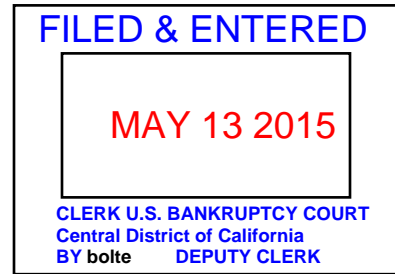


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9 Medical Technologies, Debtor and Debtor in Possession



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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

11 In re:
12 GORDIAN MEDICAL, INC., d/b/a American
13 Medical Technologies,
14 Debtor.

Case No.: 8:12-bk-12339-MW
Chapter 11

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW WITH REGARD TO DEBTOR'S
SECOND AMENDED PLAN OF
REORGANIZATION [DATED APRIL 27,
2015]**

Hearing:
Date: May 6, 2015
Time: 2:00 p.m.
Place: U.S. Bankruptcy Court
411 West Fourth Street
Courtroom 6C
Santa Ana, CA 92701
Judge: Hon. Mark Wallace

20 On May 6, 2015, a hearing was held (the "Confirmation Hearing") in the above-captioned
21 chapter 11 case (the "Case") on the *Second Amended Plan of Reorganization [Dated April 27, 2015]*
22 (the "Plan") [Docket No. 1465] filed by Gordian Medical, Inc., dba American Medical
23 Technologies, the above-captioned debtor and debtor in possession (the "Debtor"). Appearances
24 were made as noted on the record.

25 The Court considered the following in connection with the confirmation of the Plan:

- 26 (a) the Plan;
- 27 (b) *Declaration of Gerald Del Signore in Support of Second Amended Plan of*
28 *Reorganization [Dated April 27, 2015]* [Docket No. 1467];

1 (c) *Declaration of Brad Smith in in Support of Second Amended Plan of*
2 *Reorganization [Dated April 27, 2015] [Docket No. 1468];*

3 (d) *Declaration of Penelope Parmes Re Funds on Deposit in Troutman Sanders*
4 *Client Trust Account [Docket No. 1469];*

5 (e) *Notice of Filing of Comparison of Debtor's Second Amended Plan of*
6 *Reorganization under Chapter 11 of the Bankruptcy Code [Dated April 27, 2015] Showing*
7 *Changes to the First Amended Chapter 11 Plan of Reorganization [Dated January 13, 2015]*
8 *[Docket No. 1466];*

9 (f) *Notice of Motion for Order Approving the Adequacy of Information in the*
10 *Debtor's First Amended Plan of Reorganization [Dated January 13, 2015] [Docket No.*
11 *1420];*

12 (g) *Motion for Entry of an Order Confirming Debtor's First Amended Plan of*
13 *Reorganization [Dated January 13, 2015] (the "Confirmation Brief") [Docket No. 1419];*
14 *and*

15 (h) *United States of America's Objection to Confirmation of Debtor's Plan of*
16 *Reorganization (the "IRS Objection") [Docket No. 721].*

17 The findings of fact and conclusions of law set forth herein and in the record of the
18 Confirmation Hearing constitute this Court's findings of fact and conclusions of law pursuant to
19 Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Rules 7052 and 9014
20 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). To the extent any of the
21 following findings of fact constitute conclusions of law, they are adopted as such. To the extent any
22 of the following conclusions of law constitute findings of fact, they are adopted as such pursuant to
23 Bankruptcy Rule 7052.

24 The Court being fully advised on the premises and good cause appearing therefor, the Court
25 makes the following findings of fact and conclusions of law:
26
27
28

1 **A. FINDINGS OF FACT**

2 1. The Court finds that notice of the Confirmation Hearing was adequate and
3 appropriate under the applicable sections of 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), the
4 Bankruptcy Rules, and the Local Bankruptcy Rules.

5 2. The Court finds that the Plan has been proposed by the Debtor with the legitimate
6 purpose of continuing with its business and paying its Creditors.¹

7 3. The Court finds that no rights of the Debtor's Creditors have been Impaired under the
8 Plan. The Court finds that the Plan provides for the payment in full plus interest to all Holders of
9 Allowed Claims and thereby provides for a greater return to Creditors than any other alternative
10 available to the Debtor or its Estate.

11 4. Confirmation of the Plan will require payments of approximately \$13.7 million to
12 creditors on the Effective Date and the Debtor has access to approximately \$18 million to fund those
13 payments.

14 5. Confirmation of the Plan will require monthly payments of approximately \$305,000
15 for 84 months and the Debtor will have sufficient cash flow to make those monthly payments.

16 6. The exculpation provisions contained in the Plan are necessary to facilitate
17 Confirmation and feasibility of the Plan, and to minimize potential claims arising after the Effective
18 Date for indemnity, reimbursement or contribution from the Reorganized Debtor or its officers and
19 directors.

20 7. The Plan has been accepted by all Governmental Entities without objection.

21 8. All creditors other than the Governmental Entities have been paid in full.

22 9. The Plan is in the best interests of creditors.
23

24 **B. CONCLUSIONS OF LAW**

25 1. This Court has jurisdiction over the Case pursuant to 28 U.S.C. § 157 and 1334.

26 2. Venue is proper pursuant to 28 U.S.C. § 1408 and 1409.

27 3. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).
28

¹ All terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

1 4. This Court has exclusive jurisdiction to determine whether the Plan complies with the
2 applicable provisions of the Bankruptcy Code and should be confirmed.

3 5. The Court takes Judicial Notice of the docket of the Debtor’s Case as maintained by
4 the Clerk of the Court, including without limitation, all pleadings and other documents filed; all
5 orders entered; and the transcripts of, and all evidence and arguments made, proffered or adduced at,
6 the hearings held before the Court during the pendency of this Case.

7 6. To the extent the IRS Objection is not withdrawn, the Court hereby overrules the IRS
8 Objection.

9 7. The Debtor has met the burden of proving the elements of sections 1129(a) and (b) of
10 the Bankruptcy Code by a preponderance of evidence.

11 8. The Debtor has met its burden of establishing that the Plan satisfies all of the
12 requirements of the section 1129(a) of the Bankruptcy Code.

13 9. The Plan meets the requirements of section 1129(a)(1) of the Bankruptcy Code,
14 which incorporates sections 1122 and 1123 of the Bankruptcy Code.

15 10. The Plan meets the requirements of section 1129(a)(1) of the Bankruptcy Code,
16 which incorporates sections 1122 and 1123 of the Bankruptcy Code.

17 11. The Plan satisfies section 1122(a) of the Bankruptcy Code because it designates seven
18 Classes of Claims and the Claims placed in each Class are substantially similar to other Claims in
19 that Class.

20 12. Section 1122(b) of the Bankruptcy Code is not applicable to the Plan.

21 13. Article IV of the Plan satisfies section 1123(a)(1) of the Bankruptcy Code by
22 designating all Classes of Claims other than the Claims specified in section 1123(a)(1), which are
23 identified in the Plan as Administrative Claims and Priority Tax Claims in Article III of the Plan and
24 are not classified.

25 14. Article IV of the Plan satisfies section 1123(a)(2) of the Bankruptcy Code because it
26 provides that all Classes of Claims and Interests — Classes 1a, 1b, 2, 3, 4, 5, 6, 7 — under the Plan
27 are not impaired.
28

1 15. Section 1123(a)(3) of the Bankruptcy Code is satisfied because there are no Impaired
2 Classes under the Plan.

3 16. Article IV of the Plan satisfies Section 1123(a)(4) of the Bankruptcy Code because it
4 provides for the same treatment of Claims within each Class, except as otherwise agreed by the
5 Holder of a Claim.

6 17. Section 1123(a)(5) of the Bankruptcy Code is satisfied because Article VI of the Plan
7 describes the means for the Plan's implementation, the source of the funding of the Plan as well as
8 the disclosure of the Reorganized Debtor's Officers and Directors; Article VII.C of the Plan provides
9 that on the Effective Date, the Reorganized Debtor will be the representative of the Estate and will
10 be vested with the authority and power, *inter alia*, to: (i) object to Claims against the Debtor;
11 (ii) administer, investigate, prosecute, settle and abandon all claims of the Debtor and Causes of
12 Action; (iii) make Distributions provided for in the Plan, including, but not limited to, on account of
13 Allowed Claims; and (iv) take such action as required to administer, wind-down and close the Case;
14 and that as the representative of the Estate, the Reorganized Debtor will succeed to all of the rights
15 and powers of the Debtor and the Estate with respect to all Assets vested in the Reorganized Debtor;
16 and the Reorganized Debtor, as of the Effective Date, will be substituted for and will replace the
17 Debtor and the Estate as the party in interest in any litigation pending as of the Effective Date.

18 18. Section 1123(a)(5) of the Bankruptcy Code is further satisfied because the
19 Reorganized Debtor retains, and may exclusively enforce, any and all such claims, rights, or Causes
20 of Action. Section 1123(a)(5) of the Bankruptcy Code is further satisfied because the Reorganized
21 Debtor has the exclusive right, authority and discretion to institute, prosecute, abandon, settle or
22 compromise all such claims, rights and Causes of Action without the consent or approval of any
23 third party, and without any further Court order of the Court.

24 19. Section 1123(a)(5) of the Bankruptcy Code is further satisfied because Article VIII of
25 the Plan also establishes a Claims objection and resolution process and, among other things, the time
26 and method of distributions, and the details for the handling of *de minimis* and undeliverable
27 Distributions.
28

1 20. Section 1123(a)(6) of the Bankruptcy Code is satisfied in that Article VI.E of the Plan
2 provides that to the extent it does not already so provide, the Debtor's charter shall be amended to
3 include a provision prohibiting the issuance of nonvoting equity securities, and providing, as to any
4 classes of securities possessing voting power, an appropriate distribution of such power among such
5 classes, including, in the case of a class of equity securities having a preference over another class of
6 equity securities with respect to dividends, adequate provisions for the election of directors
7 representing such preferred class in the event of default in the payment of such dividends.

8 21. Section 1123(a)(7) of the Bankruptcy Code is satisfied in that Article VII.C of the
9 Plan provides that on the Effective Date, the Reorganized Debtor will be appointed as the
10 representative of the Estate and that Article VI.F of the Plan discloses the Reorganized Debtor's
11 Officers and Directors and their respective compensation.

12 22. Section 1123(a)(8) of the Bankruptcy Code is not applicable to the Plan.

13 23. Section 1123(b)(1) of the Bankruptcy Code is satisfied in that Article IV of the Plan
14 specifies that that all classes are unimpaired under the Plan.

15 24. Section 1123(b)(2) of the Bankruptcy Code is satisfied in that Article V the Plan
16 addresses the assumption or rejection of contracts and leases as is proper and appropriate under
17 section 365 of the Bankruptcy Code.

18 25. Section 1123(b)(3) of the Bankruptcy Code is satisfied in that Article VII.A of the
19 Plan contains provisions regarding the preservation of the Debtor's Causes of Action.

20 26. Section 1123(b)(4) of the Bankruptcy Code is not applicable to the Debtor herein as
21 the Debtor will not be liquidating any assets because the funding of the Plan will be from funds on
22 hand and the contribution by Mr. Del Signore.

23 27. Section 1123(a)(b)(5) of the Bankruptcy Code is satisfied in that the Plan modifies
24 the rights of Miscellaneous Secured Claims only in certain situations.

25 28. Section 1123(b)(6) of the Bankruptcy Code is satisfied in that its provisions are
26 appropriate and not inconsistent with applicable law.

1 29. The requirements of section 1129(a)(2) of the Bankruptcy Code are met in that all
2 creditors are Unimpaired and will be paid in full on or about the Effective Date, and equity Holders
3 will maintain their Interests.

4 30. Section 1129(a)(3) of the Bankruptcy Code is satisfied in that the Plan is proposed in
5 good faith and not by any means forbidden by law.

6 31. Section 1129(a)(4) of the Bankruptcy Code is satisfied in that Article III.A.1.d of the
7 Plan requires that applications for final compensation of Professionals for services rendered prior to
8 the Effective Date be filed with the Bankruptcy Court, and the Plan provides for the retention of
9 jurisdiction by the Bankruptcy Court to determine requests for compensation and reimbursement of
10 Professionals.

11 32. The Plan satisfies sections 1129(a)(5)(a)(i) and (ii) of the Bankruptcy Code in that
12 Article VI.F of the Plan identifies the officers and directors and provides that the officers and
13 directors will not change after the Effective Date.

14 33. Section 1129(a)(6) of the Bankruptcy Code is satisfied in that the Plan does not
15 provide for any changes in rates established or approved by, or otherwise subject to, any
16 governmental regulatory commission.

17 34. Section 1129(a)(7) of the Bankruptcy Code is satisfied in that the Plan provides that
18 all creditors are being paid the full amount of their Allowed Claims, plus interest from the Petition
19 Date though the date the Allowed Claim is paid, and Holders of Interests are retaining such Interests
20 in the Reorganized Debtor.

21 35. Section 1129(a)(8) of the Bankruptcy Code is satisfied in that the Plan provides that
22 all claims are Unimpaired and, therefore, the holders of those claims are deemed to have accepted
23 the Plan.

24 36. Section 1129(a)(9) of the Bankruptcy Code is satisfied in that Article III of the Plan
25 provides for payment in full in cash of all Allowed Administrative Claims and Allowed Priority
26 Non-Tax Claims.

27 37. Article III.A.3. of the Plan satisfies section 1129(a)(9)(C) of the Bankruptcy Code in
28 that, except as otherwise agreed to by the parties, each holder of an Allowed Priority Tax Claim shall

1 receive deferred Cash payments over a period not exceeding five (5) years from the date of
2 assessment of such Claim.

3 38. Section 1129(a)(10) of the Bankruptcy Code is satisfied in that there are no Impaired
4 Classes under the Plan and all Classes are deemed to accept the Plan.

5 39. Section 1129(a)(11) of the Bankruptcy Code is satisfied in the Plan provides notice of
6 the sources of funds for the payments that the Reorganized Debtor will be required to make (or
7 reserve for) on the Effective Date.

8 40. Section 1129(a)(12) of the Bankruptcy Code is satisfied in that the Debtor has paid all
9 obligations to the Office of the United States Trustee for which it has received a statement from the
10 United States Trustee and any amounts that come due hereafter shall be paid in Cash, in full, on or
11 before the Effective Date in accordance with the terms of the Plan.

12 41. Section 1129(a)(13) of the Bankruptcy Code is not applicable because the Debtor is
13 not liable for retiree benefits as defined in section 1114 of the Bankruptcy Code.

14 42. Section 1129(a)(14) of the Bankruptcy Code, which mandates the payment of
15 domestic support obligations, is inapplicable to this business Debtor.

16 43. Section 1129(a)(15) of the Bankruptcy Code is inapplicable as it only applies to cases
17 where the debtor is an individual and the Debtor is a business debtor.

18 44. Section 1129(a)(16) of the Bankruptcy Code is inapplicable.

19 45. Section 1129(b) of the Bankruptcy Code is not applicable because all classes are
20 unimpaired.

21 46. The provisions of the Plan, these Findings of Fact and Conclusions of Law, and the
22 Confirmation Order bind all parties to the confirmed Plan pursuant to section 1141 of the
23 Bankruptcy Code.

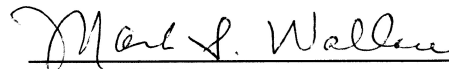
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1 47. Based on the foregoing Findings of Fact and Conclusions of Law, the Debtor is
2 entitled to the entry of the Confirmation Order.

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PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

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24 Date: May 13, 2015


Mark S. Wallace
United States Bankruptcy Judge