

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

RONALD FRIEDMAN, as trustee for the
SportCo Creditors' Liquidation Trust,

Plaintiff,

v.

WELLSPRING CAPITAL MANAGEMENT,
LLC, WELLSPRING CAPITAL PARTNERS IV,
L.P., WCM GENPAR IV, L.P., WCM GENPAR
IV GP, LLC, ALEXANDER E. CARLES,
BRADLEY JOHNSON, F. HEWITT GRANT,
CHARLES E. WALKER, JR., TODD BOEHLY,
BERNARD ZIOMEK, and ANDREW KUPCHIK,

Defendants.

Adversary No. 19-80071-dd

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Ronald Friedman (the "Trustee" or "Plaintiff"), as trustee for the SportCo Creditors' Liquidation Trust (the "Liquidation Trust"), by and through his undersigned attorneys, hereby brings this action against (1) Wellspring Capital Management LLC ("Wellspring Capital"); (2) Wellspring Capital Partners IV, L.P. ("Wellspring IV"), WCM GenPar IV, L.P., WCM GenPar IV GP, LLC, F. Hewitt Grant, Charles E. Walker, Jr., Todd Boehly, Bernard Ziomek, and Andrew Kupchik (collectively, the "Transferee Defendants"); and (3) Alexander E. Carles, and Bradley Johnson, and alleges as follows:

NATURE OF THE ACTION

1. SportCo Holdings, Inc. ("SportCo,") and its subsidiaries (collectively, the "Debtors"),¹ owing hundreds of millions of dollars to their creditors, filed for bankruptcy in June

¹ See *In re: Sportco Holdings, Inc., et al.*, Case No. 19-11299 (LSS). The other Debtors in the bankruptcy case are: Ellett Brothers, LLC United Sporting Company, Inc. Bonitz Brothers, Inc.;

2019. The Debtors' creditors, including Prospect Capital Corporation ("Prospect"), stand to receive only pennies on the dollar from the Debtors' liquidation.

2. The Debtors' former equity owners, conversely, have fared significantly better. In 2012, and then again in 2013, Wellspring Capital, through its control over the Debtors, caused the Debtors to pay more than \$188 million in cash distributions to the Debtors' owners, including more than \$183,169,466.94 to Wellspring IV, a fund controlled by Wellspring and the Debtors' largest shareholder.

3. Despite the Debtors' financial struggles and, ultimately, insolvency, neither Wellspring IV nor the other shareholders made any capital contributions back to the Debtors to support the business. Instead, as described more fully below, Wellspring Capital, Carles, and Johnson grossly and recklessly mismanaged the Debtors and made material misrepresentations to Prospect, the Debtors' largest creditor, to hinder and delay Prospect from exercising its rights.

4. In this action, the Trustee, as the successor-in-interest to the Debtors' causes of action, asserts claims against the Transferee Defendants—the Debtors' former owners and management—to avoid and recover, under [11 U.S.C. §§ 544](#) and [550](#), the more than \$188 million they received in pre-petition fraudulent transfers (collectively, the "Fraudulent Transfers") from the Debtors.

5. In addition, as the assignee of certain claims belonging to Prospect, the Trustee brings this action to recover damages caused by the negligent misrepresentations made to Prospect in the years prior to the Debtors' bankruptcies.

Ellett Brothers, LLC; Evans Sports, Inc.; Jerry's Sports, Inc.; Outdoor Sports Headquarters, Inc.; Quality Boxes, Inc.; Simmons Guns Specialties, Inc.; SportCo Holdings, Inc.; and United Sporting Companies, Inc.

PARTIES AND RELATED ENTITIES

A. Plaintiff

6. Plaintiff Ronald Friedman, a citizen of New York, is the Trustee for the Liquidation Trust. The Liquidation Trust was formed pursuant to the Fourth Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation (the “Plan of Liquidation”) filed in *In re: SportCo Holdings, Inc., et al.* before the United States Bankruptcy Court for the District of Delaware (the “Delaware Bankruptcy Case”). Pursuant to Section VIII(D) of the Plan of Liquidation, the Debtors transferred certain causes of action, including those asserted herein, to the Liquidation Trust.

7. In addition, pursuant to the Plan of Liquidation and an assignment effective as of December 20, 2019 (the “Assignment”), Prospect transferred to the Liquidation Trust the claims previously filed by Prospect in this action, including the claim for negligent misrepresentation asserted herein.

B. Defendants

8. Defendant Wellspring Capital is a Delaware limited liability company with its principal place of business at 390 Park Avenue, New York, New York 10022. At the time of the Fraudulent Transfers (as further described below) and at all times relevant to these claims, Wellspring Capital controlled (a) Wellspring IV, the largest shareholder of SportCo, (b) SportCo’s and its subsidiaries boards of directors, and (c) the Debtors’ and their subsidiaries. Furthermore, at all times relevant hereto, Wellspring Capital served as the manager of SportCo pursuant to the terms of a management agreement.

9. Defendant Wellspring IV is a New York limited partnership with its principal place of business at 390 Park Avenue, New York, New York 10022. Wellspring IV was, at all relevant times, SportCo’s private equity sponsor and largest shareholder, holding a controlling

ownership stake in SportCo. As SportCo's largest shareholder, Wellspring IV received approximately 97% of the total amount of Fraudulent Transfers.

10. Defendant WCM GenPar IV, LP is a New York limited partnership with its principal place of business at 390 Park Avenue, New York, New York 10022. WCM GenPar IV, LP is the general partner of Wellspring IV.

11. Defendant WCM GenPar IV GP, LLC is a New York limited liability company with its principal place of business at 390 Park Avenue, New York, New York 10022. WCM GenPar IV GP, LLC is the general partner of WCM GenPar IV, LP.

12. Defendant Alexander E. Carles is an individual who at all relevant times was a Managing Partner of Wellspring Capital. Carles also served as an officer and director of SportCo and its subsidiaries. Upon information and belief, Carles is a citizen and resident of the State of Connecticut.

13. Defendant Bradley Johnson is an individual who, at all relevant times, was the President and Chief Executive Officer of SportCo and its subsidiaries. Upon information and belief, Johnson is a citizen and resident of the State of Virginia.

14. Defendant F. Hewitt Grant was an equity-holder of SportCo at the time of the Fraudulent Transfers and a recipient of the Fraudulent Conveyances. Upon information and belief, Grant is a citizen and resident of the State of South Carolina.

15. Defendant Charles E. Walker, Jr. was an equity-holder of SportCo at the time of the Fraudulent Transfers and a recipient of the Fraudulent Transfers. Upon information and belief, Walker is a citizen and resident of the State of Maryland.

16. Defendant Todd Boehly was an equity-holder of SportCo at the time of the Fraudulent Conveyances and a recipient of the Fraudulent Transfers. Upon information and belief, Boehly is a citizen and resident of the State of Connecticut.

17. Defendant Bernard Ziomek was an equity-holder of SportCo at the time of the Fraudulent Transfers and a recipient of the Fraudulent Transfers. Upon information and belief, prior to his death in 2017, Ziomek was a citizen and resident of the State of Pennsylvania.

18. Defendant Andrew Kupchik was an equity-holder of SportCo at the time of the Fraudulent Transfers and a recipient of the Fraudulent Transfers. Upon information and belief, Kupchik is a citizen and resident of the State of Pennsylvania.

C. The Debtors

19. SportCo is a Delaware corporation that had its principal place of business in Chapin, South Carolina. SportCo was the parent and 100% owner of Debtor United Sporting Company, Inc. (“United Sporting”), which, in turn, was the 100% owner of Ellett Brothers, LLC (“Ellett”), the principal operating company.

20. United Sporting is a Delaware corporation that had its principal place of business and headquarters at 267 Columbia Avenue, Chapin, South Carolina.

21. Ellett is a South Carolina limited liability company that had its principal place of business and headquarters at 267 Columbia Avenue, Chapin, South Carolina. Ellett was, at all relevant times, the parent company of various subsidiaries, each of which has its chief executive office and principal place of business in Chapin, South Carolina.

D. Prospect

22. Prospect is a Maryland corporation with its principal place of business in New York, New York. As described above, pursuant to the Plan of Liquidation and the Assignment,

Prospect assigned certain claims, including the claim for negligent misrepresentation asserted herein, to the Liquidation Trust.²

JURISDICTION AND VENUE

23. This Court has subject-matter jurisdiction over this adversary proceeding pursuant to [28 U.S.C. § 1334\(b\)](#). The claims asserted herein arise under [11 U.S.C. §§ 544](#) and [550](#) of the Bankruptcy and/or relate to the Delaware Bankruptcy Case, *In re: Sportco Holdings, Inc., et al.*, Case No. 19-11299 (LSS), a case under Title 11 of the U.S. Code.

24. Venue lies in this District by virtue of the filing of the original complaint, the removal by Defendants to this Court and pursuant to [28 U.S.C. § 1409](#). Venue is appropriate because Debtors had their principal place of business and headquarters in South Carolina, and the most substantial part of the alleged acts and omissions that give rise to this adversary proceeding occurred in South Carolina.

25. Pursuant to Bankruptcy Rule 7008, the Trustee states that he hereby consents to the Bankruptcy Court's entry of final orders and judgment in this adversary proceeding.

STATEMENT OF FACTS

A. Ellett and its predecessors built a venerable South Carolina company prior to Wellspring Capital's greedy and disastrous management.

26. Ellett's history began in 1933, in the midst of the Great Depression, as Ellett Brothers, Inc. The company was established in Chapin, South Carolina, where it operated as a regional sporting goods distributor. Initially, the company distributed fishing equipment exclusively, deriving all of its business from fulfilling the requests of independent sporting goods dealers located in its home state, North Carolina, and Georgia. For the first quarter century of its

² The Trustee, as the successor-in-interest to the Debtors' causes of action, intends to file separate claims for, *inter alia*, breach of fiduciary duty against the Debtors' former directors and officers.

existence, Ellett operated as such, serving a three-state territory with fishing equipment during the economically depressed 1930s and throughout the 1940s.

27. In 1957, Ellett began distributing hunting and shooting sports products and outdoor accessories throughout an expanded geographical area. The foray into hunting and shooting products and outdoor accessories marked the introduction of what quickly would become the company's core business, a product line that has defined Ellett since the 1960s. Not long after this move, the company abandoned its original business by discontinuing the distribution of fishing equipment. From the 1960s forward, Ellett's sales force focused on selling firearms and outdoor accessories to a largely rural clientele comprised mainly of independent, "mom-and-pop" retailers.

28. During the early 1970s, Ellett's management directed a group of its salespeople to market the company's products over the telephone, marking the beginning of telemarketing at the Chapin headquarters. By the late 1970s, Ellett ranked as a leading national distributor of outdoor sporting goods products thanks largely to the effectiveness of its less-than-decade-old telemarketing program.

29. The company went public in June 1993, making its initial public offering at \$9 a share, and went on to record a banner year. Half of Ellett's 240 employees were employed as salespeople in 1993, all of whom were stationed at the company's headquarters in Chapin, the sole location of Ellett's operations. The company survived and flourished through the 1990s.

30. Wellspring Capital, through its fund Wellspring IV, acquired Ellett in 2008 and formed SportCo as a holding company to hold United Sporting (Ellett's direct parent), Ellett, and Ellett's subsidiaries indirectly.

31. In the run-up to the re-election of President Obama in 2012 and in the months following the election, Ellett achieved record sales and earned revenues of approximately \$1.2 billion in the twelve-month period from October 2012 to October 2013.

32. As recently as 2015, Ellett was the fifth largest private company in South Carolina and the largest distributor of firearms in the United States, with annual revenues of \$750 million, over 350 employees nationwide, and 175 employees in South Carolina. Ellett operated a 250,000 sq. ft. distribution center and sales office in Chapin, South Carolina and a 140,000 sq. ft. Distribution facility in Newberry, South Carolina. Ellett's broad customer base consisted of 30,000 independent retailers in all 50 states, offering over 85,000 products.

33. Once again, in 2016, the firearms industry, as a whole, achieved record sales. But, while Ellett's sales increased, its profits lagged significantly behind its competitors. Ellett's earnings in 2016 were approximately \$40 million less than those achieved in 2012 during a similar sales boon, and similar to those achieved prior to Wellspring IV's acquisition of Ellett—a time with significantly lower industry-wide sales.

34. Despite these recent periods of elevated sales, Wellspring completely ruined Ellett. Ellett survived the Great Depression, serious recessions in the 1970s, 1990s and 2000s, and legislation banning certain of its products. But Ellett could not survive the disastrous tenure of Wellspring Capital, which caused Ellett to make the Fraudulent Transfers and whose reckless and grossly negligent mismanagement of Ellett and bad-faith dereliction of their duties led to the dissipation of substantially all of Ellett's assets during some of the most historically profitable times for companies in the firearms industry.

B. Wellspring Capital caused the Debtors to transfer, for no consideration, more than \$188 million to the Transferee Defendants.

35. On September 28, 2012, Ellett and its operating subsidiaries (the “Borrowers”) entered into (i) a Third Amended and Restated Loan and Security Agreement and (ii) a Second Lien Loan and Security Agreement (the “2012 Second Lien Loan Agreement,” and together with the Third Amended and Restated Loan and Security Agreement, the “2012 Loan Agreements”). Pursuant to the 2012 Loan Agreements, certain lenders, including Prospect,³ collectively loaned \$280 million to the Borrowers (the “2012 Loan”). The proceeds from the 2012 Loan were wired to Ellett in South Carolina. SportCo and United Sporting, pursuant to certain guaranty agreements, each dated September 28, 2012, guaranteed amounts due under the 2012 Second Lien Loan Agreement.⁴

36. The Debtors used approximately \$139.6 million of the loan proceeds to repay the Borrowers’ existing debts. The Debtors, at the direction of Wellspring Capital, which controlled the Debtors’ board of directors, used the remaining proceeds of the 2012 Loan to fund distributions totaling \$134,003,871.20 to the Transferee Defendants (the “2012 Fraudulent Transfers”). Specifically, the 2012 Second Lien Loan Agreement provided that on or after closing, the Transferee Defendants would receive a “one-time cash Distribution,” which would be made by “Borrowers to [United Sporting] (for further distribution to SportCo and Wellspring and the other shareholders of SportCo).” The 2012 Fraudulent Transfers, however, were wired directly from Ellett to the Transferee Defendants.

³ The other lenders were Bank of America, Wells Fargo, Regions Bank, Summit Partners Credit Fund, LP, and their respective related entities.

⁴ SportCo also guaranteed amounts due under the Third Amended and Restated Loan and Security Agreement.

37. The Debtors voluntarily made the 2012 Fraudulent Transfers without receiving any consideration in exchange for the cash disbursement of \$134,003,871.20. On information and belief, Ellett paid the distributions to the Transferee Defendants on or about October 1, 2012.

38. On March 7, 2013, Prospect, the Borrowers, and other lenders entered into a First Amendment to Third Amended and Restated Loan and Security Agreement and Consent and a First Amended and Limited Consent (the “2013 Loan Agreements”). Pursuant to the 2013 Loan Agreements, Prospect provided an additional \$60 million to the Borrowers (the “2013 Loan”). SportCo and United Sporting, pursuant to the First Amended and Limited Consent, agreed to guarantee repayment of the 2013 Loan.

39. On or after the closing date of the loan, Ellett voluntarily transferred \$54,860,549.74 to the Transferee Defendants as cash distributions (the “2013 Fraudulent Transfers”). Specifically, the 2013 Loan provided that the Transferee Defendants would receive a “one-time cash Distribution,” which would be made “by Borrowers to [United Sporting] (for further distribution to SportCo and then to Wellspring and the other shareholders of SportCo).” The 2013 Fraudulent Transfers, however, went directly from Ellett to the Transferee Defendants.

40. The Debtors made the 2013 Fraudulent Transfers without receiving any consideration in exchange for the cash disbursement of \$54,860,549.74. On information and belief, Ellett paid the distribution to the Transferee Defendants on or about March 7, 2013.

41. All told, the Fraudulent Transfers resulted in the transfer of \$188,864,420.94 to the Transferee Defendants, broken down as follows:

Transferee Defendant	2012 Fraudulent Transfers	2013 Fraudulent Transfers	Total
Defendant Wellspring IV ⁵	\$130,024,072.35	\$53,145,394.59	\$183,169,466.94
Defendant Grant	\$667,430.68	\$287,639.45	\$955,070.13
Defendant Walker	\$66,684.06	\$28,738.51	\$95,422.57
Defendant Boehly	\$1,967,081.28	\$847,743.75	\$2,814,825.03
Defendant Ziomek	\$98,354.06	\$42,387.19	\$140,741.25
Defendant Kupchik	\$1,180,248.77	\$508,646.25	\$1,688,895.02
TOTAL	\$134,003,871.20	\$54,860,549.74	\$188,864,420.94

42. The Fraudulent Transfers took much needed funds from the Debtors to line Defendants' pockets all to the detriment of the Debtors' creditors.

C. Wellspring Capital's, Carles', and Johnson's negligent misrepresentations caused particular harm to Prospect.

43. Once the Transferee Defendants had obtained the Fraudulent Transfers, Wellspring Capital had no incentive to, and did not, manage the Debtors loyally or with good faith and due care. To the detriment of Prospect, Wellspring Capital mismanaged the Debtors with gross negligence and continued to allow the Borrowers to hemorrhage needed cash.

44. In early 2018, Wellspring Capital notified Prospect that the Borrowers would default on the interest payment due to Prospect in the amount of \$4.7 million in the second quarter of 2018. Because the Transferee Defendants had already received the Fraudulent Transfers and other cash distributions at the Borrowers' expense—effectively extracting all value out of the enterprise—and their equity in Ellett was by this time worthless, the Transferee Defendants had no financial incentive to address the Debtors' insolvency and dire cash situation. Rather, Wellspring Capital's primary concern was to keep the enterprise ostensibly afloat for as long as possible to continue collecting fees at the expense of Prospect.

⁵ WCM GenPar IV, LP, as the general partner of Wellspring IV, is liable for all of Wellspring IV's debts. WCM GenPar IV GP, LLC is the general partner of WCM GenPar IV, LP, and thus liable for WCM GenPar IV, LP's debts.

45. In April 2018, Prospect agreed to amend its loan based upon reckless misrepresentations made by Wellspring Capital, Carles, and Johnson in conjunction with a proposal for Ellett to purchase certain assets of AcuSport Corporation (“AcuSport”), another firearms distributor.

46. To induce Prospect to forgo exercising its bargained-for remedies in the event of a payment default, starting in October 2017, Wellspring Capital, through Defendant Carles and Defendant Johnson represented that Ellett could purchase certain assets of AcuSport, a competitor, for \$14.8 million. These assets included a distribution center, an office building, information technology resources, and inventory (the “AcuSport Purchase”).

47. The AcuSport Purchase required the Debtors to pay \$2 million in fees and spend another \$5.4 million in closing, transaction, and restructuring costs, draining further precious liquidity from the Debtors.

48. Wellspring Capital, Carles, and Johnson recklessly, and without reasonable diligence or inquiry, misrepresented to Prospect that the AcuSport Purchase would result in: (a) the Debtors’ capturing 20% to 30% of AcuSport sales; (b) the Debtors acquiring \$14 million worth of AcuSport inventory at a substantial discount; and (c) an immediate realization of a \$7 million profit on the sale of the AcuSport inventory purchased in the AcuSport Purchase.

49. On October 27, 2017, Carles misrepresented in writing to Rich Carratu of Prospect that “the only way to optimize is to merge with Acusport”.

50. On November 12, 2017, Carles further dialed up the purported urgency and benefits of the AcuSport Purchase, writing to Mr. Carratu: “You know [Prospect’s] rights better than me, but I’m not going to beat around the bush . . . If you think Acusport must get done, I would go to committee tomorrow and figure out what you can live with. Brad and I know the

business a lot better and we think it must get done. . . . We need to make the merger happen or deal with the consequences which could be severe.”

51. On December 26, 2017, in the context of Wellspring Capital’s, Carles’, and Johnson’s reckless efforts to get Prospect to defer its contractual entitlement to interest payments, Carles wrote to Mr. Carratu: “So you will waive [your interest payments]. Otherwise you cannot get paid.”

52. As Prospect took time to consider the information provided to it, on January 31, 2018, Carles wrote to Mr. Carratu and representatives from Ellett and Summit: “I’m really close to telling Rich [Carratu] to suck my d***.”

53. In the ensuing months, Carles repeatedly slandered Mr. Carratu and Prospect as “dumb as f**k”, “Dumbf**ks”, “so f**kin dumb”, and other variations on the same theme in numerous emails to Mr. Carratu (on which Carles copied other lenders and company management)—although the Borrowers and Guarantors owed Prospect \$160 million which was now held by the Transferee Defendants. His bravado masked his complete and utter failure to engage in basic reasonable inquiries and diligence to comply with the fiduciary duties that he owed to Prospect.

54. On February 20, 2018, Carles recklessly continued to tout the benefits of pursuing the AcuSport Purchase, writing to Mr. Carratu that “waiting was a mistake.” He followed up with another email that evening: “You’re [sic] economics are going down and the risk of chapter is going up. Sounds like a tidy deal at year end [2017] made a lot of sense.”

55. Defendant Johnson also made reckless misrepresentations about the value of AcuSport inventory that induced Prospect to agree to the AcuSport Purchase, including on March 2, 2018, when he wrote to Mr. Carratu and others: “if I can’t get product, my borrowing

base will be significantly impacted. I implore you to get it signed asap.” His statements were reckless and devoid of reasonable inquiry and diligence that would have revealed to a person of ordinary prudence that the deal made no sense and that Prospect needed to quickly move forward with the enforcement of its rights to avoid further direct and particular harm.

56. On March 16, 2018, Johnson wrote another email recklessly touting supposed synergies and savings of consolidating three United Sporting facilities into the AcuSport facility.

57. Carles supplemented Johnson’s reckless statements by continuing to pressure Prospect into agreeing to the AcuSport Purchase: “Gotta get your interest? The company will explode Rich! We are hiring lawyers and advisors. . . . If you don’t care then ignore the warnings I give you. THIS IS SERIOUS. ACT FAST. PRESERVE YOUR PRINCIPAL. PROTECT THE EMPLOYEES.”

58. On April 11, 2018, Johnson wrote to Prospect that the “[l]ayered case with recovery of Acusport volumes (2017 \$400M)” was “\$100M in sales” as the low case and “\$200M in sales” as the high case.

59. On April 17, 2018, a subordinate of Defendant Johnson’s wrote to Prospect: “Attached is our deck that walks you through our base case which assumes no acquisition of assets and then scenarios where we acquire the assets and recover 20% and 30% of AcuSport’s historical sales.”

60. On April 27, 2018, Carles wrote more reckless statements to Prospect: “What is the problem? There is no time for games. Acusport needs to file and we need to buy it. THIS IS FOR YOUR BENEFIT - THIS WILL HELP YOUR RECOVERY - THIS WILL MAKE THE BUSINESS STRONGER - UNDERSTAND? You guys get your s**t together please - this is ridiculous and unprofessional that we cannot get an answer.”

61. Wellspring Capital, Carles, and Johnson supplied information and made statements in a reckless manner to Prospect that gave the impression that they were deeply knowledgeable of the current state of the Debtors' finances and had analyzed the effect of the various actions to be taken. However, in truth, their reckless acts and omissions in providing such information constituted bad-faith dereliction of duty that directly harmed Prospect because they lacked reasonable diligence and inquiry to make such statements, which proved to be wildly off the mark.

62. On the basis of Carles' and others reckless representations, on April 30, 2018, Prospect agreed to forbear from exercising its remedies and instead defer two quarters of cash interest payments in the aggregate amount of \$9.5 million.

63. The false and reckless nature of the statements and information provided by the Wellspring Capital, Carles, and Johnson to Prospect soon became apparent. The AcuSport Purchase was disastrous for the Debtors. For example, the AcuSport distribution center the Debtors purchased contained only \$139,000 worth of inventory. Because there was very little actual inventory, the promised (a) 20% to 30% capture of AcuSport sales and (b) realization of a quick \$7 million profit on inventory sales never had a chance of materializing.

64. Wellspring Capital recklessly caused Ellett to use all of its remaining cash on the AcuSport Purchase, leaving it with insufficient borrowing capacity under its then-current revolving credit facility to cope with even a slight downturn in the market. Having already stripped Ellett of all of its value and recklessly steered the company into a catastrophic financial collapse as a result of their bad-faith dereliction of duty, Wellspring Capital, Carles, and Johnson recklessly rammed through the AcuSport Purchase which was the final nail in the coffin for Ellett and the entire enterprise.

65. Wellspring Capital, Carles, and Johnson failed to take the steps necessary to consider the interests of Prospect, a party to whom they owed fiduciary duties given Ellett's state of insolvency. Instead, Wellspring Capital, Carles, and Johnson caused Prospect to repeatedly delay and defer the exercise of its rights with respect to Ellett through reckless statements and the provision of incorrect information that was devoid of reasonable inquiry and diligence regarding the true state of affairs at Ellett and the impact of their acts and omissions on Prospect. Each act of delay and forbearance by Prospect based on Wellspring Capital's, Carles', and Johnson's misrepresentations described herein harmed Prospect by causing Prospect to lose the value that Prospect otherwise would have obtained by acting promptly on sound and accurate information to protect its interests.

D. Wellspring Capital, rather than financially supporting the Debtors with the cash it previously extracted from them, caused the Debtors to file for bankruptcy in 2019.

66. On December 31, 2018, the Borrowers defaulted on the 2012 and 2013 Loans. The Debtors subsequently filed for bankruptcy on June 10, 2019 (the "Petition Date").

67. As of the Petition Date, the aggregate obligations outstanding under the 2012 and 2013 Loans, together with accrued and unpaid interest through the Petition Date, was more than \$270 million. While the first-lien lenders were paid in full following the Petition Date, the second-lien lenders, including Prospect (collectively, the "Second-Lien Lenders"), have not been paid in full, and the Debtors' assets as of the Petition Date were woefully insufficient to cover the almost \$250 million due to the Second-Lien Lenders.

68. In addition, as of the Petition Date, the Debtors had approximately \$40 million of outstanding unsecured debt, which was comprised mostly of professional services, trade debt, and employee severance.

69. In sum, the Debtors lacked sufficient assets to pay their creditors, including, without limitation, the Second-Lien Lenders that provided funds to the Debtors in 2012 and 2013.

DEMAND FOR JURY

70. Plaintiff demands a jury trial on all issues.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**Avoidance and Recovery of Fraudulent Transfers by Debtor Ellett
11 U.S.C. § 544(b) and § 550; S.C. Code Ann. §27-23-10 et. seq.
(Against the Transferee Defendants and Wellspring Capital)**

71. Plaintiff repeats and re-alleges each of the allegations set forth above as if fully set forth herein.

72. At all times relevant hereto, there have been one or more creditors, including, without limitation, Prospect, who have held and still hold unsecured claims against Ellett that were and are allowable under 11 U.S.C. § 502. These creditors have claims under S.C. Code Ann. § 27-23-10 et. seq. (the “South Carolina Statute of Elizabeth”), against the Transferee Defendants.

73. On or about October 1, 2012, Ellett, at the direction, and under the control, of Wellspring Capital, voluntarily distributed \$134,003,871.20 to the Transferee Defendants. Ellett did not receive any consideration in exchange for the 2012 Fraudulent Transfers.

74. Prior to and at the time of the 2012 Fraudulent Transfers, Ellett owed debts to the Second-Lien Lenders. The Second-Lien Lenders remained creditors of Ellett at the time of Ellett’s bankruptcy and were not and have not been repaid in full.

75. On or about March 7, 2013, Ellett, at the direction, and under the control, of Wellspring Capital, voluntarily distributed \$54,860,549.74 to the Transferee Defendants. Ellett did not receive any consideration in exchange for the 2013 Fraudulent Transfers.

76. The Second-Lien Lenders, including Prospect, were creditors of Ellett before Ellett made the 2013 Fraudulent Transfers.

77. Under the South Carolina Statute of Elizabeth, made applicable here by [11 U.S.C. § 544](#), a transfer without consideration will be set aside if the transferor failed to retain sufficient property to pay a debt to its creditor in full at the time this debt is due or must be paid in full. Ellett defaulted on the 2012 and 2013 Loans in December 2018. A few months later, Ellett filed for bankruptcy. Ellett is currently insolvent and cannot pay its debts to the Second-Lien Lenders and other creditors. Ellett failed to retain sufficient property to satisfy its liabilities to the Second-Lien Lenders and its creditors in full.

78. As such, pursuant to [11 U.S.C. § 544](#) and the South Carolina Statute of Elizabeth, the Liquidation Trust, as assignee of the Debtors' causes of action, may avoid the 2012 and 2013 Fraudulent Transfers received by each Transferee Defendant. Pursuant to [11 U.S.C. § 550](#), the Liquidation Trust may recover the avoided Fraudulent Transfers received by the Transferee Defendants as either initial or subsequent transferees.

79. Wellspring Capital, as the entity that caused the Fraudulent Transfers to be made, is the entity for whose benefit such Fraudulent Transfers were made. Accordingly, pursuant to § 550, the Trustee may recover for the benefit of the estate the amount of the Fraudulent Transfers from Wellspring Capital.

80. The Trustee reserves the right to identify and seek recovery from any other transferees and subsequent transferees under § 550.

SECOND CAUSE OF ACTION

**Avoidance and Recovery of Fraudulent Transfers by Debtor SportCo
11 U.S.C. § 544(b) and § 550; S.C. Code Ann. §27-23-10 et. seq.
(Against the Transferee Defendants and Wellspring Capital)**

81. Plaintiff repeats and re-alleges each of the allegations set forth above as if fully set forth herein.

82. At all times relevant hereto, there have been one or more creditors, including, without limitation, Prospect, who have held and still hold unsecured claims against SportCo that were and are allowable under 11 U.S.C. § 502. These creditors have claims under the South Carolina Statute of Elizabeth against the Transferee Defendants.

83. On or about October 1, 2012, SportCo, at the direction, and under the control, of Wellspring Capital, voluntarily distributed \$134,003,871.20 to the Transferee Defendants. SportCo did not receive any consideration in exchange for the 2012 Fraudulent Transfers.

84. Prior to and at the time of the 2012 Fraudulent Transfers, SportCo owed debts to the Second-Lien Lenders. The Second-Lien Lenders remained creditors of SportCo at the time of SportCo's bankruptcy and were not and have not been repaid in full.

85. On or about March 7, 2013, SportCo, at the direction, and under the control, of Wellspring Capital, voluntarily distributed \$54,860,549.74 to the Transferee Defendants. SportCo did not receive any consideration in exchange for the 2013 Fraudulent Transfers.

86. The Second-Lien Lenders, including Prospect, were creditors of SportCo before SportCo made the 2013 Fraudulent Transfers.

87. Under the South Carolina Statute of Elizabeth, made applicable here by 11 U.S.C. § 544, a transfer without consideration will be set aside if the transferor failed to retain sufficient property to pay a debt to its creditor in full at the time this debt is due or must be paid in full. The Borrowers defaulted on the 2012 and 2013 Loans in December 2018. A few months later,

SportCo, which guaranteed the Loans, filed for bankruptcy. SportCo is currently insolvent and cannot pay its debts to the Second-Lien Lenders and other creditors. SportCo failed to retain sufficient property to satisfy its liabilities to the Second-Lien Lenders and its creditors in full.

88. As such, pursuant to [11 U.S.C. § 544](#) and the South Carolina Statute of Elizabeth, the Liquidation Trust, as assignee of the Debtors' causes of action, may avoid the 2012 and 2013 Fraudulent Transfers received by each Transferee Defendant. Pursuant to [11 U.S.C. § 550](#), the Liquidation Trust may recover the avoided Fraudulent Transfers received by the Transferee Defendants as either initial or subsequent transferees.

89. Wellspring Capital, as the entity that caused the Fraudulent Transfers to be made, is the entity for whose benefit such Fraudulent Transfers were made. Accordingly, pursuant to § 550, the Trustee may recover for the benefit of the estate the amount of the Fraudulent Transfers from Wellspring Capital.

90. The Trustee reserves the right to identify and seek recovery from any other transferees and subsequent transferees under § 550.

THIRD CAUSE OF ACTION

Negligent Misrepresentation (Against Wellspring Capital, Carles, and Johnson)

91. Plaintiff repeats and re-alleges each of the allegations set forth above as if fully set forth herein.

92. Plaintiff is the assignee of certain causes of action from Prospect, including the claim for negligent misrepresentation asserted herein.

93. Wellspring Capital, Carles, and Johnson made numerous representations to Prospect concerning the AcuSport Purchase, including that the purchase would allow the Debtors to acquire \$14 million worth of AcuSport inventory at a substantial discount; that it would result

in the Debtors' immediate realization of a \$7 million profit on the sale of the AcuSport inventory so purchased; and that it would result in the Debtors' capturing 20% to 30% of AcuSport sales.

94. Each of these representations was both material and false at the time they were made.

95. At the time that the misrepresentations were made, the Debtors were insolvent. As a result, the Debtors owed fiduciary duties to Prospect as a creditor.

96. Wellspring Capital had a substantial pecuniary interest in making these false representations, and in persuading Prospect of the merits of the AcuSport Purchase, thereby inducing Prospect to forgo exercising its bargained-for remedies in the event of an interest payment default by Ellett in the second quarter of 2018.

97. Prospect justifiably relied on the representations made by Wellspring Capital, Carles, and Johnson with respect to the AcuSport Purchase in making Prospect's decisions regarding the exercise of its rights.

98. As fiduciaries of Prospect, Wellspring Capital, Carles, and Johnson had a duty of candor and to exercise due care to impart truthful information to Prospect.

99. The false representations and omissions that Wellspring Capital, Carles, and Johnson made concerning the AcuSport Purchase were material to Prospect and induced Prospect to (i) not exercise its bargained-for remedies in response to Debtors' interest payment default in the second quarter of 2018 and (ii) instead defer two quarters of cash interest payments in the aggregate amount of \$9.5 million—a direct and particular harm to Prospect.

100. Wellspring Capital also caused Ellett to materially overstate to Prospect the value of the Debtors' inventory on their books and records. Wellspring Capital intended Prospect to rely on these misstatements, and Prospect justifiably did so rely. These misstatements cause

Prospect to justifiably believe that the Debtors' financial health was much better than it was, temporarily created the illusion that the Borrowers would not default on their interest payments, and further caused Prospect to forbear from exercising its remedies under the 2012 and 2013 Loans.

101. As a direct and proximate result of Prospect's reasonable reliance on the false representations as set forth above, Prospect was proximately harmed in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff as follows:

- a. Avoidance of the 2012 Fraudulent Transfers and 2013 Fraudulent Transfers pursuant to the South Carolina Statute of Elizabeth, applicable through [11 U.S.C. § 544](#);
- b. Recovery of the 2012 Fraudulent Transfers and 2013 Fraudulent Transfers from the Transferee Defendants and Wellspring Capital pursuant to [11 U.S.C. § 550](#), in the principal amount of \$188,864,420.94;
- c. All actual and compensatory damages sustained by Plaintiff, as the assignee of claims from Prospect, as a result of the Wellspring Capital's, Carles', and Johnson's negligent misrepresentations;
- d. Punitive damages;
- e. An award of pre- and post-judgment interest;
- f. An award of attorneys' fees and costs; and
- g. Such other relief, at law or equity, as the Court deems just and proper.

Dated: January 10, 2020

Respectfully submitted,

/s/R. William Metzger, Jr.
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