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VIA JEDS
Hon. Frank Covello, P.J.Ch.
Superior Court of New Jersey
Historic Courthouse, 1st Floor
71 Hamilton Street
Paterson, New Jersey 07505

Re: Barone, et. al v. Pina, et. al
Docket No. PAS-C-76-23

Dear Judge Covello:

Our office represents Plaintiffs Anthony Barone and Anthony Martini (collectively "Plaintiffs") in the above-captioned matter. Please accept this letter brief in lieu of a more formal brief in opposition to the motion to dismiss filed by Defendant Raashaun Casey a/k/a DJ Envy ("DJ Envy") and in support of Plaintiffs' cross-motions to authorize substituted service and to amend their verified complaint.

PRELIMINARY STATEMENT

The Court should grant Plaintiffs' cross-motions to authorize substituted service and to file an amended complaint and deny Defendant DJ Envy's motion without prejudice as moot.

Defendant DJ Envy has moved to dismiss the complaint for failure to effectuate service and for failure to state a claim. In support of his motion, DJ Envy provides a certification from the person upon whom the complaint was originally served, who turns out to be a hired contractor who happened to be at his house, and not a member of DJ Envy's household authorized to accept service on him. Plaintiffs filed the affidavit of service relying on the hired process server's affidavit that the person was a member of the household. Plaintiffs recognize that service on a contractor is not effective service. DJ Envy resides in a single-family house protected by an electric fence and signs warning of guard dogs. Despite diligent efforts to serve DJ Envy since learning that only a hired contractor had been served, Plaintiffs have been unable to effectuate service. DJ Envy's counsel has refused to accept service on his behalf. Plaintiffs therefore cross-move for authorization to serve DJ Envy by substituted service pursuant to Court Rule 4:4-4(b)(3).

As this Court knows, Defendant Taylor Court Apartments LLC filed for bankruptcy protection just minutes before this Court heard Plaintiffs' request for temporary restraints. As a result of the automatic stay imposed by Section 362 of the Bankruptcy Code on efforts to pursue a debtor in state court, Plaintiffs seek leave to amend their complaint to remove Taylor Courts as a defendant, so that this case can proceed without disruption as to the remaining parties. While amending the complaint, Plaintiffs also seek to add additional facts that have come to light since their complaint was filed and to add additional facts to provide further details regarding Cesar Pina and DJ Envy's involvement in the real estate fraud described in the complaint. At this early stage of the case, the Court should grant the motion to amend.

If the Court grants those cross-motions, which it should, it effectively moots the need to consider the substance of Defendant's motion to dismiss. The Court could simply deny Defendant's motion without prejudice without the need to determine whether the complaint fails to state a claim.

To the extent the Court is inclined to review the merits of the motion to dismiss for failure to state a claim, it should be denied. The essence of DJ Envy's motion to dismiss is to improperly rely on facts not set forth in the verified complaint to try to pin the entire blame for the real estate fraud scheme detailed in the complaint on Jennifer and Cesar Pina (the "Pinas"), claim to be a victim himself, and remarkably assert he had no role in the fraud when, as alleged in the verified complaint, he personally and through his vast promotional efforts is the only reason Plaintiffs' (and surely many other victims) came to know of and invest millions of dollars with the Pinas.

In so moving, DJ Envy not only conflates basic standards for pleading claims versus proving them, but improperly relies on supporting affidavits to try to contradict the facts set forth in the complaint. Those affidavits improperly attempt to dispute the facts in the complaint that must be accepted as true for the purposes of his motion and nonetheless are riddled with falsehoods.

Ignoring the self-serving statements set forth in defendants' affidavit that contradict the sworn allegations in the verified complaint as this Court must do on a motion to dismiss, the Complaint sufficiently pleads the existence of a multimillion-dollar real estate fraud scheme with sufficient particularized facts to state claims against DJ Envy for his involvement in promoting it to Plaintiffs and others under the NJCFA and common-law fraud, and alternatively, under an aiding and abetting theory. The allegations satisfy the heightened pleading standard applicable to fraud, the key purpose of which is to enable the person charged to try to deny, disprove or explain the allegations and the Court need not look any further than the fact that DJ Envy had apparently enough particularized information to respond with a multi-page affidavit.

The Court should grant Plaintiffs cross motions and deny Defendant's motion without prejudice.

FACTUAL BACKGROUND

Plaintiffs commenced this action on July 6, 2023 by way of order to show cause and verified complaint against Cesar and Jennifer Pina (the "Pinas"), DJ Envy, and the two entities through which Plaintiffs made their investments – Taylor Court Apartments, LLC ("Taylor Apartments") and Flip the Dao LLC ("Flip2Dao"). *See* Verified Complaint dated July 6, 2023 ("Complaint" or "Compl.") and Order to Show Cause. The Complaint alleged that the Pinas claimed to operate a successful real estate empire known as "Flipping NJ," involving the purchase, renovation and sale or rent of undervalued properties in Paterson and other cities with promised short term returns. Compl., ¶¶ 1-4. That representation however was false – as Plaintiffs recently discovered that "Flipping NJ" appears to be nothing more than a Ponzi-like scheme by which the Pinas took the money for their own personal uses and/or to pay off earlier investors. *Id.* at ¶ 126.

DJ Envy's involvement far exceeds a tacit or unknowing endorsement of the Pinas. Rather, DJ Envy repeatedly proclaimed himself to be a partner of the Pinas with respect to Flipping NJ. Over a matter of years, DJ Envy spoke about that partnership on the radio, on social media, and encouraged listeners and followers to invest with the Pinas. *Id.* at ¶¶ 13 - 14. The Pinas and DJ Envy also began hosting real estate seminars as early as 2019 to promote themselves and their real estate investment strategies, which Plaintiffs had attended. *Id.* at ¶ 15. Those promotional activities by DJ Envy lured Plaintiffs (and numerous other victims) into the scheme.[1]

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[1] *See* Derik DeAngelo v. Pina, et al. BER-L-4238-23; Trevor Roman v. Pina, et al. BER-L-3157-23; Stanley Acosta v. Pina, et al. BER-L-3775-23; Alexis Hernandez v. Whairhouse LLC, et al., BER-L-3903-23; Derek Maldonado v. Pina, et al. BER-L-4089-23; AJR Investments v. Whairhouse, et al. BER-L-4188-23; Christian Vasquez v. Pina, et al. BER-L-4193-23; Amy Flips LLC v. From Start 2 Flippin, LLC, et al. ESX-L-3112-23; Paul Peralta v. Pina, et al. ESX-L-4577-

As alleged in the Complaint, the Pinas and DJ Envy promoted and encouraged Plaintiffs to invest $1.8 million dollars in the Paterson development project eventually known as Taylor Court Apartments. *Id.* at ¶ 16. With Barone for example, DJ Envy and Cesar had lunch with Barone and others in 2019 to discuss Paterson projects, including Taylor Apartments. *Id.* at ¶¶ 21-23. Following that lunch, Barone's interest was piqued, and he agreed to continue discussing a potential investment. *Id.* at ¶ 24. Cesar provided Barone with additional documentation purporting to represent the value and expected returns on Taylor Apartments and other investment opportunities. *See id.* at ¶¶ 25-28. As further alleged in the Complaint, Cesar and DJ Envy gave Barone, his friend, Eytan Sugarman, DJ Clue and well-known venture capitalist, Gary Vaynerchuck ("Gary Vee") a lengthy tour of their projects in Paterson, including the Taylor Apartments property, during which they boasted about the success of their prior Paterson projects and plans for the construction of Taylor Apartments. *Id.* at ¶¶ 31-32. Cesar represented that the project had more than adequate financing to complete construction between a $500,000 investment from Barone, a $3.4 million dollar construction loan, a purported $2.5 million dollar contribution from Jennifer, and a $1 million dollar investment from Martini, who Cesar falsely assured Barone had executed the required consents to add Barone as a member to the company when, upon information and belief, the Pinas forged Martini's signature. *Id.* at ¶¶ 35-50. That tour and the

23; BTC Investments v. Pina, et al. ESX-L-4774-23; Hector Santana v. Pina, et al. HUD-L-2857-23; Onsight Properties LLC v. From Start 2 Flippin, PAS-L-1557-23; Jennamar Investments LLC v. Whairhouse Limited, et al. PAS-L-1653-23; Ransome Endeavors Inc. v. Whairhouse LLC, et al. PAS-L-1732-23; Adrian Arenas v. Whairhouse, LLC, et al. PAS-L-1994-23; Elite One Development, LLC v. Pina, et al. PAS-L-2031-23 misrepresentations made during and after it, together with his prior lunch with Cesar and DJ Envy and the vast promotional efforts by DJ Envy of Flipping NJ that he had seen and heard, caused Barone to invest in Taylor Apartments on May 7, 2020. *Id.* at ¶ 52. The property, however, sat idle for the next three years and Plaintiffs' numerous inquiries about the lack of progress on construction were met with either silence or countless excuses from the Pinas. To date, the property remains vacant with only a concrete foundation poured and Plaintiffs have not seen a single distribution or return on their capital investments. *Id.* at ¶¶ 55-72.

The Complaint further alleges that after successfully procuring Plaintiffs' investments in Taylor Apartments in late 2019 and 2020, the Pinas – again with DJ Envy's involvement – drummed up their next scam, Flip2Dao – pitching the project in 2022 to Plaintiffs as an opportunity to own fractional shares of real estate with promised returns of 3 to 6 times the investment within a year. *Id.* at ¶¶ 73-74, 84. Cesar provided Barone with a pitch deck in April 2022, which listed Cesar, Jennifer and DJ Envy as co-founders of the project. *Id.* at ¶¶ 75-78 and Ex. E. In addition, it falsely claimed that an attorney from Morgan Lewis was general counsel to the project to ensure SEC compliance. *Id.* at ¶¶ 78-79. Confirming Barone's understanding that DJ Envy was involved in Flip 2 Dao as represented in the pitch deck and at Cesar's suggestion, Barone watched a promotional video of DJ Envy and Cesar in which they purported to "giveaway" a house to members who subscribed in Flip2Dao to effectively accelerate and induce investments. *Id.* at ¶¶ 81-83. After reviewing the pitch deck and watching the promotional video in which DJ Envy and Cesar promoted their partnership in Flip2Dao, coupled with the misrepresentation from Cesar that there was only limited space open to subscribers, Barone invested $300,000 in Flip2Dao on June 10, 2022. *Id.* at ¶¶ 85-90.

On a segment of the Breakfast Club just a couple of weeks later, DJ Envy and Cesar confirmed what Barone already understood: that DJ Envy was a partner of the Pinas in connection with Flip2Dao, during which DJ Envy stated Flip2Dao was "a way whereby people can invest and be a part owner on some of the projects that **we** actually buy" and that the Flip2Dao platform is "there where **we** actually guide you." *See id.* at ¶¶ 91 and 94; *see also* https://www.youtube.com/watch?v=NqimnlIkESw. Subsequent posts to the Flip2Dao Instagram account[2] also confirmed the same impression of DJ Envy's involvement on Flip2Dao, in which he stated in no uncertain terms that he was a "partner" of the Pinas. *See id.* at ¶ 95.

In late May 2023, Plaintiffs discovered widespread fraud relating to Flipping NJ after seeing a social media post containing information from other victims in the scheme. *Id.* at ¶ 103. At that point, Barone confronted DJ Envy, who incredibly denied his involvement in Flip2Dao despite being listed as a co-founder on the pitch deck, helping promote the project, including with the housing giveaway and his own statements indicating that he was a partner of the Pinas in Flip2Dao. *Id.* at ¶¶ 103-105. After learning of the fraud, Plaintiffs demanded financial information in the Pinas' possession as controlling members/managers of the Taylor Apartments and Flip2Dao entities to attempt to decern where the money they invested went, especially considering the utter

[2] On or around August 13, 2023, well after Plaintiffs commenced this litigation and put the parties on notice, all but one post on Flip2Dao's Instagram account were deleted, which directly violates the parties' obligations to preserve evidence in connection with litigation. *See* https://www.instagram.com/p/CgP7ETBNwBp/

lack of development and property tax delinquency at the Taylor Apartments property. *Id.* at ¶¶ 118-131.

Plaintiffs commenced this action seeking temporary, preliminary, and permanent injunctive relief freezing the accounts to which Plaintiffs wired their investments (and any related accounts), ordering the Pinas to turn over the books and records for the Taylor Apartments and Flip2Dao entities, which they failed to produce despite repeated requests, and ordering Defendants to show cause as to why a statutory or custodial receiver should not be appointed over the companies. Relevant to this motion, the Complaint also seeks damages against the Pinas and DJ Envy based on violations of the New Jersey Consumer Fraud Act (NJCFA), N.J.S.A. 56:8-1, et seq. (Count Three), common-law fraud (Count Four) and against, DJ Envy specifically, for aiding and abetting fraud (Count Five).[3] Compl., ¶¶ 149-166.

In the Complaint, Plaintiffs allege based on the foregoing facts that DJ Envy engaged in unconscionable practices, made knowingly false statements, deception, and misrepresentations, including promoting investment in Taylor Apartments Project knowing that the investment would not be used for that purpose and promoting the Flip2Dao investment by making false statements about what the investment would be used for. Compl. ¶¶152, 157, 159. That is fraud. The Complaint further alleges that with knowledge of the fraud being committed by the Pinas, Casey materially aided and abetted the promotion of the fraud, by promoting it on his radio program,

[3] The Complaint also alleges breaches of fiduciary duty and unjust enrichment against the Pinas, which are not relevant to these motions.

holding himself out to be a partner of the Pinas, and promoting himself as a co-founder of Flip2Dao. *Id.* at ¶164.

Plaintiffs filed a July 16, 2023 affidavit of service on DJ Envy that was prepared by the professional process server hired by Plaintiffs. Certification of Sean Mack ("Mack Cert."), Ex. A (Affidavit of Louis Lisi). That affidavit represented that a member of DJ Envy's household had been served. *Ibid.* Based on that affidavit, Plaintiffs believed they had properly effectuated service on DJ Envy.

On August 2, 2023, clearly demonstrating that he had received the Complaint and had notice of it, DJ Envy, through counsel, filed a voluminous motion to dismiss for failure to effectuate service and for failure to state a claim on which relief can be granted. DJ Envy supported his motion to dismiss, which by rule must be based on the allegations in the Complaint, with several supporting affidavits, including from himself. In DJ Envy's certification, he claims to be a victim of the fraud alleged in the complaint and certifies that in late 2019, he invested $500,000 with the Pinas to renovate and flip a run-down school building located at 385-391 Totowa Avenue in Paterson ("School Building"). Affidavit of Raashaun Casey dated July 31, 2023 ("DJ Envy Aff."), ¶ 19. According to the certification, DJ Envy was promised a monthly $17,000 dividend in return, but to date, he has not received any dividends. *Ibid.*

The Court held a hearing on Plaintiffs' request for temporary restraints on August 2, 2023. Approximately fifteen minutes before the hearing, the Pinas filed a voluntary petition for Chapter 11 bankruptcy on behalf of Taylor Apartments, in a clear bad faith attempt to deprive the Court of jurisdiction to order relief against that entity. Mack Cert., Ex. B. The Court entered the requested temporary injunctive relief and issued the order to show cause, but given the bankruptcy, excluded Taylor Apartments from any relief.

Following entry of that order to show cause, Plaintiffs have attempted to personally serve DJ Envy on multiple occasions without success. DJ Envy lives in a single-family home that is surrounded by an electric fence and warnings of guard dogs on the premises. Plaintiffs' process server has been unable to serve DJ Envy or any member of his household behind the locked gates, and has repeatedly been told by someone on the security intercom that no one is home. Mack Cert., Ex. C. DJ Envy's attorney also refuses to accept service on his behalf. Mack Cert., Ex. D. Because DJ Envy is using his security measures to evade service and his counsel will not accept service, Plaintiffs seek leave from this Court to effectuate service by substituted means.

As a result of the Taylor Apartments bankruptcy filing, Plaintiffs now cross-move to amend the Complaint to remove Taylor Apartments as a party as reflected in the proposed Amended Verified Complaint ("Amended Complaint" or "Amended Compl."). In doing so Plaintiffs also seek to provide additional detail in the Amended Complaint regarding DJ Envy's active participation in and promotion of the fraudulent conduct already described in the Complaint and to respond to certain false statements in Defendants' affidavits submitted with DJ Envy's motion.

Plaintiffs also seek leave to amend to add additional facts that have been discovered since filing their Complaint a month ago. For example, contrary to the representations set forth in the Pinas certifications submitted in support of DJ Envy's motion, the Pinas sold interests in Taylor Apartments to multiple other investors promising shares in the profits generated by Taylor Apartments, but never disclosed those agreements to Martini or Barone. Specifically, in December

2017 unbeknownst to Martini at the time he invested two years later or Barone shortly thereafter, the Pinas signed an agreement with another investor and promised him 50% of the profits of Taylor Apartments. Amended Compl., ¶ 30. In November 2022, Cesar signed another operating agreement – again without informing Barone or Martini – with a different investor in which Cesar represented that he owned 100% of Taylor Apartments and was selling 25% of the company to a new investor for $1 million. *Id.* at ¶ 89. Those agreements directly contradict the sworn statements from the Pinas that the only owners of Taylor Apartments are Jennifer and the Plaintiffs. Affidavit of Cesar Pina dated July 14, 2023, ¶ 8; Affidavit of Jennifer Pina dated July 14, 2023, ¶ 8.

The Amended Complaint further provides additional details leading up to Martini's investment in Taylor Apartments, in response to DJ Envy's incredible and inaccurate statement that he had only met Martini twice and only by "chance." DJ Envy Aff., ¶ 25. In fact, DJ Envy and Martini have known each other for years, having worked closely together in the music industry, and given their longstanding relationship, DJ Envy was the catalyst for Martini's investment in Taylor Apartments. Amended Compl., ¶¶ 18-25. Martini was introduced to Cesar through DJ Envy, whom Martini had known since 2016 when Martini signed DJ Envy to his record label. *Id.* at ¶ 20. The two were in regular contact thereafter in working to release DJ Envy's music, shooting music videos for DJ Envy's singles and numerous other meetings. *Ibid.* Around that same time, like Barone and numerous other investors, Martini noticed DJ Envy becoming heavily involved in real estate investing and promoting the Pinas on the Breakfast Club and social media. *Id.* at ¶ 21. He understood from DJ Envy that he had partnered with them on real estate deals and the seminars they hosted, many of which Martini attended to better understand their real estate investment strategies. *Id.* at ¶ 22. Martini noticed that DJ Envy even moved into Cesar's office, with their desks set up next to each other to facilitate working together on real estate deals. *Ibid.*

Based upon that promotional activity, what he heard at real estate seminars, personal discussions with DJ Envy about the Pinas experience and seeing how closely DJ Envy was tied to the projects, Martini became interested in investing with the Pinas and DJ Envy made the introduction. *Id.* at ¶ 23. Before making a substantial investment in Taylor Apartments of $1,000,000, Martini first discussed it with DJ Envy. DJ Envy advised that he was being paid on his deals with the Pinas and expressly vouched for his partners and their experience. *Id.* at ¶ 25. With those representations and assurances, Martini proceeded with his investment. *Ibid.*

With respect to Barone, the Amended Complaint further details the lunch and tour that led to his investment in Taylor Apartments. *Id.* at ¶¶ 32, 41. During the lunch in late 2019, Cesar and DJ Envy presented Barone with various investment opportunities that they were working on together, at which time DJ Envy described the projects as joint real estate projects between him and Cesar. *Id.* at ¶ 32. The tour, which took place in early 2020, was preceded by a meeting in Cesar's office between Barone, Sugarman, DJ Clue, Gary Vee, Cesar, and DJ Envy. *Id.* at ¶ 42.

Sugarman introduced the meeting by explaining to Gary Vee that he and Barone had been following DJ Envy and Cesar for more than a year, went to some of their joint seminars, and now Cesar and DJ Envy were promoting some bigger opportunities that he and Barone were potentially interested in investing. Sugarman then asked DJ Envy and Cesar to explain the opportunities. *Id.* at ¶ 43.

DJ Envy took the lead in promoting the opportunities that he and Cesar were pursuing. *Id.* at ¶ 44. He explained to Barone and the others (1) how he and Cesar had worked together previously and were now working on a variety of projects together, (2) that they started working together on residential projects of two, three, and four family homes, (3) that they were now working on some bigger apartment projects together in Paterson and other cities, and (4) that he and Cesar were not only pursuing opportunities together in Paterson, but they had now done projects together in Atlanta, Atlantic City, and Chicago. *Id.* at ¶ 45. During the meeting, Cesar and DJ Envy explained their investment strategies, why they had been so successful together, and that together they were building generational wealth for their families. *Id.* at ¶ 46. Cesar and DJ Envy then spent approximately four hours giving Barone and the others a tour of all of their investment properties in Paterson. *Id.* at ¶ 47. Of note, the School Building in which DJ Envy's affidavit admits he invested, and for which he now claims he was a "victim" of the fraud because he has never been paid what he was promised, was one of several properties DJ Envy and Cesar showed to Barone and others during the 2019 Paterson tour. *Id.* at ¶ 49-50. At that time, renovations had not commenced, but DJ Envy and Cesar explained to the group their plans for developing it into apartments. *Id.* at ¶ 49.

The tour culminated with Cesar and DJ Envy bringing Barone and the others to the vacant lot where the Taylor Apartments Project would be built. Cesar then explained the planned project and the opportunity for Barone and the others to invest in it. *Id.* at ¶ 51. Impressed with everything he had heard from Cesar and DJ Envy over the last year, and in particular with their joint presentation during the Paterson meeting and tour, Barone decided to invest in the Taylor Apartments Project. *Id.* at ¶ 53.

The Amended Complaint also provides additional facts regarding DJ Envy's role in Flip 2 Dao and the promotional activity that preceded Barone's investment in June 2022. Cesar and DJ Envy prepared promotional videos for Flip2Dao that were posted on social media or emailed to potential investors. *Id.* at ¶ 101. In one video, DJ Envy explained that he has invested in properties with Cesar in the past, and that through Flip2Dao, he and Cesar are giving the public the ability to become partners with them on their next deals for as little as $100. *Ibid.* DJ Envy represented that they would post investment properties online and if an individual was interested in investing, they could and would be a partner with him and Cesar on that deal. *Ibid.* DJ Envy then explains that to demonstrate how serious their new program is, they are giving away a house to one of the investors in Flip2Dao and he and Cesar will walk that person through how to flip that house. *Id.* at ¶102. At Cesar's suggestion, Barone reviewed these videos and based on the representations made by DJ Envy and Cesar, was persuaded to invest $300,000. *Id.* at ¶ 105, ¶ 113.

In light of these facts and the Taylor Apartments bankruptcy, Plaintiffs seek leave to file the Amended Complaint, and in doing so, maintain that the Court should deny DJ Envy's motion to dismiss.

LEGAL ARGUMENT

I. THE COURT SHOULD GRANT PLAINTIFFS' CROSS MOTIONS.

A. The Court Should Authorize Substituted Service.

Court Rule 4:4-4(b)(3) authorizes this Court to enter an order authorizing service by any method consistent with due process of law. Due process is fundamentally about ensuring a defendant has notice and an opportunity to be heard on his defense. *See Kurilla v. Roth*, 132 N.J.L. 213 (1944) ("The object of all process is to impart to the person affected notice of the proceeding and an opportunity to defend; and the sufficiency of the statutory substitute for personal service depends upon whether it is reasonably calculated to provide the defendant with notice of the action or proceeding and an opportunity to be heard.").

Because he is now aware of this lawsuit, DJ Envy is using his security devices to evade service of process, making it impossible to effectuate service at his place of residence. His attorney has refused to accept service on his behalf. The sole purpose of our service of process rules is to ensure the defendant receives notice of the lawsuit; it is not designed to cause unnecessary delay and reward gamesmanship for evading service. The Court should enter an order authorizing service of the amended complaint and the Order to Show Cause by regular and certified mail to DJ Envy's home and by email to his attorneys. Such service will confirm that DJ Envy has notice of this lawsuit and can then respond as he deems appropriate.

B. The Court Should Grant Leave to File an Amended Complaint.

"Rule 4:9-1 requires that motions for leave to amend be granted liberally" in the interest of justice. *Kernan v. One Wash. Park Urban Renewal Assocs.*, 154 N.J. 437, 456 (1998). In determining whether to permit amendment to add parties or claims, "[t]he achievement of substantial justice is the fundamental consideration." *Franklin Medical Assocs. v. Newark Public Schools*, 362 N.J. Super. 494, 506 (App. Div. 2003); *Brower v. Gonnella*, 222 N.J. Super. 75, 81 (App. Div. 1987) (quoting *Jersey City v. Hague*, 18 N.J. 584, 602 (1955)). Motions for leave to amend "should generally be granted even if the ultimate merits of the amendment are uncertain." *G & W, Inc. v. Borough of E. Rutherford*, 280 N.J. Super. 507, 516 (App. Div. 1195); *see also Interchange State Bank v. Rinaldi*, 303 N.J. Super. 239, 256 (App. Div. 1997) (motions for leave to amend should be liberally granted without consideration of the ultimate merits of the amendment). The "broad power of amendment should be liberally exercised at any stage of the proceedings, . . . unless undue prejudice would result." Pressler & Verniero, *Current N.J. Court Rules*, comment 2.1 on R. 4:9-1 (2017). Generally, the "denial of such a motion in the 'interests of justice' is usually only required when there would be prejudice to another party," or if the claim is "not sustainable as a matter of law." *Id.* at 80; *Rinaldi*, 303 N.J. Super. at 256-57. Moreover, as previously stated, leave to amend is especially appropriate when a pleading is challenged by way of motion to dismiss based on a failure to particularize factual allegations supporting fraud. *See Rebish*, 224 N.J. Super. at 627.

Leave to file the proposed amended complaint is clearly in the interest of justice. A mere fifteen minutes before a hearing on Plaintiffs' request for temporary restraints in this case, the Pinas filed a voluntary Chapter 11 bankruptcy petition on behalf of Taylor Court Apartments in a bad faith attempt to tie this Court's hands in ordering relief against that entity and continue to prevent Plaintiffs from accessing basic financial information regarding the entity to which they are entitled. *See* Mack Cert., Ex. B. Plaintiffs now seek to remove Taylor Court Apartments as a party to this action to ensure its pending bankruptcy petition does not prevent this litigation from duly proceeding. An amendment at this early stage poses no prejudice to any party, but especially not the Pinas since this motion was occasioned by their own conduct.

In doing so, and although the initial complaint more than adequately states the requisite facts to support a claim against DJ Envy for fraud under the NJCFA and/or common law fraud on a direct or aiding and abetting theory of liability, Plaintiffs have included in the Amended Complaint further detail regarding DJ Envy's involvement that are referenced in the Complaint as well as address what DJ Envy certified to in his affidavit supporting his motion and other new facts that have come to light since the commencement of this case.

Initially, Plaintiffs have uncovered evidence of additional fraudulent acts by the Pinas related to Taylor Apartments. The Amended Complaint alleges that in 2017 and again in 2022, the Pinas sold interests in Taylor Apartments to other investors promising shares in the profits generated by Taylor Apartments, but never disclosed those agreements to Martini or Barone (nor did the Pinas disclose Martini's and Barone's ownership interests to those other investors) and maintain in the affidavits submitted with DJ Envy's motion to dismiss that Plaintiffs and Jennifer Pina are the sole owners of the entity. *See* Amended Compl., ¶ 30; ¶ 89; Affidavit of Cesar Pina dated July 14, 2023, ¶ 8; Affidavit of Jennifer Pina dated July 14, 2023, ¶ 8. That misrepresentation of fact clearly constitutes fraud.

The Amended Complaint also refutes several aspects of DJ Envy's affidavit. For example, DJ Envy claims that he had only met Martini by way of two "chance" encounters – during the lunch in New York City with Cesar and others and the tour of Paterson, both of which Barone attended. Martini was not present for either of those encounters, nor does the Complaint allege he was. However, far from two "chance" meetings, Martini and DJ Envy have known each other and collaborated for years on dealings in the music industry, as detailed above. Amended Compl., ¶¶ 18-25.

Moreover, contrary to DJ Envy's claim that he simply "drove around Paterson with a group of potential investors who looked at numerous real estate investment opportunities" and "had lunch in New York with other potential investors," the Amended Complaint explains that just prior to the lengthy four-hour tour, DJ Envy and Cesar met with Barone and a few others in Cesar's office. When Barone's friend, Sugarman asked DJ Envy and Cesar to describe the opportunities for Sugarman and Barone to invest with them, DJ Envy was center stage in that discussion. He represented his longstanding working relationship with Cesar on a variety of past and current projects, initially residential in nature involving the development of two, three, and four family homes, but now much larger apartment projects together in Paterson and other cities, including Atlanta, Atlantic City, and Chicago. That intimate meeting in which DJ Envy led the pitch for investment opportunities with him and Cesar was followed by a tour of several Paterson properties, which ended with the group visiting Taylor Apartments opportunity. Amended Compl., ¶¶ 41-52. Impressed with everything he had heard from Cesar and DJ Envy over the last year, and in particular with their joint presentation during the Paterson meeting and tour, Barone decided to invest in the Taylor Apartments Project. *Id.* at ¶ 53.

Notably, another property visited during the tour was the School Building in which DJ Envy's affidavit indicates that he invested $500,000 in late 2019 in exchange for promised returns of 17,000 a month. At that time, renovations had not commenced, but DJ Envy and Cesar explained to the group their plans for developing it into apartments. *Id.* at ¶¶ 49-50. According to the certification, DJ Envy never received any dividends. *Id.* at ¶ 50. If that is true, the glaring question remains: why would DJ Envy continue to promote business deals with him and the Pinas, including Flip2Dao which was several years after his investment, if he himself had not been paid a single dividend? *Id.* at ¶ 103.

Plaintiffs have more than demonstrated significant reasons to doubt the veracity of DJ Envy's certification and more detail beyond the verified accounts in the Complaint and Amended Complaint about the extent of his knowledge and involvement in the scheme will assuredly be uncovered through discovery. The facts of this unfortunate widespread fraud as expounded upon in the Amended Complaint reinforce the causes of action pled against Defendants and leave to file this pleading will not prejudice any party at this exceptionally early juncture of the litigation. The Court therefore should grant Plaintiffs' cross-motion to amend in the interest of justice. *See* R. 4:9-1.

II. THE COURT SHOULD DENY DJ ENVY'S MOTION TO DISMISS.

A. <u>This Case Should Not Be Dismissed for Failure to Effectuate Service.</u>

Based upon the affidavit of Eric Lowe, Plaintiffs agree that service upon him did not effectuate service upon DJ Envy. *See* Affidavit of Eric Lowe dated August 1, 2023. However, the time within which Plaintiffs must serve the complaint or be subject to dismissal has not come close to expiring. *R.* 1:13-7 (providing four months before a notice of dismissal for lack of prosecution is issued by the Court). Therefore, there is no basis to allow Defendant to obtain a dismissal simply by filing a premature motion to dismiss for failing to effectuate service before the time for completing service has expired. There is no reason to dismiss this case now as Plaintiffs still have time to effectuate service, especially if the Court grants Plaintiffs' cross-motion to file an amended complaint.

Therefore, Defendant's motion to dismiss for failure to effectuate service should be denied without prejudice.

B. <u>Plaintiffs' Complaint Adequately Pleads Its Causes of Action Against DJ Envy.</u>

"[O]n a motion to dismiss for failure to state a claim, a court is not concerned with a plaintiff's ability to prove the allegations contained in his complaint but simply, whether the complaint, when viewed liberally, states the fundament of a cause of action." *Too Much Media, LLC v. Hale*, 413 N.J. Super. 135, 169 (App. Div. 2010), *aff'd and modified*, 206 N.J. 209 (2011) "In considering such a motion, a court is obliged to accept as true the facts alleged in the complaint." *Darakjian v. Hanna*, 366 N.J. Super. 238, 242 (App. Div. 2004). At this stage, a trial court must merely determine "whether a cause of action is '***suggested***' by the facts" and not Plaintiffs' "ability . . . to prove the allegation[s] contained in the complaint." *Printing Mart–Morristown v. Sharp Elec. Corp.*, 116 N.J. 739, 746 (1989) (emphasis added). Likewise, "plaintiffs are entitled to the benefit of every favorable inference of fact." *DiCristofaro v. Laurel Grove Memorial Park*, 43 N.J. Super. 244, 252 (App. Div. 1957).

As a threshold matter, the Court should decline to consider by way of this premature motion to dismiss the merits of the Complaint, with which DJ Envy was never served (notwithstanding diligent efforts by Plaintiffs) and since Plaintiffs simultaneously seek leave to file the Amended Complaint. Even if this Court were inclined to grant this motion, which Plaintiffs maintain it should not, Plaintiffs must be given the opportunity to amend in any event. The Appellate Division has explained that that "on such a motion [to dismiss] as this—one which, if successful, means sudden death to the action—the court searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." *Di Cristofaro*, 43 N.J. Super. at 252, 257-58. (App. Div. 1957) (reversing the trial court's decision to grant a motion to dismiss and directing that "conclusions as to the statement or existence of a cause of action in favor of plaintiffs in these respects should await the filing of an amended complaint"). That is especially so when a moving party, as here, claims the allegations of fraud lack factual specificity. *See Rebish v. Great Gorge*, 224 N.J. Super. 619, 627 (App. Div. 1988) ("The essential elements are not missing in Counts Two and Three, but those counts simply fails to particularize, as *R.* 4:5-8 requires. Under such circumstances, the trial judge should have afforded plaintiff the opportunity to comply with the dictates of the rule."); *see also* Def's Br., at 8, 11.

Plaintiffs nonetheless maintain that the Complaint, and the specific allegations against DJ Envy comfortably meet general notions of pleading, including the standard applicable to pleading fraud claims. *Rule* 4:5-8(a) provides with respect to allegations misrepresentation or fraud, the "particulars of the wrong, with dates and items if necessary, shall be stated insofar as practicable.

Malice, intent, knowledge, and other condition of mind of a person may be alleged **generally**." The Rule is intended to assure that a pleading includes enough facts "to enable the person charged to deny or disprove or explain these facts." *Evangelista v. Pub. Serv. Coordinated Transp.*, 7 N.J. Super. 164, 168-69 (App. Div. 1950). The Complaint evidently gave DJ Envy enough facts to enable him to try to deny or explain his involvement in the fraudulent scheme through a voluminous motion to dismiss, including a detailed affidavit, in which he, among other things, acknowledges and provides a competing (albeit erroneous)[4] account of the lunch and tour with Barone in 2019 specifically referenced in the Complaint.

Rule 4:5-8's pleading standard simply does not require that Plaintiffs provide every detail as to how DJ Envy was involved in promoting and furthering the multi-million-dollar Ponzi-like scheme being operated by the Pinas at this very preliminary stage in the litigation. Indeed, the Complaint is rife with facts that controvert DJ Envy's attempt to cast his involvement with the Pinas as a "mere association with the Pinas on matters that are completely unrelated to the Taylor Apartments Project and Flip2Dao" and demonstrate that Defendants' actions were part and parcel of the fraudulent scheme. Def's Br., at 6. As self-proclaimed business **partners**, the Pinas and DJ Envy embarked on a full-fledged campaign in the form of seminars, encouraging listeners of the Breakfast Club to invest, social media and several in person meetings, to attract individuals such

[4] DJ Envy certifies that he never met Plaintiffs aside from "chance" encounters during the tour and lunch, an outright lie which is specifically addressed in the Amended Complaint that details the long working relationship between Martini and DJ Envy. Amended Compl., ¶¶ 18-25. Plaintiffs contest other statements in DJ Envy's affidavit, including that he was a mere passive attendee during the 2019 tour, thus demonstrating the existence of a very genuine legal controversy regarding the depth of his involvement in the apparent Ponzi-like scheme.

as Plaintiffs to invest large sums of money in projects that the Pinas had no ability or intention to develop. Compl., at ¶¶ 11, 13-34, 53-54, 73-95. As a well-known radio personality, DJ Envy's broader promotional efforts on the radio and social media regarding his real estate partnership with the Pinas attracted and induced Plaintiffs and others to the investment scheme by making it appear legitimate when it was not. Thus, DJ Envy's assertion that his discussion and promotion with his business partners of "house flipping investments . . . are neither 'unlawful' practices or acts", Def's Br. at 8 – ***when those investments clearly were never intended to be used exclusively for the purposes that Defendants represented to Plaintiffs' and numerous other victims' that they were investing in –*** is simply absurd. *See* N.J.S.A. 56:8-2 (broadly defining unlawful conduct under the NJCFA as "*any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation*, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission.").

And DJ Envy's involvement did not end there. The Complaint further alleges that DJ Envy helped solicit the specific investments at issue. As DJ Envy acknowledges, he participated in a lunch and follow-up lengthy tour of Paterson properties with Cesar. That tour was a means to further entice Barone to invest in their projects that would never be developed through to completion. One of the properties they toured was Taylor Apartments, which was mispresented to involve the short-term development and flip of 50 apartment units located at 555 Main Street in Paterson. *See* Compl., ¶ 16, 21-23, 31-32. Based on what he heard at the lunch, the tour and from DJ Envy's prior promotional activities related to Flipping NJ, Barone invested half a million dollars in Taylor Apartments. Compl., ¶¶ 34-36.

DJ Envy also played a critical role in inducing Martini's specific investment in Taylor Apartments. Compl., at ¶ 16. DJ Envy's role, which is further expounded upon in the Amended Complaint, included introducing Martini to Cesar after Martini had worked with DJ Envy for several years prior; his vast promotional efforts of the Pinas on the Breakfast Club and social media that Martini heard, saw and relied upon; and reinforcing through discussion and other conduct his partnership with the Pinas on real estate deals and the seminars they hosted, and even moving into Cesar's office with a desk set up directly next to each other. Based upon that promotional activity, what he heard at real estate seminars, personal discussions with DJ Envy about the Pinas experience and seeing how closely DJ Envy was tied to the projects, Martini became interested in investing with the Pinas and DJ Envy made the introduction. Martini again consulted DJ Envy before investing $1,000,000 in Taylor Apartments, at which point DJ Envy advised that he was being paid on his deals with the Pinas and expressly vouched for his partners and their experience. Amended Compl., at ¶¶ 18-25.

DJ Envy then attempts to claim he had no role in Flip2Dao or Barone's investment in the venture when the Complaint alleges facts, which are assumed to be true, demonstrating the very opposite. *See* Def's Br. at 8-9. According to the Complaint, Cesar first provided Barone with a pitch deck that listed DJ Envy as a co-founder of Flip2Dao, which was represented to be a platform through which a limited number of subscribers could own fractional shares of real estate by purchasing different tiers of membership.[5] Compl., ¶ 75-76, 78; Exhibit E. Prior to Barone's

[5] That DJ Envy now claims in his certification, and the Pinas seek to corroborate in theirs, that the Pinas listed him as a co-founder in the pitch deck without his knowledge or consent is of no moment for purposes of this motion, which again is limited to the allegations in the Complaint.

investment, Cesar also instructed Barone to watch a promotional video of DJ Envy and himself giving away a house in Paterson – an opportunity available only to those who became a member in Flip2Dao. *Id.* at ¶¶ 81-82. As icing on the cake, Cesar then told Barone he would be one of the last of 1,500 subscribers, to create a false sense of urgency after he saw Barone was interested in investing upon his review of the pitch deck and promotional video, all of which led Barone to wire Cesar $300,000 for a 1% interest in the company. *Id.* at ¶¶ 85-90. Barone's existing impressions that DJ Envy was a founding member of Flip2Dao were only reinforced when DJ Envy later hosted the Pinas on an episode of the Breakfast Club. During that program, DJ Envy explained that with Flip2Dao, there "will be a way whereby people can invest and be a part owner **on some of the projects <u>we</u> actually buy.**" *Id.* at ¶¶ 92-94. DJ Envy also confirmed in a promo video posted on the Flip2Dao Instagram page that he was a "partner" of the Pinas and encouraged others to partner with them on real estate deals. *Id.* at ¶¶ 95.

Given those facts, any effort to relegate DJ Envy's involvement in Taylor Apartments or Flip2Dao scheme more broadly to innocent "puffery" is unpersuasive. *See Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 606–08 (1997) (upholding the trial court's decision following a trial on the merits that Weichert made affirmative misrepresentations about a builder's experience,

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Plaintiffs however highly doubt DJ Envy lacked such knowledge that he was being represented as a co-founder of the investment, particularly since he was listed under the same title on Flip2Dao's public webpage, www.flip2dao.com/team, along with numerous photos of him with the Pinas under the heading "Team" as recent as February 2023. Although that content has since been removed from the Flip2Dao "Team" webpage, any member of the public can view that content with a simple search of that URL on a website that preserves past unedited versions of the webpage. *See* https://web.archive.org/

qualifications and the quality of his homes were not "idle comments or mere puffery" and that "Weichert's synergistic business arrangement approached a joint venture with the builder" such that it was "more than just a listing broker"). Likewise, the mere fact that Plaintiffs may not have executed written agreements with DJ Envy has absolutely no bearing on Plaintiffs' claims that seek to hold him liable in tort for his fraudulent conduct in furthering the fraudulent scam. The facts as alleged in the Complaint (and to be further elucidated in the Amended Complaint if granted leave) easily states a claim against DJ Envy under the NJCFA or for common-law fraud, or at a minimum, for aiding and abetting the Pinas commission of the fraud. In short, and sufficient to state a cognizable claim for a violation of the NJCFA, common law fraud, or aiding and abetting fraud, Plaintiffs allege the existence of a Ponzi-like scheme pertaining to their respective investments in Taylor Apartments and Flip2Dao, of which DJ Envy knew or had reason to know,[6] and continued to promote, nevertheless. Alternatively, even if DJ Envy is not directly liable for the indisputable fraud pertaining to Plaintiffs' investments, his actions clearly contributed to its success, and he knew that, such that he aided and abetted fraud. As a result of DJ Envy's conduct, Plaintiffs have suffered losses.

[6] Although Plaintiffs allege that DJ Envy acted with knowledge and caused them to rely on his misstatements, the NJCFA does not require proof of knowledge or intent by a defendant, like DJ Envy, who engages in an affirmative act that is unlawful, *i.e.* "any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation." N.J.S.A. 56:8-2; *Gennari*, 148 N.J. at 605 (explaining that the Act does not require proof that the defendant knew its statements were false). The Act also does not require proof of reliance and holds a defendant accountable for "for misrepresentations whether 'any person has in fact been misled, deceived or damaged thereby.'' *Id.* at 607-08.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny DJ Envy's motion to dismiss and grant Plaintiffs' cross-motion for leave to file the Amended Complaint and to authorize substituted service of the Amended Complaint.

Respectfully submitted,

Sean Mack

cc: All Counsel of Record (via JEDs and email)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)
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In re: TAYLOR COURT APARTMENTS LLC Debtor.	Chapter 11 Case No. 23-16641-RG Hearing Date and Time: September 12, 2023 at 10:00am **ORAL ARGUMENT REQUESTED**

MEMORANDUM OF LAW IN SUPPORT OF MOTION OF INTERESTED PARTIES BARONE AND MARTINI FOR ENTRY OF AN ORDER APPOINTING A CHAPTER 11 TRUSTEE PURSUANT TO 11 U.S.C. § 1104

Interested Parties Anthony Barone and Anthony Martini ("Interested Parties") hereby submit this Motion for Entry of an Order Appointing a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104 ("Motion"). In support of the Motion, the Interested Parties respectfully represent to the Court as follows:

PRELIMINARY STATEMENT

It is customary, when describing the responsibilities of a debtor-in-possession under Chapter 11 of the Bankruptcy Code, to speak of the obligations of the debtor to serve as a fiduciary for creditors, and to maximize values for the benefit of those creditors and the bankruptcy estates. Put simply, "[t]he willingness of Congress to leave a debtor-in-possession is premised on an expectation that current management can be depended upon to carry out the fiduciary responsibilities of a trustee." *In re Marvel Entertainment Group, Inc.*, 140 F.3d 463, 474 (3d Cir. 1998), *quoting In re V. Savino Oil & Heating Co.*, 99 B.R. 518, 524 (Bankr. E.D.N.Y. 1989. Here, however, Jennifer Pina and Cesar Pina ("the Pinas"), who are controlling members and/or mangers of the debtor – Taylor Court Apartments LLC ("Taylor Apartments" or "Debtor") – have demonstrated a clear propensity to disregard their fiduciary obligations through their fraudulent, deceptive and unconscionable conduct when they swindled the Interested Parties (who co-own Taylor Apartments) and many others, out of millions of dollars on sham real estate investment projects, including one purported to be developed by the Debtor.

The Pinas claimed to operate a successful property flipping empire known as "Flipping NJ," which gained widespread recognition and perceived legitimacy when it was promoted by the Pinas' partner, Raashaun Casey a/k/a DJ Envy on his radio program, Power 105.1 "The Breakfast Club" and his social media with upwards of 2 million followers. With DJ Envy's help in some instances, the Pinas specifically solicited the Interested Parties on multiple occasions to invest in what they represented to be a great real estate investment involving the purchase, development, and rental of a to be constructed multi-family apartment building at 555 Main Street, Paterson, NJ (the "Property").

In pitching the Taylor Apartments project, the Pinas misrepresented the then-financial status of the company and thereafter repeatedly misled Plaintiffs about the status of construction and the work being done on the Property for over two years. Contrary to the misrepresentations of the Pinas that the project had millions of dollars in purported financing and that construction on the project was nearing completion, only a concrete slab foundation has been poured on the Property in three years, and the Property faces tax foreclosure because the Pinas failed to pay municipal taxes. Incredibly, when the Pinas solicited Martini's investment in the Taylor Court property, they told him he would be the only additional owner. When Barone invested, he was told that Jennifer Pina and Martini were the only other owners.

Unbeknownst to Martini or Barone, when they invested, the Pinas had already taken $351,000 from another investor and promised him 50% of the rental profits. In 2022, after taking money from those three investors, the Pinas again sold the ownership of the Debtor to a fourth investor for $1 million and in that agreement, Cesar Pina misrepresented that he was the 100% owner of the Debtor.

In addition to owning Taylor Apartments, the Pinas also own several other companies involved in real estate development. The Pinas voluntarily filed one other company, Whairhouse Real Estates Investments LLC, for Chapter 11 bankruptcy to stave off a state court foreclosure proceeding. Other entities owned by the Pinas, Whairhouse Limited Liability Company and From Start 2 Flipping LLC are facing at least 19 state court lawsuits alleging that the Pinas used them to perpetrate a real estate Ponzi scheme, by reselling the same property to multiple investors. An involuntary chapter 11 petition was recently filed against Whairhouse Limited Liability Company (*In re Whairhouse Limited Liability Company, No. 23-bk-17272*)

Jennifer Pina filed the Debtor for bankruptcy minutes before the Interested Parties were to be heard on an order to show cause in a state court action (*Barone, et. al, v. Pina, et. al*, PAS-C-76-23) to freeze the Debtor's bank account.

Jennifer Pina has now twice filed personal bankruptcy in a matter of months to interrupt state court proceedings (each time being *sua sponte* dismissed by this court for failing to comply with bankruptcy rules).

Between the investments at issue in the various state court lawsuits, and contracts that counsel for the Interested Parties have reviewed, there are more than 30 victims seeking over $40 million from the Pinas. This will soon become the proverbial race to the courthouse to seize whatever assets remain of the Pinas and their entities. A trustee is needed in this case, and in the cases of the related debtor parties, to organize and efficiently marshal and distribute the remaining assets to the Pinas' many victims.

These facts together with the Pinas' flagrant misuse of the Bankruptcy Court for bad faith litigation tactics confirm that "cause" exists pursuant to section 1104(a)(1) of the Bankruptcy Code for the appointment of a trustee as an independent fiduciary over an entity controlled by two fraudulent actors who have demonstrated their wanton disregard of fiduciary principles, and that such an appointment is in the best interests of the estate, creditors and other parties, as contemplated in section 1104(a)(2) of the Bankruptcy Code.

FACTUAL BACKGROUND

1. As a controlling member of Taylor Apartments, Jennifer Pina filed a petition for Chapter 11 bankruptcy relief on behalf of the Debtor on August 2, 2023 ("Petition"), a mere fifteen minutes before a hearing in the State Action on the Interested Parties' request to temporarily restrain the Pinas from diverting assets of the entity, freezing the accounts of the company and related entities, and to turn over the books and records of Taylor Apartments and another Pina-operated entity in which Barone invested – Flip the Dao LLC ("Flip2Dao"). *See Barone, et. al, v. Pina, et. al*, PAS-C-76-23.

2. The Interested Parties commenced the State Action on July 6, 2023, in the New Jersey Chancery Division against the Pinas and the Debtor by way of order to show cause and verified complaint seeking injunctive relief and damages.

3. The State Action concerns two investments made by the Interested Parties that they ultimately learned were based upon false promises and fraudulent statements by both the Pinas and DJ Envy.

4. The first investment involved the debtor – Taylor Apartments. Beginning in late 2019, the Pinas – and in some instances, DJ Envy – specifically promoted to the Interested Parties an opportunity to invest in the development of a 50-unit apartment building located at 555 Main Street, Paterson, New Jersey ("Property").

5. In September 2019, Cesar sent Martini a certificate of formation and "stock purchase agreement" for Martini to purchase 25% of Taylor Apartments, which was the entity to own and develop the Taylor Apartments Project. The Pinas represented that Jennifer held the remaining 75% interest in Taylor Apartments. (Exhibit A to Certification of Anthony Martini dated August 19, 2023)

6. The Pinas represented that the Taylor Apartments Project was already funded with a $2.5 million investment from Jennifer and a $3.5 million construction loan, which would cover the anticipated $5.6 million construction cost. Martini's investment would be used to cover any cost overruns and operating costs until the units were rented or sold.

7. At the time Martini invested, the Pinas failed to disclose to him that they had already taken $351,000 from another investor and promised that investor that he would share in 50% of the rental profits from the Taylor Apartments. (Exhibit A to Certification of Sean Mack, Esq. ("Mack Cert."))

8. Beginning in late 2019 and into early 2020, the Pinas, and on some occasions DJ Envy, communicated with and met with Barone to pitch him on investing in Taylor Apartments.

9. Cesar initially requested a $1 million investment for a 25% ownership stake, but Barone agreed to invest $500,000 for a 12.5% interest.

10. According to the Pinas, the $7 million in then-existing assets and Barone's $500,000 investment were more than sufficient to cover all of the costs to complete construction of the Taylor Apartments Project and to fund operating costs until all the units could be sold or rented. The Pinas did not tell Barone about their promise to the first investor to share 50% of the rental profits with him.

11. Cesar later provided Barone with a cash flow chart and construction schedule among other documents to confirm the status and timeline for the Taylor Apartments Project, which confirmed net profits of over $900,000 per year. The documents further estimated construction costs of approximately $5.6 million, of which the foundation was estimated to be only $650,000.

12. On May 6, 2020, Jennifer and Barone executed an operating agreement for Taylor Apartments, which listed Cesar as the manager of the entity, along with other documents confirming Barone's purchase of 12.5% of the company from Jennifer. (Exhibit A to Certification of Anthony Barone dated August 19, 2023)

13. As Martini was already a member of the company, his signature was required on the operating agreement and related documents to add a new member to the company. Martini's signature was provided only after several requests by Barone.

14. The documents Cesar provided to Barone purporting to contain Martini's signature, were not actually signed by Martini and the Pinas never informed Martini of Barone's buy-in to the company. Upon information and belief, one of the Pinas forged his signature.

15. Following Cesar's instruction, Barone wired a $500,000 investment on May 7, 2020, to another one of the Pinas' companies, "Whairhouse LLC."

16. Soon after Barone invested his money, Cesar advised him that the COVID pandemic created construction delays and would extend the construction schedule.

17. In late 2021, Cesar told Barone that construction was beginning, and they would continue building straight through 2022 to complete the project.

18. Cesar made similar representations in response to requests from Martini regarding the status of construction. In November 2021, he told Martini that "everything is moving, guys are there non-stop every day" working on the construction. The following month, Cesar told Martini that "everything is moving, finishing plumbing, foundation done."

19. In reality, no construction was done during 2020 and most of 2021.

20. In early 2022, Cesar repeatedly advised Barone that construction was underway and would be completed that year. Cesar repeated the same story to Martini at that time – that construction was underway, workers were actively building, and the project should now be completed by November 2022.

21. More excuses ensued. During the summer of 2022, Cesar represented to Barone that construction on the Taylor Apartments Project was moving along nicely and would be completed by the end of the year or by January 2023, at the latest. At that same time and growing frustrated, Martini repeatedly complained to Cesar about the constant delays in the project.

22. After receiving no responses from Cesar for several months, Martini drove past the project in August 2022 and saw that no construction progress had been made for over a year.

23. Martini then began to demand the return of his money from Cesar.

24. Cesar responded that he needed to refinance the debt on the project and as soon as he could do so, he would repay Martini his entire investment.

25. In the fall of 2022, Cesar represented to Martini that construction work had begun again, the steel support beams would be installed soon, and that once the building was finished in a few months, he would complete the refinance and repay Martini. Martini repeatedly demanded to be repaid and for information about the status of the refinancing; Cesar delayed, obfuscated and/or simply did not respond to the inquires.

26. To date and over three years later, only the foundation has been poured at the Property and no other construction has started.

27. In late 2022, Cesar showed the poured foundation of Taylor Courts to another investor and convinced him to invest $1 million to become an owner of the Debtor. The Pinas did not disclose to the new investor that three other people had already invested and were promised ownership of the Debtor.

28. In the agreement signed with the fourth investor, Cesar misrepresented that he owned 100% of the Taylor Courts, and the Pinas never told the Interested Parties about this other investor. Exhibit B to Mack Cert.

29. In May 2023, the Interested Parties discovered that their investments in Taylor Apartment, as well as Barone's investment Flip2Dao,[1] were part of a larger fraudulent scheme by

[1] The Pinas, with DJ Envy's help, engaged in similar fraudulent tactics to induce Barone's investment in Flip2Dao in 2022, for which Barone was promised a 1% share in the ownership of a real estate investment trust available to a limited number of subscribers that would generate 3-6 times his investment in one year. Among other misrepresentations, the Pinas represented that the opportunity already had 1500 investors and provided Barone with a pitch deck which misrepresented, for example, that a securities attorney from a highly reputable law firm was retained in connection with the investment to ensure securities compliance, when in fact that attorney was never counsel to the investment. None of Barone's $300,000 investment has been

the Pinas when a real estate coach, Tony "the Closer" Robinson, posted on social media information that he received from other victims who never received their principal investments or promised returns from the Pinas.

30. The State Action is one of at least 19 lawsuits against the Pinas or their entities currently pending in New Jersey Superior Court seeking over $6 million in alleged real estate scams. *See* Exhibit C to Mack Cert. Since the filing of the State Action, the Interested Parties have come to learn of over $42 million dollars in investments from other victims obtained as a result of the fraudulent conduct of the Pinas.

31. In the State Action, the Chancery Court entered a temporary restraining order, which prohibits the Pinas from destroying or altering, and requires them to produce to the Interested Parties, the books and records of Flip2Dao. The order also froze the assets of Flip2Dao pending return of the order to show cause why a receiver should not be appointed over the company. However, the Court excluded Taylor Apartments from the restraints ordered since the TRO was entered shortly after Jennifer Pina filed the voluntary bankruptcy petition for Taylor Courts.

32. This is not the first voluntary bankruptcy proceeding initiated by the Pinas in connection with their real estate investment scheme. Jennifer filed a skeletal bankruptcy petition under Chapter 13 of the Code on June 27, 2023, just as one of their creditors, PS Funding Inc., was about to foreclose on a nearly $800,000 construction loan issued to a Pina entity. *See In Re Jennifer Iturralde*, No. 23-bk-15505-RG (ECF No. 1); *see also PS Funding Inc. v. 169 Lexington Avenue LLC*, PAS-F-3633-21. Jennifer ignored this Court's order to show cause why her petition

returned nor does it appear that any real estate was actually purchased or developed in connection with Flip2Dao.

should not be dismissed due to her failure to file several documents, meet credit counseling requirements or pay the filing fee. This Court dismissed that petition on July 18, 2023. *Id.* (ECF No. 19).

33. Jennifer filed a virtually identical skeletal petition for personal bankruptcy on July 25, 2023, in connection with the PS Funding foreclosure. *See In Re Jennifer Iturralde*, No. 23-bk-16321-RG. This Court again dismissed that bankruptcy on August 21, 2023 when Jennifer failed to respond to the Order to Show Cause.

34. Jennifer also filed a voluntary Chapter 11 petition for another Pina entity, Whairhouse Real Estate Investments, LLC, in connection with an imminent foreclosure on a $1.5 million dollar mortgage encumbering a Paterson property. *See In Re Whairhouse Real Estate Investments*, *LLC*, No. 23-bk-16723-RG (ECF No. 1); *See Colony American Finance 2016-2, LTD. v. Whairhouse Real Estate Investments, LLC*, PAS-F-021368-18.

35. The Court has issued orders to show cause in this case why the Petition should not be dismissed due to the corporate debtor's failure to obtain counsel and file numerous first-day papers.

36. To protect their interests in the estate, the Interested Parties now bring this motion to appoint a Chapter 11 trustee over Taylor Apartments pursuant to 11 U.S.C. § 1104 and to oppose the dismissal of this bankruptcy.

37. In addition to the misconduct described above, the Pinas also operated another company called Whairhouse Limited Liability Company ("Whairhouse") that they used to further their fraudulent real estate scheme. Numerous victims who invested in that company have today filed an involuntary petition for bankruptcy against Whairhouse and sought the appointment of a

trustee over that entity as well. Interested Parties hereby refer the court to and incorporate by reference the factual allegations set forth in that application for the appointment of a trustee.

JURISDICTION, VENUE AND STATUTORY PREDICATES

This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 1104 and 105(a) of Chapter 11 of the Bankruptcy Code.

ARGUMENT

a. Legal Standard

While Chapter 11 contemplates that under normal circumstances, current management will remain in control of the debtor, courts have clearly articulated that the debtor-in-possession is a fiduciary for its creditors, and a trustee should replace management if management's conduct could damage the estate or hinder the reorganization efforts. *See In re V. Savino Oil & Heating Co., Inc.*, 99 B.R. 518, 525 (Bankr. E.D.N.Y. 1989); *see also Marvel Entertainment*, 140 F.3d at 471.

Section 1104(a) of the Code governs the appointment of a Chapter 11 trustee and provides in relevant part:

> (a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States Trustee, and after notice and a hearing, the court shall order the appointment of a trustee-
>
> (1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; [or]
>
> (2) if such appointment is in the interest of creditors, any equity security holders, and other interests of the estate,

> without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor[.]

11 U.S.C. § 1104(a). Subsection (a)(1) thus requires the bankruptcy court, upon motion, to appoint a trustee when the movant has proven "cause," which the statute defines to include incompetence and gross mismanagement. Subsection (a)(2), on the other hand, embodies the more flexible "best interest of the creditors" approach, and provides a basis for relief in the appointment of a trustee in certain circumstances where cause, under section (a)(1), cannot be established. *See In re Sharon Steel Corp.*, 86 B.R. 455, 457 (Bankr. W.D. Pa. 1988). *See also*, 5 Collier on Bankruptcy § 1104.02[3][d], 1104-16 n. 29 citing 124 Cong. Rec. H11, 102 (daily ed., September 28, 1978; S17, 419 (daily ed., Oct. 6, 1978) and *In re Ionosphere Clubs, Inc.*, 113 B.R.164, 169 (Bankr. S.D.N.Y.) (trustworthiness of the Debtor is a factor in appointing a trustee under Code § 1104(a)(2)). The Interested Parties submit that grounds for appointment of a trustee are satisfied under either subsection of section 1104.

b. The Appointment of a Chapter 11 Trustee is Mandated Under Subsection (a)(1).

The affairs of Taylor Apartments (and many other Pina-controlled entities) are rife with evidence of gross mismanagement, incompetency, dishonesty, and fraud, which squarely constitute "cause" under Subsection (a)(1) requiring the appointment of a Chapter 11 trustee. "Cause" under Subsection (a)(1) is broadly defined on a case-by-case basis. *In re Sharon Steel Corp.*, 871 F2d. 1217, 1226 (3d Cir. 1989) (appointment of a trustee is mandatory upon a finding of cause, but a determination of what constitutes cause is within the court's discretion). After embarking on a full-fledged campaign with their partner DJ Envy in the form of seminars, encouraging listeners of the Breakfast Club to invest, social media and several in person meetings, to legitimize and attract individuals such as the Interested Parties to invest large sums of money in what was nothing more than a scam, the Pinas obtained a $1.5 million dollar investment from the

Interested Parties based on numerous misrepresentations of fact pertaining to the Taylor Apartments project. They failed to disclose that they had promised 50% of the rental profits to a prior investor. They specifically touted the Taylor Apartments Project as a short-term real estate investment to flip for positive cash flow, misrepresented the financial condition of the company as having several million dollars in financing between capital contributions and a $3.4 million dollar construction loan from Pride Funding, Inc., misrepresented expected returns to be upwards of $900,000 annually, knowing full well that the proposed multi-family real estate would never be developed to completion, that the invested funds would not be used exclusively for such purposes, and that the Interested Parties would never see the $1.5 million that they invested, let alone any returns on their investments. They also mispresented that they obtained Martini's consent to add Barone as a member of Taylor Apartments when it appears that they forged his signature on documents to affect such a buy-in. After the Interested Parties invested, the Pinas then misrepresented the ownership of the Debtor to another victim to entice him to invest another $1 million.

The Pinas grossly mismanaged the company, demonstrated sheer incompetence and knowingly disregarded their fiduciary obligations to the Interested Parties in their capacities as controlling members/managers of Taylor Apartments. In three years, after receiving $2,851,000 from investors, allegedly $3.5 million in construction financing, and a purported $2.5 million investment from Jennifer Pina, all the Pinas did was pour a concrete slab, which was represented to cost only a few hundred thousand dollars. They failed to maintain the Property in good condition and financial standing by not paying property taxes, allowing numerous tax liens to be filed against the Property and placing it at risk of tax foreclosure. Instead, it appears the Pinas used the money for their own personal benefit to fund their lavish lifestyle or to pay off other investors in classic Ponzi-fashion.

They then engaged in deceptive and dishonest conduct to conceal their fraud. When faced with inquiries from their co-members about the status of the Property and their investments, the Pinas lied, obfuscated, or just simply did not respond. They claimed workers were "there non-stop every day," that plumbing was finished, and steel was being set, when in truth the Property to this date remains in its largely vacant state and has not been refinanced as Cesar indicated. In response to basic and repeated requests for books and records for the company, to which the Interested Parties are clearly entitled under the operating agreement for Taylor Apartments, the Pinas either ignored those requests or made further excuses about the delays in returning their investments, forcing the Interested Parties to seek court intervention to obtain such information. Finally, to further stall a response to such requests and inquiries about the financial condition of the company, the Pinas filed a Petition for voluntary Chapter 11 bankruptcy moments before the TRO hearing in the State Action to deprive the Chancery Court of jurisdiction to order relief with respect to Taylor Apartments' affairs.

That pattern of conduct with respect to Taylor Apartments is part of a broader property-flipping scheme being operated by the Pinas, as evidenced by their conduct concerning Barone's investment in Flip2Dao, *see* n.1, *supra*, and by the numerous other lawsuits filed by victims alleging fraud against the Pinas and entities that they operate. To date, there are at least 19 other lawsuits pending in New Jersey Superior Court and the Interested Parties have come to learn of at least $42 million dollars invested by victims of the Pinas. *See* Exhibit C to Mack Cert. With fraud being at the very heart of this matter, the Interested Parties submit that there is ample "cause" mandating the appointment of a Chapter 11 trustee under Subsection (a)(1) to control and mitigate the Pinas' mismanagement of Taylor Apartments.

c. Appointment of a Trustee Also Is Warranted Under Subsection (a)(2).

Even if no "cause" exists to compel the appointment under Subsection (a)(1), the facts described above provide compelling justification for the appointment of a trustee under Subsection (a)(2) in the best interests of the Taylor Apartments' estate and its creditors. Courts consider several factors in determining whether to appoint a trustee under §1104(a)(2) of the Bankruptcy Code, including, but not limited to (a) the trustworthiness of the debtor, (b) the debtor's past and present conduct and its potential to rehabilitate, (c) creditors' lack of confidence in the debtor's current management, and (d) the relative costs and benefits of the appointment of a trustee. *In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 167 (Bankr. S.D.N.Y. 1990) (*citing In re Evans*, 48 B.R. 46, 48 (Bankr. W.D.Tex. 1985)); *In re Parker Grande Dev., Inc.*, 64 B.R. 557, 561 (Bankr. S.D.Ind. 1986); *In re Concord Coal Corp.*, 11 B.R. 552, 554 (Bankr. S.D.W.Va. 1981); *Microwave Products of America, Inc.*, 102 B.R. 666, 671 (Bankr.W.D.Tenn. 1989).

Here, all four of these factors militate in favor of the appointment of a trustee. The facts described above seriously undermine the trustworthiness of the Pinas as controlling members/mangers of the corporate debtor and their fraudulent and deceptive conduct reinforces the Interested Parties' and assuredly other creditors' lack of confidence that they will responsibly manage Taylor Apartments should it remain a debtor in possession. *See Sharon Steel*, 86 B.R. at 457 (because a debtor-in-possession is a "fiduciary of his creditors" in order to "protect and conserve property in his possession for the benefit of creditors," it must "refrain from acting in a manner which could damage the estate, or hinder a successful reorganization of the business"). Not only have the Pinas fraudulently obtained millions of dollars in investments from the

Interested Parties, commercial creditors and other victims that they had no intention of using for their intended purposes or repaying, they then tried cover up their fraud with more deceit and seek to use this bankruptcy and other bankruptcy filings as a mere tactic to stay entry of relief in ongoing state court proceedings. And although there are costs related to the appointment of a trustee, those costs are far outweighed by the benefits of an independent fiduciary to ensure the Debtor's assets are timely preserved, and sold in an efficient and optimal manner, especially since the Pinas have sought to limit, with the filing of this Petition, the Chancery Court's ability to order similar relief in the form of a receiver over Taylor Apartments in the State Action. *See In Re BLX Grp., Inc.*, 419 B.R. 457, 472 (Bankr. D. Mont. 2009) (noting it was in the best interests of creditors for an independent trustee to manage estate assets before they were sold); *see also In Re Cardinal Indus., Inc.*, 109 B.R. 755, 766-67 (Bankr. S.D. Ohio 1990) (appointing trustee where debtors' self-dealing and breach of fiduciary duties resulted in a serious erosion of trust and confidence by creditors and where benefits of potential claims against insiders of estate outweighed any cost of appointing a trustee).

The Pinas have demonstrated that they cannot be left to their own devices, nor can the entity they control in connection with this Petition remain in possession. Jennifer has filed for bankruptcy with skeletal petitions on behalf of herself, Taylor Apartments and other entities as a bad faith tactic to stall proceedings at the state level, including the Interested Parties' pending request to appoint a receiver over Taylor Apartments. Accordingly, even if this Court does not find "cause" under Subsection (a)(1), which the Interested Parties maintain is overwhelmingly established in this circumstance, it should exercise discretion under Subsection (a)(2) to appoint a Chapter 11 trustee in the best interests of the Taylor Apartments estate and its creditors, and to safeguard and investigate its remaining assets under Court supervision. As the Pinas have repeatedly invoked this Court's jurisdiction with respect to this dispute, the Court should retain it and limit the Pinas' ability to continue to manipulate the Bankruptcy Code to delay the state court actions. Ultimately, this Court will be the most efficient venue to resolve this type of widespread Ponzi-scheme fraud, where, in all likelihood, the Pinas lack sufficient assets to return all victims their investments.

CONCLUSION

For the foregoing reasons, the Interested Parties respectfully request that this Court enter an order directing the appointment of a Chapter 11 Trustee and such other and further relief that is deemed just and equitable.

Dated: August 22, 2023

PASHMAN STEIN WALDER HAYDEN, P.C.

/s/ Sean Mack

Sean Mack
Darcy Baboulis-Gyscek
21 Main Street, Suite 200
Hackensack, New Jersey 07601
(201)488-8200
smack@pashmanstein.com
dbaboulis-gyscek@pashmanstein.com

Attorneys for Anthony Barone and Anthony Martini

Fill in this information to identify the case:

United States Bankruptcy Court for the:

____________________ District of _New Jersey_____
(State)

Case number (*If known*): ________________________ Chapter __11___

❑ Check if this is an amended filing

Official Form 205

Involuntary Petition Against a Non-Individual

12/15

Use this form to begin a bankruptcy case against a non-individual you allege to be a debtor subject to an involuntary case. If you want to begin a case against an individual, use the *Involuntary Petition Against an Individual* (Official Form 105). Be as complete and accurate as possible. If more space is needed, attach any additional sheets to this form. On the top of any additional pages, write debtor's name and case number (if known).

Part 1: Identify the Chapter of the Bankruptcy Code Under Which Petition Is Filed

1. **Chapter of the Bankruptcy Code**

Check one:

❑ Chapter *7*

❑XX X Chapter 11

Part 2: Identify the Debtor

2. **Debtor's name** ____WHAIRHOUSE LIMITED LIABILITY COMPANY____

3. **Other names you know the debtor has used in the last 8 years**

Include any assumed names, trade names, or *doing business as* names.

____

____

____

4. **Debtor's federal Employer Identification Number (EIN)**

❑ X Unknown

___ ___ – ___ ___ ___ ___ ___ ___ ___
EIN

5. **Debtor's address**

Principal place of business

_______811 Totowa Rd, ___________
Number Street

____

Totowa, ___ NJ___ 07512__
City State ZIP Code

_Passaic County__________
County

Mailing address, if different

1401 Valley Road, Suite 207
Number Street

____
P.O. Box

Wayne NJ 07470
City State ZIP Code

Location of principal assets, if different from principal place of business

____
Number Street

____

____
City State ZIP Code

Debtor WHAIRHOUSE LIMITED LIABILITY COMPANY
Name

Case number (if known)

6. **Debtor's website** (URL)

7. **Type of debtor**

☒ x Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))
☐ Partnership (excluding LLP)
☐ Other type of debtor. Specify:

8. **Type of debtor's business**

Check one:

☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))
☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
☐ Railroad (as defined in 11 U.S.C. § 101(44))
☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))
☒ None of the types of business listed.
☐ Unknown type of business.

9. **To the best of your knowledge, are any bankruptcy cases pending by or against any partner or affiliate of this debtor?**

☐ No
☒ Yes. Debtor Whairhouse Real Estate Investments LLC Relationship Affiliate
District New Jersey Date filed 08/04/2023 (MM / DD / YYYY) Case number, if known 23-16723-RG

Debtor Taylor Court Apartments LLC Relationship Affiliate
District New Jersey Date filed 08/02/2023 (MM / DD / YYYY) Case number, if known 23-16641-RG

Part 3: Report About the Case

10. **Venue**

Check one:

☒ Over the last 180 days before the filing of this bankruptcy, the debtor had a domicile, principal place of business, or principal assets in this district longer than in any other district.

☐ A bankruptcy case concerning debtor's affiliates, general partner, or partnership is pending in this district.

11. **Allegations**

Each petitioner is eligible to file this petition under 11 U.S.C. § 303(b).
The debtor may be the subject of an involuntary case under 11 U.S.C. § 303(a).

At least one box must be checked:

☒ The debtor is generally not paying its debts as they become due, unless they are the subject of a bona fide dispute as to liability or amount.

☐ Within 120 days before the filing of this petition, a custodian, other than a trustee, receiver, or an agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.

12. **Has there been a transfer of any claim against the debtor by or to any petitioner?**

☒ No
☐ Yes. Attach all documents that evidence the transfer and any statements required under Bankruptcy Rule 1003(a).

Debtor Whairhouse Limited Liability Company
Name

Case number (if known)

13. Each petitioner's claim

Name of petitioner	Nature of petitioner's claim	Amount of the claim above the value of any lien
Alexis Morrillo	Breach of contract/fraud	$ 132,000
Frank Robinson	breach of contract/fraud	$ 925,670
Michael Ventura	breach of contract/fraud	$ 502,320
	Total of petitioners' claims	$ continued

If more space is needed to list petitioners, attach additional sheets. Write the alleged debtor's name and the case number, if known, at the top of each sheet. Following the format of this form, set out the information required in Parts 3 and 4 of the form for each additional petitioning creditor, the petitioner's claim, the petitioner's representative, and the petitioner's attorney. Include the statement under penalty of perjury set out in Part 4 of the form, followed by each additional petitioner's (or representative's) signature, along with the signature of the petitioner's attorney.

Part 4: Request for Relief

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Petitioners request that an order for relief be entered against the debtor under the chapter of 11 U.S.C. specified in this petition. If a petitioning creditor is a corporation, attach the corporate ownership statement required by Bankruptcy Rule 1010(b). If any petitioner is a foreign representative appointed in a foreign proceeding, attach a certified copy of the order of the court granting recognition.

I have examined the information in this document and have a reasonable belief that the information is true and correct.

Petitioners or Petitioners' Representative

Name and mailing address of petitioner

Alexis Morrilo
Name

15809 Sanford Ave 1e
Number Street

Flushing NY 07512
City State ZIP Code

Name and mailing address of petitioner's representative, if any

Name

Number Street

City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8/21/2023
MM / DD / YYYY

✗ alexis morillo
alexis morillo (Aug 22, 2023 00:26 EDT)
Signature of petitioner or representative, including representative's title

Attorneys

Sean Mack
Printed name

Pashman Stein Walder Hayden PC
Firm name, if any

21 Main Street, Suite 200
Number Street

Hackensack NJ 07601
City State ZIP Code

Contact phone 201-270-4919 Email smack@pashmanstein.com

Bar number 028191999

State NJ

✗ **/s/ Sean Mack**
Signature of attorney

Date signed **08/22/2023**
MM / DD / YYYY

Debtor Whairhouse Limited Liability Company
Name

Case number (if known)

Name and mailing address of petitioner

Frank Robinson
Name

9 High Street
Number Street

Montclair NJ 07042
City State ZIP Code

Name and mailing address of petitioner's representative, if any

Name

Number Street

City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8-21-23
MM / DD / YYYY

✘
Signature of petitioner or representative, including representative's title

Sean Mack
Printed name

Pashman Stein Walder Hayden PC
Firm name, if any

21 Main Street, Suite 200
Number Street

Hackensack NJ 07601
City State ZIP Code

Contact phone 201-270-4919 Email smack@pashmanstein.com

Bar number 028191999

State NJ

✘ /s/ Sean Mack
Signature of attorney

Date signed 08/21/2023
MM / DD / YYYY

Name and mailing address of petitioner

Michael Ventura
Name

417 Knickerbocker Rd
Number Street

Tenafly NJ 07670
City State ZIP Code

Name and mailing address of petitioner's representative, if any

Name

Number Street

City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on
MM / DD / YYYY

✘
Signature of petitioner or representative, including representative's title

Sean Mack
Printed name

Pashman Stein Walder Hayden PC
Firm name, if any

21 Main Street, Suite 200
Number Street

Hackensack NJ 07601
City State ZIP Code

Contact phone 201-270-4919 Email smack@pashmanstein.com

Bar number 028191999

State NJ

✘
Signature of attorney

Date signed
MM / DD / YYYY

Debtor WHAIRHOUSE LIMITED LIABILITY COMPANY
Name

Case number (if known)

Name and mailing address of petitioner

Frank Robinson
Name

9 High Street
Number Street

Montclair NJ 07042
City State ZIP Code

Name and mailing address of petitioner's representative, if any

Name

Number Street

City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on
MM / DD / YYYY

✘
Signature of petitioner or representative, including representative's title

Printed name

Firm name, if any

Number Street

City State ZIP Code

Contact phone Email

Bar number

State

✘
Signature of attorney

Date signed
MM / DD / YYYY

Name and mailing address of petitioner

Michael Ventura
Name

417 Knickerbocker Rd
Number Street

Tenafly NJ 07670
City State ZIP Code

Name and mailing address of petitioner's representative, if any

Name

Number Street

City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 08/18/2023
MM / DD / YYYY

✘ [signature]
Michael Ventura (Aug 18, 2023 21:04 EDT)
Signature of petitioner or representative, including representative's title

Sean Mack
Printed name

Pashman Stein Walder Hayden, P.C.
Firm name, if any

21 Main Street, Suite 200
Number Street

Hackensack NJ 07601
City State ZIP Code

Contact phone 201-270-4919 Email smack@pashmanstein.com

Bar number 028191999

State NJ

✘ /s/ Sean Mack
Signature of attorney

Date signed 08/21/2023
MM / DD / YYYY

Debtor WHAIRHOUSE LIMITED LIABILITY COMPANY
Name

Case number (*if known*) ______

13. Each petitioner's claim

Name of petitioner	Nature of petitioner's claim	Amount of the claim above the value of any lien
Rg3 LLC	breach of contract/fraud	$ 2,597,500
		$
Jermaine and Faleena Andujar	breach of contract/fraud	$ 130,000
	Total of petitioners' claims	$ continued

If more space is needed to list petitioners, attach additional sheets. Write the alleged debtor's name and the case number, if known, at the top of each sheet. Following the format of this form, set out the information required in Parts 3 and 4 of the form for each additional petitioning creditor, the petitioner's claim, the petitioner's representative, and the petitioner's attorney. Include the statement under penalty of perjury set out in Part 4 of the form, followed by each additional petitioner's (or representative's) signature, along with the signature of the petitioner's attorney.

Part 4: Request for Relief

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Petitioners request that an order for relief be entered against the debtor under the chapter of 11 U.S.C. specified in this petition. If a petitioning creditor is a corporation, attach the corporate ownership statement required by Bankruptcy Rule 1010(b). If any petitioner is a foreign representative appointed in a foreign proceeding, attach a certified copy of the order of the court granting recognition.

I have examined the information in this document and have a reasonable belief that the information is true and correct.

Petitioners or Petitioners' Representative

Name and mailing address of petitioner

Rg3 LLC
Name

107-11 107 Street
Number Street

Ozone Park NY 11417
City State ZIP Code

Name and mailing address of petitioner's representative, if any

Ramon Garcia
Name

107-11 107 Street
Number Street

Ozone Park NY 11417
City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8/21/2023
MM / DD / YYYY

✘ Ramon Garcia
Ramon Garcia (Aug 21, 2023 15:39 EDT) President
Signature of petitioner or representative, including representative's title

Attorneys

Sean Mack
Printed name

Pashman Stein Walder Hayden PC
Firm name, if any

21 Main Street, Suite 200
Number Street

Hackensack NJ 07601
City State ZIP Code

Contact phone 201-270-4919 Email smack@pashmanstein.com

Bar number 028191999

State NJ

✘ /s/ Sean Mack
Signature of attorney

Date signed 08/21/2023
MM / DD / YYYY

Debtor WHAIRHOUSE LIMITED LIABILITY COMPANY
Name

Case number (if known)

Name and mailing address of petitioner

Jermaine and Faleena Andujar
Name

19 Charles Street
Number Street

Montclair | NJ | 07042
City | State | ZIP Code

Name and mailing address of petitioner's representative, if any

Name

Number Street

City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8/20/2023
MM / DD / YYYY

✘
Signature of petitioner or representative, including representative's title

Sean Mack
Printed name

Pashman Stein Walder Hayden PC
Firm name, if any

21 Main Street, Suite 200
Number Street

Hackensack | NJ | 07601
City | State | ZIP Code

Contact phone 201-270-4919 Email smack@pashmanstein.com

Bar number 028191999

State NJ

✘ /s/ Sean Mack
Signature of attorney

Date signed 08/21/2023
MM / DD / YYYY

Nan ddress of petitioner

Name

Number Street

City ZIP Code

Name and mailing address of petitioner's representative, if any

Name

Number Street

City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on
MM / DD / YYYY

✘
Signature of petitioner or representative, including representative's title

Printed name

Firm name, if any

Number Street

C State ZIP Code

Contact phone Ema

Bar number

State

✘
Signature of attorney

Date signed
MM / DD / YYYY

Debtor: Whairhouse Limited Liability Company
Name

Case number (if known) ____________

13. Each petitioner's claim

Name of petitioner	Nature of petitioner's claim	Amount of the claim above the value of any lien
Samme Sheika	breach of contract/fraud	$ 250,000
Nicholas Tiah	breach of contract/fraud	$ 151,938
Jonathan Gunn	breach of contract/fraud	$ 130,000
	Total of petitioners' claims	$ 4,819,428

If more space is needed to list petitioners, attach additional sheets. Write the alleged debtor's name and the case number, if known, at the top of each sheet. Following the format of this form, set out the information required in Parts 3 and 4 of the form for each additional petitioning creditor, the petitioner's claim, the petitioner's representative, and the petitioner's attorney. Include the statement under penalty of perjury set out in Part 4 of the form, followed by each additional petitioner's (or representative's) signature, along with the signature of the petitioner's attorney.

Part 4: Request for Relief

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Petitioners request that an order for relief be entered against the debtor under the chapter of 11 U.S.C. specified in this petition. If a petitioning creditor is a corporation, attach the corporate ownership statement required by Bankruptcy Rule 1010(b). If any petitioner is a foreign representative appointed in a foreign proceeding, attach a certified copy of the order of the court granting recognition.

I have examined the information in this document and have a reasonable belief that the information is true and correct.

Petitioners or Petitioners' Representative

Name and mailing address of petitioner

Name: Samme Sheika

Number Street: 150 Main Street

City: Hackensack State: NJ ZIP Code: 07601

Name and mailing address of petitioner's representative, if any

Name: ____________

Number Street: ____________

City: ________ State: ____ ZIP Code: ____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8/21/2023
MM / DD / YYYY

✘ Samme Sheika
Signature of petitioner or representative, including representative's title

Attorneys

Printed name: Sean Mack

Firm name, if any: Pashman Stein Walder Hayden PC

Number Street: 21 Main Street, Suite 200

City: Hackensack State: NJ ZIP Code: 07601

Contact phone: 201-270-4919 Email: smack@pashmanstein.com

Bar number: 028191999

State: NJ

✘ /s/ Sean Mack
Signature of attorney

Date signed: 08/21/2023
MM / DD / YYYY

Debtor WHAIRHOUSE LIMITED LIABLITIY COMPANY
Name

Case number (if known)

Name and mailing address of petitioner

Nicholas Tiah
Name

Number Street

City | State MA | ZIP Code

Name and mailing address of petitioner's representative, if any

Name

Number Street

City | State | ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8/21/2023
MM / DD / YYYY

✘ Nicholas Tiah (Aug 21, 2023 17:14 EDT)
Signature of petitioner or representative, including representative's title

Sean Mack
Printed name

Pashman Stein Walder Hayden PC
Firm name, if any

21 Main Street, Suite 200
Number Street

Hackensack | NJ | 07601
City | State | ZIP Code

Contact phone 201-270-4919 Email smack@pashmanstein.com

Bar number 028191999

State NJ

✘ /s/ Sean Mack
Signature of attorney

Date signed 08/21/2023
MM/ DD / YYYY

Name and mailing address of petitioner

Jonathan Gunn
Name

396 Webster Ave
Number Street

Jersey City | NJ | 07054
City | State | ZIP Code

Name and mailing address of petitioner's representative, if any

Name

Number Street

City | State | ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on
MM / DD / YYYY

✘
Signature of petitioner or representative, including representative's title

Sean Mack
Printed name

Firm name, if any

Pashman Stein Walder Hayden PC
Number Street

Hackensack | NJ | 07601
City | State | ZIP Code

Contact phone 201-270-4919 Email smack@pashmanstein.com

Bar number 028191999

State NJ

✘
Signature of attorney

Date signed
MM / DD / YYYY

Debtor WHAIRHOUSE LIMITED LIABILITY COMPANY
Name

Case number (if known)

Name and mailing address of petitioner

Nicholas Tiah
Name

Number Street

MA
City State ZIP Code

Name and mailing address of petitioner's representative, if any

Name

Number Street

City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on
MM / DD / YYYY

✘
Signature of petitioner or representative, including representative's title

Sean Mack
Printed name
Pashman Stein Walder Hayden PC
Firm name, if any
21 Main Street, Suite 200
Number Street
Hackensack NJ 07601
City State ZIP Code

Contact phone 201-270-4919 Email smack@pashmanstein.com

Bar number 028191999

State NJ

✘
Signature of attorney

Date signed
MM / DD / YYYY

Name and mailing address of petitioner

Jonathan Gunn
Name
396 Webster Ave
Number Street
Jersey City NJ 07054
City State ZIP Code

Name and mailing address of petitioner's representative, if any

Name

Number Street

City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on
MM / DD / YYYY

✘
Signature of petitioner or representative, including representative's title

Sean Mack
Printed name

Firm name, if any
Pashman Stein Walder Hayden PC
Number Street
Hackensack NJ 07601
City State ZIP Code

Contact phone 201-270-4919 Email smack@pashmanstein.com

Bar number 028191999

State NJ

✘ /s/ Sean Mack
Signature of attorney

Date signed 08/21/2023
MM / DD / YYYY

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)
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Attorneys for Interested Parties

In re: WHAIRHOUSE LIMITED LIABILITY COMPANY Debtor.	Chapter 11 Case No. Hearing Date and Time: September 12, 2023 at 10:00am **ORAL ARGUMENT REQUESTED**

MEMORANDUM OF LAW IN SUPPORT OF MOTION OF INTERESTED PARTIES FOR ENTRY OF AN ORDER APPOINTING A CHAPTER 11 TRUSTEE PURSUANT TO 11 U.S.C. § 1104

Alexis Morrillo, Frank Robinson, Michael Ventura, RG3 LLC, Samme Sheikah, Jonathan Gunn, Nicholos Tiah, and Faleena and Jermaine Andujar (collectively, the "Interested Parties") hereby submit this Motion for Entry of an Order Appointing a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104 ("Motion"). In support of the Motion, the Interested Parties respectfully represent to the Court as follows:

PRELIMINARY STATEMENT

It is customary, when describing the responsibilities of a debtor-in-possession under Chapter 11 of the Bankruptcy Code, to speak of the obligations of the debtor to serve as a fiduciary for creditors, and to maximize values for the benefit of those creditors and the bankruptcy estates. Put simply, "[t]he willingness of Congress to leave a debtor-in-possession is premised on an expectation that current management can be depended upon to carry out the fiduciary responsibilities of a trustee." *In re Marvel Entertainment Group, Inc.*, 140 F.3d 463, 474 (3d Cir. 1998), *quoting In re V. Savino Oil & Heating Co.*, 99 B.R. 518, 524 (Bankr. E.D.N.Y. 1989. Here, however, Cesar Pina, who is the President of Whairhouse LLC ("Whairhouse" or the "Debtor") has demonstrated a clear propensity to disregard his fiduciary obligations through his fraudulent, deceptive and unconscionable conduct when he swindled the Interested Parties and many others, out of millions of dollars on sham real estate investment projects purportedly owned by the Debtor and other related entities.

Whairhouse was used by Cesar Pina to operate a real estate Ponzi scheme, instead of for the purposes represented to each of the Interested Parties.

Cesar Pina claimed to operate a successful property flipping empire known as "Flipping NJ," which gained widespread recognition and perceived legitimacy when it was promoted by Cesar's partner, Raashaun Casey a/k/a DJ Envy on his radio program, Power 105.1 "The Breakfast Club" and his social media with upwards of 2 million followers. Cesar Pina and DJ Envy also promoted their allegedly successful real estate deals through paid seminars and social media postings.

With the fame achieved by Cesar Pina based on DJ Envy's promotion of his real estate deals, Cesar was able to induce many people, including the Interested Parties, to invest in real estate projects purportedly owned by the Debtor.

Nearly each investment followed the same pattern. The investor would meet Cesar at one of Cesar and DJ Envy's seminars, or separately pay for an independent consultation with Cesar, and then Cesar would pitch a particular "joint venture" to the investor based on the amount of money the investor had available to invest.

Cesar would then provide the investor with a two page "joint venture" agreement between the Debtor and the investor. The investor would agree to provide money and in exchange Whairhouse agreed to repay the principal investment and a guaranteed return within a set number of months, usually 3 to 5 months. The invested funds were specified to be used only for the purchase and renovation of a particular property named in the joint venture agreement.

Aside from the name of the investor, the date, the amount invested, and the property address, most of the joint venture agreements were identical.

The Interested Parties each provided money to Whairhouse pursuant to one or more joint venture agreements and to date have not been repaid their principal and promised guaranteed return. In some cases, the Interested Parties have now learned that they invested in the same property that Cesar offered to other victims.

Because of this, Whairhouse has now been named as a defendant in at least 14 state court lawsuits accusing Whairhouse and Cesar Pina of operating a fraudulent real estate scam. Whairhouse is clearly not paying its debts as they come due in the ordinary course of business. The proverbial race to the courthouse for Whairhouse's assets is now underway.

The power and jurisdiction of this Court is urgently needed to control Whairhouse's assets and to systematically and in an organized fashion provide for a method to resolve the numerous claims of creditors.

These facts confirm that "cause" exists pursuant to section 1104(a)(1) of the Bankruptcy Code for the appointment of a trustee as an independent fiduciary over an entity controlled by a fraudulent actor who has demonstrated his wanton disregard of fiduciary principles, and that such an appointment is in the best interests of the estate, creditors and other parties, as contemplated in section 1104(a)(2) of the Bankruptcy Code.

FACTUAL BACKGROUND

1. Each of the Interested Parties entered into at least one joint venture agreement with Whairhouse. The following is a list of each party, the amount invested, and the property that was supposed to be purchased and renovated by Whairhouse within a few months:

property address	**Investor**	**Amount Invested**
145-147 Manchester Ave, Paterson, NJ	Alexis Morillo	$100,000.00
149 Franklin Ave, Hawthorne, NJ	Frank Robinson	$270,000.00
555-563 Main Street, Paterson, NJ	Frank Robinson	$351,000.00
14 Commerce St., Garfield, NJ	Frank Robinson	$155,900.00
523 Park Ave, Paterson, NJ	Frank Robinson	$25,000.00
147-149 Manchester Ave, Paterson, NJ	Jonathan Gunn	$100,000
141 E 32st, Paterson, NJ	Michael Ventura	$200,000.00
126 Jasper St, Paterson, NJ	Michael Ventura	roll over of prior investment
Unstated	Michael Ventura	roll over of prior investment
93 Highland St, Paterson, NJ	Nicholaus Tiah	$116,875
27 South Boyden Parkway, Maplewood, NJ	Ramon Garcia / RG3 LLC	$350,000.00
462-464 East 24th Street and 568-570 East 39th Street, Paterson, NJ	Ramon Garcia / RG3 LLC	$300,000.00
462-464 East 24th Street and 523 Park Ave, Paterson, NJ	Ramon Garcia / RG3 LLC	$1,000,000.00

7033 S Morgan Ct. Chicago, IL	Ramon Garcia / RG3 LLC	$250,000.00
145 Union Avenue, Paterson, NJ	Samme Sheika	$100,000
523 Park Ave, Paterson, NJ	Samme Sheika	$100,000.00

2. In each case, the Interested Parties were promised to have been repaid their investment along with a guaranteed return long ago.

3. None of the Interested Parties have been repaid in full what they were promised.

4. Based on public records searches, Whairhouse LLC does not currently own any of the properties listed above that were supposed to be purchased by, renovated by, and then sold by Whairhouse LLC.

5. In addition to the Interested Parties, 20 other people have sued Cesar Pina, Whairhouse, and/or other entities owned or controlled by Cesar Pina for failing to repay over $6 million in investments in real estate deals promoted by Cesar Pina.

6. Counsel for the Interested Parties have come to learn of over $40 million in investments from victims obtained as a result of the fraudulent conduct of the Pinas.

7. Pina appears to have sold the opportunity to purchase and flip the same property to multiple persons including some of the Interested Parties.

8. For example, Pina has executed contracts for the Debtor or another one of his companies, From Start 2 Flipping, LLC, to purchase and flip the property at 145-147 Manchester Avenue to seven different people for $1 million.

9. Similarly, Pina has executed contracts for the Debtor or another one of his companies, From Start 2 Flipping, LLC, to purchase and flip the property at 147-149 Manchester Avenue to eight different people for $1,095,000.

10. Pina signed a contract with Interested Party Frank Robinson promising him 50% of the rental profits for a property to be owned by Whairhouse LLC at 555 Main Street, Paterson, NJ. But Whairhouse LLC never owned that property, instead it was purchased through another company owned by Cesar and/or his wife Jennifer. Despite having given away 50% of the profits to Mr. Robinson, Jennifer Pina thereafter signed two agreements purporting to give away 37.5% of the ownership of that property, while she retained the balance of 62.5%. Cesar separately signed an agreement giving away 25% of the ownership of that property, while claiming he owned 75%. Through those agreements, the Pinas obtained $2.8 million and in six years only a foundation has been poured.

11. In one lawsuit, the state court has entered a temporary restraining order freezing the bank accounts and preventing the diversion of assets of one of Cesar Pina's other companies.

12. Cesar Pina's wife, who is a partner in his real estate business, has caused multiple voluntary bankruptcy filings to occur to interfere with state court lawsuits.

13. Jennifer filed a skeletal bankruptcy petition under Chapter 13 of the Code on June 27, 2023, just as one of their creditors, PS Funding Inc., was about to foreclose on a nearly $800,000 construction loan issued to a Pina entity. *See In Re Jennifer Iturralde*, No. 23-bk-15505-RG (ECF No. 1); *see also PS Funding Inc. v. 169 Lexington Avenue LLC*, PAS-F-3633-21. Jennifer ignored this Court's order to show cause why her petition should not be dismissed due to her failure to file several documents, meet credit counseling requirements or pay the filing fee. This Court dismissed that petition on July 18, 2023. *Id.* (ECF No. 19).

14. Jennifer filed a virtually identical skeletal petition for personal bankruptcy on July 25, 2023, in connection with the PS Funding foreclosure. *See In Re Jennifer Iturralde*, No. 23-

bk-16321-RG. This Court again dismissed that bankruptcy when Jennifer failed to respond to the Order to Show Cause.

15. Jennifer also filed a voluntary Chapter 11 petition for another Pina entity, Whairhouse Real Estate Investments, LLC, in connection with an imminent foreclosure on a $1.5 million dollar mortgage encumbering a Paterson property. *See In Re Whairhouse Real Estate Investments, LLC*, No. 23-bk-16723-RG (ECF No. 1); *See Colony American Finance 2016-2, LTD. v. Whairhouse Real Estate Investments, LLC*, PAS-F-021368-18.

16. Jennifer also filed a voluntary petition for relief on behalf of Taylor Court Apartments LLC (*In re Taylor Court Apartments LLC,* No. 23-bk-16641-RG), just minutes before a state court judge was to hear an application for a temporary restraining order to freeze the assets of that company.

17. In addition to the misconduct described above, the Pinas also operated Taylor Court Apartments LLC as another entity to further their fraudulent real estate scheme. Two victims who invested in Taylor Court have today filed a motion to appoint a trustee over Taylor Court. Interested Parties hereby refer the court to and incorporate by reference the factual allegations set forth in that application for the appointment of a trustee.

18. To protect their interests in the estate, the Interested Parties now bring this motion to appoint a Chapter 11 trustee over Whairhouse pursuant to 11 U.S.C. § 1104 because existing management cannot be trusted to fulfill the duties of a debtor-in-possession.

JURISDICTION, VENUE AND STATUTORY PREDICATES

This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 1104 and 105(a) of Chapter 11 of the Bankruptcy Code.

ARGUMENT

a. Legal Standard

While Chapter 11 contemplates that under normal circumstances, current management will remain in control of the debtor, courts have clearly articulated that the debtor-in-possession is a fiduciary for its creditors, and a trustee should replace management if management's conduct could damage the estate or hinder the reorganization efforts. *See In re V. Savino Oil & Heating Co., Inc.*, 99 B.R. 518, 525 (Bankr. E.D.N.Y. 1989); *see also Marvel Entertainment*, 140 F.3d at 471.

Section 1104(a) of the Code governs the appointment of a Chapter 11 trustee and provides in relevant part:

> (a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States Trustee, and after notice and a hearing, the court shall order the appointment of a trustee-
>
> (1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; [or]
>
> (2) if such appointment is in the interest of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor[.]

11 U.S.C. § 1104(a). Subsection (a)(1) thus requires the bankruptcy court, upon motion, to appoint a trustee when the movant has proven "cause," which the statute defines to include incompetence and gross mismanagement. Subsection (a)(2), on the other hand, embodies the more flexible "best interest of the creditors" approach, and provides a basis for relief in the appointment of a trustee in certain circumstances where cause, under section (a)(1), cannot be established. *See In re Sharon Steel Corp.*, 86 B.R. 455, 457 (Bankr. W.D. Pa. 1988). *See also*, 5 Collier on Bankruptcy §

1104.02[3][d], 1104-16 n. 29 citing 124 Cong. Rec. H11, 102 (daily ed., September 28, 1978; S17, 419 (daily ed., Oct. 6, 1978) and *In re Ionosphere Clubs, Inc.*, 113 B.R.164, 169 (Bankr. S.D.N.Y.) (trustworthiness of the Debtor is a factor in appointing a trustee under Code § 1104(a)(2)). The Interested Parties submit that grounds for appointment of a trustee are satisfied under either subsection of section 1104.

b. The Appointment of a Chapter 11 Trustee is Mandated Under Subsection (a)(1).

The affairs of Whairhouse (and many other Pina-controlled entities) are rife with evidence of gross mismanagement, incompetency, dishonesty, and fraud, which squarely constitute "cause" under Subsection (a)(1) requiring the appointment of a Chapter 11 trustee. "Cause" under Subsection (a)(1) is broadly defined on a case-by-case basis. *In re Sharon Steel Corp.*, 871 F2d. 1217, 1226 (3d Cir. 1989) (appointment of a trustee is mandatory upon a finding of cause, but a determination of what constitutes cause is within the court's discretion). After embarking on a full-fledged campaign with their partner DJ Envy in the form of seminars, encouraging listeners of the Breakfast Club to invest, social media and several in person meetings, to legitimize and attract individuals such as the Interested Parties to invest large sums of money in what was nothing more than a scam, Cesar obtained over $4 million in investments from the Interested Parties based on false representations that their investments would be used to purchase particular properties and renovate them. When in fact the properties had already been purchased and the money would not be used to renovate the property.

Cesar Pina then engaged in deceptive and dishonest conduct to conceal the fraud. When faced with inquiries from the Interested Parties about when they would be repaid, Pina lied, obfuscated, or just simply did not respond. Pina would promise to call or meet with the Interested Parties and then have to reschedule or simply not call.

On multiple occasions, Pina issued checks to some of the Interested Parties as partial repayment, only to have banks decline the checks for insufficient funds.

That pattern of conduct with respect to the Interested Parties is part of a broader property-flipping scheme being operated by the Pinas, as evidenced by their conduct concerning the numerous other lawsuits filed by victims alleging fraud against the Pinas and entities that they operate. To date, there are at least 19 other lawsuits pending in New Jersey Superior Court and counsel for the Interested Parties have come to learn of at least $40 million invested by victims of the Pinas. With fraud being at the very heart of this matter, the Interested Parties submit that there is ample "cause" mandating the appointment of a Chapter 11 trustee under Subsection (a)(1) to control and mitigate the Pinas' mismanagement of Whairhouse.

c. Appointment of a Trustee Also Is Warranted Under Subsection (a)(2).

Even if no "cause" exists to compel the appointment under Subsection (a)(1), the facts described above provide compelling justification for the appointment of a trustee under Subsection (a)(2) in the best interests of Whairhouse's estate and its creditors. Courts consider several factors in determining whether to appoint a trustee under §1104(a)(2) of the Bankruptcy Code, including, but not limited to (a) the trustworthiness of the debtor, (b) the debtor's past and present conduct and its potential to rehabilitate, (c) creditors' lack of confidence in the debtor's current management, and (d) the relative costs and benefits of the appointment of a trustee. *In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 167 (Bankr. S.D.N.Y. 1990) (*citing In re Evans*, 48 B.R. 46, 48 (Bankr. W.D.Tex. 1985)); *In re Parker Grande Dev., Inc.*, 64 B.R. 557, 561 (Bankr. S.D.Ind. 1986); *In re Concord Coal Corp.*, 11 B.R. 552, 554 (Bankr. S.D.W.Va. 1981); *Microwave Products of America, Inc.*, 102 B.R. 666, 671 (Bankr.W.D.Tenn. 1989).

Here, all four of these factors militate in favor of the appointment of a trustee. The facts described above seriously undermine the trustworthiness of the Pinas as controlling members/mangers of the corporate debtor and their fraudulent and deceptive conduct reinforces the Interested Parties' and assuredly other creditors' lack of confidence that they will responsibly manage Whairhouse should it remain a debtor in possession. *See Sharon Steel*, 86 B.R. at 457 (because a debtor-in-possession is a "fiduciary of his creditors" in order to "protect and conserve property in his possession for the benefit of creditors," it must "refrain from acting in a manner which could damage the estate, or hinder a successful reorganization of the business"). Not only have the Pinas fraudulently obtained millions of dollars in investments from the Interested Parties, commercial creditors and other victims that they had no intention of using for their intended purposes or repaying, they then tried cover up their fraud with more deceit and seek to use this bankruptcy and other bankruptcy filings as a mere tactic to stay entry of relief in ongoing state court proceedings. And although there are costs related to the appointment of a trustee, those costs are far outweighed by the benefits of an independent fiduciary to ensure the Debtor's assets are timely preserved, and sold in an efficient and optimal manner. *See In Re BLX Grp., Inc.*, 419 B.R. 457, 472 (Bankr. D. Mont. 2009) (noting it was in the best interests of creditors for an independent trustee to manage estate assets before they were sold); *see also In Re Cardinal Indus., Inc.*, 109 B.R. 755, 766-67 (Bankr. S.D. Ohio 1990) (appointing trustee where debtors' self-dealing and breach of fiduciary duties resulted in a serious erosion of trust and confidence by creditors and where benefits of potential claims against insiders of estate outweighed any cost of appointing a trustee).

The Pinas have demonstrated that they cannot be left to their own devices, nor can the entity they control in connection with this Petition remain in possession. Jennifer has filed for bankruptcy with skeletal petitions on behalf of herself, Taylor Apartments and other entities as a bad faith tactic to stall proceedings at the state level. Accordingly, even if this Court does not find "cause" under Subsection (a)(1), which the Interested Parties maintain is overwhelmingly established in this circumstance, it should exercise discretion under Subsection (a)(2) to appoint a Chapter 11 trustee in the best interests of the Whairhouse estate and its creditors, and to safeguard and investigate its remaining assets under Court supervision. As the Pinas have repeatedly invoked this Court's jurisdiction, the Court should retain it and limit the Pinas' ability to continue to manipulate the Bankruptcy Code to delay the state court actions. Ultimately, this Court will be the most efficient venue to resolve this type of widespread Ponzi-scheme fraud, where, in all likelihood, the Pinas and the Debtor lack sufficient assets to return all victims their investments.

CONCLUSION

For the foregoing reasons, the Interested Parties respectfully request that this Court enter an order directing the appointment of a Chapter 11 Trustee and such other and further relief that is deemed just and equitable.

Dated: August 22, 2023

PASHMAN STEIN WALDER HAYDEN, P.C.

/s/ Sean Mack

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ANTHONY BARONE and ANTHONY MARTINI, Plaintiffs, v. CESAR PINA, JENNIFER PINA, TAYLOR COURT APARTMENTS LLC, FLIP THE DAO LLC, d/b/a FLIP 2 DAO, RAASHAUN CASEY a/k/a DJ ENVY, JANE AND JOHN DOES 1-10, Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: PASSAIC COUNTY DOCKET NO: PAS-C-76-23 <u>Civil Action</u> **CERTIFICATION OF SEAN MACK IN SUPPORT OF MOTION FOR CONTEMPT**

I, Sean Mack, hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and a member of Pashman Stein Walder Hayden, P.C., attorneys for Plaintiffs Anthony Barone and Anthony Martini. I submit this certification in support of Plaintiffs' motion for contempt against Cesar Pina and Jennifer Pina.

2. On August 2, 2023, this Court entered an order to show cause with temporary restraints ("August 2 TRO"). Attached hereto as **Exhibit A** is a true and correct copy of the August 2 TRO.

3. Among other things, the August 2 TRO required Defendants Cesar Pina, the manager of Flip The Dao LLC d/b/a Flip2Dao, and Jennifer Pina, the controlling member of

Flip2Dao, to immediately make available basic financial and company documents relating to Flip2Dao.

4. On August 2, 2023, counsel for Defendants Jennifer and Cesar Pina (the "Pinas") agreed to accept service of the August 2 TRO on behalf of the Pinas. Attached hereto as **Exhibit B** is a true and correct copy of the Pinas' attorney's email agreeing to accept service. To date counsel for the Pinas has not returned the signed acknowledgement of service despite multiple requests.

5. Since the entry of the Augus 2, TRO, I have requested on multiple times that Flip2Dao's financial and company documents be provided.

6. Counsel for the Pinas told me that he had spoken with his clients and the only documents readily available were bank statements and it would take some time to pull together information about the expenses of the company. Mack Cert. Ex. B.

7. I specifically asked to be provided even just bank statements if those were the only documents readily available. I told counsel for the Pinas that if I did not have the documents by Friday, August 18, 2023, I would have to seek court intervention. Attached hereto as **Exhibit C** is a true and correct copy of my email correspondence with the Pinas' counsel.

8. When no documents were produced on August 18, I advised counsel for the Pinas that I would move for contempt on August 23, 2023 if the documents were not sooner produced. Mack Cert. Ex. C.

9. Despite the August 2 TRO compelling the Pinas to produce Flip2Dao documents, to date not a single document has been produced.

10. The Pinas were clearly aware of the requirements of the August 2 TRO but utterly failed to comply with this Court's order.

11. Plaintiffs therefore request that the Pinas be held in contempt and be ordered to appear in Court on a date certain and bring with them FLip2Dao's bank statements for all of its bank accounts and any available corporate books and records, and if the Pinas fail to appear in Court on the date ordered that a warrant be issued for their arrest to bring them into Court.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: August 23, 2023

Sean Mack

EXHIBIT A

PASHMAN STEIN WALDER HAYDEN, P.C.
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ANTHONY BARONE and ANTHONY MARTINI, Plaintiffs, v. CESAR PINA, JENNIFER PINA, TAYLOR COURT APARTMENTS LLC, FLIP THE DAO LLC, d/b/a FLIP 2 DAO, RAASHAUN CASEY a/k/a DJ ENVY, JANE AND JOHN DOES 1-10, Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: PASSAIC COUNTY DOCKET NO: PAS-C-76-23 Civil Action **ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS**

THIS MATTER being brought to the Court by Pashman Stein Walder Hayden P.C., attorneys for the Plaintiffs Anthony Barone and Anthony Martini ("Plaintiffs"), upon an emergent application pursuant to R. 4:52-1(a) seeking certain injunctive relief related to the business and operations of Taylor Court Apartments, LLC and Flip the Dao, LLC d/b/a Flip 2 Dao as set forth in the Verified Complaint and Brief filed by Plaintiffs herewith; and upon notice to Defendants; and the Court having considered the motion papers filed by the parties and heard oral argument; and for good cause shown,

IT IS on this 2nd day of August, 2023, ORDERED, that Defendants appear and show cause before the Superior Court at the Passaic County Courthouse, 77 Hamilton Street, Paterson, New Jersey 07505, at 9:00 A.M on the 8th day of September, 2023, or as soon thereafter as counsel may be heard, why Defendants should not be preliminarily enjoined and restrained, pending the resolution and final adjudication of this action, and why this Court should not enter an Order granting the following preliminary injunctive relief:

A. Preliminarily enjoining and restraining Defendants and all those acting in concert with them from engaging in any transactions, transfer of assets, membership interests, loans, encumbrances, payments and/or conveyances of any cash, assets or any other property of Taylor Court Apartments, LLC and Flip the Dao LLC without written consent of the Plaintiffs or leave of court pending final adjudication of this matter;

B. Preliminarily enjoining and restraining Defendants from diverting or otherwise disposing of any assets and revenue of Taylor Court Apartments, LLC and Flip the Dao LLC, either directly or through any company or entity in which they have a direct or indirect ownership interest;

C. Preliminarily enjoining and restraining Defendants from destroying, removing or altering any of the books, financials or records of Taylor Court Apartments, LLC and Flip the Dao LLC, including but not limited any electronic version of the foregoing whether kept as hardcopies or stored in any cloud service, server, laptop, tablet, computer or any device;

D. Appointing a statutory and/or custodial receiver to (i) take possession of the property or other assets, including any bank accounts, of Taylor Court Apartments, LLC and Flip the Dao LLC; (ii) dispose of the assets of those companies as deemed appropriate; (iii) examine the books and records of those companies and examine under oath any person concerning the business and affairs of the companies; (iv) pay expenses of the companies to protect their remaining assets; and (v) take all other necessary actions to best fulfill the purposes of a receivership and to protect the rights and interests of the remaining members of the companies.

And it is further ORDERED that pending the return date herein, Defendants are temporarily enjoined and retrained as follows:

A. Defendants shall not destroy, remove or alter any of the books, financials or records of ~~Taylor Court Apartments, LLC~~ and Flip the Dao LLC, including but not limited any electronic version of the foregoing whether kept as hardcopies or stored in any cloud service, server, laptop, tablet, computer or any device;

B. Defendants shall immediately make available for inspection by Plaintiffs (and/or Plaintiffs' professionals) all books, records, financials, tax returns pertaining to ~~Taylor Court Apartments, LLC~~ and Flip the Dao LLC;

C. Defendants shall not divert or otherwise dispose of any assets or revenue of ~~Taylor Court Apartments, LLC~~ and/or Flip the Dao LLC, either directly or through any company or entity in which they have a direct or indirect ownership interest, without leave of court; and

D. Defendants shall not take any action to interfere with Plaintiffs' right to access the property, books, records or assets of ~~Taylor Court Apartments, LLC~~ and Flip the Dao, LLC.

And it is further ORDERED that any financial institution at which ~~Taylor Court Apartments, LLC~~ or Flip the Dao, LLC maintains any type of account shall immediately place a freeze on such accounts until further order of the Court;

And it is further ORDERED that pending the return date of this Order to Show Cause, Plaintiffs shall have the right to conduct expedited discovery prior to the return date, including leave to serve document requests, interrogatories, request for admissions, take depositions and subpoenaing non-party witnesses for documents and depositions both in New Jersey and out of state.

And it is further ORDERED that:

1. Defendants may move to dissolve or modify the temporary restraints herein contained on two (2) days' notice to Plaintiffs' attorney.
2. A copy of this Order to Show Cause, Verified Complaint, Brief and any other documents submitted in support of this application shall be served upon Defendants with 7 days of the date hereof, in accordance with Rules 4:4-3 and 4:4-4, this being the original process.
3. Plaintiffs must file with the Court proof of service of the pleadings on Defendants no later than 7 days before the return date.
4. Defendants shall file and serve a written response to this Order to Show Cause and the request for injunctive relief and proof of service on or before August 31, 2023. The original documents must be filed with the Clerk of the Superior Court listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above, and online at http://www.judiciary.state.nj.us/prose/10153deptyclerklawref.pdf. You must also deliver a copy of all your opposition papers directly to Judge Covello, whose address is 77 Hamilton Street, Paterson, New Jersey 07505. You must also serve a copy of all your opposition papers to the Plaintiffs' attorney, whose name

and address appears above. **A telephone call will not protect your rights**. You must file a written opposition and pay the required filing fee of $175 and serve your opposition on Plaintiffs' counsel if you want the Court to hear your opposition to the injunctive relief the Plaintiffs are seeking.

5. Plaintiffs may file and serve any written reply to Defendants' opposition on or before September 5, 2023. The reply papers must be filed with the Court, and copies of all reply papers being delivered directly to the chambers of Judge Covello, located at 77 Hamilton Street, Paterson, New Jersey 07505 and also served on Defendants or Defendants' attorney if one is retained.
6. If Defendants do not file and serve an opposition to this Order to Show Cause, the application may be decided on the papers on the return date, and relief may be granted by default, provided that Plaintiff files proof of service and a proposed form of order at least three (3) days prior to the return date.
7. If Plaintiff has not already done so, a proposed form of order addressing the relief sought must be submitted to the Court no later than three (3) days before the return date.
8. Defendants take notice that Plaintiffs have filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof of service within 35 days from the date of service of this order to show cause; not counting the day you received it. These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at

http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf. Include the appropriate filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to the Plaintiff's attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the order to show cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief Plaintiff demands.

9. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153deptyclerklawref.pdf.

10. The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the Court and parties are advised to the contrary no later than __2__ days before the return date.

The temporary injunction provided for in this Order is not against Taylor Court Apartments, LLC because that entity filed for Bankruptcy in the U.S. Bankruptcy Court for the District of New under case number 23-16641 shortly before the hearing in this matter. No action will be required pursuant to this Order of any defendant who has filed for Bankruptcy protection for the duration that an automatic stay remains in effect as to that party.

/S/Frank Covello
HON. FRANK COVELLO, P.J. Ch.

EXHIBIT B

From: Steven Griegel
To: Sean Mack
Cc: Darcy Baboulis-Gyscek
Subject: RE: NJ eCourts Order To Show Cause Confirmation - General Equity - Chancery PAS-C-000076-23
Date: Tuesday, August 8, 2023 10:25:55 AM

EXTERNAL: This email originated from outside of the organization.

Hi Sean, I will get the acknowledgement back to you via email. Also, I am going to have my clients put together the info per the order. When I talk to them today, Ill give you an estimated date. It may involve getting bank records and compiling expenses as well. Ill have to see.

Steven W. Griegel, Esq.
ROSELLI GRIEGEL LOZIER & LAZZARO, PC
1337 Highway 33, Hamilton Square, New Jersey 08690
☎609-586-2257 | 🖷 609-586-2476
sgriegel@roselligriegel.com

From: Sean Mack <smack@pashmanstein.com>
Sent: Tuesday, August 8, 2023 10:19 AM
To: Steven Griegel <sgriegel@roselligriegel.com>
Cc: Darcy Baboulis-Gyscek <dbaboulis-gyscek@pashmanstein.com>
Subject: FW: NJ eCourts Order To Show Cause Confirmation - General Equity - Chancery PAS-C-000076-23

Steven –

I am just following up on the acknowledgement of service, please return it to me as soon as you can.

Also, when will your clients be making available the basic books and financial records of Flip the Dao LLC as required by the TRO?

Sean Mack
Partner
Pashman Stein Walder Hayden, P.C.
201.478.3672 Direct
smack@pashmanstein.com

From: Sean Mack
Sent: Wednesday, August 2, 2023 12:55 PM
To: sgriegel@roselligriegel.com
Subject: FW: NJ eCourts Order To Show Cause Confirmation - General Equity - Chancery PAS-C-000076-23

Steven,
Thanks for the call earlier and for agreeing to accept service. Attached is the entered order to show cause with restraints in case you have not seen it. Please sign and return the attached acknowledgement of service at your earliest convenience.

Sean Mack
Partner
Pashman Stein Walder Hayden, P.C.
201.478.3672 Direct
smack@pashmanstein.com

From: Jeannette Padilla <jpadilla@pashmanstein.com>
Sent: Wednesday, August 2, 2023 11:58 AM
To: Sean Mack <smack@pashmanstein.com>; Darcy Baboulis-Gyscek <dbaboulis-gyscek@pashmanstein.com>
Cc: Vic Ostrer <vostrer@pashmanstein.com>
Subject: FW: NJ eCourts Order To Show Cause Confirmation - General Equity - Chancery PAS-C-000076-23

I will calendar shortly

Jeannette Padilla
Legal Assistant
Pashman Stein Walder Hayden, P.C.
201.639.2007 Direct
jpadilla@pashmanstein.com

From: eCourtsCivilDoNotReply.mailbox@njcourts.gov <eCourtsCivilDoNotReply.mailbox@njcourts.gov>
Sent: Wednesday, August 2, 2023 11:54 AM
To: Sean Mack <smack@pashmanstein.com>; Jeannette Padilla <jpadilla@pashmanstein.com>; Darcy Baboulis-Gyscek <dbaboulis-gyscek@pashmanstein.com>; Vic Ostrer <vostrer@pashmanstein.com>
Subject: NJ eCourts Order To Show Cause Confirmation - General Equity - Chancery PAS-C-000076-23

SUPERIOR COURT OF NEW JERSEY - eCOURTS

The following was filed by COURT on 08/02/2023:

Plaintiff Name	ANTHONY BARONE, ANTHONY BARONE, ANTHONY MARTINI, ANTHONY MARTINI
	CESAR PINA, JENNIFER PINA, TAYLOR COURT APARTME NTS LLC, FLIP THE DAO,

Defendant Name: RAASHAUN CASEY, JANE AND JOHN DOES 1 -10

Case Caption: BARONE VS PINA

Case Number: PAS C 000076-23

Docket Text: Order To Show Cause submitted by Court

Transaction ID: CHC2023206479

Documents Attached:

Document Type	File Name	Document Description
Order To Show Cause	OTSC 08.02.2023-PCJ149363.pdf	Order To Show Cause

This communication is for notification purposes only.

This email was sent from a notification-only address that cannot accept incoming mail. Please do not reply to this message.

EXHIBIT C

From: Sean Mack
To: Steven Griegel
Subject: RE: Pinas
Date: Monday, August 21, 2023 4:41:29 PM
Attachments: image001.png

Steve –
I will be filing a motion for contempt on Wednesday because your clients have not provided any documentation on Flip2Dao.

Please send me the signed acknowledgement of service.

Also, please let me know if your clients will be appearing on Wednesday for their Rule 2004 examinations emanating from the Taylor Court bankruptcy case.

Sean Mack
Partner
Pashman Stein Walder Hayden, P.C.
201.478.3672 Direct
smack@pashmanstein.com

From: Sean Mack
Sent: Wednesday, August 16, 2023 3:38 PM
To: Steven Griegel <sgriegel@roselligriegel.com>
Subject: Pinas

Steve –
I am following up, please provide me the signed acknowledgement of service.

Please provide copies of the Flip 2 Dao bank account statements. I understand your client is pulling together expense information, but he must send over the bank statements now. It is now 2 weeks from the TRO having been entered and we have received no documents. If I do not have documents by Friday I will have to go back to court for their non compliance.

Also please advise if your firm is representing them in the Taylor Courts bankruptcy case.

Sean Mack
Partner
Pashman Stein Walder Hayden, P.C.

201.478.3672 Direct
smack@pashmanstein.com

Court Plaza South, 21 Main Street, Suite 200, Hackensack, NJ 07601
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PashmanStein
WalderHayden
A Professional Corporation