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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re	)	Misc. Case No. 24-00203
WINDSOR TERRACE HEALTHCARE,	)	
LLC,	)	
	)	
Debtor.	)	
<hr/>		
DONALD KNESTRICK by and through	)	Adv. Proc. No. 24-2193
his successor-in-interest KATHERINE	)	
FELKINS and KATHERINE FELKINS,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
WINDSOR NORCAL 13 HOLDINGS,	)	
LLC, et al.,	)	
	)	
Defendants.	)	
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**This Memorandum Decision is not appropriate for publication.  
It may be cited for persuasive value on the matters addressed.**

**MEMORANDUM OPINION AND DECISION**

On October 4, 2024, a Notice of Removal of the State Court Action was filed by Windsor Sacramento, Estates, LLC (the Debtor-Defendant) and Non-Debtor Defendant Windsor Norcal 13 Holdings, LLC (collectively the “Defendants”). Dckt. 1. Plaintiffs Katherine Felkins, as successor in interest to the late Donald Knestrict, and Katherine Felkins, individually (“Plaintiffs”) have filed a Motion requesting this Court enter an order remanding the Superior Court Proceeding *Knestrict vs. Windsor Oxford Holding Company, LLC, et al.*, Case No. 34-2022-00313404, to the Superior

1 Court for the County of Sacramento (“Superior Court Proceeding”). Dckt. 13.

2 The Defendants in the State Court Action opposing the remand are Windsor Sacramento,  
3 Estates, LLC (the Debtor-Defendant) and Non-Debtor Defendant Windsor Norcal 13 Holdings,  
4 LLC. Dckt. 20.<sup>1</sup>

5 **Plaintiffs Not Consenting to a Bankruptcy Judge Entering**  
6 **Orders (other than for the Motion to Remand)**  
**or Judgment for the Removed State Court Action**

7 On October 14, 2024, Plaintiffs filed the Statement Pursuant to Federal Bankruptcy Rule  
8 9027(e)(3) and Judicial Code Section 157(e), in which Plaintiffs states (reformatted by this Court  
9 into separate subparagraphs for ease of reading):

10 Pursuant to Federal Rule of Bankruptcy Procedure 9027(e)(3) and Judicial Code  
11 section 157(e), the non-removing plaintiff:

12 (i) disputes that any claim or cause of action herein should proceed or be  
13 tried by or before any tribunal other than the Superior Court;

14 (ii) disputes that any claim or cause of action herein is core;

15 (iii) respectfully declines to consent to entry of orders or judgment by the  
16 bankruptcy judge;

17 (iv) demands trial by jury;

18 (v) respectfully declines to consent to the bankruptcy judge conduct a jury  
19 trial; and

20 (vi) reserves all rights, claims, and defenses concerning all of the foregoing.

21 Nothing herein or in any subsequent filing shall constitute or be deemed or construed  
22 as a waiver of any rights (or as any form of consent that could adversely affect such  
23 rights) under the Constitution, the Bankruptcy Code, the Bankruptcy Rules, and/or  
24 any applicable law, including under Article III of the Constitution with respect to the  
25 exercise of the judicial power of the United States, with respect to any of the  
26 foregoing.

27 Statement; p. 1:23 - 2:6; Dckt. 10.

28 In the plain language of Plaintiffs, they respectfully do not consent to an Article I Bankruptcy

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<sup>1</sup> Though the State Court Action is not a core matter proceeding, by filing the Motion to Remand, Defendants filing their opposition, and the Parties arguing this matter and submitting it to the Bankruptcy Judge for determination, these Parties have consented, for purposes of this Motion only, to the Bankruptcy Judge entering the order on the Motion to Remand. *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665 (2015).

Judge entering any order (other than for this Motion to Remand) or judgment for the Removed State Court Action.

### Review of Motion to Remand

The State Court Action involves Plaintiffs' claims against Defendants which Defendants removed to this Court on September 26, 2024. Plaintiffs move this Court to remand the State Court Action on the following grounds:

1. The court should remand based upon 28 U.S.C. § 1447 and 1452 on the basis that: (i) on the facts and in the posture presented here, this Court "lacks subject matter jurisdiction," 28 U.S.C. § 1447(c), and (ii) additionally or in the alternative, remand of the Superior Court Action is appropriate on "any equitable ground," *id.* § 1452(b). Mot. 2:1-5, Docket 13.
2. The exclusively state law causes of action that arise under and are governed by California law, which can and should be applied by California courts in a case brought by California plaintiffs against a California facility; and
3. The absence of any federal interest or nexus – including to the out-of-District bankruptcy case that the Debtors themselves say is now post-confirmation and post-consummation.

Mot. 2:9-14. Docket 13.

Plaintiffs' bankruptcy counsel, Robert Pfister, submits his Declaration in support. Docket 15. Mr. Pfister testifies as to some time lines surrounding this case, including other details of case prosecution and plan confirmation in the related bankruptcy case in the Central District of California, Case No. 1:23-bk-11200-VK. Decl. ¶¶ 2-4, Docket 15.

Mr. Pfister identifies language in the confirmed Plan that states Plaintiffs' claim is not liquidated, and the Plan provides the claim is to be liquidated by jury trial in either a United States District Court or a California Superior Court. *Id.* at ¶ 5. Mr. Pfister testifies as to other personal injury claims ongoing against Debtor-Defendant and related affiliates, noting that Debtor-Defendant has removed some, but not all, of the other personal injury claims. Mr. Pfister testifies that randomness in removal shows there is no particular nexus between the post-confirmation liquidation of these matters and the prosecution of the confirmed Plan. *Id.* at ¶¶ 10, 11.

Plaintiffs' Superior Court Proceeding counsel, Edward Dudensing, also submits his Declaration in support. Decl., Docket 17. Mr. Dudensing testifies as to the conditions the late Donald Knestrict suffered during her time under Defendants' care. *Id.* at ¶ 3. Mr. Dudensing

1 testifies as to the nature of the issues, specifically that the issues involve state law specific causes  
2 of action. *Id.* at ¶ 4.

### 3 DEFENDANTS' OPPOSITION

4 Defendants Windsor Sacramento Estates, LLC ("Debtor-Defendant") and Non-Debtor  
5 Defendant Windsor Norcal 13 Holdings, LLC (collectively "Defendants") filed an Opposition on  
6 November 21, 2024. Defendants oppose remand on the following grounds:

- 7 1. The *Cedar Funding* factors weigh against remand. The fact that the Debtor's  
8 Plan of Reorganization has been confirmed and distributions have begun  
9 makes remand a much less efficient administration of the estate. Opp'n 2:6-  
10 17, Docket 20.
- 11 2. Importantly, because Plaintiffs have alleged that Non-Debtor Defendant  
12 Windsor Norcal 13 Holdings, LLC and all DOE Defendants in this matter are  
13 alter egos of and/or joint venturers with Windsor Sacramento Estates, LLC,  
14 but have only alleged injurious conduct by Windsor Sacramento Estates,  
15 LLC, the liability of the alleged alter ego/joint venturer Non-Debtor  
16 Defendant is not separate from that of Windsor Sacramento Estates, LLC.  
17 Therefore, the liability of the Debtor-Defendant and the Non-Debtor  
18 Defendants must be determined at the same time in the same forum. *Id.* at  
19 1:16-2:5.

### 20 PLAINTIFFS' REPLY

21 Plaintiffs filed a Reply on November 28, 2024. Plaintiffs state:

- 22 1. Debtor-Defendant has filed Oppositions in related cases after the *Orrick*  
23 ruling, but Debtor-Defendant does not mention this ruling, electing instead  
24 to argue similarly afresh. Reply 2:14-3:4, Docket 24.
- 25 2. The facts here are indistinguishable from those in *Orrick*, including the facts  
26 that: (i) the Debtors' confirmed Plan does not provide for liquidation of these  
27 personal injury claims in bankruptcy court; (ii) the sole remaining task is the  
28 liquidation of a state law claim that is much better suited to disposition in the  
Superior Court than in this Court; and (iii) this Court cannot preside over the  
jury trial that both sides have demanded but that Plaintiffs refuse to agree can  
take place here. *Id.* at 8:1-7.
3. Furthermore, as Debtors in the bankruptcy case have moved for a final  
decree, Plaintiffs argue their subject matter jurisdiction argument is even  
stronger now. *Id.* at 8:26-9:2.

### APPLICABLE LAW

Defendants removed the State Court Action as provided in 28 U.S.C. § 1452 and 1334(b),  
and Federal Rule of Bankruptcy Procedure 9027 to this Bankruptcy Court. These Sections and Rule  
provide as follows:

§ 1452. Removal of claims related to bankruptcy cases

(a) **A party may remove any claim or cause of action in a civil action** other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, **to the district court for the district where such civil action is pending**, if such district court has **jurisdiction of such claim or cause of action under section 1334 of this title**.

(b) The court to which such claim or cause of action is removed **may remand such claim or cause of action on any equitable ground**. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

28 U.S.C. § 1452 [emphasis added].

§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, **the district courts shall have original but not exclusive jurisdiction of all civil proceedings** arising under title 11, or arising in or **related to cases under title 11**.

(c)

(1) Except with respect to a case under chapter 15 of title 11, **nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding** arising under title 11 or arising in or **related to a case under title 11**.

(2) **Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11** but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, **the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction**.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

....

28 U.S.C. § 1334(a)-(d) [emphasis added].

1 In reviewing the proper exercise of federal court jurisdiction in connection with related to  
2 matters and the “bankruptcy intrusion” (in a positive way) on the State Court judicial process, the  
3 provisions of 28 U.S.C. § 157 are also relevant.

4 § 157. Procedures

5 (a) Each district court may provide that any or all cases under title 11 and any or all  
6 proceedings arising under title 11 or arising in or related to a case under title 11 shall  
be referred to the bankruptcy judges for the district.

7 (b)

8 (1) Bankruptcy judges may hear and determine all cases under title 11 and all  
9 core proceedings arising under title 11, or arising in a case under title 11,  
10 referred under subsection (a) of this section, and may enter appropriate orders  
and judgments, subject to review under section 158 of this title.

11 (2) Core proceedings include, but are not limited to—

12 (A) matters concerning the administration of the estate;

13 (B) allowance or disallowance of claims against the estate or  
14 exemptions from property of the estate, and estimation of claims or  
15 interests for the purposes of confirming a plan under chapter 11, 12,  
16 or 13 of title 11 **but not the liquidation or estimation of contingent  
or unliquidated personal injury tort or wrongful death claims  
against the estate for purposes of distribution in a case under title  
11;**

17 (C) counterclaims by the estate against persons filing claims against  
the estate;

18 (D) orders in respect to obtaining credit;

19 (E) orders to turn over property of the estate;

20 (F) proceedings to determine, avoid, or recover preferences;

21 (G) motions to terminate, annul, or modify the automatic stay;

22 (H) proceedings to determine, avoid, or recover fraudulent  
23 conveyances;

24 (I) determinations as to the dischargeability of particular debts;

25 (J) objections to discharges;

26 (K) determinations of the validity, extent, or priority of liens;

27 (L) confirmations of plans;

28 (M) orders approving the use or lease of property, including the use  
of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, **except personal injury tort or wrongful death claims**; and

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

...

**(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court** in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)

**(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge** after considering the bankruptcy judge's proposed findings and conclusions and after reviewing *de novo* those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

....

28 U.S.C. § 157(a)-(c) [emphasis added].

The plain language of 28 U.S.C. § 157(c) expressly states that for non-core matters, while the Bankruptcy Judge may hear the non-core proceeding, only proposed findings and conclusions may be issued by the Bankruptcy Judge, which must then be sent to the District Court Judge for actual determination and ruling.

Collier on Bankruptcy discusses this wrongful death and personal injury tort exception from the referral to the bankruptcy court, stating:

**(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.**



1 It is not at all clear what constitutes a “personal injury tort” claim. **Some courts**  
2 **(those that adopt what is called the “narrow view”) require a trauma or bodily**  
3 **injury;**<sup>1</sup> others more broadly look for “**any injury which is an invasion of personal**  
4 **rights.**”<sup>2</sup> A third viewpoint (which one court has called the “hybrid approach”<sup>2a</sup> finds  
5 fault with both of these approaches, and concludes that “in cases where it appears  
6 that a claim might be a ‘personal injury tort claim’ under the ‘broader’ view but has  
7 earmarks of a financial, business or property tort claim, or a contract claim, the court  
8 reserves the right to resolve the ‘personal injury tort claim’ issue by (among other  
9 things) a more searching analysis of the complaint.”<sup>3</sup>

6 1

7 A persuasive decision adopting the narrow view following a thorough review  
8 of the legislative history, is *In re Gawker Media LLC*, 571 B.R. 612 (Bankr.  
9 S.D.N.Y. 2017). *See also Massey Energy Co. v. West Va. Consumers for*  
10 *Justice*, 56 C.B.C.2d 1585, 351 B.R. 348, 351 (E.D. Va. 2006) (claims for  
11 defamation and business conspiracy are not PITWD claims, a category that  
12 “is limited to a narrow range of claims that involve an actual physical  
13 injury”); *In re Sheehan Mem’l Hospital*, 377 B.R. 63, 68 (Bankr. W.D.N.Y.  
14 2007) (employment discrimination claim); *In re Cohen*, 107 B.R. 453  
15 (S.D.N.Y. 1989) (claim for statutory violation of state anti-discrimination  
16 law); *In re Atron Inc.*, 172 B.R. 541 (Bankr. W.D. Mich. 1994) (civil rights  
17 complaint alleging damages for mental and emotional distress does not  
18 qualify); *In re Interco, Inc.*, 135 B.R. 359 (Bankr. E.D. Mo. 1991) (age  
19 discrimination complaint alleging emotional distress does not qualify).

14 2

15 *Control Center, L.L.C. v. Lauer*, 288 B.R. 269, 286 (M.D. Fla. 2002)  
16 (“Defamation is a personal injury tort.”); *Unnamed Citizens A thru E v. White*  
17 (*In re White*), 410 B.R. 195 (Bankr. W.D. Va. 2008) (violation of federal and  
18 state housing laws); *Leathem v. Volkmar (In re Volkmar)*, 217 B.R. 561, 566  
19 (Bankr. N.D. Ill. 1998) (“personal injury tort” may include complaint  
20 alleging intentional infliction of emotional distress); *Thomas v. Adams (In*  
21 *re Gary Brew Enters.)*, 198 B.R. 616 (Bankr. S.D. Cal. 1996) (racial  
22 discrimination complaint falls within the term).

19 2a

20 *In re Residential Capital, LLC*, 536 B.R. 566, 572 (Bankr. S.D.N.Y. 2015),  
21 followed by *In re Roman Catholic Church for the Archdiocese of New*  
22 *Orleans*, 2021 U.S. Dist. LEXIS 160497 at \*7 (E. D. La., Aug. 25, 2021).

21 3

22 *Parker v. Miller (In re Miller)*, 589 B.R. 550, 563 (Bankr. S.D. Miss. 2018)  
23 (**alienation of affection and intentional infliction of emotional distress are**  
24 **PITWD claims**); *In re Residential Capital, LLC*, 536 B.R. 566, 572 (Bankr.  
25 S.D.N.Y. 2015) (**emotional distress, whether intentional or negligent**);  
26 *Elkes Devel., LLC v. Arnold (In re Arnold)*, 407 B.R. 849 (Bankr. M.D.N.C.  
27 2009); *Stranz v. Ice Cream Liquidation, Inc. (In re Ice Cream Liquidation,*  
28 *Inc.)*, 281 B.R. 154, 161 (Bankr. D. Conn. 2002) (also holding that the  
provisions regarding personal injury tort and wrongful death claims are not  
constitutionally mandated); accord *Adelson v. Smith (In re Smith)*, 389 B.R.  
902, 908 (Bankr. D. Nev. 2008) (**libel claim is a PITWD claim**). The  
Supreme Court noted this triad of views in the course of its opinion in *Stern*  
*v. Marshall*, 564 U.S. 462, 131 S. Ct. 2594, 180 L. Ed. 2d 475, 65 C.B.C.2d  
827 (2011), discussed at ¶¶ 3.02[3][d][i] and 3.03 supra, but did not have to  
reach the issue.



1 Collier on Bankruptcy, ¶ 3.06 (16th Edition) [emphasis added].

Even under the most narrow view (which is not adopted by the trial courts in the Ninth Circuit), one looks to see if the claim is based on a “trauma or physical injury.”

As the court addresses below, the confirmed Chapter 11 Plan provides the process for the liquidation of the debt that Plaintiffs assert in the Superior Court Judicial Proceeding. In the Chapter 11 Plan itself (counsel for the Debtor in Possession listed as the attorneys in the upper left hand corner of page 1 of the confirmed Plan), expressly references claims in the nature of Plaintiffs’ asserted in the Superior Court Proceeding as a “Personal Injury Claim.”

The following is the “plain language” stated by the Debtor-Defendant in the Chapter 11 Plan relating to Plaintiffs’ claim that constitutes the State Court Action:

49. **“Litigation Claim” means an Employment Claim or Personal Injury Claim.**

Confirmed Plan, p. 7:22; Exhibit B, Dckt. 17 (emphasis added)

64. **“Personal Injury Claim” means a General Unsecured Claim that has been scheduled by the Debtors or asserted by a claimant in a timely filed proof of claim for damages for personal injury, wrongful death or related claims.**

*Id.*; p. 8:21-23. (emphasis added).

**Class 4 – General Unsecured Claims.** Each holder of an Allowed Class 4 General Unsecured Claim will have the option (which option will be included in their Plan ballot) of selecting between the following two treatments under this Plan, which (except as set forth immediately below) will be in full settlement and satisfaction of their Allowed General Unsecured Claim against the Debtors. Each Claimant with a Personal Injury Claim who does not accept the Debtors’ proposed Claim settlement amount and who is otherwise not able to reach agreement with the Debtors on a different mutually agreeable Claim settlement amount prior to the date of Plan confirmation (each, a **“Non-Settling Personal Injury Claimant”**) **shall be permitted to proceed with the liquidation of their disputed Personal Injury Claim against the Debtors and any third parties (including the Guarantors) in the manner set forth in Section IV(D)(7) below.**

*Id.*; p. 12:17-27. (emphasis added).

The **Personal Injury Claim** of any claimant who does not accept the Debtors’ proposed Claim settlement amount and who does not reach agreement with the Debtors through mediation or otherwise on a different mutually agreeable Claim settlement amount will be deemed a Disputed Claim, and **the holder of any such Claim will not be entitled to receive any distribution from the Reorganized Debtors unless and until such Claim becomes a liquidated Allowed Claim pursuant to a Final Order from the District Court or, to the extent the District Court elects to abstain, the applicable state court, at which time such Claim will be treated in the same manner as all other Allowed General Unsecured Claims.** For the avoidance of doubt, all rights of holders of Personal Injury Claims and the

Reorganized Debtors with respect to any request for abstention by the District Court are expressly preserved and reserved.

*Id.*; p. 32:1-11.

Thus, it appears that the plain language of the Confirmed Chapter 11 Plan, drafted for and prosecuted by the Debtor-Defendant, defines Plaintiffs' claim as one for "Personal Injury."

### Statutory Remand Provisions

As grounds for remand, Plaintiffs cites to 28 U.S.C. §§ 1447(c) and 1452(b), which state:

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

28 U.S.C. § 1447(c);

**(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.**

28 U.S.C. 1452(b) [emphasis added].

In the Opposition, Defendants also cite to 28 U.S.C. § 1367(a) as an additional basis for Federal Court jurisdiction for the State Court Action.

§ 1367. Supplemental jurisdiction

**(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.** Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

**(b)** In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title [Diversity], the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be

1 inconsistent with the jurisdictional requirements of section 1332.

2 (c) The **district courts may decline to exercise supplemental jurisdiction** over a  
3 claim under subsection (a) if—

4 (1) **the claim raises a novel or complex issue of State law,**

5 (2) **the claim substantially predominates over the claim or claims over  
6 which the district court has original jurisdiction,**

7 (3) the district court has dismissed all claims over which it has original  
8 jurisdiction, or

9 (4) in exceptional circumstances, there are other compelling reasons for  
10 declining jurisdiction. . . .

11 28 U.S.C. § 1367 [emphasis added].

12 It is argued in the Opposition that this State Court Action is “related to *In re Windsor*, a case  
13 arising in title 11 of the U.S. Code.” Opposition, p. 7:28-8:2; Dckt. 19. As addressed above,  
14 Congress expressly provides in 28 U.S.C. § 1334 for such “related to” jurisdiction in connection  
15 with jurisdiction being asserted pursuant to all proceedings under Title 11 or arising in or related to  
16 cases under Title 11.

17 A decision to remand under 28 U.S.C. 1452(b) is “committed to the sound discretion of the  
18 bankruptcy judge” and is only overturned on an abuse of discretion standard. *In re McCarthy*, 230  
19 B.R. 414, 416 (B.A.P. 9th Cir. 1999). In *McCarthy*, the Bankruptcy Appellate Panel for the Ninth  
20 Circuit found that remand was proper on an equitable basis, the bankruptcy court having made  
21 findings of fact and conclusions of law to support remand. Such findings and conclusions included  
22 the fact that the counts in the complaint were grounded upon state law issues that do not commonly  
23 arise in bankruptcy. The Bankruptcy Appellate Panel found that this factor was sufficient for a  
24 Bankruptcy Judge’s discretion in choosing to remand on the equities. *Id.* at 418.

25 In this Adversary Proceeding, the crux of Defendants’ argument is that removal is proper as  
26 the State Court Action claims share a close nexus with the related bankruptcy case. Therefore,  
27 pursuant to 28 U.S.C. § 1367(a), remand should be denied.

28 As this Court addresses below in considering the *Cedar Funding* Factors, remand is proper  
and there is not a “close nexus” to the Debtor-Defendant’s Bankruptcy Case. It is true that the  
claims of Plaintiffs must be determined so that payment thereon can be made pursuant to the terms

1 of the Confirmed Plan; however, there is no such “close nexus” to the Bankruptcy Case. Moreover,  
2 the court disagrees that the adjudication of the claim in State Court, as permitted in the Confirmed  
3 Plan, impairs Debtor-Defendant’s ability to perform the Confirmed Plan.

4  
5 **Plaintiffs Filing a Motion to Remand  
Rather Than a Motion to Abstain**

6 The Confirmed Chapter 11 Plan states that for a Disputed Claim, which is the subject of the  
7 State Court Action, that such:

8 Disputed Claim, and the holder of any such Claim will not be entitled to receive any  
9 distribution from the Reorganized Debtors unless and until such Claim becomes a  
10 liquidated Allowed Claim pursuant to a Final Order from the District Court or, to the  
11 extent the District Court **elects to abstain**, the applicable state court, at which time  
such Claim will be treated in the same manner as all other Allowed General  
Unsecured Claims. . . .

12 Confirmed Chapter 11 Plan, Section D, Means of Effectuating Plan, ¶ 7, Protocol for Liquidation  
13 Claims, Plan p. 32:4-9; Dckt. 17 (emphasis added).

14 The court observes that while the Confirmed Chapter 11 Plan uses the term “abstain” with  
15 respect to the Federal Court determining not to adjudicate the State Court Action, the Plaintiffs have  
16 filed a Motion to “remand” rather than a motion to “abstain.” It may be that Plaintiffs did not read  
17 the word abstain as a statutorily significant Bankruptcy Code term, but in its general sense as  
18 “choose not to do” (Merriam-Webster Dictionary, [www.merriam-webster.com](http://www.merriam-webster.com)).

19 The Defendants have chosen to litigate this matter under the Motion to Remand, also  
20 apparently concluding that the word abstain was being used in its common English language  
21 terminology rather than a statutory term.

22 Congress provides in 28 U.S.C. § 1334(c) that the court may abstain from hearing a  
23 particular proceeding arising under title 11 or arising in or related to a case under title 11. The  
24 court’s decision to abstain is not reviewable on appeal. 28 U.S.C. § 1334(d).

25 The Ninth Circuit Court of Appeals has addressed the factors to be considered in determining  
26 whether the Federal Trial Court should abstain or not in *In re Tucson Estates, Inc.*, 912 F.2d 1162,  
27 1165-1167 (1990). These abstention factors match up almost identically compared with the factors  
28 a court considers when deciding remand. However, as the Motion was filed in the remand context,

the Court actually considers two additional factors. Comparison of the remand and the abstention factors are shown in the following chart:

<i>In re Tucson Estate, Inc.</i> Abstention Factors	<i>In re Cedar Funding, Inc.</i> , 419 B.R. 807, 820–21 (B.A.P. 9th Cir. 2009) Remand Factors.
(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,	(1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
(2) the extent to which state law issues predominate over bankruptcy issues,	(2) extent to which state law issues predominate over bankruptcy issues;
(3) the difficulty or unsettled nature of the applicable law,	(3) difficult or unsettled nature of applicable law;
(4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,	(4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
(5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,	(5) jurisdictional basis, if any, other than § 1334;
(6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,	(6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
(7) the substance rather than form of an asserted 'core' proceeding,	(7) the substance rather than the form of an asserted core proceeding;
(8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,	(8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
(9) the burden of the bankruptcy court's docket,	(9) the burden on the bankruptcy court's docket;
(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,	(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
(11) the existence of a right to a jury trial, and	(11) the existence of a right to a jury trial;
(12) the presence in the proceeding of nondebtor parties.	(12) the presence in the proceeding of nondebtor parties;
	(13) comity; and
	(14) the possibility of prejudice to other parties in the action.

As shown by the review of the remand and the abstention factors, the only real difference between the Court's decision to remand or a court's decision to abstain is that the decision to abstain is not reviewable on appeal. In considering this Motion to Remand, the Court necessarily applied

1 all of the abstention factors, and included the two additional remand factors of “comity” and “the  
2 possibility of prejudice to other parties to the action.” These two additional factors had no impact  
3 on the outcome - that this State Court Action should be tried and judgment entered in the State  
4 Court. Thus, though presented and opposed as a Motion to Remand, the court effectively considered  
5 all of the factors as it would have if a motion to abstain had been filed.

## 6 DISCUSSION

7 Although the State Court Action is complex given the gravity of the claims asserted, issues  
8 presented, and allegations made therein, this Court has been presented with a straightforward set of  
9 facts predicated a somewhat straightforward resolution of the Motion to Remand. Plaintiffs seek  
10 remand based on a lack of subject matter jurisdiction, or based on any equitable ground based on  
11 Ninth Circuit Law. Defendants argue removal is proper and this Court should deny remand, and  
12 exercise its original or supplemental jurisdiction over Plaintiffs’ claim, to consolidate the claims and  
13 liquidate the Plaintiffs’ claims in the Federal Court forum.

### 14 Federal Court Jurisdiction

15 As this Court addresses in this Ruling and in detail at the hearing, Congress expressly  
16 provides for Federal Court jurisdiction in 28 U.S.C. § 157 where not only core matter proceedings,  
17 but also certain non-core proceedings, can be ruled on by a Bankruptcy Judge with the consent of  
18 the parties. However, Congress expressly provides in 11 U.S.C. § 157(b)(2)(B) that allowance or  
19 disallowance of claims based on a personal injury tort or wrongful death claims are not core matter  
20 proceedings, and, even going further, Congress expressly requires that the District Court shall order  
21 that personal injury or and wrongful death claims be tried in the District Court (28 U.S.C.  
22 § 157(b)(5)). Such personal injury claims must be tried in the District Court, not the Bankruptcy  
23 Court, by the plain language of 11 U.S.C. § 157(b)(5).<sup>2</sup>

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24  
25 <sup>2</sup> The Supreme Court in *Stern v. Marshall*, 564 U.S. 462, 479-480 (2011), has held that while the  
26 provisions of 28 U.S.C. § 157(b)(5) requiring that the personal injury tort and wrongful death claims shall  
27 be tried in the District Court are not statutory jurisdictional limitation provisions, but did conclude that  
absent the consent of the parties adjudication of such claims violated the Constitutional jurisdiction  
provisions providing the right to adjudication of such rights in an Article III Court.

28 In this Adversary Proceeding, the Plaintiffs have not consented to the Article I Bankruptcy Judge

1 The argument by Defendants is that while the District Court will ultimately conduct the  
2 “trial,” it is proper for the Bankruptcy Judge to do all of the pretrial work, make the pretrial rulings,  
3 and then “assign” (in this Court’s words) the litigation to a District Court Judge to conduct the trial.  
4 This is *contra* to the District Court fulfilling its statutory duties to order that the personal injury and  
5 wrongful death claims be tried, from start to finish, in the District Court before an Article III Judge  
6 (who may then choose to assign specific pretrial matters to an Article I Judge).

7 The Defendants’ proposition that the Bankruptcy Judge will address all pre-trial matters and  
8 then the State Court Action will be assigned to a District Court Judge to conduct the trial (living with  
9 all that was done pre-trial by the Bankruptcy Judge) runs contrary to the provisions of 28 U.S.C.  
10 § 157(c). Those provisions only allow a Bankruptcy Judge to make proposed findings and  
11 conclusions of law, from which the District Court Judge must then conduct the proceedings to issue  
12 the actual orders. 28 U.S.C. § 157(c) states:

13 (c)

14 (1) A bankruptcy judge may hear a proceeding that is not a core proceeding  
15 but that is otherwise related to a case under title 11. In such proceeding, the  
16 bankruptcy judge shall submit proposed findings of fact and conclusions of  
17 law to the district court, and any final order or judgment shall be entered by  
18 the district judge after considering the bankruptcy judge’s proposed findings  
19 and conclusions and after reviewing *de novo* those matters to which any party  
20 has timely and specifically objected.

21 (2) Notwithstanding the provisions of paragraph (1) of this subsection, the  
22 district court, with the consent of all the parties to the proceeding, may refer  
23 a proceeding related to a case under title 11 to a bankruptcy judge to hear and  
24 determine and to enter appropriate orders and judgments, subject to review  
25 under section 158 of this title.

26 Clearly a party is not permitted to assign matters to the Bankruptcy Judge. For non-core  
27 matters it is the District Court Judge who has statutorily been assigned (if the matter is to be tried  
28 in Federal Court) the personal injury action to determine what, if anything, should be send over to  
the Article I Bankruptcy Judge to conduct initial hearings and issue proposed findings and

adjudicating these personal injury or wrongful death claims.



1 conclusions (as would be assigned to a Magistrate Judge).<sup>3</sup>

2 **Bankruptcy Court's Jurisdiction**  
3 **For Related To Matters**

4 In the Motion, Plaintiffs' grounds stated with particularity (*see* Fed. R. Civ. P. 7(b), Fed. R.  
5 Bankr. P. 7007, 9013) assert that there is an absence of any federal interest or nexus because the  
6 bankruptcy cases are not in post-confirmation and post-consummation status. The Motion does not  
7 state any other grounds for this assertion. In the ten page points and authorities additional grounds  
8 are stated, asserting that by Debtor-Defendant's:

9 [o]wn telling, the Bankruptcy Case has "already been implemented, consummated,  
10 executed, and administered: millions of dollars in distributions have been made to  
11 thousands of creditors, management and control over all property that was previously  
12 property of the estate has been revested and returned to the equity holders, and all  
relevant contracts and leases not previously rejected have been assumed. This all  
took place despite the Superior Court Action, which is not mentioned in the Motion  
to Dismiss or the Zhou Declaration.

13 Points and Authorities, p. 3:21-26; Dckt. 16. It is further asserted that confirmation of the  
14 Chapter 11 Plan necessarily provides for the payment of the claims based upon the amount of such  
15 claim, and is not a "pot plan" in which creditors are paid a percentage of the money put into the  
16 "pot" for that class of claims. With a "pot plan," the greater the amount of future-determined  
17 creditors' claims, when that amount is greater than estimated at the time of confirmation,  
18 necessarily reduces the actual percentage paid to all creditors from the original estimated percentage.

19 A Chapter 11 Plan being confirmed and "substantially consummated" does not remove or  
20 terminate federal court jurisdiction with respect to the Bankruptcy Cases and the Confirmed Plan.  
21 As provided in 11 U.S.C. § 1141 the effect of confirmation, and the confirmation order by which  
22 the court orders the plan confirmed, binds all parties to the terms of the plan. 11 U.S.C. § 1441(a).  
23 The confirmation then vests the property of the bankruptcy estate back to the debtor, subject to the  
24 terms of the plan confirmed by the court. 11 U.S.C. § 1141(b).

25 Congress expressly provides by statute that after confirmation, the debtor must carry out the

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27 <sup>3</sup> Congress provides in 28 U.S.C. § 636 that it is the District Court Judge who determines what  
28 matters may be assigned to or for which the Magistrate Judge may conduct the proceedings.  
Additionally, that parties may consent to a Magistrate Judge to conduct jury or nonjury civil matters.

1 plan and must comply with any orders of the court. 11 U.S.C. § 1442(a). Further, that the court may  
2 direct the debtor or any other person to perform any act necessary for the consummation of a  
3 confirmed plan. 11 U.S.C. § 1142(b).

4 This Court concludes that Federal Court Jurisdiction exists for the trial of the State Court  
5 Action. It is an Action related to the Bankruptcy Case - the determination of Plaintiffs' Claim to be  
6 paid through the Confirmed Chapter 11 Plan.

7 However, while such Federal Court Jurisdiction exists, as set forth below, this Court  
8 determines that remand to the State Court is proper.

9 **Remand to the State Court**

10 This Court finds that remand is proper based on: (1) the equities and (2) the substance of the  
11 matters to be litigated. Additionally, that seeking to have this matter removed to this Bankruptcy  
12 Court, and not having sought to have this matter transferred (by withdrawal of the reference) to the  
13 District Court is in violation of the jurisdictional provisions of 28 U.S.C. § 157(b)(5) and 28 U.S.C.  
14 § 1334.

15 It is not disputed that the counts in the Complaint in the State Court Action ("State Court  
16 Complaint," (Ex. 1 to Notice of Removal; Dckt. 1 at p. 8-40) deal in issues of State Law not  
17 regularly seen in bankruptcy court, similar to the facts in *McCarthy*. The State Court Complaint  
18 involves claims stated for elder neglect; elder neglect, enhanced remedies sought; negligence,  
19 custodial; violation of patients bill of rights; negligent infliction of emotional distress; and wrongful  
20 death. *See*, State Court Complaint; Ex. A to Notice of Removal; Dckt. 1 at p. 19-39.

21 With respect to the factors set out in *In re Cedar Funding, Inc.*, 419 B.R. 807, 820–21  
22 (B.A.P. 9th Cir. 2009), those factors are, and this Court's analysis thereof in connection with this  
23 Adversary Proceeding is:

24 (1) The effect or lack thereof on the efficient administration of the estate if the Court  
25 recommends remand or abstention;

26 The Defendants present the following argument/analysis in support of a contention that not  
27 litigating the State Court Complaint in the Bankruptcy Court would impede the efficient  
28 administration of the Confirmed Chapter 11 Plan:

1 The claims that creditors, including Plaintiff, have brought against Windsor  
2 Sacramento Estates, LLC in bankruptcy are clearly within the jurisdiction of this  
3 Court. Therefore, so must be the derivative alter ego claims against the Non-Debtor  
4 Defendant. Because an alter ego defendant “has no separate primary liability to the  
5 plaintiff,” the claim against an alter ego defendant is identical to the claim brought  
6 by a plaintiff against a corporate defendant. . .

7 . . .  
8 Given that Plaintiff’s theory of the Non-Debtor Defendant’s liability cannot  
9 be separated from that of Windsor Sacramento Estates, LLC, the state court action  
10 is clearly related to the federal bankruptcy proceeding. If Plaintiff proceeds to litigate  
11 their claims, any judgment against Windsor Sacramento Estates, LLC would be  
12 submitted to the *In re Windsor* court as a claim against the estate, where Plaintiff  
13 may assert a claim for the percentage of the judgment allowed under the plan of  
14 reorganization for their type of claim. **The judgment would impact the  
15 implementation and administration of the plan by reducing the overall amount  
16 available in the bankruptcy estate to satisfy all claims against the debtor.**  
17 Additionally, any ruling on the joint and several or potentially vicarious or alter-ego  
18 liability between the Debtor Defendant and the Non-Debtor Defendant would  
19 necessarily complicate the evaluation or potential acceptance of any settlement  
20 proposal.

21 On this basis, this Court should deny Plaintiff’s Motion for Remand.

22 . . .  
23 Plaintiff’s claim, if liquidated in state court, can significantly impact the Debtor’s  
24 Confirmed Plan of Reorganization. **If the state court liquidation results in a  
25 higher-than-expected claim amount, the backstop provisions of the confirmed  
26 plan will need to account for this increase to ensure the reorganization plan  
27 remains feasible.** Confirmation of the Debtor’s Plan of Reorganization was  
28 predicated on the bankruptcy court’s determination that the plan was “not likely to  
be followed by the liquidation, or the need for further financial reorganization, of the  
debtor.” 11 U.S.C. 1129(a)(11); *see also In re Harbin*, 486 F.3d 510, 517 (9th Cir.  
2007). . . .

**Keeping this case in federal court to liquidate the Plaintiff’s claim may ensure  
that any award Plaintiff might obtain does not upset the feasibility  
of the plan,** creating significant obstacles to plan implementation or require  
adjustments to the financial provisions in the plan.

20 Opposition, p. 7:25-8:21, 8:24-2, 9:26-28; Dckt. 20 (double emphasis added).

21 The Court’s conclusion is the opposite of what the Defendants argue with respect to this  
22 factor. As an initial matter, whether in State Court or Federal Court, the parties are entitled to a jury  
23 trial, which the Debtor-Defendant and the other Defendants (Dckt. 8, 9, and Defendants’ Case  
24 Management Statement, Exhibit Dckt. 13 at 50-56) and the Plaintiffs (Plaintiffs’ Statement Pursuant  
25 to Fed. Bankr. Rule 9027(e)(3) and 28 U.S.C. § 157(e), item (iv) p. 1; Dckt. 10; and, including, Case  
26 Management Statement, Exhibit Dckt. 13 at 58-63) have demanded for this Adversary Proceeding.  
27 The Defendants offer no indication how the Federal Court could somehow more quickly and  
28 efficiently conduct the litigation on the State Court Complaint. This is especially true in the Eastern

1 District of California where the District Court Judges have some of the highest case loads in the  
2 Nation.

3 The Defendants then make what this Court concludes to be a fallacious assertion – that  
4 somehow a State Court trial would generate an inappropriately large judgment, and thereby cause  
5 the performance of the Chapter 11 Plan to be delayed or impaired. This first presumes that a State  
6 Court would not be entering a judgment based on the facts and law.

7 Second, this presumes that a Federal Court would consider that in light of the Chapter 11  
8 Plan, the amount of the judgment would need to be “adjusted” or “tweaked” to a lower amount so  
9 as to enhance Debtor-Defendant’s ability to perform the Chapter 11 Plan based on Debtor-  
10 Defendant’s estimates of what it believed to be the amount of Plaintiffs’ Claim. This assertion is  
11 based on an apparent belief that Federal Courts do not enter judgments based on the facts and the  
12 law, but what would be a better result for one party (here the Debtor-Defendant and the other  
13 Defendants) over the other (here the Plaintiffs).

14 Nothing credible has been presented by Defendants that the Federal Court presents a better  
15 forum for the adjudication of this claim than the State Court.

16 This factor weighs in favor of remand.

17 (2) Extent to which state law issues predominate over bankruptcy issues;

18 Here, the State Court Complaint asserts claims for elder neglect; elder neglect, enhanced  
19 remedies sought; negligence, custodial; violation of patients bill of rights; negligent infliction of  
20 emotional distress; and wrongful death. Exhibit 1, State Court Complaint, p. 11-32; Dekt. 1,  
21 beginning at p. 8. Reading through the State Court Complaint, the causes of action are based solely  
22 on California law, including, but not limited to:

23 (A) California Welfare and Institutions Code §§ 5325-5337, 5325.1, 15600 *et seq.*,  
24 15630, 15675(a) and (b);

25 (B) Title 22 of the California Code of Regulations §§ 72311, 72315, 72329.1,  
72523, 51215.5;

26 (C) California Health and Safety Code §§ 1250, 1430(b), 1430, 1430(b), 1599.1;

27 (D) 42 Federal Code of Regulations §§ 483.20, 483.21, 483.24, 483.25, 482.35,  
28

1 483.30, 483.90;<sup>4</sup>

2 (E) California Code of Civil Procedure § 1021.5; and

3 (F) California Fraud, Negligent Infliction of Emotional Distress, and Wrongful  
4 Death Law.

5 The claims to be adjudicated in the State Court Complaint are all California State Law based  
6 causes of action. The referenced Federal Regulations that set levels of service required for a Long  
7 Term Care Facility to qualify for patients covered by Medicare or Medicaid. There are no Federal  
8 Law causes of action of stated. Once the judgment is entered on the State Court Complaint, then  
9 that judgment is taken back to the Bankruptcy Court for its proper payment under the Confirmed  
10 Chapter 11 Plan.

11 In the Answer (Dckt. 1 at p. 73-81) Windsor Norcal 13 Holdings, LLC and S&F  
12 Management Company, LLC (a Non-Debtor Defendant added to the State Court Complaint, these  
13 Defendants:

14 A. Make a general denial to each and every allegation in the State Court Complaint, as  
15 provided in California Code of Civil Procedure § 431.30.

16 B. These Non-Debtor Defendants then state Thirty Five Affirmative Defenses, which  
include (identified by the number of the Affirmative Defense):

- 17 1. Complaint fails to stated sufficient cause of action;
- 18 2. Statue of Limitations, California Code of Civil Procedure § 340.5;
- 19 3. Laches;
- 20 4. Estoppel;
- 21 5. Waiver;
- 22 6. Unclean Hands;
- 23 7. Failure to Mitigate;
- 24 8. Failure to Take Adequate Precautions;
- 25 9. Comparative Negligence;

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26  
27 <sup>4</sup> Federal Regulations for the standards to be maintained at Long Term Care Facilities vided for  
28 Medicare and Medicaid patients admitted to Long Term Care Facilities. These are not Regulations the  
basis of the causes of action upon which the right to a monetary judgment are being asserted.

10. Intervening/Superseding Cause;
11. Liability of Third Parties;
12. Offset;
13. Non-Joint Liability for Non-Economic Damages, California Civil Code § 1421.2;
14. Vicarious Comparative Negligence;
15. Plaintiffs Were the Cause of Their Own Injuries;
16. Defendants Exercise Due Diligence;
17. Plaintiffs Failed to Take Precautions That Would Have Avoided Injuries or Damages;
18. Any Recovery By Plaintiffs Can be Paid by Periodic Payments, California Code of Civil Procedure § 667.7;
19. The Damages Alleged Have Been Paid by Collateral Sources, California Civil Code § 333.1;
20. Any Recover is Limited to \$250,000, California Civil Code § 3333.2;
21. The Causes of Action in the State Court Complaint are barred by California Business & Professions Code § 2396;
22. The Causes of Action in the State Court Complaint are barred by California Civil Code § 1714.8;
23. Defendants Complied With All Applicable Standards of Care;
24. Defendants Provided Professional, Medical Care, and are not merely “care custodians;”
25. Plaintiffs Have Failed to Join All Necessary Parties, California Code of Civil Procedure § 389;
26. All Damages Are Cumulative and Shall Not Exceed \$250,000, California Civil Code § 3333.2;
27. Plaintiffs Gave Consent For Care and Assumed the Risk;
28. Plaintiffs’ Claims in the Sate Court Complaint Are Barred, California Code of Civil Procedure § 364;
29. Plaintiffs Lack Standing;
30. The Non-Debtor Defendants Are Separate and Are Not Alter Egos of Other Defendants;
31. The State Court Lacks Subject Matter Jurisdiction;

32. The State Court Complaint is Improperly Filed Because There is an Enforceable Arbitration Agreement for the Matters in Said Complaint;

33. The Defendants Are Subject To the California Medical Injury Compensation Reform Act (MICRA);

34. Any Claim Remedies Are Limited by California Welfare & Institutions Code § 15657; and

35. The Defendants Complied With the Regulations and Directives by the Department of Health and Human Services, Center for Medicare and Medicaid Services, and the Centers for Disease Control Relating to the COVID-10 Pandemic, and Therefore Have Complete Immunity From All Claims Asserted in the State Court Complaint.

In the Answer (Dckt. 1 at p. 84-92) Non-Debtor Defendants Lee Samson, Lawrence, and Donny Feldman (Non-Debtor Defendants added to the State Court Complaint):

A. Make a general denial to each and every allegation in the State Court Complaint, as provided in California Code of Civil Procedure § 431.30.

B. These Non-Debtor Defendants then state the same Thirty Five Affirmative Defenses as Windsor Norcal 13 Holdings, LLC and S&F Management Company, LLC stated above.

In the Answer (Dckt. 1 at p. 116-124) Debtor-Defendant Windsor Sacramento Estates, LLC dba Windsor Care Center of Sacramento:

A. Make a general denial to each and every allegation in the State Court Complaint, as provided in California Code of Civil Procedure § 431.30.

B. The Debtor-Defendant then states Thirty Five Affirmative Defenses, which include (identified by the number of the Affirmative Defense):

1. The Claims Asserted by Plaintiffs are subject to an Arbitration Agreement that is in Full Force and Effect;

2. Plaintiffs Have Failed to State Sufficient Facts to Constitute Causes of Actions;

3. Plaintiffs Lack Standing;

4. Plaintiffs Have Failed to Join Parties Who May Have Claims to be Asserted, Thereby Subjecting Debtor-Defendant to Possible Multiple Liabilities;

5. The Plaintiffs Claims are Barred by the Statue of Limitations, California Code of Civil Procedure § 335.2, 340.5, 343, and 364;

6. Plaintiffs' Injuries, If Any, Were Caused by Failure of Plaintiffs to Exercise Reasonable Care of Their Own Safety;



7. If Non-Debtor Defendant is Found Liable For Damages, There Are Other as of Now Unnamed Parties, and any Damages Must be Apportioned;
8. Plaintiffs Were Comparatively Negligent, Which Superseded Any Negligent of any of the Defendants;
9. The Negligence Alleged Was Not a Substantial Factor in the Alleged Injuries, and Was Cause by the Negligence of Independent Third-Parties;
10. Plaintiffs Consented and Voluntarily Assumed the Risks for Any of the Alleged Injuries;
11. The Plaintiffs' Own Negligence Was The Sole Cause of the Injuries, if Any, and Any Liability of Debtor-Defendant Shall be Reduced Due to Comparative Negligence;
12. Plaintiffs Are Barred From Any Relief by Reason of Their Own Inequitable Conduct;
13. Debtor-Defendant May Limit or Diminish Any Damages, California Civil Code §§ 3333.1, 3333.2;
14. The Claims of Plaintiffs are Barred by the Doctrine of Waiver;
15. The Claims of Plaintiffs are Barred by the Doctrine of Estoppel;
16. The Claims of Plaintiffs are Barred by the Doctrine of Laches;
17. Any Judgment in Favor of Plaintiffs in Excess of \$50,000 Shall be Paid in Periodic Payments, California Code of Civil Procedure § 667.7;
18. Any Claim for Punitive Damages is Barred, California Code of Civil Procedure § 425.13;
19. Any Claims for Punitive Damages Violates the Requirements for Due Process set forth in the California Constitution and the Constitution of the United States;
20. Any Claims for Punitive Damages is Barred by the Eighth and Fourteenth Amendments to the Constitution of the United States;
21. Any Claim for Punitive Damages is Barred For Failure to State Sufficient Grounds, California Civil Code § 3294, or that Debtor-Defendant's Conduct was Authorized or Ratified;
22. The Claims and Damages Sought by Plaintiffs are Illegal and Unconstitutional and in Violation of the Public Policy of the State of California;
23. Plaintiffs Have Failed to Comply With the Notice Requirements, California Code of Civil Procedure § 364;
24. Debtor-Defendant is Entitled to an Offset Against Any Damages for Amounts Paid Plaintiffs by the other Defendants;

- 1           25. Debtor-Defendant is Entitled to the Full Protections Provided Under  
2           California Civil Code § 1431.1 *et seq.* (The California Fair Responsibility  
3           Act of 1986):
- 4           26. Debtor-Defendant is Entitled to the Full Benefits, Protections, and  
5           Immunities contained in the California Health & Safety Code and the  
6           California Business & Professions Code;
- 7           27. Plaintiffs Failed to Mitigate, Minimized or Avoid the Alleged Damages, and  
8           Debtor-Defendant is Entitled to Reduction in any Damages;
- 9           28. Plaintiffs' Action is Barred by California Code of Civil Procedure § 1714.8;  
10          and
- 11          29. Plaintiffs Could Have Avoided or Mitigate the Alleged Damages by  
12          Obtaining Insurance as Required by the Affordable Care Act.

13          While clearly substantially consisting of State Law issues, such law and then the evidence  
14          presented, can equally be tried in either State or Federal Court, with there being no superior “ability”  
15          of either Court to render a fair and proper judgment. (Though, it would be more likely that a State  
16          Court judge would have handled such matters in the past as opposed to a Federal Judge.) It is true  
17          that in the Answers there is a citation to a Federal Constitution Due Process Rights, but there is also  
18          a citation to the California Constitution for Due Process Right. Thus, both Constitutions come into  
19          play, and the clear overwhelming law asserted by Defendants is California statutory and case law.

20          This factor weighs in favor of remand.

21          (3) Difficult or unsettled nature of applicable law;

22          Defendants assert that there is no difficult or unsettled nature of the applicable California  
23          law. This Court concurs with such assertion, and that the State Court Complaint can be as  
24          effectively adjudicated in the State Court as well as in the Federal Court. Opp.; p. 2:10-11; Dckt. 20.

25          (4) Presence of related proceeding commenced in state court or other nonbankruptcy  
26          proceeding;

27          No such related or nonbankruptcy court proceedings have been identified.

28          (5) Jurisdictional basis, if any, other than § 1334;

29          The related to jurisdiction pursuant to 28 U.S.C. § 1334 is the basis for having removed this  
30          State Court Complaint to the Bankruptcy Court. Defendants further assert that there is supplemental  
31          jurisdiction pursuant to 11 U.S.C. § 1367(a). Such “supplemental jurisdiction” is not necessary in

light of Congress expressly providing for related to jurisdiction in 28 U.S.C. § 1334. To the extent that such supplemental jurisdiction exists, the facts, claims, pleadings, and factors weigh heavily for remand of the State Court Action to the State Court (and supplemental jurisdiction does not provide a "work-around" of the jurisdictional provisions in 28 U.S.C. §§ 1334 and 157 enacted by Congress).

(6) Degree of relatedness or remoteness of proceeding to main bankruptcy case;

While the final judgment on the State Court Complaint will be directly tied to payment under the Confirmed Chapter 11 Plan, the determination of Plaintiffs' Claim in the State Court, when compared to conducting such litigation in the District Court, does not negatively impact the Debtor-Defendant's ability to prosecute the Bankruptcy Case and perform the Confirmed Chapter 11 Plan.

Debtor-Defendant expresses a "concern" that the State Court judgment could be large enough that Debtor-Defendant would have to amend the Confirmed Chapter 11 Plan, which would arise because Debtor-Defendant's projection of the amount owed to Plaintiffs was lower than that determined based on the facts and law after a trial. However, no creditable argument is advanced that the State Court would enter a judgment contrary to the law and facts. Also, as noted above, no credible basis has been shown for an assertion that a Federal Court would be preferred because Debtor-Defendant believes that a Federal Court would be likely to give the Debtor-Defendant and the non-debtor Defendants a "favorable" lower dollar amount judgment than a State Court.

This factor weighs in favor of remand.

(7) The substance rather than the form of an asserted core proceeding;

This is not asserted to be a core proceeding, but rather there is an asserted related-to matter that Debtor-Defendant has removed from the State Court and have tried in Federal Court. This factor weighs in favor of remand.

(8) The feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;

There are no core matter proceedings, no Federal Law issues, and only State Law claims to be adjudicated. This factor weighs in favor of remand.

(9) The burden on the bankruptcy court's docket;

While a Bankruptcy Judge could try the State Court Complaint without creating a significant

burden, the plain language of the Federal Statutes state that the District Court (not the Bankruptcy Court) *shall* try personal injury tort and wrongful death claims. Defendants argue that it is proper to remove the State Court Action to the Bankruptcy Court, the Defendants “assigning” to a Bankruptcy Judge all of the pre-trial matters. No credible authority is cited and such an argument runs contrary to the structure of the District Court and Federal Law. It is the District Court Judge who is assigned such personal injury and who determines whether matters, if any, should be assigned to a Magistrate Judge, or possibly a Bankruptcy Judge. It is not the parties who assign the matter to a Magistrate Judge or Bankruptcy Judge, and then later have it assigned to a District Court Judge to “live with” whatever a Magistrate or Bankruptcy Judge did on pretrial matters.

(10) The likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;

This Court concludes that this removal is part of a forum shopping effort by the Defendants. As noted above, in starting its Argument why the Motion to Remand should be denied, the Defendants postulate (repeating the plain language stated in the Opposition):

The claims that creditors, including Plaintiff, have brought against Windsor Sacramento Estates, LLC in bankruptcy are clearly within the jurisdiction of this Court. Therefore, so must be the derivative alter ego claims against the Non-Debtor Defendant. Because an alter ego defendant “has no separate primary liability to the plaintiff,” the claim against an alter ego defendant is identical to the claim brought by a plaintiff against a corporate defendant. . .

... Given that Plaintiff’s theory of the Non-Debtor Defendant’s liability cannot be separated from that of Windsor Sacramento Estates, LLC, the state court action is clearly related to the federal bankruptcy proceeding. If Plaintiff proceeds to litigate their claims, any judgment against Windsor Sacramento Estates, LLC would be submitted to the *In re Windsor* court as a claim against the estate, where Plaintiff may assert a claim for the percentage of the judgment allowed under the plan of reorganization for their type of claim. **The judgment would impact the implementation and administration of the plan by reducing the overall amount available in the bankruptcy estate to satisfy all claims against the debtor.** Additionally, any ruling on the joint and several or potentially vicarious or alter-ego liability between the Debtor Defendant and the Non-Debtor Defendant would necessarily complicate the evaluation or potential acceptance of any settlement proposal.

On this basis, this Court should deny Plaintiff’s Motion for Remand.

... Plaintiff’s claim, if liquidated in state court, can significantly impact the Debtor’s Confirmed Plan of Reorganization. **If the state court liquidation results in a higher-than-expected claim amount, the backstop provisions of the confirmed plan will need to account for this increase to ensure the reorganization plan**

1 **remains feasible.** Confirmation of the Debtor's Plan of Reorganization was  
2 predicated on the bankruptcy court's determination that the plan was "not likely to  
3 be followed by the liquidation, or the need for further financial reorganization, of the  
debtor." 11 U.S.C. 1129(a)(11); *see also In re Harbin*, 486 F.3d 510, 517 (9th Cir.  
2007). . .

4 **Keeping this case in federal court to liquidate** the Plaintiff's claim **may ensure**  
5 **that any award Plaintiff might obtain does not upset the feasibility**  
6 **of the plan**, creating significant obstacles to plan implementation or require  
adjustments to the financial provisions in the plan.

7 Opposition, p. 7:25-8:21, 8:24-2, 9:26-28; Dckt. 20 (double emphasis added).

8 The Defendants do not put forth any credible argument or evidence that bringing these  
9 State Law Claims to Federal Court would put them in the "most efficient" court for resolution of  
10 the State Law Claims. This Court reads the argument advanced to be that Defendants seek to  
11 litigate the State Court Complaint in Federal Court because the Federal Court Judge and jury are  
12 more likely to give Defendants a judgment that Defendants request and like, as opposed to a State  
13 Court Judge and jury. This assumption appears to presume that the Federal Court judges are  
14 "biased" in favor of a debtor in litigating related to matters so as not to "upset" a debtor's  
15 bankruptcy plan by entering a judgment for a creditor in an amount that is correct based on the  
16 facts and the law.

17 While the Defendants arguments that the litigation of the liability of the Defendants (the  
18 Debtor-Defendant and the non-bankruptcy debtor Defendants) should be done in one judicial  
19 proceeding, that does not necessarily entail that a Federal Court provides the better, prompter, and  
20 more efficient forum for this Adversary Proceeding and the related Bankruptcy Case. The real  
21 argument put forth by Defendants is that they want to avoid a potential judgment which might be  
22 entered in the State Court in an amount greater than the Debtor-Debtor projected in confirming the  
23 Chapter 11 Plan. This Court has addressed above that the Defendants have not presented this Court  
24 with any basis for concluding that the State Court would issue a judgment inconsistent with the law  
25 and facts, or that a District Court trial would result in a "more just" determination of the State Law  
26 Claims and judgment entered thereon. This factor weights in favor of remand..

27 (11) The existence of a right to a jury trial;

28 Plaintiffs have demanded, and have a right to, whether in State Court or Federal Court, a jury

1 trial. Defendants, at this point in time, appear to acknowledge this, but assert the right to have the  
2 State Court Complaint assigned to a Bankruptcy judge to determine all pre-trial matters before it is  
3 assigned to a District Court Judge to conduct a trial. As this Court has stated, it is the District Court  
4 Judge to whom a case is assigned and the District Court Judge who determines (whether provided  
5 up the District Court local rules or on an individual basis) what would be assigned to a Magistrate  
6 Judge or possibly a Bankruptcy Judge for certain pre-trial matters, not the parties (absent their  
7 mutual consent).

8 (12) The presence in the proceeding of nondebtor parties;

9 Here, there are multiple non-bankruptcy debtor defendants and only one defendant debtor  
10 party – the Debtor-Defendant, with the State Court Complaint including the standard State Law  
11 “DOES 1 through 50” to add other defendants at a later date.

12 (13) Comity;

13 This Court does not perceive that there is a concern or need for allowing the State Court to  
14 adjudicate the State Court Complaint based on comity.

15 and

16 (14) The possibility of prejudice to other parties in the action.

17 On this final point, the possible “prejudice” asserted by the Debtor Defendant, it appears to  
18 be an assertion that the “prejudice” could be that a State Court judge may enter a judgment in a  
19 larger amount than Debtor-Defendant estimated in confirming the Plan and that the Debtor-  
20 Defendant might then have to modify the Confirmed Plan. While Defendants provided detailed  
21 discussion of the other *Cedar Funding, Inc.* factors, there is no significant analysis or discussion of  
22 what prejudice other parties might face if Defendants litigate the State Court Action in State Court  
23 rather than in the Federal Court.

24 The Chapter 11 Bankruptcy Plan (the modified “contract” between the Debtors and  
25 Creditors) has been confirmed and provides how once the asserted Personal Injury Claim of  
26 Plaintiffs is liquidated it will be paid. There is no Federal Law, including Bankruptcy Law, to be  
27  
28

1 adjudicated in liquidating the Claim, “just” California State Law.<sup>5</sup>

2 Based on what the Parties have presented to this Court, the California Superior Court is the  
3 better court in which these California State Law rights and issues are determinated. That court has  
4 the resources and ability to have the State Court Action diligently prosecuted and a judgment issued  
5 determining the Personal Injury Claim of Plaintiffs so as to not delay the performance of the  
6 Confirmed Chapter 11 Plan.

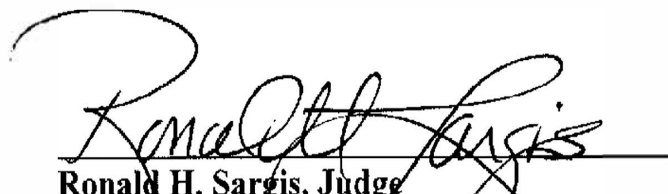
7 Additionally, the Plaintiffs have expressly stated that Plaintiffs do not consent to an Article I  
8 Bankruptcy Judge adjudicating of the State Court Action. This factor weighs in favor of remand.

9 Therefore, this Court having considered all of the above factors, applicable law, and the  
10 proper, efficient administration of justice and use of judicial resources, finds that the facts, law, and  
11 equities weigh heavily in favor for remanding this action to the Sacramento Superior Court pursuant  
12 to 28 U.S.C. 1452(b). There is little left to do with Bankruptcy Case administration. Such a remand  
13 does not create any additional burden or delay for the parties in connection with the Bankruptcy  
14 Case, and is likely to advance the actual trial date and entry of a judgment adjudicating the Claims  
15 and the Affirmative Defenses asserted in the State Court Action.

16 The Motion is granted and State Court Action, *Knestrick vs. Windsor Oxford Holding*  
17 *Company, LLC, et al.*, Case No. 34-2022-00313404, is remanded to the California Superior Court  
18 for the County of Solano, effective immediately upon this Court entering its order.

19 **Dated:** February 20, 2025

**By the Court**

20  
21   
22 **Ronald H. Sargis, Judge**  
23 **United States Bankruptcy Court**  
24  
25  
26

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27 <sup>5</sup> As addressed above, the Defendants have asserted Due Process Rights under both the Federal  
28 Constitution and the California Constitution. On this point, Lady Justice’s scale of justice is balanced and  
does not tip in either the Plaintiffs’ or the Defendants’ favor.



# Instructions to Clerk of Court

## Service List - Not Part of Order/Judgment

**The Clerk of Court is instructed to** send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked ☐, via the U.S. mail.

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