

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

		In re:		Chapter 11
RS FIT NW LLC,				Case No. 20-11568 (KBO)
Reorganized Debtor. <sup>1</sup>				<b>Related to Docket Nos. 781, 782</b>

**MEMORANDUM ORDER**

Before the Court is a *Motion for Summary Judgment* (the “Summary Judgment Motion”)<sup>2</sup> filed by Rhonda Hudson (the “Claimant”) seeking payment in full of several alleged claims against debtor 24 Hour Fitness Worldwide, Inc. (“24 Hour Fitness”) plus appropriate punitive damages. Also before the Court is the objection filed by RS FIT NW LLC (the “Reorganized Debtor”) to Claimant’s claims (the “Claims Objection”).<sup>3</sup> Having considered the argument and evidence put forth by the parties, the Court finds and orders as follows:

**I. SUMMARY OF RELEVANT FACTS**

24 Hour Fitness and its debtor affiliates (collectively, the “Debtors”) operate health and fitness clubs. They filed for chapter 11 bankruptcy protection on June 15, 2020.<sup>4</sup> Claimant was a former employee of a New York City club owned and operated by debtor 24 Hour Fitness USA, Inc. (“24 Hour Fitness USA”). She was employed from July 10, 2008 through June 11, 2020 as a night service representative in the club with an overnight shift from 10:00 p.m. to 6:00 a.m.

During the bankruptcy proceedings, the Court established October 2, 2020 at 5:00 p.m. (the “Bar Date”) as the deadline for each person or entity to file a proof of claim with respect to a prepetition claim against any of the Debtors.<sup>5</sup> Claimant filed three proofs of claim (collectively, the “Hudson Claims”). Two were filed prior to the Bar Date and one was filed after.

Claimant filed proof of claim number 9404 on August 25, 2020, asserting a \$265,881.52 general unsecured claim and a \$13,650.00 priority claim under 11 U.S.C. § 507(a)(4), for a total

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<sup>1</sup> The Reorganized Debtor in this chapter 11 case, along with the last four digits of the Reorganized Debtor’s federal tax identification number, as applicable, is RS FIT NW LLC (9372). By order dated March 16, 2021, the remaining Reorganized Debtors’ chapter 11 cases were closed. The Reorganized Debtor’s corporate headquarters and service address is 24 Hour Fitness USA, Inc., 1265 Laurel Tree Lane, Carlsbad, CA 92011.

<sup>2</sup> D.I. 781. Unless otherwise indicated herein, all docket references are to case number 20-11568.

<sup>3</sup> D.I. 782.

<sup>4</sup> See Case No. 20-11558, D.I. 1.

<sup>5</sup> *Id.*, D.I. 785 at 3.

claim of \$279,531.52 (the “Split Shift Claim”). The Split Shift Claim is for alleged unpaid wages Claimant earned for “split shift” pay under New York law.<sup>6</sup> On October 1, 2020, Claimant filed proof of claim number 24973, asserting a \$283,728.96 general unsecured claim and a \$13,650.00 priority claim pursuant to 11 U.S.C. § 507(a)(4), for a total claim of \$297,378.96. \$297,086.40 of this claim is for alleged unpaid commissions earned for Claimant’s membership sales (the “Sales Commission Claim”).<sup>7</sup> The remaining \$292.56 is for alleged unpaid disaster pay following the closure of the club due to a winter storm on January 23, 2016 (the “Disaster Pay Claim”).<sup>8</sup> Claimant filed her third and final claim after the Bar Date on December 14, 2020. Proof of claim number 27128 asserts an \$8 million general unsecured discrimination claim (the “Discrimination Claim”) arising from 24 Hour Fitness’s alleged failure to pay the wage and commission claims because Claimant is “a 59-yr. old, black (African American) hetero sexual, natural born woman”.<sup>9</sup>

On December 22, 2020, the Court confirmed the Debtors’ joint plan of reorganization.<sup>10</sup> The plan established June 27, 2021 as the initial deadline for the Reorganized Debtor to object to disputed proofs of claims.<sup>11</sup> The Reorganized Debtor obtained numerous extensions of this deadline. Currently, it is set to expire on June 11, 2024.<sup>12</sup>

Following failed settlement attempts, but before the Reorganized Debtor filed its Claims Objection, Claimant filed her Summary Judgment Motion. Claimant not only seeks payment of her claims through the motion but also asserts additional claims and punitive damages against the Reorganized Debtor arising from the failure to pay her claims in full and the attempt to settle them.<sup>13</sup> Claimant alleges (1) false pretenses, false representations, or actual fraud; (2) fraud while acting in a fiduciary capacity; and (3) willful malicious injury (the “Fraud Claims”).<sup>14</sup> Among other things, Claimant argues that the settlement negotiations demonstrate “a continual manipulation with ill placed rules, and regulations.”<sup>15</sup>

In responding to the Summary Judgment Motion, the Reorganized Debtor filed the Claims Objection, which makes numerous procedural and substantive arguments for disallowance of the Hudson Claims and the later alleged Fraud Claims. Briefing completed following three additional submissions by the parties.<sup>16</sup> The parties attempted a settlement again, but those efforts failed. The parties each disclosed to the Court that the Reorganized Debtor offered to allow the Hudson

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<sup>6</sup> Proof of Claim 9404 at 4.

<sup>7</sup> Proof of Claim 24973 at 4.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> Proof of Claim 27128 at 4.

<sup>10</sup> Case No. 20-11558, D.I. 1508.

<sup>11</sup> *Id.*, D.I. 1487, Art. VII.E.

<sup>12</sup> D.I. 847.

<sup>13</sup> Summary Judgment Motion at 7.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.*

<sup>16</sup> *See* D.I. 809, 838, 845.

Claims in the full amount and classifications asserted by the Claimant.<sup>17</sup> Claimant declined the offer because she demands payment in full for the claims, even the general unsecured claims that are only entitled to partial payment under the plan.<sup>18</sup>

The Court conducted an evidentiary hearing on the Summary Judgment Motion and Claims Objection.<sup>19</sup> Claimant offered the declarations of herself, Kerry Coleman, Alric Donaldson, Jonathan Thai, Jack Willis, Dare Matthews, and Cynthia Mathews.<sup>20</sup> Each of these declarations were admitted into evidence except for those of Mr. Willis and Mr. Thai, as neither were in attendance and available for cross-examination. The Reorganized Debtor offered, and the Court admitted into evidence, the declaration of Ms. Katie Healon (the “Healon Declaration”),<sup>21</sup> the Senior Director of Treasury and Pay Process of 24 Hour Fitness USA, LLC, successor to 24 Hour Fitness USA. Claimant also relied upon various documents she submitted with her claims and briefing, which the Court has reviewed and considered in rendering this decision.

## **II. DISCUSSION**

At the outset, the Court finds the Summary Judgment Motion procedurally incorrect. Frustrated by the Reorganized Debtor’s failure to pay her claims, Claimant filed the motion to have the Court consider the allowance and payment of her claims. However, 11 U.S.C. § 502(a) provides that “[a] claim . . . , proof of which is filed under section 501 [of the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects.” Once an objection is filed, the Court is then empowered by section 502(b) to determine whether to allow the disputed claim and in what amount.<sup>22</sup> The confirmed plan and several subsequent orders of the Court set the deadline by which the Reorganized Debtor must file objections to proofs of claims asserted in the bankruptcy cases. That deadline has not yet expired. Therefore, the Reorganized Debtor’s Claims Objection is timely and properly put before the Court the disputes with respect to the allowance of the Hudson Claims. The Court will deem Claimants’ Summary Judgment Motion and related submissions as if a response to the Claims Objection.

After considering the parties’ arguments, the witness testimony, and the documentary submissions of the Claimant, the Court concludes that there is no legal basis for the Hudson Claims. Accordingly, the Court will sustain the Claims Objection and disallow each claim.

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<sup>17</sup> See, e.g., D.I. 825 & 845 at 2 n.4.

<sup>18</sup> See Case No. 20-11558, D.I. 1508, Ex. A at Art. II-III (describing claim treatment under the plan).

<sup>19</sup> See D.I. 831.

<sup>20</sup> See D.I. 809, 838.

<sup>21</sup> See Claims Objection, Ex. B.

<sup>22</sup> 11 U.S.C. § 502(b) (“Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim . . . as of the date of the filing of the petition, and shall allow such claim in such amount, . . .”).

**A. Claimant Is Not Entitled To Split Shift Pay Under New York Law**

Split shift pay is an extra hour of pay at the full minimum wage rate required to be paid under New York Labor Law when a qualifying employee making minimum wage works a “split shift.”<sup>23</sup> The Reorganized Debtor does not dispute that the Claimant was a qualifying employee. It argues that her work schedule did not entitle her to the pay under New York law.

Section 142-2.4 of title 12 of the OFFICIAL COMPILATION OF CODES, RULES, & REGULATIONS FOR THE STATE OF NEW YORK states that “[a]n employee shall receive one hour’s pay at the basic minimum hourly wage rate . . . for any day in which: (a) the spread of hours exceeds 10 hours; or (b) there is a split shift; or (c) both situations occur.”<sup>24</sup> A circumstance under section (a) gives rise to “spread of hours” pay whereas section (b) gives rise to “split shift” pay. Section 142-2.17 defines a split shift as a “schedule of daily hours in which the working hours required or permitted are not consecutive. No meal period of one hour or less shall be considered an interruption of consecutive hours.”

An easy to understand application of the split shift pay statute is demonstrated in *Pichardo v. Hoyt Transp. Corp.*, where a plaintiff began “his workday at 5:00 a.m. at [the] defendants’ bus lot in the Bronx, conclude[d] his first shift at 9:40 a.m., commence[d] his second (and final) shift at 2:30 p.m., and end[ed] his workday at 7:00 p.m. or 7:30 p.m . . . .”<sup>25</sup> There, plaintiff’s daily working hours were not consecutive but were split in time by more than a one hour meal period.

In the matter before the Court, Claimant asserts that 24 Hour Fitness owes her split shift pay under the statute because she worked 5 consecutive overnight shifts from 10 p.m. until 6:00 a.m. In doing so, she worked six consecutive days a week, four of which included two non-consecutive shifts with a spread of more than ten hours (*i.e.* 12:00 a.m. to 6:00 a.m. and 10:00 p.m. to 11:59 p.m.).<sup>26</sup> The following chart demonstrates Claimant’s working hours and position:

	<i>Sunday</i>	<i>Monday</i>	<i>Tuesday</i>	<i>Wed.</i>	<i>Thurs.</i>	<i>Friday</i>	<i>Saturday</i>
<b>Shift 1</b>	12:00 a.m. to 6:00 a.m.	12:00 a.m. to 6:00 a.m.	12:00 a.m. to 6:00 a.m.	12:00 a.m. to 6:00 a.m.	n/a	n/a	12:00 a.m. to 6:00 a.m.
<b>Shift 2</b>	10:00 p.m. to 12:00 a.m.	10:00 p.m. to 12:00 a.m.	10:00 p.m. to 12:00 a.m.	n/a	n/a	10:00 p.m. to 12:00 a.m.	10:00 p.m. to 12:00 a.m.

<sup>23</sup> N.Y. COMP. CODES R. & REGS. tit. 12 § 142-1.1 (2024).

<sup>24</sup> *Id.* § 142-2.4.

<sup>25</sup> No. 17-CV-3196, 2018 WL 2074160, at \*1 (E.D.N.Y. Jan. 31, 2018).

<sup>26</sup> *See, e.g.*, Proof of Claim No. 9404, Ex. F (email allegedly demonstrating Claimant’s work schedule for the substantial majority of her employment); *see also* D.I. 809, Ex. B (two week timecard for weeks beginning September 14, 2019 and September 21, 2019).

Claimant misapplies the statute to conclude that she is entitled to split shift pay. In determining her “day” and “daily hours” for purposes of section 142-2.4(b), Claimant focuses on the calendar day. However, although not made clear by the statute’s text, case law interpreting the statute indicates that the analysis must focus on an individual’s working day.<sup>27</sup>

For example, in *Salustio v. 106 Columbia Deli Corp.*, the plaintiffs argued that they were owed damages under section 142-2.4(a)’s spread of hours law.<sup>28</sup> There, one of the plaintiffs worked an overnight shift from 7:00 p.m. to 4:00 a.m., six to seven days per week. According to the United States District Court for the Southern District of New York, this plaintiff did not “work[] a split shift or [] a shift longer than 10 hours” and was not entitled to spread of hours pay.<sup>29</sup>

Even more helpful, in *Martinez v. SEIU Local 32BJ*, the plaintiff filed suit for issues unrelated to pay.<sup>30</sup> However, his schedule required him to work overnight shifts from 11:00 p.m. to 7:00 a.m. beginning on Sunday and Monday evenings, and then shifts beginning at 3:00 p.m. to 11:00 p.m. on Tuesday, Wednesday, and Friday afternoons.<sup>31</sup> The United District Court for the Southern District of New York identified a split shift when plaintiff worked Monday night starting at 11:00 p.m. to Tuesday morning at 7:00 a.m. and then returned to work later on Tuesday from 3:00 p.m. to 11:00 p.m.<sup>32</sup> Notably, the court did not identify as a split shift the hours worked on Monday when plaintiff worked from 12:00 a.m. to 7:00 a.m. and then again from 11:00 p.m. to midnight.

Another similar example of a split shift for an overnight worker was identified in *Zhong v. Zijun Mo*.<sup>33</sup> In this case, plaintiff worked from 12:00 p.m. to 1:45 a.m., Monday through Friday each week.<sup>34</sup> During this time, the plaintiff sold bus tickets from Queens to Brooklyn for one

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<sup>27</sup> The Court was unable to find legislative history to aid its analysis. However, certain members of the New York legislature appear to agree with the Court’s conclusions. A “Sponsor Memo” from a proposed Senate Bill seeking to supplement New York’s split-shift pay laws from the 2019-2020 Legislative Session described a split-shift as:

a situation where an employee works a certain number of hours separated by a long break and then must *return* later in the day to *complete his or her work day*. It is unreasonable to keep the employee under the employer’s control without pay for periods of time in excess of one hour.

S. B. S7096, 2019-2020 Leg. Sess. (N.Y. 2019), <https://www.nysenate.gov/legislation/bills/2019/S7096>.

<sup>28</sup> 264 F. Supp. 3d 540, 555 (S.D.N.Y. 2017).

<sup>29</sup> *Id.* at 556.

<sup>30</sup> No. 18-CV-3961, 2019 WL 1259381, \*1 (S.D.N.Y. March 19, 2019) (asserting breaches of a collective bargaining agreement and the duty of fair representation owed by employee’s union).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Zhong v. Zijun Mo*, No. 10-CV-0806, 2012 WL 2923292 (E.D.N.Y. July 18, 2012).

<sup>34</sup> *Id.* at \*1.

hour.<sup>35</sup> The plaintiff then rode the bus from Queens to Brooklyn for approximately one hour and another bus from Brooklyn to Atlantic City for approximately two-hours, assisting passengers along the way.<sup>36</sup> Upon arrival, the plaintiff showed the passengers around the Tropicana casino for approximately one hour.<sup>37</sup> After this, the plaintiff freely spent her time in Atlantic City doing as she pleased, until having to return by bus to Brooklyn and then Queens for three hours, assisting passengers along the way.<sup>38</sup> The court in *Zhong* held that the plaintiff qualified for an extra hour of pay as split shift pay because her working hours were not consecutive.<sup>39</sup> She concluded her first shift one hour after arriving to the Tropicana, and she did not begin her next shift until she rode the bus back from the Tropicana to New York.”<sup>40</sup>

The focus of the courts in both *Martinez* and *Zhong* is not the consecutive nature of the hours worked during a calendar day. Rather, the focus is on the plaintiffs’ working days. In *Martinez*, the plaintiff’s working day was from 11:00 p.m. Monday to 11:00 p.m. Tuesday and in *Zhong*, it was 12:00 p.m. one day to 12:00 p.m. the next. In each instance the plaintiff was found to have been made to return to work after a long break to complete his or her workday. As such, under New York law, split shift pay was earned.

The Court understands why Claimant strongly believes that she is entitled to split shift pay given the lack of clarity within the text of the statute. However, based upon the conclusions reached by New York courts on this matter, Claimant’s day for purposes of the statute began at 10:00 p.m. each calendar day and concluded 24 hours later. During that day, she worked eight consecutive hours and concluded her shift at 6:00 a.m. Her next day began when she returned to the club to start her next overnight shift at 10:00 p.m. Therefore, the Court’s previous chart should be revised as follows:

	<i>Sunday 10 p.m. to Monday 10 p.m.</i>	<i>Monday 10 p.m. to Tuesday 10 p.m.</i>	<i>Tuesday 10 p.m. to Wednesday 10 p.m.</i>	<i>Wednesday 10 p.m. to Thursday 10 p.m.</i>	<i>Thursday 10 p.m. to Friday 10 p.m.</i>	<i>Friday 10 p.m. to Saturday 10 p.m.</i>	<i>Saturday 10 p.m. to Sunday 10 p.m.</i>
<b>Shift 1</b>	10 p.m. to 6 a.m.	10 p.m. to 6 a.m.	10 p.m. to 6 a.m.	n/a	n/a	10 p.m. to 6 a.m.	10 p.m. to 6 a.m.
<b>Shift 2</b>	n/a	n/a	n/a	n/a	n/a	n/a	n/a

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at \*2.

<sup>39</sup> *Id.* at \*6.

<sup>40</sup> *Id.*

As the chart demonstrates, Claimant is not entitled to any split shift pay.<sup>41</sup> Accordingly, the Court will disallow the Split-Shift Claim.

## **B. Claimant Is Not Entitled To Disaster Pay**

Claimant asserts that she is entitled to one day's worth of disaster pay following the closure of her club due to a winter storm on January 23, 2016. As support, Claimant submits an excerpt from what she describes as a copy of the 24 Hour Fitness Employee Handbook, and directs the Court to a sentence under a section labeled "Disaster Pay Policy."<sup>42</sup> It states that "[d]isaster pay will be paid to team members who were scheduled to work during any time frame the club/office was closed."<sup>43</sup> However, the relevant text of that section also provides the following conditions to the issuance of disaster pay:

Should a situation arise where there is a serious disruption to the business requiring the closure of one or more clubs *for an extended period of time*, it is natural for team members to express concern and uncertainty about their pay. The Company has created a Disaster Pay program to help minimize the financial impact to team members. It will be at the company's EVP Human Potential and SVP Club Experience discretion to implement the disaster pay for impacted team members. The Company reserves the discretion and right to amend, modify, or terminate these procedures at any time, with or without notice."<sup>44</sup>

In seeking to disallow the Disaster Pay Claim, the Reorganized Debtor argues that Claimant was not entitled to disaster pay under 24 Hour Fitness USA's historical policy when her club was closed for a single day. Ms. Healon explains that "the Debtor defined 'extended period' as a period greater than or equal to two days. If a fitness club was closed for a single day due to a disaster, employees that lost their shifts would not be qualified for compensation under the Disaster Pay Policy."<sup>45</sup> Claimant has provided no evidence to contradict Ms. Healon's testimony. Therefore, the Court will disallow the Disaster Pay Claim as it is for a single day club closure and does not qualify for compensation.

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<sup>41</sup> Claimant also argued in her briefing that she is entitled to "spread of hours" pay under section 142-2.4(a). This claim is not alleged in the Hudson Claims and cannot be considered by way of a responsive brief. Nonetheless, the Court concludes that Claimant is not entitled to that pay. The spread of hours in Claimant's workday did not exceed ten hours. Unlike the split shift statute, the spread of hours statute is clear that Claimant's workday should be the focus: "The *spread of hours* is the interval between the beginning and end of an employee's workday. The spread of hours for any day includes working time plus time off for meals plus intervals off duty." N.Y. COMP. CODES R. & REGS. tit. 12 § 142-2.18.

<sup>42</sup> See D.I. 838 at 7.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* (emphasis added).

<sup>45</sup> Healon Declaration ¶ 7.

### **C. Claimant Is Not Entitled To Sales Commissions**

Claimant asserts that she is owed commissions for her membership sales during her time of employment as “Service Representative Night”.<sup>46</sup> Claimant explains that because there were no sales employees or managers on duty during her shift, she was encouraged to sell memberships and did in fact do so. Accordingly, Claimant asserts that she earned sales commissions but that they were denied when she asked management for them.

The Reorganized Debtor does not disagree that Claimant may have enrolled new members during her overnight shifts as part of providing membership services. However, it does not agree that she is entitled to commissions for those sales. Ms. Healon explains that “[p]ursuant to the Debtor’s compensation policies, service representatives were not entitled to earn commissions on the sale of Club memberships []. Sales Commissions could only be earned by employees whose responsibilities included driving the sales of the Debtor’s Club’s memberships with specific targeted sales goals and metrics.”<sup>47</sup> These employees were then subject to minimum threshold hours and sales to earn commissions.<sup>48</sup> Similar to the Disaster Pay Claim, Claimant has provided no evidence to contradict Ms. Healon’s testimony regarding the established policy or to show that she qualified for commissions under it. In fact, during the trial, Claimant admitted that she was not a sales employee and was not subject to the hours and sales standards.<sup>49</sup> Therefore, the Court will disallow the Sales Commission Claim.

### **D. The Discrimination Claim And Fraud Claims Are Unsupported**

Claimant’s Discrimination Claim and Fraud Claims rest on her fundamental belief that she is entitled to her wage and commission claims. To justify 24 Hour Fitness USA’s failure to pay her claims both pre- and post-petition despite her efforts to collect, she concludes discrimination and other improper motivations.<sup>50</sup> The Court has determined for the reasons stated that Claimant is not entitled under New York law and company policy for the Split Shift Claim, Disaster Pay Claim, and the Sales Commission Claim. Accordingly, given the absence of other independent facts to support the claims of discrimination and fraud, the Discrimination Claim and Fraud Claims must necessarily fail.<sup>51</sup>

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<sup>46</sup> Proof of Claim 24973 at 4; *see also e.g.*, D.I. 838 at 2 (noting that the responsibilities of the “Service Representative Night” included the enrollment of new members).

<sup>47</sup> Healon Declaration ¶ 5.

<sup>48</sup> *Id.*

<sup>49</sup> D.I. 853 at 19.

<sup>50</sup> *See, e.g.*, Proof of Claim 27128 at 4-5 (“The actions of 24-Hour Fitness in my situation begged the question of why the company would choose to conduct itself so inappropriately. What was the motivation? I then remembered 24 Hour Fitness had been sued for discrimination, and recently learned that 24 Hour fitness has been sued multiple times for discrimination, I’ve read 8 times more than its competitors.”); D.I. 781 at 6 (describing the violations of Claimant’s rights as “mean spirited, malicious, injurious”).

<sup>51</sup> The Reorganized Debtor argues that the claims fail for numerous procedural issues. These issues are moot given the Court’s conclusions warranting disallowance of the claims on the merits.



### III. CONCLUSION

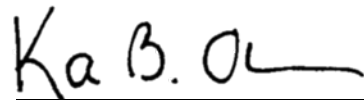
For the foregoing reasons, the Court hereby **ORDERS** the following:

1. The Reorganized Debtor's Claims Objection is sustained. Pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1, each of the Hudson Claims are disallowed in their entirety.

2. The Reorganized Company (as defined in D.I. 782), the Debtors' claims and noticing agent, and the Clerk of the Court are authorized to take all steps necessary or appropriate to carry out this Order.

3. Any relief sought in the Summary Judgment Motion is denied.

Dated: March 27, 2024  
Wilmington, DE



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Karen B. Owens  
United States Bankruptcy Judge