

1 William B. Freeman (SBN 137276)
bill.freeman@kattenlaw.com
2 Katten Muchin Rosenman LLP
515 South Flower Street, Suite 1000
3 Los Angeles, CA 90071
Telephone: 213.443.9000
4 Facsimile: 213.443.9001

5 Attorneys for Health Net of California, Inc.
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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

11 In re:
12 VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
13 Debtors and Debtors in
14 Possession.

) Lead Case No. 2:18-bk-20151-ER

) Chapter 11

) **LIMITED OPPOSITION OF HEALTH**
) **NET OF CALIFORNIA, INC. TO**
) **DEBTORS' MOTION TO APPROVE**
) **SETTLEMENT AND ASSET PURCHASE**
) **AGREEMENT BY AND BETWEEN THE**
) **DEBTORS VERITY MEDICAL**
) **FOUNDATION AND VERITY HEALTH**
) **SERVICES OF CALIFORNIA, INC. AND**
) **ALL CARE MEDICAL GROUP, INC.;**
) **DECLARATION OF DANA SLAVETT IN**
) **SUPPORT THEREOF**

) DATE: January 23, 2018

) TIME: 10:00 a.m.

) PLACE: Courtroom 1568

) U.S. Bankruptcy Court
255 E. Temple Street
Los Angeles, CA 90012

Katten

Katten Muchin Rosenman LLP

515 South Flower Street, Suite 1000
Los Angeles, CA 90071-2212
213/688-7445 tel 213/788-7380 fax



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Creditor Health Net of California, Inc. (“Health Net”) hereby submits this Limited Opposition (the “Opposition”) to Debtors’ Motion To Approve Settlement And Asset Purchase Agreement By And Between The Debtors, Verity Medical Foundation and Verity Health Services Of California, Inc. (collectively, “Debtors”), And All Care Medical Group, Inc. (the “Motion”).¹

I. INTRODUCTION AND SUMMARY OF ARGUMENT.

This is a “limited objection” because Health Net does not object to Debtors’ settlement with All Care Medical Group, Inc. (“All Care”), nor the sale transaction between Debtors and All Care under Bankruptcy Rule 9019. Health Net does, however, strongly object to Debtors’ proposed assumption and assignment to All Care of Debtors’ “Provider Participation Agreement” (referred to as a “Professional Services Agreement” in the Motion) and related executory contracts, including but not limited to the “Delegation Agreement” between Debtors and Health Net (collectively, the “Health Net Contract”) pursuant to Bankruptcy Code Sections 365(b)(1) and 365(f)(2).²

The Health Net Contract directly impacts the medical care and a wide range of professional health care services (and related administrative services) of over 2700 individuals—many of whom are Medi-Cal recipients. [Slavett Decl. at ¶11]. Specifically, the Health Net Contract is a form of “Provider Participation Agreement” where Debtors, as the delegated service provider, are compensated on capitated, per member per month basis, to arrange for and render physician care (including both primary and specialty physician services and a wide range of other professional health care services) for Health Net patients. [Slavett Decl. at ¶12]. In addition to arranging for and rendering physician and other health care services, Debtors are contracted to perform a wide range of critical administrative and management functions, including claims processing, physician credentialing, medical oversight, management, supervision and record keeping. [Slavett Decl. at

¹ This Opposition is timely filed pursuant to a Stipulation extending Health Net’s response time to January 14, 2019 [Dkt. 1230].

² The Health Net Contract is one of the “Designated Contracts” described in the Motion. Health Net takes no position on any of the other Designated Contracts described in the Motion. Finally, there is no confusion between Debtors and Health Net that the only contract at issue in the Motion is that certain “Provider Participation Agreement, effective May 1, 2007, between All Care Medical Group and Health Net of California (subsequently assigned to Daughters of Charity Health System Medical Foundation, effective January 1, 2013, with a name change to “Verity Medical Foundation”, effective December 14, 2015. [See Dkt. 399-8, Exh. “G”].

¶13]. Under the Health Net Contract, the administrative and management functions must be performed by Debtors themselves or thorough a subcontracted “Management Services Organization” (an “MSO”) acceptable to Health Net. [Slavett Decl. at ¶14].

Debtors’ and Health Net’s operations are highly regulated and subject to significant oversight. Two examples particularly relevant to this Motion and explicitly addressed in the Health Net Contract are the requirements that: (1) all primary care physicians and subcontracted specialty physicians rendering care to Health Net patients be fully “credentialed” by Debtors; and (2) any MSO retained by Debtors be fully equipped to perform the critical administrative and management services for which it is subcontracted (e.g., claims processing and credentialing). [Slavett Decl. at ¶18]. For this same reason, Bankruptcy Code Section 365 mandates that if Debtors wish to assume and assign the Health Net Contract to All Care, All Care must also satisfy these two threshold requirements---as this is truly the definition and meaning behind the “adequate assurance of future performance” requirement contained in Section 365.

Despite weeks of negotiations between Health Net, Debtors and All Care, as of the date of this Opposition, Debtors have not satisfied their burden of proof regarding adequate assurance of All Care’s future performance under the Health Net Contract--either as to: (i) All Care’s commitment and ability to credential physicians in accordance with the Health Net Contract; or (ii) All Care’s engagement of an MSO sufficiently experienced and qualified to perform the requisite management services functions. Accordingly, Health Net hereby objects to assumption and assignment of the Health Net Contract for each of the following reasons:

1. Contrary to Debtors’ assertion in the Motion, Health Net has not consented to assumption and assignment of the Health Net Contract to All Care.
2. Neither the Motion nor the declaration of Richard G. Adcock (“Adcock Declaration”) contain any evidence whatsoever on the issue of “adequate assurances of future performance” by All Care under the Health Net Contract.
3. The stakes at issue in the Motion are extraordinarily high: By assuming obligations under the Health Net Contract, All Care will be responsible for patient medical services and related administration for over 2700 individuals, yet Health Net’s due

diligence indicates (as of the date of this Opposition) that All Care: (i) has not “credentialed” any primary care physicians or subcontracted specialists sufficiently qualified to treat Health Net patients; or (ii) retained a sufficiently experienced, qualified MSO to provide the administrative and management functions required in the Health Net Contract. As such, Debtors have not provided the Court or Health Net with adequate assurances of future performance in violation of Bankruptcy Code Section 365(b)(1).

4. Because Debtors have not satisfied the requirements of Section 365, Health Net respectfully requests that the Court deny assumption and assignment of the Health Net Contract by Debtors to All Care.

5. Finally, if Debtors alternatively seek to reject the Health Net Contract at or prior to the hearing on the Motion, Health Net respectfully requests that rejection not be effective until on or after March 1, 2019, so that Health Net can provide adequate notice to its members and otherwise comply with its obligations under the Knox-Keene Act and corresponding regulations, as well as with its Medi-Cal contract and related requirements.

Each of these arguments will be discussed individually below.

For all of the foregoing reasons, Health Net respectfully requests that the Court either: (1) deny the Motion in its entirety; or (2) grant the Motion conditioned upon the removal of the Health Net Contract as one of the “Designated Contracts” to be assumed and assigned to All Care. Health Net further requests that any rejection of the Health Net Contract not be effective prior the later of: (i) March 1, 2019; or (ii) thirty (30) days following the first day of the succeeding month following a rejection order.

II. HEALTH NET HAS NOT CONSENTED TO ASSUMPTION AND ASSIGNMENT OF THE HEALTH NET CONTRACT TO ALL CARE.

On Page 13, lines 22-24 of the Motion, and Page 18, lines 13-14 of the Adcock Declaration, Debtors and Mr. Adcock state that “Upon information and belief, each counter-party to a Designated Contract has agreed to the assignment of its contract to All Care.”

For the avoidance of doubt, as of the date of this Opposition, Health Net has not agreed to

1 or consented to the assumption of the Health Net Contract by Debtors, or the assignment of the
2 Health Net Contract to All Care. [Slavett Decl. at ¶15].

3 **III. DEBTORS HAVE PRESENTED NO ADMISSABLE EVIDENCE WHATSOEVER**
4 **OF ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY ALL CARE**
5 **UNDER THE HEALTH NET CONTRACT.**

6 Debtors bear the ultimate burden of persuasion on all issues under 11 U.S.C. § 365,
7 including the “adequate assurances” requirement. *See In re Rachels Industries, Inc.*, 109 B.R. 797,
8 802 (Bankr. W.D. Tenn. 1990); *see also Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d
9 1303, 1309 (5th Cir. 1985). *See also, In re Lafayette Radio Electronics Corp.*, 12 B.R. 302, 310 -
10 312 (Bankr. E.D.N.Y. 1981).

11 The burden of persuasion is the obligation or duty of establishing, in the mind of the trier
12 of fact, the truth of the issues in dispute. *Dept. of Labor v. Greenwich Collieries*, 512 U.S. 267,
13 275, 114 S. Ct. 2251, 2256 (1994). The party asserting a claim to some relief has the burden of
14 proving every essential element of the claim. *Id.* The burden of proof as to a particular fact is
15 normally upon the party to whom that fact is essential. *KP Permanent Make-Up, Inc. v. Lasting*
16 *Impression I, Inc.*, 543 U.S. 111, 124, 125 S. Ct. 542, 551 (2004). Unless a presumption
17 specifically alters the burden of persuasion, the burden remains at all times with the party upon
18 whom it was originally cast. *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 503, 113 S. Ct. 2742,
19 2745. *See also*, Fed. R. Evid. 301.

20 The burden of producing evidence (also sometimes referred to as the burden of production)
21 refers to a “party’s obligation to come forward with evidence to support its claim.” *Dept. of Labor*
22 *v. Greenwich Collieries*, 512 U.S. at 273, 114 S. Ct. at 2255. The initial burden of producing
23 evidence as to a particular fact is on the party with the burden of proof of that fact, and thus that
24 party has the burden of introducing sufficient evidence to establish its *prima facie* case.
25 *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 1824 (1973).

26 In the Motion, Debtors have the burden of producing evidence and to produce documents
27 sufficient under Section 365. The Adcock Declaration contains no such evidence whatsoever
28 (presumably because Debtors believed Health Net would consent to assumption and assignment).
As such, the Motion should be denied as to assumption of the Health Net Contract for this reason

1 alone.

2 Moreover, to the extent Debtors seek to introduce new evidence of “adequate assurance of
3 performance” in a reply brief or other pleading, Health Net reserves the right to object to the
4 timeliness of any such new evidence, and to seek a continuance of the Motion for appropriate
5 discovery from Debtors and All Care.

6 **IV. ALL CARE HAS NOT DEMONSTRATED SUFFICIENT PHYSICIAN**
7 **“CREDENTIALING” OR RETAINED A CREDITABLE MSO TO SATISFY THE**
8 **“ADEQUATE ASSURANCES” REQUIREMENT CONTAINED IN SECTION 365.**

9 Pursuant to Bankruptcy Code Section 365(f)(2), Debtors may assign the Health Net
10 Contract and the other Designated Contracts, so long as Debtors first assume such contracts in
11 accordance with Section 365(b)(1). Pursuant to Section 365(b)(1), Debtors are required to: (a)
12 cure all arrearages under the Health Net Contract; (b) compensate Health Net and all non-debtor
13 parties for any actual pecuniary loss resulting from Debtors’ defaults; and (c) provide Health Net
14 with adequate assurance of future performance under the Health Net Contract. *See* 11 U.S.C. §
15 365(b)(1).

16 The Motion states that All Care will cure all monetary arrearages and other cure amounts
17 owed under the Health Net Contract prior to the “Closing Date” (see Motion Pg. 13, lines 7-11),
18 thereby purporting to satisfy the first two elements of Section 365(b)(1).³ As to the “adequate
19 assurances” requirement, as set forth in Section III above, Debtors have failed to proffer any
20 evidence whatsoever as to whether All Care can provide Health Net with adequate assurances of
21 future performance.

22 More significantly, Health Net’s own due diligence of All Care indicates (as of the date of
23 this Opposition) that All Care: (i) has not “credentialed” primary care physicians or subcontracted
24 specialists sufficient to treat Health Net patients after the Closing Date, or for that matter, any such
25 physicians; or (ii) retained a creditable MSO to provide the administrative, operational and
26 management functions required in the Health Net Contract. [Slavett Decl. at ¶18]. Significantly,
27 both of these deficiencies directly impact patient health and safety. [Slavett Decl. at ¶18]. Thus,

28 ³ Cure amounts and other arrearages under the Health Net Contract generally consist of pre-petition overpayments
and other adjustments owing from Debtors to Health Net in an unknown amount as of the date of this Opposition.
[Slavett Decl. at ¶17].

1 the Health Net Contract is carefully drafted to ensure that all statutory/regulatory obligations
2 imposed on Health Net as the arranger of health care services are passed along via contract to the
3 downstream provider group (presently Debtors), and ultimately to All Care if the Motion is
4 granted. [Slavett Decl. at ¶18]. Accordingly, Debtors must establish that All Care can adequately
5 assure Health Net that All Care will be able to fully perform under the Health Net Contract
6 immediately after the closing date. [Slavett Decl. at ¶19].

7 Each of these failures will be discussed individually below:

8 **A. ALL CARE HAS NOT CREDENTIALLED DOCTORS SUFFICIENT TO**
9 **CARE FOR HEALTH NET’S MEMBERS, AS REQUIRED BY THE**
10 **HEALTH NET CONTRACT.**

11 Section 2.6.4 of the Health Net Contract provides that each doctor, medical provider and
12 other subcontractor must meet Health Net credentialing requirements prior to the subcontract’s
13 effectiveness with respect to “Contracted Services”. [Slavett Decl. at ¶20]. Simply put, the
14 would-be assignee, All Care, must demonstrate that its primary care physicians and those
15 specialists with whom it subcontracts to fulfill its health care obligations under the Health Net
16 Contract are credentialed before any such physicians may render care to Health Net patients.
17 [Slavett Decl. at ¶20]. As of the date of this Opposition—and despite multiple requests by Health
18 Net to Debtors and All Care—Health Net has received no evidence that All Care has credentialed
19 primary care physicians or subcontracted specialists, or that All Care’s physicians (both PCPs and
20 subcontracted specialists) have been, or will be, credentialed on the Closing Date. [Slavett Decl. at
21 ¶22].

22 For weeks prior to the hearing on this Motion, Health Net has sought written assurance
23 from Debtors and All Care that All Care will have fully credentialed all such physicians
24 sufficiently in advance of the Closing Date of the assignment to: (i) ensure a seamless transition
25 from Debtors to All Care; and (ii) confirm All Care’s ability to render contracted physician
26 services to all Health Net patients, as required by the Health Net Contract. [Slavett Decl. at ¶21].
27 Unfortunately, as of the date of this Opposition, neither Debtors nor All Care have provided any
28 written evidence that All Care’s physicians (both PCPs and subcontracted specialists) have been,
or will be, credentialed on the Closing Date. [Slavett Decl. at ¶22]. For this reason, Debtors have

1 failed to satisfy the “adequate assurances” requirement of Section 365(b)(1).

2 **B. ALL CARE APPEARS NOT TO HAVE RETAINED AN ACCEPTABLE**
3 **MSO, IN VIOLATION OF THE HEALTH NET CONTRACT.**

4 Section 2.6.2 of the Health Net Contract provides that MSO contracts and other
5 subcontracts addressing “Contracted Services” (which includes, but is not limited to,
6 credentialing, claims processing, and other services) must comply with applicable local, state and
7 federal laws. [Slavett Decl. at ¶23].

8 Throughout the due diligence process, the primary representative of All Care, Mr. Juan
9 Lepe, has represented to Health Net that an entity known as “MHM Services, Inc., a California
10 corporation” (“MHM”) was All Care’s selected MSO. [Slavett Decl. at ¶24].

11 Health Net personnel recently reviewed the corporate filing information for MHM posted
12 to the California Secretary of State website. In doing so, Health Net learned that MHM appears to
13 have been suspended by both the Secretary of State and the Franchise Tax Board. [Slavett Decl. at
14 ¶25]. A suspended business entity is not authorized to enter into contracts and thus, until such
15 time as the suspensions are reversed, MHM cannot provide MSO services—thereby leaving All
16 Care unable to fully perform under the Health Net Contract as of the February 1, 2019 Closing
17 Date. [Slavett Decl. at ¶26].

18 Finally, when Health Net shared its concerns regarding MHM with Debtors and All Care,
19 Mr. Lepe and All Care’s legal counsel abruptly reversed course and stated to Health Net that “at
20 no time was it intended that MHM serve as MSO.” [Slavett Decl. at ¶27]. Instead, they stated that
21 All Care intended to contract with an entity known as “ProSource MSO, LLC.” as All Care’s
22 MSO. [Slavett Decl. at ¶27]. Curiously, as recently as January 11, 2019, Mr. Lepe continued to
23 represent to Health Net that MHM will act as All Care’s MSO, but added that “we have other
24 options.” [Slavett Decl. at ¶28]. When pressed for further clarification, Mr. Lepe represented that
25 both MHM and ProSource would perform MSO functions for All Care. [Slavett Decl. at ¶28].

26 Accordingly, Section 365(b)(1) and the Health Net Contract both require that All Care
27 retain a creditable MSO, acceptable to Health Net, to fulfill key delegation responsibilities such as
28 claims processing, referrals, utilization management, etc. for Health Net’s patients. [Slavett Decl.
at ¶29]. Anything less jeopardizes the health and safety of these patients. [Slavett Decl. at ¶29].

1 Because All Care has not done so (at least as of the date of this Opposition), the Motion should be
2 denied.

3 **V. IF THE HEALTH NET CONTRACT IS REJECTED, REJECTION SHOULD NOT**
4 **BE EFFECTIVE WITH LESS THAN THIRTY (30) DAYS' ADVANCE NOTICE,**
5 **SO THAT HEALTH NET CAN PROVIDE SUFFICIENT NOTICE TO ITS**
6 **MEMBERS.**

7 The Motion states that “All Care” contracts which are not assumed and assigned as
8 “Designated Contracts” shall be rejected in accordance with Debtors’ pending Rejection Motion
9 (as defined in the Motion). Health Net previously filed a Limited Opposition to the Rejection
10 Motion [Dkt. 467], and Health Net hereby incorporates that pleading into this Opposition by this
11 reference.

12 Briefly stated, Health Net does not object to Debtors’ rejection of the Health Net
13 Contract—the issue is simply the timing of the rejection. [Slavett Decl. at ¶30]. Health care
14 service plans, such as Health Net, are licensed and regulated by the state Department of Managed
15 Health Care (“DMHC”) under the Knox-Keene Health Care Service Plan Act of 1975 (“Knox-
16 Keene Act”). See Cal. Health & Safety Code §§ 1340 *et seq.* For its Medi-Cal business, Health
17 Net also is under contract with, and regulated by, the state Department of Health Care Services
18 (“DHCS”). [Slavett Decl. at ¶31]. Included within the enumerated goals of the Knox-Keene Act is
19 to ensure “that subscribers and enrollees receive available and accessible health and medical
20 services rendered in a manner providing continuity of care.” See Cal. Health & Safety Code
21 § 1342(g). Comparable goals are set forth in DHCS rules and regulations. [Slavett Decl. at ¶32].

22 Assuming that this Court rejects the Health Net Contract, Health Net will need to move
23 quickly to locate alternative providers for all members impacted by the rejection. [Slavett Decl. at
24 ¶ 33]. There are approximately 2700 members currently covered by the Health Net Contract, and
25 more than half of those members are low-income Medi-Cal recipients with limited financial
26 resources. [Slavett Decl. at ¶33]. Health Net’s paramount concern is to ensure continuity of care
27 for all impacted Health Net members so that members are not turned away from providers when
28 seeking essential health care services. [Slavett Decl. at ¶34]. The notice schemes set forth in
applicable DMHC and DHCS rules and regulations have been set in place specifically to ensure
that notice to and transfer of members is effectuated in a thoughtful, efficient manner.

At an absolute minimum, Health Net needs no less than thirty (30) days to prepare all requisite regulatory filings (including the notice to members), including provision of all required documentation to the DMHC and DHCS to ensure continuity of care for Health Net patients-- thereby safeguarding member health and safety. [Slavett Decl. at ¶35].

Health Net is sensitive to Debtors' desire to eliminate obligations that are burdens on the limited resources of the bankruptcy estate. Health Net respectfully requests, however, that a prospective rejection date which is the later of: (1) March 1, 2019; or (2) thirty (30) days following the first day of the succeeding month following a rejection order would allow Health Net to: (i) comply with applicable State regulations regarding the termination or non-renewal of provider group agreements; (ii) avoid significant financial penalties for non-compliance with said regulations; and (iii) most importantly, ensure a safe transition for more than 2700 Health Net patients impacted by the Rejection Motion to minimize disruption in care. [Slavett Decl. at ¶36].

Accordingly, Health Net respectfully requests that any rejection of the Health Net Contract not be effective until the later of: (i) March 1, 2019; or (ii) thirty (30) days following the first day of the succeeding month following the entry of a rejection order. [Slavett Decl. at ¶37].

VI. CONCLUSION

For the reasons set forth above, Health Net respectfully requests that the Court either: (1) deny the Motion in its entirety; or (2) grant the Motion conditioned upon the removal of the Health Net Contract as one of the "Designated Contracts" to be assumed and assigned to All Care. Health Net further requests that any rejection of the Health Net Contract not be effective prior the later of: (i) March 1, 2019; or (ii) thirty (30) days following the first day of the succeeding month following the entry of a rejection order.

Dated: January 14, 2019

KATTEN MUCHIN ROSENMAN LLP
William B. Freeman

By: /s/William B. Freeman
Attorneys for Health Net of California, Inc.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 2029 Century Park East, Suite 2600, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled (*specify*): **Limited Opposition of Health Net of California, Inc. to Debtors' Motion to Approve Settlement and Asset Purchase Agreement by and between the Debtors Verity Medical Foundation and Verity Health Services of California, Inc. and All Care Medical Group, Inc.; Declaration of Dana Slavett in Support Thereof** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On January 14, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On January 14, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on January 14, 2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

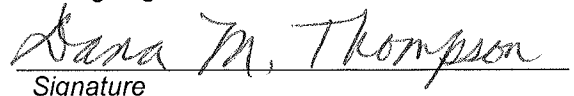
Honorable Ernest M. Robles
U.S. Bankruptcy Court for the Central District of California
255 E. Temple Street, Suite 1560/Courtroom 1568
Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

01/14/2019
Date

Dana M. Thompson
Printed Name


Signature

Service Information

Electronic Notice List

- **Robert N. Amkraut** ramkraut@foxrothschild.com
- **Kyra E. Andrassy** kandrassy@swelawfirm.com, csheets@swelawfirm.com; gcruz@swelawfirm.com; jchung@swelawfirm.com
- **Simon Aron** saron@wrslawyers.com
- **James Cornell Behrens** jbehrens@milbank.com, ggray@milbank.com; mshinderman@milbank.com; hmaghakian@milbank.com; dodonnell@milbank.com; jbrewster@milbank.com; JWeber@milbank.com
- **Ron Bender** rb@lnbyb.com
- **Bruce Bennett** bbennett@jonesday.com
- **Peter J. Benvenutti** pbenvenutti@kellerbenvenutti.com, pjbenven74@yahoo.com
- **Elizabeth Berke-Dreyfuss** edreyfuss@wendel.com
- **Steven M. Berman** sberman@slk-law.com
- **Alicia K. Berry** Alicia.Berry@doj.ca.gov
- **Stephen F. Biegenzahn** efile@sfbllaw.com
- **Scott E. Blakeley** seb@blakeleyllp.com, ecf@blakeleyllp.com
- **Dustin P. Branch** branchd@ballardspahr.com, carolod@ballardspahr.com; hubenb@ballardspahr.com; Pollack@ballardspahr.com
- **Michael D. Breslauer** mbreslauer@swsslaw.com, wyones@swsslaw.com; mbreslauer@ecf.courtdrive.com; wyones@ecf.courtdrive.com
- **Sara Chenetz** schenetz@perkinscoie.com, dlax@perkinscoie.com; cmallahi@perkinscoie.com; mduncan@perkinscoie.com
- **Aaron Davis** aaron.davis@bryancave.com, kat.flaherty@bryancave.com
- **Kevin M. Eckhardt** keckhardt@huntonak.com, keckhardt@hunton.com
- **Christine R. Etheridge** christine.etheridge@ikonfin.com
- **M Douglas Flahaut** flahaut.douglas@arentfox.com
- **Michael G. Fletcher** mfletcher@frandzel.com, sking@frandzel.com
- **Jeffrey K. Garfinkle** jgarfinkle@buchalter.com, docket@buchalter.com; dcyrankowski@buchalter.com
- **Lawrence B. Gill** lgill@nelsonhardiman.com, rrange@nelsonhardiman.com
- **Mary H. Haas** maryhaas@dwt.com, melissastobel@dwt.com; laxdocket@dwt.com; yunialubega@dwt.com
- **Robert M Hirsh** Robert.Hirsh@arentfox.com
- **Marsha A Houston** mhouston@reedsmith.com

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

- **Monique D. Jewett-Brewster** mjb@hopkinscarley.com, jkeehnen@hopkinscarley.com
- **Lance N. Jurich** ljurich@loeb.com, karnote@loeb.com; ladocket@loeb.com
- **Ivan L. Kallick** ikallick@manatt.com, ihernandez@manatt.com
- **Monica Y. Kim** myk@lnbrb.com, myk@ecf.inforuptcy.com
- **Gary E. Klausner** gek@lnbyb.com
- **Joseph A. Kohanski** jkohanski@bushgottlieb.com, kireland@bushgottlieb.com
- **Darryl S. Laddin** bkrfilings@agg.com
- **Richard A. Lapping** richard@lappinglegal.com
- **David E. Lemke** david.lemke@wallerlaw.com, chris.cronk@wallerlaw.com; Melissa.jones@wallerlaw.com; cathy.thomas@wallerlaw.com
- **Elan S. Levey** elan.levey@usdoj.gov, louis.lin@usdoj.gov
- **Samuel R. Maizel** samuel.maizel@dentons.com, alicia.aguilar@dentons.com; docket.general.lit.LOS@dentons.com; tania.moyron@dentons.com; kathryn.howard@dentons.com; joan.mack@dentons.com
- **Alvin Mar** alvin.mar@usdoj.gov
- **Craig G. Margulies** Craig@MarguliesFaithlaw.com, Victoria@MarguliesFaithlaw.com; Helen@MarguliesFaithlaw.com
- **Hutchison B. Meltzer** hutchison.meltzer@doj.ca.gov, Alicia.Berry@doj.ca.gov
- **John A. Moe** john.moe@dentons.com, glenda.spratt@dentons.com, derry.kalve@dentons.com, jennifer.wall@dentons.com, andy.jinnah@dentons.com, bryan.bates@dentons.com
- **Montserrat Morales** mmorales@marguliesfaithlaw.com, Victoria@marguliesfaithlaw.com; Helen@marguliesfaithlaw.com
- **Kevin H. Morse** kevin.morse@saul.com, rmarcus@AttorneyMM.com; sean.williams@saul.com
- **Marianne S. Mortimer** mmortimer@sycr.com
- **Tania M. Moyron** tania.moyron@dentons.com, chris.omeara@dentons.com
- **Alan I. Nahmias** anahmias@mbnlawyers.com, jdale@mbnlawyers.com
- **Jennifer L. Nassiri** jennifernassiri@quinnemanuel.com
- **Mark A. Neubauer** mneubauer@carltonfields.com, mlrodriguez@carltonfields.com; smcloughlin@carltonfields.com; schau@carltonfields.com
- **Bryan L. Ngo** bngo@fortislaw.com, BNgo@bluecapitallaw.com; SPicariello@fortislaw.com; JNguyen@fortislaw.com; JNguyen@bluecapitallaw.com
- **Abigail V. O'Brient** avobrient@mintz.com,

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docketing@mintz.com;DEHashimoto@mintz.com;nleali@mintz.com

- **Aram Ordubegian** ordubegian.aram@arentfox.com
- **Paul .J Pascuzzi** ppascuzzi@ffwplaw.com, lnlasley@ffwplaw.com
- **Mark D. Plevin** mplevin@crowell.com, cromoc@crowell.com
- **Lori L. Purkey** bareham@purkeyandassociates.com
- **Michael B. Reynolds** mreynolds@swlaw.com, kcollins@swlaw.com
- **Emily P. Rich** erich@unioncounsel.net,
bankruptcycourtnotices@unioncounsel.net
- **Debra Riley** driley@allenmatkins.com, jbatiste@allenmatkins.com
- **Julie H. Rome-Banks** julie@bindermalter.com
- **Mary H. Rose** mrose@buchalter.com, salarcon@buchalter.com
- **Megan A. Rowe** mrowe@dsrhealthlaw.com, lwestoby@dsrhealthlaw.com
- **Nathan A. Schultz** nschultz@foxrothschild.com
- **Mark A. Serlin** ms@swllplaw.com, mor@swllplaw.com
- **Rosa A. Shirley** rshirley@nelsonhardiman.com,
rrange@nelsonhardiman.com;lgill@nelsonhardiman.com
- **Kyrsten Skogstad** kskogstad@calnurses.org, rcraven@calnurses.org
- **Michael St. James** ecf@stjames-law.com
- **Jason D. Strabo** jstrabo@mwe.com, ahoneycutt@mwe.com
- **Sabrina L. Streusand** Streusand@slollp.com
- **Ralph J. Swanson** ralph.swanson@berliner.com, sabina.hall@berliner.com
- **Gary F. Torrell** gft@vrmlaw.com
- **United States Trustee (LA)** ustpreion16.la.ecf@usdoj.gov
- **Matthew S. Walker** matthew.walker@pillsburylaw.com,
candy.kleiner@pillsburylaw.com
- **Jason Wallach** jwallach@ghplaw.com, g33404@notify.cincompass.com
- **Kenneth K. Wang** kenneth.wang@doj.ca.gov,
Jennifer.Kim@doj.ca.gov;susan.lincoln@doj.ca.gov;yesenia.caro@doj.ca.gov
- **Phillip K. Wang** phillip.wang@rimonlaw.com, david.kline@rimonlaw.com
- **Gerrick Warrington** gwarrington@frandzel.com, dwise@frandzel.com
- **Latonia Williams** lwilliams@goodwin.com, bankruptcy@goodwin.com
- **Neal L. Wolf** nwolf@hansonbridgett.com,
calendarclerk@hansonbridgett.com,lchappell@hansonbridgett.com
- **Hatty K. Yip** hatty.yip@usdoj.gov

Manual Notice List

Margaret M Anderson

Ryan Schultz

Fox Swibel Levin & Carroll LLP
200 West Madison St
Chicago, IL 60606

Alicia Berry

California Attorney General
300 South Spring St Ste 1702
Los Angeles, CA 90013

Marilyn Klinger

SMTD Law, LLP
355 S. Grand Avenue
Suite 2450
Los Angeles, CA 90071

Jason Reed

Clark Whitmore

Maslon LLP
3300 Wells Fargo Center
90 S Seventh St
Minneapolis, MN 55402