

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM460563

<b>SUBMISSION TYPE:</b>	RESUBMISSION		
<b>NATURE OF CONVEYANCE:</b>	COURT ORDER		
<b>RESUBMIT DOCUMENT ID:</b>	900435796		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Alliance Health Networks, LLC		11/16/2017	Limited Liability Company:
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	UpWell Health, LLC		
<b>Street Address:</b>	10855 S River Front Parkway		
<b>City:</b>	South Jordan		
<b>State/Country:</b>	UTAH		
<b>Postal Code:</b>	84095		
<b>Entity Type:</b>	Limited Liability Company: DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	86683870	UPWELL	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	8018697646		
<b>Email:</b>	bforsgren@alliancehealth.com		
<b>Correspondent Name:</b>	UpWell Health		
<b>Address Line 1:</b>	10855 S River Front Parkway		
<b>Address Line 4:</b>	South Jordan, UTAH 84095		
<b>NAME OF SUBMITTER:</b>	Benjamin Forsgren		
<b>SIGNATURE:</b>	/benjamin forsgren/		
<b>DATE SIGNED:</b>	02/02/2018		
<b>Total Attachments: 29</b>			
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ENTERED  
11/07/2017

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:

UPLIFT RX, LLC <sup>1</sup>

Debtor(s).

CASE NO.: 17-32186

CHAPTER 11

Jointly Administered

**ORDER AUTHORIZING SALE FREE AND CLEAR OF LIENS, CLAIMS, AND  
ENCUMBRANCES**

THIS MATTER having come before the Court upon the motion, filed September 20, 2017, as amended by motion filed on October 5, 2017 (collectively, the “**Sale Motion**”)<sup>2</sup> of the Debtors herein (collectively, the “**Debtors**”), in the above-captioned chapter 11 cases (the “**Cases**”), and to the extent use of Debtors’ property is involved, such non-debtor affiliates, for the entry of an order (the “**Sale Order**”):

- i. approving that certain asset purchase agreement, a copy of which is attached hereto as **Exhibit 1**, dated as of October 31, 2017, by and between the Debtors and UpWell Holding, Inc. (the “**Buyer**”) (as amended from time to time, the “**Agreement**”);
- ii. authorizing and approving the sale (the “**Sale**”) of the Assets free and clear of all

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Uplift Rx, LLC (9306); Belle Pharmacy, LLC (0143); Alliance Medical Holdings, LLC (5945); Geneva Pharmacy, LLC (1929); Ohana Rx, LLC (1722); Benson Pharmacy, Inc. (6606); Kendall Pharmacy, Inc. (0825); Richardson Pharmacy, LLC (9566); Innovative Rx, LLC (9986); Charleston Rx, LLC (5852); On Track Rx, LLC (9021); Uinta Rx, LLC (7157); Goodman Pharmacy, LLC (9373); BrooksideRx, LLC (5927); Osceola Clinic Pharmacy, LLC (4886); Oak Creek Rx, LLC (9722); Waverly Pharmacy, LLC (7342); Newton Rx, LLC (9510); Lone Peak Rx, LLC (5973); Improve Rx, LLC (9120); New Jersey Rx, LLC (0035); Berkshire Pharmacy, LLC (9197); Health Saver Rx, LLC (7810); Best Rx, LLC (0346); Delaney Pharmacy, LLC (7497); New Life Pharmacy, LLC (8292); Skyline Health Services, LLC (6876); Stonybrook Pharmacy, LLC (7700); Woodward Drugs, LLC (2385); Bridgestone Pharmacy, LLC (5294); Brookhill Pharmacy, LLC (5296); Burbank Pharmacy, LLC (5227); Canyons Pharmacy, LLC (1744); Cheshire Pharmacy, LLC (6370); Conoly Pharmacy, LLC (0367); Cottonwood Pharmacy, LLC (5131); Galena Pharmacy, LLC (0672); Garnett Pharmacy, LLC (6505); Hawthorne Pharmacy, LLC (5345); Hazelwood Pharmacy, LLC (1088); Medina Pharmacy, LLC (8987); Raven Pharmacy, LLC (5671); Glendale Square Rx, Inc. (1022); Lockeford Rx, Inc. (1853); Pinnacle Pharmacy Solutions, LLC (9760); Riverfront Rx, LLC (7152); Riverbend Prescription Services, LLC (1862); Raven Pharmacy Holdings, LLC (2464); Bridgestone Pharmacy Holdings, LLC (2840); Crestwell Pharmacy Holdings, LLC (1503); Galena Pharmacy Holdings, LLC (8609); Geneva Rx Holdings, LLC (8247); Hawthorne Rx Holdings, LLC (9531); Woodward Rx Holdings, LLC (2173); Philadelphia Pharmacy Holdings, LLC (8526); Health Rx Holdings, LLC (0909); Canyon Medical, LLC (4915); Alliance Medical Administration, Inc. (2899); Ollin Pharmaceutical, LLC (9815); Alta Distributors, LLC (7407); Eat Great Café, LLC (2314); Alliance Health Networks, LLC (1815). The Debtors’ mailing address is Uplift Rx, LLC, 15462 FM 529, Houston, TX 77095.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Sale Motion, or the Agreement (as defined herein), as applicable.

liens, liabilities, claims, interests, and other encumbrances as set forth in the Agreement;

- iii. authorizing the Debtors to assume and assign the contracts set forth on **Exhibit 2** attached hereto (the “**Assumed Contracts**”) to the Buyer as set forth in the Agreement and Specified Contracts that subsequently may be described as Assumed Contracts (collectively, the “**Contracts**”); and
- iv. granting certain related relief.

The Court having entered an order on October 20, 2017 at Docket No. 612 (the “**Bid Procedures Order**”) approving, among other things, the proposed Bidding Procedures appended to the Bidding Procedures Order, the notice of the Sale, and procedures for determining and fixing cure costs to be paid in respect of Contracts; and the Debtors having determined, after an extensive marketing process, that the Buyer has submitted the highest and best bid for the Assets; and upon adequate and sufficient notice of the Sale Motion, the Bidding Procedures, the Auction, the Agreement, and all other related transactions contemplated thereunder and in this Sale Order having been given in the manner directed by the Court in the Bidding Procedures Order; and all interested parties having been afforded an opportunity to be heard with respect to the Sale Motion and all relief related thereto; and the Court having reviewed and considered (i) the Sale Motion and all relief related thereto, (ii) the objections thereto and (iii) the Court having heard statements of counsel and the evidence presented in support of the relief requested by the Debtors in the Sale Motion at a hearing before the Court on November 7, 2017 (the “**Sale Hearing**”); and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest; and upon the record of the Sale Hearing and all other pleadings and proceedings in these Cases, including the Sale Motion; and after due deliberation thereon; and good and sufficient cause appearing therefor,

**THE COURT HEREBY FINDS AND DETERMINES THAT:**

- A. **Findings of Fact and Conclusions of Law.** The findings and conclusions set

forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. On November 7, 2017, the Court made certain additional findings of fact on the record, which are incorporated into this Order.

B. **Jurisdiction and Venue.** The Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. § 1334. Consideration of the Sale Motion constitute a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and the proceedings on the Sale Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Bases for Relief.** The bases for the relief requested in the Sale Motion are: (i) sections 105, 363, 365, 503 and 507 of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”); and (ii) Rules 2002(a)(2), 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

D. **Final Order.** This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, waives any stay and expressly directs entry of judgment as set forth herein.

**Notice of Sale, Auction, and Cure Amounts**

E. Actual written notice of the Sale Motion, and a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein, has been afforded to

all known interested entities and parties, including, but not limited to the following entities and parties (the “**Notice Parties**”): (i) the United States Trustee for the Southern District of Texas (the “**U.S. Trustee**”); (ii) counterparties to the Contracts (the “**Contract Counterparties**”); (iii) all known holders of liens, encumbrances, and other claims secured by the Assets; (iv) all of the creditors listed on the Debtors’ matrix filed under Local Rule 1007-2(a); (v) the United States Attorney for the District of Utah; and (vi) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002 and Local Rules 6004-1(e), 2002-1(b) and 2002-4(a).

F. Actual written notice of the auction for the Sale of the Assets that was scheduled for November 7, 2017 (the “**Auction**”), the Sale Hearing, the Sale of the Assets, and a reasonable opportunity to object or be heard with respect thereto, has been afforded to all known interested entities and parties, including, but not limited to the Notice Parties.

G. Notice of the Auction, Sale Hearing, and Sale was timely, proper, and reasonably calculated to provide the Notice Parties and all other interested entities and parties with timely and proper notice of the Auction, the Sale, and the Sale Hearing.

H. In accordance with the provisions of the Bidding Procedures Order, the Debtors have served notice upon the Contract Counterparties: (i) that the Debtors seek to assume and assign to the Buyer the Contracts on the Closing Date (as defined in the Agreement) and (ii) of the relevant Cure Amounts (defined below). The service of such notice was good, sufficient, and appropriate under the circumstances, and no further notice need be given in respect of establishing a Cure Amount for the Contracts. Each of the Contract Counterparties has had or will have had an opportunity to object to the Cure Amounts set forth in the notice and to the assumption and assignment to the Buyer of the applicable Contract.

I. As evidenced by the affidavits of service previously filed with the Court, proper, timely, adequate, and sufficient notice of the Sale Motion, the Auction, the Sale Hearing, the Sale, and the transactions contemplated thereby, including without limitation, the assumption and assignment of the Contracts to the Buyer, has been provided in accordance with the Bidding Procedures Order and sections 105(a), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9008. The notices described herein were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Sale Motion, the Auction, the Sale Hearing, the Sale, or the assumption and assignment of the Contracts to the Buyer is required.

J. The disclosures made by the Debtors concerning the Sale Motion, the Agreement, the Auction, the Sale Hearing, the Sale, and the assumption and assignment of the Contracts to the Buyer were good, complete, and adequate.

K. A reasonable opportunity to object and be heard with respect to the Sale and the Sale Motion and the relief requested therein (including the assumption and assignment of Contracts to the Buyer and any Cure Costs related thereto), has been afforded to all interested persons and entities, including the Notice Parties.

**Good Faith of Buyer**

L. The Agreement was negotiated, proposed, and entered into by the Debtors and the Buyer without collusion, in good faith, and from arms'-length bargaining positions.

M. Neither the Debtors nor the Buyer have engaged in any conduct that would cause or permit the Agreement to be avoided under section 363(n) of the Bankruptcy Code. The Buyer has not acted in a collusive manner with any person in connection with any aspect of the Auction or the Sale and the Purchase Price was not controlled by any agreement

among the bidders.

N. The Buyer is purchasing the Assets in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code. The Buyer has proceeded in good faith in all respects in connection with the Sale including, but not limited to: (i) agreeing to subject its bid to the competitive bidding process contemplated in the Bidding Procedures Order in good faith, (ii) complying with the provisions in the Bidding Procedures Order, and (iii) disclosing all payments to be made by the Buyer in connection with the Sale. The Buyer is therefore entitled to all of the protections afforded under section 363(m) of the Bankruptcy Code.

**Highest and Best Offer**

O. The Debtors conducted a sale process in accordance with, and have otherwise complied in all respects with, the Bidding Procedures Order. The sale process set forth in the Bidding Procedures Order afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Assets. The Auction was duly noticed in a non-collusive, fair, and good faith manner, and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Assets.

P. The Agreement constitutes the highest and best offer for the Assets, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the Agreement constitutes the highest and best offer for the Assets constitutes a valid and sound exercise of the Debtors' business judgment.

Q. The Agreement represents a fair and reasonable offer to purchase the Assets under the circumstances of these Cases. No other entity or group of entities has offered to purchase the Assets for greater overall value to the Debtors' estates than the Buyer.

R. Approval of the Sale Motion and the Agreement and the consummation of the



transactions contemplated thereby are in the best interests of the Debtors' chapter 11 estates, their creditors, and other parties in interest.

**No Fraudulent Transfer or Merger**

S. The consideration provided by the Buyer pursuant to the Agreement (i) is fair and reasonable, (ii) is the highest or best offer for the Assets, and (iii) constitutes reasonably equivalent value (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and section 548 of the Bankruptcy Code) and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

T. The Buyer is not a mere continuation of the Debtors or their estates and there is no continuity of enterprise between the Buyer and the Debtors. The Buyer is not holding itself out to the public as a continuation of the Debtors. The Buyer is not a successor to the Debtors or their estates and the Sale does not amount to a consolidation, merger, or *de facto* merger of Buyer and the Debtors.

**Validity of Transfer**

U. Each Debtor has, to the extent necessary or applicable, (i) full corporate power and authority to execute and deliver the Agreement and all other documents contemplated thereby, (ii) all corporate authority necessary to consummate the transactions contemplated by the Agreement, and (iii) taken all corporate action necessary to authorize and approve the Agreement and the consummation of the transactions contemplated thereby. The Sale has been duly and validly authorized by all necessary corporate action. No consents or approvals, other than those expressly provided for in the Agreement, are required for the Debtors to consummate the Sale, the Agreement, or the transactions contemplated thereby.

V. The Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession or the District of Columbia. Neither the Debtors nor the Buyer is entering into the transactions contemplated by the Agreement fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims.

W. The Debtors are the sole and lawful owners of the Assets. Subject to section 363(f) of the Bankruptcy Code, the transfer of each of the Assets to the Buyer will be, as of the Closing Date, a legal, valid, and effective transfer of the Assets, which transfer vests or will vest the Buyer with all right, title, and interest of the Debtors to the Assets free and clear of (i) all liens and encumbrances relating to, accruing, or arising any time prior to the Closing Date (collectively, the “**Liens**”) and (ii) all debts arising under, relating to, or in connection with any act of the Debtors or claims (as that term is defined in section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options in favor of third parties, rights, contractual commitments, restrictions, interests, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these cases, and whether imposed by agreement, understanding, law, equity or otherwise (including, without limitation, rights with respect to Claims (as defined below) and Liens (a) that purport to give to any party a right of setoff or recoupment against, or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase or repurchase right or option, or termination of, any of the Debtors’ or the Buyer’s interests in the Assets, or any similar rights, or (b) in respect of taxes, restrictions, rights of first refusal, charges of interests of any kind or nature, if any, including, without limitation, any restriction of use, voting, transfer, receipt of income or other exercise of any attributes of ownership) (collectively, as defined in this clause (ii), “**Claims**”), relating to,

accruing or arising any time prior to the Closing Date, with the exception of the Assumed Liabilities that are expressly assumed by Buyer under the Agreement, including, for the avoidance of doubt, Cure Costs or any obligations arising at or after Closing arising under the Contracts.

**Section 363(f) Is Satisfied**

X. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Debtors may sell the Assets free and clear of any interest in the property other than the Assumed Liabilities.

Y. The Buyer would not have entered into the Agreement and would not consummate the transactions contemplated thereby if the sale of the Assets to the Buyer and the assumption of any Assumed Liabilities by the Buyer were not free and clear of all Liens and Claims, other than the Assumed Liabilities, or if the Buyer would, or in the future could, be liable for any of such Liens and Claims (other than the Assumed Liabilities). Unless otherwise expressly included in Assumed Liabilities, the Buyer shall not be responsible for any Liens or Claims, including in respect of the following: (i) any labor or employment agreements, (ii) all mortgages, deeds of trust and security interests, (iii) intercompany loans and receivables among the Debtors, (iv) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of any Debtor, (v) any other employee, workers' compensation, occupational disease, or unemployment or temporary disability related claim, (vi) Claims or Liens arising under any Environmental Law (as defined in the Agreement) with respect to the Business, Excluded Liabilities, the Assets, Excluded Assets, or assets owned or operated by Debtors or any corporate predecessor at any time prior to the Closing Date, (vii) any bulk sales or similar law, (viii) any tax statutes or

ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, (ix) any Claims by a Governmental Entity (including but not limited to the United States Department of Justice and state boards of pharmacy) relating to the perpetuation purchase or sale of diabetic test strips; (x) any Claims by a non-Governmental Entity relating to the Debtors' sales practices; and (xi) any theories of successor liability.

Z. The Debtors may sell the Assets free and clear of all Liens and Claims against the Debtors, their estates or any of the Assets (except the Assumed Liabilities) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Liens or Claims against the Debtors, their estates, or any of the Assets who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. All other holders of Liens or Claims (except to the extent that such Liens or Claims are Assumed Liabilities) are adequately protected by having their Liens or Claims, if any, in each instance against the Debtors, their estates, or any of the Assets, attach to the cash proceeds of the Sale ultimately attributable to the Assets in which such creditor alleges a Lien or Claims, in the same order of priority, with the same validity, force, and effect that such Liens or Claims had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

**Cure / Adequate Protection**

AA. The assumption and assignment of the Contracts pursuant to the terms of this Sale Order is integral to the Agreement and is in the best interests of the Debtors and their estates, their creditors, and all other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors. Subject to the Agreement, the Buyer shall: (i) to

the extent necessary, cure or provide adequate assurance of cure, of any default existing prior to the date hereof with respect to the Contracts, within the meaning of 11 U.S.C. §§ 365(b)(1)(A) and 365(f)(2)(A), and (ii) to the extent necessary, provide compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof with respect to the Contracts, within the meaning of 11 U.S.C. §§ 365(b)(1)(B) and 365(f)(2)(A). The Buyer's promise to pay the Cure Amounts and to perform the obligations under the Contracts after the Closing Date shall constitute adequate assurance of future performance within the meaning of 11 U.S.C. §§ 365(b)(1)(C) and 365(f)(2)(B).

BB. Any objections to the assumption and assignment of any of the Contracts to the Buyer are hereby overruled or withdrawn. Any objections to the Cure Amounts are hereby overruled or withdrawn. Provided, the objections of Tetra Corporate Services, LLC are reserved and subject to resolution at a later date. To the extent that any counterparty failed to timely object to its Cure Amount or the assumption and assignment of its Contract to the Buyer, such counterparty is deemed to have consented to such Cure Amount and the assignments of its respective Contracts to the Buyer.

**Compelling Circumstances for an Immediate Sale**

CC. Good and sufficient reasons for approval of the Agreement and the Sale have been articulated. The relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest. The Debtors have demonstrated both (i) good, sufficient, and sound business purposes and justifications for approving the Agreement and (ii) compelling circumstances for the Sale outside the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code before, and outside of, a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Buyer is necessary and

appropriate to maximize the value of the Debtors' estates and the Sale will provide the means for the Debtors to maximize distributions to creditors.

DD. To maximize the value of the Assets and preserve the viability of the business to which the Assets relate, it is essential that the Sale of the Assets occur within the time constraints set forth in the Agreement. Time is of the essence in consummating the Sale.

EE. Given all of the circumstances of these Cases and the adequacy and fair value of the Purchase Price under the Agreement, the proposed Sale of the Assets to Buyer constitutes a reasonable and sound exercise of the Debtors' business judgment and should be approved.

FF. The Sale does not constitute a *sub rosa* chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. The Sale neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates a liquidating chapter 11 plan for the Debtors.

GG. The consummation of the Sale and the assumption and assignment of the Contracts is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), and 365, and all of the applicable requirements of such sections have been complied with in respect of the transaction.

**NOW, THEREFORE**, on the Sale Motion of the Debtors and the record before this Court with respect to the Sale Motion, including the record made during the Hearing, and good and sufficient cause appearing therefor,

**IT IS SO ORDERED** that:

**General Provisions**

1. The Sale Motion is **GRANTED** as set forth herein.

2. The relief requested in the Sale Motion and the transactions contemplated thereby and by the Agreement are approved as set forth in this Sale Order and on the record of the Sale Hearing, which is incorporated herein as if set forth fully in this Sale Order, and the Sale contemplated thereby is approved.

3. All objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived, or settled by announcement to the Court during the Sale Hearing or by stipulation filed with the Court, including any and all reservations of rights included in such objections or otherwise, are hereby denied and overruled on the merits with prejudice. Those parties who did not object or withdrew their objections to the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

4. This Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order are incorporated herein by reference.

**Approval of the Agreement**

5. The Agreement and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved.

6. Pursuant to sections 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized, empowered, and directed to use their reasonable best efforts to take any and all actions necessary or appropriate to (a) consummate the Sale pursuant to and in accordance with the terms and conditions of the Agreement, (b) close the Sale as contemplated in the Agreement and this Sale Order, and (c) execute and deliver, perform under, consummate, implement, and fully close the Agreement, including the assumption and assignment to the Buyer of the Assigned Contracts and Assigned Leases and Interests (in each case as such terms are defined in the Agreement), together with all additional instruments and documents that may be reasonably

necessary or desirable to implement the Agreement and the Sale. The Buyer shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Agreement or any other Sale related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence and the other provisions of this Sale Order.

7. This Sale Order shall be binding in all respects upon the Debtors, their estates, all creditors of, and holders of equity interests in, any Debtor, any holders of Liens, Claims, or other interests (whether known or unknown) in, against or on all or any portion of the Assets, all Contract Counterparties, the Buyer and all successors and assigns of the Buyer, the Assets, and any trustees, if any, subsequently appointed in any of the Cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Cases. This Sale Order and the Agreement shall inure to the benefit of the Debtors, their estates and creditors, the Buyer, and the respective successors and assigns of each of the foregoing.

#### **Transfer of the Assets**

8. Pursuant to sections 105(a), 363(b), and 363(f) of the Bankruptcy Code, the Debtors are authorized and directed to use reasonable best efforts to transfer the Assets to the Buyer on the Closing Date and such transfer shall constitute a legal, valid, binding, and effective transfer of such Assets and shall vest Buyer with title to the Assets and, upon the Debtors' receipt of the Purchase Price, other than Assumed Liabilities, shall be free and clear of all Liens, Claims, and other interests of any kind or nature whatsoever, including but not limited to, (a) successor or successor-in-interest liability and (b) Claims in respect of the Excluded Liabilities, with all such Liens, Claims, or other interests to attach to the cash proceeds ultimately attributable to the property against or in which such Liens, Claims, or other interests are asserted,



subject to the terms thereof, with the same validity, force, and effect, and in the same order of priority, which such Liens, Claims, or other interests now have against the Assets, subject to any rights, claims, and defenses the Debtors or their estates, as applicable, may possess with respect thereto. Upon the Closing, the Buyer shall take title to and possession of the Assets subject only to the Assumed Liabilities.

9. All persons and entities that are in possession of some or all of the Assets on the Closing Date are directed to surrender possession of such Assets to the Buyer or its assignee at the Closing. On the Closing Date, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be reasonably necessary to release its Liens, Claims, or other interests in the Assets, if any, as such Liens, Claims or interests may have been recorded or may otherwise exist.

10. The Debtors are hereby authorized and directed to use reasonable best efforts to take any and all actions necessary to consummate the Agreement, including any actions that otherwise would require further approval by shareholders, members, or its board of directors, as the case may be, without the need of obtaining such approvals.

11. The transfer of the Assets to the Buyer pursuant to the Agreement does not require any consents other than as specifically provided for in the Agreement. On the Closing Date, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Sellers' interests in the Assets. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

12. A certified copy of this Sale Order may be filed with the appropriate clerk and/or recorded with the recorder of any state, county, or local authority to act to cancel any of the Liens, Claims, and other encumbrances of record except those assumed as Assumed Liabilities.

13. If any person or entity which has filed statements or other documents or agreements evidencing Claims or Liens on, or interests in, all or any portion of the Assets (other than statements or documents with respect to Assumed Liabilities) shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Claims, Liens, or interests which the person or entity has or may assert with respect to all or any portion of the Assets, the Debtors are hereby authorized and directed, and the Buyer is hereby authorized, on behalf of the Debtors and the Debtors' creditors, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Assets; provided that the provisions of this Sale Order authorizing the transfer of the Assets free and clear of all Liens, Claims, and Interests (except only Assumed Liabilities) shall be self-executing, and the Debtors, the Buyer, and creditors shall not be required to execute or file releases, termination statements, assignments, consents, or other instruments in order for the provisions of this Sale Order to be effectuated, consummated and/or implemented.

14. On the Closing Date, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Debtors' interests in the Assets and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Assets to the Buyer. This Sale Order is and shall be effective as a determination that, on the Closing Date, all Liens, Claims, Interests, or other

interest of any kind or nature whatsoever existing as to the Assets prior to the Closing Date, other than Assumed Liabilities, or as otherwise provided in this Order, shall have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected.

15. This Sale Order is and shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

16. Subject to the terms, conditions, and provisions of this Sale Order, all persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Assets to the Buyer in accordance with the terms of this Agreement and this Sale Order.

17. To the greatest extent available under applicable law, the Buyer shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, deemed to be transferred to the Buyer as of the Closing Date.

18. To the extent permitted by section 525 of the Bankruptcy Code, no Governmental Entity may revoke or suspend any permit or license relating to the operation of the Assets sold, transferred, or conveyed to the Buyer on account of the filing or pendency of the Cases or the consummation of the transactions contemplated by the Agreement.

**Assumption and Assignment of Contracts**

19. The Debtors are hereby authorized and directed in accordance with sections 105(a) and 365 of the Bankruptcy Code to (a) assume and assign to Buyer, effective upon the Closing of the Sale, or with respect to the Specified Contracts, the designation by the Buyer, the Contracts free and clear of all Liens, Claims, and other interests of any kind or nature whatsoever (other than the Assumed Liabilities), and (b) execute and deliver to Buyer such documents or other instruments as Buyer reasonably deems may be necessary to assign and transfer the Contracts and Assumed Liabilities to Buyer.

20. With respect to the Contracts: (a) the Debtors may assume each of the Contracts in accordance with section 365 of the Bankruptcy Code, (b) the Debtors may assign each Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Contract that prohibit or condition the assignment of such Contract or allow the party to such Contract to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Contract, constitute unenforceable anti-assignment provisions which are void and of no force and effect, (c) all other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to Buyer of each Contract have been satisfied, (d) the Contracts shall be transferred and assigned to, and following the closing of the Sale remain in full force and effect for the benefit of, Buyer, notwithstanding any provision in any such Contract (including those of

the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Contracts after such assignment to and assumption by Buyer, and (e) upon Closing or, with respect to the Specified Contracts, the designation by Buyer, in accordance with sections 363 and 365 of the Bankruptcy Code, the Buyer shall be fully and irrevocably vested in all right, title and interest of each Contract.

21. The Cure Amounts referenced earlier in this Order reflect cure amounts as of the date of publication of the cure amounts. The Buyer will notify each counterparty to a contract or lease that is to be assumed of any change in such cure amounts and give such counterparties a reasonable period of time (not less than 5 business days after Receipt of Notice) to object.

22. Specified Contracts shall not be assumed and assigned pursuant to this Order and the Agreement unless and until (i) the Debtors file a notice (a "**Specified Contract Notice**") stating that a Specified Contract is being added to the list of Assumed Contracts in accordance with section 7.4 of the Agreement (which notice shall be served on the affected parties by email, fax, or overnight mail) and (ii) the counterparty identified in the Specified Contract Notice does not file an objection within five (5) business days of receipt of the Specified Contract Notice. Any objection to a Specified Contract Notice shall either (a) supplement a timely objection filed in accordance with the deadlines set forth in the Bidding Procedures Order, or (b) set forth facts and circumstances arising after the Sale Hearing as the basis for the objection. Upon expiration of the notice period set forth herein or resolution of a timely filed objection, the applicable Specified Contract(s) shall be deemed an Assumed Contract(s) under the Agreement and assumed and assigned pursuant to this Order.

23. All defaults or other obligations of the Debtors under the Contracts arising or accruing prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be cured by the Buyer at the Closing or, with respect to the Specified Contracts, upon designation by the Buyer, or as soon thereafter as practicable by payment of the Cure Amounts.

24. INTENTIONALLY OMITTED.

25. Except for a Contract Counterparty who files or has filed a timely Contract Objection to the Debtors' proposed assignment of such Contract to the Buyer (whose objection shall be resolved in accordance with the procedures set forth in the Bidding Procedures Order), such counterparty is deemed to have consented to assumption and assignment, and the Buyer shall be deemed to have demonstrated adequate assurance of future performance with respect to such Contract pursuant to sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

26. With respect to any timely-filed Contract Objections, such objections shall be resolved in accordance with the procedures set forth in the Bidding Procedures Order. The provisions of this Sale Order shall be effective and binding upon Contract Counterparties to the extent set forth in, and in accordance with, such procedures. Nothing in this Sale Order, the Sale Motion, or in any notice or any other document is or shall be deemed an admission by the Debtors that any contract or Contract is an executory contract or unexpired lease or must be assumed and assigned pursuant to the Agreement or in order to consummate the Sale.

27. Upon the Debtors' assignment of the Contracts to the Buyer under the provisions of this Sale Order and any additional orders of this Court and Buyer's payment of any Cure Amounts pursuant to the terms hereof, no default shall exist under any Contract, and no counterparty to any Contract shall be permitted (a) to declare a default by the Buyer under such

Contract or (b) otherwise take action against the Buyer as a result of any Debtor's financial condition, bankruptcy, or failure to perform any of its obligations under the relevant Contract. Except insofar as a Contract Counterparty has filed or may timely file and prosecute a Contract Objection as provided by the Bidding Procedures Order, each non-Debtor party to a Contract hereby is also forever barred, estopped, and permanently enjoined from (i) asserting against the Debtors or Buyer, or the property of any of them, any default or Claim arising out of any indemnity obligation or warranties for acts or occurrences arising prior to or existing as of the Closing, or, against Buyer, any counterclaim, defense, setoff, or any other Claim asserted or assertable against the Debtors and (ii) imposing or charging against Buyer or its affiliates any rent accelerations, assignment fees, increases, or any other fees as a result of the Debtors' assumption and assignments to Buyer of the Contracts. The validity of such assumption and assignments of the Contracts shall not be affected by any dispute between the Debtors and any non-Debtor party to a Contract relating to such Contract's respective Cure Amount.

28. Except as provided in the Agreement or this Sale Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities and all holders of such Claims are forever barred and estopped from asserting such Claims against the Debtors, their successors or assigns, their property or their assets or estates.

29. The failure of the Debtors or Buyer to enforce at any time one or more terms or conditions of any Contract shall not be a waiver of such terms or conditions, or of the Debtors' and Buyer's rights to enforce every term and condition of the Contracts.

**Prohibition of Actions Against the Buyer**

30. Except for the Assumed Liabilities, or as otherwise expressly provided for in this Sale Order or the Agreement (including, *inter alia*, Paragraph 35 hereof), the Buyer shall not have any liability or other obligation of the Debtors arising under or related to any of the Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the Agreement, the Buyer shall not be liable for any Claims against the Debtors or any of their predecessors or affiliates, and the Buyer shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, under any theory of antitrust, environmental, successor, or transferee liability, labor law, de facto merger, mere continuation, or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether asserted or unasserted, whether legal or equitable, whether liquidated or unliquidated, including, but not limited to, liabilities on account of warranties, intercompany loans, and receivables among the Debtors, Environmental Liabilities, and any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the Assets prior to the Closing.

31. Except for the Assumed Liabilities, or as otherwise expressly provided for in this Sale Order or the Agreement (including, *inter alia*, Paragraph 35 hereof), all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants, and other creditors, holding Liens, Claims, or other interests of any kind or nature whatsoever against or in all or any portion of the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinate), arising under or out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the



Debtors' Business prior to the Closing Date, or the transfer of the Assets to the Buyer, hereby are forever barred, estopped and permanently enjoined from asserting against the Buyer, any of the foregoing's affiliates, successors, or assigns, their property or the Assets, such persons' or entities' Liens, Claims, or interests in and to the Assets, including, without limitation, the following actions: (a) commencing or continuing in any manner any action or other proceeding against the Buyer, its Affiliates, its successors, assets or properties, (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Buyer, its Affiliates, its successors, assets or properties, (c) creating, perfecting, or enforcing any Lien or other Claim against the Buyer, its Affiliates, its successors, assets, or properties, (d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due the Buyer, its Affiliates or its successors, (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Sale Order or other orders of the Court, or the agreements or actions contemplated or taken in respect thereof, or (f) revoking, terminating or failing or refusing to transfer or renew any license, permit, or authorization to operate any of the Assets or conduct any of the businesses operated with the Assets. On the Closing Date, each creditor is authorized and directed, and the Buyer is hereby authorized, on behalf of each of the Debtors' creditors, to execute such documents and take all other actions as may be necessary to release Liens, Claims, and other interests in or on the Assets (except Assumed Liabilities or as otherwise provided in this Order), if any, as provided for herein, as such Liens, Claims, and other interests may have been recorded or may otherwise exist.

32. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and

transfer the Assets to the Buyer in accordance with the terms of the Agreement and this Sale Order.

33. The Buyer has given substantial consideration under the Agreement for the benefit of the Debtors, their estates, and their creditors. The consideration given by the Buyer shall constitute valid and valuable consideration for the releases of any potential Claims and Liens pursuant to this Sale Order, which releases shall be deemed to have been given in favor of the Buyer by all holders of Liens against or interests in, or Claims against any of the Debtors or any of the Assets, other than holders of Liens or Claims relating to the Assumed Liabilities. The consideration provided by the Buyer for the Assets under the Agreement is fair and reasonable and, accordingly, the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

34. Unless otherwise set forth in this Sale Order, notwithstanding any provision in the Agreement to the contrary, nothing therein or in this Sale Order shall be deemed to impair valid outstanding liabilities of any affiliate of the Debtors whose equity is being sold to the Buyer.

35. Notwithstanding any of the foregoing, however, and for the avoidance of doubt, this Order does not release any claims of any of the Debtors' creditors (or any other third parties) against the Buyer, any affiliate of the Buyer, or any other non-Debtor, except to the extent that such claims are (1) owned by the Debtors or the estates, or were owned by the Debtors or the estates; or (2) against any of the Assets prior to the Closing. Notwithstanding any of the foregoing, however, and for the avoidance of doubt, no claims or causes of action against former employees or employees who are not Transferring Employees are released under the Sale Order or otherwise. In the event of any inconsistency between this provision of this Sale Order and any other provision of this Sale Order, or any provision of the Agreement, this provision shall control.

Moreover, notwithstanding any provision of this Order or the Agreement to the contrary, the Estates retain the right to assert causes of action against Buyer Related Parties but only to the extent that the causes of action asserted are insured by a directors and officers insurance policy that covers such claim and that was in existence as of November 7, 2017 or before (“an Existing Insurance Policy”). For the avoidance of doubt, no Buyer Related Parties will have any liability to the Estates or successors that must be satisfied out of any assets other than the coverage available under an Existing Insurance Policy. Upon exhaustion of all directors and officers coverage under Existing Insurance Policies, no such cause of action may be asserted or maintained by the Estates or successors.

**Other Provisions**

36. For the avoidance of doubt, only those Liens, Claims, interests, and other encumbrances in or on the Assets being transferred to the Buyer pursuant to the Agreement and any ancillary agreements contemplated thereby are being transferred free and clear pursuant to the terms of this Order, and any and all other assets of the Debtors that the Buyer is not acquiring shall remain subject to all valid pre-existing Liens, Claims, interests and other encumbrances. Any releases, terminations, termination statements, assignments, consents, or other instruments relating to Liens or other encumbrances in or on the Assets shall properly be limited to the Assets being transferred to, and Assumed Liabilities being assumed by, Buyer.

37. The consideration provided by the Buyer to the Debtors pursuant to the Agreement for the Assets constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and under the laws of the United States, any state, territory, possession or the District of Columbia.

38. The transactions contemplated by the Agreement are undertaken by the Buyer without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale, unless such authorization and such Sale are duly stayed pending such appeal. The Buyer is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

39. Buyer shall comply with (a) any internal health care policy of the Debtors, and (b) the Health Insurance Portability and Accountability Act of 1995 and any similar laws or regulations applicable to the Debtors, to ensure that personally identifiable information, including any individually identifiable health information, is protected.

40. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) these chapter 11 cases, (b) any subsequent chapter 7 case into which any such chapter 11 case may be converted, or (c) any related proceeding subsequent to entry of this Sale Order, shall conflict with or derogate from the provisions of the Agreement or the terms of this Sale Order. This Order and the Agreement do not otherwise dictate any terms of any plan or liquidation.

41. For cause shown, pursuant to Bankruptcy Rules 6004(h) and 7062(g), this Sale Order shall not be stayed, shall be effective immediately upon entry, and the Debtors and Buyer are authorized to close the Sale immediately upon entry of this Sale Order.

42. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sale.

43. The failure to specifically include any particular provision of the Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement be authorized and approved in its entirety; provided that this Sale Order shall govern if there is any inconsistency between the Agreement (including all ancillary documents executed in connection therewith) and this Sale Order. Likewise, all of the provisions of this Sale Order are non-severable and mutually dependent.

44. The Agreement and any related agreements, documents or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates or lower the amount of cash proceeds paid; provided that prior notice shall be provided to the Agent with respect to any modification, amendment, or supplement, and the Agent shall have the opportunity to object to any material modification, amendment, or supplement that has a material adverse effect on the Debtors' estates.

45. The Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the Agreement, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which any Debtor is a party or which has been assigned by the Debtors to the Buyer, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets to the Buyer, (b) interpret, implement, and enforce the provisions of this Sale Order; (c) protect Buyer against any Liens, Claims, or other interest in or against the Sellers or the Assets

of any kind or nature whatsoever, attaching to the proceeds of the Sale, and (d) enter any orders under sections 363 and 365 of the Bankruptcy Code with respect to the Contracts.

46. All time periods set forth in this Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

47. Nothing in this Sale Order or the Agreement (a) releases, nullifies, or enjoins the enforcement of any liability to a Governmental Entity under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the date of entry of this Sale Order and (b) authorizes the transfer or assignment to Buyer of any license, permit, registration, authorization, or approval of or with respect to a Governmental Entity without Buyer's complying with all applicable legal requirements under non-bankruptcy law governing such transfers or assignments.

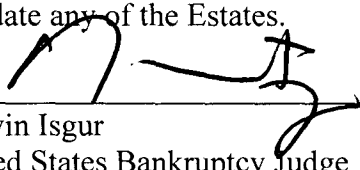
48. To the extent that this Sale Order is inconsistent with any prior order or pleading with respect to the Sale Motion in these Cases, the terms of this Sale Order shall govern.

49. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

50. Notwithstanding any provision of this Order or the Agreement to the contrary, the allocation of the purchase price is binding on the parties for tax purposes only. All allocation for any other purposes are subject to further Court order.

51. This Order does not substantively consolidate any of the Estates.

Dated: 11-7-17

  
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Marvin Isgur  
United States Bankruptcy Judge

