

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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In re:	:	Chapter 11
	:	
North Philadelphia Health System,	:	Case No. 16-18931-MDC
	:	
Debtor.	:	
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**MOTION FOR (1) INTERIM AND FINAL ORDERS  
(A) AUTHORIZING THE DEBTOR TO USE CASH COLLATERAL  
OF EXISTING SECURED PARTIES AND GRANTING ADEQUATE  
PROTECTION FOR USE AND (B) PRESCRIBING FORM AND MANNER  
OF NOTICE AND SETTING THE TIME FOR THE FINAL HEARING AND (2)  
EXPEDITED HEARING ON THE RELIEF SOUGHT HEREIN**

North Philadelphia Health System, debtor and debtor-in-possession (the “Debtor”), by its undersigned proposed counsel, hereby moves this Court, pursuant to this motion (this “Motion”), for the entry of (1) an interim order substantially in the form attached hereto (the “Interim Order”) and a final order (the “Final Order,” and with the Interim Order, the “Cash Collateral Orders”), pursuant to 11 U.S.C. §§ 105, 361, and 363 and Fed. R. Bankr. P. 4001 and 9014, (a) authorizing the Debtor to use the cash collateral of the existing secured parties and granting adequate protection to secured parties and (b) prescribing the form and manner of notice and setting the time for the final hearing on the Motion (the “Final Hearing”) and (2) an order expediting the hearing on the relief sought herein. In support of this Motion, the Debtor respectfully represents as follows:

**Bankruptcy Rule 4001 and Local Rule 1002-4 Concise Statement**

1. The provisions described in Bankruptcy Rule 4001(b)(1)(B)(i)-(iv) are set forth at the following sections the Motion and Interim Order:

a. *Name of Entities with Interest in Cash Collateral.* [See paragraphs 12-17 hereto]

- b. *Purposes of Use of Cash Collateral.* [Interim Order ¶¶ 4, 5.]
- c. *Duration of Use of Cash Collateral.* [Interim Order ¶ 6.]
- d. *Liens, Cash Payments or Other Adequate Protection to Be Provided to the Entity with Interest in Cash Collateral.* [Interim Order ¶¶ 7-10.]

2. In addition to the relief requested herein, the Debtor wishes to highlight that the Motion requests this Court, in connection with a Final Order (or second interim order), Order the following additional relief:

(a) directing that Wells Fargo turnover approximately \$700,000 in proceeds from the Charles English Trust [Motion ¶¶ 21-26]; and

(b) directing Hunt Mortgage Group to utilize the contents of a certain escrow to continue to pay insurance as it comes due. [Motion, ¶¶ 27-28].

### **Jurisdiction**

3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105, 361 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 1002-4, 2002-1, and 9014-3 of the Local Rules of Bankruptcy Practice and Procedure (the “Local Rules”) of the United States Bankruptcy Court for the Eastern District of Pennsylvania (the “Court”).

### **Background**

6. On December 30, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief with the Court under Chapter 11 of title 11 of the Bankruptcy Code. The Debtor is

operating its business and managing its property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. As of the date of the filing of this Motion, no official committee of unsecured creditors, trustee, or examiner has been appointed or designated in this case.

*The Debtor's Operations*

8. The Debtor is a Pennsylvania non-profit, non-stock, non-member corporation. The Debtor's mission is to provide quality healthcare through prevention, education, and treatment in the hospital and community, including services and special programs for persons with behavioral medical disorders and/or extended acute medical conditions. It seeks to provide care with integrity, sensitivity and consistency to the under-served communities of Philadelphia.

9. Currently, the Debtor operates the Girard Medical Center, a state-licensed 65 person private psychiatric hospital, and the Goldman Clinic, a medically assisted treatment center, both located at 801 West Girard Avenue, Philadelphia, PA (together, "GMC"). Services offered at the GMC hospital and clinic programs include: hospital-level psychiatric services; residential-level mental health services; outpatient drug and alcohol services; and outpatient mental health services.

10. Until its closure in March 2016, the Debtor also operated St. Joseph's hospital, which was an acute care hospital offering medical and surgical services to poor and underserved residents of North Philadelphia throughout its 186-year history. The Debtor still owns the real property and improvements that housed the hospital located at 1600-50 W. Girard Avenue, Philadelphia, PA 19130, together with certain equipment (the "SJ Campus").

11. The Debtor is in the process of selling the SJ Campus.

The Secured Parties

12. The Debtor is a party to a certain Credit Agreement dated as of December 30, 2010 (as the same may be amended, restated, supplemented or modified from time to time, the “Credit Agreement”) with Gemino Healthcare Finance, LLC (“Gemino”), pursuant to which Gemino has established an \$8.5 million revolving credit facility (the “Facility”) in favor of the Debtor.

13. The Credit Agreement provides that the Facility is secured by a first priority security interest in certain property of the Debtor, including all of the Debtor’s accounts receivable.

14. As of the Petition Date, the Debtor has drawn approximately \$1.9 million of the Facility, and expects that this amount could increase to as high as \$3.0 million.

15. The Debtor is also the borrower under the Hospitals and Higher Education Facilities Authority of certain FHA-Insured Mortgage Hospital Revenue Bonds Series A of 1997 in the original principal amount of \$25 million (the “Bonds”) issued under a trust indenture dated December 31, 1997 (the “Indenture”). The Bank of New York Mellon Trust Company, N.A. (“BNY”) is currently acting as Mortgagee on behalf of FHA Mortgage and security interests and as Successor Trustee under the Trust Indenture dated December 1, 1997 between the Hospitals and Higher Education Facilities Authority of Philadelphia and North Philadelphia Health System. Security for the Bonds includes, a Federal Housing Administration (“FHA”)-insured mortgage and security interest in the Debtor’s facilities and personal property and certain funds held under the Indenture.

16. As of the Petition Date, the outstanding principal balance of the Bonds is approximately \$14 million.

17. Upon information and belief, Gemino and the FHA (together, the “Secured Parties”) both assert security interests in the Debtor’s accounts receivable.<sup>1</sup> The Debtor does not hereby make any admission or consent with respect to the validity, priority, extent or enforceability of the liens asserted by the Secured Parties, and hereby reserves all rights with respect thereto.

*Potential Sources of Cash Collateral*

*(1) Patient Revenues*

18. The Debtor’s primary source of operating funds is fees for the various services and programs it provides to patients at GMC (the “Patient Revenues”). Almost 100% of the Patient Revenues generated from its operations are paid by Community Behavioral Health, a Medicaid Managed Care Organization.

19. The accounts receivable that are generated when the Debtor provides services are pledged to Gemino as security for the Credit Facility and are paid directly into a lock box controlled by Gemino. As of the Petition Date, the Debtor has approximately \$3.5 million in outstanding, collectable receivables securing the Credit Facility.

20. On a weekly basis, Gemino releases a portion of the funds collected in the lockbox to the Debtor. On December 29, 2016, Gemino released approximately \$1 million in Patient Revenues. As of the Petition Date, Gemino had approximately an additional \$1 million

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<sup>1</sup> The Secretary of the United States Department of Housing and Urban Development, acting by and through the Federal Housing Commissioner (“HUD”), under Regulatory Agreement, Section 242 Nonprofit Hospital, Project No. 034-57004 may also be asserting secured creditor status. The HUD Regulatory Agreement, Section 242 Nonprofit Hospital, Project No. 034-57004, is a recorded covenant against certain real and personal property of the Debtor arising from the Secretary’s endorsement of the FHA mortgage insurance on December 30, 1997. It is not believed that the Secretary is asserting a lien on cash collateral.

in Patient Revenues in its lock box account which it is scheduled to release on Thursday, January 5.

(2) *Gift from the Charles English Trust*

21. In addition to Patient Revenues, the Debtor, as the successor to the Philadelphia Children's Homeopathic Hospital, is also a beneficiary of the Charles English Trust (the "Trust"). The Trust was established by Mr. English in his January 2, 1913 will for the benefit of his children and grandchildren, with income of the Trust paid 57% to his daughter and 43% to his son or their issue until any grandchild of Mr. English alive at the time of his death passed. At that time, the trust was to terminate and the principal distributed, in equal shares, to three (3) New Jersey charities, and the Children's Homeopathic Hospital.

22. Wells Fargo is currently the executor of the Trust. On or about November 30, 2015 Wells Fargo filed a Complaint for Settlement of First and Final Account of Trustee in the Superior Court of Burlington County, New Jersey (the "Probate Court"). In its complaint, Wells Fargo alleged that the last grandchild of Mr. English who was alive at the time of his death in 1916, passed away in 2013, triggering the termination of the Trust.

23. On September 26, 2016, the Probate Court approved a final distribution to the Debtor from the Trust of 25% of the remaining corpus of the Trust. Based on Wells Fargo's accounting, the Debtor believes it will receive approximately \$766,313.28, plus an unknown amount of accrued income from July 1, 2015 forward to the actual date of distribution (the "Distribution").

24. Wells Fargo has recently advised that the account will be prepared for termination and sent to its closing department in the first half of January 2017. The Debtor has been further

advised by Wells Fargo that the closing department may then take an additional 30-45 days to ensure all taxes and expenses were paid from the Trust prior to making the Distribution.

25. The Distribution will be a much-needed infusion of funds at a time when the Debtor needs it in order to continue operating and effectuating its reorganization.

26. The Debtor believes it unnecessary for Wells Fargo to hold the entirety of the Distribution for an additional 45 days while it reconciles the matter. Consequently, in connection with the Final Cash Collateral Order in this matter (or a second interim order), the Debtor is requesting that this Court direct that Wells Fargo turnover \$700,000 (less than 90% of what it believes to be due) to the Debtor at that time. The remainder of the Distribution will await the reconciliation by the Wells Fargo closing department.

(3) *Insurance Escrow*

27. Hunt Mortgage Group, the servicer of the mortgage securing the Bonds, holds an insurance escrow in the approximate amount of \$900,000 (the “Escrow”). The purpose of the Escrow is to ensure that the Debtor maintains insurance on its real property, including the buildings that house GMC.

28. The Debtor continues to have insurance obligations, and wishes to ensure that the Escrow funds will be used for those purposes. As part of a Final Order (or a second interim order) on cash collateral, the Debtor requests that this Court direct Hunt Mortgage Group to continue to utilize the Escrow to maintain insurance in the ordinary course.

**Relief Requested**

29. The Debtor requires use of the foregoing cash, assets, and proceeds in which the Secured Parties may assert liens and security interests (the “Cash Collateral”) in order to meet its payroll and other operating obligations. If the Debtor is unable to pay its employees and

suppliers, it will not be able to continue to operate and provide much-needed services to the citizens of Philadelphia.

30. The Debtor intends to use Cash Collateral to operate and provide its numerous services and programs, while it explores various restructuring alternatives. The Debtor is confident that it can do so and resolve its present financial difficulties through chapter 11; however, it can only do so with uninterrupted access to and use of the Cash Collateral.

31. By this Motion, pursuant to sections 105, 361 and 363 of the Bankruptcy Code and Bankruptcy Rules 4001 and 9014, the Debtor requests that the Court grant the following relief as provided for in the Interim Order and the Final Order:

- a. authorize the Debtor on an interim basis pursuant to section 363(c) of the Bankruptcy Code, to use the Cash Collateral in accordance with the budget (as amended from time to time, the “Budget”) attached to the Interim Order as Exhibit 1;<sup>2</sup>
- b. authorize the Debtor on an interim basis, pursuant to sections 361 and 363 of the Bankruptcy Code, to provide the adequate protection described herein to the Secured Parties;
- c. schedule the Final Hearing, pursuant to Bankruptcy Rule 4001, no later than twenty (20) days after the entry of the Interim Order, to consider entry of a Final Order authorizing the use of the Cash Collateral and approving the notice procedures in respect of the Final Hearing;
- d. authorize the Debtor on a final basis pursuant to section 363(c) of the Bankruptcy Code, to use the Cash Collateral in accordance with the Budget and any supplemental budgets as approved by the Court after further notice and hearing;
- e. authorize the Debtor on a final basis, pursuant to sections 361 and 363 of the Bankruptcy Code, to provide the adequate protection described herein to the Secured Parties with respect to any diminution in value of the Secured Parties’ interests in the Collateral whether from the use of the Cash Collateral or the use,

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<sup>2</sup> The Budget will include amounts budgeted for payment of quarterly bankruptcy fees to the United States Trustee (the “U.S. Trustee Fees”). Notwithstanding anything above or in the Budget, the Debtor seeks authority to pay the actual amounts owing on account of such U.S. Trustee Fees as and when due. It is anticipated that the budget will be amended prior to the hearing on the motion.



sale, lease, depreciation, decline in market price, or otherwise of the Prepetition Collateral.

f. direct that, to the extent it is not paid in the ordinary course, Wells Fargo turnover \$700,000 of the Distribution (or such other amount as the Court deems appropriate); and

g. direct that Hunt Mortgage Group continue to utilize the Escrow to maintain insurances for the Debtor.

### **Basis for Relief**

#### **A. The Debtor Has an Immediate Need for Use of the Cash Collateral.**

32. The Debtor has an urgent need for the immediate use of the Cash Collateral pending the final hearing on this Motion. Accordingly, the Debtor seeks to use Cash Collateral existing on or after the Petition Date that may be subject to the Secured Parties' liens. As of the Petition Date, the Debtor does not have sufficient unencumbered cash to fund its business operations and pay present operating expenses.

33. Absent the ability to use Cash Collateral, the Debtor will not be able to pay wages, vendors, utility charges, and other critical operating expenses. Consequently, without access to Cash Collateral, the Debtor will not be able to maintain its business operations and continue its restructuring efforts, and would likely be forced to cease operations and liquidate. Accordingly, the Debtor's estate would be immediately and irreparably harmed.

34. If the Debtor is unable to obtain sufficient operating liquidity to meet its post-petition obligations on a timely basis, its provision of urgently needed behavioral health services will be interrupted and could cease. This would of course be detrimental to the communities and individuals the Debtor serves, and the potential loss of revenue and going concern value would likewise be extremely harmful to the Debtor, its estate and its creditors. The Debtor cannot obtain funds sufficient to administer its estate and operate the GMC other than by obtaining the relief requested herein pursuant to section 363 of the Bankruptcy Code.

35. The Debtor's management has formulated the Budget for the use of Cash Collateral from the Petition Date. The Debtor believes that the Budget includes all reasonable, necessary and foreseeable expenses to be incurred in the ordinary course in connection with its operations and its restructuring efforts for the period set forth in the Budget. The Debtor also believes that the use of Cash Collateral in accordance with the Budget will provide the Debtor with adequate liquidity to pay administrative expenses as they become due and payable during the period covered by the Budget.

36. The Debtor's right to use Cash Collateral under the Interim Order shall commence on the date of the entry of the Interim Order and expire on the earlier of (a) the entry of a subsequent interim order, or (b) the entry of the Final Order.

**B. The Interests of the Secured Parties Are Adequately Protected.**

37. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor in possession may only use "cash collateral" with the consent of the secured party with an interest therein or court approval. *See* 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code provides that, upon request of an entity that has an interest in cash collateral sought to be used by a debtor, the court shall prohibit or condition such use of cash collateral as is necessary to provide adequate protection of such entity's interest. See 11 U.S.C. § 363(e).

38. Appropriate adequate protection is decided on a case-by-case basis. *See, e.g., In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Beker Indus. Corp.*, 58 B.R. 725 (Bankr. S.D.N.Y. 1986); *see also In re JKJ Chevrolet, Inc.*, 190 B.R. 542, 545 (Bankr. E.D. Va. 1995) (adequate protection is a flexible concept that is determined by considering the facts of each case) (citing *In re O'Connor*, 808 F.2d 1393, 1396-97 (10th Cir. 1987)). Although adequate protection is not defined in the

Bankruptcy Code, section 361 of the Bankruptcy Code provides the following three (3) nonexclusive examples of what may constitute adequate protection:

- (1) requiring the [debtor] to make a cash payment or periodic cash payments to such entity, to the extent that the . . . use . . . under section 363 . . . results in a decrease in the value of such entity's interest in such property;
- (2) providing to such entity an additional or replacement lien to the extent that such . . . use . . . results in a decrease in the value of such entity's interest in such property; or
- (3) granting such other relief . . . as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

11 U.S.C. § 361. Essentially, with the provision of adequate protection, the Bankruptcy Code seeks to shield a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re Hubbard Power & Light*, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996); *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. at 736; *see also In re Nice*, 355 B.R. 554, 563 (Bankr. N.D. Va. 2006) (“adequate protection is solely a function of preserving the value of the creditor’s secured claim as of the petition date due to a debtor’s continued use of collateral”). The Debtor asserts that the Secured Parties are adequately protected by the granting of replacement liens (only to the extent that its prepetition security interests are perfected and enforceable), the value of the SJ Campus and the Debtor’s other real estate holdings, and the continuation of the Debtor’s operations.

#### Replacement Liens

39. As adequate protection for any diminution in value of the Secured Parties’ interests, the Debtor requests that the Court grant the Secured Parties security interests (“Replacement Liens”) equivalent to a lien granted under section 364(c)(2) and (3) of the

Bankruptcy Code, as applicable, in and upon the Debtor's personal property and the Cash Collateral, whether such property was acquired before or after the Petition Date, to the extent: (i) that the Secured Parties' prepetition security interests in the Collateral are valid and properly perfected, and (ii) of the amount of any diminution in value of the Secured Parties' Collateral. If granted, the Replacement Liens will adequately protect the Secured Parties' interests from any potential depreciation and deterioration.

Value of the Debtor's Real Estate Holdings

40. The Debtor is owner of several parcels of valuable real estate, including the SJ Campus and a number of parking lots on and near Girard Avenue, on which FHA is asserting a lien. As these parcels have been valued at in excess of \$30 million, the FHA is oversecured.

41. In addition Gemino is also oversecured as it asserts a lien on over \$3.5 million in receivables under circumstances where its claim is less than \$2 million.

Continued Operations

42. In addition to the proposed Replacement Liens, and the value of the Debtor's real estate, the Secured Parties are also adequately protected as a result of the continuation of the Debtor's operations. Without the use of the Cash Collateral, the Debtor would have to curtail or cease providing behavioral health services and its operations would be irreparably harmed. Indeed, absent use of the Cash Collateral, the Debtor likely will be unable to pay its ordinary business expenses, including employee wages and other payments to healthcare service providers. In that event, all operations will cease – the Debtor will no longer provide services, employees will be terminated, and all assets on which the Secured Parties assert a lien will be liquidated. Those pledged assets (including accounts receivable and real estate) will be worth less in a liquidation than they will be worth as a going concern reorganization. As going concern

value exceeds liquidation value, adequate protection is being provided. Accordingly, the Debtor submits that use of the Cash Collateral will allow the Debtor to continue its operations and further protect the Secured Parties' interests.

43. Courts have recognized that the preservation of the going concern value of secured lender's collateral constitutes adequate protection of such creditor's interest in the collateral. *See, e.g., In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713, 716 (Bankr. D. Del. 1996) (holding that if there is no actual diminution of value of collateral and the debtor can operate profitably post-petition, then the secured creditor is adequately protected); *In re 499 W. Warren Street Assocs., Ltd. P'ship*, 142 B.R. 53, 56 (Bankr. N.D.N.Y. 1992) (where the court found a secured creditor's interest in collateral adequately protected when cash collateral was applied to normal operating and maintenance expenditures on the collateral property); *In re Willowood E. Apartments of Indianapolis II, Ltd.*, 114 B.R. 138, 143 (Bankr. S.D. Ohio 1990) (same); *In re Stein*, 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982) (creditor's secured position would be enhanced by the continued operation of the debtor's business);

44. In summary, the Debtor submits that the Secured Parties are adequately protected by the proposed Replacement Liens in the Collateral, by the value of their liens on the Debtor's real estate, and by the continued operation of GMC.

**C. Interim Approval Should Be Granted.**

45. The Debtor respectfully requests that the Court conduct an expedited preliminary hearing on this Motion and authorize the Debtor (from and after the entry of the Interim Order and pending the final hearing) to use the Cash Collateral in accordance with the Budget for, among other things, working capital purposes and the payment of certain obligations in accordance with the relief authorized by the Court. Interim access to the Cash Collateral will

ensure that the Debtor maintains ongoing operations and avoids immediate and irreparable harm and prejudice to its estate and all parties in interest pending the Final Hearing.

46. The Debtor submits that, for the reasons set forth herein, immediate access to the use of Cash Collateral (first, on an interim basis as requested in this Motion), on the terms set forth in the Budget, is necessary to preserve the value of the Debtor's estate for the benefit of all parties in interest.

**D. Request for Final Hearing**

47. Pursuant to Bankruptcy Rule 4001(b)(2), the Debtor requests that the Court set a date for the Final Hearing that is as soon as practicable, but in no event later than twenty (20) days following the entry of the Interim Order, and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

**Request for Expedited Relief and Shortened Notice**

48. Pursuant to Local Bankruptcy Rule 5070-1(f) and 9014-1, the Debtor requests expedited consideration of the Motion.

49. Expedited consideration is vital to protect the Debtor's ability to continue to operate. Without the immediate ability to use cash collateral, the Debtor will be unable to meet its ongoing operating expenses and its operations will cease, causing harm to all parties in interest.

50. The Debtor proposes that it will serve notice of this motion by electronic, facsimile or overnight mail to the Secured Parties, the banks in which the Debtor maintains accounts, the Office of the United States Trustee and any party that has entered an appearance requesting notice in this case. The Debtor submits that such notice is sufficient under the circumstances of this case.

51. Given its timing, the Debtor has not had the opportunity to consult with its secured creditors or other creditors prior to the filing of this motion. The Debtor did notify the Office of the United States Trustee of the anticipated filing and has notified the Rule 1007-1 creditors of this motion.

52. Expedited consideration is sought because the Debtor will be unable to fund payroll for its employees and healthcare providers, many of whom live paycheck to paycheck. Failure to compensate its employees and other individuals who provide services at GMC places the Debtor at significant risk that its employees will seek alternate employment and, more importantly, causes significant harm to the Debtor's employees who rely on regular compensation to satisfy their own obligations. In addition, the Debtor needs to be able to utilize cash collateral to fund its operations.

#### **Notice**

53. The Debtor will provide notice of the request for a final Order on the Motion to: (a) the Office of the United States Trustee for the Eastern District of Pennsylvania; (b) the Secured Parties; (c) all creditors on the list of the top 30 unsecured creditors (unless a committee is formed in the interim); and (d) the banks in which the Debtor maintains its bank accounts. In light of the nature of the relief requested, the Debtor respectfully submits that no further notice is necessary.

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests that the Court enter an order granting an expedited hearing at the Court's earliest convenience and, at such hearing enter an order, substantially in the form attached hereto as **Exhibit A**; and grant such other and further relief as is just and proper.

Dated: January 2, 2017

**DILWORTH PAXSON LLP**

By: /s/Martin J. Weis

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