IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re: PITTSBURGH ATHLETIC ASSOCIATION, *et al*[1] *Debtors*,	Jointly Administered at: Case No. 17-22222-JAD Bankruptcy Case Nos: 17-22222-JAD, and 17-22223-JAD
YVONNE ROSE, AS A MEMBER AND MEMBER OF THE BOARD OF DIRECTORS OF THE PITTSBURGH ATHLETIC ASSOCIATION, *Movant*, v. PITTSBURGH ATHLETIC ASSOCIATION and PITTSBURGH ATHLETIC ASSOCIATION LAND COMPANY, *Respondents*.	Chapter 11 Related to Doc. No. Hearing:

DEBTORS' RESPONSE AND NEW MATTER
TO MOVANT'S MOTION TO APPOINT A CHAPTER 11 TRUSTEE
PURSUANT TO 11 U.S.C. §1104 (a) and (b)

Debtors, Pittsburgh Athletic Association and Pittsburgh Athletic Association Land Company, by and through its counsel, Tucker Arensberg, P.C., hereby files this Response and New Matter to the Motion of Yvonne Rose's Motion to Appoint A Chapter 11 Trustee Pursuant to 11 U.S.C. §1104(a) and (b). Debtors represent as follows:

[1] The Debtors have the following case pending Pittsburgh Athletic Association, Case No. 17-22222-JAD and the Pittsburgh Athletic Association Land Company, Case No. 17-22223-JAD, both cases are being jointly administered under Case No. 17-22222-JAD.

PRELIMINARY STATEMENT AND BACKGROUND

On May 30, 2017 (the "**Petition Date**"), the Debtors, Pittsburgh Athletic Association (the "**PAA**") and Pittsburgh Athletic Association Land Company (the "**PAA-LC**") each filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§101, *et. seq.* (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Western District of Pennsylvania (the "**Bankruptcy Court**") at the above-captioned case numbers. The Debtors remain in possession of their assets and are managing their businesses as debtors-in-possession, pursuant to §§1107 and 1108 of the Bankruptcy Code.

On July 3, 2017, Movant filed a Motion to Appoint a Chapter 11 Trustee pursuant to 11 U.S.C. §1104(a) and (b) (the "**Motion**") at Doc. No. 125. Movant claimed she was filing in her capacity as "a member and a member of the Board of Directors of the Pittsburgh Athletic Association". Notably, Ms. Rose was removed from the Board of Directors for cause on June 21, 2017, so her representation as being on the Board is patently false and Movant's counsel is filing a misrepresentation with this Court. Furthermore, Ms. Rose has failed to pay her membership dues for the past three (3) months and, as such, is subject to having her membership revoked pursuant to Article II, §§ 24 and 25 of the Bylaws.

On July 28, 2017, the Pittsburgh Athletic Association Preservation Association (the "**PAAPA**") filed a "Joinder" to the Motion. (Doc. No. 203) (the "**Joinder**"). PAAPA's membership has not been disclosed, however PAAPA's Counsel described it generally as being comprised of "former, current and future" members of the PAA. *See, Notice of Appearance, Request for Notices and Service of Papers* at Doc. No. 199. The impropriety of the Joinder is discussed in the New Matter herein.

JURISDICTION AND VENUE

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

INTRODUCTION AND PROCEDURAL HISTORY

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted

9. Admitted

10. Admitted in part and denied in part. It is admitted as to the location and ownership of the real properties described in Paragraph 10 of the Motion. The remaining allegations and assertions contained in Paragraph 10 of the Motion are specifically denied and strict proof is demanded at the hearing.

11. Admitted.

12. Denied as stated. The PAA did not have funds to pay any insurance or other bills at the time stated and strict proof is demanded at the time of hearing as to this allegation.

13. Admitted in part and denied in part. It is admitted that the PAA failed to make certain payments to the PWSA, but it is denied that funds were available for the PAA to make these payments.

14. Denied. The allegations and content provided for in Paragraph 14 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

15. Denied. The allegations and content provided for in Paragraph 15 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

16. Denied. The allegations and content provided for in Paragraph 16 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

17. Admitted in part and denied in part. It is admitted that the text cited is accurate. It is denied that this is the complete text of the cited email and Exhibit "C" to the Motion is a document that speaks for itself.

18. Denied as stated. Due to lack of insurance and utilities, there was an urgent need to temporarily close the PAA Club facilities in the interest of the public and PAA members' safety. Additionally, Exhibit "C" to the Motion is a document that speaks for itself.

FAILURE TO COMPLY WITH BYLAWS AND ULTRA VIRES ACT

Introductory Statement

By means of background and clarification, the Debtors' Boards of Directors (collectively, the "**Board**"), held a Special Meeting on May 21, 2017 (the "**May 21st Special Meeting**") and adopted corporate resolutions (the "**Pre-Bankruptcy Resolutions**") which authorized the Board to file the above-referenced bankruptcy cases and take all other acts necessary to effectuate and proceed with these Chapter 11 cases. *See Officer's Certification of Resolutions of the Board of Directors of the Pittsburgh Athletic Association* and Exhibit "A" attached thereto at Case No. 17-22222, Doc. No. 1 and Case No. 17-22223, Doc. No. 1. Movant was present at the May 21st Special Meeting and abstained from voting on the Pre-Bankruptcy Resolutions.

Subsequent to the Petition Date, at a properly noticed Special Meeting of the then-sitting Board on June 30, 2017 (the "**June 30th Special Meeting**"), Movant was removed as a member of the Board due, *inter alia*, to her breach of fiduciary duty to the PAA. The remaining Board

members then properly filled four of the vacant seats to increase the number of Directors to nine (9). Additionally, the Board, by unanimous vote, ratified the Pre-Bankruptcy Resolutions and all other decisions related to the Debtors' bankruptcy filings and Debtors' reorganization strategy plans.

Throughout Movant's sections averring violations of the Ultra Vires Act and the Bylaws, Movant merely states unsupported and inaccurate accusations of, *inter alia*, fraud, self dealing and ultra vires conduct by the Board. No fraud has been pled with specificity and no elements of fraud are alleged in the Motion and all Board actions challenged in the Motion as violating the Bylaws are statutorily authorized. *See* 15 Pa.C.S.A. §5903 (providing the statutory authority for the Debtors' filing of the bankruptcy cases and to subsequently participate in the bankruptcy proceedings). Furthermore, the Board properly ratified any of the herein challenged Board actions through its ratification of the Pre-Bankruptcy Resolutions at the June 30th Special Meeting with a quorum as required by the Bylaws.

Response

19. Denied as stated. However, Exhibit "D" to the Motion only contains the Bylaws governing PAA. The membership of the PAA approved the PAA Bylaws, but the Bylaws for PAA-LC have existed since 1939 and have never been amended or changed. A true and correct copy of the PAA-LC Bylaws are attached hereto and incorporated herein as **Exhibit "A"**.

20. Denied. Article IV, Section 1 of the Bylaws does not contain the text quoted in Paragraph 20 of the Motion.

21. Admitted.

22. Admitted.

A. Lack of Required Quorum of Board Members

Introductory Statement

Notably, any statements addressing quorum averred in Paragraphs 23 through 26 of the Motion have already been addressed by this Court during the hearing held on July 11, 2017. This Court, in considering the issues Movant raised in her Objection (as defined herein), which included whether the Board acted improperly without quorum, this Court held that the Board rectified any quorum issues and acted properly in ratifying the Pre-Bankruptcy Resolutions (as defined herein). Furthermore, the Board acted properly with Quorum as substantiated by the Meeting Minutes. A true and correct copy of the Meeting Minutes is attached hereto and incorporated herein as **Exhibit "B"**

Additionally, as of the Motion's filing date, the Board had vetted, voted to approve and filled four (4) of the vacancies complained of herein. The Board is continuing to vet and approve additional Board Members and, as recently as yesterday, the Board approved and a fifth new Board Member brining the head count of the Board to ten (10).

Response

23. Denied as stated. The assertion that the Bylaws quorum provision is "clearly and unequivocally" stated and applied to any action taken by the Board Members is a conclusion of law to which no response is required. To the extent a response is required, the allegations contained in Paragraph 23 of the Motion are specifically denied and strict proof is required at the time of hearing.

24. Debtors are without knowledge as to the allegations contained in Paragraph 24 of the Motion, therefore the allegations contained in Paragraph 24 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

25. Denied as stated. It is admitted that there were resignations of prior members of the PAA Board, however the remainder of the content and allegations contained in Paragraph 25 of the Motion are specifically denied and strict proof is demanded at the time of hearing. Movant's speculation as to the motivations underlying these resignations should not be stated as factual allegations.

26. Denied as stated. The allegations and content contained in Paragraph 26 of the Motion are specifically denied and strict proof is demanded at the time of hearing. By way of further response, as of the Motion's filing date, the Board had vetted, voted to approve and filled four (4) of the vacancies complained of herein. The Board is continuing to vet and approve additional Board Members and, as recently as yesterday, the Board approved and filled an additional vacancy.

B. Meetings Held Without All Seated Board Members and Actions Taken Without Notice, a Meeting or the Opportunity for All Seated Board Members to Vote

27. Denied. The allegations contained in Paragraph 27, subparts (a) through (g) of the Motion are specifically denied and strict proof is demanded at the time of hearing.

28. Denied. The allegations contained in Paragraph 28 of the Motion are specifically denied and strict proof thereof is demanded at the hearing.

29. Denied. Debtors are without knowledge as to why Claire Donahue resigned from the Board and therefore the allegations contained in Paragraph 29 of the Motion are specifically denied and strict proof is demanded at the time of hearing. Additionally, without an Affidavit attached, Movant should not be stating as fact her speculation as to the motivations underlying resignations from the Board.

C. Refusal to Keep Minutes of Board Meetings and Unlawful Requirement for Board Members to Sign a Confidentiality Agreement

Introductory Statement

Of importance, any allegation that Board Meeting Minutes were not maintained is invalid, as the Meeting Minutes are documents that speak for themselves. *See* Exhibit "B".

As to the remaining allegations pertaining to the confidentiality agreements, due to, *inter alia*, ongoing concerns with Movant's confidentiality and the sensitivity of the information being discussed, the Board, on the advice of its counsel, discussed Board of Directors Guidelines, which contained a confidentiality agreement limited to preventing the disclosure of "all non-public information,"[2] and requiring executed conflicts of interest forms as a prerequisite to serving on the Board. *See*, PAA Meeting Minutes of the Emergency Board Meeting, held on May 4, 2017 at Exhibit "A". A true and correct copy of the following are attached hereto and incorporated herein as follows: (1) the Board of Directors Guidelines at **Exhibit "C"** (the "**Board Guidelines**"; and (2) the Pittsburgh Athletic Association Conflict of Interest Policy at **Exhibit "D"** (the "**COI Policy**").

As reflected in the May 4, 2017 Minutes, Movant was present at the Meeting and the Minutes show that a vote was taken and all voted in favor of adopting the Board Guidelines and the requirement of an executed confidentiality agreement and conflict of interest form as a prerequisite for service as a Board Member with Movant being the sole abstention.

Movant refused to sign the confidentiality agreement and the conflict of interest form. Further, Movant incorrectly asserts that since the Bylaws do not provide for these prerequisites for serving on the Board this was an "illegal" action. This is an inaccurate statement of the law and the Board acted within its authority. Article V, §6 of the PAA Bylaws provides as follows:

2 Fiduciary Duties

> **Section 6.** The Board of Directors shall have the power to borrow money; ***to make and amend rules for its own government***; and to fix and enforce penalties for violation thereof; and shall have power to *decide all questions not governed by the Charter and the By-Laws*. (emphasis added).

Under Article V, §6 of the PAA Bylaws, the Board's adoption of the Board Guidelines and the COI Policy, (collectively, the "**Policies**") are authorized because (1) they were duly voted upon and approved as indicated in the May 4, 2017 Meeting Minutes; (2) the Policies are rules for governance of the Board; and (3) the PAA Bylaws are silent as to any qualifications for serving on the Board, aside from being a member and other time-related service restrictions.

Furthermore, Movant asserts she was removed from the Board for failure to sign the Policies. This is also a misrepresentation as the Board had numerous concerns in relation to Movant, including breaches of her fiduciary duties, failure to maintain confidential information and corporate waste.

Response

30. Denied. Debtors are without knowledge as to whether every Board Meeting prior to April 2017 was recorded and memorialized in written minutes. Therefore, Debtor cannot form an accurate response to the allegations contained in Paragraph 30 of the Motion. To the extent this Court deems a response is required, the allegations contained in Paragraph 30 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

31. Denied. The allegations contained in Paragraph 31 of the Motion are specifically denied and strict proof thereof is demanded at the time of hearing.

32. Denied. The allegations contained in Paragraph 32 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

33. Admitted in part and denied in part. It is admitted that the cited statute in Paragraph 33 of the Motion provides that a non-profit corporation shall keep minutes of proceedings. However, it is denied that members have an unqualified right to inspect the minutes under 15 Pa.C.S.A. §5508(b). By way of further response, §5508(b) provides that a member shall make "verified written demand" stating a "proper purpose" for inspection of the inspection of the minutes. The statutory definition of "proper purpose" is "a purpose reasonably related to the interest of the person as a member." 15 Pa.C.S.A. §5508(b).

34. Admitted in part and denied in part. It is admitted that in a Special Board Meeting held on May 4, 2017, the Board duly voted and adopted the Policies as reflected in the PAA Meeting Minutes for the Emergency Board Meeting held on May 4, 2017. *See,* Exhibit "B". The remaining allegations contained in Paragraph 34 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

35. Denied as stated. By way of further response, the sole qualification contained in the PAA Bylaws for serving as a member of the Board is that the person must be a member of the PAA, separate from other time-related restrictions contained therein.

36. Denied as stated. It is admitted that the Bylaws do not state the Board of Directors must sign a Confidentiality Agreement, however, the legal implication asserted that because the Bylaws are silent equates to a prohibition is specifically denied and strict proof is demanded at the time of hearing. By way of further response, the Board duly adopted the Policies and had the authorization to do so under Article V, §6 of the PAA Bylaws.

37. Admitted.

38. Denied. The allegations and content contained in Paragraph 38 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

39. Denied. The allegations and content contained in Paragraph 39 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

D. Unauthorized Termination of PAA Board Meetings

Introductory Statement

By way of background, it is important to address the misrepresentations pervasive throughout Paragraphs 40 through 44 of the Motion. Throughout this section, Movant refers to Board meetings being cancelled or terminated. Of important distinction, is that the Board terminated ad hoc Special Board Meetings, which are not required under the PAA Bylaws. In the weeks surrounding the filing of the bankruptcy cases, due to the numerous time-sensitive issues, the Board was having regular, telephonic Special Board Meetings. *See*, Transcript of Hearing-July 11, 2017, Page 83, lines 23-25 and Page 84, lines 1-3 (Doc No. 100).

During these Special Board Meetings, Movant made numerous threats to sue the Board and on June 1, 2017 filed a Writ of Summons in the Court of Common Pleas of Allegheny County against the other Board Members at Case Number GD-17-008174 (the "**Rose Action**"). A true and correct copy of the Writ of Summons for the Rose Action is attached hereto as **Exhibit "E"** and incorporated herein. The email addressed in Paragraph 42 of the Motion, was actually the June 13, 2017, electronic cancellation of the outlook calendar invite for the scheduled telephonic Special Board Meetings. A true and correct copy of this cancellation is attached hereto as **Exhibit "F**" and incorporated herein. The Special Board Meeting was cancelled within an hour of the first member of the Board being served with the Rose Action, as substantiated by the Docket Report for the Rose Action. A true and correct copy of the Docket Report is attached hereto as **Exhibit "G"** and incorporated herein.

Movant has conveniently failed to provide that the cancelled meetings were telephonic *Special* Board Meetings and they were cancelled in direct response to her initiating a lawsuit against her fellow Board Members.

Response

40. Denied. The allegations and content contained in Paragraph 40 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

41. Denied as stated. The allegations and content contained in Paragraph 41 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

42. Denied. The allegations contained in Paragraph 42 of the Motion are specifically denied and strict proof is demanded at the time of hearing. To the extent the alleged email communication exists, the document speaks for itself. By way of further response, in his sworn testimony before this Court on July 11, 2017, Mr. Jonathan Glance, Secretary for the Debtors, testified that the email stated that ad hoc, telephonic meetings would occur on a daily basis because the formal Board had not been reconstituted. *See*, Transcript of Hearing- July 11, 2017, page 83, lines 23-25, Page 84, lines 1-3 (Doc. No. 100).

43. The allegations contained in Paragraph 43 of the Motion constitutes a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations contained in Paragraph 43 of the Motion are specifically denied and strict proof is demanded at the hearing.

44. The allegations contained in Paragraph 44 of the Motion constitutes a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations contained in Paragraph 44 of the Motion are specifically denied and strict proof is demanded at the hearing. Additionally, Paragraphs 40 through 44 of the Motion directly conflict

with Paragraph 39 of the Motion which states the Board of Directors is "allowing non-board members to attend and participate in meetings of the PAA Board."

E. Retention of Holiday Fenoglio Fowler, L.P. to Market the Club Parcel and Hotel Parcel without Board Approval or Membership Approval

Introductory Statement

On June 1, 2017, Debtors filed Applications to employ the following: (1) Tucker Arensberg, P.C. as Debtors Counsel (Case No. 17-22222, Doc. No. 49) (the "**Tucker Application**"); (2) Gleason & Associates, P.C. as Financial Advisor (Case No. 17-22222, Doc. No. 50) (the "**Gleason Application**"); and (3) Holiday Fenoglio Fowler, L.P. ("**HFF**") as Real Estate and Capital Advisors (Case No. 17-22222, Doc. No. 51) (the "**HFF Application**"). On June 26, 2017, Movant filed an objection, wherein she improperly challenged multiple actions taken by the Board, including the Petition filing and the HFF Application (the "**Objection**"). The Tucker Application and the Gleason Application were granted on June 29, 2017 via Default Orders entered by this Court respectively at Doc Nos. 121 and 122. Debtors filed a Reply to the Objection on July 3, 2017 highlighting, among other items, the impropriety of raising the issues in an objection to an application for the employment of professionals.

A hearing was held before this Court on July 11, 2017, where *inter alia*, the Board's retention of HFF was discussed (the "**July 11th Hearing**"). *See* Transcript of July 11, 2017 at Doc. No. 100. (the "**Transcript**"). During the July 11th Hearing, this Court, relying specifically upon 11 Pa.C.S.A §5725, held that the Board's actions ratified the retention of HFF as real estate advisor. *See*, Transcript, Page 109, lines 17-25 and Page 110, lines 1-4. An Order granting the HFF Application was entered on August 8, 2017. Therefore, Paragraphs 45-64 of the Motion, which allege that the Board acted improperly and without authority in retaining HFF as a basis for the appointment of a Chapter 11 trustee is not determinative.

The propriety of the Board's retention of HFF as a real estate and capital advisor has already been addressed by the Court and should not be considered again for purposes of this Motion. Furthermore, Movant's allegations herein that the Board is conducting tours of the building to only certain people or developers are patently false. HFF is engaged in the Request for Proposals ("**RFP**") process, which will ultimately be subject to this Court's approval. Mr. Mark Popovich, of HFF has provided the Board with updates throughout the RPF process, including that nearly one hundred (100) confidentiality agreements were executed by parties interested in redeveloping or purchasing the PAA. Furthermore, HFF has already received ten (10) offers which are being considered by the Board. Any suggestion by Movant that this has been a self-serving or closed process is unsubstantiated conjecture. A copy of the RFP is attached hereto and incorporated by reference as **Exhibit "H"**.

Response

45. Admitted in part and denied in part. It is admitted that the content of Article V, Section 11 is accurately cited in Paragraph 45 of the Motion. However, the implication that Article V, Section 11 applies to the Debtors' retention of HFF is specifically denied. The Bylaws are silent as to the retention of professionals.

46. Denied as stated. By way of further response, the statute cited by Movant in Paragraph 46 of the Motion states that no vote or consent of the members shall be required to make effective an action by the governing body of the corporation for the sale, lease or other disposition of real or personal property. 15 Pa.C.S. §5546 provides as follows in its entirety:

> Except as otherwise provided in this subpart and unless otherwise provided in the bylaws, no application to or confirmation of any court shall be required for the purchase by or the sale, lease or other disposition of the real or personal property, or any part of the real or personal property, of a nonprofit corporation, and, unless otherwise restricted in section 5930 (relating to voluntary transfer of corporate assets) or in the bylaws, no vote or consent of the members shall be required

> to make effective such action by the board or other body. If the property is subject to a trust, the conveyance away shall be free of trust, and the trust shall be impinged upon the proceeds of the conveyance.

47. Denied. The allegations and content contained in Paragraph 47 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

48. Denied as stated. Debtors entered into a contract with HFF on May 3, 2017. *See* Document No. 51-1. By way of further response, the Contract with HFF is a written document which speaks for itself.

49. Denied. The allegations and content contained in Paragraph 49 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

50. Admitted in part and denied in part. It is admitted that Movant, Ms. Donahue and Mr. Goodwin attended a Board Meeting. However, it is denied that the Board Meeting occurred on April 25, 2017. As the Meeting Minutes provide, the meeting contemplated herein occurred on April 24, 2017. *See* Exhibit "B". By way of further response, the Movant and Mr. Goodwin attended the April 24th meeting as guests to be interviewed and considered for election to the Board.

51. Admitted in part and denied in part. It is admitted that the decision to retain HFF as a real estate advisor was not discussed at the Board Meeting held on April 24, 2017[3]. It is specifically denied the implication that Article V, Section 11 of the Bylaws applies to the retention of HFF as a real estate and capital advisor. Additionally, Footnote 1 to Paragraph 51 of the Motion is specifically denied with strict proof as to the allegations contained therein demanded at the time of hearing.

[3] Paragraph 51 of the Motion alleges that the Board Meeting occurred on April 25, 2017. The Meeting Minutes reflect that this meeting in fact occurred on April 24, 2017.

52. Denied. The allegations contained in Paragraph 52 of the Motion are specifically denied and strict proof is demanded at the hearing. By way of further response, Movant's implication that the alleged failure of not having a Board meeting from April 25, 2017 to May 1, 2017, a seven day period, somehow warrants the appointment of a Chapter 11 trustee exceeds the limits of 11 U.S.C. §1104(a) and (b).

53. Admitted in part and denied in part. The Contract with HFF is a written document which speaks for itself as to the success fee provided for HFF and was approved by this Court. It is specifically denied that the fee is the "maximum fee amount that could be agreed to by the Board under the Bylaws without membership vote." In fact, Movant's counsel stated in the July 11th Hearing that the Bylaws are silent as to whether the Board was to obtain approval for the retention of professionals. Furthermore, the $325,000 cap referred to in the Bylaws is specifically related to construction and capital improvements or expenditures related thereto. *See Transcript*, Page 27, lines 11-21 (Doc. No. 100); *See Bylaws at Article V, Section , Page 8*.

54. Denied. The incomplete allegations and content contained in Paragraph 54 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

55. Denied as stated. A hearing on July 11, 2017 was held on the matter, which resulted in this Court's approval of the HFF Application that same day. An Order reflecting this approval was entered by the Court on August 1, 2017.

56. Denied. The allegations and content contained in Paragraph 56 of the Motion are specifically denied with strict proof demanded at the time of hearing. By way of further response, the RFP is a written document which speaks for itself and the outcome of the process will ultimately be left to this Court's approval, therefore eradicating the alleged necessity for the appointment of a trustee.

57. Denied. The allegations and content contained in Paragraph 57 of the Motion are specifically denied with strict proof demanding at the time of hearing.

58. Denied. The allegations and content contained in Paragraph 58 of the Motion are specifically denied with strict proof demanding at the time of hearing. By way of further response, the allegation that tours are being granted to "certain insider or favored purchasers or developers" is inaccurate and false, as substantiated by the RFP process.

59. Admitted.

60. Denied. The allegations contained in Paragraph 60 of the Motion are specifically denied and strict proof is demanded at the time of hearing. .

61. The allegations contained in Paragraph 61 of the Motion are unsubstantiated and vague. In the absence of an Affidavit, the Debtors are without the requisite knowledge to admit or deny. To the extent a response is deemed required by this Court, the allegations and content contained in Paragraph 61 are specifically denied and strict proof thereof is demanded at the time of hearing.

62. Denied. The allegations contained in Paragraph 62 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

63. Denied. The allegations contained in Paragraph 63 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

64. Denied. The allegations contained in Paragraph 64 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

F. Disbanding of all standing committees of the PAA required by the Bylaws.

Introductory Statement

Due to insufficient number of Board Members and certain other exigent matters at the time of filing these bankruptcy cases and leading up to, the standing committees discussed in the PAA Bylaws remained dormant. Movant's characterization that the standing committees were "disbanded" is inaccurate. As of July 2017, the House Committee was reconstituted under the PAA Bylaws.

Response

65. Denied. The allegations contained in Paragraph 65 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

66. Denied. The allegations contained in Paragraph 66 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

67. Admitted. By way of further response, the Bylaws constitute a written document that speaks for itself.

68. Denied. The allegations contained in Paragraph 68 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

Standard of Review[4]

Section 1104(a)(1) and (2) govern the appointment of trustee in a Chapter 11 case on motion of an interested party and provides as follows:

> At any time after the commencement of the case, but before the 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-

4 Notably, the Movant cites to law outside of this jurisdiction in support of her standard of review for the appointment of a trustee in a Chapter 11 case. In fact, only one case cited in the entire section is from the Third Circuit.

> (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 interests of the 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)(1)&(2).

The party moving for the appointment of a trustee under Section 1104(a) must prove the need for a trustee under either subsection with clear and convincing evidence. *In re Marvel Entertainment Group*, 140 F.3d. 463, 471 (3d. Cir. 1998). Given the fact that Chapter 11 is designed to allow the debtor to manage its own business during the restructuring period, the appointment of a Chapter 11 trustee is the exception, not the rule. *In re Sharon Steel Corporation*, 871 F.2d 1217, 1226 (3d. Cir. 1989). Therefore, the moving party must overcome the strong presumption against appointing an outside trustee in a Chapter 11 case. *In re North American Communications, Inc.*, 138 B.R. 175, 178 (Bankr. W.D.Pa. 1992). *See also, In re Marvel*, 140 F.3d at 471 and *In re G-I Holdings, Inc.*, 385 F.3d 313, 317 (3d. Cir. 2004)(holding that if the court finds that the moving party has satisfied its burden of proof, the court must appoint the trustee; however, determination of whether the movant has satisfied its burden is committed to the court's discretion") .

The strong presumption against the appointment of a Chapter 11 trustee is that the debtor-in-possession has "usual familiarity with the business it had already been managing at the time of the bankruptcy filing, often making it [the debtor] the best party to conduct operations during the reorganization." *In re Sharon Steel Corporation*, 871 F.2d at 1226.

Additionally, acrimony between creditors and a debtor's board of directors, as well as a movant's mere assertion that the board can no longer discharge its fiduciary duties was insufficient

to appoint a Chapter 11 trustee. *In re G-I Holdings*, 385 F.3d at 321. The common grounds for the appointment of a Chapter 11 trustee are incompetence and gross mismanagement. *In re North American Communications*, 138 B.R. at 178. Although Subsection 1104(a)(2) creates a "flexible standard" which allows for the appointment of a trustee where "cause" does not exist, the purpose of this flexible standard is to allow the appointment of a trustee where it would serve the interests of the creditors and the estate. *Id*. at 178-79 (citing *In re Sharon Steel Corp.*, 86 B.R. 455, 458 (Bankr. W.D.Pa. 1988), *aff'd*, 871 F.2d at 1217 (3d. Cir. 1990)).

Argument

I. A CHAPTER 11 TRUSTEE SHOULD BE APPOINTED FOR CAUSE, BECAUSE CURRENT MANAGEMENT HAS COMMITTED ACTS OF FRAUD, DISHONESTY, INCOMPETENCE AND GROSS MISMANAGEMENT.

Introductory Statement

Throughout Movant's Argument section, Movant makes unsubstantiated allegations that the Board engaged in acts of fraud, self-dealing and ultra vires conduct. No fraud is pled with specificity and Movant fails to allege how the Board engaged in self-dealing. Movant merely speculates that the Board may be seeking to purchase the PAA and that she is aware of undisclosed conflicts of interests of the Board. Given the fact that: (1) each Board Member executed a conflict of interest disclosure form prior to service on the Board and no Board Member disclosed any interest related to the potential sale or redevelopment of the PAA and (2) the Request for Proposal Process is being conducted by HFF and has closed with no potential bidder being related to any Board Member, these allegations are frivolous in nature.

Additionally, Paragraphs 69 through 99 of the Motion are substantially similar to the Motion's preceding paragraphs. However, the Debtors restate their responses as follows:

A. The actions of the current officers to ignore and wantonly disregard the Bylaws and Applicable Law.

(1) Lack of Required Quorum of Board of Directors

Given the repetitive nature of the arguments contained in this subsection, Debtors incorporate by reference its "Introductory Statement" immediately following Paragraph 22 above as if it were set forth herein.

69. Denied as stated. The assertion in Paragraph 69 that the Bylaws quorum provision is "clearly and unequivocally" stated and applied to any action taken by the Board Members is a conclusion of law to which no response is necessary. To the extent a response is deemed required, the allegations and content contained in Paragraph 69 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

70. Denied as stated. The allegations and content contained in Paragraph 70 of the Motion are specifically denied and strict proof is demanded at the time of hearing. By way of further response, as of the Motion's filing date, the Board had vetted, voted to approve and four (4) of the vacancies complained of herein. The Board is continuing to vet and approve additional Board Members and, as recently as yesterday, the Board approved and filled an additional vacancy.

(2) Meetings Held Without All Seated Board Members and Actions Taken Without Notice, a Meeting or the Opportunity for All Seated Board Members to Vote.

69. Denied. The allegations contained in Paragraph 69[5], subparts (a) through (g) of the Motion are specifically denied and strict proof thereof is demanded at the hearing.

71. Denied. The allegations contained in Paragraph 71 of the Motion constitute a conclusion of law to which no response is required. To the extent a response is deemed necessary,

5 For purposes of this Motion, Movant's numbered paragraphs on Pages 21 and 22 of the Motion are incorrect. For the sake of this Response, Debtors have used the numbering in the Motion.

the allegations and content contained in Paragraph 71 of the Motion are specifically denied and strict proof is demanded at the hearing. By way of further response, in his testimony at the July 11th Hearing, Jonathan Glance testified that the Special Meetings were properly noticed to seated Board Members. *See Transcript*, Page 87, lines 8-23. Pursuant to the Meeting Minutes, Movant was present for Special Meetings and, in some instances, abstained from voting. Therefore, Movant is not entitled to raise lack of notice as any prejudice. *See* Exhibit "B". *See In re Audubon Quartet, Inc.*, 285 B.R. 250, 255, 257 (Bankr. W.D. Va. 2002); *See also Id.* at 257 (holding that the ratification at the special meeting was valid by focusing on the equitable consideration that the dissenting director "should not be permitted to demand strict compliance since he co-founded the custom of disregard, "[a]ttendance of a person at any meeting shall constitute a waiver of notice of the meeting . . .").

(3) Refusal to Keep Minutes of Board Meetings and Unlawful Requirement For Board Members to Sign a Confidentiality Agreement.

Given the repetitive nature of the arguments contained in this subsection, Debtors incorporate by reference its "Introductory Statement" immediately following Paragraph 29 above as if it were set forth herein.

72. Denied. The allegations contained in Paragraph 72 of the Motion are specifically denied and strict proof is demanded at the hearing. The Meeting Minutes are written documents and business records maintained in the ordinary course of business that speak for themselves.

73. Denied. The allegations and content contained in Paragraph 73 of the Motion are specifically denied and strict proof is demanded at the hearing.

74. Denied. The allegations and content contained in Paragraph 74 of the Motion are specifically denied and strict proof is demanded at the hearing.

75. Admitted in part and denied in part. It is admitted that the cited statute in Paragraph 75 of the Motion provides that a nonprofit corporation shall keep minutes of the proceedings. However, it is denied that members have an unqualified right to inspect the minutes under 15 Pa.C.S.A. §5508(b). By way of further response, §5508(b) provides that a member shall make "verified written demand" stating a "proper purpose" for inspection of the inspection of the minutes. The statutory definition of "proper purpose" is "a purpose reasonably related to the interest of the person as a member." 15 Pa.C.S.A. §5508(b).

Additionally, the string of citations Movant includes do not support the assertion in Paragraph 75 of the Motion that "inaccurate, incomplete recordkeeping alone amounts to cause requiring the appointment of a trustee under 11 U.S.C. §1104(a)(1). Movant attempts to equate the PAA Board's alleged temporary lack of Board Meeting Minutes with the cited cases which deal with material failures in financial statements and deficiencies in the debtor's financial records amounts. This is a gross mischaracterization. *See In re McCorhill Publishing, Inc.*, 73 B.R. 1013, 1017 (Bankr. S.D.N.Y 1987)(stating in dicta that debtors' failure to maintain accurate *financial* records or to substantiate undocumented transactions constitutes gross mismanagement); *In re Colby Const. Co.*, 51 B.R. 113, 117 (Bankr. S.D.N.Y. 1985)(holding that the appointment of a trustee was appropriate where, among other actions, the debtor's management withdrew funds characterized as "loans", but failed to have documentation to substantiate the transactions); *In re Humphreys Pest Control Franchise, Inc.*, 40 B.R. 174, 177 (Bankr. E.D. Pa. 1984)(holding that creditors committee's motion to appointment of trustee was warranted where there were substantial transfers made between two corporations that could not be substantiated through the debtor's financial records and there were conflicts of interests between the management of the two corporations); *In re Main Line Motors, Inc.*, 9 B.R. 782, 784 (Bankr. E.D. Pa. 1981)(holding that

where alleged loans were not reflected on the debtor's financial statements, the appointment of a trustee is appropriate); and *In re Hotel Associates, Inc.*, 3 B.R. 343, 345-46 (Bankr. E.D. Pa. 1980)(holding that an inaccurate accounting system and lack of financial records of the debtor is a substantial factor in the appointment of a trustee).

76. Admitted in part and denied in part. It is admitted that in a Special Board Meeting held on May 4, 2017, the Board duly voted and adopted the Policies as reflected in the PAA Meeting Minutes for the Emergency Board Meeting held on May 4, 2017. *See,* Exhibit "B". The remaining allegations contained in Paragraph 76 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

77. The allegations contained in Paragraph 77 of the Motion constitute a legal conclusion to which no response is necessary. To the extent a response is deemed required, the allegations contained in Paragraph 77 are specifically denied and strict proof is demanded at the hearing.

78. Admitted. By way of further response, the fact that the Bylaws are silent as to whether a confidentiality agreement can be required does not equate to a prohibition on the execution of a confidentiality agreement prior to service on the Board.

79. Admitted.

80. Denied. The allegations and content contained in Paragraph 80 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

81. Denied. The allegations and content contained in Paragraph 81 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

82. The allegations contained in Paragraph 82 of the Motion constitute a conclusion of law to which no response is required. To the extent a response is deemed required, the allegations

contained in Paragraph 82 of the Motion are specifically denied and strict proof is required at the hearing. By way of further response, Movant has failed to meet her burden of showing cause for the appointment of a trustee through clear and convincing evidence by merely asserting conclusory statements that the Board's actions constitute "gross mismanagement" without further substantiation.

(4) Retention of Holiday Fenoglio Fowler, L.P. to Market the Club Parcel and Hotel Parcel for Sale Without Board Approval or Membership Approval.

Given the repetitive nature of the arguments contained in this subsection, Debtors incorporate by reference its "Introductory Statement" immediately following Paragraph 45 above as if it were set forth herein.

83. Paragraph 83 of the Motion is incomplete and Debtors cannot accurately respond to the contents of Paragraph 83 without further clarification as two which Section 11 is being referenced. To the extent this Court deems a response is necessary, the allegations contained in Paragraph 83 of the Motion are specifically denied and strict proof is demanded at the time of hearing. By way of further response, the Bylaws are silent as to the retention of professionals.

84. Denied as stated. By way of further response, the statute cited by Movant in Paragraph 84 of the Motion states that no vote or consent of the members shall be required to make effective an action by the governing body of the corporation for the sale, lease or other disposition of real or personal property. 15 Pa.C.S. §5546 provides as follows in its entirety:

> Except as otherwise provided in this subpart and unless otherwise provided in the bylaws, no application to or confirmation of any court shall be required for the purchase by or the sale, lease or other disposition of the real or personal property, or any part of the real or personal property, of a nonprofit corporation, and, unless otherwise restricted in section 5930 (relating to voluntary transfer of corporate assets) or in the bylaws, no vote or consent of the members shall be required to make effective such action by the board or other body. If the property is subject to a trust, the conveyance away shall be free of trust, and the trust

shall be impinged upon the proceeds of the conveyance.

85. Denied. The allegations and content contained in Paragraph 85 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

86. Denied as stated. Debtors entered into an agreement with HFF on May 3, 2017. *See* Document No. 51-1. By way of further response, the agreement with HFF is a written document that speaks for itself.

87. Denied. The allegations contained in Paragraph 87 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

88. Admitted in part and denied in part. It is admitted that Movant, Ms. Donahue and Mr. Goodwin attended a Board Meeting. However, it is denied that the Board Meeting occurred on April 25, 2017. As the Meeting Minutes provide, the meeting contemplated herein occurred on April 24, 2017. *See* Exhibit "B". By way of further response, the Movant and Mr. Goodwin attended the April 24th meeting as guests to be considered for election to the Board.

89. Admitted in part and denied in part. It is admitted that the decision to retain HFF as a real estate advisor was not discussed at the Board Meeting held on April 24, 2017[6]. It is specifically denied the implication that Article V, Section 11 of the Bylaws applies to the retention of HFF as a real estate and capital advisor.

90. Denied. The allegations contained in Paragraph 90 of the Motion are specifically denied and strict proof is demanded at the hearing. By way of further response, Movant's implication that the alleged failure of not having a Board meeting from April 25, 2017 to May 1, 2017, a seven day period, somehow warrants the appointment of a Chapter 11 trustee exceeds the limits of 11 U.S.C. §1104(a) and (b) .

[6] Paragraph 89 of the Motion alleges that the Board Meeting occurred on April 25, 2017. The Meeting Minutes reflect that this meeting in fact occurred on April 24, 2017.

91. Admitted in part and denied in part. The agreement with HFF is a written document which speaks for itself as to the success fee provided for HFF and was approved by this Court. It is specifically denied that the fee is the "maximum fee amount that could be agreed to by the Board under the Bylaws without membership vote." In fact, Movant's counsel stated in the July 11th Hearing that the Bylaws are silent as to whether the Board was to obtain approval for the retention of professionals. *See Transcript*, Page 27, lines 11-21 (Doc. No. 100).

92. Denied as stated. allegations and content contained in Paragraph 92 of the Motion are specifically denied with strict proof demanded at the time of hearing. By way of further response, a hearing on July 11, 2017 was held on the matter, which resulted in this Court's approval of the HFF Application that same day. An Order reflecting this approval was entered by the Court on August 1, 2017.

93. Denied. The allegations and content contained in Paragraph 93 of the Motion are specifically denied with strict proof demanded at the time of hearing. By way of further response, the RFP is a written document which speaks for itself and which will ultimately be left to this Court's approval.

94. Denied. The allegations and content contained in Paragraph 94 of the Motion are specifically denied with strict proof demanded at the time of hearing.

95. Denied. The allegations and content contained in Paragraph 95 of the Motion are specifically denied with strict proof demanded at the time of hearing. By way of further response, the allegation that tours are being granted to "certain insider or favored purchasers" is inaccurate and false, as substantiated by the RFP process.

96. Admitted.

97. Denied. The allegations and content contained in Paragraph 97 of the Motion are specifically denied with strict proof demanded at the time of hearing.

98. Denied. The allegations contained in Paragraph 98 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

99. Denied. The allegations contained in Paragraph 99 of the Motion are specifically denied and strict proof is demanded at the time of hearing.

100. The allegations contained in Paragraph 100 of the Motion constitute a legal conclusion to which no response is necessary. To the extent a response is deemed required, the allegations contained in Paragraph 100 of the Motion are specifically denied and strict proof is demanded at the time of hearing. By way of further response, the Board's actions with respect to the retention of HFF have already been determined as proper by this Court.

II. A CHAPTER 11 TRUSTEE APPOINTMENT IS IN THE INTERESTS OF CREDITORS, ANY EQUITY SECURITY HOLDERS, AND OTHER INTERESTS OF THE ESTATE.

Denied. The allegations contained in the final section of Movant's Argument Section are specifically denied and strict proof is demanded at the hearing. Important, neither the Movant nor the PAAPA are creditors of the PAA. By way of further response, Movant alleges in the final paragraph of its "Argument" Section that the Court should appoint a trustee because the appointment is "in the interests of creditors" pursuant to 11 U.S.C. §1104(b). In support thereof, Movant merely states that the chapter 11 trustee would provide the Estate with a "true fiduciary" which is "necessary [in this case] to address any conflicts of interests with respect to officers or members of the Board." Movant has failed to provide the alleged conflicts of interests. Movant merely asserts that she has been informed of alleged interests. *See* Paragraphs 61, 62 and 98 of the Motion.

CONCLUSION

Movant has not met her burden of proving "cause" for the appointment of a trustee through "clear and convincing evidence" pursuant to 11 U.S.C. §1104 with these vague, unsubstantiated claims of conflicts of interests, breaches of fiduciary duties and inaccurate statements that governance procedures have not been followed. *See, e.g., In re Marvel Entertainment Group*, 140 F.3d. 463, 471 (3d. Cir. 1998). Therefore, the Motion must be denied.

AFFIRMATIVE DEFENSES

I. Movant and the Pittsburgh Athletic Association Preservation Association lack the requisite standing before this Court in this proceeding.

1. In order to have standing before this Court and in these proceedings, Movant and the Pittsburgh Athletic Association Preservation Association ("**PAAPA**") would have to demonstrate each is a party in interest to the proceedings. While not statutorily defined, a "party in interest" must show that it has "a sufficient stake in the proceeding…" *In re Shubh Hotels Pittsburgh, LLC*, 495 B.R. 274, 283 (Bankr. W.D.Pa. 2013).

2. Section 1104 provides that, under certain circumstances, at the request of a part in interest, the Court may appoint a Chapter 11 Trustee. *See* 11 U.S.C. § 1104(a). Furthermore to appear and be heard generally in a Chapter 11 proceeding, a party must, at minimum, qualify as a "party-in-interest."

3. Although "party in interest" standing is construed broadly," *In re Amatex Corp.*, 755 F.2d 1034, 1042 (3d Cir. 1985) (holding that future asbestos claimants were "parties in interest" entitled to representation because other parties to the action had would not represent their claims")[7], such standing should not be granted when the party seeking standing is adequately

7 In *Amatex Corp*, the Third Circuit noted the importance of providing future asbestos claimants, who had already been exposed, with a voice, given the "almost epidemic proportions of [asbestos related cases] in our nations legal system.755 F.2d at 1035. Indeed, *Amatex Corp*, was decided with a specific public policy backdrop that is simply

represented and his intended actions will burden the reorganization process. *In re Addison Cmty. Hosp. Auth.*, 175 B.R. 646, 650 (Bankr. E.D. Mich. 1994)("This Court should not be so liberal in granting applications to be heard as to overburden the debt adjustment process.")(citing *In re Public Service Co. of New Hampshire,* 88 B.R. 546, 554 (Bankr.D.N.H.1988)).

4. As detailed herein, neither the Movant nor PAAPA qualify as such a "party in interest."

a. Movant's standing is limited to issues in connection with the rejection of her lease with the Debtors.

5. Movant is not a creditor of PAA, rather she is merely a party to an oral month-to-month "tenancy at will" lease for a suite located in the PAA. While she may have standing in connection with the rejection of the above-referenced lease, she is not a creditor and does not have general standing to be heard as to all matters in this bankruptcy case, including the within Motion. Additionally, this Court already authorized PAA's rejection of Movant's lease. *See* Document No. 66.

6. Movant has not paid her dues to PAA for, at minimum, the past three (3) months. As such, Movant is not a creditor of PAA, but rather owes money to PAA. [8]

7. The PAA has also commenced an eviction proceeding against Ms. Rose which is currently pending at *Pittsburgh Athletic Association v. Yvonne Rose*, MDJ-05-2- 27. A hearing was held on August 8, 2017, with a decision for eviction and past-due rent rendered in favor of the Debtors. A true and correct copy of the eviction decision is attached hereto as **Exhibit "I".**

not present in the case of a private health/social club which is trying to right itself from a financial maelstrom.

[8] Under the PAA By-laws, PAA membership may be terminated for outstanding debts owed to the PAA which have not been paid for three months. Once terminated, the Member losses all rights of membership and any interests vest in the Association. *See* By-laws Art. II, §§ 24, 25.

8. Accordingly, any would-be standing that Ms. Rose's had as a former tenant at will of the PAA, may be completely eliminated through this eviction action.

b. PAAPA lacks standing to appear before this Court to be heard on any matter in these proceedings.

9. PAAPA has a website located at www.paapa.club.

10. According to its website and communications with counsel, PAAPA is comprised of current, former and future PAA members.[9] *See*, Doc. No. 199. PAAPA is not a creditor and does not have a "substantial stake" in these bankruptcy proceedings so as to establish standing as a "party in interest".

11. To the extent PAAPA is comprised of future PAA members, these parties are not entitled to participate in these bankruptcy proceedings as they hold no rights in the PAA and do not have a present "stake" in the proceedings. A future intention to join the PAA as a purported stake in the proceedings, does not provide for standing, it is merely speculative with no concrete basis in law.

12. Pursuant to Article II, Section 25 of the PAA Bylaws, once a member resigns "his/her membership, and all rights acquired under it, shall thereupon cease and be forever at an end and any interest the member may have had in the property of the Association shall thereupon revert to and be vested in the Association…." Therefore, to the extent PAAPA is comprised of any former PAA members, it lacks standing before this Court in these proceedings.

13. Furthermore, former and future members of the PAA lack "party in interest" standing because any purported harm they could suffer by way of these proceedings is not any different than that of members of the general public. *See Bldg. Indus. Ass'n of Lancaster Cty. v.*

[9] PAAPA imposes no criteria for joining PAAPA and has not released the names of its "members" whom they allege have party of interest standing before this Court.

Manheim Twp., 710 A.2d 141, 145 (Pa. Commw. Ct. 1998) (to have standing party must suffer substantial harm "greater tha(n) [the challenged action's] effect on the public at large . . ") (citing *South Whitehall Township Police Service v. South Whitehall Township,* 521 Pa. 82, 555 A.2d 793 (1989)).

14. Any current PAA members in good standing that are also members of PAAPA have a limited interest in these bankruptcy proceedings and, therefore, standing before this Court is limited to the rights and privileges granted to them by the PAA Bylaws and under any applicable non-profit laws, regulations and precedent. Membership in the PAA grants any current members of the PAA the rights to enjoy certain services and amenities provided to them in connection with the PAA's social and athletic purpose.

15. Association membership is not akin to an equitable ownership stake in a for-profit corporation. PAA members do not have a true pecuniary interest in the Debtors' bankruptcy cases, as they do not have a reasonably likelihood or expectation of appreciable financial gain or loss based upon the outcome of these proceedings. PAA members do not hold an "equity type" membership. *See In re Reserve Golf Club of Pawleys Island, LLC,* 428 B.R. 678, 685 (Bankr. D.S.C. 2010)(finding that former members of club with no pecuniary interest in the estate did not have standing to object to the sale of debtor's assets)(citing *Grausz v. Englander,* 321 F.3d 467, 473 (4th Cir. 2003) (stating that "[i]n the bankruptcy context a party in interest is one who has a pecuniary interest in the distribution of assets to creditors"); and *In re LeBlanc, Inc.*, 299 B.R. 546, 551 (Bankr. N.D. Iowa 2003)(finding that because a non-creditor party had no pecuniary interest in the sale, it did not have standing to object to the sale)).

16. The fact that current members have no "party in interest" standing is further evidence by way of the PAA Corporate Charter which specifically designates the PAA as a non-

stocked non-profit corporation formed under, *inter alia*, § 501(c)(7) of the Internal Revenue Code.[10]

17. All that the current PAA members have is a personal interest in seeing the continuation of the PAA so they can enjoy the used of its facilities and social functions, which is not a legally protected interest. *In re Global Industrial Technologies, Inc.,* 645 F.3d 201, 210 (3d Cir. 2011) (a party in interest is "anyone who has a legally protected interest that could be affected by a bankruptcy proceeding") (citing *In re James Wilson Associates,* 965 F.2d 160, 169 (7th Cir. 1992).

18. Due to the fact that the PAAPA is now comprised of a melting pot of members, former members and other non-members, it cannot seek to represent three factions who do not have a commonality of interests. Pursuant to 15 Pa. C.S.A. § 5782, to bring an action against a non-profit organization or its directors or officers, ***each*** plaintiff must have been a member at the time of the transaction. 11 Pa. C.S.A. §5782(a); *See also* Hart v. Manning, 828 A.2d 5, 9 (Pa. Commw. Ct. 2003), as amended (June 9, 2003)(finding that non-member who failed to pay dues did not have standing to bring claim against non-profit corporation); *In re Orlando Inv'rs, L.P.*, 103 B.R. 593, 597 (Bankr. E.D. Pa. 1989) ("It does not follow, though, that the statutory right to be heard on an issue includes the right to assert interests possessed solely by others."); *Bldg. Indus. Ass'n of Lancaster Cty. v. Manheim Twp.*, 710 A.2d 141, 146 (Pa. Commw. Ct. 1998) (finding

[10] 26 U.S.C. § 501(c)(7), prohibits exemptions of a non-profit organizations net earnings if those earnings will enure to the benefit, in any way, to the personal or private interests of the members. Accordingly, even if the PAA were to complete a formal voluntary dissolution, the sale of any assets and proceeds were to be distributed to members, the proceeds would first be subject to applicable taxes, including but not limited to tax on capital gains realized on property acquired by the Debtors in 1908 and sold over 100 years later, in 2017, as well as any applicable real estate transfer taxes. Furthermore, PAAPA's web-site specifically states it is apposed to the sale/liquidation of the Debtors assets as it is focused on the **"PRESERVATION"** of the PAA. How now can it assert that is members have a "party in interest status" from the liquidation of the Debtors assets?

non-profit builders association did not have standing to pursue "individualized damages that are not shared in amount by all of its members.")

19. Furthermore, the current PAA members have privileges and benefits that are limited and these privileges and benefits cannot be permitted to overburden this Court with objections and motions where it lacks standing and exacerbate the Debtors' already limited funds, especially in light of the purpose of Chapter 11, which is to facilitate reorganization. *In re Addison Cmty. Hosp. Auth.*, 175 B.R. 646, 659 (Bankr. E.D. Mich. 1994)(noting a bankruptcy court must determine "party in interest" status in light of the Bankruptcy Code's stated policies).

20. The loss of membership rights current PAA members hold does not give rise to the type of direct, immediate, and substantial harm which would allow PAAPA standing to seek appointment of a Chapter 11 Trustee. *See Bldg. Indus. Ass'n of Lancaster Cty. v. Manheim Twp.*, 710 A.2d at 145 (finding that non-profit builders association had standing to challenge impact fee ordinance because its members (the builders) would have to pay the impact fee, i.e. a pecuniary interest in the fee ordinance, and thus would suffer a direct, immediate and substantial harm)(citing *William Penn Parking Garage v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975)).

21. Considering that PAAPA has not disclosed its membership composition PAAPA lacks standing to be heard in these bankruptcy proceedings, this Court should not permit PAAPA to continue to inundate the Debtors and the bankruptcy cases.

c. PAAPA and Movant have ulterior motives that this Court should consider when determining their standing to be heard in this matter.

22. In addition to their lack of standing under the Bankruptcy Code and applicable case law, this Court must also acknowledge PAAPA and Movant's motivations.

23. Movant is the Founder of PAAPA. Their President is not a PAA member but in fact held herself out for many years as a member until her scam was uncovered recently. Certainly a disingenuous act.

24. PAAPA and Ms. Rose's actions surrounding these bankruptcy proceedings have been aimed at usurping the Debtors' rights and assets with the goal of controlling and interfering these proceedings.

25. The ulterior motives of PAAPA are clearly identified from its website, which states that its main goals include the "reversal of the bankruptcy" and submitting its own plan of reorganization.

26. PAAPA has included a "Plan of Reorganization Donation Form," on its website whereby it requests donations "to support their efforts of submitting a 'plan of reorganization' to the Court that will allow the PAA to retain ownership of its building, land, parking lot/hotel lease and artworks for generations to come."

27. In conjunction with emails being sent out from Movant to PAAPA Members with inaccurate information, PAAPA's actions constitute a clear and misleading implication that PAAPA is acting on behalf of the PAA. Nothing could be further from the truth. Rather, these actions and communications establish an improper effort to influence the bankruptcy proceedings and gain control of the property and administration of the estate. A Cease and Desist letter was sent to PAAPA on August 2, 2017.

28. Debtors currently have a Motion to Quash pending before this Court in relation to eight (8) improper subpoenas issued from Movant and PAAPA to members of the Board. This Court should prohibit PAAPA and Movant from continuing to overburden this Court and divert focus from the proceedings through the use of frivolous filings.

II. Impropriety of Joinder

29. On July 28, 2017, PAAPA, filed a "Joinder" to the Motion to Appoint Trustee which is a Contested Matter. See Document No. 203.

30. Bankruptcy Rule 9014 governs the procedures for contested matters through the incorporations of certain Bankruptcy Rules which apply in adversary proceedings but does not incorporate Bankruptcy Rule 7020 which governs "permissive joinder" is not specifically incorporated in Contested Matted. Fed. R. Bankr. P. 9014(c).

31. Notwithstanding that Bankruptcy Rule 7020 is not specifically incorporated, the Court has discretion to incorporate this rule. *See Id.* However, once incorporated, the party wishing to join bears the burden of proving they are permitted to join.

32. Pursuant to Fed. R. Civ. P. 20, as incorporated by Bankruptcy Rule 7020, to join as a plaintiff (or movant in this case) the party must demonstrate:

> (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
>
> (B) any question of law or fact common to all plaintiffs will arise in the action.

Fed. R. Civ. P. 20(a).

33. As detailed herein, not only does PAAPA lacks standing as a "party in interest" between and amount its own members there is no relief available to them either jointly or severally. As between the PAAPA and the Movant, Ms. Rose, she has a interest only as a counter party to a rejected lease, and now owes the PAA money.

34. Accordingly, not withstanding PAAPA's failure to obtain an order from the Court regarding the application of Bankruptcy Rule 7020, it does not satisfy the plain language of the rule governing permissive joinder.

Reservation of Rights

35. Debtors specifically reserve all rights pursuant to Bankruptcy Rule 7054 as incorporated by Bankruptcy Rule 9014 with respect to recovery of fees and costs associated with the Motion to Appoint filed by Ms. Rose.

WHEREFORE, Debtors respectfully request this Court (1) deny the Motion for Appointment of a Chapter 11 Trustee; (2) issue an Order limiting Movant's standing to Debtors' rejection of her lease; (3) deny PAAPA's Joinder Motion; (4) issue an Order rejecting PAAPA's standing to be heard in these proceedings; and (5) grant such other relief as the Movant deems is equitable and just.

Respectfully submitted,

DATED: August 8, 2017

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