

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)**

In re:

**ADVANCED PAIN MANAGEMENT
SERVICES, LLC**

Case No.: 17-16047-TJC
(Chapter 11)

Debtor

* * * * *

In re:

✻

**ADVANCED ANESTHESIOLOGY
ASSOCIATES, LLC**

Case No.: 17—18849-TJC
(Chapter 11)

Debtor

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In re:

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**ADVANCED PAIN SURGERY CENTER
LLC**

Case No.: 17-18850-TJC
(Chapter 11)

Debtor

* * * * *

In re:

✻

**AMERICAN SPINE SURGERY CENTER
LLC**

Case No.: 17-18851-TJC
(Chapter 11)

Debtor

✻

**(Jointly Administered under
Case No. 17-16047-TJC)**

* * * * *

TRUSTEE'S MOTION FOR AN ORDER (A) APPROVING SETTLEMENT AGREEMENT AND RELEASE; (B) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING THE SALE OF ASSETS OUTSIDE THE ORDINARY COURSE OF BUSINESS; (C) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS PURSUANT TO SECTIONS 363(b), (f) AND (m) OF THE BANKRUPTCY CODE; (D) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (E) GRANTING RELATED RELIEF

Alan M. Grochal, Chapter 11 Trustee (the "Trustee") for Advanced Pain Management Services, LLC ("APMS"), Advanced Anesthesiology Associates, LLC ("AAA"), Advanced Pain Surgery Center LLC ("APSC") and American Spine Surgical Center LLC ("ASSC") (collectively, APMS, AAA, APSC and ASSC are the "Debtors"), by his undersigned counsel, moves, pursuant to §§ 105, 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9019 of the Federal Rules of Bankruptcy Procedure, for the entry of an Order: (a) approving a Settlement Agreement and Release (the "Agreement"); (b) approving an Asset Purchase Agreement ("APA") and related documents, and authorizing the sale of assets outside the ordinary course of business; (c) authorizing the sale of assets free and clear of all liens, claims, encumbrances and interests pursuant to sections 363(b), (f) and (m) of the Bankruptcy Code; (d) authorizing the assumption and assignment of certain executory contracts and unexpired leases; and (e) granting related relief (the "Motion").

In support of the Motion, the Trustee states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are §§ 105, 363, 365, 503, 1107 and 1108 of Chapter 11 of title 11, United States Code (the "Bankruptcy Code"), Rules 2002(a)(2), 6004, 6006, 9014 and 9019 of the Federal Rules of Bankruptcy Procedure (the

“Bankruptcy Rules”), and Rule 6004-1, 6006-1 and 9019-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Maryland (the “Local Rules”).

The Bankruptcy Case

4. On March 16, 2017 (the “Petition Date”), APMS filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Kentucky. On May 1, 2017, the APMS case was transferred to this Court and on May 11, 2017, the Court entered an Order Approving the Appointment of Alan M. Grochal as Chapter 11 Trustee (dkt. 100).

5. On June 29, 2017, APSC, AAA and ASSC, affiliates of APMS, each filed a voluntary petition under Chapter 11 of the Bankruptcy Code in this Court.

6. By Order entered on July 5, 2017, AAA, APSC and ASSC have been administratively consolidated with APMS (dkt. 133).

7. On August 4, 2017, the Trustee was appointed as Chapter 11 Trustee for AAA and on August 7, 2017, the Trustee was appointed as Chapter 11 Trustee for APSC and ASSC.

8. Since his appointment, the Trustee has been operating the Debtors’ business and managing their properties pursuant to §§1107(a) and 1108 of the Bankruptcy Code.

9. Shortly after the filing of the Motion, the Trustee anticipates that he will be filing a Motion Seeking Substantive Consolidation of the Debtors’ Estates.

Pre-Bankruptcy Allegations

10. The Debtors are all Maryland Limited Liability Companies and together operate medical practices specializing in pain management and surgery centers in Frederick, Maryland and Waldorf, Maryland.

11. The Debtors’ bankruptcy filings were predicated, in part, by an indictment

issued on June 28, 2016 by the Grand Jury for the District of Maryland against the Debtors' owners, Dr. Sandeep Sherlekar ("Sherlekar") and Dr. Atif Malik ("Malik"), on allegations of (i) Conspiracy to Violate the anti-Kickback Act, 18 U.S.C. § 371; (ii) Soliciting and Receiving Illegal Remuneration in Violation of the Anti-Kickback Act 42 U.S.C. § 1320a-7b(b)(1)(A); (iii) Conspiracy to Defraud the United States, 18 U.S.C. § 371; (iv) Health Care Fraud, 18 U.S.C. § 1347; (v) False Statements Relating to Health Care Matters, 18 U.S.C. § 1035; and (vi) Aiding and Abetting, 18 U.S.C. § 2. The indictment alleges that Sherlekar and Malik received kickback payments totaling approximately \$244,000 each from June 2011 until August 2012. The indictment also charges that between January 2009 and the end of 2013 Sherlekar, Malik and others conspired to defraud the IRS by not reporting as income cash payments received by the Debtors, and by filing false corporate tax returns that overstated the practice's expenses and understated its revenues. The indictment further alleges that the Debtors overbilled for treatments in providing diagnostic or therapeutic nerve blocks and injections and other surgical procedures related to spinal conditions, provided in conjunction with anesthesia services.

12. On September 30, 2016, Sherlekar was found unresponsive and pronounced dead at the scene. Police have ruled that the death was a suicide.

13. The United States has determined that it will not hold the Debtors liable for any alleged or proven criminal wrongdoing by Sherlekar and/or Malik.

Life Insurance

14. In or about April 2013 (a) a \$5 million life insurance was purchased from John Hancock Insurance Company ("John Hancock"), designating Malik as the owner and Sherlekar as the beneficiary (the "Malik Policy"); and (b) a \$5 million life insurance was purchased from John Hancock, designating Sherlekar as the owner and Malik as the beneficiary

(the “Sherlekar Policy”). The Sherlekar Policy and Malik Policy are collectively, the “Insurance Policies”. APMS paid all of the premiums on the Insurance Policies as non-deductible business expenses.

15. Following the death of Sherlekar on September 30, 2016, and after being provided with requested documentation, John Hancock, on January 26, 2017, agreed to pay out the death benefit on the Sherlekar Policy subject to Dr. Malik obtaining an order from the U.S. District Court.¹

16. The Trustee has asserted a claim against the proceeds of the Sherlekar Policy on the basis that the insurance proceeds constitute property of the bankruptcy estates. Malik disputes the Trustee’s claim, but wishes to use a portion of the balance of the life insurance proceeds to settle any litigation claims asserted by the Trustee.

Other Litigation Claims

17. The Trustee has filed a \$2.5 million claim in the estate of Sherlekar which is pending in the Circuit Court for Montgomery County. The gravamen of the Trustee’s claim against decedent’s estate is that Sherlekar breached his fiduciary duties to APMS. The Trustee reserves the right to assert similar claims against Sherlekar’s estate on behalf of the Affiliates.

18. The Trustee believes that the bankruptcy estate has breach of fiduciary claims against Malik of the same nature and scope as those that the Trustee has asserted against Sherlekar; however, as of the date of the Motion, no suit or other proceeding has been commenced by the Trustee against Malik.

The Litigation Settlement

19. After a thorough evaluation of the litigation claims against Dr. Malik,

¹ On January 23, 2017, in Case Number 13-cr-00324-MJG, Judge Garbis entered a restraining order against the proceeds of the Sherlekar Policy. On February 7, 2017, Judge Garbis authorized the disbursement of \$1.75M of the funds to Dr. Malik’s counsel and on March 31, 2017, the balance of the funds were released to Dr. Malik.

including the claim against the proceeds of the Sherlekar Policy, the Trustee has determined that the best way to maximize value for creditors is to settle all litigation claims against Dr. Malik and provide Malik with a release.

20. Under the Agreement, a copy of which is attached hereto as **Exhibit A**, Dr. Malik will pay the Trustee **\$1.75 Million** in full and final settlement of all claims and Dr. Malik will receive a full and complete release.

21. Given Malik's upcoming criminal trial and the possibility of a restitution order, the Trustee could be facing the prospect of battling the federal government with respect to collection on any successful litigation claims that he may have. In such circumstances, the Trustee believes, in his business judgment, that a settlement at this time is the most reasonable approach in order to maximize the recovery for creditors.

Marketing Efforts

22. After learning of the impending indictments, the Debtors began attempting to sell the practice. All non-owner physicians were invited to buy the practice. Three physicians formed a group, prepared a letter of intent, but ultimately did not pursue the purchase. Next, the Debtors attempted to sell the practice through a business broker. Finally, the Debtors have attempted to sell the surgery centers separately.

23. Starting in October 2016, these marketing efforts intensified and three separate groups of buyers visited the practice and reviewed the financial records. None of these efforts resulted in an offer.

24. One of the difficulties in marketing the practice is the need for hard-to-find interventional pain specialists to fill the void created by Dr. Sherlekar's death.

25. The Debtors, and subsequently the Trustee, have also been actively attempting to recruit new physicians for the medical practice, but this has also proved to be challenging due to the adverse publicity associated with the practice. Despite solid financial results

post-petition, given the uncertainty regarding Dr. Malik's future involvement in the medical practice, the Trustee has had a difficult time obtaining what he believes to be a fair price for the practice from an outside third party.

The Asset Purchase Agreement

26. The Trustee has entered into the APA, a copy of which is attached hereto as **Exhibit B** with Advanced Pain Management LLC ("APM" or the "Buyer") an entity in which Dr. Malik does not have an interest.² The Buyer will acquire substantially all of the operating assets of the Debtors with the exception of: (a) all accounts receivable, whether billed or unbilled, in connection with all medical services provided by the Debtors through the date of execution of the Agreement (the "Account Receivable") in the approximate face amount of \$6 million; (b) a loan receivable from Dr. Said G. Osman; (c) all claims against Dr. Malik (which are subject to the Agreement); (d) all claims against the Estate of Dr. Sandeep Sherlekar; (e) the Debtors' rights and obligations under a Management Services Agreement with Nextgen Healthcare Information Systems, Inc. and (f) all causes of action under Chapter 5 of the Bankruptcy Code. At APM's option, the Trustee will assume and assign certain executory contracts and leases that the Buyer wishes to utilize in the practice post-closing, including, but not limited to its leases with Parkway Key LLC (the "Frederick Lease") and with NMN Old Line Professional Centre, LLC (the "Waldorf Lease"). The Trustee is responsible to pay any pre-petition arrearages owed under both the Frederick Lease and the Waldorf Lease.

27. In consideration for the purchase of the operating assets, the Buyer shall be responsible for all accounts payable that accrued after execution of the APA, including but not limited to accrued payroll obligations and accrued trade accounts payable. The Buyer has also

² The owners of APM are Dr. Ojedapo Ojeyemi, Dr. Matthew Roh and Dr. Nina Kahloon, the wife of the Debtors' CEO and General Counsel, Khalid Kahloon. Dr. Kahloon was asked to become involved at the request of her husband to ensure that the group remained in good standing with Medicare.

assumed all accrued vacation pay and severance obligations in the aggregate amount of \$650,000 as well as various equipment leases and service contracts in the aggregate amount of \$100,000.

28. APM shall also provide personnel at no cost to the Trustee, to assist the Trustee in collecting the Accounts Receivable and in reconciling accounts receivable generated prior to execution of the APA and those accounts receivable generated after execution of the APA. Notwithstanding the foregoing, the Trustee shall be responsible for any collection charges owed to Athena in connection with collection of the Accounts Receivable.

29. The Buyer shall provide the Trustee with a monthly accounting between accounts receivable collection and funds collected on behalf of APM and shall remit all accounts receivable collections to the Trustee monthly after approval of the accounting by the Trustee.

30. The Trustee believes, in the exercise of his business judgment, that the sale of the Assets as a going concern as set forth in the APA, represents the maximum realizable value for the medical practice.

Relief Requested

31. Through the Motion, the Trustee is requesting that this Court: (i) authorize the litigation settlement with Dr. Malik; (ii) authorize the sale of the Assets to Advanced Pain Management LLC free and clear of all liens, claims, encumbrances or other interests pursuant to §§ 363(b), (f) and (m) and 365 of the Bankruptcy Code, with such liens, claims, rights, interests and encumbrances (collectively, the “Interests”) to attach to the sale proceeds of the Assets with the same validity (or invalidity), priority and perfection as existed immediately prior to such sale; (iii) approve the assumption and assignment of any executory contracts and leases that APM wishes to have the Trustee assume and assign to it; and (iv) grant such other relief as may be necessary or appropriate.

Basis for Relief

A. Both the Litigation Settlement and the Sale Were Negotiated In Good Faith And Made For Sound Business Reasons; and the Litigation Settlement and the Purchase Price are Both Fair and Reasonable

1. The Litigation Settlement

32. Bankruptcy Rule 9019(a) authorizes a bankruptcy court to approve compromises and settlements. The approval or rejection of a compromise is left to the sound discretion of the bankruptcy court, and is to be determined by the particular circumstances of each proposed compromise. The term “sound discretion” indicates the absence of a hard-and-fast rule. When invoked as a guide to judicial action, it means a decision giving due regard to what is right and equitable under the particular circumstances of the case and applicable law. Langes v. Green, 282 U.S. 531, 541 (1931). A proposed settlement should be approved so long as “it does not fall below the ‘lowest point of reasonableness.’” United States of America ex rel. Rahman v. Oncology Associates, PC, 269 B.R. 139, 153 (D. Md. 2001).

33. Compromises are favored in bankruptcy because they minimize the costs of litigation and expedite administration of the bankruptcy case. In re Martin, 91 F.3d 389, 393 (3d Cir. 1996) (citing 9 Collier on Bankruptcy ¶ 9019.03[1] (15th ed. Rev. 2001)).

34. In considering whether to approve a settlement, a court must determine whether such settlement is fair and reasonable and in the best interests of the estate, which requires an examination of the litigation’s probable costs and benefits. *See, e.g., Nussbaum v. United States (In re Smith)*, 210 B.R. 689, 692 (Bankr. D. Md. 1997).

35. In this case, the Trustee has weighed the cost of litigating with Malik, the likelihood of success, and the ability to collect even if he is successful, and concluded, in his business judgment, that a settlement of the litigation claims at this time makes the most sense.

2. The Proposed Sale to Advance Pain Management LLC

36. The Bankruptcy Code permits a Trustee to sell substantially all of its assets outside the ordinary course of business and prior to confirmation of a Chapter 11 plan. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” This Court has held that transactions should be approved under § 363(b) (1) of the Bankruptcy Code when they are supported by a sound business reason. *See In re WBQ P’ship*, 189 B.R. 97 (Bankr. E.D. VA 1995) (citing *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986)). *See also Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Naron & Wagner, Chartered*, 88 B.R. 85, 87 (Bankr. D. Md. 1988). In reviewing such a proposed transaction, courts give substantial deference to the business judgment of the debtor-in-possession or in this case, the Trustee. *See e.g., Esposito v. Title Inc. Co. of Pa. (In re Fernwood Mkts)*, 73 B.R. 616, 621 n.2 (Bankr. E.D. Pa. 1987).

37. The sale of the Assets serves a sound business purpose. Dr. Malik is currently an integral part of the Debtors’ medical practice. Dr. Malik’s criminal trial commences in early October. Given the uncertainty as to the outcome of the trial, and the fact that during the period leading up to the trial, Dr. Malik will be unable to practice medicine on a full time basis since he will need to prepare for the trial, the future viability of the medical practices is fraught with uncertainty. The sale as reflected in the APA will return a greater benefit to the creditors than any of the alternatives, including a sale at a later date, the continuation of operations until after Dr. Malik’s trial, or the piecemeal liquidation of the operating assets.

38. A sale of the operating assets at this time is the best option presently available to maximize value and preserve employee jobs and is proposed by the Trustee in good faith. Absent an immediate sale, the Debtor may be forced to terminate additional employees or, at

worst, begin the wholesale liquidation of its assets to the detriment of creditors. The Trustee has proposed the sale of the Assets as the only viable approach currently available to these estates and has concluded that the sale is supported by fair consideration and a number of sound business reasons.

39. The Debtors have been both actively marketing the practice for sale and/or seeking to employ additional physicians for more than six months before the Petition Date. Given the adverse publicity associated with the medical practice, coupled with the uncertainty surrounding Dr. Malik's future role in the practice, these efforts have not been successful. The Trustee has concluded that additional marketing efforts would be unlikely to generate a higher or better offer than the offer from the Buyer.

40. Similarly, the Agreement is a valid exercise of the Trustee's business judgment.

41. Together, the projected proceeds from the proposed sale to APM and approval of the Agreement will generate sufficient funds to enable the Trustee to pay off Suntrust Bank and allow funds for unsecured creditors in these cases. Moreover, the Trustee is retaining substantial assets including the Accounts Receivable with a face amount of approximately \$6 Million, a litigation claims against Dr. Said G. Osman and a substantial claim in the Sherlekar Estate. The bankruptcy estates have incurred substantial administrative expenses since the Petition Date and there have been a number of large claims filed that were not scheduled. However, even if all of the filed claims are ultimately allowed, the sale and settlement will, at a minimum, allow a substantial dividend for all creditors.

B. The Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code For a Sale Free and Clear of Liens, Claims, and Interests

42. Section 363(f) of the Bankruptcy Code provides:

The trustee may sell Property under subsection (b) or (c) of this section free and clear of any interest in such Property of an entity other than the estate, only if –

- (1) applicable nonbankruptcy law permits sale of such Property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such Property is to be sold is greater than the aggregate value of all liens on such Property;
- (4) such interest is in a bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

43. In this case, Suntrust Bank (the “Bank”) is the sole secured creditor of the Debtors. According to information received from the Bank’s counsel, Suntrust is owed slightly in excess of \$1.75M. Given the fact that the litigation settlement alone will generate \$1.75 Million at closing, between the litigation settlement proceeds and the accounts receivable, the Trustee should have sufficient funds to repay Suntrust in full, thus satisfying Section 363(f).³

44. Moreover, the Trustee expects that at the Hearing to approve both the Settlement and the Sale, Suntrust will consent to the requested relief.

45. Accordingly, this Court should approve the sale of the Assets to Potomac Spine free and clear of Interests under Bankruptcy Code section 363(f), and any potential lien claimants should be compelled to look exclusively to the proceeds of the sale for satisfaction of their claims.

C. The Sale Was Made in Good Faith Under Section 363(m) of the Bankruptcy Code; and Not in Violation of Section 363(n) of the Bankruptcy Code

46. Section 363(m) of the Bankruptcy Code provides:

³ The Trustee is responsible to cure the pre-petition arrearage owed to Parkway Key LLC, the Frederick landlord, in order to be able to assume and assign the Frederick Lease to the Buyer. Accordingly, the litigation settlement payment will not be sufficient to pay the Bank in full, however, the Trustee will be entitled to a payment on Accounts Receivable collections shortly after closing which should enable him to retire the Bank’s debt shortly after closing.

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of Property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such Property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. §363(m). Section 363(n) of the Bankruptcy Code, among other things, provides, in turn, that a trustee may avoid a sale under such section if the sale price was controlled by an agreement among potential bidders at the sale. While the Bankruptcy Code does not define “good faith,” the Third Circuit in *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F. 2d 143 (3rd Cir. 1986) has held that:

[t]he requirement that a Buyer act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a Buyer’s good faith status at a judicial sale involves fraud, collusion between the Buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

788 F. 2d at 147 (citations omitted).

47. Two of the three owners of APM are physicians who are currently employed by the Debtors, but neither is an owner of the Debtors. As noted above, Dr. Malik is not involved in APM. Both pre-petition and post-petition, and both prior to the appointment of the Trustee and after the appointment of the Trustee, there have been extensive attempts to market the medical practice for sale and/or to attract additional physicians. However, given the stigma created by the indictments coupled with Dr. Sherlekar’s untimely death, it has been difficult to create serious interest in either purchasing the medical practice from third parties, or hiring new doctors.

48. As noted above, the Buyer has made an offer that will remove \$750,000 in additional liabilities from these cases. Furthermore, the Trustee believes that the collectible accounts receivable, coupled with the proceeds from the litigation settlement, will generate considerably more funds than the Bank’s debt and will guarantee a substantial dividend for unsecured creditors, even

after payment of all projected administrative expenses. The Trustee recognizes that actual claims have significantly exceeded scheduled claims, but this fact does not alter his analysis. Finally, not all assets are being sold to APM. The Trustee is retaining his claim in the Sherlekar Estate as well as a note receivable from Dr. Osman.

49. The Trustee intends to establish at the Sale Hearing that the Agreement was a negotiated, arm's-length transaction, in good faith, without collusion or fraud of any kind, and in compliance with the *Abbotts Dairies* standard. The evidence at the Sale Hearing will further establish that no party has engaged in any conduct that would prevent the application of § 363(m) of the Bankruptcy Code or allow avoidance of the Sale pursuant to § 363(n) of the Bankruptcy Code.

50. Accordingly, the Trustee requests that the Court find that the Buyer has purchased the Assets in good faith within the meaning of § 363(m) of the Bankruptcy Code, and is entitled to the protections of § 363(m) of the Bankruptcy Code.

51. The Trustee further requests that the Sale Order provide that the Assumed Contracts will be assigned to, and remain in full force and effect for the benefit of APM notwithstanding any provisions in the Assumed Contracts, including those described in §§ 365(b)(2) and (f)(1) and (3) of the Bankruptcy Code, that prohibit such assignment.

52. Section 365(f) of the Bankruptcy Code provides, in pertinent part, that:

The trustee may assign an executory contract or unexpired lease of the debtor only if –

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2). Under § 365(a), a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” Section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee --

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

53. Although § 365 of the Bankruptcy Code does not set forth standards for courts to apply in determining whether to approve a Trustee's decision to assume an executory contract, courts have consistently applied a "business judgment" test when reviewing such a decision. *See, e.g., Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 318 U.S. 523, 550 (1953); *In re Talco, Inc.*, 558 F. 2d 1369, 1173 (10th Cir. 1977). A trustee satisfies the "business judgment" test when he determines, in good faith, that assumption of an executory contract will benefit the estate and the unsecured creditors. *In re FCX, Inc.*, 60 B.R. 405, 411 (Bankr. E.D. N.Y. 1986). The assumption and assignment of the assumed contracts and leases, or any of them, is a necessary part of the sale and, therefore will benefit the bankruptcy estates.

54. The Trustee will serve the Motion and a separate Notice on all Counterparties to the Assumed Contracts, notifying such Counterparties of the potential assumption by the Trustee and assignment to the Buyer of the Assumed Contracts at the Sale Hearing. The Notice will also provide parties with an opportunity to dispute proposed cure amounts.

55. APM is responsible for providing evidence of "adequate assurance of future performance" to the extent required in connection with the assumption and assignment of any Assumed Contracts. The meaning of "adequate assurance of future performance" for the purpose of the assumption of executory contracts and unexpired leases pursuant to § 365 of the Bankruptcy

Code depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985). If necessary, the Buyer is prepared to provide evidence of its ability to provide adequate assurances to Counterparties at the sale hearing.

Notice

56. Concurrently with this filing, the Settlement and Sale Motion will be served on: (a) the U.S. Trustee; (b) counsel to Suntrust Bank; (c) all scheduled creditors; and (d) all parties who have timely filed requests for notice under Rule 2002 of the Federal Rules of Bankruptcy Procedure.

57. The Trustee submits that the notice that they have provided and intend to provide of this Sale Motion and the sale hearing is reasonable and appropriate and should be approved by this Court as adequate and sufficient notice. *See, e.g., In re Naron & Wagner, Chartered*, 88 B.R. 85, 87 (Bankr. D. Md. 1988); *In re WBQ P’ship*, 189 B.R. 97, 103 (Bankr. E.D. VA 1995).

58. The Trustee requests, pursuant to Bankruptcy Rules 6004(g) and 6006(d), that the order approving the Motion become effective immediately upon its entry.

WHEREFORE, the Trustee requests that this Court (i) grant the Motion and approve the Settlement and authorize the sale of the Assets to APM and approve the proposed Asset Purchase Agreement in the form attached to the Motion, pursuant to the attached proposed order; (ii) approve the assumption and assignment of the Assumed Contracts in accordance with

the proposed Asset Purchase Agreement; (iii) approve the assumptions and assignments requested by the Trustee ; and (iv) grant such other and further relief as is just and proper

Dated: September 26, 2017

/s/ Alan M. Grochal
Alan M. Grochal, Bar No. 01447
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Counsel for Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of September, 2017, a copy of the foregoing Trustee's Motion for Order (A) Approving Settlement Agreement and Release; (B) Approving Asset Purchase Agreement and Authorizing the Sale of Assets Outside the Ordinary Course of Business; (C) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to Sections 363(b), (f) and (m) of the Bankruptcy Code; (D) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (E) Granting Related Relief, and Notice of Motion was served electronically or mailed, first class, postage prepaid, to all parties on the attached matrix.

/s/ Alan M. Grochal
Alan M. Grochal

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Rockville, MD 20849

Parkway Key LLC
7420 Hayward Road
Frederick, MD 21702

Seneca Meadows Surgery
Center, LLC
1050 Key Parkway, Suite 103
Frederick, MD 21702

State of Maryland
Comptroller of Maryland
Revenue Administration Division
110 Carroll Street
Annapolis, MD 21411-0001

State of Maryland
Comptroller of Treasury
Revenue Administration Division
P.O. Box 17251
Baltimore, MD 21297

SunTrust Bank
Bankruptcy Department
P.O. Box 85092
Richmond, VA 23286

US Securities & Exchange Comm.
Atlanta Reg. Office & Reorg.
950 E. Paces Ferry Road NE Ste. 900
Atlanta, GA 30326-1382

State of Maryland DLLR
Division of Unemployment Insurance
1100 N. Eutaw Street, Room 401
Baltimore, MD 21201-2225

Treasurer of Frederick County
30 N. Market Street
Frederick, MD 21701-5420

US Attorney – District of MD
36 S. Charles Street, 4th Floor
Baltimore, MD 21201-3119

Advanced Anesthesiology Assoc. LLC
1050 Key Parkway, Suite 103
Frederick, MD 21702

Comptroller of the Treasury
Compliance Division, Room 409
301 W. Preston Street
Baltimore, MD 21201-2305

Treasurer of Frederick County
30 N. Market Street
Frederick, MD 21701-5420

Madison Funding, LLC
11433 Cronridge Drive, Suite F
Owings Mills, MD 21117

Bradshaw Rost, Esquire
Tenenbaum & Saas, P.C.
4504 Walsh Street, Suite 200
Chevy Chase, MD 20815

Khalid Kahloon
Advanced Pain Management Services
LLC
1050 Key Parkway, Suite 103
Frederick, MD 21702

Christopher Chipman, Esquire
Protas Spivok & Collins LLC
4330 East West Highway, Suite 900
Bethesda, MD 20814

Susan J. Klein, Esquire
Weinstock Friedman & Friedman
P.A.
10461 Mill Run Circle, Suite 550
Owings Mills, MD 21117

Kristen M. Siracusa, Esquire
Miles & Stockbridge P.C.
100 Light Street, 10th Floor
Baltimore, MD 21202

Joel L. Perrell, Jr., Esquire
Miles & Stockbridge P.C.
100 Light Street, 10th Floor
Baltimore, MD 21202

Lynn A. Kohen, Esquire
Office of the U.S. Trustee
6305 Ivy Lane, Suite 600
Greenbelt, MD 20770

David G. Sommer, Esquire
Gallagher Evelius & Jones LLP
218 North Charles Street, Suite 400
Baltimore, MD 21201

Tammy Cohen, Esquire
Sellman Hoff, LLC
2201 Old Court Road
The Cooperage
Baltimore, MD 21208

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of this 26th day of September, 2017 by and between **ALAN M. GROCHAL** (the "Trustee"), Chapter 11 Trustee of Advanced Pain Management Systems, LLC, Advanced Pain Surgery Center, LLC, Advanced Anesthesiology Associates, LLC, and American Spine Surgery Center, LLC (each and collectively, the "Debtors"), and **DR. ATIF MALIK** ("Malik").

RECITALS

The Bankruptcy Filing

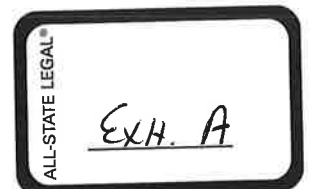
1. On March 16, 2017 (the "Petition Date"), Advanced Pain Management Systems, LLC ("APMS") filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Kentucky. On May 1, 2017, the case was transferred to United States Bankruptcy Court for the District of Maryland (the "Bankruptcy Court"), Case No. 17-16047-TJC (the "Bankruptcy Case").

2. On May 9, 2017, the Office of the United States Trustee filed an Application to Approve Appointment of Chapter 11 Trustee (dkt. 99), and on May 11, 2017, the Court entered an Order Approving the Appointment of Alan M. Grochal as Chapter 11 Trustee (dkt. 100).

3. On June 29, 2017, Advanced Pain Surgery Center, LLC ("APSC"), Advanced Anesthesiology Associates, LLC ("AAA"), and American Spine Surgery Center, LLC ("ASSC"), each an affiliate of APMS (the "Affiliates" and collectively, with APMS, APSC, AAA and ASSC are referred to herein as the "Debtors") filed separate voluntary petitions under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court. By order entered on June 30, 2017 these cases have been administratively consolidated with the Bankruptcy Case of APMS. On August 4, 2017, Alan M. Grochal was appointed as Chapter 11 Trustee for AAA, and on August 7, 2017, Alan M. Grochal was appointed as Chapter 11 Trustee for ASSC and APSC.

The Debtors

4. Each of the Debtors is a Maryland limited liability company and together operate a medical practice specializing in pain management with multiple offices located in the State of Maryland. In the ordinary course of their common business enterprise, the revenues of all of the Debtors are deposited into a common operating account from which the expenses of all of the Debtors are paid.



5. Dr. Sandeep Sherlekar (“Sherlekar”) and Malik each owned a 50% membership interest in each of the Debtors.

6. On September 30, 2016, Sherlekar was found unresponsive and pronounced dead at the scene. Police have ruled that the death was a suicide.

7. Since the Petition Date, without the historical contributions of Sherlekar, the Debtors have continued to operate their respective businesses, albeit on a more limited scale.

Pre-Bankruptcy Allegations

8. On June 28, 2016, the Grand Jury for the District of Maryland indicted the owners of APMS, Dr. Sandeep Sherlekar (“Sherlekar”) and Malik, on allegations of (i) Conspiracy to Violate the Anti-Kickback Act 18 U.S.C. § 371; (ii) Soliciting and Receiving Illegal Remuneration in Violation of the Anti-Kickback Act, 42 U.S.C. § 1320a-7b(b)(1)(A); (iii) Conspiracy to Defraud the United States, 18 U.S.C. § 371; (iv) Health Care Fraud, 18 U.S.C. § 1347; (v) False Statements Relating to Health Care Matters, 18 U.S.C. § 1035; and (vi) Aiding and Abetting, 18 U.S.C. § 2. This matter is filed as United States v. Sherlekar, Case Number 13-cr-00324-MJG.

9. The indictment alleges that: (a) Sherlekar and Malik received kickback payments totaling approximately \$244,000 each from June 2011 until August 2012; (b) from January 2009 to the end of 2013 Sherlekar, Malik and others conspired to defraud the IRS by not reporting as income cash payments received by APMS, and by filing false corporate tax returns that overstated the practice’s expenses and understated its revenues; and (c) APMS overbilled for treatments in providing diagnostic or therapeutic nerve blocks and injections and other surgical procedures related to spinal conditions, provided in conjunction with anesthesia services.

10. The United States has determined that it will not hold APMS or any of the Affiliates liable for any alleged or proven criminal wrongdoing by Sherlekar and/or Malik in the criminal cases.

11. In or about April 2013 (a) a \$5 million life insurance was purchased from John Hancock Insurance Company (“John Hancock”), designating Malik as the owner and Sherlekar as the beneficiary (the “Malik Policy”); and (b) a \$5 million life insurance was purchased from John Hancock, designating Sherlekar as the owner and Malik as the beneficiary (the “Sherlekar Policy”). The Sherlekar Policy and Malik Policy are collectively, the “Insurance Policies”.

Life Insurance

12. APMS paid all of the premiums on the Insurance Policies as non-deductible business expenses.

13. Following the death of Sherlekar on September 30, 2016, and after being provided with requested documentation, John Hancock, on January 26, 2017, agreed to pay out the death benefit on the Sherlekar Policy subject to Dr. Malik obtaining an order from the U.S. District Court.¹

14. The Trustee has asserted a claim against the proceeds of the Sherlekar Policy on the basis that the insurance proceeds constitute property of the bankruptcy estates. Malik disputes this claim, and wishes to use a portion of the balance of the life insurance proceeds to settle any litigation claims asserted by the Trustee.

Claims Against Owners of Debtor

15. The Trustee has filed a \$2.5 million claim in the estate of Sherlekar pending in the Circuit Court for Montgomery County. The gravamen of the Trustee's claim against decedent's estate is that Sherlekar breached his fiduciary duties to APMS. The Trustee reserves the right to assert similar claims against Sherlekar's estate on behalf of the Affiliates.

16. The Trustee believes the bankruptcy estate has breach of fiduciary claims against Malik of the same nature and scope as those that the Trustee has asserted against Sherlekar; however, as of the date of this Agreement, no suit or other proceeding has been commenced by the Trustee against Malik.

Resolution of Disputes

17. The Trustee and Malik believe that the Debtors can continue as a viable business and significant employer. In order to do so: (a) the Trustee wishes to sell and the Buyer wishes to purchase substantially all of the operating assets of the Debtors; (b) the Trustee and Malik wish to resolve their disputes regarding the insurance proceeds from the Sherlekar Policy.; and (c) the parties wish to resolve any other potential claims that the Trustee might assert against Malik.

¹ On January 23, 2017, in Case Number 13-cr-00324-MJG, Judge Garbis entered a restraining order against the proceeds of the Sherlekar Policy. On February 7, 2017, Judge Garbis authorized the disbursement of \$1.75M of the funds to Dr. Malik's counsel and on March 31, 2017, the balance of the funds were released to Dr. Malik.

NOW, THEREFORE, for and in consideration of the terms, conditions, covenants and agreements provided for herein, the parties do hereby agree as follows:

TERMS OF SETTLEMENT

1. Sale of Assets. The Trustee has agreed to sell and the Buyer has agreed to purchase substantially all of the assets of the Debtors on the terms and conditions set forth in an Asset Purchase Agreement (the "APA") attached as **Exhibit 1**. The following is an outline of the essential terms of the sale:

(a) Subject to the terms of the APA, the Buyer will purchase all accounts, documents, equipment, inventory, general intangibles, instruments and other personal property of the Debtors (with the exception of certain excluded assets) "AS IS", WHERE IS" without any express or implied warranty of any kind. The Trustee shall retain all healthcare receivables as of the date of execution of the APA (the "Accounts Receivable") in the face amount of approximately \$6 Million.

(b) Under the terms of the APA, the Buyer shall assume all accounts payable that accrued after the Petition Date including, but not limited to accrued payroll obligations and accrued trade accounts payable, and the other terms of the purchase and sale shall be as reflected in the APA, including, without limitation, those related to lease and contract assignments, payments of arrearages, and personnel.

(c) In addition, the terms of the APA provide that on or before the tenth day following the end of each calendar month after execution of the APA, Buyer shall be required under the APA to generate a report with respect to all receipts and said report shall, among other things, show how each receipt has been allocated as between post-agreement collections and Accounts Receivable during the calendar month, and, upon approval of the report by the Trustee, the Buyer shall be required under the APA to remit all Accounts Receivable to the Trustee as mutually agreed under the APA.

2. Settlement of Claims

(a) The consideration to be paid by Malik for the settlement of all claims that the Trustee may have, against Malik, and for the Trustee's performance of his obligations under

the Agreement (including, without limitation, those obligations set forth in section 2(c) below), is \$1,750,000 (the "Settlement Payment").

(b) The Settlement Payment will be paid as follows: At the closing on the Agreement (the "Closing"), Malik shall pay the Trustee the sum of \$1,750,000 in immediately available funds. The Trustee acknowledges that the primary source of these funds will be the life insurance proceeds from the Sherlekar Policy.

(c) Between the date of execution of the Agreement and Closing, the Trustee shall enter into a standstill and forbearance agreement with Suntrust Bank (the "Bank") whereby the Bank, upon receipt of a substantial payment from the Trustee out of the Settlement Payment: (1) agrees to forbear from suing, and agrees that the Bank and/or any of its affiliates, assignees and/or their respective successors are precluded from proceeding, in any way against Malik with respect to Malik's alleged debt to the Bank, Malik's alleged personal guaranty to the Bank, and/or any other matter(s) related to the foregoing; and (2) agrees to provide a full and complete release for both the Debtors and Malik upon payment in full.

3. Insurance Proceeds. Notwithstanding the foregoing or anything to the contrary stated in this Agreement, all of the Buyer's obligations (and/or any other obligations) under the APA shall be non-recourse against Malik, and any breach or nonperformance of the Buyer under the APA shall not affect the validity or enforceability of the Malik Release (as defined herein) or the other terms of this Agreement, which shall be absolute and irrevocable on the Effective Date.

4. Settlement Payment. Malik shall pay \$1,750,000 in order to fund the Settlement Payment.

5. Release of Malik. Upon execution of this Agreement and upon approval of this Agreement by the Bankruptcy Court and subject to the terms and conditions of this Agreement, in consideration of the mutual agreements herein and other valuable consideration set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Trustee, on behalf of himself, the Debtors, their bankruptcy estates, and their respective past and present officers, directors, shareholders, agents, representatives, employees, predecessors, successors and assigns and any and all other interested third parties (and with respect to any such unspecified interested third parties, to the fullest extent permissible by applicable law)(collectively, the "Releasing Parties"), does hereby release, waive, and forever discharge Malik, and any and all of his past present and future heirs, representatives, agents, attorneys, insurers, underwriters, and the

successors, and assigns of all of the foregoing, and each and every one thereof, (the “Malik Released Parties”), from any and all liabilities, obligations, debts, actions, suits, judgments, claims, causes of action and demands, whether known or unknown, asserted or unasserted, suspected or unsuspected, under contract, in law or in equity, for or by reason of any matter, cause or thing whatsoever that the Releasing Parties (or any one of them) have or has asserted, could have asserted, or may assert in the future for any reason whatsoever against the Malik Released Parties (or any one of them), all whether arising from contract, tort, statute, or otherwise (collectively, the “Claims”). The foregoing release is referred to herein as, the “Malik Release.” For the avoidance of doubt, this paragraph shall not release any obligations of the Buyer that arise under the terms of the APA.

6. Release of Trustee and Bankruptcy Estates. Upon execution of this Agreement and upon approval of this Agreement by the Bankruptcy Court and subject to the terms and conditions of this Agreement (including, without limitation, Trustee’s compliance herewith) Malik shall be deemed to have released, waived and discharged the Trustee, the Debtors and their bankruptcy estates, and their respective professionals from any and all liabilities, obligations, actions, suits, judgments, claims, causes of action and demands, known or unknown, whatsoever at law or in equity arising on or before the date of this Agreement. For the avoidance of doubt, this paragraph shall not release any obligations of the Trustee, the Debtors and/or their bankruptcy estates any obligations of that arise under the terms of this Agreement or the APA.

7. Malik Authorization to File a Claim. Malik has alleged that Suntrust Bank has garnished \$31,143.08 from Malik’s personal bank accounts (the “Garnished Personal Funds”). Notwithstanding the claims bar date in the Debtors’ cases, within thirty (30) days after the Bankruptcy Court approves the Agreement, Malik shall be entitled to file proofs of claims covering the Garnished Personal Funds to which he believes he is entitled to be paid from the Debtors’ estates. The Trustee reserves all rights to object to any such claim for Garnished Personal Funds.

8. Release of Suntrust Bank. The Trustee has agreed to utilize the Settlement Payment to substantially repay the Debtors’ obligations to Suntrust Bank (the “Bank”). Since the Bank has a first priority lien on the Accounts Receivable, the Trustee shall pay the balance owed to the Bank on a first priority basis out of the Accounts Receivable that he collects as funds are received. The Bank has alleged that Malik has personally guaranteed these obligations. Malik

disputes the validity of the Bank's claims. At the time that the Trustee repays the obligations to the Bank, the Trustee shall obtain cancellation of the underlying note from the Bank and shall also obtain a full and complete release of any and all obligations by Malik to the Bank, including but not limited to, a full and complete release of the alleged personal guaranty.

9. Other Personal Obligations of Malik. Upon information and belief, Malik has personally guaranteed several obligations of the Debtors. To the extent that the Trustee is in a position to distribute funds to any such creditors that result in full payment, the Trustee will use his best efforts to obtain a full and complete release of any personal guarantees by Malik to such creditors. Additionally, there is a pending arbitration proceeding in the Circuit Court of the 19th Judicial Circuit, Lake County, Illinois brought by BFG Corporation, d/b/a Byline Financial Group (as successor in interest to Baytree National Bank and Trust Company)(the "Arbitration Proceeding"). The Trustee will cooperate with Malik's attorneys in their attempt to obtain a stay and standstill agreement with respect to the Arbitration Proceeding.

10. Final Settlement Agreement. This Agreement is the resolution of disputed claims and nothing contained herein shall be deemed an admission against any party. Specifically, and without limiting the foregoing, Malik disputes any claim or contention that he breached any fiduciary duty and contends that he did not breach any fiduciary duty. The parties agree that this Agreement constitutes the entire settlement between the parties with respect to the subject matter hereof and that no term or provision of this Agreement may be varied, changed, modified, discharged, amended, waived or terminated, except by an instrument in writing signed by both parties and, if required, Bankruptcy Court approval.

11. Waivers. The waiver by any party hereto of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision hereof or thereof, nor shall any failure to enforce any provision operate as a waiver at such time or any future time of such provision or of any other provision hereof or thereof. The Trustee hereby represents and warrants that he has not assigned or transferred to any person or other third party any matter released under this Agreement or any part or portion of any matter released under this Agreement, other than pursuant to this Agreement and that all of the claims, defenses, rights, and obligations, and causes of action asserted and raised, or that could have been raised, against Malik or subject to this Agreement are in fact owned or controlled by him and the Bankruptcy Estate.

12. Acknowledgment. The parties represent that: (a) they fully understand all of the terms and provisions of this Agreement and regard the same to be fair and reasonable; (b) they have had the opportunity to be advised of their legal rights and liabilities in connection with this Agreement; and (c) they are signing this Agreement freely and voluntarily.

13. Counterparts and Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all counterparts shall constitute one and the same document regardless of the date of execution and delivery. Any signed faxed or electronic pdf counterpart shall be deemed an original for evidentiary purposes and will be enforceable by the parties as an original.

14. Authority. Subject to Bankruptcy Court approval as set forth below, the parties represent that the undersigned have full authority to bind themselves to the terms of this Agreement.

15. Further Assurances. The parties covenant and agree to take such actions and to supplement such documents and things as may be reasonably necessary from time to time to effectuate the terms and intent of this Agreement.

16. Counsel Fees. The parties will bear their own respective attorney's fees, expenses and costs in connection with the preparation and execution of the terms of this Agreement.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties' respective assigns and successors, including trustees and receivers.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland and laws of the United States of America applicable to transactions within the State of Maryland. The parties agree that if any clause or provision herein (excluding the Malik Release) is deemed by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected thereby, and the remainder of this Agreement shall remain in full force and effect.

19. Approval of Bankruptcy Court. This Agreement is subject to the approval of the Bankruptcy Court and the entry of a final, non-appealable order. The Bankruptcy Court shall retain jurisdiction over the interpretation, application and enforcement of this Agreement.

20. Confidentiality. The Trustee has agreed to delete certain portions of the Agreement at the request of Malik. The Trustee will use his best efforts to maintain the

confidentiality of those deleted portions of the Agreement, however, the parties acknowledge that the Bankruptcy Judge handling the Debtors' cases will make the final determination as to confidentiality issues.

Signatures on Next Page. This is Page 9 of 10.

IN WITNESS WHEREOF, this Agreement has been executed under seal as of the day and year first mentioned above.

WITNESS:

ALAN M. GROCHAL, Chapter 11 Trustee
on behalf the Debtors and the bankruptcy estates
of Advanced Pain Management Systems, Inc.,
Advanced Pain Surgery Center, LLC, Advanced
Anesthesiology Associates, LLC, and American
Spine Surgery Center, LLC

Alvin A. Kahlou

_____ (SEAL)

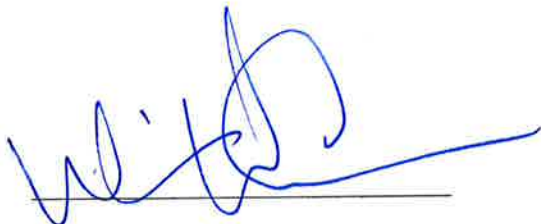
[Signature]

_____ (SEAL)

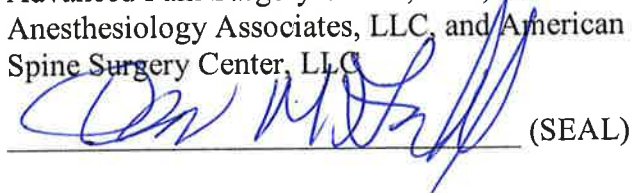
DR. ATIF MALIK

IN WITNESS WHEREOF, this Agreement has been executed under seal as of the day and year first mentioned above.

WITNESS:



ALAN M. GROCHAL, Chapter 11 Trustee
on behalf the Debtors and the bankruptcy estates
of Advanced Pain Management Systems, Inc.,
Advanced Pain Surgery Center, LLC, Advanced
Anesthesiology Associates, LLC, and American
Spine Surgery Center, LLC


_____ (SEAL)

_____ (SEAL)
DR. ATIF MALIK

ASSET PURCHASE AGREEMENT (363 SALE)

THIS ASSET PURCHASE AGREEMENT ("Agreement") is entered into this 8th day of September, 2017, by and between ALAN M. GROCHAL, Chapter 11 Trustee (the "Trustee") of Advanced Pain Management Services, LLC, a Maryland limited liability company ("APMS"), and its affiliates, American Spine Surgery Center, LLC, a Maryland limited liability company ("ASSC"), Advanced Pain Surgery Center, LLC, a Maryland limited liability company ("APSC"), and Advanced Anesthesiology Associates, LLC, a Maryland limited liability company ("AAA"), (ASSC, APSC and AAA collectively, the "Affiliates") (APMS and the Affiliates collectively, "Debtors"), and ADVANCED PAIN MANAGEMENT LLC, a Maryland limited liability company ("Buyer").

WHEREAS, Debtors own and operate private medical offices for the practice of pain management medicine (collectively, the "Practice") located at (i) 1050 Key Parkway, Suites 102, 103, 104 and 202, Frederick, Maryland 21702; and (ii) 12070 Old Line Center, Suites 210 and 205, Waldorf, Maryland 20602 (the "Offices");

WHEREAS, on May 1, 2017, the Chapter 11 bankruptcy case filed by APMS in the United States Bankruptcy Court for the Western District of Kentucky was transferred to the United States Bankruptcy Court for the District of Maryland (the "Bankruptcy Court") and was assigned Case No. 17-16047-TJC;

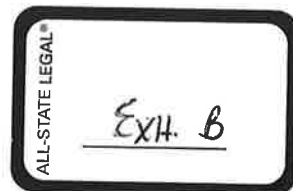
WHEREAS, on June 29, 2017 (the "Petition Date"), the Affiliates commenced cases (the "Bankruptcy Cases") under Chapter 11 of the United States Bankruptcy Code (as amended, the "Bankruptcy Code"), 11 U.S.C. §§ 101 *et seq.*, by filing voluntary petitions in the United States Bankruptcy Court for the District of Maryland (the "Bankruptcy Court"), Case nos. 17-18851-TJC, 17-18850-TJC, and 17-18849-TJC;

WHEREAS, the Trustee, by court orders dated May 11, 2017, August 4, 2017, and August 7, 2017, was named trustee for APMS and in the Bankruptcy Cases, along with the power to sell, assign, transfer and otherwise convey the assets of Debtors;

WHEREAS, Trustee wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Trustee, substantially all of the assets, and assume certain specified liabilities, of the Practice, all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with the Bankruptcy Code.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. SALE OF ASSETS



(a) Trustee hereby agrees to sell to Buyer and Buyer hereby agrees to purchase from Trustee, on a "AS IS" and "WHERE IS" basis, WITH ALL FAULTS and, except as otherwise specifically set forth in this Agreement, with NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER (EXPRESS OR IMPLIED), INCLUDING NO REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS OR USE FOR A PARTICULAR PURPOSE, all of Debtors' and Trustee's right, title and interest in the assets of Debtors used in connection with the operation of the Practice, including, but not limited to the following, but not including the assets excluded under Section 1(b) below (collectively the "Assets"):

(1) All personal property, including, but not limited to furniture, fixtures, equipment, computer hardware and computer software licenses used in connection with the Practice and located in the Offices, including, but not limited to, substantially all of those identified in Exhibit B attached hereto (collectively, the "Fixed Assets");

(2) All cash on hand and cash in banks, up to One Hundred Thousand Dollars (\$100,000.00), whether represented by deposits in checking accounts, savings accounts, or similar types of banking arrangements, and all other cash equivalents and financial investments (collectively "Cash");

(3) To the extent assignable, all legally binding agreements, including the "Leases", to which Debtors are a party listed on Exhibit C attached hereto and made a part hereof ("Contracts"), and all Contracts made or entered into after the date hereof by Debtors with respect to the Practice in the ordinary course not in violation of this Agreement ("Assigned Contracts");

(4) All leasehold improvements located at the Offices, to the extent the same are the property of the Debtors;

(5) All instruments and non-medical supplies used in connection with the Practice and all records relating thereto;

(6) All pharmaceuticals, vaccines and medical supplies used in connection with the Practice and all records relating thereto;

(7) All medical records, patient lists (collectively, the "Medical Records"), and other records of Debtors, excluding all corporate and tax records of Debtors;

(8) Trade names and trademarks, whether registered or unregistered, patents, trade secrets, telephone numbers, telephone listings, URLs, websites, social and professional media links and sites;

(9) Security deposits and prepaid amounts under agreements included in the Assets;

(10) All licenses (to the extent transferable), permits, approvals, and assets, intangible or otherwise, of, relating to, or used in connection with the operation of Practice; and

(11) All goodwill and other intangible assets relating to the Practice.

(b) Notwithstanding anything herein to the contrary, the following items shall not be included in the term "Assets", and shall remain the property of Debtors, physicians and employees, as applicable, after Closing:

(i) All accounts or notes receivable, whether billed or to be filled, and any security, claim, remedy or right to payment related to any and all medical services provided by the Debtors through the date of execution of the Agreement (the "Accounts Receivable");

(ii) The Debtors rights and obligations under a Management Services Agreement with Nextgen Healthcare Information Systems, LLC ("Nextgen");

(iii) All cash on hand and cash in banks in excess of \$100,000.00, whether represented by deposits in checking accounts, savings accounts, or similar types of banking arrangements, and all other cash equivalents and financial investments (collectively, "Cash");

(iv) That certain loan receivable due and owing from Dr. Said G. Osman, M.D., payable to Debtors;

(v) All causes of action, claims, rights and remedies, existing or arising under the Bankruptcy Code or applicable non-bankruptcy law for the avoidance of or recovery for preferential transfers or fraudulent conveyances including, without limitation, any and all present and future claims and causes of action arising under Chapter 5 of the Bankruptcy Code ("Avoidance Claims") (including actions relating thereto), all rights, claims or causes of action of Debtors against third parties relating to the Excluded Assets, and all rights, claims and causes of action of Debtors against former officers, directors, employees, members, principals, agents, and representatives of Debtors arising out of events occurring prior to the Closing Date, including and, for the avoidance of doubt, arising out of events occurring prior to the Petition Date; provided, however, that notwithstanding anything to the contrary in this Agreement, Debtors release, and covenants not to assert, Avoidance Claims (including actions relating thereto) against (x) any counter party to an Assigned Contract, (y) any trade account debtor as to whom Buyer is assuming trade account payable pursuant to Section 3(a)(iii), below; and

(vi) Trustee's claim in the estate of Sandeep Sherlekar, M.D.;

2. CONSIDERATION FOR PURCHASE OF ASSETS

(a) The Buyer shall assume all accounts payable incurred after execution of the Agreement, including but not limited to payroll obligations and trade accounts payable;

(b) The Trustee will assume and assign its leases with Parkway Key LLC (the "Frederick Lease") and with NMN Old Line Professional Centre, LLC (the "Waldorf Lease"), however, Buyer shall not be responsible to pay any pre-petition arrearages owed to the landlords under those leases;

(c) Buyer shall provide personnel at no cost to the Trustee to assist the Trustee in collecting the Accounts Receivable, provided however that the Trustee shall be responsible for collection charges owed to Athena and Nextgen in connection with the Accounts Receivable collected by their respective personnel;

(d) By the tenth days following the end of each calendar month after execution of the Agreement, Buyer shall generate a report with respect to all receipts and said report shall, among other things, show how each receipt has been allocated as between post-agreement collections and Accounts Receivable during the calendar month, and, upon approval of the report by the Trustee, shall remit all Accounts Receivable to the Trustee as he directs;

(e) Within fifteen (15) days of execution of the Agreement, Buyer shall notify the Trustee of any other leases and executory contracts that it wishes to have the Trustee assume and assign to it with Buyer being responsible for curing any pre-petition arrearages owed on any such leases and contracts being assumed and assigned; and,

(f) The Parties agree to allocate the Purchase Price among the Assets, and to consult with each other and file the same Internal Revenue Form 8594 with their respective federal income tax returns for the calendar year in which Closing occurs. At or before Closing, the Buyer shall prepare and deliver to Trustee the Form 8594 for approval by Trustee, which approval shall not be unreasonably withheld.

3. LIABILITIES

(a) Assumed Liabilities. At Closing, effective as of Closing, Buyer shall assume full responsibility for: (i) liability under all Assigned Contracts accruing after execution of the Agreement, (ii) trade payables of the Practice accruing after execution of the Agreement, and (iii) any liabilities incurred in the operation of the Practice after execution of the Agreement, including the Leases.

(b) Excluded Liabilities. Buyer does not hereby assume any liabilities of Debtors other than those specifically set forth in Section 3(a) above (collectively, the "Excluded Liabilities").

4. CLOSING DATE

(a) The closing of purchase and sale of the Assets provided for in this Agreement ("Closing") shall take place within fifteen (15) days after the Sale Order (as herein defined) is entered but not earlier than November 1, 2017, at 10:00 a.m., at the offices of Tydings & Rosenberg LLP, One East Pratt Street, Suite 901, Baltimore, Maryland, 21202 (the "Closing Date"). The parties agree to use commercially reasonable efforts to deliver documents in escrow in advance of the Closing Date, so that a formal settlement is not necessary.

(b) All personal property taxes and rights and obligations under the Assigned Contracts shall be apportioned to the date of execution of the Agreement. The Parties shall cooperate with each other to insure that all utility accounts are transferred as of the date of

Closing. Trustee shall be responsible for all utility expenses arising under the Leases incurred prior to execution of the Agreement and Buyer shall be responsible for all utility expenses arising under the Leases after execution of the Agreement. In the event that there are any errors in the adjustments contemplated by this Section 4(b), the parties agree to correct the same promptly after Closing upon the discovery of the correct information. Each party shall be solely responsible for its own settlement costs, including its own attorney fees.

(c) Each party hereto shall use its best efforts to obtain, all consents, authorizations, orders and approvals of, and make all filings and registrations with, any governmental commission, board or other regulatory body or any other person required for or in connection with the consummation by it of the transaction contemplated on its part hereby and shall cooperate in all reasonable respects with the other parties in assisting them to obtain such consents, authorizations, order and approvals and to make such filings and registrations. No party hereto shall take or omit to take any action for the purpose of delaying, impairing, or impeding the receipt of any required consent, authorization, order or approval or the making of any required filing or registration.

(d) At Closing, Buyer shall make offers of employment to all non-physician employees of the Debtors, who meet all of Buyer's standard qualifications for employment.

In the event that there are any errors in adjustments or inaccurate estimates, the parties agree to correct the same promptly after Closing upon the discovery of the correct information. Except as specifically provided herein, each party shall be solely responsible for its own settlement costs including its own attorney fees.

5. REPRESENTATIONS, WARRANTIES AND COVENANTS OF TRUSTEE

Trustee hereby represents, warrants, covenants and agrees that upon entry of the Sale Order, and subject to any other order or orders of the Bankruptcy Court: (i) The Trustee has full corporate power and authority to enter into this Agreement; (ii) when this Agreement has been duly executed and delivered by Trustee (assuming due authorization, execution and delivery by each other party thereto) this Agreement will constitute a legal, valid and binding obligation of the Trustee enforceable against the Trustee in accordance with its terms; (iii) at Closing, the Trustee will have the power and authority to carry out his obligations hereunder and any other document or documents required to consummate the transactions contemplated hereby (the "Transaction Documents").

6. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER

Buyer hereby represents, warrants, covenants and agrees as follows:

(a) Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Maryland.

(b) The execution, delivery and performance of this Agreement in compliance with the provisions hereof by Buyer have been approved by all necessary corporate action by Buyer and, to the best of Buyer's knowledge, will not violate any provision of any law, will not conflict or result in

any breach of any of the terms, conditions or provisions of, or constitute a default under, Buyer's Articles of Incorporation or By-Laws or any material indenture, mortgage, lease, agreement, or other instrument to which Buyer is a party or by which it is bound.

(c) To the best of Buyer's knowledge, there is no litigation, proceeding or governmental investigation, including, but not limited to, any bankruptcy proceeding, pending or threatened against Buyer which will have a material adverse effect on the transactions contemplated hereby.

(d) The representations, warranties and covenants made in this Section 6 will be correct to the best of Buyer's knowledge in all material respects on and as of the Closing Date with the same force and effect as if so made as of the Closing Date. Buyer shall indemnify and hold Trustee and/or physicians harmless against any loss, damages or expense (including legal or other fees) incurred or sustained by Trustee, Debtors and/or physicians as a result of or attributable to any misrepresentations, breach of covenant, warranty or representation given or made by Buyer hereunder.

(e) Buyer agrees, warrants, and represents that, except as set forth in this Agreement, (i) Buyer is purchasing the Assets on an "AS IS" basis and "WITH ALL FAULTS" based solely on Buyer's own investigation of the Assets and (ii) neither the Trustee nor his representatives have made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the Assets or the Assumed Liabilities, any part of the Assets or the Assumed Liabilities, relating to the financial performance of the Assets or the Practice, or the physical condition of the Assets. Buyer further acknowledges that the consideration for the Assets specified in this Agreement has been agreed upon by Debtors and Buyer after good-faith arms-length negotiation in light of Buyer's agreement to purchase the Assets "AS IS" and "WITH ALL FAULTS". Buyer confirms that Debtors have made available to Buyer the opportunity to ask questions of the officers and management of Debtors and to acquire additional information about the Practice, the Assets and the Assumed Liabilities. Buyer agrees, warrants, and represents that, except as set forth in this Agreement, Buyer has relied, and shall rely, solely upon Buyer's own investigation of all such matters, and that Buyer assumes all risks with respect thereto. EXCEPT AS SET FORTH IN THIS AGREEMENT, TRUSTEE AND DEBTORS MAKE NO EXPRESS WARRANTY, WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO ANY REAL OR PERSONAL PROPERTY OR ANY FIXTURES OR THE ASSETS, THE ASSUMED LIABILITIES OR THE PRACTICE.

7. CONDITIONS TO OBLIGATIONS OF BOTH TRUSTEE AND BUYER

The obligations of each party to consummate the transactions contemplated by this Agreement shall be conditioned upon entry by the Bankruptcy Court of an order pursuant to Section 363 of the Bankruptcy Code approving the transactions contemplated by this Agreement and directing the sale of the Assets in accordance with terms and conditions of this Agreement, free and clear of all encumbrances, which order shall be substantially in form attached hereto as Exhibit G (the "Sale Order"). In the event the Sale Order has not been entered by November 1, 2017, either party shall have the right to terminate this Agreement by written notice to the other party.

8. CONDITIONS TO OBLIGATIONS OF BUYER AND CLOSING DELIVERIES OF TRUSTEE

The obligation of Buyer to proceed to Closing hereunder is subject to the satisfaction of the following conditions on or before the Closing Date, any of which conditions may be waived in writing by Buyer at its option:

(a) The Assets shall not have been materially adversely affected as a result of fire, accident, vandalism or other casualty, litigation or acts of God.

(b) At Closing, Trustee shall execute and deliver a Bill of Sale for the Assets, without warranty or representation.

9. CONDITIONS TO OBLIGATIONS OF TRUSTEE AND CLOSING DELIVERIES OF BUYER

The obligation of Trustee to proceed to Closing hereunder is subject to the satisfaction of the following conditions on or before the Closing Date, any of which conditions may be waived in writing by Trustee at its option:

(a) (1) In order to allow Buyer to fully bill and collect for services provided by Buyer at the Facility to beneficiaries of federal and state programs, including, without limitation, Medicare, TRICARE, and the Veterans' Administration program (collectively, "Government Programs") and, where applicable, to patients of other third party payors, during the Interim Billing Period (as defined below) in compliance with applicable law, Trustee shall Cause Debtors to assign their Medicare provider agreements, and other federal and state governmental payor contracts with respect to the Facility and authorizes Buyer to use Debtors' National Provider Identifier ("NPI") and/or Government Program contract number with respect to the Facility for the sole purpose of billing any claims to Medicare or other governmental payors for medical services rendered by Buyer at the Facility during the Interim Billing Period (the "Interim Accounts Receivable"). Notwithstanding the foregoing, Buyer is prohibited from using Debtors' NPI number to submit claims to the Maryland medical assistance program for services provided to Medicaid beneficiaries. Debtors shall withhold the submission of their forms to deactivate their NPI number or change their bank account in which Medicare receivables are deposited during the Interim Billing Period. Further, Debtors shall cease billing Government Programs for services at the Facility using Debtors NPI and/or Government Program contract numbers. Trustee shall cause Debtors to hereby authorize Buyer to take the following actions with respect to the Interim Accounts Receivable other than Medicaid Interim Accounts Receivable: (A) to bill Government Programs, except Medicaid, using Debtors' NPI or Government Program number; (B) to collect Interim Accounts Receivable resulting from such billing using Debtors' NPI or Government Program number; (C) to take possession of and subsequent to receipt, endorse in the name of Debtors any notes, checks, money orders, insurance payments and other instruments received in payment of Interim Accounts Receivable; and (D) at Buyer's expense, to initiate legal proceedings to collect any Interim Accounts Receivable, to enforce the rights of Debtors as

creditors under any contract or in connection with the rendering of any service during the Interim Billing Period, and to contest adjustments and denials by Government Programs.

(2) It is understood and agreed that Government Programs and other third party payors will make payment on certain of the Interim Accounts Receivable directly into a bank account of Debtors (the "Debtors Bank Account"). Without limiting the generality of the foregoing, the following reconciliation procedure shall be followed with respect to the Interim Accounts Receivable other than Medicaid Interim Accounts Receivable. No later than Wednesday of each calendar week, (i) Buyer and Debtors through Trustee shall compile a written report (the "Weekly Detailed Patient Billing Report") that itemizes, by patient, all claims submitted to Government Programs and other third party payors under Seller's NPI or Government Program number for all nursing facility services rendered by Buyer at the Facility during the previous calendar week and (ii) Trustee shall cause Debtors to compile and issue to Buyer a written report (the "Weekly Detailed Patient Accounting Report") that (a) itemizes, by patient, all Interim Accounts Receivable payments that were deposited into the Debtors Bank Account in the preceding calendar week (the "Weekly Interim Accounts Receivable Payments"), and (b) indicates which of the Interim Accounts Receivable on the Weekly Detailed Patient Billing Report are still outstanding after application of the Weekly Interim Accounts Receivable Payments. Within five (5) days of Debtors' issuance to Buyer of each Weekly Detailed Patient Accounting Report through Trustee, Trustee shall cause Debtors to remit to Buyer an amount equal to the Weekly Interim Accounts Receivable Payments as set forth in such Weekly Detailed Patient Accounting Report. Buyer shall be solely responsible for the collection of all Interim Accounts Receivable from all Government Programs and other third party payors.

(3) For purposes of this Agreement, "Interim Billing Period" shall mean: for Medicare, the period commencing as of the Closing Date and ending upon the earlier of (i) the date set forth in written notice from Buyer to Debtors through Trustee that Buyer's Medicare Change of Ownership application has been processed, the Regional Office has issued the tie-in notice approving the Change of Ownership, and Buyer has received approval to file claims under the assigned provider agreement and Buyer's NPI number; and (B) for other Government Programs except Medicaid, the period commencing as of the Closing Date and ending upon the earlier of (i) the date set forth in written notice from Buyer to Debtors through Trustee that Buyer's contract to provide services under the Government Program has been executed such that Buyer is able to file claims under Buyer's contract or (ii) such date that is one hundred eighty (180) days following the Closing Date. Debtors through Trustee and Buyer will cooperate in good faith with one another both before and after the Closing Date to obtain approval of such Change of Ownership applications as expeditiously as possible after the Closing Date.

(4) If Buyer and Debtors are unable to resolve any dispute that may arise under this Section 1.7, either Buyer, or Debtors through Trustee, may submit such dispute to an independent accounting firm mutually agreeable to Buyer and Debtors (the "Independent Accounting Firm"), which shall be jointly engaged by Buyer, on the one hand, and Debtors through Trustee, on the other hand, pursuant to an engagement letter in customary form which each of Buyer, and Debtors through Trustee, shall execute. If Buyer, and Debtors through Trustee, have failed to reach agreement on a suitable independent accounting firm to serve as the Independent Accounting Firm, then the Independent Accounting Firm shall be selected by the

American Arbitration Association. The Independent Accounting Firm shall prescribe procedures for resolving the disputed items and in all events shall make a written determination with respect to such disputed items only (the "Determination"). The Determination shall be based solely on presentations with respect to such disputed items by Buyer, and Debtors through Trustee, to the Independent Accounting Firm and not on the Independent Accounting Firm's independent review; provided, that such presentations shall be deemed to include, without limitation, any work papers, records, accounts or similar materials delivered to the Independent Accounting Firm by Buyer, or Debtors through Trustee, in connection with such presentations and any materials delivered to the Independent Accounting Firm in response to requests by the Independent Accounting Firm. Each of Buyer, and Debtors through Trustee, shall use reasonable best efforts to make its presentation as promptly as practicable following submission to the Independent Accounting Firm of the disputed items, and each such party shall be entitled, as part of its presentation, to respond to the presentation of the other party and any questions and requests of the Independent Accounting Firm. Buyer, and Seller through Trustee, shall instruct the Independent Accounting Firm to deliver the Determination to Buyer and Debtors no later than thirty (30) days following the date on which the disputed items are referred to the Independent Accounting Firm. In deciding any matter, the Independent Accounting Firm shall be bound by the express terms, conditions and covenants set forth in this Agreement. In the absence of fraud or manifest error, the Determination of the Independent Accounting Firm shall be final, conclusive, non-appealable and binding upon Buyer and Debtors for all purposes hereunder. The fees and disbursements of the Independent Accounting Firm shall be shared based on the percentage of the disputed amount that is determined in favor of the other party (e.g., if the disputed amount is \$100 and if the Independent Accounting Firm determines that the actual amount of the adjustment is \$90, then the party who benefits from such adjustment shall pay ten percent (10%) of the fees and disbursements of the Independent Accounting Firm and the other party shall pay ninety percent (90%) of the fees and disbursements of the Independent Accounting Firm).

(b) Trustee shall cause the Debtors to be entitled to and responsible for billing and collection for all items and services performed at or provided by the Facility before the Effective Time. Buyer shall be entitled to and responsible for billing and collection for all items and services performed at or provided by the Facility at and after the Effective Time. Trustee shall indemnify and hold Buyer harmless for any future Medicare recoupment from APSC for any payments Medicare may have made prior to the Closing Date.

(c) Buyer shall deliver the Excess Cash and the Collateral Documents.

(d) All the terms, covenants and conditions of this Agreement to be complied with and performed by Buyer on or before the Closing Date shall have been fully complied with and performed in all material respects. (e) At Closing, the parties shall, at Buyer's expense send a letter to all patients and referral sources of the Practice advising of the transaction contemplated hereby. Buyer shall provide Trustee a draft of the press release and letter fifteen (15) days prior to Closing for Trustee's approval, which approval shall not be unreasonably withheld.

10. EXPENSES AND BROKERS' FEES

Except as otherwise set forth herein, Trustee and Buyer shall each pay their own fees and expenses in connection with this Agreement and the transactions contemplated hereunder. The parties agree that no broker has been utilized in connection with the transaction contemplated hereby.

11. DEFAULT

(a) In the event of an alleged default by Trustee or Buyer, the other party or its counsel shall notify the defaulting party in writing of the alleged default, and the defaulting party shall then have ten (10) days after receipt of such notice to cure the default. Trustee or Buyer shall not be deemed in default until after receipt of the aforesaid notices and after the expiration of the aforesaid cure period.

(b) In the event of a default, which continues beyond the grace period contained in paragraph (a) above, the non-defaulting party shall have the right to terminate this Agreement by written notice to the other party, provided that such termination shall not relieve Buyer from any liability arising out of Buyer's breach of this Agreement.

12. MISCELLANEOUS PROVISIONS

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

(b) All notices and other communications provided for herein shall be validly given, made and served if in writing and delivered personally or sent by registered or certified mail, postage prepaid, or sent by any overnight delivery service:
If to Trustee or Debtors:

Alan M. Grochal, Esquire
1 East Pratt Street, Suite 901
Baltimore, MD 21201
agrochal@tydingslaw.com
(p) 410.752.9700
(f) 410.727.5460

If to Buyer:

Kal Kahloon, Esquire
CEO and General Counsel
1050 Key Parkway, Suite 103
Frederick, Maryland 21702
kal.kahloon@orthopedicwellness.com
(p) 240-629-3990
(f) 240-629-3983

Each such notice shall be deemed given on the date so hand-delivered or sent by overnight delivery, or on the second business day following such mailing. Each party may change his or its address for purposes of this Section by notice to the other parties as provided herein.

(c) This Agreement represents the total agreement and understanding of the parties, and may be amended only by written instrument executed on behalf of the parties.

(d) The headings in this Agreement are for the convenience of reference only and shall not limit or otherwise affect the terms or provisions hereof.

(e) Trustee and Buyer agree to execute and deliver or cause to be executed and delivered all such other additional instruments and documents, and to do, or cause to be done, such other acts and things as may be necessary or proper to more fully effect or evidence the provisions of this Agreement.

(f) All covenants, agreements, warranties and representations hereby set forth shall survive the transactions provided herein and continue in effect until the first (1st) anniversary of the Closing Date.

(g) This Agreement shall be construed in accordance with and be governed by the laws of the State of Maryland without regard to principles of conflicts of laws. THE PARTIES SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND FOR ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY

(h) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

(i) Buyer shall comply with all applicable laws and regulations regarding the Medical Records, including custody, maintenance, confidentiality and release of the Medical Records. Buyer, at its sole cost and expense, shall notify all patients reflected in the Medical Records of this transfer, Buyer's location and its willingness to continue to provide care. Buyer shall comply with all requirements of law with regard to Medical Records and continuation of patient care. If Trustee or Debtors need access to the Medical Records due to any litigation, professional disciplinary action, claim or any similar proceeding or matter, Trustee or Debtors shall be permitted to review and/or copy any Medical Record relevant thereto, after reasonable

notice to Buyer. This provision regarding access to the Medical Records shall survive the Closing.

(j) Notwithstanding anything to the contrary in this Agreement or under any applicable law, regulation, rule or order, no party hereto, and no Physician, shall be liable, either in contract or tort, for any damages other than direct damages, including, without limitation, any consequential damages, incidental damages, special damages, punitive damages, diminution in value, or lost profits, income or revenue, whether or not the possibility of such damages has been disclosed to the other party in advance or could have been reasonably foreseen by such other party. Neither Trustee nor Debtors shall have liability for any misrepresentation, breach of representation or breach of warranty to the extent Buyer had any knowledge prior to Closing of facts constituting a basis for such claim.

(k) Assignment. This Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party hereto by operation of law or otherwise without the express written consent of the other Parties (which consent may be granted or withheld in the sole discretion of such other Party).

(l) No Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

(m) Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

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SIGNATURE PAGE(S) FOLLOW

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written with the intent that this Agreement be a sealed instrument.

ATTEST/WITNESS:

BUYER:

Chanda Kahloun
9.8.17

ADVANCED PAIN MANAGEMENT, LLC

By: [Signature] (SEAL)

Print Name: OPEDAPO OSEYEMI

Title: PRESIDENT

ALAN M. GROCHAL, CHAPTER 11
TRUSTEE on behalf the Debtors and the
bankruptcy estates of Advanced Pain
Management Systems, LLC, Advanced Pain
Surgery Center, LLC, Advanced
Anesthesiology Associates, LLC, and
American Spine Surgery Center, LLC

_____ (SEAL)

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written with the intent that this Agreement be a sealed instrument.

ATTEST/WITNESS:

BUYER:

ADVANCED PAIN MANAGEMENT, LLC

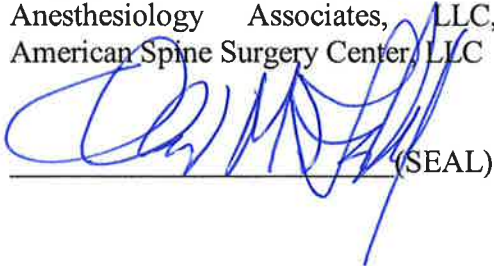
By: _____ (SEAL)

Print Name: _____

Title: _____

ALAN M. GROCHAL, CHAPTER 11
TRUSTEE on behalf the Debtors and the
bankruptcy estates of Advanced Pain
Management Systems, LLC, Advanced Pain
Surgery Center, LLC, Advanced
Anesthesiology Associates, LLC, and
American Spine Surgery Center, LLC

Catherine Hopkins

 (SEAL)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)**

In re:

**ADVANCED PAIN MANAGEMENT
SERVICES, LLC**

✻

Case No.: 17-16047-TJC
(Chapter 11)

Debtor

* * * * *

In re:

✻

**ADVANCED ANESTHESIOLOGY
ASSOCIATES, LLC**

✻

Case No.: 17—18849-TJC
(Chapter 11)

Debtor

* * * * *

In re:

**ADVANCED PAIN SURGERY CENTER
LLC**

Case No.: 17-18850-LSS
(Chapter 11)

Debtor

* * * * *

In re:

✻

**AMERICAN SPINE SURGERY CENTER
LLC**

Case No.: 17-18851-TJC
(Chapter 11)

Debtor

✻

**(Jointly Administered under
Case No. 17-16047-TJC)**

* * * * *

NOTICE OF TRUSTEE'S MOTION FOR AN ORDER (A) APPROVING SETTLEMENT AGREEMENT AND RELEASE; (B) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING THE SALE OF ASSETS OUTSIDE THE ORDINARY COURSE OF BUSINESS; (C) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS PURSUANT TO SECTIONS 363(b), (f) AND (m) OF THE BANKRUPTCY CODE; (D) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (E) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on September 26, 2017, Alan M. Grochal, Chapter 11 Trustee (the "Trustee") for Advanced Pain Management Services, LLC ("APMS"), Advanced Anesthesiology Associates, LLC ("AAA"), Advanced Pain Surgery Center LLC ("APSC") and American Spine Surgical Center LLC ("ASSC")(collectively, APMS, AAA, APSC and ASSC are the "Debtors"), filed the Trustee's Motion For An Order (A) Approving Settlement Agreement and Release; (B) Approving Asset Purchase Agreement and Authorizing the Sale of Assets Outside the Ordinary Course of Business; (C) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to Sections 363(b), (f) and (m) of the Bankruptcy Code; (D) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (E) Granting Related Relief (the "Motion").¹ A copy of the Motion has been provided to you as part of this mailing.

The Debtors operate a medical practice specializing in pain management and have surgery centers located in Frederick, Maryland and Waldorf, Maryland. The Debtors' bankruptcy filings were predicated, in part, by an indictment issued by the Grand Jury for the District of Maryland against the Debtors' owners, Dr. Sandeep Sherlekar ("Dr. Sherlekar") and Dr. Atif Malik ("Dr. Malik") on various allegations of health care fraud, illegal billing practices and income tax evasion. On September 30, 2016, Sherlekar was found unresponsive and pronounced dead at the scene. Police have ruled the death was a suicide. The United States has determined that the Debtors will not be held liable for any criminal wrongdoing by the owners in the criminal case.

The Settlement Agreement

In 2013, Dr. Malik and Dr. Sherlekar each purchased life insurance policies in the amount of \$5 million. Each policy named the other owner as the beneficiary and APMS paid all of the premiums on the policies. After the death of Dr. Sherlekar, and after approval by the U.S. District Court, the proceeds from Dr. Sherlekar's life insurance policy were released to Dr. Malik. The Trustee has asserted a claim against these proceeds on the basis that the insurance proceeds constitute property of the bankruptcy estates. Dr. Malik disputes the Trustee's claim.

Furthermore, the Trustee has filed a \$2.5 million claim in the estate of Dr. Sherlekar pending in the Circuit Court for Montgomery County. The claim asserts that Dr. Sherlekar breached his fiduciary duties to APMS. The Trustee contends that the bankruptcy estate has a similar claim for breach of fiduciary duties against Dr. Malik; however the Trustee has not yet commenced a proceeding against Dr. Malik.

¹ Capitalized terms not otherwise defined herein shall have the meanings set forth in the Settlement and Sale Motion. The term "Assets" in this Notice shall have the same meaning as "Assets" as set forth in the Agreement (defined herein). To the extent there is any conflict between the terms of this Notice and the Settlement and Sale Motion, the Settlement and Sale Motion shall control.

The Motion seeks approval of a settlement agreement (the “Agreement”) as to the claims against Dr. Malik, concerning his liability to the Debtors for breach of fiduciary duties and the allocation of the funds from Dr. Sherlekar’s insurance policy. Under the Settlement Agreement and Release, Dr. Malik will pay the Trustee \$1.75 million in full and final settlement of all claims against him, and Dr. Malik will receive a full and complete release.

A copy of the Agreement is attached to the Motion as **Exhibit A**. The Trustee has carefully reviewed the terms of the Agreement and believes that the settlement is in the best interest of the Debtors’ estates and will maximize value for creditors. Dr. Malik has an upcoming criminal trial and the Trustee is concerned that even if he is able to successfully prosecute litigation claims against Dr. Malik, he could be faced with the possibility of having to battle the United States over Dr. Malik’s assets in the event that the criminal trial results in entry of a restitution order. Weighing the probability of a successful recovery with the cost of litigation, the Trustee believes that entered into the Agreement is in the best interest of the Debtors’ estates.

The Sale

Upon learning of the impending indictments against the owners, the Debtors began attempting to sell the practice by inviting all non-owner physicians to buy the practice. After the failure to sell the practice to their current physicians, the Debtors attempted to sell the practice through a business broker, eventually attempting to sell the surgery centers separately. Although the Debtors increased their marketing efforts and there was some interest from potential buyers, the Debtors did not receive an offer for the practice. Additionally, the Debtors, and subsequently the Trustee, have attempted to recruit new doctors to the practice. However, due to the adverse publicity associated with the practice, the Trustee has not been able to attract new physicians. This adverse publicity has also impacted the Trustee’s ability to obtain a fair price for the practice.

The Trustee has entered into an Asset Purchase Agreement (the “APA”) with Advanced Pain Management, LLC (“APM”), an entity in which Dr. Malik does not have an interest. The owners of APM are Dr. Ojedapo Ojeyemi, Dr. Matthew Roh and Dr. Nina Kahloon. The sale terms are set forth with more particularity in the APA. A copy of the APA is attached to the Motion as **Exhibit B**. The Buyer will acquire substantially all of the operating assets of the Debtors with the exception of: (a) all accounts receivable, whether billed or unbilled, in connection with all medical services provided by the Debtors through the date of execution of the Agreement (the “Account Receivable”) in the approximate face amount of \$6 million; (b) a loan receivable from Dr. Said G. Osman; (c) all claims against the Estate of Dr. Sandeep Sherlekar; (d) the Debtors’ rights and obligations under a Management Services Agreement with Nextgen Healthcare Information Systems, Inc. and (e) all causes of action under Chapter 5 of the Bankruptcy Code. At APM’s option, the Trustee will assume and assign certain executory contracts and leases that the Buyer wishes to utilize in the practice post-closing, including, but not limited to its leases with Parkway Key LLC (the “Frederick Lease”) and with NMN Old Line Professional Centre, LLC (the “Waldorf Lease”). The Trustee is responsible to pay any pre-petition arrearages owed under both the Frederick Lease and the Waldorf Lease. In consideration for the purchase of the operating assets, the Buyer shall be responsible for all accounts payable that accrued after execution of the APA, including but not limited to accrued payroll obligations and accrued trade accounts payable. The Buyer has also assumed all accrued vacation pay and severance obligations in the aggregate amount of \$650,000 as well as various equipment leases and service contracts in the aggregate amount of \$100,000.

The Trustee is seeking to sell substantially all of the Debtors' operating assets under Chapter 11 of the United States Bankruptcy Code. After the sale of the Assets, the Debtors will no longer operate their businesses, although the Trustee, with assistance from employees of the Debtors (who will be employed by APM) will need to collect the Accounts Receivable. The Trustee believes the sale of substantially all the operating assets is in the best interest of the Debtors estates, will preserve employee jobs, and will provide the highest and best value for the Assets.

The Sale Hearing

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court has scheduled a hearing for **October 23, 2017, at 11:00 a.m. (Eastern Daylight Time)** (the "**Hearing**") to consider the approval of the Agreement and the APA, pursuant to the Motion. The Hearing may be adjourned in open court from time to time, without further notice. The Hearing will be held before the Honorable Thomas J. Catliota, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Maryland, 6500 Greenbelt Lane, Courtroom No. 3-E, Greenbelt, Maryland 20770.

Objections

ANY INTERESTED PARTY OBJECTING TO THE PROPOSED SETTLEMENT OR THE SALE MUST FILE AN OBJECTION, IN WRITING, WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MARYLAND, 3rd FLOOR, U.S. COURT HOUSE, 6500 CHERRYWOOD LANE, GREENBELT, MARYLAND 20770 WITHIN TWENTY ONE (21) DAYS FROM THE DATE OF THIS NOTICE. YOUR WRITTEN OBJECTION SHOULD SET FORTH IN DETAIL THE BASIS FOR YOUR OBJECTION, A COPY SHOULD BE SENT TO UNDERSIGNED COUNSEL AT THE ADDRESS LISTED BELOW AND TO THE OFFICE OF THE UNITED STATES TRUSTEE, 6305 IVY LANE, SUITE 600, GREENBELT, MD 20770 (ATTENTION: LYNN KOHEN). IF NO OBJECTIONS ARE FILED, THE COURT MAY GRANT THE MOTION WITHOUT FURTHER NOTICE.

PLEASE TAKE FURTHER NOTICE that all requests for information concerning the Agreement and the APA and all requests for information concerning the sale of the Assets, should be directed in writing to Tydings & Rosenberg LLP, 1 E. Pratt Street, Suite 901, Baltimore, MD 21202, (Attention: Alan M. Grochal).

Dated: September 26, 2017

/s/ Alan M. Grochal
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