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25 UNITED STATES BANKRUPTCY COURT
26
27 NORTHERN DISTRICT OF CALIFORNIA
28
29 OAKLAND DIVISION

30 In re:

31 ANKA BEHAVIORAL HEALTH,
32 INCORPORATED,

33 Debtor.

34 Case No. 19-41025-WJL

35 Chapter 11

36 **DISCLOSURE STATEMENT FOR**
37 **DEBTOR'S PLAN OF LIQUIDATION**
38 **JOINTLY PROPOSED BY DEBTOR**
39 **AND COMMITTEE**

40 **DATED AUGUST 2, 2019**

41 Hon. William J. Lafferty, III

1 **I. INTRODUCTION**

2 This is the disclosure statement (the “**Disclosure Statement**”) describing the Plan of
3 Liquidation Jointly Proposed By Debtor And Committee dated July 25, 2019 (the “**Plan**”), which as
4 the title indicates, is jointly proposed by ANKA Behavioral Health, Inc. (“**ANKA**” or the
5 “**Debtor**”), debtor in possession in the above-captioned chapter 11 case (the “**Bankruptcy Case**”),
6 and the Official Committee of Unsecured Creditors (the “**Committee**”). The Debtor and the
7 Committee are also referred to as the Proponents. This Disclosure Statement also contains
8 information about the Debtor. A full copy of the Plan accompanies this Disclosure Statement.

9 **Your rights may be affected. You should read the Plan and the Disclosure**
10 **Statement carefully and discuss them with your attorney. If you do not have an attorney, you**
11 **may wish to consult one.**

12 The Proponents believe that the Plan provides the best possible recoveries for
13 creditors that can be achieved in any reasonable time frame (*but see Risk Factors, Article IV above*)
14 and that possible alternatives are likely to result in delayed distributions and diminished recoveries
15 for creditors. Therefore, the Proponents urge all Holders of Claims in Classes 2, 3 and 4 to vote to
16 accept the Plan.

17 **A. Purpose of this Document**

18 The Disclosure Statement describes the Debtor and significant events leading up to
19 and occurring during the bankruptcy case; how the Plan proposes to treat claims of the type you hold
20 (i.e. what you will receive on your claim if the Plan is confirmed); who can vote on or object to the
21 Plan; what factors the Bankruptcy Court will consider when deciding whether to confirm the Plan;
22 why the Debtor believes that the Plan is feasible and how the treatment of your claim under the Plan
23 compares to what you would receive on your claim in a liquidation; and the effect of confirmation of
24 the Plan.

25 Following the background discussion in Part II, the detailed and technical description
26 of the terms of the Plan in Part III, the discussion of risk factors in Part IV and tax consequences in
27 Part V, the Disclosure Statement will discuss in Part VI.D. below the main choice that creditors will
28 be deciding in voting on the Plan, and the Court will be deciding in confirming the Plan, namely,

1 whether it is in the best interest of creditors (a) to confirm the Plan and manage the remaining
2 case duties under the supervision of the existing Committee or (b) to delegate the collection of
3 receivables, the prosecution of avoidance actions, and the pursuit of recovery of insurance
4 proceeds to a Court-appointed and Court-supervised trustee.

5 Be sure to read the Plan as well as the Disclosure Statement. The Disclosure
6 Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your
7 rights.

8 **B. Deadline for Voting and Objecting; Date of Plan Confirmation Hearing**

9 The Bankruptcy Court has not yet confirmed the Plan described in this Disclosure
10 Statement. This section describes the procedures pursuant to which the Plan will or will not be
11 confirmed.

12 **1. Time and Place of the Hearing to Confirm the Plan**

13 The hearing at which the Bankruptcy Court will determine whether to confirm the
14 Plan will take place on **TBD**, at **TBD**, in Courtroom 220, before the Honorable Judge William J.
15 Lafferty III, located at the United States Bankruptcy Court, Northern District of California, 1300
16 Clay Street, Oakland, California.

17 **2. Deadline for Voting to Accept or Reject the Plan**

18 If you are entitled to vote to accept or reject the Plan, vote on the enclosed ballot and
19 return the ballot via U.S. Post, courier service, facsimile or email **so that it is received no later than**
20 **TBD** by: WENDEL, ROSEN, BLACK & DEAN LLP, Attn: Tracy Green, 1111 Broadway, Suite
21 2400, Oakland, CA 94607-4028; Facsimile: (510) 834-1928; Email: tgreen@wendel.com.

22 See below, section IV(A), for a discussion of voting eligibility requirements. **Your**
23 **ballot must be received by TBD or it will not be counted.**

24 **3. Deadline for Objecting to Confirmation of the Plan**

25 Objections to the confirmation of the Plan must be filed with the Bankruptcy Court
26 and served by **TBD**.

27 **4. Identity of Person to Contact for More Information**

28 If you want additional information about the Plan, you should contact: Richard A.

1 Lapping, TRODELLA & LAPPING LLP, 540 Pacific Avenue, San Francisco, CA 94133; Email:
2 Rich@TrodellaLapping.com.

3 **C. Disclaimer**

4 **The Court has provisionally approved this Disclosure Statement as containing**
5 **adequate information to enable parties affected by the Plan to make an informed judgment**
6 **about its terms. The Court has not yet determined whether the Plan meets the legal**
7 **requirements for confirmation, and the fact that the Court has approved this Disclosure**
8 **Statement does not constitute an endorsement of the Plan by the Court, or a recommendation**
9 **by the Court that it be accepted.**

10 **II. BACKGROUND**

11 **A. Description of the Debtor and Events Leading to Chapter 11 Filing**

12 ANKA is a 501(c)(3) non-profit behavioral healthcare corporation that operated since
13 1973. It earned national recognition as a result of its ability to design, implement, and operate
14 exceptional, innovative programs. Over the course of a year, ANKA served nearly 15,000
15 individuals and their families and generally had 200-300 clients at any one time at over 50 facilities
16 that it operated throughout California and Michigan. ANKA had residential and Intensive
17 Outpatient Programs (IOP) located in Contra Costa, Alameda, Solano, Sonoma, Santa Clara, Fresno,
18 San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Riverside Counties and Michigan.

19 Before bankruptcy, ANKA employed almost 1,000 professional and specialized staff
20 members and independent contractors across the states of California and Michigan. Its philosophy
21 was to treat the whole person by fully integrating care of both mind and body, always using
22 clinically-proven, psycho-social models designed to promote health and wellness while containing
23 costs. It offered the best and newest treatment methods for those seeking help in a warm and
24 supportive environment. ANKA provided crisis residential treatment, transitional residential
25 treatment, long-term residential treatment, outpatient services, forensic programs and vocational
26 services. Its specific programs included the following:

- 27 • Crisis Residential Treatment for Children & Adults with Co-Occurring Disorders
- 28 • Substance Use Treatment Programs

- Residential Programs for Children & Adults with Intellectual Disabilities
- Care/Drop-In Centers
- Forensic Outpatient & Residential Services
- Independent & Supportive Housing
- Mental Health Rehabilitation Centers
- Veterans Services
- Assertive Community Treatment/Full-Service Partnerships Programs
- Transitional Residential for Co-Occurring Disorders
- Eating Disorder Treatment
- Homeless Continuum of Care
- Day Programs/Outpatient Services
- Vocational Services
- Emergency Shelter Services
- U.S. Probation Mental Health Assessment
- Outreach & Engagement

ANKA commenced this bankruptcy case so that it could undertake an orderly wind down of all of its residential and outpatient treatment programs. It worked closely with the California Department of Developmental Services, regional centers, and county mental health agencies to ensure that all of the needs of the patients were met. ANKA's goal was to transition all of the locations to other providers without closing any facilities to ensure that there was no interruption in patient services, and that the employees continued to work at the same locations since they have the knowledge and relationships with the patients. The Company was committed to an orderly and complete transition of its clients and patients to alternate providers before terminating any service or closing any facility.

The bankruptcy was necessitated because some vendors threatened to discontinue services, and without those services, ANKA could not operate its business. Additionally, ANKA's financial obligations had grown to a point where its net income from operations would never be sufficient to satisfy even a small portion of its obligations. ANKA's financial difficulties primarily

1 arose because of unexpected losses associated with ANKA's expansion into new developmental
2 disabilities service programs. The licenses for the new locations were unexpectedly delayed due to
3 new regulations and could not be operated for significant periods while expenses accrued
4 immediately. The commencement of this bankruptcy case provided ANKA with the ability to
5 orderly transfer its patients to other providers while making current payments to creditors.

6 **B. Significant Events During the Bankruptcy Case**

7 ANKA commenced the Bankruptcy Case by filing a voluntary petition under
8 chapter 11 of the Bankruptcy Code on April 30, 2019 (the "**Petition Date**"). The Debtor continues
9 to operate its business, manage its financial affairs, and operate its bankruptcy estate as a debtor in
10 possession. On June 3, 2019, July 8, 2019 and July 22, 2019, the Meeting of Creditors was held and
11 concluded.

12 **Appointment of Creditors Committee**

13 On May 8, 2019, the Official Committee of Unsecured Creditors was appointed by
14 the Office of the United States Trustee in the Bankruptcy Case. The three members of the
15 Committee are Health Information Technology Care, LLC, Berkshire Hathaway Homestate
16 Insurance Company, and CallTower, Inc.

17 **Employment of Professionals**

18 On May 21, 2019, the Bankruptcy Court approved the appointment of Trodella &
19 Lapping LLP and Wendel, Rosen, Black & Dean LLP as co-counsel for the Debtor. On May 30,
20 2019, the Bankruptcy Court approved the appointment of BPM, LLP as financial advisor to the
21 Debtor. On June 14, 2019 the Bankruptcy Court approved the appointment of Fox Rothschild LLP
22 as attorneys for the Committee. On May 10, 2019 the Bankruptcy Court directed the appointment of
23 a Patient Care Ombudsman. On May 17, 2019, the Office of the United States Trustee appointed
24 David N. Crapo to that position, which appointment was approved by the Bankruptcy Court on June
25 3, 2019.

26 **Transfer of Debtor's Patients and Termination of Operations**

27 Since the commencement of this case, the Debtor has transitioned all of its patients to
28 other providers. Although most of the patients were transitioned to other providers who took over

1 the Debtor's locations, some were moved to other providers because the counties chose to close the
2 facilities. Many of the ANKA employees were retained by the new companies that came in to
3 operate at the facilities.

4 In connection with the transfer of patients, the Debtor rejected all of its leases of real
5 property for its facilities and rejected numerous contracts between Debtor and various state, county,
6 and private payor agencies ("**Payor Agencies**") whose patients were treated at Debtor's facilities
7 under various programs of the Payor Agencies.

8 **Cash Collateral Stipulation and Collection of Receivables**

9 Prior to filing bankruptcy, the Debtor had entered into secured credit agreements in
10 favor of the Bank of Guam (the "**Bank**"), in the original aggregate principal amount of \$8,898,900.
11 Each of the Credit Agreements is secured by and a Security Agreement executed by the Debtor in
12 favor of the Bank, whereby each Credit Agreement is secured by certain Collateral (as defined in the
13 Security Agreements) consisting of all assets of the Debtor of any kind or nature, including but not
14 limited to all accounts receivable, claims, choses in action, policies and the proceeds of policies for
15 insurance of every kind, general intangibles, equipment, furniture and fixtures (the "Collateral").
16 The Bank's liens were duly perfected by filing financing statements under the Uniform Commercial
17 Code.

18 On the Petition Date, the Bank's Collateral, and in particular, cash collateral
19 consisting of Debtor's accounts receivable, were the only source of income that allowed the Debtor
20 to operate in chapter 11. In order for the Debtor to use the cash collateral, the Debtor and the Bank
21 entered into a stipulation to that effect that was approved by the Court in two Cash Collateral Orders
22 (defined in **Exhibit 1** hereto) on an interim and then final basis. In essence, to the extent that the
23 accounts receivable generated and collected by the Debtor after the Petition Date are less than the
24 receivables generated prior to the Petition Date, then the Bank gets a replacement lien such that the
25 value of its Collateral as of the Petition Date does not decrease due to Debtor's activities during the
26 Bankruptcy Case. On the Petition Date, the Debtor estimates that its collectible accounts receivable
27 were at least \$4,000,000.

28 In addition to the liens on the accounts receivable, the Bank's Claim (defined below)

1 is also supported by guarantees by Debtor's two wholly-owned subsidiaries AP&H, Inc. and ANKA
2 MHSA Holding Company LLC (the "**Subsidiaries**") and also secured by the real property owned by
3 the Subsidiaries. The Debtor is cooperating with the Bank to sell the real property owned by the
4 Subsidiaries and will be applying the net proceeds to reduce the Bank's Claim.

5 Pursuant to the Cash Collateral Orders, the Committee was granted the 90 Day
6 Challenge Period (from June 14, 2019 to September 12, 2019) during which the Committee may
7 challenge, seek to avoid or otherwise object to the Bank Claim. The Committee is currently in the
8 process of investigating all potential challenges to the Bank Claim.

9 During the Bankruptcy Case and as of the date of this Disclosure Statement, the
10 Debtor has paid \$1,904,296.99 to the Bank from the proceeds of accounts receivable, and the
11 Subsidiaries have paid the Bank \$69,773.05 from the proceeds of the sale of real property. As of
12 July 29, 2019, the Bank's Claim is approximately \$5,172,037.82, and the Debtor's collectible
13 accounts receivable are estimated to be \$ 2,050,976.35.

14 Due to the nature of the Debtor's business, the collection of accounts receivable
15 requires access to confidential patient information maintained by Debtor that was reported to the
16 Payor Agencies to support the Debtor's billings. The confidentiality of patient information is
17 governed by the HIPAA Privacy Rule of the federal Department of Health and Human Services
18 under the Health Insurance and Portability Accountability Act ("**HIPAA**"), and analogous
19 California statutes and regulations. All staff involved on behalf of the Debtor in the management
20 and collection of accounts receivable must be and currently are certified to be HIPAA qualified. In
21 addition, many of Debtor's contracts with Agency Payors are "cost plus" contracts, meaning the
22 Debtor is required to collect and submit the eligible costs in order to justify its reimbursement. The
23 Debtor's efforts to comply with the various billing protocols and collect the remaining outstanding
24 receivables are important to cost-effectively reducing the Bank's Claim, which has a secured and
25 unsecured component, and thus improving the recoveries of all unsecured creditors.

26 **Records Management**

27 Title 22, Division 5, § 70001 and following of the California Code of Regulations,
28 contain provisions that require health care providers to keep patient records for a minimum of seven

1 years or three years after a juvenile has turned 18, whichever is longer, and to provide access to
2 patients, insurers and government agencies on request. At the Petition Date, the Debtor's patient
3 records consisted of voluminous paper records commingled with non-patient records stored in
4 facilities in northern and southern California and in the locations of the former facilities. Since
5 2016, the Debtor's records have been maintained electronically. During the Bankruptcy Case, the
6 Debtor's staff have been taking the paper records out of storage, destroying records that are not
7 required, and indexing the remainder for storage, future access, and timed destruction when
8 permitted.

9 The Debtor is seeking to arrange for a HIPAA qualified company to store the patient
10 records and provide access to future requestors for a fee as permitted by the regulations. The cost of
11 this has not been determined but will be an administrative expense of the Bankruptcy Case.

12 **C. Recovery of Avoidable Transfers and Insurance Proceeds**

13 The Bankruptcy Code permits the Debtor or a designee, including the Liquidation
14 Trustee under the Plan, to recover certain transfers such as preferences (a payment or other transfer
15 within 90 days of the bankruptcy) where the aggregate amount transferred is at least \$6,425. The
16 Debtor and the Committee have not yet completed an investigation with regard to prepetition
17 transactions, including preferences and other potentially avoidable transfers. Recoveries of
18 avoidable transfers are not subject to the Bank's liens and, therefore, may form a pool of assets that
19 can be distributed to unsecured creditors.

20 In addition to the above, the Debtor had a policy of insurance for claims made against
21 its officers and directors with an aggregate limit of \$5 million (the "**D&O Insurance**"). The
22 Committee and the Bank have notified the Debtor of potential claims that may be covered by the
23 D&O Insurance, and the Debtor duly and timely tendered these claims to the insurance broker and
24 the issuer of the D&O Insurance policy. The validity and value of such claims is unknown. Any
25 recoveries of insurance proceeds may also become part of the pool of assets that can be distributed to
26 unsecured creditors.

27 **D. Current Financial Condition**

28 Apart from potential recovery of avoidable transfers and D&O Insurance proceeds,

1 the Debtor has no significant assets that can be monetized for distribution to unsecured creditors.

2 3 **III. SUMMARY OF THE PLAN AND TREATMENT OF CLAIMS**

4 **ARTICLE I**

5 **DEFINED TERMS AND RULES OF INTERPRETATION**

6 The defined terms and rules of interpretation are attached at the end of the Disclosure
7 Statement as **Exhibit 1**.

8 **ARTICLE II**

9 **CLASSIFICATION OF CLAIMS**

10 **2.1 Unclassified Claims**. In accordance with section 1123(a)(1) of the Bankruptcy Code,
11 Administrative Claims and Priority Tax Claims have not been classified.

12 **2.2 Classification of Claims**. A Claim shall be included in a particular Class only to the
13 extent that the Claim qualifies within the description of that Class and shall be classified in a
14 different Class or Classes to the extent that any remainder of such Claim qualifies for the description
15 of such different Class or Classes. A Claim is placed in a particular Class for the purpose of
16 receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in
17 that Class and such Claim has not been paid, released or otherwise settled before the Effective Date.
18 The Bankruptcy Court shall have exclusive jurisdiction over any dispute concerning the
19 classification of Claims, and resolution of any such dispute shall not be a condition precedent to
20 entry of a Confirmation Order or consummation of the Plan. The Claims against the Debtor are
21 classified as follows:

22 (i) **Class 1 – Non-Tax Priority Claims**. Class 1 Claims consist of all Allowed
23 Claims that are Non-Tax Priority Claims, if any.

24 (ii) **Class 2 – Secured Bank Claim**. Class 2 Claims consist of the Allowed Bank
25 Claim that is a Secured Claim.

26 (iii) **Class 3 – Unsecured Claims**. Class 3 Claims consist of all Allowed Claims
27 that are General Unsecured Claims, including Claims that are allowed pursuant to order of the
28 Bankruptcy Court, Claims allowed pursuant to sections 502(g), 502(h) and 502(i) of the Bankruptcy

Code, and deficiency Claims allowed pursuant to section 506(a) of the Bankruptcy Code and Bankruptcy Rule 3012.

(iv) **Class 4 – Other Secured Claims.** Class 4 Claims consist of all Allowed Claims that are Other Secured Claims.

ARTICLE III

TREATMENT OF CLAIMS

3.1 Unclassified Claims.

(i) ***Administrative Claims.*** Each Holder of an Allowed Administrative Claim entitled to priority pursuant to sections 507(a)(2) or 507(b) of the Bankruptcy Code shall be paid by the Disbursing Agent in full, without interest, or on such other terms as may be agreed upon by such Holder and the Debtor or the Liquidation Trustee, on the Effective Date or as soon thereafter as may be practicable, *provided, however*, that if such Holder's Administrative Claim is (a) disputed as to amount, validity, priority or enforceability or (b) subject to setoff by reason of an action that is or may be brought by the Debtor or the Liquidation Trust, or otherwise, then such Administrative Claim shall be payable only to the extent allowed by order of the Bankruptcy Court. Furthermore, no payment on account of an Administrative Claim for a Professional's fees allowable pursuant to sections 330 and 331 of the Bankruptcy Code and Bankruptcy Rule 2016, or any other applicable provision shall be made until such Claim is Allowed by order of the Bankruptcy Court. Bankruptcy fees accrued and payable pursuant to 28 U.S.C. § 1930 through and including the Effective Date shall be paid in full on or before the Effective Date.

(ii) ***Priority Tax Claims.*** Each Holder of an Allowed Claim for taxes entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code shall be paid by the Disbursing Agent in full, without interest, or on such other terms as may be agreed upon by such Holder and the Debtor or the Liquidation Trustee, on the Effective Date or as soon thereafter as may be practicable.

3.2 Unimpaired Classes of Claims.

(i) ***Class 1 Non-Tax Priority Claims.*** Class 1 Claims are not Impaired under the Plan. Under the Plan, each Holder of an Allowed Non-Tax Priority Claim shall be paid by the Disbursing Agent in full, without interest, or on such other terms as may be agreed upon by such

Holder and the Debtor, on the Effective Date.

3.3 Impaired Classes of Claims.

(i) ***The Class 2 Secured Bank Claim.*** The Class 2 Bank Claim is Impaired under the Plan. Under the Plan, the Holder of the Allowed Class 2 Bank Claim shall: (a) subject to the Committee's and/or Liquidation Trustee's rights to challenge the Bank Liens during the 90-Day Challenge Period and prosecute to conclusion any challenge brought during the 90-Day Challenge Period, (i) retain past the Effective Date its pre-Petition Date Liens on the Bank Collateral and its Replacement Liens on the Replacement Lien Collateral, and (ii) retain all payments or other distributions made by the Debtor to the Bank prior to the Effective Date to the extent that such payments or other distributions are Bank Collateral in which the Bank has an unavoidable Lien; and (b) receive on the Effective Date, or as soon thereafter as may be practicable, but in any event, after the conclusion of the 90-Day Challenge Period and the prosecution of any challenge brought during the 90-Day Challenge Period, the Liquidation Proceeds of the Bank Collateral and the Replacement Lien Collateral. Any balance of the Class 2 Bank Claim, to the extent not secured by the Bank Collateral or Replacement Lien Collateral or not satisfied from the Liquidation Proceeds of such collateral, shall be treated as a Class 3 Claim.

(ii) ***Class 3 General Unsecured Claims.*** Class 3 Claims are Impaired under the Plan. Under the Plan, each Holder of an Allowed Claim that is a General Unsecured Claim shall receive on the Effective Date, or as soon thereafter as may be practicable, an amount equal to such Holder's pro rata share of the Liquidation Proceeds remaining after payment in full of all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Non-Tax Priority Claims, and Allowed Secured Claims.

(iii) ***Class 4 Other Secured Claims.*** Class 4 Claims are Impaired under the Plan. Under the Plan, each Holder of an Allowed Other Secured Claim shall, at the election of the Liquidation Trustee, (a) have the collateral securing its Secured Claim abandoned to it, (b) be entitled, upon the Effective Date, to exercise any and all rights related to (i) foreclosure and realization upon its collateral, or (ii) setoff under Bankruptcy Code § 553, as the case may be, or (c) be paid the amount of its Allowed Other Secured Claim in full, in Cash, on or as soon as practicable

1 after the later of (i) the Effective Date, (ii) the date any such Claim becomes an Allowed Claim, or
2 (iii) the date on which sufficient Net proceeds are generated from the Disposition of the collateral
3 securing such Claim. Any balance of a Class 4 Claim, to the extent not secured by Collateral or not
4 satisfied from the Liquidation Proceeds of such collateral, shall be treated as a Class 3 Claim.

5 **3.4 Retention of Defenses and Rights of Setoff Regarding Claims.** Except as
6 otherwise provided in the Plan, nothing shall prejudice the Debtor's, the Liquidation Trustee's and
7 the Disbursing Agent's rights and defenses, both legal and equitable, with respect to any Claims,
8 including, but not limited to, all rights of setoffs or recoupment with respect to such Claims.

9 **ARTICLE IV**

10 **ACCEPTANCE OR REJECTION OF THE PLAN**

11 **4.1 Impaired Classes of Claims Entitled to Vote.** Subject to Section 4.5 of the Plan,
12 the Holders of the Class 2 Secured Bank Claim, Class 3 General Unsecured Claims, and Class 4
13 Other Secured Claims are entitled to vote to accept or reject the Plan.

14 **4.2 Acceptance by Impaired Classes.** In accordance with section 1126(c) of the
15 Bankruptcy Code and except as provided under sections 1126(e) & (g) of the Bankruptcy Code, an
16 Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the Holders of at
17 least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed
18 Claims of such Class that have timely and properly voted to accept or reject the Plan.

19 **4.3 Acceptance by Unimpaired Classes and Unclassified Claims.** Pursuant to section
20 1126(f) of the Bankruptcy Code, each Unimpaired Class of Claims is presumed to have accepted the
21 Plan and, therefore, votes to accept or reject the Plan will not be solicited from such Classes.
22 Holders of Class 1 Allowed Non-Tax Priority Claims will be paid in full on the Effective Date. To
23 the extent that a Holder of a Class 1 Non-Tax Priority Claim does not file a timely and proper
24 objection to the Plan in accordance with the requirements set forth herein, such Holder may be
25 deemed to have accepted the treatment as set forth in Article III of the Plan.

26 **4.4 Cramdown.** If any Impaired Class of Claims entitled to vote shall not accept the
27 Plan by the requisite majorities provided in section 1126(c) or 1126(d) of the Bankruptcy Code, as
28 applicable, the Plan Proponents reserve the right to (i) amend the Plan, or (ii) to undertake to have

1 the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code, or (iii) both
2 amend the Plan and seek Confirmation of any amended plan pursuant to section 1129(b) of the
3 Bankruptcy Code.

4 **ARTICLE V**

5 **IMPLEMENTATION OF THE PLAN**

6 **5.1 Conditions to Effective Date.** Unless waived by the Plan Proponents, the following
7 are conditions precedent to the occurrence of the Effective Date: (a) the Confirmation Order, in a
8 form reasonably satisfactory to the Plan Proponents, that approves all of the terms and conditions of
9 the Plan and all distributions to be made pursuant thereto, shall have been entered by the Bankruptcy
10 Court and shall be a Final Order, and no request for revocation of the Confirmation Order under
11 section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending; (b) no
12 stay shall be in effect with respect to the Confirmation Order; and (c) all documents, agreements and
13 instruments required for the consummation of the Plan shall have been executed, shall not be subject
14 to dispute, and shall be valid and legally binding obligations of the parties thereto. Until the
15 foregoing conditions are satisfied or waived in accordance with the preceding sentence, the Estate
16 shall remain vested in the Debtor as debtor in possession.

17 **5.2 Funding.** In accordance with sections 1123(a)(5)(D) and 1123(b)(4) of the
18 Bankruptcy Code, all Assets of the Estate shall be sold, otherwise liquidated, distributed, or
19 abandoned. As of the Effective Date, the Liquidation Proceeds, and the Assets of the Estate,
20 including all Cash of the Estate, shall be transferred, conveyed and assigned to the Liquidation Trust.

21 **5.3 Liquidation Trust.** On or before the Effective Date, the Debtor shall establish a
22 liquidation trust in accordance with the Liquidation Trust Agreement. On the Effective Date, the
23 Debtor shall be deemed to have transferred the Liquidation Proceeds and all other Assets of the
24 Estate to the Liquidation Trust pursuant to the terms of the Liquidation Trust Agreement. A
25 Liquidation Trustee acceptable to the Plan Proponents shall be appointed pursuant to the Liquidation
26 Trust Agreement and shall be responsible for liquidating and administering the Trust Assets and for
27 all distributions pursuant to the Plan. On the Effective Date, subject to approval of the Bankruptcy
28 Court, the Liquidation Trustee shall become the appointed representative of the Estate in accordance

1 with section 1123(b)(3) of the Bankruptcy Code, shall assume all liabilities of the Estate and shall
2 pay such liabilities as provided under the Plan. Under the Liquidation Trust Agreement, the
3 Liquidation Trustee shall report to, consult with, and generally be supervised by the Trust Oversight
4 Committee, which shall consist of the current members of the Committee, and essentially be a
5 continuation of the Committee after Confirmation. The members of the Trust Oversight Committee
6 will serve without compensation, except for reimbursement of expenses.

7 **5.4 Liquidation Trustee.** The Liquidation Trustee shall be a person who has previously
8 qualified and served as a bankruptcy trustee, plan administrator or liquidating trustee in a case
9 pending in the Northern District of California, and subject to Court Approval. The Liquidation
10 Trustee shall have and perform all of the duties, responsibilities, rights and obligations set forth in
11 the Liquidation Trust Agreement. The Liquidation Trustee may retain counsel and other
12 professionals as the Liquidation Trustee, in his or her sole discretion, deems appropriate, without
13 further order of the Bankruptcy Court, to assist the Liquidation Trustee in performing his or her
14 duties, rights and obligations under the Plan. At present, the Plan Proponents have nominated Lynn
15 Schoenmann, an experienced bankruptcy trustee, to be the Liquidating Trustee subject to Court
16 Approval.

17 **5.5 Disbursing Agent.** The Liquidation Trustee shall also as the Disbursing Agent for
18 the purpose of implementing the Plan.

19 **5.6 Liquidation Trustee's and Disbursing Agent's Rights, Powers and Duties.** On
20 and after the Effective Date, as set forth in the Liquidation Trust Agreement, the Liquidation Trustee
21 and Disbursing Agent shall have, among others, the following rights and powers (including all of the
22 rights and powers of a trustee appointed under the Bankruptcy Code) with respect to the
23 implementation of the Plan:

- 24 (i) To invest all Cash of the Liquidation Proceeds;
- 25 (ii) To make all required distributions under the Plan;
- 26 (iii) To employ, supervise and compensate Professionals retained to represent the
27 interests of the Liquidation Trustee in connection with the Plan;
- 28 (iv) To make and file tax returns as required by applicable state, federal or local

1 laws;

2 (v) To object to Claims Filed or otherwise asserted against the Debtor, the Estate
3 and property of the Debtor or the Estate;

4 (vi) To seek an estimation of contingent or unliquidated Claims under section
5 502(c) of the Bankruptcy Code;

6 (vii) To seek the determination of the Debtor's tax liabilities under section 505 of
7 the Bankruptcy Code;

8 (viii) To prosecute all Litigation Claims whether pending as of the Effective Date or
9 commenced thereafter, including but not limited to any and all claims against the Debtor's former
10 officers that are covered under policies of insurance;

11 (ix) To sell the Assets free and clear of all liens, claims and interests to the fullest
12 extent provided in section 1123(a)(5)(D) of the Bankruptcy Code;

13 (x) To surcharge the Assets and their proceeds for costs of preservation and
14 disposition to the fullest extent provided in section 506(c) of the Bankruptcy Code;

15 (xi) To amend or modify the Plan in accordance with section 1127 of the
16 Bankruptcy Code; and

17 (xii) To file and prosecute such motions, applications or other pleadings in the
18 Bankruptcy Court or other appropriate forum, and exercise all other powers and rights, and take all
19 other actions necessary or appropriate to implement the Plan.

20 **5.7 Exculpation and Indemnification of the Liquidation Trust and Liquidation**
21 **Trustee.**

22 **From and after the Effective Date, to the fullest extent permitted by applicable law, the**
23 **Liquidation Trustee and each of the Liquidation Trustee's representatives shall not have and**
24 **shall not incur any liability to any Person from any and all claims, causes of action and other**
25 **assertions of liability arising out of the discharge of the powers and duties conferred upon the**
26 **Liquidation Trustee by the Plan, the Liquidation Trust or any court order after the Effective**
27 **Date pursuant to or in furtherance of the Plan, the Liquidation Trust or applicable law, or**
28 **otherwise, except for willful misconduct or gross negligence as determined by a Final Order.**

1 No Holder of a Claim, or any other party in interest, will have or pursue any claim or cause of
2 action against the Liquidation Trustee, the Liquidation Trust or their respective
3 representatives, for making payments or distributions in accordance with the Plan or for
4 implementing the provisions of the Plan, except for claims of willful misconduct or gross
5 negligence. Any act or omission taken that is consistent with the provisions of the Plan, the
6 Liquidation Trust or court order, will be conclusively deemed not to constitute gross
7 negligence or willful misconduct. To the fullest extent permitted by applicable law, the
8 Liquidation Trust will indemnify, hold harmless, defend and reimburse the Liquidation
9 Trustee and each of his or her designated representatives from and against any and all losses,
10 claims, causes of action, damages, fees, expenses, liabilities and actions for any act or omission
11 taken pursuant to the Plan, the Liquidation Trust or court order, except for willful misconduct
12 or gross negligence as determined by a Final Order. All rights of the Persons exculpated and
13 indemnified pursuant hereto shall survive confirmation of the Plan and the closing of the
14 Chapter 11 Case.

15 **5.8 Post-Confirmation Management.** From and after the Effective Date, the
16 Liquidation Trustee shall manage the Liquidation Trust and control and perform all post-
17 Confirmation responsibilities, including implementation of the Plan. From and after the Effective
18 Date, all fees shall be paid to the Liquidation Trustee and any other Professionals retained by the
19 Liquidation Trustee without approval of the Bankruptcy Court.

20 **5.9 Record Date for Distributions.** At 5:00 p.m. prevailing Pacific time on the Record
21 Date, the transfer records for Allowed Claims shall be closed, and there shall be no further changes
22 in the Holders of record of any Allowed Claims. Neither the Debtor, the Liquidation Trustee nor the
23 Disbursing Agent shall be obligated to recognize the transfer of any Allowed Claims after the
24 Record Date but shall be entitled to recognize, for all purposes hereunder, only those Holders of
25 record as of 5:00 p.m. prevailing Pacific time on the Record Date.

26 **5.10 Fractional Dollars; De Minimis Distributions.** Notwithstanding any other
27 provision of the Plan, (a) the Liquidation Trustee and Disbursing Agent shall not be required to
28 make distribution or payments of fractions of dollars, and whenever any payment of a fraction of

1 dollars under the Plan would otherwise be called for, the actual payment made shall reflect a
2 rounding of such fraction to the nearest whole dollar, with one-half (1/2) dollar being rounded down,
3 and (b) the Liquidation Trustee and Disbursing Agent shall not have any obligation to make any
4 distribution to a specific Holder of an Allowed Claim if the amount to be distributed to that Holder
5 on the relevant Distribution Date is less than \$10.

6 **5.11 Executory Contracts and Unexpired Leases.** All executory contracts and
7 unexpired leases that (i) the Debtor entered into prior to the Petition Date, (ii) are executory as of the
8 Effective Date, and (iii) have not been assumed or rejected pursuant to section 365 of the
9 Bankruptcy Code before the Effective Date, shall be deemed rejected as of the Effective Date;
10 *provided, however*, that no such rejection shall occur as to any policies of insurance in force as of the
11 Effective Date under which the Debtor is an insured. Any Claim arising from such rejection under
12 the Plan shall be filed within thirty (30) days of the Effective Date or forever be barred from
13 recovery against the Estate.

14 **5.12 Disputed Claims.** The Liquidation Trustee and Disbursing Agent reserve all rights
15 to prosecute any and all timely Filed objections to Claims, including Administrative Claims, after the
16 Confirmation Date. Any such objection shall be litigated to decision or settled after such notice and
17 opportunity for hearing as shall be appropriate in the Bankruptcy Court's discretion. No
18 disbursement shall be made on account of any Claim, including any Administrative Claims, as to
19 which an objection has been interposed, or as to which a counterclaim or setoff has or may be
20 asserted, unless and until the objection, counterclaim or setoff is resolved by a Final Order. The
21 Liquidation Trustee or Disbursing Agent shall reserve sufficient funds to satisfy any Disputed Claim
22 to the extent provided for in the Plan.

23 **5.13 Effect of Appeals.** Provided that the Confirmation Order is not stayed pending
24 appeal, the Plan Proponents may consummate the Plan notwithstanding such pending appeal, or the
25 timely service and filing of a motion pursuant to Bankruptcy Rules 7052, 7062, 8002(b), 8002(c),
26 8003, 8015, 9023 or 9024.

27 **5.14 Unclaimed Disbursements.** All distributions made pursuant to the Plan that are not
28 negotiated within ninety (90) days after the relevant Distribution Date and that consequently become

1 unclaimed shall revert to and become property of the Liquidation Trust, free and clear of any and all
2 Claims, Interests, demands and causes of action, but subject to further redistribution in accordance
3 with the Plan.

4 **5.15 Injunction.** Except for such actions as Holders may take to prosecute or defend
5 their respective Claims in the Bankruptcy Court, entry of a Confirmation Order will operate
6 as an injunction against the commencement or continuation of an action, the employment of
7 process, or any act to collect, recover or offset any Claim of any Holder until the entry of a
8 final decree or the dismissal of the Chapter 11 Case.

9 **5.16 Retention of Claims.** Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, the
10 Litigation Claims shall be retained, prosecuted and enforced by the Liquidation Trustee.

11 **5.17 Continued Corporate Existence.** Subject to the provisions of the Plan, the Debtor
12 shall continue to exist after the Effective Date as a separate corporation, in accordance with
13 applicable law and pursuant to its articles of incorporation as amended and in effect prior to the
14 Effective Date, provided however, that the purpose of the Debtor shall be limited to taking such
15 actions as are necessary to implement, and are consistent with implementing, the Plan. On the
16 Effective Date, the Liquidation Trustee shall be deemed to be sole director of the Debtor. Any
17 dispute as to the propriety of any action sought to be taken by the Debtor shall be resolved by the
18 Bankruptcy Court. Subject to the provisions of the Plan, as soon as practicable after the Liquidation
19 Trustee makes the final distribution of Cash under the Plan and the Liquidation Trust Agreement, the
20 Liquidation Trustee shall effectuate the dissolution of the Debtor in accordance with applicable law.
21 On the Effective Date, all Assets of the Debtor and the Estate shall vest in the Liquidation Trust.

22 **5.18 Amendments, Modifications, Revocation and Interpretation of the Plan.** Before
23 the Confirmation Date, the Plan Proponents may alter, amend, modify or withdraw the Plan at any
24 time subject to section 1127 of the Bankruptcy Code. In the event that inconsistencies exist between
25 the Plan and the Disclosure Statement, the Plan shall govern.

26 **5.19 Exemption from Certain Transfer Taxes.** Pursuant to section 1146(a) of the
27 Bankruptcy Code, the issuance, transfer or exchange of any security or the making or delivery of any
28 instrument of transfer under the Plan, including the transfer of the Liquidation Proceeds and all other

1 property of the Estate to the Liquidation Trust, may not be taxed under any law imposing a stamp tax
2 or similar tax. Any sale of any property of the Liquidation Trust occurring on or after the Effective
3 Date shall be deemed to be in furtherance of the Plan.

4 **5.20 Jurisdiction.** The entry of a Confirmation Order shall not diminish or impair the
5 Court's subject matter jurisdiction. Until the entry of a final decree, the Court shall retain subject
6 matter jurisdiction of the Chapter 11 Case, and all proceedings arising therein or related thereto,
7 including proceedings that aid the consummation of the Plan, to the fullest extent permissible under
8 applicable law. Without limiting the generality of the foregoing, the Bankruptcy Court shall retain
9 jurisdiction over:

10 (i) **Claims.** To determine the allowance, classification, or priority of Claims
11 against the Debtor;

12 (ii) **Actions.** To determine all applications, motions, adversary proceedings,
13 contested matters, Litigation Claims, and any other litigated matters instituted in the Chapter 11 Case
14 or on behalf of the Debtor or the Liquidation Trust;

15 (iii) **Professional Fees.** To determine any and all applications by Professionals for
16 compensation and reimbursement of expenses before the Effective Date, as provided for in the Plan;

17 (iv) **Injunctions.** To issue injunctions or take such other actions or make such
18 other orders as may be necessary or appropriate to restrain interference with the Plan or its execution
19 or implementation by any Person, to construe and to take any other action to enforce and execute the
20 Plan, the Confirmation Order, or any other order of the Bankruptcy Court, to issue such orders as
21 may be necessary for the implementation, execution, performance and consummation of the Plan
22 and all matters referred to herein, and to determine all matters that may be pending before the Court
23 in the Chapter 11 Case on or before the Effective Date;

24 (v) **Priority Claims and Administrative Claims.** To determine the allowance and
25 classification of any Priority Tax Claim, Non-Tax Priority Claims, Administrative Claims, or any
26 request for payment of an Administrative Claim;

27 (vi) **Secured Claims.** To determine the validity, priority or extent of any Secured
28 Claims.

(vii) **Dispute Resolution.** To resolve any dispute arising under or related to the implementation, execution, consummation or interpretation of the Plan and the making of distributions thereunder, including, without limitation, any dispute concerning payment of Professional fees and expenses of the Liquidation Trustee;

(viii) **General Matters.** To determine such other matters, and for such other purposes, as may be provided in the Confirmation Order or may be authorized under provisions of the Bankruptcy Code;

(ix) **Plan Modification.** To modify the Plan under section 1127 of the Bankruptcy Code, remedy any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order so as to carry out its intent and purpose;

(x) **Aid Consummation.** To issue such orders in aid or consummation of the Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any entity, to the full extent authorized by the Bankruptcy Code;

(xi) **Implementation of Confirmation Order.** To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;

(xii) **Enforcement of Orders.** To enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case;

(xiii) **Taxes.** To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(xiv) **Post-Effective Date Professionals.** To hear and determine disputes with respect to the Liquidation Trustee's Professionals; and

(xv) **Final Decree.** To enter a Final Decree closing the Chapter 11 Case.

IV. RISK FACTORS

The proposed Plan has among the following risks: (1) the collection of accounts receivable may be less than expected, which may result in the Bank holding a larger unsecured claim than expected; and (2) the proceeds of avoidable transfers and the D&O Insurance, which are the

1 main sources of funds for unsecured creditors, may not be sufficient to result in meaningful or,
2 possibly, any distributions to general unsecured creditors.

3 4 **V. TAX CONSEQUENCES OF PLAN**

5 **Creditors concerned with how the Plan may affect their tax liability should**
6 **consult with their own accountants, attorneys, and/or advisers.** The following are the anticipated
7 tax consequences of the Plan:

8 Since the Debtor is a non-profit corporation, all federal income tax consequences of
9 the Plan will not affect the Debtor and will be unique to each creditor.

10 **The above text is only the most basic statement of the anticipated tax**
11 **consequences of the Plan and does not constitute legal or tax advice. Neither the Debtor nor its**
12 **counsel are experts in tax matters. Neither the Debtor nor the Debtor's professionals have in**
13 **any way attempted to provide tax advice to any of the Debtor's creditors. The Plan has been**
14 **drafted with the goal of providing liquidation of the Debtor's business, and not with the goal of**
15 **minimizing the potential adverse tax consequences to the Debtor's creditors. Interested parties**
16 **concerned with how the Plan may affect their tax liability should consult their own**
17 **professional(s).**

18 19 **VI. CONFIRMATION REQUIREMENTS AND PROCEDURES**

20 To be confirmable, the Plan must meet the requirements listed in section 1129 of the
21 Bankruptcy Code. These include the requirements that: the Plan must be proposed in good faith; at
22 least one (1) impaired class of claims must accept the Plan, without counting votes of insiders; the
23 Plan must distribute to each creditor at least as much as the creditor would receive in a Chapter 7
24 case, unless the creditor votes to accept the Plan; and the Plan must be feasible. These requirements
25 are not the only requirements listed in section 1129 of the Bankruptcy Code and they are not the only
26 requirements for confirmation.

27 **A. Who May Vote or Object**

28 Any party in interest may object to the confirmation of the Plan if the party believes

1 that the requirements for confirmation are not met. Many parties in interest, however, are not entitled
2 to vote to accept or reject the Plan. A creditor has a right to vote for or against the Plan only if that
3 creditor has a claim that is both (1) allowed or allowed for voting purposes, and (2) impaired.

4 In this case, the Proponents believe that Classes 2, 3, and 4 are impaired and that
5 holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan.
6 The Proponents believe that class 1 is unimpaired and that holders of claims in this class, therefore,
7 do not have the right to vote to accept or reject the Plan.

8 **1. What is an Allowed Claim**

9 Only a creditor with an allowed claim has the right to vote on the Plan. Generally, a
10 claim is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless
11 the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a
12 proof of claim, unless an objection has been filed to such proof of claim. When a claim is not
13 allowed, the creditor holding the claim cannot vote unless the Bankruptcy Court, after notice and
14 hearing, either overrules the objection or allows the claim for voting purposes pursuant to
15 Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

16 **The deadline for filing a proof of claim in this case is September 3, 2019. The**
17 **deadline for filing a governmental proof of claim is October 27, 2019.**

18 **The deadline for filing an Administrative Claim in this case is October 31, 2019.**

19 **2. What is an Impaired Claim**

20 As noted above, the holder of an allowed claim has the right to vote only if it is in a
21 class that is *impaired* under the Plan. As provided in section 1124 of the Bankruptcy Code, a class is
22 considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of
23 that class.

24 **3. Who is Not Entitled to Vote**

25 The holders of the following six (6) types of claims are *not* entitled to vote:

- 26 • Holders of claims that have been disallowed by an order of the Bankruptcy
27 Court;
- 28 • Holders of other claims that are not Allowed Claims (as discussed above),

1 unless they have been allowed for voting purposes;

- 2 • Holders of claims in unimpaired classes;
- 3 • Holders of claims entitled to priority pursuant to sections 507(a)(2), (a)(3),
4 and (a)(8) of the Bankruptcy Code;
- 5 • Holders of claims in classes that do not receive or retain any value under the
6 Plan; and
- 7 • Holders of claims for administrative expenses.

8 **Even if you are not entitled to vote on the Plan, you have a right to object to the**
9 **confirmation of the Plan.**

10 **B. Votes Necessary to Confirm the Plan**

11 If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one
12 impaired class of creditors has accepted the Plan without counting the votes of any insiders within
13 that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be
14 confirmed by “cram down” on non-accepting classes, as discussed in Section VI (B)(2).

15 **1. Votes Necessary for Class to Accept the Plan**

16 A class of claims accepts the Plan if both of the following occur: (1) the holders of
17 more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the
18 Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the
19 class, who vote, cast their votes to accept the Plan.

20 **2. Treatment for Nonaccepting Classes**

21 Even if one or more impaired classes reject the Plan, the Court may nonetheless
22 confirm the Plan if the nonaccepting classes are treated in the manner prescribed by section 1129(b)
23 of the Bankruptcy Code. A plan that binds nonaccepting classes of claims can be confirmed if it
24 meets all the requirements for consensual confirmation except the voting requirements of section
25 1129(a)(8) of the Code, does not “discriminate unfairly” and is “fair and equitable” toward each
26 impaired class that has not voted to accept the Plan. **You should consult your own attorney if a**
27 **“cram down” confirmation will affect your claim, as the variations on this general rule are**
28 **numerous and complex.**

1 **C. Feasibility**

2 The Bankruptcy Court must find that confirmation of the Plan is not likely to be
3 followed by the liquidation, or the need for further financial reorganization, of the Debtor or any
4 successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan. (11 U.S.C.
5 § 1129(a)(11).) This provision does not apply because the Plan calls for the liquidation of the
6 Debtor.

7 **D. Liquidation Analysis and Best Interest of Creditors Criteria**

8 The Bankruptcy Court must independently determine that the Plan is in the best
9 interest of all classes of Creditors. The “best interest” test requires that a plan provide to each
10 dissenting member of each impaired Class a recovery that has a present value at least equal to the
11 present value of the distribution which each such Creditor would receive if the Debtor were
12 liquidated under Chapter 7 of the Bankruptcy Code. In this regard, the central choice is whether it is
13 in the best interest of Creditors to continue with the Liquidation Trustee supervised by the
14 Committee, which under the Liquidation Trust Agreement, will become the Trust Oversight
15 Committee, or to hand over the case to a Court-appointed and Court-supervised trustee.

16 In performing this analysis, the Bankruptcy Court must determine the amount that
17 would be generated from a Chapter 7 liquidation of the Debtors’ assets after deducting the cost of
18 liquidation. The cost of liquidation would include the Trustee’s commissions (approximately three
19 to four percent of disbursements), the Trustee’s expenses, and fees for counsel and other
20 professionals retained by the Trustee, and Administrative Claims. In addition to liquidating the
21 Debtors’ assets, the Trustee must also decide whether to litigate certain claims and possibly other
22 litigation matters, with which he or she will have little initial familiarity as he or she will be new to
23 the case. Generally, no distribution is made in a Chapter 7 case until all assets of the bankruptcy
24 estate and all claims have been liquidated, a process that can take many months and sometimes
25 years. This delay could further impair the value of any distribution made to holders of Claims under
26 a Chapter 7 liquidation.

27 As the Plan is a liquidation plan, the Proponents are of the opinion that it is
28 unnecessary to prepare an additional analysis of the result that might occur through a liquidation

1 under Chapter 7 of the Bankruptcy Code.

2 The Proponents believe that if the Bankruptcy Case were converted to Chapter 7, or if
3 the Court appointed a Chapter 11 Trustee to oversee the final liquidation of the Debtor and the
4 winding up of the Case, the trustee would not have the background information and knowledge of
5 the Bankruptcy Case to pursue efficient recovery of remaining assets or complete claim objections.
6 The Proponents believe that collection of the Debtor's remaining receivables by the Liquidation
7 Trustee acting in the name of the Debtor and using Debtor's collections staff and collections
8 software will materially increase the amount collected over what a trustee could accomplish.
9 Unsecured creditors benefit if the Liquidation Trustee collects as much of the Bank's receivables as
10 possible, as that reduces the amount of the Bank's unsecured claim and means that more of the assets
11 that the Bank does not have a lien on will be available to unsecured creditors. Further, a trustee
12 would need to hire a HIPAA certified person to access the billing and cost records, whereas the
13 Liquidation Trustee will act as a corporate officer and director of the Debtor, which is already
14 HIPAA qualified. Finally, the Liquidation Trust Agreement provides that the Liquidation Trustee
15 will be compensated by commission according to the same sliding scale as a Court-appointed
16 trustee. Therefore, the costs of liquidating the Debtor's assets via the Liquidation Trust will be no
17 greater than via a Chapter 7 trustee, while the potential recoveries might be significantly greater.

18 The Proponents also believe that the continuation of the Committee, as the Trust
19 Oversight Committee under the Liquidating Trust Agreement, provides important continuity in terms
20 of the legal work and investigation already conducted by the Committee and its attorneys with
21 respect to the Debtor's historical operations, the legal and factual basis for the assertion of claims
22 against the D&O Insurance, and the pursuit of Avoidance Actions. The Liquidation Trustee can start
23 to prepare for her takeover of the case prior to the Confirmation Hearing. While she would not start
24 her services until such time as the Plan is confirmed, she can start to think through the issues that are
25 involved, learn the history, and make suggestions for an efficient turnover of operations. The
26 Liquidation Trustee can also engage in advance planning for which if any employees are necessary
27 for the remaining activities, including avoidance action evidence, collections, and other issues that
28 will arise in an organized wind-down of the Debtor. In contrast, if a trustee is appointed by the

1 Court, there would not be the same opportunity to introduce the trustee to the issues remaining in the
2 case until after his or her employment. If there were a gap in time while the trustee determines what
3 is necessary, some of the remaining critical employees may not be available to work for the trustee.

4 The court-appointed trustee would also have to take the time to seek authority to
5 retain employees. The trustee would also need time to understand what assets are important to retain,
6 such as the use of computer programs, server leases, and real property leases if necessary. While
7 some of the costs to the estate of a Court-appointed trustee and a Liquidation Trustee would be
8 similar, such as how much the trustee would be compensated; ultimately creditors will benefit by the
9 continuity that the Liquidation Trustee can bring to this process.

10 The Plan and Liquidation Trust also streamline the management of the Debtor's
11 liquidation, an advantage that would be lost in a Chapter 7 where every transaction would require the
12 expense of Court approval and extensive notice. Further, it is extremely rare for a Chapter 7 trustee
13 to make interim distribution to creditors, meaning that holders of Allowed Claims will receive no
14 distributions in a Chapter 7 until the cases are fully administered and ready to be closed, which
15 would likely be much longer than it will take for the same creditors to receive at least a partial
16 distribution under the Plan.

17 The Proponents therefore believe that the liquidation under the Plan will achieve at
18 least the same results as would occur in the conversion of the Case to Chapter 7. The result can be
19 achieved without the duplication of administrative costs that would result from the appointment of a
20 Chapter 7 trustee and the employment of additional professional persons, and the delay attendant
21 with the administration of the assets in Chapter 7.

22 THE PROPONENTS BELIEVE THAT CONFIRMATION AND
23 IMPLEMENTATION OF THE PLAN IS PREFERABLE BECAUSE IT IS EXPECTED TO
24 PROVIDE GREATER RECOVERIES AND INVOLVE LESS DELAY AND UNCERTAINTY
25 AND LOWER ADMINISTRATIVE COSTS. ACCORDINGLY, THE PROPONENTS URGE
26 HOLDERS OF CLAIMS IN CLASSES 2, 3, AND 4 TO VOTE TO ACCEPT THE PLAN BY SO
27 INDICATING ON THEIR BALLOTS AND RETURNING THEM AS SPECIFIED IN THE
28 NOTICE.

1 **VII. RECOMMENDATION AND CONCLUSION**

2 The Proponents believe that the Plan provides the best possible recoveries for
3 creditors that can be achieved in any reasonable time frame (*but see Risk Factors, Article IV above*)
4 and that possible alternatives are likely to result in delayed distributions and diminished recoveries
5 for creditors. Therefore, the Proponents urge all Holders of Claims in Classes 2, 3 and 4 to vote to
6 accept the Plan.

7 Dated: August 2, 2019

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WENDEL, ROSEN, BLACK & DEAN LLP

10 By: /s/ Richard A. Lapping

11 Richard A. Lapping
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16 Michael A. Sweet
17 Attorneys for the Official Committee of
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19
20 **EXHIBIT 1 FOLLOWS**

EXHIBIT 1 TO DISCLOSURE STATEMENT

DEFINED TERMS AND RULES OF INTERPRETATION

As used herein, capitalized terms have the meanings set forth below. Any term that is not otherwise defined herein, but that is defined in the Bankruptcy Code or the Bankruptcy Rules, will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

Definitions

“90 Day Challenge Period” means the 90-day period from June 14, 2019, to September 12, 2019, during which the Committee may challenge, seek to avoid or otherwise object to the Bank Claim as set forth in the Cash Collateral Orders.

“Administrative Claim” means a Claim for a cost or expense of administration of the Chapter 11 Case allowable under sections 503(b) or 1114(e)(2) of the Bankruptcy Code and entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including: (i) any actual and necessary cost and expense, incurred by the Debtor after the Petition Date, of preserving the Estate and operating the Debtor’s business, including wages, salaries or commissions for services rendered after the commencement of the Case; (ii) Professional Fee Claims; and (iii) all fees and charges properly assessed against the Estate pursuant to 28 U.S.C. § 1930.

“Administrative Claims Bar Date” means October 31, 2019, the date by which all unpaid Administrative Claims arising prior to the Effective Date shall be filed with the Bankruptcy Court or be forever barred.

“Allowed Claim” means a Claim: (a) scheduled by the Debtor as undisputed, not contingent and liquidated; (b) as to which no objection or request for estimation has been filed on or before the Claims Objection Deadline or the expiration of such other applicable period fixed by the Bankruptcy Court; (c) as to which any objection has been settled, waived, withdrawn or denied by a Final Order; or (d) that is Allowed (i) by a Final Order, (ii) by an agreement between the Holder of such Claim and the Debtor, or (iii) pursuant to the Plan. For the purpose of computing distributions under the Plan, Allowed Claims shall not include penalties, punitive damages or interest with respect to such Claim accruing from and after the Petition Date, except as provided in section 506(b) of the

1 Bankruptcy Code, or as otherwise expressly set forth in the Plan.

2 **“Assets”** means all of the assets, property, interests, and effects, Cash, receivables, real and
3 personal, tangible and intangible, wherever situated, of Debtor, as they existed on the Effective Date
4 or thereafter, including all of the Debtor’s other non-Cash property and assets, including all of the
5 Litigation Claims.

6 **“Avoidance Actions”** means all claims, rights, and causes of action of Debtor’s Estate under
7 the Bankruptcy Code, including but not limited to those set forth in sections 506(c), 506(d), 510,
8 542, 543, 544, 545, 547, 548, 549, 550, 551 or 553, or their state law analogs, regardless of whether
9 or not such actions have been commenced prior to the Effective Date.

10 **“Bank”** means the Bank of Guam.

11 **“Bank Claim”** means all Claims of the Bank under the Bank Lien Documents.

12 **“Bank Collateral”** means all Assets securing the Bank Claim under the Bank Lien
13 Documents.

14 **“Bank Lien Documents”** has the meaning ascribed to it in the Cash Collateral Orders.

15 **“Bankruptcy Code”** means title 11, United States Code, as now in effect or hereafter
16 amended.

17 **“Bankruptcy Court”** means the United States Bankruptcy Court for the Northern District of
18 California, which has jurisdiction over the Chapter 11 Case pursuant to section 1334 of title 28 of the
19 United States Code and the reference from the United States District Court for the Northern District
20 of California pursuant to its General Order No. 24 as amended February 22, 2016.

21 **“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure and the Bankruptcy
22 Local Rules of the Bankruptcy Court, as now in effect or hereafter amended.

23 **“Cash”** means legal tender of the United States of America and equivalents thereof.

24 **“Cash Collateral Orders”** means the *Interim Order Granting Debtor’s Motion for Approval*
25 *of Stipulation for Interim and Final Order (I) Authorizing Debtor’s Use of Cash Collateral Pursuant*
26 *to 11 U.S.C. § 363 and Bankruptcy Rule 4001 and (II) Granting Adequate Protection Pursuant to 11*
27 *U.S.C. §§ 361 and 363 and Setting Final Hearing Thereon* [entered May 16, 2019, at Docket No.
28 58], and the *Order After Final Hearing Approving Amended Stipulation (I) Authorizing Debtor’s*

1 *Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Bankruptcy Rule 4001 and (II) Granting*
2 *Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363* [entered July 14, 2019, at Docket No.
3 165].

4 **“Chapter 11 Case”** means the case under chapter 11 of the Bankruptcy Code commenced
5 by the Debtor in the Bankruptcy Court and assigned Case No. 19-41025.

6 **“Claim”** shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

7 **“Claims Objection Deadline”** means the last day for Filing objections to Claims established
8 by Bankruptcy Local Rule 3003-1.

9 **“Class”** means a category of Holders of Claims as described in Article II of the Plan.

10 **“Committee”** means the Official Committee of Unsecured Creditors, appointed by the
11 Office of the United States Trustee in the Bankruptcy Case, as its membership may be revised from
12 time to time under applicable bankruptcy procedures.

13 **“Confirmation Date”** means the date on which the Clerk of the Bankruptcy Court enters the
14 Confirmation Order on the docket of the Bankruptcy Court.

15 **“Confirmation Hearing”** means the hearing held by the Bankruptcy Court pursuant to
16 section 1128 of the Bankruptcy Code to consider confirmation of the Plan, as such hearing may be
17 adjourned or continued from time to time.

18 **“Confirmation Order”** means the order of the Bankruptcy Court confirming the Plan
19 pursuant to section 1129 of the Bankruptcy Code.

20 **“Debtor”** has the meaning assigned to it in the Introduction.

21 **“Disbursing Agent”** means the Person or Entity that may be designated in the Liquidation
22 Trust Agreement and/or Confirmation Order to make distributions under the Plan.

23 **“Disclosure Statement”** means that certain document as defined in section 1125(b) of the
24 Bankruptcy Code relating to the Plan, including all exhibits and schedules thereto, as will be filed
25 separately and as thereafter amended or supplemented from time to time, and as approved by order
26 of the Bankruptcy Court.

27 **“Disputed Claim”** means any Claim (a) as to which the Debtor or Liquidation Trustee has
28 interposed a timely objection or request for estimation in accordance with the Bankruptcy Code and

1 the Bankruptcy Rules, (b) scheduled as disputed, unliquidated or contingent, or not scheduled, (c)
2 subject to setoff, recoupment or any avoidance action arising under sections 544-550 of the
3 Bankruptcy Code, or (d) otherwise disputed by the Debtor in accordance with applicable law, which
4 objection has not been withdrawn or determined by a Final Order.

5 **“Distribution Date”** means any date, after the Effective Date, upon which the initial and all
6 subsequent distributions will be made to or on account of the Holders of Allowed Claims pursuant to
7 the provisions of the Plan.

8 **“Effective Date”** means the first date on which all of the conditions precedent described in
9 Section 5.1 of the Plan have occurred or have been waived in accordance with Section 5.1 of the
10 Plan.

11 **“Estate”** means the Debtor’s estate created under section 541 of the Bankruptcy Code.

12 **“File, Filed or Filing”** means file, filed or filing with the Bankruptcy Court or its authorized
13 designee in the Chapter 11 Case.

14 **“Final Order”** means an order of the Bankruptcy Court as to which the time to appeal,
15 petition for certiorari or move for reargument or rehearing has expired and as to which no appeal,
16 petition for certiorari or other proceedings for reargument or rehearing shall then be pending or as to
17 which any right to appeal, petition for certiorari, reargue or rehear shall have been waived in writing
18 in form and substance satisfactory to the Plan Proponents or, in the event that an appeal, writ of
19 certiorari or reargument or rehearing thereof has been sought, such appeal, writ of certiorari or
20 reargument or rehearing shall have been denied and the time to take any further appeal, petition for
21 certiorari or motion for reargument or rehearing shall have expired; provided, however, that the
22 possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any
23 analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not
24 preclude such order from being a Final Order.

25 **“General Unsecured Claim”** means a Claim that is not an Administrative Claim, a Priority
26 Tax Claim, a Non-Tax Priority Claim, or a Secured Claim. A Claim arising from the rejection of an
27 executory contract or unexpired lease, and Claims allowable under section 502(h) of the Bankruptcy
28 Code shall be General Unsecured Claims.

1 **“Holder”** means, when used in reference to a Claim, an Entity, Person or Governmental Unit
2 that owns such Claim.

3 **“Impaired”** means, when used in reference to a Claim, a Claim that is impaired within the
4 meaning of section 1124 of the Bankruptcy Code.

5 **“Interest”** means the legal, equitable, contractual and other rights of the Holders of any
6 shareholder interests in the Debtor. There are no Interests or Holders of Interests because Debtor is a
7 California domestic nonprofit corporation.

8 **“Lien”** shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

9 **“Liquidation Proceeds”** means all available Cash on hand as of the Effective Date in
10 addition to Cash to be received from the resolution of Litigation Claims and the sale or disposition of
11 the Assets and all of the Debtor’s remaining Assets including all interests therein, Net of expenses
12 (including professional fees and expenses) of such resolution and disposition.

13 **“Liquidation Trust”** means a liquidating trust that will be established for the benefit of
14 Holders of Allowed Claims pursuant to the Plan and in accordance with the terms of the Liquidation
15 Trust Agreement.

16 **“Liquidation Trust Agreement”** means the Liquidation Trust Agreement that will establish
17 the Liquidation Trust subject to amendment not later than five days before the Confirmation
18 Hearing. A copy of the Liquidation Trust Agreement is attached to the Plan as **Exhibit A**.

19 **“Liquidation Trustee”** means the person or entity who shall become trustee of the
20 Liquidation Trust upon the Effective Date.

21 **“Litigation Claims”** means any Claim, Avoidance Action, cause of action, controversy,
22 demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment,
23 account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever,
24 known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected,
25 liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertible directly or
26 derivatively, whether arising before, on or after the Petition Date, in contract or in tort, in law or in
27 equity, or pursuant to any other theory of law, including but limited to any and all claims against the
28 Debtor’s former officers that are covered under policies of insurance.

1 **“Net”** means, with respect to Cash proceeds received from the disposition or collection of
2 any particular asset, the Cash proceeds remaining after payment of (i) all taxes related to the
3 disposition or collection of such assets, (ii) any incurred or anticipated costs of administering the
4 Liquidation Trust, and (iii) all costs and expenses related to the Disposition, collection, enforcement,
5 settlement, pursuit, improvement, maintenance, and operation of such assets, including, without
6 limitation, brokers’ fees and expenses and attorneys’ fees and expenses.

7 **“Non-Tax Priority Claim”** means a Class 1 Claim, other than an Administrative Expense
8 Claim or Priority Tax Claim, that is entitled to priority in payment pursuant to sections 507(a)(3),
9 (4), (5), (6), (7) or (9) of the Bankruptcy Code.

10 **“Other Secured Claim”** means a Secured Claim other than the Bank Claim.

11 **“Petition Date”** means April 30, 2019, the date on which the Debtor filed its petition for
12 relief commencing the Chapter 11 Case.

13 **“Plan”** means the Plan and all supplements, appendices and schedules hereto, either in its
14 present form or as the same may be altered, amended or modified from time to time.

15 **“Plan Proponents”** means the Debtor and the Committee.

16 **“Priority Tax Claim”** means a Claim of a Governmental Unit of the kind specified in
17 sections 502(i) and 507(a)(8) of the Bankruptcy Code.

18 **“Professional”** means (a) any professional employed in the Chapter 11 Case pursuant to
19 section 327 or 1103 of the Bankruptcy Code or otherwise, and (b) any professional or other entity
20 seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case
21 pursuant to section 503(b)(4) of the Bankruptcy Code.

22 **“Record Date”** means the record date for purposes of making distributions under the Plan on
23 account of Allowed Claims, which date shall be the Effective Date.

24 **“Replacement Liens”** has the meaning ascribed to it in the Cash Collateral Orders.

25 **“Replacement Lien Collateral”** means all Assets securing the Replacement Liens, as
26 identified in the Cash Collateral Orders.

27 **“Secured Claim”** means a Claim that is secured by a Lien on property in which the Debtor’s
28 Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the

1 extent of the value of the Claim Holder's interest in the Debtor's Estate's interest in such property or
2 to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a)
3 of the Bankruptcy Code or, in the case of a setoff, pursuant to section 553 of the Bankruptcy Code.

4 **"Trust Assets"** means all Assets of the Estate that will be transferred to the Liquidation
5 Trust, including the Liquidation Proceeds and all other property of the Estate.

6 **"Unimpaired Claim"** means a Claim that is not impaired within the meaning of section
7 1124 of the Bankruptcy Code.

8 **Rules of Interpretation and Computation of Time.** For purposes of the Plan, unless
9 otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated
10 in the singular or the plural, will include both the singular and the plural; (b) unless otherwise
11 provided in the Plan, any reference in the Plan to a contract, instrument, release or other agreement
12 or document being in a particular form or on particular terms and conditions means that such
13 document will be substantially in such form or substantially on such terms and conditions; (c) any
14 reference in the Plan to an existing document or schedule, Filed or to be Filed, means such document
15 or schedule, as it may have been or may be amended, modified or supplemented pursuant to the
16 Plan; (d) any reference to an entity as a Holder of a Claim includes that entity's successors and
17 assigns; (e) all references in the Plan to Sections, Articles and Schedules are references to Sections,
18 Articles and Schedules of or to the Plan; (f) the words "herein," "hereunder" and "hereto" refer to
19 the Plan in its entirety rather than to a particular portion of the Plan; (g) captions and headings to
20 Articles and Sections are inserted for convenience of reference only and are not intended to be a part
21 of or to affect the interpretation of the Plan; (h) the rules of construction set forth in section 102 of
22 the Bankruptcy Code and in the Bankruptcy Rules will apply; and (i) in computing any period of
23 time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) and Bankruptcy
24 Local Rule 9013-3(a) will apply.

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