

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address  Daniel A. Lev (CA Bar No. 129622) daniel.lev@gmlaw.com Elissa D. Miller (CA Bar No. 120029) elissa.miller@gmlaw.com Mark S. Horoupian (CA Bar No. 175373) mark.horoupian@gmlaw.com <b>Greenspoon Marder LLP</b> 1875 Century Park East, Suite 1900 Los Angeles, California 900671 Telephone: 213.626.2311 Facsimile: 954.771.9264  <input type="checkbox"/> <i>Movant(s) appearing without attorney</i> <input checked="" type="checkbox"/> <i>Attorneys for Howard M. Ehrenberg, Chapter 11 Trustee</i>	FOR COURT USE ONLY
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION</b>	
In re:  BEVERLY COMMUNITY HOSPITAL ASSOCIATION, dba BEVERLY HOSPITAL, a nonprofit public benefit corporation, <sup>1</sup>  Debtor(s)  <input checked="" type="checkbox"/> Affects all Debtors <input type="checkbox"/> Affects Beverly Community Hospital Association <input type="checkbox"/> Affects Montebello Community Health Services, Inc. <input type="checkbox"/> Affects Beverly Hospital Foundation	Case No. 2:23-bk-12359-SK Chapter 11 Jointly administered with: Case No. 2:23-bk-12360-SK Case No. 2:23-bk-12361-SK  <b>DECLARATION THAT NO PARTY REQUESTED A HEARING ON MOTION</b>  <b>LBR 9013-1(o)(3)</b>  [No Hearing Required]

1. I am the ☐ Movant(s) or ☒ attorney for Movant(s) or ☐ employed by attorney for Movant(s).
2. **On: March 13, 2024, Movant(s) filed a motion entitled: CHAPTER 11 TRUSTEE'S MOTION TO APPROVE SETTLEMENT BY AND BETWEEN BEVERLY COMMUNITY HOSPITAL ASSOCIATION AND HOOPER LUNDY & BOOKMAN, P.C.; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF HOWARD. M. EHRENBURG IN SUPPORT THEREOF [Docket No. 952]**
3. A copy of the motion and notice of motion is attached hereto.

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Boulevard, Montebello, California 90640.



4. **On March 13, 2024**, Movant(s) served a copy of ☐ the notice of motion or ☒ the motion and notice of motion on required parties using the method(s) identified on the Proof of Service of the notice of motion.
5. Pursuant to LBR 9013-1(o), the notice of motion provides that the deadline to file and serve a written response and request for a hearing is 14 days after the date of service of the notice of motion, plus 3 additional days if served by mail, or pursuant to F.R.Civ.P. 5(b)(2)(D) or (F).
6. More than 17 days have passed since Movant(s) served the notice of motion.
7. I checked the docket for this bankruptcy case and/or adversary proceeding, and no response and request for hearing was timely filed.
8. No response and request for hearing was timely served on Movant(s) via Notice of Electronic Filing, or at the street address, email address, or facsimile number specified in the notice of motion.
9. Based upon the foregoing, and pursuant to LBR 9013-1(o), a hearing is not required.

Movant(s) requests that the court grant the motion and enter an order without a hearing.

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

Date: April 2, 2024

/s/ Elissa D. Miller  
Signature

Elissa D. Miller  
Printed name

# **ATTACHMENT**

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Attorneys for Howard M. Ehrenberg, Chapter 11 Trustee

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

**LOS ANGELES DIVISION**

In re

BEVERLY COMMUNITY HOSPITAL  
ASSOCIATION, dba BEVERLY  
HOSPITAL, a nonprofit public benefit  
corporation,<sup>1</sup>

Debtor.

Case No. 2:23-bk-12359-SK

Chapter 11

Jointly administered with:

Case No. 2:23-bk-12360-SK  
Case No. 2:23-bk-12361-SK

**CHAPTER 11 TRUSTEE'S MOTION TO  
APPROVE SETTLEMENT BY AND  
BETWEEN BEVERLY COMMUNITY  
HOSPITAL ASSOCIATION AND  
HOOPER LUNDY & BOOKMAN, P.C.;  
MEMORANDUM OF POINTS AND  
AUTHORITIES AND DECLARATION OF  
HOWARD. M. EHRENBERG IN  
SUPPORT THEREOF**

**Fed. R. Bankr. P. 9019(a) and Loc.  
Bankr. R. 9013-1(o)**

**NO HEARING REQUIRED UNLESS  
REQUESTED**

- ☐ Affects all Debtors
- ☒ Affects Beverly Community Hospital  
Association
- ☐ Affects Montebello Community Health  
Services, Inc.
- ☐ Affects Beverly Hospital Foundation

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Boulevard, Montebello, California 90640.

1 **TO THE HONORABLE SANDRA KLEIN, UNITED STATES BANKRUPTCY JUDGE,**  
2 **THE OFFICE OF THE UNITED STATES TRUSTEE, AND INTERESTED PARTIES:**

3 **PLEASE TAKE NOTICE** that Howard M. Ehrenberg, (the “Trustee”), the duly  
4 appointed, qualified, and acting chapter 11 trustee for the bankruptcy estates of the jointly  
5 administered debtors Beverly Community Hospital Association, dba Beverly Hospital, a  
6 nonprofit public benefit corporation (the “Hospital”), Montebello Community Health  
7 Services, Inc. (“Montebello”), and Beverly Hospital Foundation (the “Foundation”) (and  
8 sometimes jointly referred to as the “Debtors”), will and hereby does move for an Order  
9 granting “*Chapter 11 Trustee’s Motion to Approve Settlement By and Between Beverly*  
10 *Community Hospital Association and Hooper Lundy and Bookman, P.C.; Memorandum*  
11 *of Points and Authorities and Declaration of Howard M. Ehrenberg in Support Thereof*”  
12 (the “Motion”).

13 The settlement is memorialized in a written Settlement Agreement (the  
14 “Agreement”) between the Trustee and Hooper Lundy and Bookman, P.C. (“HLB”) and  
15 resolves the Trustee's claim that the payment HLB received the day before the  
16 bankruptcy case included both an avoidable preferential payment and a refundable  
17 retainer for post petition services for which it was never properly employed.

18 This Motion is brought in accordance with Federal Rule of Bankruptcy Procedure  
19 9019(a) and Local Bankruptcy Rule 9013-1(o)(1) and is made on the ground that Trustee  
20 has determined in his best business judgment that it is in the best interests of the  
21 bankruptcy estate to settle this matter on the terms set forth in the following Motion.

22 This Motion is based on the Notice of Motion filed concurrently herewith, the  
23 attached memorandum of points and authorities, the declaration of Howard M. Ehrenberg  
24 in support hereof and the exhibits attached hereto the pleadings and records on file with  
25 the Court and such other argument or law as will be presented in further briefing or at the  
26 hearing on this Motion.

1           **WHEREFORE**, the Trustee respectfully requests that the Court enter an order:

2           1.       Approving the settlement with HLB;

3           2.       Authorizing the Trustee to take such other and further action as may be

4 necessary by the terms of the Agreement; and

5           3.       Granting such other relief as the Court deems just and proper.

6

7 DATED: March 13, 2024

Respectfully Submitted,

8

**GREENSPOON MARDER LLP**

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By: /s/ Elissa D. Miller

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Elissa D. Miller

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Attorneys for Howard M. Ehrenberg, Chapter  
11 Trustee

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**  
**OF MOTION TO SETTLE WITH HOOPER LUNDY & BOOKMAN, P.C.**

**I.**

**PREFATORY STATEMENT**

This Motion seeks approval of an Agreement by and between Howard M. Ehrenberg, the Trustee for the Hospital, and HLB, one of the law firms who represented the Hospital.

Based on the Trustee's review of the books and records, the Trustee learned that HLB received a payment of approximately \$105,000 on April 18, 2023, the day before the bankruptcy case was filed. The Trustee further determined that the payment was for invoices, including those dating back to September 2022, and a \$15,000 retainer for work to be done post petition. The Trustee contends that the payment of the invoices is an avoidable preference, and the retainer must be refunded as HLB was never authorized to provide services post petition. Thus, the Trustee contends, all funds must be returned.

In response, HLB contends that it has viable defenses, and that the Debtor specifically requested it to provide services post petition. It disputes that it is required to return any portion of the payment.

Prior to filing a complaint, the Trustee reached out to HLB to see if the matter could be settled. After negotiations, the Trustee and HLB reached the Agreement, approval of which is sought by this Motion.

For the reasons set forth herein, the Trustee submits that the Agreement is fair, equitable and in his best business judgment and should be approved.<sup>2</sup>

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<sup>2</sup> In the interest of full disclosure, following the approval of this Agreement, the Trustee will be filing a motion to retain HLB in connection with work performed, but not paid by the Estate. HLB represents the Hospital together with numerous other independent hospitals against Medicare in an administrative matter seeking reimbursement. HLB is being paid by the California Hospital Association on behalf of all the hospitals it represents.

**PERTINENT FACTS**

**A. The Bankruptcy, the Sale, and The Appointment of the Trustee**

On April 19, 2023 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code. On May 10, 2023, the Office of the United States Trustee (the “OUST”) appointed an official committee of unsecured creditors.

On Motion of the Debtors on August 18, 2023, the Court entered its “Order (A) Authorizing the Sale of Debtors’ Assets to Purchaser Free and Clear of Liens, Claims, Interests, and Other Interests; (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related Relief” (the “Sale Order”) [Docket No. 718] granting the Sale Motion, approving the AHWM APA, and authorizing the Debtors’ proposed sale to AHWM pursuant to 11 U.S.C. §§ 105(a), 363, and 365, Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure, and Rules 6004-1 and 9013-1 of the Local Bankruptcy Rules for the Central District of California.

On September 7, 2023, the Debtors caused to be filed their “Notice of Closing of Sale to White Memorial Medical Center d/b/a Adventist Health White Memorial” [Docket No. 789] pursuant to which, among other things, the Debtors reported that, the effective date of the sale, of 12:01 a.m. (Pacific Time) on September 7, 2023. Four days later, U.S. Bank Trust Company, National Association, as Master Trustee (“U.S. Bank”) caused to be filed “U.S. Bank Trust Company, National Association, As Master Trustee’s Emergency Request for Status Conference and Order to Show Cause Why A Chapter 11 Trustee Should Not Be Appointed” (the “OSC”) [Docket No. 791].

The OSC was granted by the Court pursuant to its “Order Directing the Appointment of a Chapter 11 Trustee and Setting Hearing and Briefing Schedule on Fee Applications” entered on September 13, 2013 [Docket No. 803]. On September 15, 2023, the U.S. Trustee filed its “Notice of Appointment of Chapter 11 Trustee” [Docket



1 No. 811] pursuant to which Howard M. Ehrenberg was appointed chapter 11 trustee for  
2 the Debtors' jointly administered estates.

3 On September 15, 2023, the OUST filed its "Application for Order Approving  
4 Appointment of Trustee and Fixing Bond" [Docket No. 813]. On September 15, 2023, the  
5 Court entered its "Order Approving the Appointment of a Chapter 11 Trustee" [Docket No.  
6 815]. As a result of the foregoing, Howard M. Ehrenberg became the duly appointed,  
7 qualified, and acting chapter 11 trustee for the Debtors' jointly administered estates and  
8 has continued to act in this capacity since.

9 **B. HLB and the Payment**

10 HLB is, and has been since 1987, a law firm based in Los Angeles with a robust  
11 national health care practice. It represented the Hospital in a variety of health law  
12 matters for many years.

13 Typically, over the years, the Hospital would pay HLB invoices more than 60 days  
14 after the invoice date but would pay each invoice (or maybe two) at a time.

15 Commencing in September 2022, the Hospital stopped paying any of HLB's  
16 invoices, notwithstanding that HLB continued to provide services up to and even beyond  
17 the petition date. On April 18, 2023, the day before this case was filed, the Hospital wired  
18 \$105,901.00 to HLB (the "Payment"). Of this amount, \$90,901.00 was for payment in full  
19 of all past due and current invoices and \$15,000.00 was for a retainer for post-petition  
20 services to be provided.

21 Thereafter, the Hospital included HLB in its application to employ ordinary course  
22 professionals [Dkt. No. 385] and in reliance thereon, HLB continued to provide services at  
23 the Hospital's request. However, HLB never filed the Declaration of Disinterested as  
24 required by the Order Authorizing the Debtors to Retain the Ordinary Course  
25 Professionals [Dkt. No. 575] and therefore, HLB was never an approved ordinary course  
26 professional.

27 Following his appointment, the Trustee made demand on HLB to return the full  
28 amount of the Payment to the estate contending the Payment was both avoidable as a

1 preference and as an unauthorized retainer. HLB disputed the Trustee's position  
2 contending that the payment of the invoices was made in the ordinary course of the  
3 business between the parties and that even if it was not in the ordinary course, it had  
4 provided new value. The Trustee disputed HLB's contentions. After negotiations, the  
5 Trustee and HLB reached the Agreement, approval of which is sought by this Motion.

6 **III.**

7 **THE AGREEMENT**

8 Attached to the Ehrenberg Declaration as **Exhibit 1** is a true and correct copy of  
9 the Agreement. The following is a summary of the Agreement's pertinent terms. Parties  
10 in interest are encouraged to review the Agreement for its full terms and conditions.

11 In full settlement of the disputes by and between the Trustee and HLB agree as  
12 follows:

13 a. Within seven (7) business days after entry of the final order approving this  
14 Agreement, HLB shall pay to the Trustee the sum of \$65,000.

15 b. HLB has waived its claim based on the repayment under 11 U.S.C.  
16 §502(h); and

17 c. The parties are exchanging mutual general releases related to Payment.

18 **IV.**

19 **THE AGREEMENT SHOULD BE APPROVED BECAUSE IT IS FAIR,**  
20 **EQUITABLE AND IN THE BEST INTEREST OF THE ESTATE**

21 Federal Rule of Bankruptcy Procedure 9019 provides that "on motion by the  
22 trustee and after notice and a hearing, the court may approve a compromise or  
23 settlement." Fed. R. Bankr. P. 9019. Compromise is favored over continued litigation.  
24 See In re A & C Properties, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986) (citing Port O'Call  
25 Investment Co. v. Blair (In re Blair), 538 F.2d 849, 851 (9<sup>th</sup> Cir. 1976)). A compromise  
26 should be approved if it is "fair and equitable." In re Woodson, 839 F.2d 610, 620 (9<sup>th</sup> Cir.  
27 1988); In re A & C Properties, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986), cert. denied, 479 U.S.  
28 854 (1986); Burton v. Ulrich (In re Schmidtt), 215 B.R. 417, 424 (9<sup>th</sup> Cir. B.A.P. 1997)

(considering whether a compromise is fair and equitable for the creditors and whether it is in the best interests of the estate). “Whether a compromise will benefit or harm the Debtor is immaterial.” Burton v. Ulrich (In re Schmidtt), 215 B.R. at 424.

In determining whether to approve a compromise or settlement, the court must consider the following factors:

1. the probability of success in the litigation;
2. the difficulties, if any, to be encountered in the matter of collection;
3. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
4. the paramount interest of the creditors and a proper deference to their reasonable views.

In re Woodson, 839 F.2d 610, 620 (9<sup>th</sup> Cir. 1988); In re A & C Properties, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986). When considering these factors, the court need “only canvass the issues.” In re Schmitt, 215 B.R. at 423 (citing In re Blair, 538 F.2d at 851-52); Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2<sup>nd</sup> Cir. 1983), cert. denied, 464 U.S. 822 (1983). “A mini trial on the merits is not required.” In re Schmitt, 215 B.R. at 423. A compromise or settlement should be approved unless it “fall[s] below the lowest point in the range of reasonableness.” Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2<sup>nd</sup> Cir. 1983), cert. denied, 464 U.S. 822 (1983); see also In re A & C Properties, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986) (holding that a settlement should be approved if it is reasonable given the particular circumstances of the case), cert. denied, 479 U.S. 854 (1986).

The compromise approval process does not contemplate that a bankruptcy court will substitute its business judgment for that of a trustee. To the contrary, a settlement that has been negotiated by a trustee, as representative of the estate, is entitled to deference. See In re Morrison, 69 B.R. 586, 592 (Bankr. E.D. Pa. 1987) (“The objecting creditors may not substitute their judgment for that of the Trustee”).

1 Applying the A&C factors to this Agreement supports the Trustee's determination  
2 that the Agreement is in his best business judgment.

3 **A. Probability of Success in the Litigation**

4 The Trustee has concluded that this factor somewhat weighs in favor of the  
5 Agreement. The Trustee contends that the timing of the payment – the day before the  
6 bankruptcy was filed with notice that the case would be filed the next day – and the fact  
7 HLB was never an employed professionals means that HLB has no defenses, and the  
8 entirety of the payment must be returned. HLB disagrees with the Trustee's position and  
9 contends that even though the invoices were paid the day before the filing and included a  
10 retainer for future work, most if not all of the payment is subject to, in its opinion, viable  
11 defenses such as ordinary course between the parties and new value.

12 While the Trustee disputes HLB's conclusions, he also recognizes that HLB  
13 arguments may have at least some merit at least as to the ordinary course defense.  
14 Over the years, the Hospital paid HLB's invoices anywhere from between a low of 30  
15 days from issuance to over 130 days, although payments at either end of the spectrum  
16 were rare. The invoices that were paid on April 18, 2022, ran from between a low of 8  
17 days to a high of 202 days from the invoice date with many falling between 49 to 140  
18 days from the invoice date. HLB contends that, with least as to those payments in the  
19 same range as the payments made on pre-petition invoices, they should be entitled to the  
20 benefits of the ordinary course defense. That would be an issue for the Court to decide.

21 As for the new value defense, the Trustee asserts that HLB is not entitled to use  
22 that defense since it was not a retained professional. However, HLB asserts it should be  
23 entitled to do so as the Hospital specifically asked it to provide services post petition and,  
24 as a matter of equity, it should be entitled to keep the funds as to the services provided.  
25 Again this would be an issue for the Court.

26 Based on the foregoing, the Trustee asserts that while he believes he has the  
27 better arguments, it is not entirely without risk and, therefore, this factor weighs in favor of  
28 approving the Agreement.

**B. The Difficulties, If Any, To Be Encountered In The Matter Of Collection**

The Second A&C factor is likely not an issue. HLB is a well-respected national law firm based in Los Angeles with an excellent reputation.

**C. The Complexity Of The Litigation Involved, And The Expense, Inconvenience And Delay Necessarily Attending It.**

The analysis of this third A&C factor supports approval of the Settlement. While the litigation should not be complex – essentially a generic preference action – like all litigation, it will take time and require the expenditure of estate resources. The maximum recovery is \$105,900 if the Trustee were to win on every issue. However, should HLB choose to litigate, the fees would not be limited, and they would not be recoverable as there is no right to recover fees in a preference action. Moreover, the litigation would take time and would distract the Trustee from his other efforts to administer this case. Finally, there is no guaranty that the Trustee will prevail on all issues so that any judgment may be less than the full amount. Thus, the Trustee has concluded that this factor, likewise, supports approval of the Agreement.

**D. The Paramount Interest Of The Creditors And A Proper Deference To Their Reasonable Views.**

As is the case with the other factors, the application of this fourth and final A&C factor supports the Agreement. The paramount interest of creditors which a bankruptcy court must consider in deciding whether to approve a proposed compromise, generally reflects not only the desire of creditors to obtain the maximum possible recovery, but also their competing desire that the recovery should occur in the least amount of time possible. See In re Marples, 266 B.R. 202, 206 (Bankr. D. Idaho 2001); In re Lake City RV, Inc., 226 B.R. 241, 243-44 (Bankr. D. Idaho 1998).

The Agreement resolves the claim against HLB in a manner meant to avoid further administrative expenses while at the same time recovering approximately 62% of the maximum the estate would be entitled to recover if it recovered every dime. By settling now, the Trustee eliminates any risk of loss and limits the estate's fees and costs

1 associated with this matter as the matter settled before litigation. As such the net benefit  
2 of the settlement, both in terms of the money into the estate and the waiver of the 11  
3 U.S.C. §502(h) claim, is likely greater than the net benefit of a later settlement and/or a  
4 judgment after litigation.

5 As noted earlier, a court should approve a proposed settlement so long as it is  
6 above "the lowest point in the range of reasonableness," giving deference to a trustee's  
7 reasonable business judgment. See In re Receivership Estate of Indian Motorcycle Mfg.,  
8 Inc., 299 B.R. 8, 21 (D. Mass. 2003)

9 In this case, as detailed above, the Trustee submits the settlement set forth in the  
10 Agreement is well above the "lowest point in the range of reasonableness. Therefore, the  
11 Trustee submits that the Agreement is fair and equitable, in his best business judgment  
12 and should be approved.

13 **V.**

14 **EFFECT OF SETTLEMENT ON ESTATE**

15 As noted above, the Agreement results immediately and without significant legal  
16 fees, the recovery of \$62,500 plus the waiver of any unsecured claim based on the  
17 Section 502(h). At this time, however, what the ultimate result of this Agreement will be  
18 on distributions is unknown as the Trustee has not yet set a bar date. In addition, his  
19 professionals are currently analyzing and identifying all the potential avoidance claims,  
20 this just being the first, the recoveries on which will be unencumbered assets. Finally, the  
21 Trustee continue to negotiate with U.S. Bank as to a budget/surcharge of its collateral to  
22 operate the estate as the funds the Trustee is currently holding are all U.S. Bank's  
23 collateral. Resolution of the foregoing, as well as other issues, will define the financial  
24 parameters of the estate.

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VI.

**CONCLUSION**

Based on the foregoing, the Trustee respectfully requests that the Court enter an order:

1. Granting the Motion;
2. Approving the Agreement with HLB;
3. Authorizing the Trustee to take such other and further action as may be necessary by the terms of the Agreement; and
4. Granting such other relief as the Court deems just and proper.

DATED: March 13, 2024

**Greenspoon Marder LLP**

By: /s/ Elissa D. Miller

Elissa D. Miller

Attorneys for Howard M. Ehrenberg, Chapter  
11 Trustee

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**DECLARATION OF HOWARD M. EHRENBURG**

I, Howard M. Ehrenberg, declare:

1. I am an attorney licensed to practice in the State of California and before this Court. I am the duly appointed, qualified, and acting chapter 11 trustee for the estates of the jointly administered debtors Beverly Community Hospital Association, dba Beverly Hospital, a nonprofit public benefit corporation ("Beverly Community"), Montebello Community Health Services, Inc. ("Montebello Health"), and Beverly Hospital Foundation ("Foundation ") (collectively and interchangeably, the "Debtor" or "Debtors"). The statements contained in this declaration are based on my personal knowledge, review of documents, and my investigation of the Debtors' cases conducted since my appointment as chapter 11 trustee, and, if called as a witness, I could and would competently testify thereto.

2. I make this declaration in support of my "Chapter 11 Trustee's Motion To Approve Settlement By and Between Beverly Community Hospital Association and Hooper Lundy & Bookman, P.C.; Memorandum of Points and Authorities and Declaration of Howard M. Ehrenberg in Support Thereof" (the "Motion"), through which I seek, to sell the recovery of an avoidable transfer and the payment of a post -petition retainer paid the day before the bankruptcy case was filed pursuant to a Settlement Agreement (the "Agreement"), a true and correct copy of which is attached hereto as **Exhibit 1**. As set forth in detail herein, I believe the settlement is fair, equitable and in my best business judgment.

3. The facts underlying the Motion are as follows:

**The Bankruptcy**

4. On April 19, 2023 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code. On May 10, 2023, the Office of the United States Trustee (the "U.S. Trustee") appointed an official committee of unsecured creditors.



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1           5.       On August 7, 2023, the Debtors caused to be filed their “Notice of Motion  
2 and Motion for Entry of An Order (I) Authorizing the Sale of Substantially all of the  
3 Debtors’ Assets Free and Clear of All Liens, Claims, and Encumbrances; to White  
4 Memorial Medical Center d/b/a Adventist Health White Memorial Free and Clear; (II)  
5 Authorizing the Assumption and Assignment of Certain Executory Contracts and  
6 Unexpired Leases, and (III) Granting Related Relief; Declaration of Jason A. Cohen in  
7 Support Thereof” ” (the “Sale Motion”) [Docket No. 638]. The Sale Motion sought, among  
8 other things, approval of that certain “Asset Purchase Agreement” (the “AHWM APA”),  
9 dated as of August 7, 2023, by and between Beverly Community and Montebello Health,  
10 as sellers, and White Memorial Medical Center d/b/a Adventist Health White Memorial  
11 (“AHWM”), as buyer.

12           6.       Eleven days later, on August 18, 2023, the Court entered its “Order (A)  
13 Authorizing the Sale of Debtors’ Assets to Purchaser Free and Clear of Liens, Claims,  
14 Interests, and Other Interests; (B) Approving the Assumption and Assignment of  
15 Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related  
16 Relief” (the “Sale Order”) [Docket No. 718] granting the Sale Motion, approving the  
17 AHWM APA, and authorizing the Debtors’ proposed sale to AHWM pursuant to 11 U.S.C.  
18 §§ 105(a), 363, and 365, Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules  
19 of Bankruptcy Procedure, and Rules 6004-1 and 9013-1 of the Local Bankruptcy Rules  
20 for the Central District of California.

21           7.       On September 7, 2023, the Debtors caused to be filed their “Notice of  
22 Closing of Sale to White Memorial Medical Center d/b/a Adventist Health White  
23 Memorial” [Docket No. 789] pursuant to which, among other things, the Debtors reported  
24 that, pursuant to Section 1.3 of the AHWM APA, the Closing (as defined in the AHWM  
25 APA) of the sale to AHWM occurred on September 6, 2023 (the “Closing Date”), with an  
26 Effective Time (as defined in the AHWM APA) of 12:01 a.m. (Pacific Time) on  
27 September 7, 2023. Four days later, U.S. Bank Trust Company, National Association, as  
28 Master Trustee (“U.S. Bank”) caused to be filed “U.S. Bank Trust Company, National

1 Association, As Master Trustee's Emergency Request for Status Conference and Order  
2 to Show Cause Why A Chapter 11 Trustee Should Not Be Appointed" (the "OSC")  
3 [Docket No. 791].

4 8. The OSC was granted by the Court pursuant to its "Order Directing the  
5 Appointment of A Chapter 11 Trustee and Setting Hearing and Briefing Schedule on Fee  
6 Applications" entered on September 13, 2013 [Docket No. 803]. On September 15,  
7 2023, the OUST filed its "Notice of Appointment of Chapter 11 Trustee" [Docket No. 811]  
8 pursuant to which I was appointed chapter 11 trustee for the Debtors' jointly administered  
9 estates.

10 9. On September 15, 2023, the OUST filed its "Application for Order  
11 Approving Appointment of Trustee and Fixing Bond" [Docket No. 813]. On September 15,  
12 2023, the Court entered its "Order Approving the Appointment of A Chapter 11 Trustee"  
13 [Docket No. 815]. As a result of the foregoing, I became the duly appointed, qualified,  
14 and acting chapter 11 trustee for the Debtors' jointly administered estates and continue to  
15 act in this capacity.

16 **The Hospital's Relationship With And Payment To HLB**

17 10. Based on my research and review, I learned that HLB is and has been  
18 since 1987, a national law firm based in Los Angeles with a robust health care practice. I  
19 have also been advised that HLB represented the Hospital in a variety of health law  
20 matters for many years.<sup>3</sup>

21 11. I have reviewed the financial relationship between HLB and the Hospital. I  
22 determined that over the years, the Hospital would generally pay HLB invoices more than  
23 60 days after the invoice date but would pay each invoice (or maybe two) at a time.  
24 Commencing in September 2022, the Hospital stopped paying any of HLB's invoices

25 \_\_\_\_\_  
26 <sup>3</sup> In the interest of full disclosure, during the course of my involvement in this case, HLB  
27 advised me that it represented the Hospital along with many other independent hospitals  
28 in connection with an administrative action involving claims reimbursements against  
Medicare. HLB is not paid for these serves by the Estate but by California Hospital  
Association on behalf of all of the hospitals it represents. Upon the approval of this  
settlement, I intend to file a motion to employ HLB out of an abundance of caution.

**Greenspoon Marder LLP**  
1875 Century Park East, SUITE 1900  
LOS ANGELES, CALIFORNIA 90067  
TEL. 213.626.2311 • FAX 954.771.9264

1 notwithstanding that HLB continued to provide services up to and even beyond the  
2 petition date. On April 18, 2023, the Hospital wired \$105,901.00 to HLB (the "Payment").  
3 Of this amount, \$90,901.00 was for payment in full of all past due and current invoices  
4 and \$15,000.00 was for a retainer for post-petition work. At the time of the Payment,  
5 HLB had been advised that the bankruptcy case would be filed the next day.

6 12. Thereafter, the Hospital included HLB in its application to employ ordinary  
7 course professionals [Dkt. No. 385]. Based on billing records in the Hospital's files, I  
8 learned that post petition, HLB continued to provide services to the Hospital. I have  
9 reviewed the Docket and HLB, however, never filed the Declaration of Disinterested as  
10 required by the Order Authorizing the Debtors to Retain the Ordinary Course  
11 Professionals [Dkt. No. 575] and therefore, HLB was never an approved ordinary course  
12 professional.

13 13. After reviewing the payment and the docket, I caused to be made a demand  
14 on HLB to return the full amount of the Payment to the estate contending the Payment  
15 was both avoidable as a preference and as an unused unauthorized retainer. HLB  
16 disputed that it was required to repay the estate contending that the payment of the  
17 invoices was made in the ordinary course of the business between the parties and that  
18 even if it was not in the ordinary course, it had provided new value.

19 14. After reviewing both the Hospital's records and the information provided by  
20 HLB, I caused my counsel to reach out to HLB to see if the matter could be settled. After  
21 negotiations in which I was involved, we reached the settlement, approval of which is  
22 sought by this Motion.

23 15. The Agreement provides that upon approval 1) HLB will pay to the Estate  
24 the sum of \$65,000; 2) be deemed to have waived its claim based on the repayment  
25 under 11 U.S.C. §502(h); and 3) the parties are exchanging mutual general releases  
26 related to Payment.

27 **The A&C Case Factors**

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1           16. In reviewing the Agreement and determining that the settlement was fair  
2 reasonable and in my best business judgment, I considered each of the four A&C factors.  
3 I concluded that this first factor somewhat weighs in favor of the settlement. In my  
4 opinion, the timing of the payment – the day before the bankruptcy was filed with notice  
5 of the filing of the case the next day – and the fact HLB was never an employed  
6 professionals means that HLB has no defenses, and the entirety of the payment must be  
7 returned. HLB disagrees with my position and contends that even though the invoices  
8 were paid the day before the filing and included a retainer for future work, most if not all  
9 the payment is subject to, in its opinion, viable defenses such as ordinary course  
10 between the parties and new value.

11           17. While I dispute HLB's conclusion, I recognize that HLB arguments may  
12 have at least some merit at least as to the ordinary course defense. I have reviewed the  
13 relationship between HLB and the Hospital and saw that over the years, the Hospital paid  
14 HLB's invoices anywhere from between a low of 30 days from issuance to over 130 days,  
15 although payments at either end of the spectrum were rare. The invoices that were paid  
16 on April 18, 2022, however, ran from between a low of 8 days to a high of 202 days from  
17 the invoice date with many falling between 49 to 140 days from the invoice date. Thus,  
18 there is a possibility, that HLB could prevail on its defense at least as to payments made  
19 on invoices dating in the middle range of payment dates.

20           18. As for the new value defense, it is my understanding that HLB is not entitled  
21 to use that defense since it was not a retained professional. However, HLB asserts it  
22 should be entitled to do so as the Hospital specifically asked it to provide services post  
23 petition. This is an equitable argument that the Court would have to decide.

24           19. Based on the foregoing, it is my conclusion that any litigation is not without  
25 risk and, therefore, this factor weighs in favor of the settlement.

26           20. I do not believe the second A&C factor is an issue. HLB is a longtime will  
27 respected law firm and it is unlikely payment would be an issue.  
28

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21. The analysis of the third A&C factor supports the settlement. While the litigation should not be complex – essentially a generic preference action – like all litigation, it will take time and require the expenditure of estate resources. The maximum recovery is \$105,900 if I were to win on every issue. However, should HLB choose to litigate, the fees would not be limited, and they would not be recoverable as there is no right to recover fees in a preference action. Moreover, the litigation would take time my attention away from my other efforts to administer this case. Thus, I have concluded that this factor supports approval of the Agreement.


22. As with the first three factors, it is my conclusion that the application of this fourth and final A&C factor--the paramount interest of creditors--supports approval of the Agreement. The settlement resolves the claim against HLB in a manner meant to avoid further administrative expenses while at the same time recovering approximately 62% of the maximum the estate would be entitled to recover if it recovered every dime. By settling now, I have limited the fees and costs the estate would have incurred if I had litigated this matter. As such the net benefit of the settlement, both in terms of the money into the estate and the waiver of the 11 U.S.C. §502(h) claim, is likely greater than the net benefit of a later settlement and/or a judgment after litigation.

23. In this case, as detailed above, I submit the settlement is well above the "lowest point in the range of reasonableness." Therefore, I believe that the settlement is fair and equitable, in my best business judgment.

24. I respectfully request that the settlement embodied in the Agreement be approved.

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

Executed this 13<sup>th</sup> day of March 2024, at Los Angeles, California.

  
Howard M. Ehrenberg, Chapter 11 Trustee

# EXHIBIT 1

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into by and between Howard M. Ehrenberg, solely in his capacity as trustee (the “Trustee”) of the estate of Beverly Community Hospital Association (the “Debtor”), and Hooper Lundy and Bookman, P.C. (“HLB”). The Trustee and HLB may hereinafter be referred to individually as a “Party” and collectively as the “Parties.”

### RECITALS

A. HLB has provided healthcare-related legal services to the Debtor since 1987. On April 18, 2023, Debtor paid HLB a total of \$105,901 (“Payment”), \$15,000 of which was designated as a retainer for post-petition services (the “Retainer”), and \$90,901 was for pre-petition legal services from September 2022 through April 18, 2023.

B. On April 19, 2023 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code.

C. On August 7, 2023, the Debtors caused to be filed their “Notice of Motion and Motion for Entry of An Order (I) Authorizing the Sale of Substantially all of the Debtors’ Assets Free and Clear of All Liens, Claims, and Encumbrances; to White Memorial Medical Center d/b/a Adventist Health White Memorial Free and Clear; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief; Declaration of Jason A. Cohen in Support Thereof” (the “Sale Motion”) [Docket No. 638].

D. Eleven days later, on August 18, 2023, the Court entered its “Order (A) Authorizing the Sale of Debtors’ Assets to Purchaser Free and Clear of Liens, Claims, Interests, and Other Interests; (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related Relief” (the “Sale Order”) [Docket No. 718] granting the Sale Motion, approving the AHWM APA, and authorizing the Debtors’ proposed sale to AHWM pursuant to 11 U.S.C. §§ 105(a), 363, and 365, Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure, and Rules 6004-1 and 9013-1 of the Local Bankruptcy Rules for the Central District of California.

E. On September 7, 2023, the Debtors caused to be filed their “Notice of Closing of Sale to White Memorial Medical Center d/b/a Adventist Health White Memorial” [Docket No. 789]. Four days later, U.S. Bank Trust Company, National Association, as Master Trustee (“U.S. Bank”) caused to be filed “U.S. Bank Trust Company, National Association, As Master Trustee’s Emergency Request for Status Conference and Order to Show Cause Why A Chapter 11 Trustee Should Not Be Appointed” (the “OSC”) [Docket No. 791].

F. The OSC was granted by the Court pursuant to its "Order Directing the Appointment of a Chapter 11 Trustee and Setting Hearing and Briefing Schedule on Fee Applications" entered on September 13, 2013 [Docket No. 803]. On September 15, 2023, the OUST filed its "Notice of Appointment of Chapter 11 Trustee" [Docket No. 811] pursuant to which Howard M. Ehrenberg was appointed chapter 11 trustee for the Debtors' jointly administered estates.

G. On September 15, 2023, the OUST filed its "Application for Order Approving Appointment of Trustee and Fixing Bond" [Docket No. 813]. On September 15, 2023, the Court entered its "Order Approving the Appointment of a Chapter 11 Trustee" [Docket No. 815]. As a result of the foregoing, Howard M. Ehrenberg became the duly appointed, qualified, and acting chapter 11 trustee for the Debtors' jointly administered estates, and he continues to act in this capacity.

H. Following his appointment, the Trustee was advised that Debtor had made the Payment to HLB.

I. The Trustee reviewed the Docket and ascertained that although HLB was listed as a professional whose services were to be provided post-petition as an ordinary course professional [Dkt. No. 385] HLB never filed the declaration required in order to qualify it as an ordinary course professional.

J. The Trustee contends the Payment was an avoidable preferential transfer and the Retainer needed to be returned as HLB was never authorized to provide services post-petition.

K. HLB contends that it has defenses to a preference claim, including that most of the Payment qualifies for the ordinary course of business defense and that at Debtor's request, HLB provided post-petition legal services and earned nearly \$8,000 in legal fees for such services which could be used as an offset or a new value defense. The Trustee disputes the validity of HLB's claimed defenses.

L. After negotiations, the Parties reached the settlement memorialized by this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants, conditions, promises, and agreements contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

## **ARTICLE 1**

### **APPROVAL ORDER AND BINDING EFFECT**

**1.1. Binding Effect.** This Agreement shall become effective and binding only upon entry by the Bankruptcy Court of a final order approving the Agreement (the "Approval Order"). The Approval Order is "final" after it is entered unless an appeal is timely filed and a stay pending appeal is obtained. In the event of a timely-filed appeal



and stay, the order shall become final if and when the appeal is resolved in favor of the Trustee. In the event the stay pending appeal is lifted prior to the resolution of the appeal, the order shall become final upon the lifting of the stay pending appeal. The "Effective Date" of this Agreement shall be the first business day after the Approval Order becomes final.

**1.2. Court Approval.** Upon execution of this Agreement by the Parties, the Trustee will promptly file a motion to approve this Agreement with the Bankruptcy Court. The Trustee shall use his best efforts to obtain the Bankruptcy Court's approval of the motion and this Agreement, and the Parties shall cooperate in this regard and in defending against an appeal of the Court's approval of the Motion.

**1.3. Termination of Agreement.** In the event that this Agreement is not approved by the Bankruptcy Court with a final Approval Order, with the exception of Article I of this Agreement, this Agreement shall become null and void and of no force or effect.

## **ARTICLE 2**

### **TERMS OF SETTLEMENT**

**2.1. Settlement Payment.** Upon entry of the Approval Order, the Trustee shall provide HLB with a copy of the Approval Order. HLB shall have seven (7) business days after entry of the Approval Order to remit to the Trustee the sum of \$65,000 (the "Settlement Payment") by check made payable to "Howard M. Ehrenberg, Chapter 7 Trustee of the Bankruptcy Estate of Beverly Hospital Association" and sent to:

Greenspoon Marder  
Attention: Howard M. Ehrenberg, Trustee  
1875 Century Park East, Suite 1900  
Los Angeles, California 90067

**2.2. Full Satisfaction of Avoidance Claims and Waiver of Claim.** The Trustee hereby acknowledges the Settlement Payment is being made in full and final settlement of any and all transfer avoidance and recovery type claims the Trustee or Debtor's estate may have against HLB, including, without limitation, for a return of the Retainer, under 11 U.S.C. §§ 544, 547, and/or 548 (collectively, the "Avoidance Claims"). HLB hereby acknowledges and expressly waives any claim provided by 11 U.S.C. § 502(h) that may arise in connection with the Settlement Payment. The Trustee further reserves the right to object to any proof of claim (if any), or scheduled claim, that HLB may have previously filed or could have been filed against the Debtor and the Estate.

## **ARTICLE 3**

### **REPRESENTATIONS AND WARRANTIES**

**3.1. No Undisclosed Inducements.** The Parties represent that they have entered into this Agreement in reliance on their own investigation and that no representations, warranties, or promises other than those set forth in this Agreement

were made by the Parties or their agents, employees, or counsel to induce either Party to enter into this Agreement.

**3.2. Representation by Counsel.** Each Party represents that he or she has obtained independent legal advice with respect to this Agreement, the subject matter of this Agreement, the facts referred to above, and any rights or asserted rights arising therefrom. The Parties acknowledge that they are executing this Agreement voluntarily, without any duress or undue influence.

**3.3. Authority to Execute Agreement.** The Parties warrant and represent that they are authorized to execute this Agreement on behalf of the respective parties and in their respective capacities as indicated below, provided however that the Trustee's execution of this Agreement is specifically subject to the approval of the Bankruptcy Court as provided for herein.

#### **ARTICLE 4** **MUTUAL GENERAL RELEASES**

**4.1.** The Trustee, on behalf of himself as the duly-appointed Chapter 11 trustee of the Debtor and the Debtor's bankruptcy estate (collectively, the "Beverly Estate Releasing Parties"), hereby fully and forever mutually specifically release and discharge HLB and all of its current and former owners, officers, directors, predecessors, successors, partners, shareholders, attorneys, agents, employees, and representatives, as applicable (collectively, the "HLB Released Parties"), from any and all charges, complaints, claims, causes of action, liabilities of any kind, rights, obligations, accountings or damages, whether fixed or contingent, matured or unmatured, claimed or unclaimed, specific or unasserted, anticipated or unanticipated, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which any of the Beverly Estate Releasing Parties have, may have or have had related to the Avoidance Claims (which are described in the Recitals and in Section 2.2 hereof), against any of the HLB Released Parties. The Beverly Estate Releasing Parties understand and agree that, with respect to the matters released herein, one of it may have sustained injuries or damages that have not yet manifested and that are presently unknown to the Beverly Estate Releasing Parties, but each of the Beverly Estate Releasing Parties deliberately and expressly assume the risk of releasing possible and any and all unknown and future charges, complaints, claims, causes of action, liabilities of any kind, rights, obligations, accountings or damages related to the Avoidance Claims. Notwithstanding the foregoing, the Beverly Estate Releasing Parties are not releasing or waiving hereunder any other claims they may have against HLB Released Parties besides the Avoidance Claims.

**4.2.** HLB and all of its current and former owners, officers, directors, predecessors, successors, partners, shareholders, attorneys, agents, employees, and representatives, as applicable (collectively, the "HLB Releasing Parties"), hereby fully and forever mutually specifically release and discharge the Trustee, on behalf of himself as the duly-appointed Chapter 11 trustee of the Debtor and the Debtor's bankruptcy estate (collectively, the "Beverly Estate Released Parties"), from any and all

charges, complaints, claims, causes of action, liabilities of any kind, rights, obligations, accountings or damages, whether fixed or contingent, matured or unmatured, claimed or unclaimed, specific or unasserted, anticipated or unanticipated, known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which any of the HLB Releasing Parties have, may have or have had related to the Avoidance Claims against any of the Beverly Estate Released Parties. The HLB Releasing Parties understand and agree that, with respect to the matters released herein, one of it may have sustained injuries or damages that have not yet manifested and that are presently unknown to the HLB Releasing Parties, but each of the HLB Releasing Parties deliberately and expressly assumes the risk of releasing possible and any and all unknown and future charges, complaints, claims, causes of action, liabilities of any kind, rights, obligations, accountings or damages related to the Avoidance Claims. Notwithstanding the foregoing, the HLB Releasing Parties are not releasing or waiving hereunder any other claims they may have against Beverly Estate Released Parties besides the Avoidance Claims.

**4.3. Civil Code Section 1542 Waiver.** The Parties further acknowledge that any or all of them, or their attorneys, may hereafter discover facts different from or in addition to the facts which are now known or believed to be known, and that it is their intention to fully, finally, absolutely and forever settle any and all disputes and differences which now exist, previously existed, or may exist in the future, whether known or unknown, related to the Avoidance Claims. The Parties acknowledge that they have been informed by their respective attorneys and/or advisors of, and that they are familiar with, Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

**4.4.** The Parties do hereby release, abandon, waive and relinquish all rights and benefits which they may acquire under Section 1542 of the Civil Code of the State of California, or any statute of similar effect, regarding the Avoidance Claims.

## **ARTICLE 5**

### **GENERAL PROVISIONS**

**5.1. Integration.** This Agreement sets forth the entire agreement between the Parties with regard to the subject matter hereof and no change, modification, amendment, termination or discharge of this Agreement shall be binding unless made in writing and executed by each of the parties. All agreements, covenants, representations and warranties, express or implied, oral and written, of the parties with regard to the subject matter hereof, are contained in this Agreement and the documents

referred to herein or implementing the provisions hereof. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another party with respect to the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein, and superseded hereby and thereby.

**5.2. No Third-Party Beneficiaries.** This Agreement is not for the benefit of any person who is not a party signatory to this Agreement or who is not specifically named as a beneficiary in this Agreement, and the provisions of this Agreement are not intended to affect the rights of any party or non-party against any person or entity who is not a party signatory to this Agreement or who is not specifically named as a beneficiary in this Agreement.

**5.3. Attorneys' Fees.** With respect to any suit or proceeding involving the enforcement of this Agreement, including, but not limited to, instituting any action or proceeding to enforce any provisions of this Agreement, to prevent a breach of this Agreement, for damages by reason of any alleged breach of any provisions of this Agreement, or for a declaration of a Party's rights or obligations under this Agreement, the ultimate prevailing Party shall be entitled to recover from the losing Party or Parties, in addition to such other relief as may be granted, his/her reasonable attorneys' fees (other than the attorneys' fees and costs to prepare this Agreement and seek Bankruptcy Court approval of this Agreement).

**5.4. Survival.** It is expressly understood and agreed by each of the Parties that nothing provided for in this Agreement is intended to nor does it release any claims arising out of breach of this Agreement, or any representations contained herein or made in connection herewith. All representations, warranties and covenants herein shall survive the execution of this Agreement.

**5.5. Further Documentation.** Following the date hereof, the Parties must take such action and execute and deliver such further documents as may be reasonably necessary or appropriate to effectuate the intention of this Agreement.

**5.6. Governing Law.** This Agreement and the rights and obligations of the Parties hereunder shall be construed, interpreted and enforced in accordance with the laws of the State of California.

**5.7. Jurisdiction.** In the event a dispute arises under this Agreement, the Bankruptcy Court shall have exclusive jurisdiction to interpret and enforce this Agreement.

**5.8. Interpretation.** This Agreement shall be treated as jointly drafted and will not be construed against any Party as drafter. Furthermore, in the event of any ambiguity in or dispute regarding the interpretation of this Agreement, the interpretation will not be resolved by any rule of interpretation providing for interpretation against the Party who causes the uncertainty to exist or against the draftsperson.

**5.9. Meaning of Pronouns and Effect of Headings.** As used in the Agreement and attached exhibits, the masculine, feminine and/or neuter gender, in the singular or plural, shall be deemed to include the others whenever the text so requires. The captions and paragraph headings in the Agreement are inserted solely for convenience or reference and shall not restrict, limit or otherwise affect the meaning of the Agreement.

**5.10. Counterparts and Electronic Signatures.** This Agreement may be executed in multiple counterpart copies, each of which shall be deemed an original, but all of which together shall constitute one agreement. A signature sent and received by facsimile or other electronic means shall constitute an original signature for purposes of this Agreement. An electronic signature shall constitute an original signature for purposes of this Agreement.

**5.11. Severability.** In the event that any covenant, condition or other provision contained in this Agreement is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision contained herein, so long as such severance does not materially affect the consideration given or received herein or the general intent hereof. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent that the scope or breadth is permitted by law.

**5.12. Waiver.** No breach of any provision herein can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. No failure or delay on the part of any Party to exercise any right hereunder, nor any other indulgence of such Party, shall operate as a waiver of any other rights hereunder, nor shall any single exercise by any Party of any right hereunder preclude any other or further exercise thereof. The rights and remedies herein provided are cumulative and not exclusive of any right or remedies provided by law.

**5.13. Binding on Successors.** This Agreement shall be binding upon and inure to the benefit of the successors, assigns, heirs, executors, administrators, etc. of each of the Parties, including but not limited to any successor trustee and the Debtor after the case is dismissed or closed.

**5.14. No Assignments or Delegation of Rights.** Neither Party hereto has assigned or delegated any rights to any other party or person any of the rights or interests related to any claim which may be subject to the terms of this Agreement.

**5.15. Further Assurances.** The Parties shall take all further acts and sign all further documents necessary or convenient to effectuate the purpose of this Agreement.

**5.16. Full Authority to Sign Agreement.** Any individual signing on behalf of any Party hereto expressly represents and warrants to each other Party that he or she has full authority to do so and to bind such Party hereto and, in the case of the Trustee, to bind the Estate, subject only to approval of the Bankruptcy Court.

**5.17. Parties to Bear Own Costs.** Each party shall be responsible for the payment of its own costs, attorneys' fees, and all other expenses in connection with negotiation, preparation, execution, and approval of this Agreement.

**5.18. Recitals Acknowledged.** The Recitals are true and correct to the best of the Parties' knowledge, and hereby adopted by the Parties as material understandings upon which the Parties have relied in preparation of this Agreement.

**5.19. Notices.** Any notice by any Party to any other Party may be made by e-mail and delivered to the other Party at the address below until written notice of a different email address is given by the Party. Any payments to be made pursuant to this Agreement shall be deemed made only upon actual receipt.

**To the Trustee:**

Howard M. Ehrenberg, Bankruptcy Trustee for Beverly Hospital  
c/o Greenspoon Marder  
1875 Century Park East, Suite 1900  
Los Angeles, CA 90067  
[Howard.ehrenberg@gmlaw.com](mailto:Howard.ehrenberg@gmlaw.com)

**with a copy to:**

Elissa D. Miller, Esq.  
Greenspoon Marder  
1875 Century Park East, Suite 1900  
Los Angeles, CA 90067  
[elissa.miller@gmlaw.com](mailto:elissa.miller@gmlaw.com)

**To HLB :**

Gary Torrell, Esq.  
Hooper Lundy & Bookman, P.C.  
1875 Century Park East, Suite 1600  
Los Angeles, CA 90067  
[gtorrell@hooperlundy.com](mailto:gtorrell@hooperlundy.com)

Signatures on next page . . .

IN WITNESS WHEREOF, the Parties hereto hereby execute this Settlement Agreement as of the date of final signature below.

DATED: March 11, 2024

A handwritten signature in black ink, appearing to read "H. Ehrenberg", written over a horizontal line.

Howard M. Ehrenberg, solely in his capacity  
as Chapter 11 Trustee of the Estate of the  
Beverly Community Hospital Association

DATED: March \_\_\_\_, 2024

Hooper Lundy & Bookman, P.C.

By: \_\_\_\_\_  
Its \_\_\_\_\_


IN WITNESS WHEREOF, the Parties hereto hereby execute this Settlement Agreement as of the date of final signature below.

DATED: March \_\_, 2024

\_\_\_\_\_  
Howard M. Ehrenberg, solely in his capacity  
as Chapter 11 Trustee of the Estate of the  
Beverly Community Hospital Association

DATED: March 11, 2024

Hooper Lundy & Bookman, P.C.

By:   
Its General Counsel, CFO



## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 1875 Century Park East, Suite 1900, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled (*specify*): **CHAPTER 11 TRUSTEE'S MOTION TO APPROVE SETTLEMENT BY AND BETWEEN BEVERLY COMMUNITY HOSPITAL ASSOCIATION AND HOOPER LUNDY & BOOKMAN, P.C.; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF HOWARD. M. EHRENBURG IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) March 13, 2024 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Megan M Adeyemo** madeyemo@grsm.com, asoto@grsm.com
- **David E Ahdoot** dahdoot@bushgottlieb.com, kprestegard@bushgottlieb.com
- **Joseph M Ammar** ammar@millercanfield.com
- **Scott E Blakeley** seb@blakeleyllp.com, ecf@blakeleyllp.com
- **Joseph P Buchman** jbuchman@bwslaw.com, gmitchehl@bwslaw.com
- **Adrian Butler** abutler@bushgottlieb.com
- **Augustus Curtis** augustus.t.curtis@usdoj.gov
- **Howard M Ehrenberg (TR)** ehrenbergtrustee@gmlaw.com, ca25@ecfcbis.com; C123@ecfcbis.com; howard.ehrenberg@ecf.courtdrive.com; Karen.Files@gmlaw.com
- **David K Eldan** David.Eldan@doj.ca.gov
- **Amanda N Ferns** afernslaw.com, mmakalintal@fernslaw.com
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☐ Service information continued on attached page.

**2. SERVED BY UNITED STATES MAIL:**

On (date) March 13, 2024, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Gary Torrell, Esq.  
Hooper Lundy & Bookman, P.C.  
1875 Century Park East, Suite 1600  
Los Angeles, CA 90067

The Honorable Sandra R. Klein  
U.S. Bankruptcy Court  
Roybal Federal Building  
255 E. Temple Street, Suite 1582  
Los Angeles, CA 90012

☐ Service information continued on attached page.

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

☐ Service information continued on attached page.

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

<u>March 13, 2024</u>	<u>Cheryl Caldwell</u>	<u>/s/Cheryl Caldwell</u>
<i>Date</i>	<i>Printed Name</i>	<i>Signature</i>

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Attorneys for Howard M. Ehrenberg, Chapter 11 Trustee

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

**LOS ANGELES DIVISION**

In re  
BEVERLY COMMUNITY HOSPITAL  
ASSOCIATION, dba BEVERLY  
HOSPITAL, a nonprofit public benefit  
corporation,<sup>1</sup>

Debtor.

Case No. 2:23-bk-12359-SK

Chapter 11

Jointly administered with:

Case No. 2:23-bk-12360-SK  
Case No. 2:23-bk-12361-SK

**NOTICE OF CHAPTER 11 TRUSTEE'S  
MOTION TO APPROVE SETTLEMENT  
BY AND BETWEEN BEVERLY  
COMMUNITY HOSPITAL ASSOCIATION  
AND HOOPER LUNDY & BOOKMAN,  
P.C.**

**Fed. R. Bankr. P. 9019(a) and Loc.  
Bankr. R. 9013-1(o)**

**NO HEARING REQUIRED UNLESS  
REQUESTED**

- ☐ Affects all Debtors
- ☒ Affects Beverly Community Hospital  
Association
- ☐ Affects Montebello Community Health  
Services, Inc.
- ☐ Affects Beverly Hospital Foundation

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Boulevard, Montebello, California 90640.

1 **TO THE HONORABLE SANDRA KLEIN, UNITED STATES BANKRUPTCY JUDGE,**  
2 **THE OFFICE OF THE UNITED STATES TRUSTEE, AND INTERESTED PARTIES:**

3 **PLEASE TAKE NOTICE** that Howard M. Ehrenberg, (the "Trustee"), the duly  
4 appointed, qualified, and acting chapter 11 trustee for the bankruptcy estates of the jointly  
5 administered debtors Beverly Community Hospital Association, dba Beverly Hospital, a  
6 nonprofit public benefit corporation (the "Hospital"), Montebello Community Health  
7 Services, Inc. ("Montebello"), and Beverly Hospital Foundation (the "Foundation") (and  
8 sometimes jointly referred to as the "Debtors"), has filed his "*Chapter 11 Trustee's Motion*  
9 *to Approve Settlement By and Between Beverly Community Hospital Association and*  
10 *Hooper Lundy and Bookman, P.C.; Memorandum of Points and Authorities and*  
11 *Declaration of Howard M. Ehrenberg in Support Thereof*" (the "Motion").

12 As more particularly set forth therein, the Motion seeks an order approving a  
13 Settlement Agreement, a copy of which is attached to the Motion as Exhibit 1, by and  
14 between the Trustee and Hooper Lundy and Bookman, P.C. ("HLB"), with regard to a  
15 \$105,000 payment made by the Hospital to HLB the day before the bankruptcy case for  
16 invoices dating back to September, 2022 and for a post petition retainer (the "Payment").  
17 The Trustee contends the Payment should be avoided in total as both an avoidable  
18 preferential payment and a refundable retainer for post petition services for which HLB  
19 was never properly employed. HLB disputes the Trustee's contention that the payment  
20 should be avoided based on its assertion of defenses such as ordinary course and  
21 reliance which the Trustee disputes are viable under the circumstances of this case.  
22 Before filing litigation, the parties agreed to settle this matter for a payment by HLB to the  
23 estate of \$65,000, plus HLB waiver of its claim pursuant to 11 U.S.C. §502(h) based on  
24 the settlement payment. The Parties are also exchanging mutual releases solely with  
25 respect the facts giving rise to the payment.

26 The Trustee submits that the settlement is fair and equitable, in the best interest of  
27 the estate and its creditors and in his best business judgment. The Settlement avoids  
28 costly and time consuming litigation over a claim. In this case, any attorneys fees

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1 incurred are not recoverable, thus, even if after litigation, the Trustee is granted a  
2 judgment for the full amount of his claim, the net benefit may be less than the settlement  
3 amount.

4 **PLEASE TAKE FURTHER NOTICE THAT** this Motion is brought in accordance  
5 with Federal Rule of Bankruptcy Procedure 9019(a) and Local Bankruptcy Rule 9013-  
6 1(o)(1) and is made on the ground that Trustee has determined in his best business  
7 judgment that it is in the best interests of the bankruptcy estate to settle this matter on the  
8 terms set forth in the Motion.

9 **PLEASE TAKE FURTHER NOTICE THAT** this Motion is based on this Notice, the  
10 Motion, attached memorandum of points and authorities and declaration of Howard M.  
11 Ehrenberg in support hereof and the exhibit attached thereto filed concurrently herewith,  
12 the pleadings and records on file with the Court and such other argument or law as will  
13 be presented in further briefing or at the hearing on this Motion.

14 **PLEASE TAKE FURTHER NOTICE** that the Motion, with all supporting papers,  
15 has been filed electronically with the United States Bankruptcy Court and may be viewed  
16 through the Court's Case Management/Electronic Case Files System or at the Clerk's  
17 office at 255 East Temple Street, Los Angeles, CA 90012. You may also obtain a copy of  
18 the Motion by contacting the Trustee's counsel in writing at the e-mail address at the  
19 upper left corner of the first page of this Notice.

20 **PLEASE TAKE FURTHER NOTICE** that any opposition to the Application, and  
21 request for a hearing, must (1) be in the form required by Local Bankruptcy Rule 9013-  
22 1(f)(1), (2) be filed with the Clerk of the Court, (3) be served upon the Trustee's counsel  
23 (whose name and contact information are indicated on the upper left-hand corner of the  
24 first page of this notice), and the United States Trustee fourteen days (14) days after  
25 service of this notice, plus an additional 3 days unless this notice was served upon you  
26 by personal delivery or posting as described in Federal Rule of Civil Procedure  
27 5(b)(2)(A)-(B).

28

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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 1875 Century Park East, Suite 1900, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF CHAPTER 11 TRUSTEE'S MOTION TO APPROVE SETTLEMENT BY AND BETWEEN BEVERLY COMMUNITY HOSPITAL ASSOCIATION AND HOOPER LUNDY & BOOKMAN, P.C.** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **March 13, 2024** I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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☐ Service information continued on attached page.

## 2. SERVED BY UNITED STATES MAIL:

On (date) March 13, 2024, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Gary Torrell, Esq.  
Hooper Lundy & Bookman, P.C.  
1875 Century Park East, Suite 1600  
Los Angeles, CA 90067

☒ Service information continued on attached page.

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) March 13, 2024, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page.

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

March 13, 2024	Cheryl Caldwell	/s/Cheryl Caldwell
<i>Date</i>	<i>Printed Name</i>	<i>Signature</i>

SERVICE LIST (via First Class Mail)

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
TOP 30	Abbott Laboratories Inc	Nathan Scott	100 Abbot Park Road			Abbot Park	IL	60064
TOP 30	Advantis Medical Staffing	Elayne Goldmane	13155 Noel Road Suite 300			Dallas	TX	75240
Counsel for Advantis Medical Staffing	Akerman LLP	Evelina Gentry and Anthony D. Sbardellati	601 West Fifth Street, Suite 300			Los Angeles	CA	90071
TOP 30	Allied Universal Security Services	Moises Rodriguez	161 Washington St Suite 600			Conshohocken	PA	19428
TOP 30	Arthrex, Inc	Carla Pitcher	2825 Airview Boulevard			Kalamazoo	MI	49002
Office of the Attorney General of the United States	Attorney General of the United States	U.S. Department of Justice	950 Pennsylvania Avenue, NW			Washington	DC	20530-0001
TOP 30	Boston Scientific Corp	Kathleen Homsab	300 Boston Scientific Way			Marlborough	MA	01752-1234
Counsel for Sodexo	Brown McGarry Nimeroff LLC	Jami B. Nimeroff	Two Penn Center, Suite 610	1500 John F. Kennedy Boulevard		Philadelphia	PA	19102
Counsel for United Nurses Associations of California/Union of Health Care Professionals	Bush Gottlieb, A Law Corporation	David E. Ahdoot, Kirk M. Prestegard and Adrian R. Butler	801 North Brand Boulevard	Suite 950		Glendale	CA	91203
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California Department of Health Care Services	California Department of Health Care Services	Jennifer Kent, Director	1501 Capitol Avenue, Suite 4510			Sacramento	CA	95814
California Department of Public Health	California Department of Public Health	Stephanie Spich	PO Box 997377 MS 0500			Sacramento	CA	95899-7377
California Secretary of State	California Secretary of State		1500 11th Street			Sacramento	CA	95814
California State Board of Pharmacy	California State Board of Pharmacy		1625 North Market Boulevard			Sacramento	CA	95834
California Statewide Communities Development Authority	California Statewide Communities Development Authority	Chair	1100 K Street, Suite 101			Sacramento	CA	95814
California Statewide Communities Development Authority	California Statewide Communities Development Authority	James Hamill	1700 N. Broadway, Suite 405			Walnut Creek	CA	94596
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TOP 30	Cloudfwave	Loraine Sarno	100 Crowley Dr.			Marlborough	MA	01752
TOP 30	Constellation New Energy-Gas	Zachary Keczykecy	9400 Bunsen Parkway Suite 100			Louisville	KY	40220
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IRS	Internal Revenue Service	Centralized Insolvency Operation	P.O. Box 7346			Philadelphia	PA	19101-7346
IRS	Internal Revenue Service	Centralized Insolvency Operation	2970 Market St			Philadelphia	PA	19104
IRS	Internal Revenue Service		300 North Los Angeles Street			Los Angeles	CA	90012
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		Dr. Lawrence L. Cohen	c/o Stanley Martin Cohen	5081 Lansdowne Drive		Solon	OH	44139

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TOP 30	Philips Healthcare	Jose Rivera	222 Jacobs Street			Cambridge	MA	02141
Interested Party	Ready Refresh	BlueTriton Brands, Inc.	P.O. Box 30139			College Station	TX	77842
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TOP 30	Shiftwise	Jennifer Folds	200 SW Market Street Suite 700			Portland	OR	97201
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TOP 30	Stryker Instruments	Donovan Reiley	4100 E. Milham Road			Kalamazoo	MI	49001
TOP 30	Stryker Orthopedics	Trent Zaks	325 Corporate Drive			Mahwah	NJ	07430
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U.S. Department of Health and Human Services	U.S. Department of Health and Human Services	Angela M. Belgrove, Assistant Regional Counsel	Office of the General Counsel, Region IX	90 7th Street, Suite 4-500		San Francisco	CA	94103-6705
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 1875 Century Park East, Suite 1900, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled: **DECLARATION THAT NO PARTY REQUESTED A HEARING ON MOTION [LBR 9013-1(o)(3)]** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* April 2, 2024, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page.

**2. SERVED BY UNITED STATES MAIL:**

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

☐ Service information continued on attached page.

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

☐ Service information continued on attached page.

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

<u>April 2, 2024</u>	<u>Cheryl Caldwell</u>	<u>/s/ Cheryl Caldwell</u>
<i>Date</i>	<i>Printed Name</i>	<i>Signature</i>

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