UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF FLORIDA West Palm Beach Division www.flsb.uscourts.gov

In re:	Case No. 21-15555 -EPK
PALM BEACH RESORT AND BEACH CLUB CONDOMINIUM ASSOCIATION, INC.,	Chapter 11
Debtor-in-Possession.	
PALM BEACH RESORT AND BEACH CLUB CONDOMINIUM ASSOCIATION, INC.,	
Plaintiff. vs.	Adv. Pro. No.: 21-01168-EPK
HPP HOLDINGS, LLC, et. al.,	
Defendants.	1

PLAINTIFF'S EX PARTE MOTION FOR SUSPENSION OF APPLICABILITY OF LOCAL RULE 7055-1 PROVISION REQUIRING A STATEMENT AFFIRMING A DEFENDANT IS NOT A MEMBER OF THE MILITARY SERVICE

The Plaintiff, Palm Beach Resort and Beach Club Condominium Association, Inc., by undersigned counsel, respectfully requests this Court for entry of an Order suspending the applicability of Local Rule 7055-1's provision that requires the movant of a motion for default to attest that a defendant is not a member of the military service¹ (the "Motion")². In support of the Motion, the Plaintiff states as follows:

1. This adversary proceeding was commence by the filing of the Complaint on June 7, 2021 [Adv. ECF # 1].

¹ Contemporaneously with this Motion, the Plaintiff filed a Verified Motion for Default as to Certain Defendants [Adv. ECF # 16].

² Plaintiff is not requesting the suspension of the *entirety* of Local Rule 7055-1; Plaintiff's request is solely as to the provision relating to a statement on the defendant's military non-status, as it relates to the requested default and any future default sought against other defendants in this adversary proceeding.

- 2. Given the nature of the Plaintiff's business, the amount of defendants named in this adversary proceeding is voluminous. Indeed, the amount of defendants surpasses 1,000.
- 3. The defendants were served with the Complaint, a copy of the Summons and Notice of Status Conference [Adv. ECF # 2] and a copy of the Order Setting Status Conference and Establishing Procedures and Deadlines [Adv. ECF # 3] either by U.S. Mail or electronic mail, as approved by this court and reflected in the certificate of service filed by undersigned counsel [Adv. ECF # 9].
- 4. Certain defendants failed to file an answer to the Complaint by the deadline of July 26, 2021, and the Plaintiff now seeks to have a default entered against those Defendants.
- 5. Entry of a default in a bankruptcy adversary proceeding is governed by Fed. R. Bankr. P. 7055 and Local Rule 7055-1.
 - 6. Local Rule 7055-1 states in relevant part:

Motions for entry of default shall be verified (sworn or affirmed under penalty of perjury) and shall state that the defendant has been properly served with the complaint, that no response has been served on the plaintiff, and that the defendant—if an individual—is not a member of the military service.

- 7. Given the significant number of defendants (more than 1000 persons and entities) in this adversary proceeding, it is simply not feasible to conduct a search for the military status (or non-status) of every single defendant named in this action. Further, such a search would require the estate to expend considerable resources to complete.
- 8. The Plaintiff's requested relief does not run contrary to the legislative intent behind Section 201(b) of the Servicemembers Civil Relief Act (SCRA), as the Plaintiff is not seeking to enter a monetary judgment against any defendant, but rather, is seeking declaratory relief from the Court.

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9. Local Rule 1001-1(E) provides that upon motion of party in interest, the court

may suspend the requirements of any of the local rules in appropriate circumstances.

10. Further, 11 U.S.C. §105(a) grants the Court the discretion to issue any order

necessary or appropriate to carry out the provisions of the Bankruptcy Code (the "Code").

11. Application of Local Rule 1001-1(E) is appropriate here, given the

circumstances. Absent the suspension of the local rules requested in the Motion, the Plaintiff

would be unable to proceed in the instant adversary proceeding, as it would be unable to

obtain defaults against the non-responsive defendants and the case would become stagnant.

12. Accordingly, the Plaintiff respectfully requests that the Court, in light of the

sheer volume of defendants, the circumstances of the case, and pursuant to Local Rule 1001-

1(E) and §105 of the Code, grant the Motion such that the Plaintiff may proceed to obtain

defaults against the defendants.

WHEREFORE, the Plaintiff requests entry of an Order suspending the application of

the provision in Local Rule 7055-1 requiring the Plaintiff to attest that the defendant(s) are not

members of the military to all defaulting defendants in this adversary, given the facts and

circumstances of this case, and for such other and further relief as the Court deems just and

proper.

Dated: September 26, 2021

LEIDERMAN SHELOMITH ALEXANDER +

SOMODEVILLA, PLLC

Counsel for Plaintiff

2699 Stirling Road, Suite C401 Ft. Lauderdale. Florida 33312

Telephone: (954) 920-5355

Facsimile: (954) 920-5371

By:__ /s/

IDO J. ALEXANDER, ESQ.

Florida Bar No. 51892

ija@lsaslaw.com

CERTIFICATE OF SERVICE

	I hereby certify	that a true	and correct	copy of	f the foreg	oing was s	served (on Sept	ember
26, 20	021 to all parties	on the list	to receive e-	-mail n	otice/serv	ice for this	case,	via the	Notice
of Ele	ctronic Filing (w	hich is inco	rporated her	ein by	reference).			

By:	/s/	
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