Hearing Date and Time: April 30, 2020 at 10:00 a.m. (EDT)
Objection Deadline: April 23, 2020 at 4:00 p.m. (EDT)

SCHIFF HARDIN LLP
Steven Wilamowsky
1185 Avenue of the Americas
New York, NY 10036
Telephone: 212.745.0825

Co-Counsel for the Debtor and Debtor in Possession

-and-

CHAPMAN AND CUTLER LLP
Aaron M. Krieger
111 West Monroe Street
Chicago, IL 60603-4080
Telephone: 312.845.3000
Co-Counsel for the Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
Retrieval-Masters Creditors Bureau, Inc.,[1]	:	Case No. 19-23185 (RDD)
	:	
Debtor.	:	

NOTICE OF DEBTOR'S MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 305(a), 349, 365(a) AND 1112(b) AND FED. R. BANKR. P. 1017(a), 2002(a)(4) AND 9019(a) DISMISSING CHAPTER 11 CASE AND GRANTING RELATED RELIEF

PLEASE TAKE NOTICE, that Retrieval-Masters Creditors Bureau, Inc. ("*Debtor*"), by and through its undersigned counsel, will move this Court for the entry of an order pursuant to 11 U.S.C. § 105(a), 305(a), 349, 365(a) and 1112(b) and Fed. R. Bankr. P. 1017(a), 2002(a)(4) AND 9019(a) Dismissing Chapter 11 Case and Granting Related Relief (the "*Motion*"). A

[1] The last four digits of the Debtor's taxpayer identification number is 9495. As of November 1, 2019, the Debtor's service address for purposes of this chapter 11 case is 200 Pemberwick Road, Greenwich, CT 06831. The Debtor also does business as American Medical Collection Agency.

hearing on the annexed Motion will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601 (the "*Bankruptcy Court*"), on **April 30, 2020 at 10:00 a.m. (EDT)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections (the "*Objections*") to the Motion shall be in writing, shall conform to the Bankruptcy Rules and the Local Rules, shall be filed with the Bankruptcy Court and served in accordance with the *Order Granting Debtor's Motion for Order Authorizing the Establishment of Certain Notice, Case Management, and Administrative Procedures* [Doc. No. 31], so as to be filed and received no later than **April 23, 2020 at 4:00 p.m. (EDT)**.

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Motion, the relief requested in the Motion may be granted without a hearing.

Dated: New York, New York
March 19, 2020

By: /s/ Steven Wilamowsky
SCHIFF HARDIN LLP
Steven Wilamowsky
1185 Avenue of the Americas
New York, NY 10036
Telephone: 212.745.0825

Co-Counsel for the Debtor and Debtor in Possession

-and-

CHAPMAN AND CUTLER LLP
Aaron M. Krieger
111 West Monroe Street
Chicago, IL 60603-4080
Telephone: 312.845.3000

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
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Retrieval-Masters Creditors Bureau, Inc.,[1]	:	Case No. 19-23185 (RDD)
	:	
Debtor.	:	

DEBTOR'S MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 305(a), 349, 365(a) AND 1112(b) AND FED. R. BANKR. P. 1017(a), 2002(a)(4) AND 9019(a) DISMISSING CHAPTER 11 CASE AND GRANTING RELATED RELIEF

Retrieval-Masters Creditors Bureau, Inc., the debtor and debtor in possession in above-captioned case (the "Debtor"), by and through its undersigned counsel, as and for its motion (the "Motion"), seeking entry of an order substantially in the form annexed as Exhibit "A" hereto (the "Proposed Order"), pursuant to sections 105(a), 305(a), 349, 365(a) and 1112(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rules 1017(a), 2002(a)(4), and 9019(a) of the

[1] The last four digits of the Debtor's taxpayer identification number is 9495. As of November 1, 2019, the Debtor's service address for purposes of this chapter 11 case is 200 Pemberwick Road, Greenwich, CT 06831. The Debtor also did business as American Medical Collection Agency.

Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), dismissing the Debtor's chapter 11 case (the "Chapter 11 Case") and granting related relief, respectfully represents as follows:

BACKGROUND

1. The Debtor was a debt and medical receivables collection agency that was founded in 1977 in New York City. Over time, the business grew into a thriving agency and, in 1995, relocated to Elmsford, New York, where it remained as of the date of the commencement of the Chapter 11 Case on June 17, 2019 (the "Petition Date").[2] The Debtor is in possession of its assets and remains a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

2. Prior to the Petition Date, the Debtor had two basic business segments. The first principally involved collections from retail consumer debtors of direct mail marketers, among others. The second involved the collection of receivables on behalf of clinical diagnostic laboratories, and did business under the name American Medical Collection Agency. As a result of the circumstances that led to the filing of the Chapter 11 Case, the Debtor's operations effectively ceased within a short period after the Petition Date, and the Debtor no longer is actively conducting any business.

3. In March 2019, the Debtor became aware of a significant IT security breach involving its servers (the "Data Breach") that appeared to have occurred sometime in August, 2018. That led to a cascade of events that ultimately necessitated the commencement of the Chapter 11 Case. More details regarding these events and the Debtor's business are set forth in the *Declaration of Russell H. Fuchs Pursuant to Local Bankruptcy Rule 1007-2 and in Support of "First Day" Motions* [Doc. No. 2].

[2] On November 1, 2019, the Debtor relocated to a much smaller space in Greenwich, Connecticut to reduce its costs of overhead.

4. Although the Debtor knew that its prospects of rehabilitating itself as a going concern were dim, it nonetheless commenced the Chapter 11 Case on the Petition Date for the purposes of commencing an orderly liquidation of its assets and creating a manageable context for responding to regulatory notices and demands that the Debtor had been receiving.

5. On July 2, 2019, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Committee") in this Chapter 11 Case. *See Notice Appointing Creditors Committee* [Doc. No. 44]. The Committee has not appeared in such capacity and has not otherwise been active in the Chapter 11 Case.

6. Since the Petition Date, the Debtor, with the involvement of various parties in interest, worked diligently to wind-up the Debtor's existing business arrangements and respond to regulatory, customer, and other third-party information requests relating to the Data Breach.

7. Despite the Debtor's efforts to maximize the liquidation value of the Debtor's assets and keep the costs of case administration to a minimum, the Debtor finds itself administratively insolvent -- *but for* the willingness of the Debtor's principal, Russell Fuchs, to compromise a portion of his claims against the Debtor's estate and provide further funding necessary to satisfy administrative expense claims, pursuant to the compromise and settlement described herein. Given the foregoing, the Debtor does not have the financial or operational wherewithal to confirm a chapter 11 plan and, therefore, seeks the entry of an order dismissing the Debtor's Case and granting related relief to effectuate such dismissal, including authorizing the Debtor to make distributions to creditors as described below.

JURISDICTION

8. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The statutory predicates for the relief sought herein are sections 105(a), 305(a), 349, and 1112(b) of the Bankruptcy Code, and Bankruptcy Rules 1017(a), 2002(a)(4), and 9019(a).

OUTSTANDING CLAIMS AGAINST THE DEBTOR

A. Secured Claims

10. The only known creditor holding secured claims against the Debtor's estate is the Debtor's principal, Russell Fuchs, arising from: (a) a loan of $2.5 million made shortly before the Petition Date to permit the Debtor to pay for printing and mailing millions of notices to parties potentially affected by the Data Breach; and (b) funds loaned to the Debtor during the pendency of the Debtor's Case pursuant to that certain *Order Pursuant To 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, And 507: (I) Authorizing The Debtor To Obtain Secured Superpriority Postpetition Financing; (II) Granting Liens And Superpriority Administrative Expense Claims; (III) Authorizing Use Of Cash Collateral; (IV) Granting Adequate Protection; (V) Modifying The Automatic Stay; and (VI) Granting Related Relief* [Doc. No. 106] (the "DIP Order") that have allowed the Debtor to administer its case. The total present amount of Mr. Fuchs's secured claim is not less than $3,000,000, including not less than $415,000 arising under the DIP Order (the "DIP Claim" and all claims of Mr. Fuchs collectively, the "DIP Lender Claims").

B. Administrative Priority Claims

11. The Debtor has largely been paying its post-petition expenses and obligations relating to salary and overhead, as and when due. The Debtor, however, has been accumulating a balance in connection with the fees and expenses of its estate-retained professionals (in this case, just attorneys), who may not be paid except upon interim allowance and authorization of the Court pursuant to section 331 of the Bankruptcy Code and Bankruptcy Rule 2016(a). As a result of the delays in payment inherent in the fee application process, amplified in this case by

the desire of the Debtor's attorneys to avoid burdening the Debtor's diminishing estate with the expense of their preparing and filing frequent applications for compensation, no fees have yet been authorized (or applied for) for any period on or after October 1, 2019. Moreover, fees approved by the Court on an interim basis for the period prior to October 1st were subject to a 10% holdback. In total, therefore, the Debtor estimates that subject to Court approval, the aggregate amount owed to its professionals, including Chapman and Cutler LLP and Schiff Hardin LLP (bankruptcy co-counsel), Morvillo Abramowitz Grand Iason & Anello PC (special regulatory counsel), and Geist Schwarz & Jellinek PLLC (landlord litigation counsel), as of the date hereof, is approximately $500,000. Other, non-professional claims enjoying administrative expense priority is estimated to be approximately $300,000. All this is in addition to certain other claims asserted with administrative priority, but which the Debtor asserts is either not owed at all or not entitled to priority.

C. Prepetition Unsecured Claims

12. According to the Debtor's Schedule F (filed at Doc. No. 94), unsecured non-priority claims against the estate as of the Petition Date totaled $442,281.26. As of the date hereof, 158 proofs of claim have been filed against the Debtor's estate, at least two of which were untimely.

13. Liquid assets in the Debtor's estate total approximately $720,000, plus certain unliquidated litigation claims that do not exceed approximately $850,000.[3] As such, even in a reasonable best-case scenario, the Debtor's estate is insufficient to satisfy even the outstanding

[3] Of this amount, only approximately $225,000 is connected with litigation in this Court, and therefore is in short-term prospect. The balance relates to what has been referred to in this case as the "landlord litigation," which is very slowly wending its way through the state court, involves multiple parties, and may take years to produce any recovery.

secured claims against the Debtor, let alone administrative expense claims, without a compromise involving those claims and/or additional funding.

THE SETTLEMENT WITH MR. FUCHS

14. In mapping out a pathway for winding up the Chapter 11 Case, the Debtor quickly recognized that the only non-Debtor entity with the desire, incentive, and wherewithal to ensure the Debtor the necessary funding for an orderly liquidation was Russell Fuchs, its CEO and sole shareholder. Mr. Fuchs already had repeatedly demonstrated his good faith by providing pre-petition financing to allow the Debtor to comply with its legal noticing obligations relating to the Data Breach and, with the Court's approval, providing post-petition financing on extraordinarily favorable terms to allow the Debtor to meet its payroll obligations, liquidate its remaining assets and cooperate with information requests made by various regulatory authorities.

15. Late in 2019, therefore, the Debtor, via its professionals and its Chief Oversight Officer,[4] reached out to Mr. Fuchs and proposed that he consider funding a chapter 11 plan (a "Plan"). After due consideration, in consultation with his own attorneys, and further discussions with the Debtor, the parties agreed that the incremental cost of a Plan, which was expected to reach into six figures through the date of Plan confirmation alone, would not provide any corresponding benefit, not just to Mr. Fuchs personally, but to virtually *anyone,* considering that any recovery to unsecured creditors in any plausible Plan scenario would not be meaningful. Moreover, the actual cost of a Plan, and therefore the amount of required funding, likely would be a multiple of the cost of its prosecution, given that implicit in providing any distribution to

[4] The Debtor's Chief Oversight Officer, Mr. Bradley Scher, is also the Debtor's independent director. Pursuant to the relevant organizational documents, no board action can be taken without the approval of both Messrs. Fuchs and Scher, except for those involving any insider transactions (such as those involving Mr. Fuchs in his personal capacity), with respect to which Mr. Scher enjoys the *sole* right of approval.

holders of prepetition claims is the need to reconcile, and potentially litigate those claims, most of which are contingent and/or unliquidated.

16. With a Plan not being a realistic option, therefore, the Debtor then turned to its second-best option, which it concluded would be an orderly, structured dismissal of the Chapter 11 Case, pursuant to which it would ask Mr. Fuchs to compromise the DIP Lender Claims and/or provide additional funding in an amount reasonably necessary to avoid administrative insolvency, maintain the Debtor's books and records for a limited period of time, pay any outstanding fees of the United States Trustee's office, and otherwise wind-up the Chapter 11 Case in a manner as close as possible to that customary to a confirmed Plan. In exchange, the Debtor offered Mr. Fuchs only a broad release by the Debtor of any and all claims and causes of action, if any, that the Debtor may otherwise have against Mr. Fuchs and other directors and officers of the Debtor, with the sole exception of claims sounding in actual fraud or willful misconduct (as and to the extent set forth in the Proposed Order, the "Release"). After further arm's length discussions and compromises, Mr. Fuchs agreed to fund a structured dismissal on the terms presented by this Motion (the "Settlement").

17. Despite the facially obvious benefits of the Settlement, the Debtor, by agency of its Chief Oversight Officer working with the Debtor's counsel, nonetheless considered potential claims by the Debtor against Mr. Fuchs before agreeing to the Settlement. After reviewing the history of the Debtor, and Mr. Fuchs's conduct of the Debtor in the period preceding and during the immediate aftermath of the Data Breach, in conjunction with applicable New York law, it became clear that there is no obvious basis for a claim by the Debtor against Mr. Fuchs in his capacity as CEO.

18. The only other reasonable avenue for raising a claim, then, was the potential for recoveries under sections 548 and 550 of the Bankruptcy Code for distributions made to Mr.

Fuchs as shareholder in the period prior to the Petition Date.[5] The problem with that theory of recovery is the Debtor was a consistently successful, profitable business with no debt up until *at least* the discovery of the Data Breach in March, 2019. Even if one were to assume that the Debtor's discovery of the Data Breach created an event of insolvency due to the contingent claims, reporting and noticing obligations, and other burdens imposed upon the Debtor,[6] the distributions made to Mr. Fuchs in or after March, 2019 totaled $1,030,000, which is only fraction of the secured DIP Lender Claims.[7]

19. In addition, there is the problem of how any theoretical litigation against Mr. Fuchs would be funded, considering that the Debtor would be administratively insolvent but for the Settlement, and has no ready access to cash in any event.

20. The Settlement, on the other hand, provides the Debtor and its estate with substantial benefits. The terms of the Settlement are incorporated in the Proposed Order, but provides that Mr. Fuchs will subordinate such portion of the DIP Lender Claims to claims against the Debtor entitled to priority under section 507(a)(2) of the Bankruptcy Code (the "Administrative Claims") to the extent necessary to satisfy the Administrative Claims. Moreover, to the extent such subordination does not free up sufficient cash to satisfy such claims, Mr. Fuchs will provide additional financing to the Debtor, subject to a maximum of

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5 There was no debt repayment by the Debtor to Mr. Fuchs during the one-year insider preference period.

6 In fact, the Debtor *did* so assume for the purpose of its analysis, but notes that Mr. Fuchs has taken strong exception to that notion, arguing that the Debtor remained solvent despite the Data Breach, and that its insolvency came, at the earliest, several weeks later, after the Debtor's key clients abandoned ship and effectively terminated their business relationships with the Debtor.

7 There would likely be additional complications with any potential claim, associated with the Debtor's status as a subchapter "S" corporation (*i.e.,* a pass-through), which creates an additional "earmarking" argument with respect to at least that portion of any dividend by which taxes on account of the Debtor's income was paid.

$1,500,000,[8] which shall be treated as an increment to his DIP Claim and paid from any subsequent recoveries if at any point there are any that become available.[9]

REQUESTED RELIEF

21. By this Motion, the Debtor requests the entry of an order: (i) dismissing the Chapter 11 Case pursuant to sections 305(a) and 1112(b) of the Bankruptcy Code; (ii) authorizing the payment of claims and payment of professional fees as described herein and in the Proposed Order; (iii) providing releases as set forth in the Proposed Order; and (iv) approving, pursuant to Bankruptcy Rule 9019(a), the Settlement to effect the foregoing.

22. As part of the requested dismissal of the Debtor's Case and as a result of the willingness of the Debtor's principal to compromise his claims against the Debtor's estate, as described above, the Debtor intends to pay, in full, all applicable United States Trustee fees and costs pursuant to 28 U.S.C. § 1930 and all other Administrative Claims, subject to a maximum cap of $1,500,000, which is: (a) 200% of what the Debtor currently estimates the Administrative Claims will be; *minus* (b) current cash, and which the Debtor believes provides a high level of assurance that the Administrative Claims will be satisfied in full.

23. Satisfaction of the Administrative Claims would be impossible due to the Debtor's administrative insolvency if not for Mr. Fuchs's willingness to compromise his claims against the Debtor's estate, in exchange only for the Release, which is being provided by the Debtor in the exercise of its business judgment and not any third party.

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[8] The maximum obligation was, by agreement of the parties, set at 200% of the Debtor's reasonable estimate of the aggregate Administrative Claims through the projected date of dismissal, minus the Debtor's cash as of the date hereof. The amount was designed to give the Debtor and the Court a high level of assurance that the Administrative Claims will be paid in full while still providing Mr. Fuchs with downside protection in the event that a particularly large, unanticipated expense were to somehow emerge, and thereby disrupt the economic bargain between the parties.

[9] To the Debtor's knowledge, there is only one such remaining source of such recoveries that may prove meaningful -- the pending litigation with its former landlord. *See* Doc. No. 150.

24. With respect to pre-petition claims, given that the Debtor will not have any funds to satisfy those claims, pursuing a claims reconciliation and objection process would not have any utility. The Debtor therefore has included in the Proposed Order provisions confirming that each unsecured creditor shall not receive any distribution unless otherwise provided for by separate Order, and enjoining claimants from pursuing the Debtor in the absence of any such Order.

BASIS FOR RELIEF

A. The Court Must Dismiss the Chapter 11 Case if the Elements Of "Cause" Are Demonstrated Under Section 1112(b)(4) of the Bankruptcy Code.

25. Pursuant to section 1112(b)(1) of the Bankruptcy Code, absent unusual circumstances, a court shall dismiss a bankruptcy case "for cause." Section 1112(b)(1) states, in pertinent part:

> on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

11 U.S.C. § 1112(b)(1). The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 changed the statutory language with respect to conversion and dismissal from permissive to mandatory.[10] *See* H.R. Rep. 109-31 (I), 2005 U.S.C.C.A.N. 88, 94 (stating that the Act

[10] Before the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, a bankruptcy court had wide discretion to use its equitable powers to dispose of a debtor's case but was not required to dismiss a case if cause were shown. H.R. Rep. No. 595, 95th Cong., 1st Sess. 405 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 117 (1978), reprinted in 1978 U.S.C.C.A.N. 5787; *see also Small Business Admin. v. Preferred Door Co.* (*In re Preferred Door Co.*), 990 F.2d 547, 549 (10th Cir. 1993) (a court has broad discretion to dismiss a bankruptcy case); *In re Sullivan Cent. Plaza I, Ltd.*, 935 F.2d 723, 728 (5th Cir. 1991) (determination of whether cause exists under § 1112(b) "rests in the sound discretion" of the bankruptcy court); *In re Koerner*, 800 F.2d 1358, 1367 & n. 7 (5th Cir. 1986) (bankruptcy court is afforded "wide discretion" under section 1112(b)).

"mandate[s] that the court convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, if the movant establishes cause, absent unusual circumstances."); *see also In re Gateway Access Solutions, Inc.*, 374 B.R. 556 (Bankr. M.D. Pa. 2007) (amendments to section 1112 limit court's discretion to refuse to dismiss or convert a chapter 11 case upon a finding of cause); *accord In re TCR of Denver, LLC*, 338 B.R. 494, 498 (Bankr. D. Colo. 2006) ("Congress has purposefully limited the role of this Court in deciding issues of conversion or dismissal such that this Court has no choice, and no discretion in that it 'shall' dismiss or convert a case under chapter 11 if the elements for 'cause' are shown under 11 U.S.C. § 1112(b)(4)") (emphasis added).

26. The amendments to section 1112 thus limit the Court's discretion to refuse to dismiss or convert a chapter 11 case upon a finding of cause. *In re 3 Ram, Inc.*, 343 B.R. 113, 119 (Bankr. E.D. Pa. 2006) ("Under new § 1112 when cause is found, the court shall dismiss or convert unless special circumstances exist that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate."); *see also In re Broad Creek Edgewater, LP*, 371 B.R. 752, 759 (Bankr. D. S.C. 2007).

27. For reasons more fully explained below, this Court should dismiss the Chapter 11 Case because cause exists and dismissal is in the best interests of the Debtor, the estate, and its creditors.

B. Cause Exists to Dismiss the Debtor's Bankruptcy Case Because the Debtor Ceased its Business Operations, Has No Assets Available for Distribution to General Unsecured Creditors, and is Unable to Confirm a Liquidating Plan.

28. Section 1112(b)(4) of the Bankruptcy Code provides a non-exhaustive list of 16 grounds for dismissal. 11 U.S.C. § 1112(b)(4)(A)-(P). *See In re Gateway Access Solutions*, 374 B.R. at 561 ("Generally, such lists are viewed as illustrative rather than exhaustive, and the Court

should 'consider other factors as they arise.'") (quoting *In re Brown*, 951 F.2d 564, 572 (3d Cir. 1991)); *In re 3 Ram, Inc.*, 343 B.R. at 117 ("While the enumerated examples of 'cause' to convert or dismiss a chapter 11 case now listed in § 1112(b)(4) have changed under BAPCPA, the fact that they are illustrative, not exhaustive has not."); accord *In re Frieouf.*, 938 F.2d 1099, 1102 (10th Cir. 1991) (stating that section 1112(b)'s list is non-exhaustive).[11] One such ground is where a party-in-interest shows that there is a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).

29. To demonstrate a continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation, a debtor must establish: (i) that there has been a diminution of value of the estate; and that (ii) the debtor does not have a "reasonable likelihood of rehabilitation." *See, e.g., In re Citi-Toledo Partners*, 170 B.R. 602, 606 (Bankr N.D. Ohio 1994) ("Section 1112(b)(1) contemplates a "two-fold" inquiry into whether there has been a 'continuing diminution of the estate and absence of a reasonable likelihood of rehabilitation'") (citing *In re Photo Promotion Associates, Inc.*, 47 B.R. 454, 458 (Bankr. S.D.N.Y. 1985)).

30. Under the two-fold inquiry, the Debtor must first demonstrate that there has been a diminution of value of the estate. *See, e.g., In re Citi-Toledo Partners*, 170 B.R. at 606 (finding that accumulation of real estate taxes impaired the value of the estate). Second, the Debtor must demonstrate that it has no "reasonable likelihood of rehabilitation." *See, e.g., Clarkson v. Cooke Sales And Service Co.* (*In re Clarkson*), 767 F.2d 417, 420 (8th Cir. 1985)

[11] In *In re TCR of Denver*, the court recognized the apparent typographical error in § 1112(b)(4) of the Bankruptcy Code. The sixteen illustrative examples of "cause" set forth in that section are linked by the word "and" after subsection (O). Accordingly, strict construction of the statute would require that a debtor establish all of the items constituting "cause" before a case can be dismissed by the court. The TCR court held that Congress could not have intended to require a "perfect storm" of all sixteen circumstances listed before a case is converted or dismissed. *See In re TCR of Denver*, 338 B.R. at 498.

(dismissal warranted where "the absence of financial data and certain sources of income for the [debtors] indicate[d] the absence of a reasonable likelihood of rehabilitation"); *A. Illum Hansen Inc. v. Tiana Queen Motel, Inc.* (*In re Tiana Queen Motel, Inc.*), 749 F.2d 146 (2nd Cir. 1984) (conversion under section 1112(b)(1), (2) and (3) warranted in light of debtors' "failure . . . to demonstrate that their prospects for prompt rehabilitation were based upon anything more substantial than [their] boundless confidence" in the 15 months after the filing of a chapter 11 petition); *see also In re Wright Air Lines, Inc.*, 51 B.R. 96, 99 (Bankr. N.D. Ohio 1985) (stating that "[r]ehabilitation as used in 11 U.S.C. Section 1112(b)(1) means 'to put back in good condition; re-establish on a firm, sound basis'") (citation omitted).

31. Here, the Debtor easily satisfies the two-fold inquiry. First, it is undisputed that the Debtor's estate is diminishing. Simply put, the Debtor's estate continues to decrease in value as administrative claims and ordinary expenses accrue without any additional source of funds with which to satisfy accumulating expenses, as the Debtor has entirely stopped doing business. Second, the Debtor has at no point in the Chapter 11 Case had any meaningful prospect of rehabilitation. Although very early on in the case, the Debtor had held out some hope that it might be able to rehabilitate itself around a much smaller core business, the Debtor knew the chances that could be accomplished were slim and commenced the Chapter 11 Case principally to facilitate an orderly liquidation and create a context for fielding requests from regulators.

32. The Debtor has met its burden and accordingly, cause exists to dismiss the Chapter 11 Case under section 1112(b)(4) of the Bankruptcy Code due to, *inter alia,* the substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.

C. Dismissal is in the Best Interests of the Debtor's Creditors and Estate.

33. Once a court determines that cause exists to dismiss a debtor's chapter 11 case, the court must evaluate whether dismissal is in the best interests of the debtor's creditors and of the estate. *See, e.g., Rollex Corp. v. Associated Materials* (*In re Superior Siding & Window*), 14 F.3d 240, 242 (4th Cir. 1994) ("Once 'cause' is established, a court is required to consider this second question of whether to dismiss or convert"). Further, in addition to "cause" under section 1112(b) of the Bankruptcy Code section 305(a) requires dismissal if "the interests of creditors and the debtor would be better served by such dismissal…" 11 U.S.C. § 305(a)(1). *See, e.g., In re Magnolia Energy LP*, Case No. 06-11069 (MFW) (Bankr. D. Del. Feb. 12, 2007) [Doc. No. 196]; *In re Monitor Single Lift I Ltd.*, 381 B.R. 455, 463 (Bankr. S.D.N.Y. 2008). As detailed below, a variety of factors evidence that the proposed dismissal is in the best interest of the estate and the Debtor's creditors. Accordingly, dismissal is appropriate under sections 1112 and 305(a) of the Bankruptcy Code.

34. First, the dismissal of a chapter 11 case is in the best interests of creditors when a debtor has nothing to reorganize, and the debtor's assets are fixed and liquidated. *See Camden Ordinance Mfg. Co. of Ark., Inc. v. Unites Stated Trustee* (*In re Camden Ordnance Mfg. Co. of Ark., Inc.*), 245 B.R. 794, 799 (E.D. Pa. 2000) (reorganization to salvage business which ceased operations was infeasible); *In re Brogdon Inv. Co.*, 22 B.R. 546, 549 (Bankr. N.D. Ga. 1982) (court dismissed chapter 11 proceeding in part where there was "simply nothing to reorganize" and therefore no reason to continue the reorganization). As explained above, the Debtor has nothing left to reorganize. The Debtor does not possess any remaining assets of substantial value, other than perhaps some contingent and unliquidated litigation assets, and a small amount of cash, which combined have a value far less than the DIP Lender Claims. The Debtor is no

longer conducting its pre-petition collection activities and the computer systems that were essential to the Debtor's pre-petition business have been physically unplugged. The Debtor does not possess funds necessary to finance confirmation of a liquidating chapter 11 plan, and even if it did, the Debtor would not have funds to thereafter reconcile and litigate the unsecured claims against the Debtor or provide any meaningful distribution to creditors. Further, there are no funds available for distribution other than as provided herein. Dismissal is, therefore, in the best interest of the estate and its creditors.

35. Second, dismissal is in the best interest of the creditors when a debtor demonstrates the ability to oversee its own liquidation. *See Camden Ordinance*, 245 B.R. at 798; *Mazzocone*, 183 B.R. at 412 ("[o]nly when a Chapter 11 debtor has no intention or ability to . . . perform its own liquidation … should a debtor be permitted to remain in bankruptcy"). *See also* Norman L. Pernick & G. David Dean, Structured Chapter 11 Dismissals: a Viable and Growing Alternative After Asset Sales, 29 AM. BANK INST. J., June 2010, at 1, 58-59. Here, the Debtor has managed a post-petition process that has maximized, to the extent possible, the value of its assets in an orderly fashion, including by recovering payments on receivables from its former customers, and by responding appropriately to regulatory requests. The Debtor is confident that that there is nothing further to pursue in the Chapter 11 Case. The Debtor is capable of administering the distributions permitted under the Proposed Order. Thus, dismissal is in the best interest of the creditors.

36. Third, dismissal of the Chapter 11 Case pursuant to the terms of the Proposed Order is in the best interest of the creditors because it will make *some* creditors better off, namely, creditors with Administrative Claims, without making *any* creditors worse off as a result. On the other hand, conversion to chapter 7 would increase costs to the estate with no way

to pay for them and, because of the lack of the Settlement, would render the Debtor administratively insolvent, even in its chapter 7 case. Accordingly, dismissal of this Case, under the terms of the Proposed Order, is in the best interest of the Debtor's estate and its creditors.

37. Courts in this and other districts have dismissed cases pursuant to sections 1112(b) and 305(a) under similar circumstances, where the debtor lacks sufficient funds to confirm a chapter 11 plan and/or where the costs associated with plan confirmation would eliminate the possibility of a meaningful creditor recovery. *See, e.g., In re CSI Inc.*, Case No. 01-12923 (REG) (Bankr. S.D.N.Y July 24, 2006) [Doc. No. 284]; *In re Harvey Electronics, Inc.*, 07-14051 (ALG) (Bankr. S.D.N.Y. Dec. 16, 2008) [Doc. No. 177]; *In re Levitz Home Furnishings, Inc.*, 05-45194 (BRL) (Bankr. S.D.N.Y. Nov. 2, 2007) [Doc. No. 5]; *In re Princeton Ski Shop*, Case No. 07-26206 (MS) (Bankr. D. N.J. Dec. 23, 2008) [Doc. No. 546]; *In re Blades Board and Skate, LLC*, Case No. 03-48818 (Bankr. D. N.J. June 29, 2004) [Doc. No. 126]; *In re Ascendia Brands, Inc.*, Case No. 08-11787 (BLS) (Bankr. D. Del. July 18, 2012) [Doc. No. 1230]; *In re G.I. Joe's Holding Corp.*, Case No. 09-10713 (KG) (Bankr. D. Del. Mar. 10, 2011) [Doc. No. 753, 773, 804]; *In re Thompson Prods., Ins.*, Case No. 08-10319 (PJW) (Bankr. D. Del. Dec. 28, 2010) [Doc. Nos. 512, 542]; *In re CFM U.S. Corp.*, Case No. 08-10668 (KJC) (Bankr. D. Del. Feb. 1, 2010) [Doc. No. 1282]; *In re Foamex Int'l Inc.*, Case No. 09-10560 (KJC) (Bankr. D. Del. Jan. 20, 2010) [Doc. No. 761].

38. Finally, allowing the structured dismissal of the Debtor's chapter 11 Case advances the Bankruptcy Code's goal for the efficient administration of bankruptcy estates, eliminates the accrual of administrative expense obligations, and brings closure to this Case in a timely manner.

D. The Settlement Should Be Approved

39. Key to the proposed dismissal of the Chapter 11 Case is the Settlement, and its accompanying Release. Under the governing standards for approval of settlements, the Settlement should be approved.

40. Before a court may approve a settlement, it must find that it is fair and equitable, and in the best interests of the estate. *See In re Drexel Burnham Lambert Grp., Inc.*, 134 B.R. 493, 496 (Bankr. S.D.N.Y. 1991) (citing *Protective Comm. for Indep. Stockholders of TMT Trailers Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)). *See also In re Chemtura Corp.*, 439 B.R. at 593-94. The determination of whether a settlement meets those standards is within the discretion of the court. *See In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993) ("A Bankruptcy Court's decision to approve a settlement should not be overturned unless its decision is manifestly erroneous and 'a clear abuse of discretion.'") (citations omitted); *Kenton Cty. Bondholders Comm. v. Delta Air Lines (In re Delta Air Lines)*, 374 B.R. 516, 522 (S.D.N.Y. 2007) ("The bankruptcy court will have abused its discretion if 'no reasonable man could agree with the decision' to approve a settlement.") (citation omitted). In exercising that discretion, the court does not conduct a mini-trial on the merits of the settlement or otherwise resolve disputed issues of law or fact underlying the settlement. Instead, the court need only to "canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). *See also O'Connell v. Packles (In re Hilsen)*, 404 B.R. 58, 70 (Bankr. E.D.N.Y. 2009) ("[T]he court must make an informed and independent judgment as to whether a proposed compromise is 'fair and equitable' after apprising itself of 'all facts necessary for an intelligent and objective

opinion of the probabilities of ultimate success should the claim be litigated.'" (quoting Anderson, 390 U.S. at 424)).

41. In doing so, the court should accord proper deference to a debtor's business judgment. *See In re Stone Barn Manhattan LLC*, 405 B.R. 68, 75 (Bankr. S.D.N.Y. 2009) ("Although approval of a settlement rests in the Court's sound discretion ... the debtor's business judgment should not be ignored.") (citations omitted).[12] In the Second Circuit, the factors that a court must weigh in determining whether a proposed settlement is "fair and equitable," are:

> (1) the balance between the litigation's possibility of success and the settlement's future benefits; (2) the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment; (3) the paramount interests of the creditors, including each affected class's relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement; (4) whether other parties in interest support the settlement; (5) the competency and experience of counsel supporting, and the experience and knowledge of the bankruptcy court judge reviewing, the settlement; (6) the nature and breadth of releases to be obtained by officers and directors; and (7) the extent to which the settlement is the product of arm's length bargaining.

See Motorola v. Comm. of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 462 (2d Cir. 2007) (internal citations omitted) (the foregoing, the "Iridium Factors").

42. As described herein, before agreeing to the Settlement, the Debtor's Chief Oversight Officer, working with the Debtor's counsel, considered potential claims by the Debtor against Mr. Fuchs following a review of the Debtor's and Mr. Fuchs's conduct in the period preceding and immediately following the Data Breach, in conjunction with applicable New York

[12] Due to both: (a) the fact that the Debtor was represented in the Settlement by its independent, Chief Oversight Officer; and (b) the multi-faceted nature of the *Iridium* standards applicable to settlements under Rule 9019(a), no heightened "entire fairness" standard of scrutiny applies to the Settlement, despite that the Debtor's counterparty is an insider. *See In re Dewey & LeBoeuf LLP*, 478 B.R. 627, 642 (Bankr. S.D.N.Y. 2012). Moreover, the Debtor is confident that the Settlement may be approved regardless of the level of judicial scrutiny applied.

law. In conjunction with such review, no obvious basis for a claim by the Debtor against Mr. Fuchs in his capacity as CEO or principal was identified.

43. Furthermore, to the extent that claims might be brought under sections 548 or 550 of the Bankruptcy Code against Mr. Fuchs, such claims would be difficult to sustain as a factual matter and, from a recovery standpoint, would, even if successful, return to the Debtor only a fraction of Mr. Fuchs' secured DIP Lender Claims, and therefore would just go from one of Mr. Fuchs's pockets into the other.

44. Therefore, regarding Iridium Factor (1), there is a low likelihood of success on claims that might be brought against Mr. Fuchs and such successes would not outweigh the value of the Settlement to the Debtor's estate.

45. Regarding Iridium Factor (2), but for the Settlement, the Debtor would be administratively insolvent and it is not clear how the litigation of claims against Mr. Fuchs would be paid for, particularly given that such claims would be fact-intensive and potentially complex.

46. With respect to the remaining Iridium Factors: (i) the Settlement provides an incremental benefit to the Debtor's creditors by enabling the estate to remain administratively solvent (Iridium Factor (3)), (ii) at the moment, the Debtor is not aware of any formal or informal objections to the Settlement (Iridium Factor 4)), (iii) the Settlement has been reviewed and is supported by Debtor's experienced bankruptcy counsel for the reasons set forth herein (Iridium Factor 5)), (iv) the Release is limited so as not to encompass claims sounding in actual fraud or willful misconduct and are the result of fully arm's length discussions between the Debtor's fully independent director and Mr. Fuchs (Iridium Factors 6 and 7)).

47. For the foregoing reasons and on account of the critical nature of the Settlement to an orderly and organized dismissal of the Debtor's chapter 11 case, the Settlement and the Release should be approved.

REJECTION OF EXECUTORY CONTRACTS

48. For the avoidance of doubt, and to ensure the viability of the Settlement, it is important to confirm that no claims for damages under any of the Debtor's prepetition unexpired leases or executory contracts (the "Executory Contracts") would bear administrative expense priority. Accordingly, as provided in the Proposed Order, the Debtor requests that, pursuant to section 365(a) of the Bankruptcy Code, to the extent not previously assumed or rejected, all Executory Contracts be deemed rejected as of the earlier of: (a) the date the Debtor last received any goods or services under the applicable Executory Contract; and (b) the date hereof.

SURVIVAL OF PRIOR ORDERS

49. The Debtor requests that, notwithstanding section 349 of the Bankruptcy Code, all prior Orders of this Court entered in the Chapter 11 Case shall remain in full force and effect and shall survive the dismissal of the Chapter 11 Case.[13]

[Remainder of page intentionally omitted]

[13] In particular, courts have retained jurisdiction post-dismissal to rule on fee applications. *See, e.g., In re Pappas Telecasting Inc.*, Case No. 08-10916 (PJW) (Bankr. D. Del. June 4, 2010) [Doc. No. 2132]; *In re Alternative Distribution Systems, Inc.*, Case No. 09-13099 (PJW) (Bankr. D. Del. Dec. 1, 2009) [Doc. No. 213]; *In re Wickes Holdings LLC*, Case No. 08-10212 (KJC) (Bankr. D. Del. May 11, 2009) [Doc. No. 1418]; *In re New Weathervane Retail Corp.*, Case No. 04-11649 (PJW) (Bankr. D. Del. Sept. 2, 2005) [Doc. No. 566]; *In re Harvey Electronics, Inc.*, Case No. 07-14051 (ALG) (Bankr. S.D.N.Y. Dec. 16, 2008) [Doc. No. 177].

CONCLUSION

WHEREFORE, the Debtor respectfully request entry of an order substantially in the form of the Proposed Order, and such other and further relief as this Court deems just and proper.

Dated: March 19, 2020
New York, New York

Respectfully submitted,

By: /s/ Steven Wilamowsky

SCHIFF HARDIN LLP
Steven Wilamowsky
1185 Avenue of the Americas, Ste. 3000
New York, NY 10036
Telephone: 212.745.0825

-and-

CHAPMAN AND CUTLER LLP
Aaron M. Krieger
111 West Monroe Street
Chicago, IL 60603-4080
Telephone: 312.845.3000

Co-Counsel for the Debtor and Debtor in Possession

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
Retrieval-Masters Creditors Bureau, Inc.,[1]	:	Case No. 19-23185 (RDD)
Debtor.	:	

ORDER GRANTING DEBTOR'S MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 305(a), 349, 365(a) AND 1112(b) AND FED. R. BANKR. P. 1017(a), 2002(a)(4) AND 9019(a) DISMISSING CHAPTER 11 CASE AND GRANTING RELATED RELIEF

Upon the *Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a), 305(a), 349, 365(a) and 1112(b) and Fed. R. Bankr. P. 1017(a), 2002(a)(4) and 9019(a) Dismissing Chapter 11 Case and Granting Related Relief* [Doc. No. [__]] (the "Motion")[2]; and any objections to the relief sought in the Motion having been resolved or overruled on the merits; and the Court having considered the Motion, the relief requested therein, pleadings filed in the Chapter 11 Case, and the statements and representations of counsel at the hearing held by the Court on the Motion to Dismiss on April 30, 2020 (the "Hearing"); and the Court having found that the relief requested in the Motion is in the best interests of the Debtor, its estate, creditors, and parties-in-interest; and sufficient cause appearing, it is hereby:

FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over the Motion to Dismiss pursuant to 28 U.S.C. §§ 157(a) and (b) and 1334(b) and the Amended Standing Order of Reference of the United States District Court for the Southern District of New York dated January 31, 2012 (Preska, C.J.). This

[1] The last four digits of the Debtor's taxpayer identification number is 9495. As of November 1, 2019, the Debtor's service address for purposes of this chapter 11 case is 200 Pemberwick Road, Greenwich, CT 06831. The Debtor also did business as American Medical Collection Agency.

[2] Capitalized terms used and not defined herein shall have the meanings scribed thereto in the Motion.

matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and this Court may enter a final order on the Motion. Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought herein are sections 105(a), 305(a), 349, 365(a) and 1112(b) of the Bankruptcy Code, and Bankruptcy Rules 1017(a), 2002(a)(4), and 9019(a).

C. Notice of the Motion has been provided to: (i) the United States Trustee; (ii) any persons or entities that have requested notice of the proceedings in this chapter 11 case pursuant to Bankruptcy Rule 2002; (iii) all persons or entities that have filed proofs of claim against the Debtor as of the date of the filing of the Motion, whether or not timely; (iv) all known creditors and other known holders of Claims against the Debtor, including all persons or entities listed in the Schedules for which the Debtor has addresses; (v) all parties to executory contracts and unexpired leases of the Debtor; (vi) all parties to litigation with the Debtor and their counsel (if known), *provided, however* that in the case of class action litigation, service may have been provided only to counsel to the lead plaintiff or plaintiffs; (vii) the Internal Revenue Service for the Southern District of New York; (viii) any other governmental units applicable to the Debtor's businesses; and (ix) attorneys general for all fifty states in which the Debtor conducted business, which notice was extensive, proper, sufficient and adequate, and no further notice of the Motion to Dismiss is required.

D. The relief requested by the Motion is proper, lawful, necessary, appropriate, and in the best interests of the Debtor, its estate, creditors, and all parties-in-interest.

E. The legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein. Accordingly, after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted, as set forth below.

2. Pursuant to sections 305(a) and 1112(b) of the Bankruptcy Code, the Debtor's chapter 11 bankruptcy case is hereby dismissed (the date hereof referred to herein as the "Effective Date").

3. Pursuant to section 350(a) of the Bankruptcy Code, the Debtor's chapter 11 case is hereby closed and a final decree is hereby granted for the Debtor's chapter 11 case as of the Effective Date.

4. Pursuant to Bankruptcy Code section 105(a) and Bankruptcy Rule 9019, the Settlement is approved in its entirety.

5. Notwithstanding any otherwise applicable provisions of section 349 of the Bankruptcy Code, all prior Orders of this Court entered in the Chapter 11 Case shall remain in full force and effect and shall survive the dismissal of the Chapter 11 Case.

6. This Court shall retain jurisdiction for a period of 180 days from the Effective Date (or if the Chapter 11 Case is reopened), with respect to: (a) any matters, claims, rights, or disputes arising from or relating to the implementation of this or any other Order of this Court entered in the Chapter 11 Case; and (b) any applications for compensation that are filed may be filed by professionals previously retained by the Debtor and approved by the Court pursuant to any of sections 327, 328 and 330 of the Bankruptcy Code, for services provided until and through the Effective Date.

7. Except as otherwise set forth below, the Debtor is authorized to and shall fully and finally distribute all funds in the Debtor's estate ("Estate Funds") no later than sixty (60) days from the date this Order becomes final and non-appealable, unless otherwise noted below. The funds shall be distributed as follows:

a. First, all applicable United States Trustee fees and costs pursuant to 28 U.S.C. § 1930 shall be paid in full from Estate Funds within fourteen (14) days of the entry of this Order.

b. Second, any claims against the Debtor entitled to priority under section 507(a)(2) of the Bankruptcy Code, other than the DIP Lender Claims (defined below), shall be paid in full from Estate Funds.

c. Third, subject to approval by separate Order of the Court entered in the form required by Local Bankruptcy Rule 2016-1(b), allowed professionals' fees and expenses shall be paid from Estate Funds as follows:

i. Chapman and Cutler LLP ("Chapman") shall receive a distribution of 100% of the allowed amount of its fees and expenses in full and final satisfaction of its claims against the estate.

ii. Schiff Hardin LLP ("Schiff") shall receive a distribution of 100% of the allowed amount of its fees and expenses in full and final satisfaction of its claims against the estate.

iii. Morvillo Abramowitz Grand Iason & Anello P.C. ("Morvillo") shall receive a distribution of 100% of the allowed amount of its fees and expenses in full and final satisfaction of its claims against the estate.

iv. Geist Schwarz & Jellinek, PLLC ("Geist") shall receive a distribution of 100% of the allowed amount of its fees and expenses in full and final satisfaction of its claims against the estate.

d. Fourth, the DIP Claim; and

e. Fifth, the remaining DIP Lender Claims.

8. In accordance with the Settlement, to the extent that available Estate Funds are insufficient to satisfy the claims enumerated in subparagraphs (a) through (c) above, then Russell Fuchs shall provide funding in an amount necessary to satisfy those claims, which amount shall thereupon be added to, and become part of, the DIP Claim, and be entitled to all liens and priorities associated therewith; *provided, however,* that Mr. Fuchs shall have no obligation to provide funding, for any reason, in an amount that exceeds, in the aggregate, $1,500,000.

9. The Debtor is authorized and directed to make the distributions and payments authorized by this Order from the funds in the Debtor's existing debtor-in-possession accounts and from any other cash that the Debtor may receive hereafter, in such manner as the Debtor may decide in its discretion.

10. From and after the date of this Order, the Debtor in its own capacity and as debtor in possession, on behalf of itself and including, without limitation, any successor to the Debtor or to its interests, will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever provided a full discharge, waiver and release to each of the Debtor's directors, officers, agents, shareholders, and representatives, including, without limitation, Bradley E. Scher, Russell H. Fuchs and Jeffrey S. Wollman (each, a "Released Party" and collectively, the "Released Parties") from any and all claims, causes of action and any other debts, obligations, rights, suits, damages, actions, remedies, and liabilities whatsoever, whether known or unknown,

foreseen or unforeseen, whether directly or derivatively held, existing as of the Effective Date or thereafter arising, in law, at equity or otherwise, whether for tort, contract, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way in whole or in part to the Debtor, the Debtor's business, the circumstances leading to the Chapter 11 Case, the conduct of the Chapter 11 Case, or its dismissal pursuant to the Motion (the "Release").

11. Nothing in this Order shall be deemed to release any of the Released Parties from liability for acts that are the result of actual fraud or willful misconduct as fully and finally determined by a court of competent jurisdiction, if and to the extent committed by such Released Party.

12. From and after ninety (90) days after the Effective Date, the Debtor is authorized to abandon or destroy any documents and business records (other than those necessary for filing taxes) and to abandon any furniture, fixtures, and equipment that may remain in the Debtor's estate and that the Debtor in its discretion determines to be of inconsequential value.

13. Pursuant to section 365(a) of the Bankruptcy Code, any executory contract or unexpired lease (each an "Executory Contract") entered into by the Debtor prior to the Petition Date that has not been assumed or rejected by the Debtor by order of the Court prior to the Effective Date, or has not previously expired or terminated pursuant to its own terms, shall be deemed rejected as of the earlier of: (a) the date the Debtor last received any goods or services under the applicable Executory Contract; and (b) the date of the filing of the Motion.

14. The Debtor shall reserve sufficient funds to pay the Office of the United States Trustee the amount of any quarterly fees due pursuant to 28 U.S.C. § 1930 and any applicable

interest due pursuant to 31 U.S.C. § 3717, which fees and interest, if any, shall be paid within ten (10) days after the entry of this Order. Within fourteen (14) days after the entry of the Order, the Debtor shall provide to the United States Trustee an affidavit indicating cash disbursements for the month of April, 2020 and for any other months in 2020 that the case is still open, to the date that the Order has been entered.

15. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

16. To the extent applicable, Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure are waived and this Order shall be effective and enforceable immediately upon entry.

Dated: _____, 2020
White Plains, New York

_____
HON. ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE