IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: CHARGE ENTERPRISES, INC. Debtor.	Chapter 11 Case No. 24-10349 (TMH) **Hearing Date: 10/10/2024 10:00** **Obj. Deadline: 09/13/2024 4:00**

MOTION OF CRAIG DENSON, LEAH SCHWELLER
<u>TO ENFORCE THE CHAPTER 11 PLAN AND CONFIRMATION ORDER</u>

1. Craig Denson and Leah Schweller (collectively, the "D&O Parties") hereby submit this Motion to Enforce the Plan and Confirmation Order (each as defined below). In support of this Motion, the D&O Parties, by and through their undersigned counsel, respectively represent as follows.

PRELIMINARY STATEMENT

2. The D&O Parties seek to enjoin litigation which directly violates provisions of the Chapter 11 Plan of Reorganization approved by this Court. The plaintiffs in the litigation are two creditors of the Debtor along with several of their affiliates. The two creditor plaintiffs not only voted in favor of the plan, but expressly advocated for its approval by this Court, and they are represented in the litigation by the same counsel that represented them in this bankruptcy proceeding. The Plan spelled out a simple procedure that the plaintiffs were required to follow before commencing litigation against the D&O Parties. Yet the plaintiffs made no effort to follow that procedure. In fact, plaintiffs intentionally ignored the procedure. For this willful violation of

the Plan and Confirmation Order, the Court should not only enjoin the litigation, but order the plaintiffs to dismiss it with prejudice.

3. On May 3, 2024, this Court entered the Confirmation Order approving the Debtor, Charge Enterprises, Inc.'s Chapter 11 Plan of Reorganization. See Findings of Fact, Conclusions of Law, and Order Approving Disclosure Statement and Confirming the Debtor's Chapter 11 Plan (ECF No. 255) (the "Confirmation Order"); Chapter 11 Combined Plan & Disclosure Statement Debtor's Conformed Combined Disclosure Statement and Prepackaged Chapter 11 Plan of Reorganization (ECF No. 266) (the "Plan"). The Plan, which became effective on May 3, 2024 (ECF No. 275), releases claims by affiliates of Arena Investors, LP ("Arena Investors), a significant shareholder of the Debtor, against directors and officers of the Debtor, except to the extent those claims are covered by the Debtor's D&O insurance policies ("Insured Claims").

4. For any Insured Claims the Plan specified that, at least 30 days before commencing litigation, they send a demand letter to the D&O Parties detailing the claims to be asserted and identifying D&O insurance policies of the Debtor which may cover the claims (the "Pre-Litigation Demand Provision").

5. Arena Investors' affiliates AI Amped I, LLC ("AI Amped I"), AI Amped II, LLC ("AI Amped II" and collectively with AI Amped I, the "Supporting Entities") voted to approve the plan, including the Pre-Litigation Demand Provision, and advocated for its confirmation in the Bankruptcy Court. Yet, before the ink on the Plan and Confirmation Order could dry, the Supporting Entities along with four other Arena affiliated entities—Arena Special Opportunities Fund, LP ("ASOF"), Arena Special Opportunities Partners I, LP ("ASOP"), Arena Origination Co., LLC ("AOC"), Mt. Whitney Securities, LLC ("Mt. Whitney," together with ASOF, ASOP, AOC, and Mt. Whitney, the "Arena Shareholders," collectively with AI Amped I and AI Amped

II, the "Arena Plaintiffs," and further with Arena Investments, "Arena")—commenced litigation in New York state court against the D&O Parties (the "New York Action"). *AI Amped I, LLC v. Hanson*, Index No. 653261/2024 (N.Y. Sup. Ct., N.Y. County). However, the Arena Plaintiffs failed to comply with the procedures required by the Plan before filing such a suit, specifically, the Pre-Litigation Demand Provision. This Court can, and should, specifically enjoin the Arena Plaintiffs' clear and knowing violation of the Plan and Confirmation Order, and order that the suit be dismissed with prejudice.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(b). This Motion involves a core proceeding as it concerns, inter alia, a Chapter 11 plan confirmed by order of this Court. *In re General Media, Inc.*, 335 B.R. 66, 73-74 (Bankr. S.D.N.Y. 2005) (recognizing post-confirmation jurisdiction when there is a "close nexus to the bankruptcy matter or proceedings, as when a matter affects the interpretation, implementation, consummation, execution, or administration of the confirmed plan . . ." and when the plan provides for such retention).

7. In addition, pursuant to Paragraph KK of the Confirmation Order and Article XII of the Plan, this Court retained "jurisdiction, to the maximum extent permitted by applicable law, over all matters arising out of, or related to, the Chapter 11 Case and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code." (ECF No. 255, ¶ KK; ECF No. 266, Art. XII). In particular, the Court retained jurisdiction to "enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of … the Plan or the Confirmation Order, including contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan," (ECF No. 266, Art. XII, ¶ f) and to "issue

injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan," (ECF No. 266, Art. XII, ¶ h). This Court plainly has jurisdiction to enforce its own orders. *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009); *see also In re Resorts Int'l, Inc.*, 372 F.3d 154, 168-69 (3d Cir. 2004) ("[W]here there is a close nexus to the bankruptcy plan or proceeding, as when a matter affects the interpretation, implementation, consummation, execution, or administration of a confirmed plan or incorporated litigation trust agreement, retention of postconfirmation bankruptcy court jurisdiction is normally appropriate."); *In re Midstate Mortg. Inv., Inc.*, 105 F. App'x 420, 422-23 (3d Cir. 2004) (affirming bankruptcy court's decision to enjoin creditors of the debtor from prosecuting a state-court action or instituting any other action that might interfere with the plan or releases).

8. In accordance with Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the D&O Parties confirm their consent to the entry of a final order by this Court in connection with this Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTUAL AND PROCEDURAL BACKGROUND

9. Pursuant to a Securities Purchase Agreement between the Debtor and ASOF and ASOP dated May 19, 2021 (the "May 2021 SPA") and a Securities Purchase Agreement between the Debtor and the Arena Shareholders dated December 17, 2021 (the "December 2021 SPA," together with the May 2021 SPA, the "SPAs"), the debtor issued senior secured non-convertible

promissory notes to Arena and borrowed from Arena $27.8 million which came due on November 19, 2023.

10. On June 30, 2022, the Debtor entered into an Exchange Agreement with ASOF and ASOP (the "Exchange Agreement"), pursuant to which ASOF and ASOP exchanged the May 19, 2021 Convertible Notes for a new series of convertible preferred stock designated as Series D preferred stock.

11. The Debtor was unable to pay the notes when they came due in November 2023, because the Debtor's investment advisor, Kenneth Adam Orr ("Orr"), Cori Joy Orr, and their Corporate entities, Korr Acquisitions Group, Inc. and Korr Value L.P., failed to return approximately $14.9 million in funds which should have been invested in marketable securities but were instead unbeknownst to the D&O Parties improperly and inappropriately invested in a limited partnership. Moreover, Arena blocked the Debtor's efforts to secure financing from a third party lender to repay the notes by invoking a provision of the SPAs that precluded the Debtor from taking on additional debt except in pre-agreed circumstances while Arena's loan is still outstanding.

12. On December 28, 2023, the Arena Shareholders assigned their respective rights and interests in the SPAs and the Exchange Agreement, as well as several other agreements with Charge and Convertible and Non-Convertible Notes, to AI Amped I and AI Amped II.

13. On March 7, 2024, the Debtor filed its Chapter 11 Bankruptcy Petition in this Court. (ECF No. 1). Denson executed the Petition as the authorized representative of the Debtor. (*Id.* at 5, 41). That same day, two of the Arena Plaintiffs, Amped I and Amped II, entered their appearances in the bankruptcy proceeding. (ECF No. 17).

14. AI Amped I and AI Amped II were the only creditors entitled to vote on the plan, and they both voted to accept it. (ECF No. 13). During the bankruptcy proceedings, AI Amped I

and AI Amped II advocated for confirmation of the plan and opposed efforts by Kenneth Orr and parties associated with him to delay or obstruct the swift confirmation of the Chapter 11 Plan. (See ECF Nos. 176, 192).

15. On April 24, 2024, the Court entered the Confirmation Order, which permanently enjoined "all Entities who have held, hold, or may hold Causes of Action that have been released or exculpated pursuant to Sections 5.1, 9.4, or 9.5" of the Plan from "commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Causes of Action, Claims, or Interests, as applicable" against, inter alia, "the Released Parties." (ECF No. 255 ¶ 25).

THE NEW YORK ACTION

16. On June 26, 2024, the Arena Plaintiffs commenced the New York Action in the Supreme Court of the State of New York, in New York County against the D&O Parties. A copy of the Arena Plaintiffs' Complaint ("the Complaint") in the New York Action is attached hereto as Exhibit A. In Paragraph 1 of the Complaint, the Arena Plaintiffs assert that the New York Action "is an action against senior officers and directors of the [Debtor] for fraud, negligent misrepresentation, and breach of fiduciary duty stemming from the Defendants' financial mismanagement, lack of corporate governance and oversight, misrepresentations of financial covenants and warranties, and abdication of their duties as directors and officers of the Company, resulting in millions of dollars of financial harm to Plaintiffs." The D&O Parties, the Defendants in the New York Action, have not yet answered the Complaint.

17. The Complaint seeks damages in excess of $33 million against the D&O Parties, jointly and severally, Ex. A ¶ 170, and asserts the following five causes of action:

18. Count One, for Fraudulent Inducement or Misrepresentation, alleges that the D&O Parties fraudulently induced the Arena Shareholders to enter into the December 2021 SPA by falsely representing that the Debtor was "not in default under or in violation of any indenture, loan or credit agreement and that it was not in violation or default in the performance or observation of any material obligation, agreement, covenant or condition contained in any note" and by failing to disclose the scope of Orr's authority over the Debtor's funds and investments and the lack of "oversight or monitoring" of Orr's activities. Ex. A ¶¶ 106-117.

19. Count Two, for Fraudulent Inducement or Misrepresentation, alleges that the D&O Parties fraudulently induced Amped I to loan $13.3 million to the Debtor "on the false basis that the Company would not 'make or suffer to exist any Investments using any proceeds from [Arena] or commitments therefor, or to become or remain a partner in any partnership or joint venture, except for (i) Investments in cash and cash equivalents,'" and by failing to disclose the scope of Orr's authority over the Debtor's funds and investments and the lack of "oversight or monitoring" of Orr's activities. Ex. A ¶¶ 118-129.

20. Count Three, for Fraudulent Inducement or Misrepresentation, alleges that the D&O Parties fraudulently induced Amped II to convert $12.5 million in Convertible Notes into preferred shares pursuant to the Exchange Agreement, by falsely representing that the Debtor was "not in default under or in violation of any indenture, loan or credit agreement and that it was not in violation or default in the performance or observation of any material obligation, agreement, covenant or condition contained in any note,", and by failing to disclose the scope of Orr's authority over the Debtor's funds and investments and the lack of "oversight or monitoring" of Orr's activities. Ex. A ¶¶ 130-142.

21. Count Four, for Negligent Misrepresentation, alleges that the D&O Parties negligently made misrepresentations in the December 2021 SPA, the Non-Convertible Notes, and the Exchange Agreement. Ex. A ¶¶ 143-159.

22. Count Five, for Breach of Fiduciary Duty, alleges that the D&O Parties breached fiduciary duties to the Arena Shareholders by making misrepresentations in the December 2021 SPA, the Non-Convertible Notes, and the Exchange Agreement. Ex. A ¶¶ 160-169.

23. The Complaint in the New York Action expressly acknowledges that Debtor "filed a voluntary petition for bankruptcy under Chapter 11 in the U.S. Bankruptcy Court for the District of Delaware" and that this Court confirmed the Plan. Ex. A, ¶¶ 93, 94.

24. However, the Complaint fails to allege, and cannot truthfully allege, that the Arena Plaintiffs issued any demand letter to the D&O Parties, much less a demand letter that contains the information required by § 5.1(f) of the Plan.

25. Notably, the only potentially applicable insurance policy of which the D&O Parties are aware excludes coverage for deliberately fraudulent or criminal acts. Yet, three out of the five counts the Arena Plaintiffs assert in the Complaint against the D&O Parties allege deliberately fraudulent acts.

26. The Complaint is signed by the same counsel, who was also counsel of record for AI Amped I and AI Amped II in these bankruptcy proceedings. As such, the Arena Plaintiffs cannot claim ignorance about the procedures that the Plan and Confirmation Order required them to follow as a prerequisite to any suit against the D&O Parties.

27. Moreover, the Arena Plaintiffs know or should have known that claims sounding in fraud are not and cannot be Insured Claims and, consequently, the D&O Parties were unequivocally released from such claims.

28. As a result of the Arena Plaintiffs knowing and blatant violation of the Plan and Confirmation Order, the D&O Parties have been forced to incur substantial legal expenses in the New York Action and to file this motion to enforce the Plan and Confirmation Order.

29. In addition, the D&O Parties have been subjected to intentional reputational harm at the hands of the Arena Plaintiffs by the filing of the Complaint, which alleges that the D&O Parties have committed multiple frauds. Had the Arena Plaintiffs followed the process set forth in the Plan and Confirmation Order, the New York Action would not have been filed. And even if it was, had the Arena Plaintiffs honored the Plan and Confirmation Order, they would not have brought claims sounding in fraud which they clearly knew were released. As a result, by bringing such fraud claims in direct and blatant contravention of the Plan and Confirmation Order, the Arena Plaintiffs intentionally and willfully ignored the Plan and Confirmation Order to purposefully embarrass and harass the D&O Parties. The Complaint should never have been filed and such claims should never have been included in the Complaint.

THE RELEVANT PLAN AND CONFIRMATION ORDER PROVISIONS

30. Section 2.1 of the Plan defines the following terms which are relevant to this motion:

a. "Arena" is defined as "Arena Investors, LP, the Prepetition Lenders, the DIP Lender, and any Entity affiliated with any of them that holds or previously held Claims against or Interests in the Debtor." (ECF No. 266 § 2.1(5)).

b. "Arena D&O Claims" is defined as "all Causes of Action of Arena against the Ds & Os (regardless of whether acting in a fiduciary capacity or otherwise)." (*Id.* § 2.1(6))

c. "Directors" means "all directors of the Debtor as of the Petition Date." (*Id.* § 2.1(48)). The Plan specifically identifies Hanson and Denson as Directors. (*Id.*)

d. "DIP Lender" means "AI Amped I LLC, in its capacity as holder of a DIP Lender Claim." (*Id.* § 2.1(43)).

e. "DIP Lender Claim" means "any Claim against the Debtor arising under the DIP Term Sheet or DIP Order, or both (other than a Claim for adequate protection due to the Prepetition Lenders under the DIP Order, which Claim shall constitute a Prepetition Lender Claim for purposes of the Plan." (*Id.* § 2.1(44)).

f. "Ds & Os" means "the Directors and Officers." (*Id.* § 2.1(52)).

g. "Officers" means "all officers of the Debtor as of the Petition Date." (*Id.* § 2.1(77)). The Plan specifically identifies Denson and Schweller as Officers. (*Id.*)

h. "Prepetition Lender Claims" means "the Claims against the Debtor arising under the Arena SPAs, the Arena Notes (including, but not limited to, Claims on the secured notes converted into the Series D Preferred Interests), and the Arena Exchange Agreement, which Claims are secured, in whole or in part, by first-priority security interests in all assets of the Debtor." (*Id.* § 2.1(88)).

i. "Prepetition Lenders" means "AI Amped I, LLC and AI Amped II, LLC, in their capacity as holders of Prepetition Lender Claims" (*Id.* § 2.1(89)).

31. In Section 5.1(e) of the Plan, Arena released "all Arena D&O Claims, provided that such release shall not release any Arena D&O Claims that are or may be covered by the Debtor's D&O Liability Insurance Policies (as determined in good faith by Arena), except to the extent set forth in Section 5.1(f)." (*Id.* § 5.1(e).

32. Section 5.1(f) of the Plan provides that "any recovery on account of any Arena D&O Claim … shall be satisfied solely by and to the extent of the proceeds of any applicable D&O Liability Insurance Policy after payment from such D&O Liability Insurance Policy of any and all

covered costs and expenses incurred in connection with the defense of the Arena D&O Claims." (*Id.* § 5.1(f)). So, only claims to which insurance coverage would apply were not released. Claims sounding in fraud are not covered by insurance. Consequently, claims sounding in fraud were expressly released.

33. Section 5.1(f) also provides a procedure that Arena Plaintiffs are required to follow before commencing any action against any director or officer of the Debtor. Specifically, "[a]t least 30 days prior to commencing an action against a D&O with respect to any Arena D&O Claims," Arena must send the director or officer "a letter setting forth in reasonable detail (i) the factual and legal basis for the Arena D&O Claims to be pursued in such action and (ii) each Potentially Applicable Insurance Policy under which Arena has determined there may be coverage for such Arena D&O Claim, and the basis for such determination (the 'Arena D&O Demand Letter'), which shall be tendered by the D&O to the applicable Insurer(s) for a coverage determination with respect to such Arena D&O Claims." (*Id.*) If the insurer denies the claim on an initial basis, the director or officer "shall use reasonable efforts to seek a Final Coverage Determination with respect to" the claims, but is not required to "commence or prosecute and Insurance Coverage Action unless" there is a good faith basis for doing so and Arena has "agreed, in a writing acceptable to the D&O, to pay and fully indemnify and hold harmless the D&O from all costs and expenses in connection with the prosecution of such Insurance Coverage Action." (*Id.*).

34. Section 5.1(d) further provides that "[u]pon the earlier … of (i) a Final Coverage Determination denying coverage under any potentially applicable D&O Liability Insurance Policy identified in the Arena D&O Demand Letter of any coverage claims asserted against, and properly noticed to, the Insurer under such policy, or (ii) the exhaustion of the available insurance coverage

under all applicable D&O Liability Insurance Policy, the Arena D&O Claim shall be released and discharged without the need for further action or Bankruptcy Court order." (*Id.*)

35. Finally, Section 5.1(f) provides that "any assignee or successor of interest of Arena with respect to the Arena D&O Claims shall be bound by the provisions of Sections 5.1(e) and (f)." (*Id.*)

36. The Confirmation Order provides that "[e]ntry of this Confirmation Order constitutes approval" of compromises and settlements set forth in the plan "pursuant to the Bankruptcy Rules." (ECF No. 255 at 17 ¶ 4). Specifically, the Confirmation Order identifies among the compromises and settlements approved the release of the Arena D&O claims to the extent not covered by insurance. (*Id.* at 18 ¶ 5(f) ("In accordance with section 5.1(e) of the Plan, on the Effective Date, Arena shall be deemed to release all Arena D&O Claims provided that such release shall not release any Arena D&O Claims that are or may be covered by the Debtor's D&O Liability Insurance Policies (as determined in good faith by Arena), except to the extent set forth in Section 5.1(f) of the Plan….")). The Confirmation Order further provides that, upon the Effective Date of the Plan, the Plan "shall be immediately effective and enforceable and deemed binding on the Debtor, all Creditors and holders of Interests, and all other Persons in accordance with their respective terms." (*Id.* at 20 ¶ 10). According to the Debtor, the Plan went effective on May 3, 2024 (ECF No. 275).

37. Paragraph 26 of the Confirmation Order permanently enjoins "all Entities who have held, hold, or may hold Causes of Action that have been released or exculpated pursuant to Sections 5.1, 9.4, or 9.5 hereof, or Claims or Interests that have been discharged pursuant to Section 9.1 hereof" from "commencing or continuing in any manner any action or proceeding of any kind

on account of or in connection with or with respect to" released claims, "[e]xcept as otherwise expressly provided in the Plan." (ECF No. 255 at 25-26 ¶ 26).

RELIEF REQUESTED

38. The D&O Parties respectfully request that the Court enter an order (a) finding that the Arena Plaintiffs intentionally and knowingly failed to comply with § 5.1(f) of the Plan in bringing the New York Action; (b) enjoining the Arena Plaintiffs' prosecution of the New York Action; (c) ordering the Arena Plaintiffs to dismiss the New York Action with prejudice; and (d) awarding counsel fees and costs for having to defend against claims that should never have been filed in the first place.

BASIS FOR RELIEF

39. Section 105 of the Bankruptcy Code empowers this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Under this section, "[a] bankruptcy court may enjoin state court actions brought in contravention of its decrees." *In re Trump Taj Mahal Assocs*., 156 B.R. 928, 942 (Bankr. D.N.J. 1993) (citing *In re Central R.R. of N.J.*, 38 B.R. 686, 690 (D.N.J.1983)); *see also In re Johns-Manville Corp.*, 97 B.R. 174, 181 (Bankr. S.D.N.Y. 1989) (this section "confers authority on the bankruptcy court to enjoin actions in other courts that interfere with the reorganization of the debtor" under Chapter 11). Furthermore, under § 1142(b) of the Bankruptcy Code, a court may "direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan."

40. The claims asserted in the New York Action constitute "Arena D&O Claims" and are released to the extent not covered by the Debtor's D&O Insurance under §§ 5.1(e) and (f) of the Plan. To the extent they are covered by the Debtor's D&O Insurance, and therefore not released, they are not properly before the court as Plaintiffs failed to comply with the Pre-Litigation Demand Provision.

41. The Arena Plaintiffs each fall under the definition of "Arena" set forth in § 2.1(5) of the Plan. Section 2.1(5) of the Plan defines "Arena" to include "Prepetition Lenders," and AI Amped I and AI Amped II are expressly identified as "Prepetition Lenders" in § 2.1(89) of the Plan. ASOF, ASOP, AOC, and Mt. Whitney are identified in the Complaint (as they are herein) as the "Arena Shareholders." Ex. A at 1. All of the Arena Shareholders are affiliates of Arena Investors, and as alleged in the Complaint, each of them holds or previously held Claims against or Interests in the Debtor.

42. The claims asserted in the New York action constitute "Arena D&O Claims" under § 2.1(6) of the Plan, as they are "Causes of Action of Arena against the Ds & Os (regardless of whether acting in a fiduciary capacity or otherwise)." (ECF No. 266 ¶ 2.1(6) (emphasis added)).

43. Under the Pre-Litigation Demand Provision in section 5.1(f) of the Plan, "[a]t least 30 days prior to commencing" the New York Action, the Arena Plaintiffs were required to send the D&O Parties a "D&O Demand Letter" identifying the factual and legal basis for the claims they planned to assert and "each Potentially Applicable Insurance Policy under which Arena has determined there may be coverage for" the Arena Plaintiffs' claims. (ECF No. 266 § 5.1(f)).

44. Because the New York Action was filed in violation of the Pre-Litigation Demand Provision, the Arena Plaintiffs are in violation of the injunction set forth in paragraph 26 of the Confirmation Order.

45. Moreover, the claims sounding in fraud were released and the fact that such claims were included in the New York Action is demonstration of the Arena Plaintiffs' bad faith in filing the New York Action. Not only did the Arena Plaintiffs willfully ignore the procedure outlined before filing the Complaint, they also intentionally assert claims they knew to be released by the Plan and Confirmation Order they advocated for.

CONCLUSION

WHEREFORE, the D&O Parties respectfully request that the Court enter an order (a) finding that the Arena Plaintiffs intentionally and knowingly failed to comply with § 5.1(f) of the Plan in bringing the New York Action; (b) enjoining the Arena Plaintiffs' prosecution of the New York Action; (c) ordering the Arena Plaintiffs to dismiss the New York Action with prejudice; and (d) awarding counsel fees and costs for having to defend against claims that should never have been filed in the first place.

Dated: August 30, 2024
Wilmington, Delaware

McCARTER & ENGLISH, LLP

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: CHARGE ENTERPRISES, INC. Debtor.	Chapter 11 Case No. 24-10349 (TMH) **Hearing Date: 10/10/2024 10:00** **Obj. Deadline: 09/13/2024 4:00**

NOTICE OF MOTION OF CRAIG DENSON, LEAH SCHWELLER
TO ENFORCE THE CHAPTER 11 PLAN AND CONFIRMATION ORDER

PLEASE TAKE NOTICE that McCarter & English, LLP, attorneys for Craig Denson and Leah Schweller (the "D&O Parties"), filed the *Motion of Craig Denson, Leah Schweller to Enforce the Chapter 11 Plan and Confirmation Order* (the "Application") with the United States Bankruptcy Court for the District of Delaware (the "Court").

PLEASE TAKE FURTHER NOTICE that objections to the Application are to be filed with the Court, and served upon, so as to be actually received by the undersigned counsel, no later than **September 13, 2024 at 4:00 p.m**.

PLEASE TAKE FURTHER NOTICE that a hearing on the Application will be held before the Honorable Thomas M. Horan, at the Court, 824 Market Street, 5th Floor, Courtroom #4, Wilmington, Delaware 19801, on **October 10, 2024 at 10:00 a.m.**

If you fail to respond in accordance with this notice, the Court may grant the relief requested in the application without further notice or hearing.

Dated: August 30, 2024
Wilmington, Delaware

McCARTER & ENGLISH, LLP

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Exhibit A

SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF NEW YORK

AI AMPED I, LLC, AI AMPED II, LLC, ARENA ORIGINATION CO., LLC, ARENA SPECIAL OPPORTUNITIES FUND, LP, ARENA SPECIAL OPPORUNITIES PARTNERS I, LP, and MT. WHITNEY SECURITIES, LLC, *Plaintiffs*, -against- AMY HANSON, CRAIG DENSON, ANDREW FOX, and LEAH SCHWELLER, *Defendants*.	**VERIFIED COMPLAINT**

Plaintiffs (i) AI Amped I LLC ("Amped I") and AI Amped II, LLC ("Amped II"), together with their predecessors and assignors, the largest and sole secured creditors of Charge Enterprises Inc. ("Company"), and (ii) Arena Origination Co., LLC, Arena Special Opportunities Fund, LP, Arena Special Opportunities Partners I, LP, and Mt. Whitney Securities, LLC, together with their predecessors and assignors, equity holders of the Company (the "Arena Shareholders," and together with Amped I and Amped II, "Plaintiffs") by and through their undersigned counsel allege the following based upon investigation of Plaintiffs' counsel, the Company's public statements and filings, and allegations from the Verified Complaint filed by the Company with this Court on January 8, 2024 captioned *Charge Enterprises, Inc. v. Kenneth Adam Orr et al.*, (the "Company Complaint") and accompanying documents:

NATURE OF THE ACTION

1. This is an action against senior officers and directors of the Company for fraud, negligent misrepresentation, and breach of fiduciary duty stemming from the Defendants' financial

mismanagement, lack of corporate governance and oversight, misrepresentations of financial covenants and warranties, and abdication of their duties as directors and officers of the Company, resulting in millions of dollars of financial harm to Plaintiffs.

2. Specifically, in direct reliance on Defendants' repeated and express representations and assurances to Plaintiffs between December 2021 and November 2023 that the Company had not and would not invest Company funds (including Amped I and Amped II's cash collateral) in a limited partnership or invest in anything other than cash or cash equivalents, Plaintiffs entered into agreements to purchase Company shares, warrants, and Convertible and Non-Convertible Notes. But contrary to their express representations on which Plaintiffs relied, Defendants had granted their former Chairman and Chief Executive Officer ("CEO") unfettered authority and control over tens of millions of dollars of Company funds which he invested in his limited partnership and cross-collateralized with other personal accounts.

3. Defendants' lack of proper governance and duty of care ultimately caused a default on the Company's debt to Amped I and Amped II and rendered the Company unable to sustain operations as a going concern to the detriment of the Arena Shareholders. Plaintiffs seek damages in an amount to be determined at trial but believed to be not less than $33,199,846.

THE PARTIES

4. Plaintiff Amped I is a Delaware limited liability company with its principal place of business at 2500 Westchester Avenue, Suite 401, Purchase, New York 10577. Amped I is the current holder of the Non-Convertible Notes (as defined below) and is the largest secured lender of the Company. The Non-Convertible Notes were assigned from Arena Origination Co., LLC, Arena Special Opportunities Fund, LP, Arena Special Opportunities Partners I, LP, and Mt.

Whitney Securities, LLC to Amped I, LLC along with all claims, pursuant to an Assignment Agreement dated as of December 28, 2023.

5. Plaintiff Amped II is a Delaware limited liability company with its principal place of business at 2500 Westchester Avenue, Suite 401, Purchase, New York 10577. Amped II is the current holder of the Convertible Notes (as defined below). The Convertible Notes were assigned from Arena Origination Co., LLC, Arena Special Opportunities Fund, LP, Arena Special Opportunities Partners I, LP, and Mt. Whitney Securities, LLC to Amped I, LLC along with all claims, pursuant to an Assignment Agreement dated as of December 28, 2023.

6. Plaintiffs Arena Origination Co., LLC, Arena Special Opportunities Fund, LP, Arena Special Opportunities Partners I, LP, and Mt. Whitney Securities, LLC are each Delaware limited liability companies, with their principal place of business at 405 Lexington Avenue, New York, New York 10174. The Arena Shareholders hold the Series C, Series E, Warrants, and Common shares of the Company.

7. Defendant Amy Hanson ("Hanson") was the lead independent director of the Company Board ("Board") from June 2023 to the Company's restructuring (described in paragraph 92), has been a Director of the Company since January 2022 and, at relevant times, served as Chairman of the Audit Committee. As Chairman of the Audit Committee she was tasked with, among other things, assisting the Board in overseeing material transactions, identifying and monitoring significant business risk, reviewing and managing the independent auditors, reviewing deficiencies or weaknesses of internal controls over financial reporting, overseeing press releases and regulatory reporting, and reviewing and approving related party transactions. A copy of the Company's Charter of the Audit Committee of the Board of Directors is attached as Exhibit A. Defendant Hanson resides in Cincinnati, OH.

8. Defendant Craig Denson ("Denson") has been a member of the Board since October 2020 and served as the Interim CEO of the Company from August 2023 to the restructuring. Defendant Denson resides in Davenport, Florida.

9. Defendant Andrew Fox ("Fox") served as CEO of the Company from October 2020 to August 2023. Fox has been a Director of the Company since October 2020 and was Chairman of the Board from September 2021 until August 31, 2023. Defendant Fox resides in New York, New York.

10. Defendant Leah Schweller ("Schweller") served as Chief Financial Officer ("CFO") of the Company from September 2021 until its restructuring. Defendant Schweller resides in New York, New York.

11. Each of the Defendants was directly involved in the management and oversight of the Company, a publicly held company with its principal place of business in New York, New York. The Company's securities are registered with the SEC pursuant to the Securities and Exchange Act of 1934 ("Exchange Act") and, until its delisting on February 29, 2024, traded on Nasdaq.

RELEVANT NON-PARTIES

12. Nonparty Kenneth Orr ("Orr") was majority owner of the Company and served as Director, President, and CFO of the Company and its predecessors prior to September 2021. He was also the Chairman of the Company's Board of Directors from May 2020 until September 2021.

13. Nonparty KORR Acquisitions Group, Inc. ("KORR Acquisitions") is a registered investment advisor incorporated under the laws of the State of New York. KORR Acquisitions is owned by Orr and his wife, Cori Orr. Since in or around 2019, Orr was and remains the founder, Chairman, CEO, and Chief Investment Officer ("CIO") of KORR Acquisitions. Upon information

and belief, Orr is the principal operating officer and has the sole voting and dispositive power over shares held by KORR Acquisitions. KORR Acquisitions is the general partner of KORR Value LP.

14. Nonparty KORR Value LP ("KORR Value") is a Delaware limited partnership doing business in New York. Orr is CEO of KORR Value.

JURISDICTION AND VENUE

15. This Court has jurisdiction over the parties under New York's Civil Practice Law and Rules ("CPLR") Sections 301 and 302 because the Defendants have conducted business within the State of New York on an ongoing and continuous basis in their capacities as officers and directors of the Company with its principal place of business in the State of New York. The underlying issues are directly related to Defendants' transaction of business in the State of New York, and the Notes, Securities Purchase Agreements, Exchange Agreement, and the Special Advisor Agreement at issue here are each governed by the laws of the State of New York and subject to the jurisdiction and venue of the State of New York and New York County.

16. Venue is proper in this Court under CPLR §§ 503(a) and 509, and Plaintiffs designate New York County as the place of trial.

FACTUAL ALLEGATIONS

A. Background of Charge Enterprises, Inc. and Kenneth Orr

17. The Company is an electric, broadband and EV charging infrastructure company. The Company was initially incorporated as E-Education Network, Inc. in Nevada on May 8, 2003 and changed its name to GoIP Global, Inc., on August 10, 2005. On April 30, 2020, GoIP Global, Inc. acquired 100% of the outstanding equity interests of Transworld Holdings, Inc. and in connection with that transaction, GoIP Global, Inc. changed its name to Transworld Holdings, Inc.

and converted from a Colorado corporation to a Delaware corporation. On January 26, 2021, Transworld Holdings, Inc. changed its name to Charge Enterprises, Inc.

18. Orr was majority owner of the Company and served as Director, President, and Chairman of the Board until September 2021.

19. In or around mid-2021, the Company pursued an uplisting with the Nasdaq Stock Market. In connection with the uplisting, the SEC and Nasdaq raised concerns over Orr's ownership and role in the Company because of Orr's criminal and regulatory history.

20. As a result of the concerns raised by the SEC and Nasdaq, Orr, then the majority owner of the Company, stepped down as Chairman of the Board and purportedly divested his interest in the Company to less than 10% of the beneficial ownership.

21. On April 7, 2022, Charge Enterprises, Inc. was approved for uplisting to the Nasdaq Stock Market with the ticker symbol "CRGE" and began trading on April 12, 2022.

22. As a public company, the Company was required to file with the SEC certain disclosure documents containing accurate and comprehensive information about its business operations and financial condition. Defendants were required to maintain effective disclosure controls and procedures to comply with their SEC reporting obligations.

B. <u>Defendants Abdicate Their Responsibilities to Orr</u>

23. Though Orr purportedly divested his interests in the Company and stepped down as an officer and director at the Company, Defendants kept in place an informal agreement ("Informal Agreement") with Orr from late 2020 which granted him unfettered authority and discretion over the Company's funds and investments without need for any Company consultation or approval. The Informal Agreement was described and reaffirmed by the Defendants in the Company's June 11, 2021 Amended Form S-1 Registration Statement filed with the SEC and in

Exhibit 10.23 to its 2021 Form 10-K for the fiscal year ended December 31, 2021. According to the December 31, 2021 Form 10-K, the Informal Agreement provides that:

> KORR Acquisition Group, Inc., an entity controlled by Kenneth Orr, the Company's chairman of the board of director ("KORR") . . . shall be responsible for the investment and reinvestment of certain assets of the Company, as may be designated by the Company, from time to time, to be subject to KORR's management . . . [and] KORR shall be granted discretionary authority, without prior consultation with the Company, to buy, sell, trade, and allocate in and among, stocks, bonds and other securities and/or contracts relating to same, or otherwise...

24. The 10-K for fiscal year ended December 31, 2021 was signed by Defendants Fox, Schweller, Denson, and Hanson, among other Board members and is attached as Exhibit B.

25. The Company's Amendment No. 9 to Form S-1 Registration Statement filed on December 10, 2021 described the Informal Agreement as an "at-will" arrangement that allowed KORR Acquisitions to invest in "marketable securities" on the Company's behalf. It further stated that the investments were to be limited to "20% of our assets, and of that, less than 5% in illiquid assets." The filed Amended Form S-1 represented that "[w]e continuously monitor and review the value of our investments, including but not limited to conducting a mark-to-market valuation of our investments on a weekly basis, and, if ever we exceed 20%, we will liquidate marketable securities to stay within our intended maximum investment of 20% of our total assets." A copy of the December 10, 2021 Amended Form S-1 is attached as Exhibit C.

26. Defendants also repeatedly represented in their public disclosures that they had established effective internal disclosure controls and procedures for the Company. Defendants Schweller, Fox, and Denson all at various times provided disclosure control certifications in the 2021 10-K, 1Q2022 10-Q, 2Q2022 10-Q, 3Q2022 10-Q, 2022 10-K, 1Q2023 10-Q, and 2Q2023 10-Q.

27. On June 7, 2022, the Company and KORR Acquisitions entered into a formal, written investment agreement with Orr (the "Special Advisor Agreement"), whereby KORR

Acquisitions agreed to "manage the Company's investment account" in exchange for a $500,000 up-front payment and a monthly payment of $25,000. Under the Special Advisor Agreement, and notwithstanding the fact that the Company was a Nasdaq listed entity, Orr was again tasked with managing the Company investments with no Company oversight and no imposed restrictions or guardrails on the nature of the investments permitted. The Special Advisor Agreement was signed by Defendant Denson on behalf of the Company and approved through an Action by Unanimous Consent of the Board of Directors of the Company on June 7, 2022 signed by Defendants Fox and Denson, among other Board members. A copy of the Special Advisor Agreement is attached hereto as Exhibit D. A copy of the unanimous consent is attached as Exhibit E.

28. Defendants gave Orr over $35 million to invest at his sole discretion without any oversight, consult, or approval by the Defendants or any officers or directors at the Company. Nearly $20 million was given to Orr between March 2022 and April 2023, alone.

29. Defendants knew that the funds held invested by Orr via KORR Acquisitions were "critical" to the Company's liquidity and ability to operate as a going concern.

30. KORR Acquisitions established accounts at Interactive Brokers (the "IB Accounts") and Defendants wired money from the Company to Orr's account at Wells Fargo from which Orr then transferred the funds to the IB Accounts.

31. With a total lack of any corporate governance, Orr invested the funds in his limited partnership, KORR Value LP, wherein his company KORR Acquisitions purportedly has sole and absolute rights with respect to the funds of the partnership, including the alleged right to limit redemptions. The Company's funds were held in two accounts and then cross-collateralized with six other of Orr-controlled accounts in the name of the Limited Partnership at Interactive Brokers,

and KORR Acquisitions has maintained it has full discretion as to when and whether to return any funds to the Company.

32. According to Company records, Orr and KORR Acquisitions also moved more than $6.275 million of Company funds into other accounts controlled by Orr, his children, and related companies, including "Optimus Health" a/k/a Optimus Healthcare Services, Inc, a publicly traded company with ties to certain of Charge's directors, before returning it.

C. <u>The Defendants Are Regularly Apprised of Orr's Investment Actions</u>

33. Though Defendants gave full discretion over the Company's investments, the Company's officers and directors, including the Defendants, knew or should have known that the Company's funds had been encumbered and invested in a limited partnership.

34. Throughout the period that the Company gave tens of millions of dollars of its assets to Orr and KORR Acquisitions, Orr provided the Company with monthly IB Account statements. Upon information and belief the IB Account Statements were shared with the Board. Statements from December 2021 through December 2023 are attached here as Exhibit F. The statements clearly show, among other glaring indicia, that the Company was investing in a limited partnership and the funds were leveraged:

- The IB Accounts are not in the Company's name, but held in the name of KORR Value LP, which would only be the case if the Company were invested in KORR Value LP.
- The "Customer Type" is identified as "Partnership".
- The value of the investments is reflected as "NAV," which is investment fund terminology.
- The Time-Weighted Rate of Return (TWR) are often very high, virtually an impossibility for a cash or cash equivalent type investment.
- The stock positions are long and short.
- The "Account Capabilities" indicate "Portfolio Margin," which allows the account holder to borrow on the securities—*i.e.*, create indebtedness or leverage.

35. Communications between Defendants and Orr demonstrate that the IB Account statements were available to and known by the Defendants. An example of a communication between Defendant Schweller and Orr from February 2022 is attached here as Exhibit G (CE_00106019).

D. Plaintiffs Relied on Defendants' Misstatements When Loaning the Company Money and Purchasing Company Stock

36. In parallel with the Defendants' abdication of their responsibilities to Orr, it sought funding from Plaintiffs for working capital and to run the Company's operations.

37. On May 8, 2020, November 3, 2020, and May 19, 2021 respectively, with Board approval, the Company entered into three agreements, as amended thereafter, with Amped II for Original Issue Discount Senior Convertible Notes in the aggregate principal amounts of $3,000,000, $3,888,889.00, and $5,610,000.00 respectively (the "Convertible Notes"). In total, the Company issued and had outstanding approximately $12,498,889 in aggregate principal amount (cost basis of $11,200,000) of Senior Convertible Notes. Copies of the Convertible Notes are attached hereto as Exhibit H.

38. On December 17, 2021, with Board approval, the Company entered into Original Issue Discount Senior Secured Non-Convertible Promissory Notes due November 19, 2023, in the aggregate principal amount of $14,814,814.67 (cost basis of $13,333,180) (the "Non-Convertible Notes"). The Non-Convertible Notes have a 23-month term, with a 7.5% interest rate, subject to increase to 20% per annum upon and during the occurrence of an event of default. A copy of the Non-Convertible Notes is attached hereto as Exhibit I.

39. Amped I, the Company, and certain of the Company's subsidiaries also entered into an Amended and Restated Security Agreement dated as of December 17, 2021 (as amended,

modified, and supplemented from time to time, and including Additional Debtor Joinders dated as of August 18, 2022 and November 3, 2022, collectively the "Amended Security Agreement").

40. Pursuant to the Amended Security Agreement, the Company and certain of its subsidiaries (the "Subsidiary Grantors") granted a security in all of their assets to serve as Collateral (as defined in the Amended Security Agreement) for the outstanding obligations under the Non-Convertible Notes.

41. The Non-Convertible Notes contain several covenants for Amped I and Amped II's protection of its Collateral including several negative covenants, with which Defendant Fox represented the Company was in compliance when he signed the Non-Convertible Notes on behalf of the Company.

42. Among others, the negative covenant in Section 7(i) of the Non-Convertible Notes provides that the Company will not:

> make or suffer to exist any Investments using any proceeds from [Amped I] or commitments therefor, or to become or remain a partner in any partnership or joint venture except for: (i) Investments in cash and cash equivalents…

43. Section 1(x) of the December 2021 SPA (as defined below) defines Investments as "any investment…in or to any Person, whether payment therefore is made in cash or capital stock or other equity interests or otherwise, and whether such Investment is by acquisition of capital stock or other equity interests or Indebtedness, or by loan, advance, transfer of property out of the ordinary course of business, capital contribution, equity or profit sharing interest, extension of credit on terms other than those normal in the ordinary course of business or otherwise."

44. Section 6(a)(ii) of the Non-Convertible Notes provides that it is an Event of Default if the Company fails "to observe or perform any other covenant or agreement contained in the Note[s]."

45. Defendant Fox executed the Non-Convertible Notes knowing, or he should have known, that the Company was invested in a limited partnership that was not limited to cash or cash equivalents, and that the Company was already in breach of the negative covenant and would continue to be moving forward.

46. On December 23, 2021, the Company filed an 8-K announcing the Non-Convertible Notes. It was signed by Defendant Schweller.

47. Amped I would not have entered into the Non-Convertible Notes had it known this material representation was false.

48. Pursuant to the Non-Convertible Notes, in December 2021 Amped I loaned the Company approximately $13.3 million. Three months later, in March 2022, the Defendants wired Orr $13.5 million. At that time, the Defendants were already receiving account information, which demonstrated that their funds were invested in a limited partnership, in non-cash or cash equivalents, and the account was utilizing its margin capability. The Defendants knew or should have known that the wiring of these funds was a breach of the terms of the Non-Convertible Notes.

49. In connection with the Non-Convertible Notes, the Arena Shareholders and the Company, with the consent of the Board, also entered into a Securities Purchase Agreement dated December 17, 2021 (the "December 2021 SPA") pursuant to which the Arena Shareholders purchased 2,370,370 shares of Series C Convertible Preferred Stock, for a purchase price of $6,666,666.00 with a stated value of $7,407,407.56.

50. In the December 2021 SPA, the Company represented that it was not "in default under or in violation of . . . any indenture, loan or credit agreement" and that it was not "in violation or default in the performance or observance of any material obligation, agreement, covenant or condition contained in any . . . note."

51. Defendant Fox executed the December 2021 SPA on behalf of the Company. Upon information and belief, Fox and all acting directors and officers, including Defendants Denson and Schweller, knew, or should have known, that the Company gave tens of millions of dollars of its assets to Orr and KORR Acquisitions, including because they were provided monthly IB Account statements by Orr. As a result, Fox and all acting directors and officers knew, or should have known, that the Company was in breach of the Non-Convertible Notes and therefore also knew, or should have known, that he made misrepresentations in the December 2021 SPA; namely, that the Company was already in default of the Non-Convertible Notes.

52. Due to the nature and size of the Non-Convertible Notes and the December 2021 SPA, and because of the Defendants' obligation to be apprised of the Company's largest secured debt, the Company's directors and officers, including Defendants, had knowledge of and approved of, the Company's entrance into these agreements as well as the representations and warranties being made by Defendant Fox on the Company's behalf therein.

53. But for the representation that the Company was not in default under any agreement or note, most pertinently its own Non-Convertible Notes, and Defendants' failure to disclose there was no oversight or review of Orr's unfettered discretion over Company funds and the nature of those investments, the Arena Shareholders would not have entered into the December 2021 SPA. Defendants' misrepresentations—which Defendants never corrected over the course of over two years—induced the Arena Shareholders into the purchase of securities totaling 2,370,370 Series C Convertible Preferred Stock at the price of $6,666,666.

54. Further in connection with the December 2021 transactions, the Arena Shareholders received a warrant to purchase up to 2,370,000 shares of the Company's common stock with an exercise price of $4.00 per share.

55. Furthermore, on March 14, 2023, without knowledge of the material defaults that had occurred and in reliance on the repeated prior representations to Amped I, Amped II, and the public disclosures affirming the cash position of the Company and assurances of effective oversight and internal controls, the Arena Shareholders elected to exercise a series of warrants into 4,400,000 shares of common stock and 3,200,000 shares of Series E Convertible Preferred Stock with a stated value of $1,600,000.

E. <u>D&O Misstatements Induce Amped II to Convert Notes to Stock</u>

56. On June 30, 2022, and based on the continued misrepresentations by the Defendants and failure by Defendants to advise Plaintiffs that the Company funds and Amped I and Amped II's cash collateral were invested in a limited partnership, the Company and Amped II entered into an agreement (the "Exchange Agreement") to convert a total of $12,498,889 of the Convertible Notes into Preferred D shares. A copy of the Exchange Agreement is attached hereto as Exhibit J.

57. Defendant Fox executed the Exchange Agreement on behalf of the Company. On July 7, 2022, the Company filed an 8-K announcing the Exchange Agreement. It was signed by Defendant Schweller. The Company's officers and directors had knowledge of and approved of the Exchange Agreement and the representations and warranties therein.

58. In Section 3.7 of the Exchange Agreement, Defendant Fox, on behalf of the Company, represented and warranted to Amped II that:

> Neither the Company nor any Subsidiary…is in default under or in violation of…any indenture, loan or credit agreement or any other agreement or instrument to which it is party or by which it or any of its properties is bound (whether or not such default or violation has been waived)

59. In Section 3.11 of the Exchange Agreement, Defendant Fox, on behalf of the Company, represented and warranted to Amped II that:

> The Company is not…in violation or default in the performance or observation of any material obligation, agreement, covenant or condition contained in any

> contract…loan or credit agreement, note, lease, or other agreement or instrument to which the Company is party or by which it may be bound, or to which any of the property or assets of the Company is subject…

60. In Section 3.14 of the Exchange Agreement, Defendant Fox, on behalf of the Company, represented and warranted to Amped II that:

> No statement or information contained in this Agreement, any other Transaction Document[1] or any other document, certificate, or statement furnished to the Purchaser on behalf of the Company in writing or for use in connection with the transactions contemplated by this Agreement and/or the other Transaction Documents contained, as of the date such statement, information, document, or certificate was made or furnished, as the case may be, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein, taken as a whole, not materially misleading. There is no fact known to the Company that would reasonably be expected to materially affect the Company that has not been expressly disclosed herein, in the other Transaction Documents, or in any other documents, certificates and written statements furnished to the Purchaser for use in connection with the transactions contemplated hereby and by the other Transaction Documents.

61. In Section 3.26 of the Exchange Agreement, Defendant Fox, on behalf of the Company, represented and warranted to Amped II that:

> The Company understands that the Investor[2] may rely on the Transaction Documents, the information included therein, including, but not limited to, the foregoing representation in purchasing the New Securities.[3] All of the disclosure furnished by or on behalf of the Company to the Investor in the Transaction Documents regarding, among other matters relating to the Company, its business and the transactions contemplated in the Transaction Documents, is true and correct in all material respects as of the date made and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading…

62. At the time that he entered into the Exchange Agreement on behalf of the Company, Defendant Fox knew, or should have known, that the Company was in default of the Non-Convertible Notes. The Defendants, who, upon information and belief were aware of and/or

[1] Transaction Documents is defined in the Exchange Agreement as the Exchange Agreement, the Registration Rights Agreement, the Certificate of Designation and other related agreements.

[2] Investor is defined as the parties that are signatories to the Exchange Agreement and is Arena (now Amped II).

[3] New Securities is defined in the recitals as the Series D Preferred stock.

approved the Exchange Agreement, did nothing to correct the misrepresentations made by Defendant Fox on behalf of the Company.

63. But for the representations and warranties made by Defendant Fox on behalf of the Company and with the approval of the other Defendants, Amped II would never have converted its secured debt into equity and taken on more stock in a Company whose assets, including Amped II's cash collateral, was encumbered.

64. Notably, Section 2.4 of the Exchange Agreement provides:

> ***It shall be a condition*** to the obligation of each [Arena Party] on the one hand and the Company on the other hand, ***to consummate the Exchange contemplated hereunder***, ***that the other party's representations and warranties contained herein are true and correct on the Closing Date***, with the same effect as though made on such date, unless waived in writing by the other party to whom such representations and warranties are made.

Exchange Agreement at § 2.4 (emphasis added).

65. Because the truth of the representations and warranties was a necessary condition to the consummation of the Exchange and such representations were false, the conversion did not occur. The Convertible Notes therefore became due on May 8, 2023 and November 3, 2023, and May 19, 2024 respectively, while the Non-Convertible Notes became due in November 2023.

F. <u>The Defendants' Mismanagement and Misstatements Result in Defaults and Company Insolvency</u>

66. The Non-Convertible Notes were due on November 19, 2023. In anticipation of its repayment obligations to Amped I, the Defendants began demanding a return of the Company assets from Orr, but the Defendants quickly learned that Orr was unable to return the funds.

67. Specifically, Defendants set a repayment schedule in May 2023 over numerous email conversations between Defendants Schweller and Denson asking Orr to return all the funds in the IB Accounts to the Company.

68. As of July 2023, Orr had returned only $5 million of the $10 million the Company had requested. The failure to return the funds was a clear indication that the funds were illiquid, contrary to the Company's repeated disclosures and reports in their SEC filings, including announcing that it had more than $57 million in cash as of September 30, 2023 and claiming as late as November 8, 2023 that the Company expected "to have sufficient resources to meet [its] current operating liquidity and capital requirements for the next 12 months."

69. By August 2023, Orr and KORR Acquisitions had failed to meet Defendants' repeated demands to return the proceeds at the time requested.

70. Because the Company needed to address its liquidity concerns, the Defendants elected to enter into a Securities Purchase Agreement dated August 11, 2023 with Orr's KORR Value LP (the "August 2023 SPA"). Under the August 2023 SPA, KORR Value LP agreed to provide the Company with up to $5 million in liquidity by purchasing shares of the Company's common stock. Orr signed the August 2023 SPA on behalf of Orr and the Board unanimously approved the transaction. Upon information and belief, the Company delayed their 10-Q filing specifically so they could represent to the market that they had sufficient liquidity to continue as a going concern based on the August 2023 SPA.

71. To demonstrate sufficient liquidity to purchase the Company shares, KORR Value LP purportedly demonstrated a net value of $14.4 million by showing "screenshots" from an unnamed account with a negative cash position of $34 million and net value of $14.46 million (due to a positive equity position of nearly $49 million). The information Orr used to demonstrate KORR Value LP's net value was the same balances as the Company's own money from the IB Accounts.

72. The Company inaccurately reported in its August 14, 2023 10-Q additional liquidity based on this related-party transaction. The 10-Q, which was signed by Defendants Fox and Schweller, omitted the fact that KORR Value LP was an entity in which the Company was invested. There is also no mention that it is the same entity that was owner of the IB Accounts in which Orr held the Company's money—money that he failed to return upon request. A copy of the 10-Q is attached as Exhibit K.

73. As of August 14, 2023, when the Defendants issued the inaccurate cash and cash equivalent position of the Company, including the approximately $10 million held and unavailable in KORR Value LP and a $5 million "subscription line" from the August 2023 SPA, the Company's shares closed at $0.9.

74. In September and October 2023, Defendants knew that Orr and KORR Acquisitions did not return the full amount of the requested funds or adhere to the schedule agreed to between Orr and the Defendants—the failure of which they knew would have a "cataclysmic" impact on the Company.

75. By the end of October, despite agreeing to return $12 million of the Company funds before the end of October, Orr had returned only $4 million.

76. With this knowledge the Defendants continued to disregard their obligations to the Company's stakeholders and did not adequately disclose this issue in an SEC public filing even after they realized Orr was not returning the Company's money and Plaintiffs' Collateral.

77. In total, the Company had an outstanding principal balance of $27.8 million due under the Notes, exclusive of interests and fees. In addition, the Company had several other debt obligations that contained cross-default provisions.

78. By November 2023, Defendants Denson and Schweller sent increasingly urgent emails to Orr demanding the return of the money so that the Company could meet its obligations to Amped I. Defendant Denson had a call with Orr on November 2, 2023 discussing Orr's failure to return the Company funds or to adhere to the schedule agreed to by the parties in August 2023.

79. Then on November 3, 2023, Defendant Denson wrote that "Charge was experiencing financial harm by Orr's failure" which could "impact the Company's ability to sustain operations as a going concern." Company Compl. ¶¶ 76-77. The same day, Defendant Denson discussed a revised drawdown schedule for the return of the remaining $10.75 million in the IB Accounts. On November 3 and November 6, the Company alleges it received wires in amounts of $800,000 and $200,000, respectively—far less than the $4 million agreed to.

80. Notwithstanding actual knowledge that their funds were not being returned and the inherent financial risk to Plaintiffs and the Company overall, on November 2, 2023, Defendants were finalizing terms of a refinancing with Amped I and failed to notify Plaintiffs—their largest secured creditor and a shareholder—or the public, of the issue. Indeed, the refinancing negotiations between the Company and Amped I, which had been ongoing since May 2023, ultimately resulted in the Company indicating it wanted to pay off Amped I's debt in full and its Series C preferred investment on or prior to November 19, 2023. The payoff to Amped I was approved by the Company's officers, pending approval from the Board.

81. Then on or around November 3, 2023, Plaintiffs were informed that the Board did not approve the recommended pay off. Upon information and belief, this was because as of November 2 or 3, 2023, the Company knew that the Company did not have cash and cash equivalents it previously represented to all shareholders in its public filings, available to pay off the debt owed to Amped I and Amped II.

82. Nonetheless, on November 8, 2023, the Company issued its Third Quarter earnings and in its financial results, without any reference to the known financial risk facing the Company and inaccurately reporting investments in cash and cash equivalents. The November 8, 2023 8-K was signed by Defendant Schweller.

83. The Company never issued an 8-K revealing the Company's true financial condition until November 15, 2023.

84. Then in its November 15, 2023 8-K, the Company reported that it had intended to pay off Amped I, but "in preparing to access funds its investment accounts . . . the Company learned that certain Company funds were unexpectedly unavailable, rendering the Company unable to repay the Notes." It then reports that pursuant to a Special Advisor Agreement, KORR Acquisitions was managing the investment and reinvestment of certain Company assets and "approximately $9.9 million of the Company asset under management" were not in the form of "cash, cash equivalents, marketable securities or similarly readily liquid assets" but instead, "were in fact invested in limited partnership interests of KORR Value, L.P." and "are not immediately able to be liquidated or readily accessible." The Company further reported that absent sufficient liquidity to pay the principal and interest on the Notes, it could result in default under other of the Company's debt instruments and agreements that would "likely have a material adverse effect on the Company's liquidity, financial condition and results of operations, and may render the Company insolvent and unable to sustain its operations and continue as a going concern."

85. As a result of the abdication of their duties to their former Chairman, the Defendants knew the Company would be unable to repay the debt owed to Amped I, which as result of the breaches from the outset carried default interest, penalties, fees, and liquidated damages. They further would have understood that they owed a debt to Amed II given that the conversion of the

Convertible Notes was ineffective since it was conditioned on representations which were false at the time of the Exchange Agreement.

86. Without access to its monies held in the IB Accounts, Defendants knew there would be cross-defaults on other instruments—all of which would render the Company unable to continue its operations.

87. On November 19, 2023, the Company defaulted on the Non-Convertible Notes.

88. As of February 29, 2024, the Company owed Amped I at least: (1) the principal amount of $25,847,423.00 in the aggregate; (2) accrued and unpaid interest (at standard 7.5% rate) through maturity totaling $93,841.42; (3) a 12.5% interest rate on the outstanding amounts due under the May Senior Non-Convertible Notes and December Senior Non-Convertible Notes (representing the difference between the standard 7.5% interest rate and the 20% interest rate that applies in the Event of Default) from at least May 19, 2021 and December 17, 2021, respectively, totaling $7,112,431.96; (4) interest at the default rate of 20% on due and unpaid principal amount totaling at least $1,450,327.62; (5) a 20% per annum late fee on overdue accrued but unpaid interest from the due date to the actual payment date totaling $1,731,320.20; (6) an Exit Fee totaling $1,938,556.70, (7) a liquidated damages fee of $30,000 per day for each day the Company has incurred Indebtedness in violation of the Notes totaling $163,350,000; and (8) other fees and expenses permitted under the Notes totaling $2,424,315.50. In total, the Company owed Amped I $45,598,216.40 as of February 29, 2024, plus liquidated damages for a total of $203,948,216.42.

89. As of February 29, 2024, the Company owed Amped II at least: (1) the principal amount of $12,498,889 in the aggregate; (2) a 17.75% interest rate on the outstanding Convertible Notes from at least July 1, 2022 (the day after the Exchange Agreement) totaling $3,746,889.20; and (3) a 20% per annum late fee on overdue accrued but unpaid interest from the due date to the

actual payment date, totaling $749,377.80. In total, the Company owed Amped II $16,995,156 as of February 29, 2024.

90. In total, the amount owed Amped I and Amped II exceeded $220,000,000 on its secured debt, an amount stipulated to by the Company's subsidiary, PTGI.

91. Following the default, between November 2023 and January 2024 Amped I and Amped II issued default notices and ultimately a notice of foreclosure whereby Amped I and Aped II would hold an auction, pursuant to the Uniform Commercial Code, to satisfy the Company's outstanding indebtedness. The Company reported the default notices on November 21, 2023 and December 6, 2023 respectively. The December 6, 2023 8-K further reported that the Company was ceasing certain operations to preserve liquidity. On January 25, 2024, in a form 8-K, the Company reported that it had received the foreclosure notice.

92. After months of restructuring efforts, the Company and Amped I and Amped II entered into a Restructuring Support Agreement. On March 7, 2024, the Company filed a voluntary petition for bankruptcy under Chapter 11 in the U.S. Bankruptcy Court for the District of Delaware.

93. Following the Company's bankruptcy, Amped I and Amped II received some, but not all, recovery on its secured claims. Specifically, as of May 3, 2024 when a Plan was confirmed by the Bankruptcy Court, Amped I and Amped II received 95% equity in the Company based on a stipulated value of secured debt of no less than $51 million.

94. As a result of Defendants' misstatements and omissions, the Arena Shareholders were falsely induced to purchase and/or convert over 12 million shares of the Company stock, comprising 2.37 million Series C Convertible Preferred shares purchased in the December 2021 SPA, 9 million shares of Common Stock purchased in connection with the private market securities

transaction with Defendant Fox and KORR Value, and nearly 1.2 million Series D shares that were or would have been converted pursuant to the Exchange Agreement. As of the Effective Date of the Bankruptcy, all common and preferred stock was without any value. Therefore, the Arena Shareholders received no recovery.

G. <u>The Defendants Were Aware that Orr Could Invest Funds Inappropriately</u>

95. In November 2023, Orr produced to the Company a limited partnership agreement ("LPA") between KORR Value LP and the Company's predecessor GoIP Global, Inc. effective as of May 9, 2020. The LPA purports to give the general partner, KORR Acquisitions, all decision-making authority with no review from the limited partner and the power to "determine the criteria, timing and circumstances of the purchase, sale or distribution of the [investments] or proceeds or distributions thereon or in respect thereof at any time held or received by the Partnership." LPA § 2.2.1. A copy of the LPA is attached as Exhibit L.

96. The LPA was never disclosed in any SEC filing prior to November 2023.

97. The Company initiated an action in this Court against Orr, his wife, Korr Acquisitions Group, and Korr Value LP on January 8, 2024 captioned *Charge Enterprises, Inc. v. Kenneth Adam Orr et al*. pursuant to which the Company sought at least $15 million in damages (exclusive of interest, costs, and fees) based on claims of, among others, unjust enrichment, constructive trust, conversion and fraud in the inducement. A copy of the Company Complaint is attached as Exhibit M.

98. The Company Complaint alleges that until November 2023, Charge's officers and directors, including Defendants, had never seen the LPA and they were unaware that the tens of millions of dollars of the Company's funds were ever invested in KORR Value LP, invested in anything other than cash or cash equivalents, or that the funds would not be immediately available

to repay Amped I and Amped II when the debt became due. The Company Complaint further alleges that the LPA is a forgery.

99. Under the terms of the Informal Agreement with KORR Acquisitions and the 2022 Special Advisory Agreement there was no prohibition or restriction to Orr's wholly discretionary investment authority, no consultation or approval requirement with the Company, and no requirement that Orr adhere to any request or any alleged request as to how the funds were to be invested. There was nothing preventing Orr from investing the Company funds in a limited partnership or adhering to the requirements and covenants under the Notes. It was therefore critical that the Defendants actually "continuously monitor and review" the value of the investments to ensure liquidity as was represented in public filings.

100. Further, Orr shared monthly statements regarding the investments with Defendants Fox, Schweller, and Denson, as well as the Company's entire accounting department. The other Defendants, as officers and directors, had access to these monthly statements informing them of the nature of the investments. Thus, at minimum, Defendants had an obligation to oversee their investments and ensure that their representations were accurate before warranting to Plaintiffs that its cash collateral was not and would not be encumbered or otherwise invested in anything other than cash or cash equivalents—promises that induced Plaintiffs to lend millions of dollars, convert notes into stock, and purchase additional Company shares.

101. In short, whether Defendants did not know the Company was invested in KORR Value LP, had indebtedness, or was otherwise invested in other than cash and cash equivalents at the time of the Notes, Security Agreements, and Exchange Agreement, they should and could have known had Defendants acted with any regard for the truth of their statements instead of expending their loyalty to Orr at the expense of the Company and the Arena Shareholders.

H. The Defendants Refuse to Provide Arena with Information, and Uses Arena's Cash Collateral for its Own Benefit

102. On November 21, 2023, the Company filed an 8-K in which it announced its default on its repayment obligations to Arena, acknowledged the resultant Notices of Default, and noted the risk of insolvency.

103. Yet while the Company publicly acknowledged it was in default of the non-Convertible Notes, Defendants refused to respond to Arena's repeated requests for information related to the investment agreements, KORR Value LP partnership agreement, or any other requests about the financial condition of the Company.

104. This repeated stonewalling and denial of access to information continued for a month and violated Arena's contractual rights under Section 4.22 of the Security Purchase Agreement and statutory rights under Section 220(b) of the Delaware General Corporation Law to inspect the books and records.

105. At the same time, and despite the mismanagement that resulted in material adverse effects on the Company's financial condition and a conversion of Arena's cash collateral, in its December 6, 2023 8-K, the Company announced that, on December 1, 2023, it entered into retention agreements with Defendant Denson, the CEO and COO, Defendant Schweller, the Company's CFO, and James Biehl, the Company's Chief Legal and Compliance Officer pursuant to which they were paid bonuses of $200,000, $150,000 and $175,000, respectively, 50% payable on December 15, 2023 and 50% payable on February 29, 2024. A copy of the December 6, 2023 8-K is attached as Exhibit N together with copies of the retention agreements.

FIRST CAUSE OF ACTION
(Fraudulent Inducement or Misrepresentation– By the Arena Shareholders Against All Defendants)

106. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

107. Defendants engaged in fraud by knowingly inducing the Arena Shareholders to enter into the December 2021 SPA on the false basis that the Company was not in default under or in violation of any indenture, loan or credit agreement and that it was not in violation or default in the performance or observation of any material obligation, agreement, covenant or condition contained in any note.

108. These representations, in the December 2021 SPA, were false and materially misleading because as Defendants knew, the Company had already violated and was in default under the Non-Convertible Notes because the Company was invested in a limited partnership that was not limited to cash or cash equivalents, as described above.

109. Additionally, as Defendants knew but omitted to disclose, Defendants had abandoned their duties and given Orr unfettered authority and discretion over the Company's funds and investments—funds they knew were "critical" to the Company's liquidity and ability to continue as a going concern. Without any oversight or monitoring, Orr improperly invested the Company funds in his own limited partnership and cross-collateralized the Company's funds with his other accounts, rendering them illiquid and unavailable.

110. The Company's non-default and non-violation of any notes, loans, credit agreements, or other material obligations, were material terms of the December 2021 SPA and the Arena Shareholders justifiably and reasonably relied upon the representations in the December 2021 SPA when they purchased 2,370,370 shares of Series C Convertible Preferred Stock and

warrants to purchase up to 2,370,000 shares of the Company's common stock, and 9,000,000 shares of the Company's common stock from Defendant Fox and KORR Value.

111. Had the Arena Shareholders known that the Company had already violated and was in default under the Convertible Notes the Arena Shareholders or that the Company had granted full authority and discretion to Orr without oversight, they would not have entered into the December 2021 SPA.

112. Defendants, individually and in concert, directly or indirectly made or approved the false representations in the December 2021 SPA in order to induce the Arena Shareholders to purchase shares despite knowing or deliberately disregarding that the representations were false.

113. Defendants, as high-level officers and directors of the Company were directly involved in drafting, producing, reviewing, and/or disseminating the false statements in the December 2021 SPA and/or approved or ratified such statements in furtherance of the fraud alleged herein.

114. Defendants, as high-level officers and directors of the Company, had actual knowledge of the falsity of the material misrepresentations in the December 2021 SPA and intended to deceive the Arena Shareholders or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in those representations made by them or other Defendants to the Arena Shareholders.

115. Defendants intentionally misled the Arena Shareholders in order to induce the Arena Shareholders to purchase the Company's stock and to conceal the Company's defaults and violations of the Non-Convertible Notes.

116. The Arena Shareholders reasonably relied on Defendants' fraudulent statements and were induced to purchase 2,370,370 shares of Series C Convertible Preferred Stock, warrants to purchase up to 2,370,000 shares of the Company's common stock.

117. As a result, Defendants are liable to the Arena Shareholders for damages of in an amount to be determined at trial, but no less than $6,666,666 (representing the cost basis of $6,666,666 price of the 2,370,370 shares purchased under the December 2021 SPA).

SECOND CAUSE OF ACTION
(Fraudulent Inducement or Misrepresentation – By Amped I Against All Defendants)

118. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

119. Defendants engaged in fraud in the December 2021 Non-Convertible Notes by inducing Amped I to loan the Company $13.3 million on the false basis that the Company would not "make or suffer to exist any Investments using any proceeds from [Arena] or commitments therefor, or to become or remain a partner in any partnership or joint venture, except for (i) Investments in cash and cash equivalents…" Non-Convertible Notes, § 7(i).

120. The representations in Section 7.1 of the December 2021 Non-Convertible Notes were false because, as Defendants knew, the Company was already invested in a limited partnership (namely, KORR Value LP) that was not limited to cash or cash equivalents and, given the Company's ongoing relationships with Orr and Defendants' total abdication of their responsibilities to Orr, would continue to use proceeds from Amped I and Amped II for such purposes moving forward.

121. Additionally, as Defendants knew but omitted to disclose, Defendants had abandoned their duties and given Orr unfettered authority and discretion over the Company's funds and investments without oversight, allowing Orr to improperly invest in his own limited

partnership and cross-collateralize the Company's funds, which would cause the Company to default on its obligations to Amped I.

122. Defendants' agreement to not invest in any limited partnership that was not limited to cash or cash equivalents was a material term of the December 2021 Non-Convertible Notes and Amped I justifiably and reasonably relied upon Defendants' agreement in loaning the Company $13.3 million.

123. Had Amped I known that the Company was already invested and would continue to be invested in a limited partnership that was not limited to cash or cash equivalents or that the Company had relinquished such authority and discretion to Orr without proper controls or oversight, Amped I would not have entered into the December 2021 Non-Convertible Notes.

124. Defendants, individually and in concert, directly or indirectly made and/or approved the false representations in the December 2021 Non-Convertible Notes in order to induce the Arena Shareholders to loan the Company millions of dollars despite knowing or deliberately disregarding that the representations were false and that they had abandoned their duties and given Orr unfettered authority over Company funds.

125. Defendants, as high-level officers and directors of the Company were directly involved in drafting, producing, reviewing, and/or disseminating the false statements in the December 2021 Non-Convertible Notes and/or approved or ratified such statements in furtherance of the fraud alleged herein.

126. Defendants, as high-level officers and directors of the Company, had actual knowledge of the falsity of the material misrepresentations in the December 2021 Non-Convertible Notes and intended to deceive the Amped I or, in the alternative, acted with reckless disregard for

the truth when they failed to disclose the true facts in those representations made by them or other Defendants to Amped I.

127. Defendants intentionally misled Amped I in order to induce Amped I to loan the Company money and to conceal the Company's defaults and violations and Defendants' abdication of their duties as described herein.

128. Amped I reasonably relied on Defendants' fraudulent statements and was induced to loan the Company $13,333,180.

129. As a result, Defendants are liable to Amped I for damages in an amount to be determined at trial, but believed to be at least $13,333,180.

THIRD CAUSE OF ACTION
(Fraudulent Inducement or Misrepresentation – Amped II Against All Defendants)

130. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

131. Defendants engaged in fraud in the Exchange Agreement by inducing Amped II to convert a total of $12,498,889 of the Convertible Notes into Preferred D shares on the basis of the representations and warranties in the Exchange Agreement, including that the Company was not in default under or in violation of any indenture, loan or credit agreement and that it was not in violation or default in the performance or observation of any material obligation, agreement, covenant or condition contained in any note.

132. Specifically, Defendants falsely represented in the Exchange Agreement that (i) the Company was not in default or in violation of any "any indenture, loan or credit agreement or any other agreement or instrument to which it is party or by which it or any of its properties is bound"; (ii) the Company was not "in violation or default in the performance or observation of any material obligation, agreement, covenant or condition contained in any contract…loan or credit agreement,

note, lease, or other agreement or instrument..."; (iii) "[t]here is no fact known to the Company that would reasonably be expected to materially affect the Company that has not been expressly disclosed herein"; and (iv) "[a]ll of the disclosure furnished by or on behalf of the Company to the Investor in the Transaction Documents regarding, among other matters relating to the Company, its business and the transactions contemplated in the Transaction Documents, is true and correct in all material respects as of the date made and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading…"

133. These representations were false and misleading because the Company was, in fact, in violation and default under loan agreements — namely, the Non-Convertible Notes and Convertible Notes — because, as Defendants knew, the Company was already invested in a limited partnership (namely, KORR Value LP) that was not limited to cash or cash equivalents and, given the Company's ongoing relationships with Orr and Defendants' total abdication of their responsibilities to Orr, would continue to use proceeds from Arena for such purposes moving forward.

134. Additionally, as Defendants knew but omitted to disclose, Defendants had abandoned their duties and given Orr unfettered authority and discretion over the Company's funds and investments, allowing Orr to improperly invest in his own limited partnership and cross-collateralize the Company's funds to the Company's detriment.

135. Defendants' representations were material terms of the Exchange Agreement and Amped II justifiably and reasonably relied upon Defendants' representations in agreeing under the Exchange Agreement to convert its notes into Preferred D shares.

136. Had Amped II known that the representations in the Exchange Agreement were false, it would not have entered into the Exchange Agreement or converted its notes into Preferred D shares.

137. Defendants, individually and in concert, directly or indirectly made or approved the false representations in the Exchange Agreement in order to induce the Amped II to convert its shares despite knowing or deliberately disregarding that the representations were false.

138. Defendants, as high-level officers and directors of the Company were directly involved in drafting, producing, reviewing, and/or disseminating the false statements in the Exchange Agreement and/or approved or ratified such statements in furtherance of the fraud alleged herein.

139. Defendants, as high-level officers and directors of the Company, had actual knowledge of the falsity of the material misrepresentations in the Exchange Agreement and intended to deceive Amped II or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in those representations made by them or other Defendants to Amped II.

140. Defendants intentionally misled Amped II in order to induce Amped II to convert its notes into equity and to conceal the Company's defaults and violations as described herein.

141. Amped II reasonably relied on Defendants' fraudulent statements and omissions and, as a result, suffered damage including but not limited to the loss of $11,200,000 of Convertible Notes that were converted into worthless Series D stock by virtue of the Exchange Agreement.

142. As a result, Defendants are liable to Amped II for damages in an amount to be determined at trial, but believed to be at least $12,498,889.

FOURTH CAUSE OF ACTION
(Negligent Misrepresentation – All Plaintiffs Against All Defendants)

143. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

144. Defendants were negligent when they made the misrepresentations and omissions in the December 2021 SPA, the Non-Convertible Notes, and the Exchange Agreement as specified above.

145. Defendants, as high-level officers and directors of the Company were directly involved in drafting, producing, reviewing, and/or disseminating the false statements in the December 2021 SPA, the Non-Convertible Notes, and the Exchange Agreement and/or approved or ratified such statements in furtherance of the fraud alleged herein.

146. The Arena Shareholders held the Company stock prior to December 2021. As a result, Defendants, as officers and directors of the Company, owed fiduciary duties to the Arena Shareholders at all relevant times, including the duty of loyalty and duty of candor. Defendants further knew that the funds invested with Orr were "critical to [the Company's] liquidity" and that absent access to such funds, the Company would default on its obligations to Amped I which would render the Company unable to continue as a going concern. Defendants therefore owed a fiduciary duty to Amped I and Amped II as secured creditors. Defendants therefore had a duty to ensure that the statements in the December 2021 SPA, the Non-Convertible Notes, and the Exchange Agreement were not false or misleading and Plaintiffs were entitled to rely on their fiduciaries' representations and complete, undivided loyalty.

147. Defendants nevertheless misrepresented in the December 2021 SPA that the Company was not in default under or in violation of any indenture, loan or credit agreement and that it was not in violation or default in the performance or observation of any material obligation,

agreement, covenant or condition contained in any note when, in fact, the Company had already violated and was in default under the Non-Convertible Notes because the Company was invested in a limited partnership that was not limited to cash or cash equivalents. The statements in the December 2021 SPA were further misleading because Defendants failed to disclose that they had abandoned their duties and given Orr unfettered authority and discretion over the Company's funds and investments, allowing Orr to improperly invest in his own limited partnership and cross-collateralize the Company's funds.

148. Defendants further misrepresented in the Non-Convertible Notes that the Company would not "make or suffer to exist any Investments using any proceeds from [Arena] or commitments therefor, or to become or remain a partner in any partnership or joint venture, except for (i) Investments in cash and cash equivalents." This representation was false because, in fact, the Company was already invested in a limited partnership not limited to cash or cash equivalents and, as Defendants knew, it would continue to use proceeds from Arena for such purposes moving forward. Additionally, Defendants failed to disclose that they had abandoned their duties and given Orr unfettered authority and discretion over the Company's funds and investments, allowing Orr to improperly invest in his own limited partnership and cross-collateralize the Company's funds.

149. Defendants also misrepresented in the Exchange Agreement that (i) the Company was not in default or in violation of any "any indenture, loan or credit agreement or any other agreement or instrument to which it is party or by which it or any of its properties is bound"; (ii) the Company was not "in violation or default in the performance or observation of any material obligation, agreement, covenant or condition contained in any contract…loan or credit agreement, note, lease, or other agreement or instrument..."; (iii) "[t]here is no fact known to the Company

that would reasonably be expected to materially affect the Company that has not been expressly disclosed herein"; and (iv) "[a]ll of the disclosure furnished by or on behalf of the Company to the Investor in the Transaction Documents regarding, among other matters relating to the Company, its business and the transactions contemplated in the Transaction Documents, is true and correct in all material respects as of the date made and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading…" These statements were false or misleading because the Company was in fact in violation and default under the Non-Convertible Notes and Convertible Notes and because Defendants failed to disclose that they had abandoned their duties and given Orr unfettered authority and discretion over the Company's funds and investments, allowing Orr to improperly invest in his own limited partnership and cross-collateralize the Company's funds.

150. Defendants, as high-level officers and directors of the Company were directly involved in drafting, producing, reviewing, disseminating, approving, and/or ratifying the misstatements in the December 2021 SPA, the Non-Convertible Notes, and the Exchange Agreement.

151. Had Plaintiffs known that Defendants' statements were false or that Defendants had abandoned their duties and given Orr unfettered authority and discretion over the Company's funds and investments without oversight, allowing Orr to improperly invest in his own limited partnership and cross-collateralize the Company's funds, Plaintiffs would not have purchased the Company stock, loaned the Company money, or converted notes to the Company stock.

152. Defendants knew or should have known that Plaintiffs would rely on the representations in the December 2021 SPA, the Non-Convertible Notes, and the Exchange Agreement.

153. Plaintiffs did reasonably rely on the representations in the December 2021 SPA, Non-Convertible Notes, and Exchange Agreement when they purchased nearly 2.4 million shares of Series C Convertible Preferred Stock, warrants to purchase nearly 2.4 million shares of the Company stock, and 9 million shares of common stock, loaned the Company over $13.3 million dollars, and converted nearly $12.5 million worth of Convertible Notes into the Company stock.

154. Defendants misrepresented in its December 10, 2021 Amendment to Form S-1 Registration Statement that the Informal Agreement was an "at will" arrangement allowing KORR Acquisitions to invest in "marketable securities" limited to "20% of our assets, and of that, less than 5% in illiquid assets." Defendants misrepresented the level of oversight over those investments stating that they had effective internal disclosure controls and procedures. These misrepresented were repeated in multiple public disclosures.

155. Defendants specifically reviewed and approved reporting that affirmed, in SEC filings and a press release as late as November 8, 2023, that as of September 30, 2023, the Company "held $57.2 million in cash, cash equivalents and marketable securities most of which is expected to be used for operations and debt service." In the same press release it was announced that on November 8, 2023, the Company would host a webcast where Defendants Schweller and Denson would present on the Company's third quarter financial results.

156. Amped I and Amped II reasonably relied on these disclosures made by the Company and approved by Defendants. The information regarding the arrangement with KORR

Acquisitions and KORR Value LP and the nature of the Company's investments, including the lack of liquidity, was peculiarly within the knowledge of the Company, including Defendants.

157. Defendants made these disclosures to its investors, in particular to Plaintiffs as the Company's largest and only secured creditor. As a public company, the Company was required to make accurate disclosures to its investors, and yet, Defendants authorized statements that misrepresented this information. Defendants knew or should have known that they were insolvent or on the brink of insolvency when they approved these disclosures and that Plaintiffs would rely on these disclosures. Defendants knew or should have known that the funds that had not been returned by Orr were critical to the Company's liquidity and that without access to those funds, the Company would default on its obligations.

158. As a result of Defendants' negligent misrepresentations, Plaintiffs have suffered damages, including the price of the securities they were wrongly induced to purchase, the more than $13.3 million Plaintiffs loaned the Company, and the loss of the $11,200,000 of Convertible Notes that were converted into worthless Series D stock by virtue of the Exchange Agreement.

159. Defendants are therefore liable to Plaintiffs in an amount to be established at trial, but believed to be at least $33,199,846.

FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty – The Arena Shareholders Against All Defendants)

160. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

161. As directors and officers of the Company, Defendants owed fiduciary duties to the Company's shareholders, including Plaintiffs.

162. The Arena Shareholders held the Company stock prior to December 2021. As a result, Defendants, as officers and directors of the Company, owed fiduciary duties to the Arena

Shareholders at all relevant times, including the duty of loyalty and duty of candor. Defendants therefore had a duty to ensure that the statements in the December 2021 SPA, the Non-Convertible Notes, and the Exchange Agreement were not false or misleading and Plaintiffs were entitled to rely on their fiduciaries' representations and complete, undivided loyalty.

163. Defendants nevertheless breached their fiduciary duties by making the misrepresentations and omissions in the December 2021 SPA, Non-Convertible Notes, and Exchange Agreement.

164. Specifically, in the December 2021 SPA Defendants misrepresented to Plaintiffs that the Company was not in default under or in violation of any indenture, loan or credit agreement and that it was not in violation or default in the performance or observation of any material obligation, agreement, covenant or condition contained in any note when, in fact, and as Defendants knew, the Company had already violated and was in default under the Non-Convertible Notes because the Company was invested in a limited partnership that was not limited to cash or cash equivalents. The statements in the December 2021 SPA were further misleading because Defendants failed to disclose that they had abandoned their duties and given Orr unfettered authority and discretion over the Company's funds and investments, allowing Orr to improperly invest in his own limited partnership, leverage Company funds for his personal benefit, and cross-collateralize the Company's funds with accounts of his family and friends.

165. Defendants further misrepresented in the Non-Convertible Notes that the Company would not "make or suffer to exist any Investments using any proceeds from [Arena] or commitments therefor, or to become or remain a partner in any partnership or joint venture, except for (i) Investments in cash and cash equivalents." This representation was false because, in fact and as Defendants knew, the Company was already invested in a limited partnership not limited

to cash or cash equivalents and, as Defendants knew, it would continue to use proceeds from Arena for such purposes moving forward. Additionally, Defendants failed to disclose that they had abandoned their duties and given Orr unfettered authority and discretion over the Company's funds and investments, allowing Orr to improperly invest in his own limited partnership and cross-collateralize the Company's funds.

166. Defendants also misrepresented in the Exchange Agreement that (i) the Company was not in default or in violation of any "any indenture, loan or credit agreement or any other agreement or instrument to which it is party or by which it or any of its properties is bound"; (ii) the Company was not "in violation or default in the performance or observation of any material obligation, agreement, covenant or condition contained in any contract…loan or credit agreement, note, lease, or other agreement or instrument..."; (iii) "[t]here is no fact known to the Company that would reasonably be expected to materially affect the Company that has not been expressly disclosed herein"; and (iv) "[a]ll of the disclosure furnished by or on behalf of the Company to the Investor in the Transaction Documents regarding, among other matters relating to the Company, its business and the transactions contemplated in the Transaction Documents, is true and correct in all material respects as of the date made and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading…" These statements were false or misleading because, as Defendants knew, the Company was in violation and default under the Non-Convertible Notes and Convertible Notes and because Defendants failed to disclose that they had abandoned their duties and given Orr unfettered authority and discretion over the Company's funds and investments, allowing Orr to improperly invest in his own limited partnership and cross-collateralize the Company's funds.

167. Defendants, as high-level officers and directors of the Company were directly involved in drafting, producing, reviewing, disseminating, approving, and/or ratifying the misstatements in the December 2021 SPA, the Non-Convertible Notes, and the Exchange Agreement.

168. As a result of Defendants' breaches of their duties of candor and loyalty to Plaintiffs in favor of Orr and their desire to secure investments, Plaintiffs have suffered damages, including the price of the securities they were wrongly induced to purchase, the more than $13.3 million Plaintiffs loaned the Company, and the loss of the $12,498,889 of Convertible Notes that were converted into worthless Series D stock by virtue of the Exchange Agreement.

169. Defendants are therefore liable to Plaintiffs in an amount to be established at trial, but believed to be at least $33,199,846.

PRAYER FOR RELIEF

170. WHEREFORE, Plaintiffs respectfully requests this Court enter judgment in its favor and order the following relief:

i. On the first cause of action awarding compensatory damages in favor of the Arena Shareholders and against Defendants, jointly and severally, in an amount to be determined at trial but believed to be in the amount of at least $6,666,666, plus pre-and post-judgment interest thereon;

ii. On the second cause of action awarding compensatory damages in favor of Amped I and against Defendants, jointly and severally, in an amount to be determined at trial but believed to be in the amount of at least $13,333,180, plus pre-and post-judgment interest thereon;

iii. On the third cause of action awarding compensatory damages in favor of Amped II and against Defendants, jointly and severally, in an amount to be determined at trial but believed to be in the amount of at least $11,200,000, plus pre-and post-judgment interest thereon;

iv. On the fourth cause of action awarding compensatory damages in favor of Plaintiffs and against Defendants, jointly and severally, in an amount to be determined at trial but believed to be in the amount of at least $33,199,846, plus pre-and post-judgment interest thereon;

v. On the fifth cause of action awarding compensatory damages in favor of the Arena Shareholders and against Defendants, jointly and severally, in an amount to be determined at trial but believed to be in the amount of at least $33,199,846, plus pre-and post-judgment interest thereon; and

vi. Awarding any such further relief this Court deems just and proper.

This the 26th day of June, 2024

By: *s/ Laura J. Garr*

Laura J. Garr
Susan L. Grace
Sally Kagay
Paula Kates

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Counsel for Plaintiffs

VERIFICATION

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

Lawrence Cutler, being duly sworn, deposes and says:

I am an authorized representative of the Plaintiffs in the instant action. I have read the foregoing Complaint and its factual contents are true to my personal knowledge, except as to the matters alleged on information and belief, and as to those matters, I believe them to be true.

I affirm this 25th day of June, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

DocuSigned by:
Lawrence Cutler
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By: Lawrence Cutler

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: CHARGE ENTERPRISES, INC. Debtor.	Chapter 11 Case No. 24-10349 (TMH) **Hearing Date: 10/10/2024 10:00** **Obj. Deadline: 09/13/2024 4:00**

ORDER GRANTING MOTION OF CRAIG DENSON, LEAH SCHWELLER
TO ENFORCE THE CHAPTER 11 PLAN AND CONFIRMATION ORDER

McCarter & English, LLP ("McCarter & English", counsel to Craig Denson and Leah Schweller (the "D&O Parties"), in the above-captioned case, having filed a *Motion to Enforce the Chapter 11 Plan and Confirmation Order* (the "Application"); and parties in interest having received adequate notice; and the Court having considered the Application and having found the relief requested in the Application to be reasonable, and just cause appearing therefore; it is hereby

ORDERED that the Application is granted, and McCarter & English is awarded counsel fees and costs for defending claims;

ORDERED that Arena Plaintiffs intentionally and knowingly failed to comply with § 5.1(f) of the Plan in bringing the New York Action;

ORDERED that the Arena Plaintiffs' prosecution of the New York Action is enjoined;

ORDERED that the Arena Plaintiffs shall dismiss the New York Action with prejudice.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: CHARGE ENTERPRISES, INC. Debtor.	Chapter 11 Case No. 24-10349 (TMH) **Hearing Date: 10/10/2024 10:00** **Obj. Deadline: 09/13/2024 4:00**

CERTIFICATE OF SERVICE

I, Kate Roggio Buck, certify that on August 30, 2024, I caused a true and correct copy of the foregoing *Motion of Craig Denson, Leah Schweller to Enforce the Chapter 11 Plan and Confirmation Order,* to be served upon the parties referenced below via electronic mail.

By: /s/ Kate Roggio Buck
Kate Roggio Buck (No 5140)

Name	Email Address
CHARGE ENTERPRISES, INC.	mrosenwald@charge.enterprises
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