

1 LOEB & LOEB LLP
KARL E. BLOCK (SBN 112739)
2 DANIEL B. BESIKOF (Admitted *Pro Hac Vice*)
LISA E. RUBIN (SBN 317355)
3 10100 Santa Monica Boulevard, Suite 2200
Los Angeles, California 90067
4 Telephone: 310.282.2000
Facsimile: 310.282.2200
5 kblock@loeb.com; dbesikof@loeb.com; lrubin@loeb.com

6 Attorneys for Creditor SCAN Health Plan, a California nonprofit
public benefit corporation
7

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

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

- 15 Affects All Debtors
16 Affects Verity Health System of
California, Inc.
17 Affects O'Connor Hospital
 Affects Saint Louise Regional Hospital
18 Affects St. Francis Medical Center
 Affects St. Vincent Medical Center
19 Affects Seton Medical Center
 Affects O'Connor Hospital Foundation
20 Affects Saint Louise Regional Hospital
Foundation
21 Affects St. Francis Medical Center of
Lynwood Foundation
22 Affects St. Vincent Foundation
 Affects St. Vincent Dialysis Center, Inc.
23 Affects Seton Medical Center Foundation
 Affects Verity Business Services
24 Affects Verity Medical Foundation
 Affects Verity Holdings, LLC
25 Affects De Paul Ventures, LLC
26 Affects De Paul Ventures – San Jose
Dialysis, LLC,

27 Debtors and Debtors in Possession.
28

Lead Case No.: 2:18-bk-20151-ER
CHAPTER: 11

- Jointly Administered With:
Case No. 2:18-bk-20162-ER
Case No. 2:18-bk-20163-ER
Case No. 2:18-bk-20164-ER
Case No. 2:18-bk-20165-ER
Case No. 2:18-bk-20167-ER
Case No. 2:18-bk-20168-ER
Case No. 2:18-bk-20169-ER
Case No. 2:18-bk-20171-ER
Case No. 2:18-bk-20172-ER
Case No. 2:18-bk-20173-ER
Case No. 2:18-bk-20175-ER
Case No. 2:18-bk-20176-ER
Case No. 2:18-bk-20178-ER
Case No. 2:18-bk-20179-ER
Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

**LIMITED OBJECTION OF SCAN
HEALTH PLAN TO SECOND
AMENDED JOINT CHAPTER 11 PLAN
OF LIQUIDATION (DATED JULY 2,
2020) OF THE DEBTORS, THE
PREPETITION SECURED
CREDITORS AND THE COMMITTEE**

Hearing:

Date: August 12, 2020
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA 90012



1 SCAN Health Plan, a California nonprofit public benefit corporation (“SCAN”), by
2 and through its undersigned counsel, hereby submits this limited objection (this
3 “Objection”) to confirmation of that certain *Second Amended Joint Chapter 11 Plan of*
4 *Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors and the*
5 *Committee* [Docket No. 4993] (the “Plan”). In support of this Objection, SCAN
6 respectfully submits as follows.

7 **I. PRELIMINARY STATEMENT**

8 SCAN does not oppose confirmation of the Plan as a general matter, though it takes
9 the solemn note of the final chapter of a collective group of hospitals that provided care to
10 so many people in disadvantaged communities. The release and injunction provisions of
11 the Plan, however, would potentially and improperly eliminate SCAN’s setoff, recoupment
12 and other defensive rights in violation of well-settled bankruptcy law. Any order
13 confirming the Plan should clarify that all of SCAN’s setoff, recoupment rights, and any
14 other legal and equitable defenses, are expressly preserved. Until and unless such
15 clarification is made to bring the Plan into compliance with applicable bankruptcy law, the
16 Plan will run afoul of Section 1129(a)(1) of the Bankruptcy Code and thus cannot be
17 confirmed.

18 **II. BACKGROUND**

19 **a. The SCAN Agreements.**

20 SCAN is a California nonprofit corporation headquartered in Long Beach,
21 California. Since its formation in the 1970’s, SCAN has played a material part in seeking
22 favorable healthcare outcomes for seniors. Until the program was ended in 2004, SCAN
23 was a social HMO (health maintenance organization), providing health care benefits to
24 seniors by way of long term and acute care in order to minimize institutionalization of its
25 members. At the conclusion of the social HMO program, SCAN was designated as a
26 Medicare Advantage Organization by the Centers for Medicare & Medicaid Services
27 (“CMS”) of the United States Department of Health & Human Services.

28

1 SCAN is under contract with CMS pursuant to Section 402 of the 1967
2 Amendments to the Social Security Act and the Department of Health Services of the State
3 of California pursuant to Article 1 (commencing with Section 14490) of the California
4 Welfare and Institutions Code, and is licensed by the State of California’s Department of
5 Managed Health Care as a health care service plan pursuant to the Knox-Keene Health
6 Care Service Plan Act of 1975, as amended.

7 As a result of its Federal and State licensing, SCAN continues to offer benefit plans
8 to Medicare beneficiaries who choose to enroll with SCAN. SCAN also provides
9 important community benefits to its members. These benefits include the Independence at
10 Home program (IAH) that provides long term and personal care coordination for low-
11 income seniors and functionally disabled adults. SCAN also sponsors the Volunteer
12 Action for Aging (VAA) program, a community service that provides individuals with the
13 ability to volunteer for episodic events and ongoing opportunities and engage isolated
14 seniors in community activities.

15 SCAN has more than 200,000 members in Northern and Southern California. As of
16 the Debtors’ August 31, 2018 petition date (the “Petition Date”), SCAN was party to six
17 contracts (the “SCAN Agreements”) with the Debtors, including St. Vincent’s Medical
18 Center (“St. Vincent”), St. Francis Medical Center (“St. Francis”), O’Connor Hospital and
19 Seton Medical Center (“Seton”). The SCAN Agreement with O’Connor Hospital was
20 assumed. The two SCAN Agreements with St. Vincent were rejected. The two SCAN
21 Agreements with St. Francis and the one SCAN Agreement with Seton are the subject of
22 the pending sales transactions, where they appear to be slated for rejection. SCAN has
23 rights of recoupment under each of the SCAN Agreements and applicable law. SCAN
24 may also have rights of setoff under the SCAN Agreements and applicable law.

25 **b. The Plan.**

26 On July 2, 2020, the Debtors filed the Plan. Under the Plan, the Debtors purport to
27 preserve a wide swath of claims against their stakeholders, including health plans, like
28 SCAN. *See* Plan § 13.9 (preserving claims against, *inter alia* health plans). However, the

1 Plan would appear to limit substantially the exercise by SCAN and other creditors of
2 recoupment rights and other legal and equitable defenses to those claims.

3 Specifically, the injunction provisions of Section 13.6 of the Plan would
4 permanently enjoin all holders of Claims from “taking any action in furtherance of [any]
5 . . . *Cause of Action*” and “asserting any *setoff*, right of subrogation or *recoupment* of any
6 kind, directly or indirectly, against any debt, liability or obligation due to the Debtors, the
7 Post-Effective Date Debtors or the Liquidating Trust.” The definition in the Plan of Cause
8 of Action includes “any and all present or future claims, rights, *legal and equitable*
9 *defenses, offsets [and] recoupments.*” Plan § 1.30 (Emphasis added). While it is hard to
10 imagine the Debtors intended to eliminate the assertion of all “legal and equitable
11 defenses, offsets [and] recoupments,” that is what appears to be the potential consequence
12 of this provision.

13 Likewise, the release provisions of Section 13.5 provide for the holders of Claims,
14 including SCAN, to release “all claims, obligations, suits, judgments, damages, demands,
15 debts, rights, *causes of action*, and liabilities” against the Debtors, the Settlement Released
16 Parties and the Liquidating Trust. Plan § 13.5(a)-(c). While the term “causes of action” is
17 not capitalized (implying a potential different meaning than the capitalized defined term),
18 SCAN is concerned that the Plan’s definition of Causes of Action, which includes both
19 rights of recoupment and all “legal and equitable defenses,” may be deemed to control,
20 thus depriving SCAN of those important defensive rights.

21 Section 13.7, too, provides that the Debtors (as Released Parties) shall be released
22 and exculpated from any and all Causes of Action relating to or arising out of “The
23 Chapter 11 Cases . . . the marketing and sale of the Assets of the Debtors [and] the Plan” –
24 broad categories that could potentially be construed to encompass a wide variety of
25 released rights.

26 **III. LIMITED OBJECTION**

27 “Recoupment, an equitable defense, is the setting up of a demand arising from the
28 same transaction as the plaintiff’s claim or cause of action, strictly for the purpose of

1 abatement or reduction of such claim.” *Conrad v. NMTC Inc. (In re Conrad)*, Nos. 05-
2 51412, 07-4095, 2007 Bankr. LEXIS 3757, at *12-13 (Bankr. W.D. Wash. Nov. 2, 2007)
3 (citing *Newbery Corp. v. Fireman’s Fund Ins. Co.*, 95 F.3d 1392, 1399 (9th Cir. 1996)). It
4 is “based on the premise that the defendant should be entitled to show that because of
5 matters arising out of the transaction sued on, he or she is not liable in full for the
6 plaintiff’s claim.” *Id.* It is “a challenge to the validity and extent of the plaintiff’s claim,
7 and no affirmative recovery is permitted.” *Id.* (citing *In re Al-Jiboury*, 344 B.R. 218, 227-
8 28 (Bankr. D. Mass. 2006) (quotations omitted).

9 Put another way, “the equitable doctrine of recoupment allows a creditor to
10 withhold funds owed to another party ‘to offset a claim that arises from the same
11 transaction as the debtor’s claim, without reliance on the setoff provisions and limitations
12 of [11 U.S.C. §] 553, because the creditor’s claim . . . is essentially a defense to the
13 debtor’s claim against the creditor” *Davidovich v. Welton (In re Davidovich)*, 901
14 F.2d 1533, 1537 (10th Cir. 1990).

15 “A claim subject to recoupment avoids the usual bankruptcy channels.” *Megafoods*
16 *Stores, Inc. v. Flagstaff Realty Assocs. (In re Flagstaff Realty Assocs.)*, 60 F.3d 1031, 1035
17 (3d Cir. 1995). Not only are recoupment rights not subject to the automatic stay, but they
18 are also not even affected by a debtor’s discharge. *Process Am., Inc. v. Cynergy Holdings,*
19 *LLC (In re Process A., Inc.)*, 588 B.R. 82, 105 (Bankr. C.D. Cal. 2018) (“[a]s recoupment
20 is neither a claim nor a debt, it is unaffected by either the automatic stay or the debtor’s
21 discharge”); *see also In re Al-Jiboury*, 344 B.R. 218, 227 (Bankr. D. Mass. 2006) (quoting
22 *In re Jones*, 289 B.R. 188, 191 (Bankr. M.D. Fla. 2002)) (while a discharge “prohibits a
23 setoff of any debt as to the personal liability of a debtor, Section 524(a)(2) of the Code
24 does not prohibit a recoupment.”).

25 Likewise, a debtor’s discharge does not eliminate a creditor’s right of setoff. *In re*
26 *De Laurentiis Entm’t Grp., Inc.*, 963 F.2d 1269, 1277 (9th Cir. 1992) (“the primacy of
27 setoffs is essential to the equitable treatment of creditors. A setoff is allowed as a defense
28 to a claim brought by the debtor against a creditor.”). A “creditor’s right of setoff is not

1 barred by the debtor’s discharge because § 524 is not a listed exception to subsection
2 553(a).” *Rivera v. United States (In re Rivera)*, 345 B.R. 229, 233 (Bankr. E.D. Cal.
3 2005); *In re Buckenmaier*, 127 B.R. 233, 237 (B.A.P. 9th Cir. 1991) (finding discharge did
4 not deprive creditor of setoff right: “most cases hold that a valid setoff claim cannot be
5 defeated by a discharge in bankruptcy.”).

6 Here, the Plan does not provide for the Debtors to receive a discharge. Nor could it,
7 since the Plan provides for the liquidation of all of the Debtors’ assets and for the Debtors
8 not to conduct business after the Effective Date. See 11 U.S.C. § 1141(d)(3). Yet the Plan
9 affords the Debtors broad releases and injunctive provisions that would appear to have
10 essentially the identical effect.

11 Whether or not the Plan’s release and injunction provisions are appropriate absent a
12 discharge, there is no basis for depriving SCAN of any valid setoff right, recoupment
13 rights, or the right to assert defensively any “legal and equitable defenses.” See Plan §
14 1.30. As noted above, the Plan could create an absurd situation where claims are being
15 asserted against a stakeholder, but such stakeholder is enjoined from asserting rights of
16 recoupment or other legal or equitable defenses. That construct would fail even if the
17 Debtors were entitled to a discharge. See *In re Process A., Inc.*, 588 B.R. at 105 (supra).
18 Here, however, they are not.

19 Based on the foregoing, any order confirming the Plan should ensure that all “legal
20 and equitable defenses, offsets [and] recoupments,” including rights of setoff, of SCAN are
21 preserved. Absent that clarification, the Plan violates applicable bankruptcy law and
22 therefore cannot be confirmed. See 11 U.S.C. § 1129(a)(1) (requiring compliance with
23 “applicable provisions of [the Bankruptcy Code]” for plan to be confirmed).

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1 **IV. CONCLUSION**

2 **WHEREFORE**, for the foregoing reasons, SCAN respectfully requests that the
3 Court grant relief consistent with this Objection and such other and further relief as may be
4 just and proper.

5 Dated: August 3, 2020

6 LOEB & LOEB LLP
7 KARL E. BLOCK
8 DANIEL B. BESIKOF
9 LISA E. RUBIN

10 By: /s/ Karl E. Block
11 Karl E. Block
12 Daniel B. Besikof
13 Lisa E. Rubin
14 Attorneys for Creditor
15 SCAN Health Plan, a California nonprofit
16 public benefit corporation
17
18
19
20
21
22
23
24
25
26
27
28

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:
10100 Santa Monica Blvd., Suite 2200, Los Angeles, CA 90067-4120.

A true and correct copy of the foregoing document entitled (*specify*): LIMITED OBJECTION OF SCAN
HEALTH PLAN TO SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION (DATED JULY 2, 2020) OF THE
DEBTORS, THE PREPETITION SECURED CREDITORS AND THE COMMITTEE

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 (*date*) 8/3/2020, 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:

- Melinda Alonzo ml7829@att.com
- Robert N Amkraut ramkraut@foxrothschild.com
- Kyra E Andrassy kandrassy@swelawfirm.com,
- lgarrett@swelawfirm.com;gcruz@swelawfirm.com;jchung@swelawfirm.com
- Simon Aron saron@wrslawyers.com
- Lauren T Attard lattard@bakerlaw.com, abalian@bakerlaw.com
- Allison R Axenrod allison@claimsrecoveryllc.com
- Keith Patrick Banner kbanner@greenbergglusker.com,
- sharper@greenbergglusker.com;calendar@greenbergglusker.com
- Cristina E Bautista cristina.bautista@kattenlaw.com, ecf.lax.docket@kattenlaw.com
- James Cornell Behrens jbehrens@milbank.com, •
- gbray@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 Benvenuti pbenvenuti@kellerbenvenuti.com, pjenven74@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@sfblaw.com
- Karl E Block kblock@loeb.com, jvazquez@loeb.com;ladoCKET@loeb.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
- Chane Buck cbuck@jonesday.com
- Damarr M Butler butler.damarr@pbgc.gov, efile@pbgc.gov
- Lori A Butler butler.lori@pbgc.gov, efile@pbgc.gov
- Howard Camhi hcamhi@ecjlaw.com, tcastelli@ecjlaw.com;amatsuoka@ecjlaw.com
- Shirley Cho scho@pszjlaw.com
- Jacquelyn H Choi jchoi@swesq.com
- Shawn M Christianson cmcintire@buchalter.com, schristianson@buchalter.com
- Kevin Collins kevin.collins@btlaw.com, Kathleen.lytle@btlaw.com
- David N Crapo dcrapo@gibbonslaw.com, elrosen@gibbonslaw.com
- Mariam Danielyan md@danielyanlawoffice.com, danielyan.mar@gmail.com
- Brian L Davidoff bdavidoff@greenbergglusker.com, •
- calendar@greenbergglusker.com;jking@greenbergglusker.com

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

- Aaron Davis aaron.davis@bryancave.com, kat.flaherty@bryancave.com
- Anthony Dutra adutra@hansonbridgett.com
- Kevin M Eckhardt keckhardt@huntonak.com, keckhardt@hunton.com
- Andy J Epstein taxcpaesq@gmail.com
- Christine R Etheridge christine.etheridge@ikonfin.com
- M Douglas Flahaut flahaut.douglas@arentfox.com
- Michael G Fletcher mfletcher@frandzel.com, sking@frandzel.com
- Joseph D Frank jfrank@fgllp.com, matlock@fgllp.com;csmith@fgllp.com;jkleinman@fgllp.com;csucic@fgllp.com
- William B Freeman william.freeman@kattenlaw.com, nicole.jones@kattenlaw.com,ecf.lax.docket@kattenlaw.com
- Eric J Fromme efromme@tocounsel.com, lchapman@tocounsel.com;sschuster@tocounsel.com
- Amir Gamliel amir-gamliel-9554@ecf.pacerpro.com,
- csmallahi@perkinscoie.com;DocketLA@perkinscoie.com;JDerosier@perkinscoie.com
- Jeffrey K Garfinkle jgarfinkle@buchalter.com, docket@buchalter.com;dcyrankowski@buchalter.com
- Lawrence B Gill lgill@nelsonhardiman.com, rrange@nelsonhardiman.com
- Paul R. Glassman pglassman@sycr.com
- Eric D Goldberg eric.goldberg@dlapiper.com, eric-goldberg-1103@ecf.pacerpro.com
- David Guess dguess@bmkattorneys.com, 4579179420@filings.docketbird.com
- Anna Gumpert agumpert@sidley.com
- Mary H Haas maryhaas@dwt.com, melissastobel@dwt.com;laxdocket@dwt.com;yunialubega@dwt.com
- James A Hayes jhayes@jamesahayesaplc.com
- Michael S Held mhheld@jw.com
- Lawrence J Hilton lhilton@onellp.com,
- lthomas@onellp.com;info@onellp.com;evescance@onellp.com;nlichtenberger@onellp.com;rgolder@onellp.com
- Robert M Hirsh Robert.Hirsh@arentfox.com
- Florice Hoffman fhoffman@socal.rr.com, floricehoffman@gmail.com
- Michael Hogue hogue@gtlaw.com, fernandezc@gtlaw.com;SFOLitDock@gtlaw.com
- Matthew B Holbrook mholbrook@sheppardmullin.com, mmanns@sheppardmullin.com
- David I Horowitz david.horowitz@kirkland.com, keith.catuara@kirkland.com;
- terry.ellis@kirkland.com;jay.bhimani@kirkland.com;elsa.banuelos@kirkland.com;ivon.granados@kirkland.com
- Marsha A Houston mhouston@reedsmith.com
- Brian D Huben hubenb@ballardspahr.com, carolod@ballardspahr.com
- Lawrence A Jacobson laj@cohenandjacobson.com
- John Mark Jennings johnmark.jennings@kutakrock.com
- Monique D Jewett-Brewster mjb@hopkinscarley.com, eamaro@hopkinscarley.com
- Crystal Johnson M46380@ATT.COM
- Gregory R Jones gjones@mwe.com, rnhunter@mwe.com
- Lance N Jurich ljurich@loeb.com, karnote@loeb.com;ladocket@loeb.com
- Jeff D Kahane jkahane@duanemorris.com, dmartinez@duanemorris.com
- Steven J Kahn skahn@pszyjw.com
- Cameo M Kaisler salembier.cameo@pbgc.gov, efile@pbgc.gov
- Ivan L Kallick ikallick@manatt.com, ihernandez@manatt.com
- Ori Katz okatz@sheppardmullin.com, cshulman@sheppardmullin.com;ezisholtz@sheppardmullin.com
- Jane Kim jkim@kellerbenvenuti.com
- Monica Y Kim myk@lnbrb.com, myk@ecf.inforuptcy.com
- Gary E Klausner gek@lnbyb.com Joseph A Kohanski jkohanski@bushgottlieb.com,
- kprestegard@bushgottlieb.com
- Jeffrey C Krause jkrause@gibsondunn.com, dtrujillo@gibsondunn.com;jstern@gibsondunn.com
- Darryl S Laddin bkrfilings@agg.com
- Robert S Lampl advocate45@aol.com, rlisarobinsonr@aol.com
- Richard A Lapping richard@lappinglegal.com
- Paul J Laurin plaurin@btlaw.com, slmoore@btlaw.com;jboustani@btlaw.com
- David E Lemke david.lemke@wallerlaw.com,
- chris.cronk@wallerlaw.com;Melissa.jones@wallerlaw.com; cathy.thomas@wallerlaw.com
- Elan S Levey elan.levy@usdoj.gov, louisalin@usdoj.gov
- Tracy L Mainguy bankruptcycourtnotices@unioncounsel.net, tmainguy@unioncounsel.net

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

- 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; David@MarguliesFaithLaw.com; Helen@MarguliesFaithlaw.com
- Hutchison B Meltzer hutchison.meltzer@doj.ca.gov, Alicia.Berry@doj.ca.gov
- Christopher Minier becky@ringstadlaw.com, arlene@ringstadlaw.com
- John A Moe john.moe@dentons.com, glenda.spratt@dentons.com,derry.kalve@dentons.com,andy.jinnah@dentons.com
- Susan I Montgomery susan@simontgomerylaw.com, assistant@simontgomerylaw.com; simontgomerylawecf.com@gmail.com;montgomerysr71631@notify.bestcase.com
- Monserrat Morales mmorales@marguliesfaithlaw.com, Victoria@marguliesfaithlaw.com; David@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, tingman@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
- Charles E Nelson nelsonc@ballardspahr.com, wassweilerw@ballardspahr.com
- Sheila Gropper Nelson shedoesbklaw@aol.com
- Mark A Neubauer mneubauer@carltonfields.com,mlrodriguez@carltonfields.com; smcloughlin@carltonfields.com;schau@carltonfields.com;NDunn@carltonfields.com;ecfla@carltonfields.com
- Nancy Newman nnewman@hansonbridgett.com, ajackson@hansonbridgett.com; calendarclerk@hansonbridgett.com
- Bryan L Ngo bngo@fortislaw.com, BNgo@bluecapitallaw.com;SPicariello@fortislaw.com;JNguyen@fortislaw.com;JNguyen@bluecapitallaw.com
- Melissa T Ngo ngo.melissa@pbgc.gov, efile@pbgc.gov
- Abigail V O'Brient avobrient@mintz.com, docketing@mintz.com; DEHashimoto@mintz.com; nleali@mintz.com; ABLevin@mintz.com;GJLeon@mintz.com
- John R OKeefe jokeefe@metzlewis.com, slohr@metzlewis.com
- Scott H Olson solson@vedderprice.com, jcano@vedderprice.com,jparker@vedderprice.com; scott-olson-2161@ecf.pacerpro.com,ecfsfdocket@vedderprice.com
- Aram Ordubegian ordubegian.aram@arentfox.com
- Keith C Owens kowens@venable.com, khoang@venable.com
- Paul J Pascuzzi ppascuzzi@ffwplaw.com, Inlasley@ffwplaw.com
- Lisa M Peters lisa.peters@kutakrock.com, marybeth.brukner@kutakrock.com
- Christopher J Petersen cjpetersen@blankrome.com, gsolis@blankrome.com
- Mark D Plevin mplevin@crowell.com, cromo@crowell.com
- David M Poitras dpoitras@wedgewood-inc.com, dpoitras@jmbm.com; dmarcus@wedgewoodinc.com; aguisinger@wedgewood-inc.com
- Steven G. Polard spolard@ch-law.com, cborrayo@ch-law.com
- David M Powlen david.powlen@btlaw.com, pgroff@btlaw.com
- Christopher E Prince cprince@lesnickprince.com, jmack@lesnickprince.com; mlampton@lesnickprince.com; cprince@ecf.courtdrive.com
- Lori L Purkey bareham@purkeyandassociates.com
- William M Rathbone wrathbone@grsm.com, jmydlandevans@grsm.com
- Jason M Reed Jason.Reed@Maslon.com
- Michael B Reynolds mreynolds@swlaw.com, kcollins@swlaw.com
- J. Alexandra Rhim arhim@hrhlaw.com
- Emily P Rich erich@unioncounsel.net, bankruptcycourtnotices@unioncounsel.net
- Lesley A Riis Iriis@dpmclaw.com
- Debra Riley driley@allenmatkins.com
- Christopher O Rivas crivas@reedsmith.com, chris-rivas-8658@ecf.pacerpro.com
- Julie H Rome-Banks julie@bindermalter.com

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- Mary H Rose mrose@buchalter.com, salarcon@buchalter.com
- Megan A Rowe mrowe@dsrhealthlaw.com, lwestoby@dsrhealthlaw.com
- Nathan A Schultz nschultz@foxrothschild.com
- William Schumacher wschumacher@jonesday.com
- Mark A Serlin ms@swllplaw.com, mor@swllplaw.com
- Seth B Shapiro seth.shapiro@usdoj.gov
- David B Shemano dshemano@shemanolaw.com
- Joseph Shickich jshickich@riddellwilliams.com
- Rosa A Shirley rshirley@nelsonhardiman.com, ksherry@nelsonhardiman.com;lgill@nelsonhardiman.com;
jwilson@nelsonhardiman.com; rrange@nelsonhardiman.com
- Kyrsten Skogstad kskogstad@calnurses.org, rcraven@calnurses.org
- Michael St James ecf@stjames-law.com
- Andrew Still astill@swlaw.com, kcollins@swlaw.com
- Jason D Strabo jstrabo@mwe.com, ahoneycutt@mwe.com
- Sabrina L Streusand Streusand@slolp.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; Stacy.McKellar@doj.ca.gov;
yesenia.caro@doj.ca.gov
- Phillip K Wang phillip.wang@rimonlaw.com, david.kline@rimonlaw.com
- Gerrick Warrington gwarrington@frandzel.com, sking@frandzel.com
- Adam G Wentland awentland@tocounsel.com, lkwon@tocounsel.com
- Latonia Williams lwilliams@goodwin.com, bankruptcy@goodwin.com
- Michael S Winsten mike@winsten.com
- Jeffrey C Wisler jwisler@connollygallagher.com, dperkins@connollygallagher.com
- Neal L Wolf nwolf@hansonbridgett.com, calendarclerk@hansonbridgett.com,lchappell@hansonbridgett.com
- Hatty K Yip hatty.yip@usdoj.gov
- Andrew J Ziaja aziaja@leonardcarder.com, sgroff@leonardcarder.com; msimons@leonardcarder.com;
lbadar@leonardcarder.com
- Rose Zimmerman rzimmerman@dalycity.org

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) _____, 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 (date) 8/3/2020, 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.

tania.moyron@dentons.com; jmoloney@cainbrothers.com; gbray@milbank.com; dsbleck@mintz.com;
pricotta@mintz.com; ncoco@mwe.com; mpreusker@mwe.com; bbennett@jonesday.com; brosenblum@jonesday.com;
psaba@jonesday.com.

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.

8/3/2020
Date

Fiona P. McKeown
Printed Name

/s/ Fiona P. McKeown
Signature

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