens of jurisdictions across the country as opposed to a single action; (2) the claims against the BSA Related Parties are not merely "in a similar legal or factual nexus with the debtor" but rather are inextricably intertwined with the BSA because, in many instances, including in the Objector's own case, such claims are identical to the claims against the BSA and are based almost entirely on Scouting programs; and (3) the continuation of the Pending Abuse Actions would require significant attention by BSA employees who otherwise could be focused on furthering the BSA's restructuring efforts. Indeed, courts, including this Court, have recently entered injunctions in mass tort cases that have raised substantially similar concerns. *See, e.g.*, *In re TK Holdings* Hr'g

Tr. at 18:10-19:4; *see also* Transcript of October 11, 2019 Hearing at 69:17-22, *Purdue Pharma L.P. v. Massachusetts (In re Purdue Pharma L.P.),* Adv. Case No. 19-08289-RDD (Bankr. S.D.N.Y. Oct. 16. 2019) [ECF No. 87] (issuing preliminary injunction over claims against nondebtors where, among other things, litigation distracted key employees from focusing on issues related to the debtor's bankruptcy proceedings).

B. The Traditional Four-Factor Test for Injunctive Relief is Satisfied.

1. The Debtors Have a Substantial Likelihood of Successfully Reorganizing.

The Debtors have demonstrated a strong likelihood that they will successfully reorganize if the Court extends the proposed Consent Order over the Objector's abuse action. The Objector misunderstands the nature of the court's inquiry under this factor and ignores the significant progress the Debtors have made in advancing these chapter 11 cases. As noted in the Opening Brief, where, as here, a bankruptcy case is in its early stages, this factor supports granting injunctive relief if the case "is proceeding on track, and there is no reason to believe or suspect that [the debtor's] reorganization will fail." *Lyondell Chem. Co. v. CenterPoint Energy Gas Servs., Inc. (In re Lyondell Chem. Co.),*, 402 B.R. 571, 590 (Bankr. S.D.N.Y. 2009). These cases are barely a month old, but the Debtors have filed a plan and disclosure statement, engaged in extensive and productive good-faith negotiations with the TCC and others with respect to the preliminary injunction resulting in the proposed Consent Order, and continued to work diligently and in good faith to resolve these chapter 11 cases in as efficient and equitable a manner as possible. Indeed, in stark contrast to the Objector's claim that "the majority, if not all, [of the plaintiffs in underlying Pending Abuse Actions] will oppose [the] BSA's requested relief," the Objector is the *only* interested party with an unresolved objection. There is simply no reason to suspect at this stage in the proceedings that the Debtors are not acting in good faith or that they

will fail to successfully reorganize. Given the substantial progress the Debtors have made in these chapter 11 cases so far, this factor strongly supports extending the proposed Consent Order to enjoin the Objector's abuse action.

2. The BSA Will be Irreparably Harmed Absent a Stay.

The BSA will suffer irreparable harm endangering its prospects for a successful reorganization if the Pending Abuse Actions and the Objector's abuse action are not stayed as against the BSA Related Parties. The Objector's arguments to the contrary are without merit. As both the sample insurance policies the BSA submitted in support of the Motion, as well as the specific shared insurance policies applicable to the Objector's claims demonstrate, the BSA Related Parties are named or additional insureds under such policies with equal rights to the proceeds thereof, and claims litigated against them, or any settlements reached with respect to such claims, are payable out of such insurance policies, allowing certain claimants to deplete the assets of the BSA's estate on a dollar-for-dollar basis to the detriment of all parties in interest.

Second, the Objector argues that the BSA has not produced evidence that it would be bound by adverse rulings in the Pending Abuse Actions if such Actions are permitted to go forward against the BSA Related Parties, because the BSA Related Parties are separate, independent entities. *See* Outstanding Obj. at ¶¶ 63-65. This argument ignores both the well-settled application of non-mutual offensive collateral estoppel and the substantial risk of record taint as a result of unfavorable evidentiary rulings concerning evidence the BSA itself would be required to produce in the Pending Abuse Actions. The Objector fails to acknowledge that the evidence necessary to determine liability as to the BSA Related Parties is not only in the possession of the BSA and concerns the BSA's own conduct and operations, but is also the same evidence that would be needed to determine liability against the BSA itself. The fact that the

claims, and the evidence needed to substantiate those claims, against the BSA and against the BSA Related Parties are nearly identical creates a substantial risk that evidentiary findings, adverse inferences, or legal conclusions made in any Pending Abuse Action, or the Objector's abuse action, against a BSA Related Party may be held against the BSA. This substantial risk would force the BSA to either allow itself to be prejudiced by invariably inconsistent findings in hundreds of tort actions across dozens of different jurisdictions, or litigate to protect its interests, wasting value that would otherwise be distributable to creditors. *See Lomas Fin. Corp. v. Northern Tr. Co. (In re Lomas Fin. Corp.)*, 117 B.R. 64, 67 (S.D.N.Y. 1990) (finding "irreparable harm" where debtor's key personnel would be forced to participate in such litigation to avoid the "threat of collateral estoppel" because "it is not possible for the debtor to be a bystander to a suit which may have a $20 million issue preclusion effect against it in favor of a pre-petition creditor").

3. The Irreparable Harm to the BSA Outweighs the Harm to the Objector.

The BSA would suffer irreparable harm that would threaten its ability to reorganize if the Court does not extend the Consent Order over the Objector's abuse action. This irreparable harm significantly outweighs the harm to the Objector from a short delay in the prosecution of his recently filed claims against the BSA Related Parties. First, the BSA has unequivocally not attempted to stay, enjoin, or otherwise postpone the litigation of any claims against perpetrators of abuse. The BSA does not seek to shield abusers from accountability and has not included any abusers on its list of BSA Related Parties attached as Schedule 2 to the proposed Consent Order.

Second, the proposed Consent Order does not contravene the terms of any state law extending the statute of limitations or otherwise relaxing the requirements for survivors of abuse to bring claims on account of their injuries. As noted above, the terms of the proposed Consent

Order specifically contemplate the filing and service of additional abuse actions against the BSA and the BSA Related Parties. Consent Order at ¶¶ 6-7.

Third, the Consent Order simply provides a temporary pause in the litigation to allow the parties to work towards a global resolution. It is not a determination on the merits of any Pending Abuse Action, does not seek to force an unreasonable settlement on any abuse survivor and would not require any abuse survivor to litigate claims in this Court or the Delaware District Court.

The only harm the Objector would suffer from entry and extension of the proposed Consent Order is a brief delay in the prosecution of his recently filed claims against the GNF Council. While the BSA acknowledges this harm, the procedural postures of both the Pending Abuse Actions generally and the Objector's own case mitigate much of this harm. Only two of the Pending Abuse Actions were scheduled for trial between the Petition Date and the proposed Termination Date, and no other trials are scheduled in any of the Pending Abuse Actions until June of this year. The Objector's own case was only filed in December 2019, and there are no deadlines, dispositive motions, or any other litigation activity that would be materially affected by entry of the Consent Order. Thus the harm to the Objector caused by a brief pause in the litigation, which is already stayed as to the BSA by its bankruptcy filing, is minimal and does not outweigh the irreparable harm the BSA would suffer absent a stay of the Pending Abuse Actions.

4. The Preliminary Injunction is in the Public Interest.

The BSA's successful reorganization is undoubtedly in the public's best interest. As noted, in the context of bankruptcy proceedings, courts have routinely acknowledged the paramount public interest in promoting the successful reorganization of a debtor. *See* Opening Br. at 38-39; Furthermore, as noted, there is a uniquely important public interest in promoting a

successful reorganization in this case due to the BSA's vital mission and long history of providing Scouting to youth, families, and local communities across the country.

The BSA recognizes and appreciates the public interest in holding parties accountable for abuse. However, that is precisely why the BSA has (1) unequivocally not sought to stay the Pending Abuse Actions as against the perpetrators of abuse; and (2) sought to use the bankruptcy case to bring parties together through mediation to equitably compensate survivors of abuse. Thus, the Consent Order furthers this important public interest by allowing abuse survivors to hold their abusers accountable while allowing time to ensure that survivors are equitably compensated and the BSA is able to successfully reorganize.

CONCLUSION

For the above reasons, and those stated in the Opening Brief, the BSA respectfully requests this Court enter and extend the Consent Order and preliminarily enjoin the Pending Abuse Actions and the Objector's abuse action against the BSA Related Parties pursuant to the terms thereof.

Dated: March 22, 2020
Wilmington, Delaware

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PROPOSED COUNSEL TO THE DEBTORS AND DEBTORS IN POSSESSION

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC,[1] Debtors.	Chapter 11 Case No. 20-10343 (LSS) (Jointly Administered)
BOY SCOUTS OF AMERICA, Plaintiff, v. A.A., *et al*.,[2] Defendants.	Adv. Pro. No. 20-50527 (LSS) **Related Adv. Docket Nos. 6, 7, 32**

ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 362 GRANTING THE BSA'S MOTION FOR A PRELIMINARY INJUNCTION

Upon consideration of the Motion for a Preliminary Injunction Pursuant to 11 U.S.C. §§ 105(a) and 362 of the Bankruptcy Code (the "Motion")[3] of the BSA, as above-captioned plaintiff (the "Plaintiff") in the adversary proceeding commenced by the Verified Complaint for Injunctive Relief (the "Complaint"), and as debtor and debtor in possession in the above-captioned chapter 11 cases, for entry of an order extending the stay to enjoin the prosecution of the Pending Abuse Actions pursuant to sections 105 and 362 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 7065 of the Federal Rules of Bankruptcy Procedure (the

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtors' federal tax identification number, are as follows: Boy Scouts of America (6300) and Delaware BSA, LLC (4311). The Debtors' mailing address is 1325 W. Walnut Hill Ln., Irving, Texas 75038.

[2] A full list of the Defendants in this adversary proceeding is included in redacted form on Exhibit A to the BSA's Verified Complaint for Injunctive Relief [A.D.I 14-1] to protect the privacy interests of abuse victims.

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

"Bankruptcy Rules"); the Court having reviewed and considered the Complaint, the Motion, the briefs, declarations and other documents filed in support of the Motion, all other evidence and argument submitted by the Plaintiff in support thereof, and all objections and replies thereto; and due and proper notice of the Motion having been given, and no other or further notice being necessary or required; and the Court having held a hearing; and after due deliberation and sufficient cause appearing therefor; the Court finds and concludes as follows:

A. The Plaintiff in this adversary proceeding is debtor the Boy Scouts of America (the "BSA"). The Defendants in this adversary proceeding are those parties listed in the "Underlying Plaintiffs" column of Exhibit A to the Complaint. The Defendants are all plaintiffs in lawsuits that seek to hold the BSA or the BSA Related Parties liable in actions that include claims and/or causes of action arising out of the plaintiffs' involvement or connection with the BSA.

B. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Pursuant to Local Rule 9013-1(f), the BSA confirms its consent to the entry of a final order or judgment by the Court if it is determined that the Court, absent consent of the parties, cannot enter final order or judgments consistent with Article III of the United States Constitution. Venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The Court has entered the *Consent Order Pursuant to 11 U.S.C. §§ 105(a) and 362 Granting the BSA's Motion for a Preliminary Injunction* (the "Consent Order"), pursuant to which the BSA, the Official Tort Claimants' Committee, and the Official Committee of Unsecured Creditors have agreed to a limited preliminary injunction of the Pending Abuse Actions listed in Schedule 1 thereto, as against the BSA Related Parties identified in Schedule 2 thereto.

D. Defendant LG 37 Doe has filed the *Laraine Kelley, Esq. Affidavit in Opposition to (I) the BSA's Motion for a Preliminary Injunction; and (II) the BSA's Motion for an Order Appointing a Judicial Mediator* (A.D.I. 32 and D.I. 164) (the "LG 37 Doe Objection") objecting to the Motion. Defendant LG 37 Doe is therefore not currently subject to the terms of the Consent Order.

E. The legal and factual bases set forth in the Complaint, the Motion, the briefs and declarations in support thereof, other supporting papers, and at the hearing establish just cause for the relief granted herein.

Based on these findings, **IT IS HEREBY ORDERED THAT:**

1. The relief requested in the Motion is GRANTED as set forth herein. The LG 37 Doe Objection is hereby OVERRULED.

2. The litigation captioned as *LG 37 Doe v. Douglas Nail, Greater Niagara Frontier Council, Inc., Boy Scouts of America and Boy Scouts of America,* Case No. 1:20-00217 (W.D.N.Y.) (the "LG 37 Doe Abuse Action"), currently pending in the United States District Court for the Western District of New York, is hereby stayed pursuant to the terms of the Consent Order and to the same extent as the Pending Abuse Actions identified in Schedule 1 thereto.

3. Each of the findings and conclusions made in the Consent Order is incorporated and restated as if fully set forth herein and shall apply with full force and effect to Defendant LG 37 Doe and the LG 37 Doe Abuse Action..

4. This Order shall be promptly filed in the clerk's office and entered into the record.

5. The BSA is authorized to take all actions necessary or appropriate to carry out this Order.

6. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____ __, 2020
Wilmington, Delaware

THE HON. LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE