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Substantively Consolidated SIPA liquidation of
Bernard L. Madoff Investment Securities LLC
and the Chapter 7 Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Substantively
Consolidated Liquidation of Bernard L. Madoff
Investment Securities LLC and the Chapter 7 Estate
of Bernard L. Madoff,

Plaintiff,

v.

MALCOLM SAGE and LYNNE FLORIO,

Defendants.

Adv. Pro. No. 08-01789 (LGB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 23-01099 (LGB)

**MEMORANDUM OF LAW IN SUPPORT OF
TRUSTEE'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT**

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Irving H. Picard (the “Trustee”), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”), under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III, and the substantively consolidated chapter 7 estate of Bernard L. Madoff, by and through his undersigned counsel, respectfully submits this memorandum of law and accompanying declaration of James H. Rollinson (“Rollinson Declaration”) in support of the Trustee’s Motion for Leave to File an Amended Complaint (the “Motion”).

PRELIMINARY STATEMENT

In this proceeding, the Trustee seeks to recover from defendants Malcolm Sage and Lynne Florio (“Defendants”) more than \$4.75 million in subsequent transfers of property which belongs to other BLMIS customers. Federal Rule of Civil Procedure 15(a)(2) provides that a “court should freely give leave [to file an amended pleading] when justice so requires.” Here, the Trustee only recently learned through certain documents produced by Defendants in response to requests served by the Trustee more than a year and half ago, that he has grounds to assert a constructive fraudulent transfer claim against Defendants. Their recent production revealed that in 2013, Defendants deposited the entirety of the \$3,529,037.15 in income tax refunds, which they jointly received from federal and state taxing authorities, into bank accounts held solely in Ms. Florio’s name. At that time, Mr. Sage was named as a defendant in the two avoidance actions pending before this Court wherein the Trustee sought to recover \$16.88 million from Mr. Sage and certain others. Those actions culminated in \$16.88 million in judgments being entered jointly and severally against, among others, Mr. Sage, of which he has failed to satisfy any part. Given these undisputed facts, not only does the Trustee now have a constructive fraudulent transfer claim against Defendants under section 273-a of the New York Debtor and Creditor Law (“DCL”), he is also entitled to judgment on such a claim as a matter of law at this stage of this proceeding. The Trustee respectfully submits that he should be granted leave to add this claim against Defendants through

the proffered amended complaint (the “Amended Complaint”) which is attached to the Rollinson Declaration as Exhibits A–B.

RELEVANT PROCEDURAL HISTORY

In November 2010, the Trustee commenced two adversary proceedings (the “Avoidance Actions”) against two partnerships, Sage Associates and Sage Realty, respectively, and against the general partners of each partnership, Malcom Sage, Martin Sage, and Ann Sage Passer (the “Sages”), to avoid and recover fraudulent transfers made by BLMIS to the partnerships through two BLMIS accounts held by Sage Associates (Account Nos. 1S0004 and 1S0547) and one account held by Sage Realty (Account No. 1S0316) totaling \$16,880,000 within two years of the collapse of BLMIS.¹ *Picard v. Sage Assocs.*, Adv. Pro. No. 10-04362 (Bankr. S.D.N.Y.) and *Picard v. Sage Realty*, Adv. Pro. No. 10-04400 (Bankr. S.D.N.Y.). Following the removal of the Avoidance Actions from this Court, the District Court conducted a bench trial, finding in favor of the Trustee on all issues. On April 20, 2022, the District Court entered two judgments in favor of the Trustee (i) in the amount of \$13,510,000 against Sage Associates, Mr. Sage, Martin Sage, and Ann Sage Passer, jointly and severally, and (ii) in the amount of \$3,370,000 against Sage Realty, Mr. Sage, Martin Sage, and Ann Sage Passer, jointly and severally. *Picard v. Sage Assocs.*, No. 20-cv-10057 (JFK) (S.D.N.Y. Apr. 20, 2022), ECF No. 114; *Picard v. Sage Realty*, No. 20-cv-10109 (JFK) (S.D.N.Y. Apr. 20, 2022), ECF No. 70. To date, Mr. Sage has paid no monies towards either of these judgments, of which more than \$11 million remains outstanding. Trustee’s Letter at 16–17, ECF No. 138-1.²

¹ In the Avoidance Actions, the Trustee was limited to seeking the avoidance and recovery of only the two-year transfers. *See SIPC v. BLMIS*, 773 F.3d 411, 423 (2d Cir. 2014).

² Unless otherwise indicated, all ECF references refer to the above-captioned adversary proceeding.

On April 19, 2023, the Trustee commenced the instant proceeding against Defendants. In his complaint (the “Complaint”), the Trustee seeks to recover more than \$4.75 million in subsequent transfers received by Defendants of avoided transfers made by BLMIS to Sage Associates and Sage Realty in both of which Mr. Sage held an interest. Compl., ECF No. 1.

In the Complaint, the Trustee alleges that in the two-year period preceding BLMIS’s collapse, Mr. Sage received approximately \$4.5 million in subsequent transfers from Sage Associates. Compl. ¶ 58 & Ex. C.³ He deposited these subsequent transfers from Sage Associates into a bank account which he held solely in his own name at JPMorgan Chase. *Id.* ¶ 58. He thereafter used substantial portions of each of the transfers to pay federal and state income taxes for the calendar years of 2006 and 2007, which he believed he owed to the United States Treasury (the “U.S. Treasury) and the New York State Department of Taxation and Finance (“NYS Tax Department”) based on gains reported in Sage Associates account statements received from BLMIS. *See id.* ¶¶ 59–63.

Following the exposure of Madoff’s fraud, Defendants sought the refund of those payments by amending their previously-filed federal and state joint income tax returns on the basis that “[a]ll income and gains from Bernard L. Madoff [must] be[] eliminated from taxable income due to the arrest of Mr. Madoff and the announcement that any income reported from the investments with Mr. Madoff are fictitious.” *Id.* ¶¶ 64–71. At the time of the filing of the Complaint, the Trustee did not know whether the refunds had actually been issued to Defendants and thus he had to merely allege “[u]pon information and belief” that “Defendants jointly received” the refunds. *See, e.g., id.* ¶¶ 65, 67, 69 & 71. Likewise, the Trustee had no knowledge and thus could not allege as to what Defendants did with those refunds once received.

³ The Trustee also alleges Mr. Sage and Ms. Florio respectively received \$185,000 and \$70,000 in subsequent transfers from Sage Realty. Compl. ¶ 72.

In June 2023, Ms. Florio moved to dismiss the subsequent transfer claim asserted against her in the Complaint. Mot. to Dismiss Compl., ECF No. 26. Ms. Florio argued that because she had no interest in Sage Associates, she had no interest in any refunds issued by the U.S. Treasury and the NYS Tax Department and therefore cannot be deemed a subsequent transferee. *See id.* at 13. In October 2023, this Court denied the motion. Mem. Decision Denying In Part And Granting In Part Defs.’ Mot. To Dismiss (the “MTD Decision”), ECF No. 44. The Court ruled that under governing Second Circuit law, Defendants were presumed to have received the refunds in equal shares and thus the Trustee can pursue his subsequent transferee claim against Ms. Florio. *See id.* at 9–11 (applying the “50/50 Rule” which provides for a rebuttable presumption that any tax refund issued jointly to a married couple is received by each of them in equal shares).⁴

After securing an additional month to answer the Complaint, Defendants each filed an Answer to the Complaint on February 12, 2024. *See* Stipulation & Proposed Order, ECF No. 68, So Ordered Stipulation, ECF No. 69, Ms. Florio’s Answer, ECF No. 73, Mr. Sage’s Answer, ECF No. 74.

On May 17, 2024, the Trustee served numerous document requests on Defendants. In those requests, the Trustee sought, *inter alia*, documents relating to any tax refunds Defendants received from the federal and the New York State governments (Request No. 8), documents concerning the account or accounts into which any refunds they received were deposited (Request No. 9), and documents concerning how they used any refunds they received (Request No. 10). An extended stay of discovery followed due to the withdrawal of Defendants’ counsel, *see, e.g.*, ECF Nos. 82 & 98, a lengthy period in which Defendants attempted to secure new counsel, *see, e.g.*, ECF Nos.

⁴ Defendants thereafter sought to convert the MTD Decision into proposed findings of fact and conclusions of law so that they could seek immediate review of the decision by the District Court. *See* Letter, ECF No. 45. On November 30, 2023, this Court entered an errata order regarding its MTD Decision, *see* Errata Order, ECF No. 62, and then on December 5, 2023, entered an order settling its MTD Decision. *See* Order, ECF No. 63.

98 & 109, and then Defendants' refusal to produce any documents responsive to the Trustee's requests. *See, e.g.*, ECF Nos. 110 & 116. On July 16, 2025, the Trustee requested a discovery conference with the Court regarding Defendants' refusal to respond to the Trustee's document requests including, most notable for purposes of this Motion, Request Nos. 8, 9, and 10. *See* Trustee's Letter, ECF No. 120. On September 30, 2025, this Court held a conference and thereafter ordered Defendants to respond to, among others, Request Nos. 8, 9, and 10. *See* Order Regarding Disc. Dispute, ECF No. 127. On December 15, 2025, Defendants produced certain documents responsive to Request Nos. 8, 9, and 10.

In response to Request No. 8, Defendants produced the front sides of the two income tax refund checks they received from the U.S. Treasury which were both dated March 1, 2013 and made jointly payable to "Malcolm Sage & Lynne Florio" and which were respectively in the amounts of \$463,217.87 (the 2006 refund) and \$1,712,646.70 (the 2007 refund). Defendants also produced the front sides of the two income tax refund checks they received from the NYS Tax Department which were both dated October 11, 2013 and made jointly payable to "SAGE-MALCOLM & FLORIO, LYNNE" and which were respectively in the amounts of \$252,168.70 (the 2006 refund) and \$1,101,003.88 (the 2007 refund).

In response to Request No. 9, Defendants produced two account statements: a checking account at HSBC held solely in the name of "LYNNE MARIE FLORIO" which evidences the deposit into the account on March 11, 2013 of \$2,175,864.57, the total of the two refund checks jointly received by Defendants from the U.S. Treasury; and a statement for a savings account at Capital One Bank held solely in the name of "LYNNE M FLORIO" which evidences the deposit into the account on October 17, 2013 of \$1,353,172.58, the total of the two refund checks jointly received by Defendants from the NYS Tax Department.

At the recent discovery conference held on February 3, 2026 before this Court, Ms. Florio conceded that all of the \$3.5 million in refund checks were deposited into accounts held solely in her name. *See* Feb. 3, 2026 Tr. at 14:14–18, ECF No. 145 (suggesting that any further discovery relating to the transfer of the tax refunds into her own name is unnecessary: “So even though it seems to me, I’m not a lawyer, illogical to go through all that effort, I’d like to understand what will the back of the checks show when I’ve already shown that [they were] deposited in my account? So what further information . . .” is needed).

THE PROPOSED AMENDED COMPLAINT

The Trustee’s proposed Amended Complaint adds a constructive fraudulent transfer claim under DCL § 273-a and numerous new factual allegations to substantiate the claim. Specifically, the Trustee alleges in his Amended Complaint that Defendants jointly received, via four checks, a total of \$3.5 million in tax refunds from the federal and state taxing authorities, *see* Am. Compl. ¶¶ 67, 70, 73 & 76, and that the checks jointly made out to Defendants were then deposited into one of two bank accounts which Ms. Florio held solely in her own name and in which Mr. Sage held no interest. *Id.* ¶¶ 68, 71, 74 & 77. In the Amended Complaint, the Trustee continues to allege, as he did in his original Complaint, that at the time that Mr. Sage transferred each of his interest in the tax refunds to his wife, he was a named defendant in the Avoidance Actions which culminated in the District Court entering judgments against, *inter alia*, Mr. Sage totaling \$16.88 million which he has failed to satisfy in whole or in part. *Id.* ¶¶ 57, 59; *see also* Compl. ¶ 57. These factual allegations collectively plead a prima facie case for a constructive fraudulent transfer claim under DCL § 273-a.

DISCUSSION

I. LEGAL STANDARDS

Under the Federal Rules of Civil Procedure which are made applicable here by Federal Rule of Bankruptcy Procedure 7015, when a party seeks to amend its pleading, “[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). As this Court has explained, there is a well-established “presumption in favor of granting leave” to amend under Rule 15(a)(2). *Sigmund v. Martinez*, No. 06 CIV. 1043 RWS MHD, 2006 WL 2016263, at *1 (S.D.N.Y. July 13, 2006) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)); see also *In re United Brands Co. Sec. Litig.*, No. 85 CIV. 5445 (JFK), 1990 WL 16164, at *2 (S.D.N.Y. Feb. 15, 1990) (“[T]he Court begins with the presumption that the motion should be granted unless good reason exists to deny it.”); *Yerkyn v. Yakovlevich*, No. 23-CV-02399 (DHL)(CLP), 2024 WL 4350699, at *2 (E.D.N.Y. Sept. 30, 2024) (“Rule 15 expresses a strong presumption in favor of allowing amendment”). Given the presumption that granting leave favors the interests of justice, “it is rare that such leave should be denied, especially when there has been no prior amendment.” *Ricciuti v. N.Y.C. Transit Auth.*, 941 F.2d 119, 123 (2d Cir. 1991).

Under Rule 15(a)(2)’s “liberal and permissive standard,” leave to amend a pleading “should not be denied unless there is evidence of undue delay, bad faith, undue prejudice to the non-movant, or futility.” *Milanese v. Rust-Oleum Corp.*, 244 F.3d 104, 110 (2d Cir. 2001) (citing *Foman*, 371 U.S. at 182); see also *Sacerdote v. NYU*, 9 F.4th 95, 115 (2d Cir. 2021) (holding that under this “liberal and permissive standard, . . . the only grounds on which denial of leave to amend has long been held proper are upon a showing of undue delay, bad faith, dilatory motive, [or] futility” (internal quotation marks and citation omitted)). The burden is on the party opposing leave to amend to demonstrate that one or more of the grounds supporting denial exists. See, e.g., *Blagman v. Apple, Inc.*, No. 12-cv-5453, 2014 WL 2106489, at *3 (S.D.N.Y. May 19, 2014) (bad

faith); *Alexander Interactive, Inc. v. Adorama, Inc.*, No. 12-cv-6608, 2014 WL 113728, at *3–4 (S.D.N.Y. Jan. 13, 2014) (futility); *Margel v. E.G.L. Gem Lab Ltd.*, No. 04-cv-1514, 2010 WL 445192, at *10–13 (S.D.N.Y. Feb. 8, 2010) (undue prejudice).

The filing of an amended complaint should only be deemed futile where it cannot withstand a motion to dismiss under Rule 12(b)(6). See *Dougherty v. Town of N. Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 88 (2d Cir. 2002). To survive Rule 12(b)(6) scrutiny, a complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Fed. Treasury Enter. Sojuzplodoimport v. SPI Spirits Ltd.*, 726 F.3d 62, 71 (2d Cir. 2013) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible where “the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Picard v. Estate of Steven Mendelow (In re BLMIS)*, 560 B.R. 208 at 225 (Bankr. S.D.N.Y. 2016) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Whether the filing of an amended complaint is unfairly prejudicial turns on whether the amendment “would require the opponent to expend significant additional resources to conduct discovery and prepare for trial or significantly delay the resolution of the dispute.” *AEP Energy Servs. Gas Holding Co. v. Bank of Am., N.A.*, 626 F.3d 699, 725–26 (2d Cir. 2010) (internal quotation marks and citation omitted); see also *Estate of Ratcliffe v. Pradera Realty Co.*, No. 05-CV-10272, 2007 WL 3084977, at *4 (S.D.N.Y. Oct. 19, 2007) (finding diligence and lack of unfair prejudice when plaintiff moved to amend shortly after learning the relevant facts through discovery). The party opposing amendment has the burden of establishing “actual prejudice, not the possibility of prejudice.” *Mendelow*, 560 B.R. at 224; see also *State Teachers Ret. Bd. v. Fluor Corp.*, 654 F.2d 843, 856 (2d Cir. 1981) (finding no prejudice where no trial date had been set, no motion for summary judgment had been filed, and the amendment would not involve much additional discovery).

II. THE TRUSTEE SHOULD BE GRANTED LEAVE TO AMEND THE COMPLAINT

A. AMENDING THE COMPLAINT WOULD NOT BE FUTILE

The Trustee's newly asserted claim in his proffered Amended Complaint can readily survive a motion to dismiss.

On April 4, 2020, the New York Uniform Voidable Transactions Act ("UVTA") became effective and replaced Article 10, Sections 270 to 281 of the DCL. *See Diaz v. 297 Schaefer St. Realty Corp.*, 145 N.Y.S.3d 813, 814 (N.Y. App. Div. 2021) (citing N.Y. Laws, Ch. 580, § 2). Prior to that date, the DCL provided that a conveyance made without fair consideration by a defendant, who at the time of the transfer was a party in an action for money damages, is fraudulent as to the plaintiff in that action, regardless of intent, if the defendant fails to satisfy a resulting judgment in the action:

Conveyances by defendants. Every conveyance made without fair consideration when the person making it is a defendant in an action for money damages or a judgment in such an action has been docketed against him, is fraudulent as to the plaintiff in that action without regard to the actual intent of the defendant if, after final judgment for the plaintiff, the defendant fails to satisfy the judgment.

DCL § 273-a (2019). The repeal of DCL § 273-a in early 2020, however, does not "apply to a transfer made or obligation incurred before" its repeal, that is any transfer made before April 4, 2020. *Great Atl. & Pac. Tea Co., Inc. v. 380 Yorktown Food Corp.*, No. 16-CV-5250, 2020 WL 4432065, at *17 n.19 (S.D.N.Y. July 31, 2020); *see also Ray v. Ray*, 799 F. App'x 29, 31 n.1 (2d Cir. 2020) ("[A]ll sections of the NYDCL relevant to this appeal have been repealed and replaced The new provisions, however, will 'not apply to a transfer made or obligation incurred before' the act's effective date, 'nor shall [they] apply to a right of action that has accrued before [that] effective date.'"). DCL § 273-a therefore is in full effect here given that the fraudulent transfers made by Defendants at issue here were made in 2013.

A claim under DCL § 273-a is likewise entirely timely here. A fraudulent transfer claim under section 273-a is governed by a six-year statute of limitation. *See, e.g., Wall Street Assocs. v. Brodsky*, 257 A.D.2d 526, 530 (1st Dep’t 1999) (“New York law provides [that] a claim for constructive fraud is governed by the six-year limitation set out in CPLR 213(1).”). Any claim under section 273-a does not accrue until the time that the judgments in the relevant action was entered, which here occurred on April 20, 2022. *See, e.g., Coyle v. Lefkowitz*, 89 A.D.3d 1054, 1056 (2011); *Foley v. Union de Banques Arabes et Francaises*, 683 F. Supp. 3d 375, 395 (S.D.N.Y. 2023). Accordingly, the Trustee’s claim against Defendants under section 273-a is timely.

Finally, the Trustee can readily establish all elements of a claim under DCL § 273-a against Defendants. Indeed, once filed, the Trustee will be entitled to judgment as a matter of law on the claim. The Trustee filed his avoidance actions against Mr. Sage and certain others in November 2010 wherein he sought to avoid and recover \$16.88 million in fraudulent transfers or the value thereof from, among others, Mr. Sage. *See* Am. Compl. ¶¶ 53–55; *see also* Compl. ¶¶ 53–55. In March and October 2013, Mr. Sage transferred all of his interests in the \$3.5 million in federal and state tax refunds to Ms. Florio without fair consideration. *See* Am. Compl. ¶¶ 68, 71, 74 & 77. And finally, the Trustee secured in April 2022 judgments totaling \$16.88 million jointly and several against, *inter alia*, Mr. Sage in connection with the avoidance actions which he has failed to satisfy in whole or in part. *See id.* ¶¶ 57, 59; *see also* Compl. ¶ 57. And notably, unlike with actual fraudulent conveyances, Defendants’ intent is irrelevant to whether they are liable under DCL § 273-a. *See, e.g., Lyman Commerce Sols., Inc. v. Lung*, No. 12 Civ. 4398, 20115 WL 1808693, at *5 (S.D.N.Y. Apr. 20, 2015). DCL § 273-a explicitly provides that a transfer “is fraudulent . . . without regard to the actual intent of the defendant.” Accordingly, although there can be little doubt about Defendants’ motivation in transferring the entirety of the \$3.5 million in

tax refunds, which they jointly received, solely into Ms. Florio's name, their intent in doing so is irrelevant here.

Given the foregoing facts, the added constructive fraudulent transfer claim under DCL § 273-a in the Trustee's proffered Amended Complaint can readily survive Rule 12(b)(6) scrutiny.

B. THE TRUSTEE HAS NOT ACTED WITH UNDUE DELAY OR IN BAD FAITH IN MOVING FOR LEAVE TO AMEND

The Trustee has acted entirely in good faith and has not engaged in any type of delay in seeking leave to amend. Indeed, the record before this Court demonstrates that the Trustee has diligently attempted to move this proceeding forward at every stage. All delays in this proceeding to date are solely attributable to Defendants.

As recounted *supra* at 5, following this Court's entry on December 5, 2023 of an order denying Defendants' motion to dismiss the subsequent transferee claim asserted against them and then Defendants' Answers to the Complaint on February 12, 2024, the Trustee served numerous document requests on Defendants on May 17, 2024. The Trustee sought various categories of documents including documents relating to any income tax refunds Defendants received from the federal and the New York State governments (Request No. 8) as well as documents concerning the account or accounts into which any refunds they received were deposited (Request No. 9). A lengthy delay then followed caused first by Defendants' counsel that successfully withdrew as counsel of record over Defendants' objection, Defendants' unsuccessful attempt to secure new counsel, and Defendants' refusal to engage in any form of discovery while they pursued an attack on the underlying judgments entered by the District Court. *See* ECF Nos. 82, 98, 103, 104, 115, 116; Mot. for Relief Fed. R. Civ. P. 60(d)(3), *Picard v. Sage Assocs.*, No. 20-cv-10057 (S.D.N.Y. July 1, 2025), ECF No. 125. Ultimately, on October 1, 2025, this Court ordered Defendants to provide documents responsive to, among other of Trustee's document requests, Request Nos. 8 and 9. ECF No. 127. On December 15, 2025, Defendants finally produced certain documents

responsive to Request Nos. 8, 9, and 10. *See* ECF Nos. 133 & 137. Only through that production by Defendants did the Trustee learn that (1) Defendants actually received \$3.5 million in refunds in 2013 from the federal and state taxing authorities and (2) upon receipt of each refund, the refund checks were endorsed over to Ms. Florio and deposited into accounts solely held by Ms. Florio. Within a month of learning these facts, the Trustee sought leave from this Court to file the Amended Complaint. ECF No. 138.

Given the foregoing sequence of events, the Trustee has acted timely and entirely in good faith in seeking leave to amend the Complaint to add a claim under DCL § 273-a against Defendants.

C. DEFENDANTS WILL NOT BE UNFAIRLY PREJUDICED BY THE FILING OF THE AMENDED COMPLAINT

Defendants will suffer no unfair prejudice as a result of the filing of the Trustee’s Amended Complaint. The Trustee acted swiftly in seeking leave to amend the Complaint once he learned through discovery of facts that he had grounds to assert a fraudulent transfer claim under DCL § 273-a against Defendants. *See Estate of Ratcliffe*, 2007 WL 3084977, at *4 (finding lack of unfair prejudice when plaintiff moved to amend shortly after learning relevant facts through discovery to support a further claim for relief). And the Trustee only discovered his ability to assert such a claim through Defendants’ own documents which they finally produced more than a year and a half after being served with requests seeking production of the same. If Defendants somehow are prejudiced by the filing of the Amended Complaint, such prejudice is not unfair—they brought it on themselves.

But Defendants cannot possibly complain of any prejudice caused by the filing of the Amended Complaint. The amendment would not “require [Defendants] to expend significant additional resources to conduct discovery and prepare for trial or significantly delay the resolution of the dispute.” *AEP Energy Servs. Gas Holding Co.*, 626 F.3d at 725–26 (internal quotation marks

and citation omitted). There will be minimal, if any, further discovery required concerning the added fraudulent transfer claim against Defendants. *See, e.g., State Teachers Ret. Bd.*, 654 F.2d at 856 (finding no prejudice where no trial date had been set, no motion for summary judgment had been filed, and amendment would not involve much additional discovery). Indeed, judgment as a matter of law can be entered in favor of the Trustee on the constructive fraudulent transfer against Defendants under DCL § 273-a at this stage of the proceeding. All of the elements of such a claim are already a part of the record in this proceeding and are beyond dispute.

CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that this Court grant his motion for leave to file his Amended Complaint.

Date: February 25, 2026
Cleveland, Ohio

By: /s/ James H. Rollinson

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