

Hearing Date and Time: March 17, 2022 at 10:00.m. (ET)
Objection Deadline: March 7, 2022 at 5:00 p.m. (ET)

HAYNES AND BOONE, LLP

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Attorney for the MedMal Trust Monitor

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:

SAINT VINCENT’S CATHOLIC MEDICAL
CENTERS OF NEW YORK, *et al.*¹,

Debtors.

Chapter 11

Case No. 05-14945 (CGM)
Jointly Administered

-----X
In re:

SAINT VINCENT’S CATHOLIC MEDICAL
CENTERS OF NEW YORK, *et al.*²,

Debtors.

Chapter 11

Case No. 10-11963 (CGM)
Jointly Administered
-----X

**NOTICE OF THE MEDMAL TRUST MONITOR’S MOTION FOR ENTRY OF AN
ORDER: (I) ENFORCING THE SV2 CONFIRMATION ORDER, (II) RELEASING THE
MEDMAL TRUST FUNDS, AND (III) GRANTING RELATED RELIEF**

¹ The debtors in these chapter 11 cases (the “SV1 Cases”) include Saint Vincent’s Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers (“SVCMC”), Medical Service of St. Vincent’s Hospital and Medical Center, P.C., Surgical Service of St. Vincent’s, P.C., CMC Cardiology Services P.C., CMC Physician Services P.C., and CMC Radiological Services P.C. (collectively, the “SV1 Debtors”).

² In addition to SVCMC, the debtors in these chapter 11 cases (the “SV2 Cases”) include 555 6th Avenue Apartment Operating Corporation, Bishop Francis J. Mugavero Center for Geriatric Care, Inc., Chait Housing Development Corporation, Fort Place Housing Corporation, Pax Christi Hospice, Inc., Sisters of Charity Health Care System Nursing Home, Inc. d/b/a St. Elizabeth Ann’s Health Care & Rehabilitation Center, St. Jerome’s Health Services Corporation d/b/a Holy Family Home, and SVCMC Professional Registry, Inc. (collectively, the “SV2 Debtors”).

PLEASE TAKE NOTICE that on February 4, 2022, Michael E. Katzenstein (the “MedMal Trust Monitor”), in his capacity as the MedMal Trust Monitor of the MedMal-MW Trust, the MedMal-SI Trust, and the MedMal-BQ Trust, filed the attached *Motion for Entry of an Order: (I) Enforcing the SV2 Confirmation Order, (II) Releasing the MedMal Trust Funds, and (III) Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the Southern District of New York (the “Court”) in each of the above-captioned cases.

PLEASE TAKE FURTHER NOTICE that the Motion is scheduled for a hearing before the Court on March 17, 2022, at 10:00 a.m. (prevailing Eastern Time) before the Honorable Cecelia G. Morris, United States Bankruptcy Court for the Southern District of New York, 355 Main Street, Poughkeepsie, NY 12601 (the “Hearing”).

PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to the Motion, including for the avoidance of doubt, any holder of an Unliquidated MedMal Claim (as defined in the Motion) seeking to assert their rights as described in the Motion, shall: (i) be in writing; (ii) conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York; (iii) be filed with the Court (a) by registered users of the Bankruptcy Court’s case filing system, electronically in accordance with General Order M–399 (which can be found at <http://www.nysb.uscourts.gov>) and (b) by all other parties in interest, on a CD-ROM, in text searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Court and General Order M–399, to the extent applicable, and (iv) served upon the following parties: (a) the above-captioned Debtors and their counsel: Latham and Watkins, LLP, Attn: Anupama Yerramalli, 1271 Avenue of the Americas, New York, NY 10020, (anu.yerramalli@lw.com); (b) the Liquidating Trustee, Eugene I. Davis, and his counsel: Akin Gump Strauss Hauer & Feld LLP, Attn: Sarah Link Schultz,

2800 N. Field Street, Suite 1800, Dallas, TX 75201-2481, (sschultz@akingump.com); (c) the MedMal Trustee, Wilmington Savings Fund Society, FSB, successor in interest to the Christiana Bank & Trust Company and its counsel, Bayard, P.A., Attn: Neil Glassman, 600 N. King Street, Suite 400, Wilmington, DE 19801, (NGlassman@bayardlaw.com); (d) the MedMal Trust Monitor and his undersigned counsel, Haynes and Boone, LLP, Attn: Richard Kanowitz, 30 Rockefeller Plaza, 26th Floor, New York, NY 10112, (richard.kanowitz@haynesboone.com); (e) counsel to the SV2 Post-Effective Date Committee: Akin Gump Strauss Hauer & Feld LLP, Attn: Sarah Link Schultz, 2800 N. Field Street, Suite 1800, Dallas, TX 75201-2481, (sschultz@akingump.com); (f) the Office of the United States Trustee, Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014; and (g) any other party that has submitted a request for electronic notice. Objections must be actually received on or before March 7, 2022, at 5:00 p.m. (prevailing Eastern Time) (the “Objection Procedures”).

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned thereafter from time to time without further notice other than an announcement of the adjourned date or dates in open court at the Hearing.

PLEASE TAKE FURTHER NOTICE that a copy of the Motion and all other documents filed in the above captioned chapter 11 cases may be obtained by visiting the Court’s website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein, or through the applicable Debtors’ claims agent website free of charge: (i) for the SV1 Debtors: <https://dm.epiq11.com/case/svc/dockets>; and (ii) for the SV2 Debtors: <https://dm.epiq11.com/case/svcmc2010/info>.

Dated: February 4, 2022
New York, New York

HAYNES AND BOONE, LLP

By: /s/ Richard S. Kanowitz

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Chapter 11

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**THE MEDMAL TRUST MONITOR’S MOTION FOR ENTRY OF AN ORDER: (I)
ENFORCING THE SV2 CONFIRMATION ORDER, (II) RELEASING THE MEDMAL
TRUST FUNDS, AND (III) GRANTING RELATED RELIEF**

¹ The debtors in these chapter 11 cases (the “SV1 Cases”) include Saint Vincent’s Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers (“SVCMC”), Medical Service of St. Vincent’s Hospital and Medical Center, P.C., Surgical Service of St. Vincent’s, P.C., CMC Cardiology Services P.C., CMC Physician Services P.C., and CMC Radiological Services P.C. (collectively, the “SV1 Debtors”).

² In addition to SVCMC, the debtors in these chapter 11 cases (the “SV2 Cases”) include 555 6th Avenue Apartment Operating Corporation, Bishop Francis J. Mugavero Center for Geriatric Care, Inc., Chait Housing Development Corporation, Fort Place Housing Corporation, Pax Christi Hospice, Inc., Sisters of Charity Health Care System Nursing Home, Inc. d/b/a St. Elizabeth Ann’s Health Care & Rehabilitation Center, St. Jerome’s Health Services Corporation d/b/a Holy Family Home, and SVCMC Professional Registry, Inc. (collectively, the “SV2 Debtors”).

TO THE HONORABLE CECELIA G. MORRIS,
CHIEF UNITED STATES BANKRUPTCY JUDGE:

Michael E. Katzenstein (the “MedMal Trust Monitor”), in his capacity as the MedMal Trust Monitor, files this *Motion for Entry of an Order: (I) Enforcing the SV2 Confirmation Order, (II) Releasing the MedMal Trust Funds, and (III) Granting Related Relief* (the “Motion”). In support of the Motion, the MedMal Trust Monitor submits the *Declaration of Barry Taub, SVC MC Malpractice Counsel, in Support of the MedMal Trust Monitor’s Motion for Entry of an Order: (I) Enforcing the SV2 Confirmation Order, (II) Releasing the MedMal Trust Funds, and (III) Granting Related Relief*, attached hereto as **Exhibit 1** (the “Taub Declaration”), and respectfully states as follows:

PRELIMINARY STATEMENT³

1. The SV1 Cases and the SV2 Cases have collectively been pending for over fifteen (15) years, and the relief requested in this Motion will pave the long-awaited path to the closure of the SV1 Cases. As this Court is aware, the SVC MC Debtors faced substantial liability in both cases from MedMal Claims,⁴ which are the claims for medical malpractice that arose prior to the commencement of the SV1 Cases, and which were channeled to the MedMal Trusts. As such, the SV1 Plan included specific mechanisms to treat the MedMal Claims by paying the Allowed MedMal Claims from the MedMal Trusts, and the SV2 Plan continued that process without interruption. To be an Allowed MedMal Claim entitled to a distribution from the MedMal Trusts,

³ Capitalized terms used in this preliminary statement but not defined shall have the meanings given to such terms below.

⁴ As defined in the SV1 Plan, “MedMal Claim” “means any prepetition Claim relating to medical malpractice (i) asserted or which can be asserted against SVC MC and/or SVC MC’s insurers on account of or related to SVC MC’s purported liability for an alleged act of medical malpractice or (ii) asserted or which can be asserted against any Covered Person with respect to or related to claims of alleged medical malpractice, in each case net of the proceeds of SVC MC’s third party insurance available to pay the holder of such Claim.” See SV1 Plan, p. 16.

pursuant to the SV1 Plan (as implemented through the SV2 Plan) holders of such claims are required to reduce their claims to Final Order or otherwise settle or close their cases. Through a global settlement reached by the SV2 Debtors, the MedMal Trust Monitor, and other constituents during the SV2 Cases, to the extent any amounts are remaining in the MedMal Trusts after distribution of the Allowed MedMal Claims, such amounts are to be disbursed to the Liquidating Trustee for distribution to the SV2 General Unsecured Creditors, pursuant to the terms of the SV2 Plan and the Trust Modifications.

2. During the past fifteen (15) years, the MedMal Trust Monitor, with the assistance of SVCMC, has worked to resolve 697 MedMal Claims. Of those claims: (i) 657 MedMal Claims are fully resolved and (ii) forty (40) claims are unliquidated. This Motion will describe these categories of claims in turn. The fact that over 650 MedMal Claims have been Allowed and resolved in their entirety is an unprecedented outcome for cases of this scale and the amount of MedMal Claims that the SVCMC Debtors faced. Moreover, if the relief in this Motion is granted and a distribution of the balance of the MedMal Trusts is disbursed to the SV2 General Unsecured Creditors, the MedMal Trust Monitor projects an additional recovery to the SV2 General Unsecured Creditors of approximately \$24,280,234.41,⁵ which is approximately an additional five percent (5%) recovery, for a recovery of approximately eighteen percent (18%) to date.⁶ This result, combined with the incredible results achieved by the Liquidating Trustee during the course of the SV2 Cases, is a remarkable outcome from the initially projected recoveries to the SV2

⁵ This amount reflects the estimated additional recovery pursuant to the balances in the MedMal Trusts as of November 30, 2021. This amount does not reflect the deduction for the estimated \$500,000 for the Wind Down Reserve Amount.

⁶ For the avoidance of doubt, the MedMal Trust Monitor makes no representations about the total recovery that will be available to the SV2 Unsecured Creditors. It is the MedMal Trust Monitor's understanding that distributions outside the scope of this Motion are being made to the SV2 Unsecured Creditors.

General Unsecured Creditors of 2.3% to 7.5%.⁷ The MedMal Trust Monitor knows of no other bankruptcy case with such large-scale tort claims that has achieved these results.

3. As explained herein, the MedMal Trusts have dissolved pursuant to the terms of their respective Trust Agreements and distributions must be made accordingly as required under each of the Trust Agreements and as requested in this Motion. *See* Trust Agreements §§ 5.5(b), 11.1. Further maintenance of the MedMal Trusts pending such distributions will serve only to prolong the administrative costs of maintaining the MedMal Trusts without a cognizable benefit. Pursuant to this Motion, the MedMal Trust Monitor seeks relief needed for the SV1 Cases, which will also assist the MedMal Trust Monitor to terminate and conclude the affairs of the MedMal Trusts in the ultimate pursuit of winding up the SV1 Cases. As such, the MedMal Trust Monitor seeks the following relief:

- First, a ruling that the Residual MedMal Trust Amounts in the MedMal Trusts should not be reserved for the holders of the Unliquidated MedMal Claims. Such holders have had over ten (10) years to liquidate their claims for treatment as Allowed Claims under the SV1 and SV2 Plans. Under section 1143 of the Bankruptcy Code, if a claimant fails to take any act required by the plan to receive a distribution, they are barred after the fifth anniversary of the confirmation date. Here, in the SV1 Cases, that date expired in 2012. The holders of Unliquidated MedMal Claims have had ample time to liquidate their claims.
- Second, a ruling disallowing and expunging the Unliquidated MedMal Claims for all purposes and from the record in the SV1 Cases. The holders of the Unliquidated MedMal Claims have failed to prosecute their claims and therefore, cannot be Allowed Claims under the SV1 and SV2 Plans. Moreover, upon the MedMal Trust Monitors' diligence, the Unliquidated Claims are either: (i) not true medical malpractice claims; (ii) filed out of an abundance of caution for claims that never came into fruition, (iii) subject to expired statutes of limitations, and (iv) held by claimants that failed to file a suit. Such ruling shall be deemed to resolve all of the Unliquidated MedMal Claims for purposes of the Trust Agreements.
- Third, a ruling authorizing the MedMal Trust Monitor to: (i) direct the MedMal Trustee to release the Net MedMal Trust Amounts to the Liquidating Trustee, (ii) discharge the MedMal Trustee from their responsibilities under the MedMal Trusts

⁷ *See Declaration of Steven R. Korf in Support of Confirmation of the Debtors' Second Amended Joint Chapter 11 Plan* [SV2 Cases, Doc. No. 3045, ¶ 23].

and their beneficiaries, (iii) dissolve and terminate the MedMal Trusts, as applicable,⁸ and take all necessary or advisable ancillary and related actions; and (iv) take any and all necessary or advisable ancillary and related actions that are required after the MedMal Trusts are dissolved, as determined in the MedMal Trust Monitor's sole discretion. Under sections 1142 and 105 of the Bankruptcy Code and Bankruptcy Rule 3020(d), this Court has authority to enforce its own confirmation orders and compel distributions on claims that are required by the SV1 and SV2 Plan. The SV2 Plan authorizes the MedMal Trust Monitor to direct the MedMal Trustee to disburse the Net MedMal Trust Amounts to the Liquidating Trustee and doing so will allow an additional recovery of approximately \$24,280,234.41 to the SV2 General Unsecured Creditors.⁹

- Fourth, a ruling, in connection with the release of the Residual MedMal Trust Amounts, authorizing the MedMal Trust Monitor to direct the MedMal Trustee to transfer \$500,000.00 of the Residual MedMal Trust Amount from the MedMal-BQ Trust (the "Wind Down Reserve Amount") to SVCMC to be used for: (i) the reasonable fees and expenses of the MedMal Trust Monitor to serve on the SV2 Post-Effective Date Committee and to wind down the SV1 Cases, including advisor fees and expenses, (ii) the reasonable fees and expenses of the MedMal Trustee and its advisors to liquidate, dissolve, wind up, and terminate the MedMal Trusts, and (iii) any other reasonable amounts related to the winding up of the SV1 Cases, that, for the avoidance of doubt, may be incurred after the dissolution of the MedMal Trusts. The transfer of the Wind Down Reserve Amount shall complete the distributions required to be made by the MedMal Trustee under the SV1 Plan with respect to each MedMal Trust. When the MedMal Trusts are liquidated and wound up and all ancillary work after the wind up is completed as determined in the MedMal Trust Monitor's sole discretion, the MedMal Trust Monitor shall direct SVCMC to transfer the remainder of the Wind Down Reserve Amount, if any, to the Liquidating Trustee.
- Fifth, a ruling restating and/or extending the exculpation in the SV2 Plan to the MedMal Trust Monitor, the MedMal Trustee, the Liquidating Trustee, SVCMC, and their advisors for their post-SV2 Effective Date work to administer, liquidate, wind up, and dissolve the MedMal Trusts, to wind down the SV1 Cases, and for any ancillary matters related to the foregoing.

⁸ The MedMal Trusts have dissolved by the terms of the MedMal Trust Agreements, so to the extent dissolution or termination is still necessary after the distributions are made pursuant to the terms of the MedMal Trust Agreements and the relief sought in this Motion, the MedMal Trust Monitor continues to seek full dissolution and termination of the MedMal Trusts out of an abundance of caution.

⁹ These recoveries do not include further recoveries on the MedMal Trusts' POCs. For the avoidance of doubt, the claims asserted under the MedMal Trusts' POCs were satisfied on the Effective Date of the SV2 Plan and thereafter through distributions from the SV2 Liquidating Trust. With respect to the unsecured portion of the MedMal Trusts' POCs, the MedMal Trusts shall no longer be entitled to receive distributions from the SV2 Liquidating Trust upon entry of the Proposed Order approving this Motion, and the MedMal Trusts' POCs will be deemed fully and finally resolved, satisfied, and expunged.

4. Before any hearing on this Motion is held, the MedMal Trust Monitor will provide the holders of the Unliquidated MedMal Claims one final opportunity to come forward and assert their rights to the MedMal Trusts. The relief in the Motion is sought on thirty (30) day notice and during that time, as soon as practicable after filing the Motion, the MedMal Trust Monitor will mail the attached Mail Notice to last known addresses of the holders of the Unliquidated MedMal Claims and publish the attached Publication Notice in the following newspapers: (i) the Staten Island Advance; (ii) the New York Times; (iii) the New York Law Journal; (iv) the New York Post; and (v) USA Today. Moreover, the SV1 and SV2 Debtors' claims agent will publish this Motion and the Publication Notice on the SV1 and SV2 case websites. This additional time and these notice procedures provide the holders of the Unliquidated MedMal Claims with more than ample time to assert their claims before the MedMal Trusts are wound down. In total, the holders of Unliquidated Med Mal Claims will have had at least thirteen (13) years to come forth to liquidate or settle their claims and have failed to do so. The administration of the MedMal Trusts should no longer be prolonged, and the MedMal Trustee should be discharged from its responsibilities.

5. Entry of the Proposed Order and the release of the MedMal Trust Amounts to the Liquidating Trustee will allow the MedMal Trust Monitor and other interested parties the ability to begin to wind down the SV1 Cases. A final decree will be sought by separate motion for the SV1 Cases.

6. The relief requested herein is within the Court's jurisdiction to enforce and interpret its own confirmation orders and is in the interest of judicial economy. No parties will be prejudiced by the relief requested herein, as they will have had ample time to assert their rights prior to the hearing on the Motion and entry of the Proposed Order. Moreover, if the relief is granted, the SV2 General Unsecured Creditors will receive an additional recovery of approximately

\$24,280,234.41, which the SV2 General Unsecured Creditors are entitled to receive with no further delay.

JURISDICTION AND VENUE

7. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter under 28 U.S.C. § 1334. This Court retains jurisdiction to enforce its own confirmation order. *In re Chateaugay Corp.*, 213 B.R. 633, 638 (Bankr. S.D.N.Y. 1997); *In re Cont’l Airlines, Inc.*, 236 B.R. 318, 325 (Bankr. D. Del. 1999) (“It is axiomatic that a court possesses the inherent authority to enforce its own orders.”); *see also* SV2 Confirmation Order (defined below), ¶ 15 (“Unless otherwise provided in the Plan or in this Confirmation Order, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, or related to the Chapter 11 Cases.”); SV2 Plan § 21 (as defined below). This matter is a core proceeding under 28 U.S.C. § 157(b).

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

9. The bases for the relief requested include sections 1142, 1143, and 105 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 3020(d) and 3021 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

I. General Procedural Background of the SV1 Cases

10. On July 5, 2005 (the “SV1 Petition Date”), SVCMC and its debtor affiliates commenced the above-captioned chapter 11 cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “SV1 Cases”). SVCMC was a nonprofit corporation organized under the Non-for-Profit Corporation Law of the State of New York. SVCMC was a

comprehensive healthcare system, with several hospitals located throughout New York City and Westchester County, New York.

11. On June 5, 2007, the SV1 Debtors filed: (i) the *First Amended Chapter 11 Plan of Reorganization for First Amended Chapter 11 Plan of Reorganization for Saint Vincent's Catholic Medical Centers of New York D/B/A Saint Vincent Catholic Medical Centers, and Chapter 11 Plans of Liquidation for Medical Service of St. Vincent's Hospital and Medical Center, P.C., Surgical Service of St. Vincent's, P.C., CMC Cardiology Services P.C., CMC Physician Services P.C., and CMC Radiological Services P.C.* [Doc. No. 3207] (the "SV1 Plan"), and (ii) the *Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for First Amended Chapter 11 Plan of Reorganization for Saint Vincent's Catholic Medical Centers of New York D/B/A Saint Vincent Catholic Medical Centers, and Chapter 11 Plans of Liquidation for Medical Service of St. Vincent's Hospital and Medical Center, P.C., Surgical Service of St. Vincent's, P.C., CMC Cardiology Services P.C., CMC Physician Services P.C., and CMC Radiological Services P.C.* [Doc. No. 3207] (the "SV1 Disclosure Statement").¹⁰

12. On June 5, 2007, the Court entered the *Order (I) Approving the Disclosure Statement, (II) Fixing a Record Date, (III) Approving Solicitation Packages and Procedures for Distribution Thereof, (IV) Approving Forms of Ballots and Establishing Procedures for Voting on Debtors' First Amended Plans of Reorganization and Liquidation, and (V) Scheduling a Hearing and Establishing Notice and Objection Procedures in Respect of Confirmation of Debtors' First Amended Plans of Reorganization and Liquidation* [Doc. No. 3205].

¹⁰ Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the SV1 Plan or the SV2 Plan (as defined below), as applicable.

13. On July 27, 2007 (the “SV1 Confirmation Date”), the Court issued its *Findings of Fact and Conclusions of Law in Connection with the Chapter 11 Plan* [Doc. No. 3489] and entered the *Order Confirming Debtors’ First Amended Chapter 11 Plans of Reorganization and Liquidation, Dated June 5, 2007* [Doc. No. 3490] (the “SV1 Confirmation Order”).

14. On August 30, 2007 (the “SV1 Effective Date”), the SV1 Plan went effective by its terms. *See* Doc. No. 3638 (*Notice of Occurrence of Effective Date of Debtors’ First Amended Plans of Reorganization and Liquidation*).

II. SV1 Case Background Specific to the MedMal Claims

A. Events Occurring Before the SV1 Confirmation Date

15. As of the SV1 Petition Date, one or more of the SV1 Debtors’ hospitals were named as defendants in approximately 700 lawsuits based on claims of alleged medical malpractice, and other incidents and circumstances that could give rise to litigation (i.e., the “MedMal Claims”).¹¹

16. On January 26, 2006, the Court entered the *Order Pursuant to Bankruptcy Rule 3003(c)(3) Establishing the Deadline for Filing Certain Proofs of Claim and Approving the Form and Manner of Notice Thereof* [Doc. No. 1037] (the “Bar Date Order”). Pursuant to the Bar Date Order, the Court established March 30, 2006 at 4:00 p.m. (ET) as the bar date (the “SV1 Bar Date”). The Bar Date Order applied to holders of the MedMal Claims. Written notice of the Bar Date was mailed to all creditors listed on the SV1 Debtors’ schedules and published in among

¹¹ As noted above, “MedMal Claim” “means any prepetition Claim relating to medical malpractice (i) asserted or which can be asserted against SVC MC and/or SVC MC’s insurers on account of or related to SVC MC’s purported liability for an alleged act of medical malpractice or (ii) asserted or which can be asserted against any Covered Person with respect to or related to claims of alleged medical malpractice, in each case net of the proceeds of SVC MC’s third party insurance available to pay the holder of such Claim.” *See* SV1 Plan, p. 16.

others, the *New York Times* (National Edition) and the largest local papers in Brooklyn, Queens, Staten Island, the Bronx, and Westchester.¹²

17. On April 23, 2006, a group of ten (10) law firms representing holders of alleged MedMal Claims filed a motion seeking appointment of an official committee to represent the interests of MedMal Claimants. *See* Doc. No. 1402. The Court granted the motion and directed the United States Trustee to appoint a tort committee. *See* Doc. No. 1454. On May 17, 2006, the United States Trustee appointed a five-member committee (the “Tort Claimants’ Committee”) pursuant to sections 1102(a) and (b) of the Bankruptcy Code.

18. By order dated July 25, 2006 [Doc. No. 1946] (the “Tort Committee Retention Order”), the Tort Claimants’ Committee was given the following limited responsibilities:

- Investigate, monitor, negotiate and assist in resolving MedMal Claims;
- Investigate, monitor, negotiate and assist in resolving requests by holders of MedMal Claims for relief from the automatic stay;
- Investigate, monitor, negotiate and assist the holders of MedMal Claims with respect to the SV1 Debtors’ various insurance policies;
- Investigate, monitor, negotiate and assist holders of MedMal Claims with respect to procedures for pooling of insurance proceeds and the treatment of the SV1 Debtors’ current or former employees in the context of commencing or continuing a proceeding related to a MedMal Claim;
- Monitor the disposition of otherwise unencumbered assets of the SV1 Debtors’ estates which might be available for distribution to holders of MedMal Claims;
- Communicate with holders of MedMal Claims regarding the cases generally or the treatment of MedMal Claims; and
- Participate in the formation of any plan of reorganization or liquidation, but only to the extent of (a) reviewing and negotiating the classification of MedMal Claims in such plan; (b) reviewing whether a plan that separately classifies the holders of MedMal Claims discriminates unfairly or is fair and equitable with respect to such a class; and (c) advising

¹² An Affidavit of Service was filed with the Court at Docket Number 1171. Certifications of Publication of the notice of the Bar Date were filed with the Court at Docket Numbers 1280, 1279, 1270, and 1271.

holders of MedMal Claims of the Tort Claimants' Committee's determination as to such a plan.

B. Treatment of the MedMal Claims in the SV1 Plan

19. The SV1 Plan contemplated the payment in full of all timely filed "Allowed" proofs of claim asserting medical malpractice liability for which SVCMC was liable either directly or vicariously based on medical malpractice committed by its employees or other healthcare professionals, when the particular MedMal Claim became "Allowed." *See* SV1 Plan, §§ 4.8(b), 4.9(b), and 4.10(b). Under the SV1 Plan, a MedMal Claim becomes an "Allowed Claim" only "after the MedMal Claim has been determined by Final Order of a court of competent jurisdiction or by settlement." SV1 Plan, § 1.10.

20. Pursuant to the SV1 Plan, Reorganized SVCMC was to create and maintain three separate trusts (the "MedMal Trusts") to cover its estimated liability for the MedMal Claims. *See* SV1 Plan, § 6.6. If a holder of a timely filed MedMal Claim liquidated his or her claim under terms of the SV1 Plan and could not recover from insurance, such claims would be satisfied from the applicable MedMal Trusts.

21. The MedMal Trusts correspond to the three (3) regions in which SVCMC operated prior to the SV1 Petition Date: Manhattan/Westchester (the "MedMal-MW Trust"), Brooklyn/Queens (the "MedMal-BQ Trust"), and Staten Island (the "MedMal-SI Trust"). Copies of each of the trust agreements (as thereafter amended from time to time, the "Trust Agreements") for the MedMal Trusts were attached to the supplement to the SV1 Plan. Doc. No. 3350 (Ex. Nos. 3(A)–(C)) (the "SV 1 Plan Supplement"). To secure the SV1 Debtors' funding obligations for the MedMal Trusts, SVCMC granted to the MedMal Trusts: (i) a second priority mortgage and security interest on Staff House and (ii) a second priority mortgage and security interest on the Westchester Real Property.

22. The SV1 Plan provided that the automatic stay under section 362 of the Bankruptcy Code and the injunctions set forth in the SV1 Plan would not apply after the SV1 Effective Date “to acts by holders of timely filed Claims alleging medical malpractice to seek payment from the Debtors’ insurance companies for or to liquidate the amount of such Claims against the Debtors.” SV1 Plan, § 11.6(c). Despite this relief from the automatic stay, the Plan provided that holders of MedMal Claims could only be paid for those claims from the MedMal Trusts or insurance, as applicable. *Id.*

23. Moreover, the SV1 Plan contemplated appointment of “[o]ne or more MedMal Trust Monitors” to monitor the operations of the MedMal Trusts. *See* SV1 Disclosure Statement, p. 5; SV1 Plan § 6.6(g). The responsibilities of the MedMal Trust Monitor include: (i) monitoring the contributions from Reorganized SVCMC, (ii) being available to answer questions from holders of MedMal Claims, (iii) enforcing the payment obligations of Reorganized SVCMC to the MedMal Trusts, (iv) enforcing the MedMal Lien, (v) overseeing the refinancing or other disposition of the MedMal Collateral, (vi) enforcing the cap on the MedMal Defense Costs, and (vii) performing other duties as set forth in the SV1 Plan. SV1 Disclosure Statement, p. 5; SV1 Plan § 1.104.

24. After consultation with SVCMC, the Tort Claimants’ Committee appointed Michael E. Katzenstein as the MedMal Trust Monitor pursuant to each of the Trust Agreements. Cooley Godward Kronish LLP (“Cooley”), formerly counsel to the Tort Committee, was retained as counsel to the MedMal Trust Monitor under section 6.6(g)(ii) of the SV1 Plan and the Trust Agreements. Haynes and Boone, LLP succeeded Cooley as counsel to the MedMal Trust Monitor.

25. The SV1 Plan also contemplated appointment of the MedMal Trustee to administer and manage the MedMal Trusts. *See* SV1 Plan, §§ 6.6(e), (f). As required by the Plan, and in

consultation with the Tort Claimants' Committee, Christiana Bank & Trust Company was appointed as the MedMal Trustee for all of the MedMal Trusts pursuant to the Trust Agreements. Christiana Bank & Trust Company was acquired by Wilmington Savings Fund Society, FSB, which became the successor MedMal Trustee for the MedMal Trusts.

C. Efforts of the MedMal Trust Monitor before the SV2 Cases

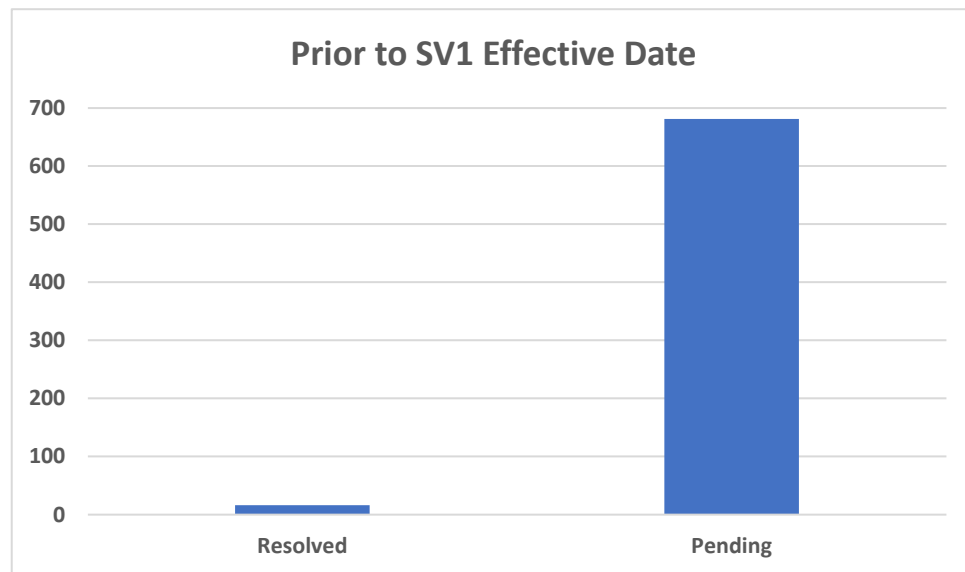
26. The SV1 Plan permitted the MedMal Trust Monitor and the MedMal Trustee to make distributions from the MedMal Trusts “to holders of Allowed MedMal Claims in accordance with Sections 4.8, 4.9, and 4.10 of the [SV1] Plan.” SV1 Plan, § 6.6(t)(i). Accordingly, if a MedMal Claim is not an Allowed Claim, *i.e.*, has not been reduced to Final Order or settlement (*see* SV1 Plan § 1.10), the MedMal Trust Monitor is not permitted to make a distribution to such holders.

27. The efforts of the MedMal Trust Monitor and SVCMC to resolve the MedMal Claims are described in detail in the attached Taub Declaration. Mr. Taub is SVCMC's current Malpractice Counsel and worked with the MedMal Trust Monitor to resolve the MedMal Claims.

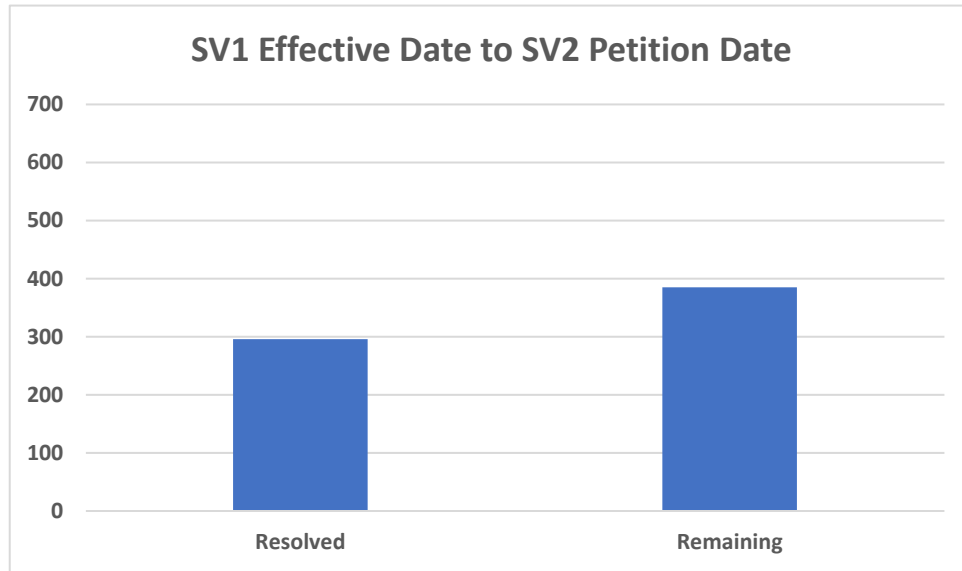
28. Initially, to contact the claimants to resolve the MedMal Claims, the MedMal Trust Monitor, through his counsel, sent letters to the holders of MedMal Claims or counsel for holders of MedMal Claims inviting them to make a settlement demand. *See* Taub Declaration, ¶ 16. The MedMal Trust Monitor sent these letters approximately twice year. *Id.* Once a settlement demand was received, the MedMal Trust Monitor would work with SVCMC to review the demand and respond with a reasonable counter-offer, which was subject to approval by the MedMal Trust Monitor. *Id.* at ¶¶ 17–18. Once a settlement was approved, SVCMC prepared a direction letter, subject to review by the MedMal Trust Monitor, to send to the MedMal Trustee. *Id.* at ¶ 18. Upon

receipt of the direction letter, the MedMal Trustee would send the settlement payment from the applicable MedMal Trust to the holder of the MedMal Claim. *Id.*

29. As noted above, there were 697 MedMal Claims asserted against the SVC MC Debtors in the SV1 Cases. During the SV1 Cases and up to the SV1 Effective Date, through the efforts of the MedMal Trust Monitor, his counsel, and SVC MC, approximately sixteen (16) of the 697 MedMal Claims were resolved, settled and/or closed, leaving 681 claims to be resolved post-emergence from the SV1 Cases. *Id.* at ¶ 24. A chart illustrating the same is below:



30. After the SV1 Effective Date and prior to the SV2 Petition Date, through the efforts of the MedMal Trust Monitor, his counsel, and SVC MC, an additional approximately 296 of the 697 MedMal Claims were resolved, settled and/or closed. *Id.* at ¶ 25. Therefore, as of the SV2 Petition Date there were 385 MedMal Claims left to be addressed. A chart illustrating the same is below:



31. By 2010, prior to the commencement of the SV2 Cases, approximately \$98.4 million was distributed in association with these resolved cases. *Id.*

III. General Procedural Background of the SV2 Bankruptcy Cases

32. On April 14, 2010 (the “SV2 Petition Date”), the SV2 Debtors commenced the cases styled and numbered, *In re Saint Vincent’s Catholic Medical Centers of New York, et al.*, Case No. 10-11963 (CGM) (the “SV2 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Prior to the SV2 Petition Date, the SV2 Debtors (formerly the SV1 Debtors) faced a severe cash liquidity crisis in late 2009. *See* Doc. No. 18, ¶ 7 (Toney First Day Decl.). Despite out-of-court restructuring efforts, SVCMC’s board of directors voted to close the hospital. *Id.* at ¶ 9. Under New York State law, closure of a hospital requires obtaining approval from the Department of Health of a plan of closure. The purpose of the SV2 Cases was to implement the plan of closure, sell the SV2 Debtors’ non-hospital healthcare business, and complete an orderly wind-down of the SV2 Debtors’ business. *Id.* at ¶ 11.

33. On April 21, 2010, the United States Trustee appointed the Official Committee of Unsecured Creditors for the SV2 Cases (the “SV2 UCC”). See Doc. No. 106 (Notice of Appointment of SV2 UCC). The United States Trustee named the MedMal Trust Monitor as one of the members of the SV2 UCC. See *id.*, p. 2. The MedMal Trust Monitor is one of the largest creditors in the SV2 Cases.

34. In connection with the SV2 Cases, on October 7, 2010, the MedMal Trust Monitor filed a proof of claim for secured and unsecured amounts. See SV2 Claim Nos. 2822 & 3090 (the “MedMal Trusts’ POCs”). In the MedMal Trusts’ POCs, the MedMal Trust Monitor asserted a claim of no less than \$120,511,853.91 based on the projected funding of the MedMal Trusts that was required under the SV1 Plan. The secured portions of the MedMal Trusts’ POCs were satisfied upon the SV2 Effective Date (as defined below). The remainder of the MedMal Trusts’ claims were for the unsecured deficiency claims in the allowed amount of \$113,080,000.00. See SV2 Claim No. 3128 (the “MedMal Unsecured Claim” and together with the MedMal Trusts’ POCs, the “MedMal POCs”).

35. On May 18, 2012, the SV2 Debtors filed: (i) the *Debtors’ Amended Joint Chapter 11 Plan* [Doc. Nos. 2848, 3035] (as amended, the “SV2 Plan”), and (ii) the *Disclosure Statement for the Amended Joint Plan of Saint Vincent’s Catholic Medical Centers of New York and Certain of its Affiliates Under Chapter 11 of the Bankruptcy Code* [Doc. No. 2920] (the “SV2 Disclosure Statement”). On May 21, 2012, the Court entered the *Order (I) Approving the Disclosure Statement, (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Debtors’ Joint Chapter 11 Plan, (III) Scheduling a Hearing on Confirmation of the Plan, (IV) Approving Procedures for Notice of the Confirmation Hearing and for Filing Objections to Confirmation of the Plan, and (V) Granting Related Relief* [Doc. No. 2923].

36. On June 13, 2012, the SV2 Debtors filed the *Second Notice of Filing of Plan Supplements to the Debtors' Amended Joint Chapter 11 Plan* [Doc. No. 3010] (the “SV2 Plan Supplement”). As explained below, the SV2 Plan Supplement included modifications to the Trust Agreements.

37. On June 29, 2012 (the “SV2 Confirmation Date”), the Court entered the *Order Confirming Debtors' Second Amended Joint Chapter 11 Plan* [Doc. No. 3060] (the “SV2 Confirmation Order”). Under the terms of the SV2 Plan, the SV2 UCC dissolved as of the SV2 Effective Date (as defined below), and the SV2 Plan appointed the Post-Effective Date Committee (as defined in the SV2 Plan) (the “SV2 Post-Effective Date Committee”). SV2 Plan, § 5.8. The MedMal Trust Monitor is one of the members of the SV2 Post-Effective Date Committee. SV2 Plan Supplement, Doc. No. 3010.

38. On June 29, 2012 (the “SV2 Effective Date”), the SV2 Plan was substantially consummated, and the effective date occurred by its terms. *See* Doc. No. 3069 (*Notice of Effective Date of the Debtors' Second Amended Joint Chapter 11 Plan*). Upon the SV2 Effective Date, Eugene I. Davis was appointed as the Liquidating Trustee (as defined in the SV2 Plan). *See* SV2 Plan, § 5.7(a); SV2 Plan Supplement, p. 40. The duties of the Liquidating Trustee include, among others, “administering the Liquidating Trust, maintaining the Liquidating Trust Reserves, liquidating the Liquidating Trust Assets and making distributions under the Plan.” SV2 Plan, § 5.7(b).

IV. SV2 Case Background Specific to the MedMal Claims

39. As of the SV2 Petition Date, 385 MedMal Claims remained unresolved. The filing of the SV2 Cases automatically stayed all of the litigation underlying the MedMal Claims. At that

time, the MedMal Trusts held approximately \$13 million. *See* SV2 Disclosure Statement, p. 58 of 138.

A. Claims Resolved During the SV2 Cases

40. During the pendency of the SV2 Cases, the MedMal Trust Monitor and SVCMC worked to resolve the MedMal Claims, as contemplated in the SV2 Plan. *See* Taub Declaration, ¶ 26. Consistent with the settlement attempts after the SV1 Cases, and as described in the Taub Declaration, the MedMal Trust Monitor continued the letter campaign to obtain settlement demands from holders of MedMal Claims. *Id.* The responses to the letters had decreased, compared to the earlier years. *Id.* Accordingly, SVCMC and the MedMal Trust Monitor began renewed targeted efforts to contact holders of the largest purported MedMal Claims in order to execute on an organized strategy to settle or liquidate MedMal Claims. *Id.*

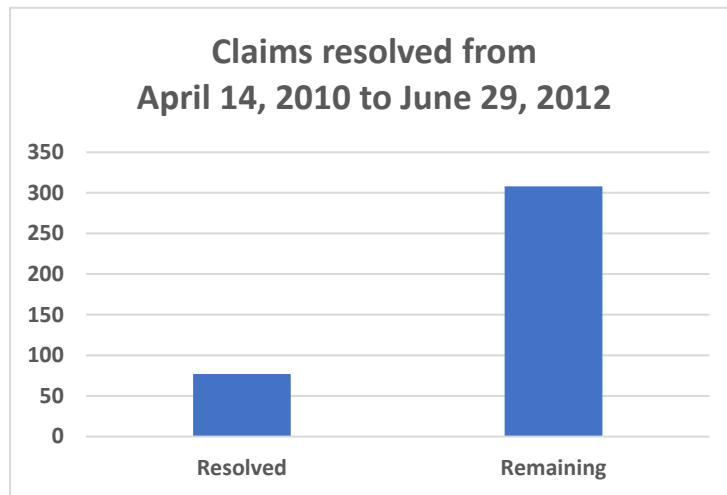
41. These renewed efforts included shifting focus to resolve the MedMal Claims that had the largest indemnity reserves. *Id.* at ¶ 27. For each active case, SVCMC assigned the underlying MedMal Claim an indemnity reserve amount. *Id.* The indemnity reserve is an estimated maximum settlement amount taking into account medical and legal review by a team of physicians and lawyers. *Id.* As such, SVCMC would set aside the funds to pay that claim in an indemnity reserve. *Id.* The amount of the indemnity reserve would fluctuate during the life of a case, such as after depositions, expert reviews, physical examinations, and the like. *Id.* SVCMC would make the adjustments accordingly. *Id.*

42. On or around June 2011, SVCMC became aware that some of the letters from the letter campaign were not reaching holders of MedMal Claims or the attorneys for the holders of the MedMal Claims. *Id.* at ¶ 28. Accordingly, the MedMal Trust Monitor coordinated with SVCMC to locate new addresses for the individual claimants and/or their counsel. *Id.* The

MedMal Trust Monitor and SVCMC searched for claimants through the Social Security Administration, publications, and social media to determine whether they were still living. When family members of deceased claimants were located, the MedMal Trust Monitor and/or SVCMC would negotiate with the administrator or executor of the claimant's estate. *Id.*

43. During the pendency of the SV2 Cases, the SV2 Debtors opposed various of the stay relief requests that were filed by holders of MedMal Claims. Ultimately, the SV2 Debtors stipulated that the stay relief was appropriate if the request was limited to recovery from third-party insurance and/or the MedMal Trusts. If a claim was self-insured, the stay was modified only to implement a settlement agreement to permit collection on the claim. Thus, consistent with the SV1 Plan, to recover on a claim, holders of MedMal Claims had an obligation to liquidate their claims so that they could be treated through insurance and/or the MedMal Trusts.

44. From around 2010 to 2012, the MedMal Trust Monitor, his counsel and SVCMC resolved approximately seventy-seven (77) additional MedMal Claims, some of which were settled within insurance policy limits without payment from the MedMal Trusts and others with direct cash recoveries from the MedMal Trusts. *Id.* at ¶ 29. Therefore, as of the SV2 Effective Date, 308 of the 697 MedMal Claims remained unresolved. A chart illustrating the same is below.



45. By 2012, an additional approximately \$23 million was distributed to holders of resolved MedMal Claims. *Id.* From the SV2 Petition Date to the SV2 Confirmation Date, the MedMal Trusts received distributions of approximately \$28 million. *See* SV2 Disclosure Statement, p. 58.

B. Events After the SV2 Effective Date

46. The MedMal Trust Monitor, in coordination with the SV2 Debtors, continued to resolve the MedMal Claims pursuant to the SV2 Plan on a post-effective date basis. Under the SV2 Plan, the MedMal Trust Monitor had the specific “sole and exclusive authority to reconcile and resolve the SV1 MedMal Claims in accordance with the SV1 Plan, the Amended MedMal Trust Agreements, and the MedMal Trusts Settlement Agreement.” *See* SV2 Plan, § 8.6. Stated differently, the MedMal Trust Monitor could only resolve MedMal Claims that were Allowed Claims, which required a determination by Final Order or settlement. *See* SV1 Plan, § 1.10.

47. The continuance of the resolution of the claims was contingent upon entry into amendments to each of the Trust Agreements, which were filed with the SV2 Plan Supplement (the “Trust Modifications”). *See* SV2 Plan Supplement, pp. 43–94. Pursuant to the Trust Modifications, relevant to this Motion, after resolution of the remaining MedMal Claims, any residual funds in the MedMal Trusts would revert to SVC MC and be made available to general unsecured creditors of the SV2 Debtors’ estate. *See* SV2 Disclosure Statement, pp. 58–59. Specifically (and using the MedMal-BQ Trust as an example), the Trust Modifications each state that:

The final sentence of Section 5.5(b) is deleted in its entirety and the following is inserted in lieu thereof:

In the event there are no remaining MedMal Trusts other than the MedMal-BQ Trust, or if the MedMal-BQ Trustee determines that the funds in each remaining MedMal Trust exceed 125% of all then remaining MedMal Claims subject to each such MedMal Trust plus (i)

the estimated MedMal Defense Costs for such claims at such time, and (ii) all reasonably anticipated taxes, administrative expenses and fees and winddown costs for such MedMal Trust, ***then any excess funds in the MedMal- BQ Trust shall be remitted to the Liquidating Trustee*** (as defined in that certain Amended Joint Chapter 11 Plan filed by Reorganized SVCMC on May 14, 2012).

SV2 Plan Supplement, pp. 48, 65, 82 (emphasis added).

48. On August 30, 2021, the MedMal Trusts dissolved pursuant to the terms of the Trust Agreements. *See* SV1 Plan Supplement, pp. 76, 124, 172 (Section 11.1 – Termination). Upon dissolution of the Trust Agreements, distributions are to be made pursuant to Section 5.5, which is set forth above. *Id.* The relief requested in this Motion is consistent with Section 5.5 to distribute the residual funds in the MedMal Trusts.

C. Claims Resolved After the SV2 Cases

49. After the SV2 Effective Date, pursuant to the SV2 Plan, all of the litigation for the MedMal Claims remained stayed. Accordingly, the MedMal Trust Monitor could only close cases within the confines of the SV2 Plan, which required a settlement for payment from the MedMal Trusts or a stipulation to recover from insurance only.

50. The MedMal Trust Monitor, with the assistance of SVCMC, continued efforts to settle the MedMal Claims through the letter campaign and targeting the largest reserved claims. Taub Declaration, at ¶ 31. The MedMal Trust Monitor and SVCMC resolved some of the claims by stipulations to lift the stay to allow recovery against insurance proceeds. *Id.* Thirty (30) MedMal Claims were closed between 2012 and 2018, by obtaining stipulations limiting recovery to commercial insurance. *Id.*

51. Around 2013, the MedMal Trust Monitor discontinued the letter campaign, but continued its effort on the claims with the larger SVCMC indemnity reserves. *Id.* at ¶ 32. By

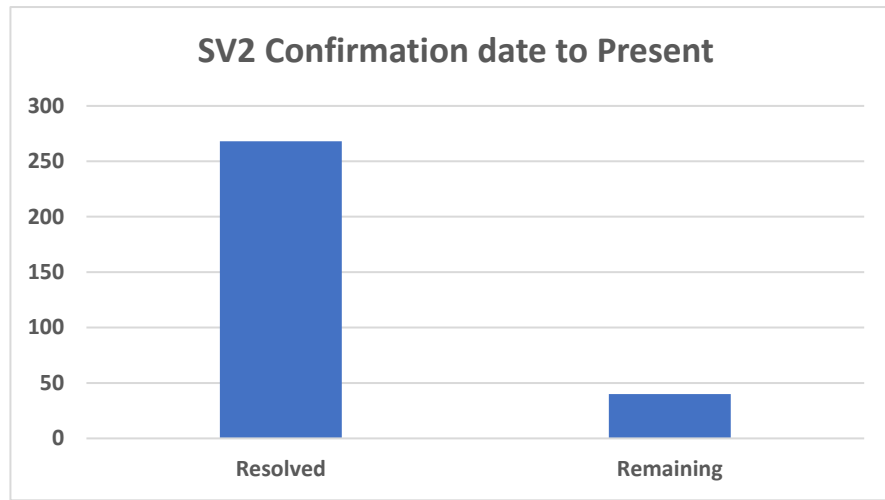
2019, all MedMal Claims with indemnity reserves were resolved or were in the process of being closed and paid. *Id.*

52. As the number of outstanding MedMal Claims was reduced, it became more difficult to resolve the remaining claims due to an inability to locate the remaining claimants or their counsel. *Id.* at ¶ 33. In some instances, the MedMal Trust Monitor and SVCMC hired private investigators to assist in locating claimants. *Id.* Many of the claimants located this way were *pro se*, and the MedMal Trust Monitor and SVCMC negotiated directly with these claimants. From the SV2 Confirmation Date in June 2012 to 2016, the MedMal Trust Monitor resolved an additional 192 claims. *Id.*

53. Around 2016, the MedMal Trust Monitor began to focus on resolving the cases in which neither the claimant nor their counsel could be located. *Id.* at ¶ 34. For pending cases in this category, SVCMC worked with the MedMal Trust Monitor to close these pending cases by filing motions to dismiss for failure to prosecute in the applicable state courts. *Id.* Approximately, ten (10) MedMal Claims were dismissed based upon state court orders. *Id.*

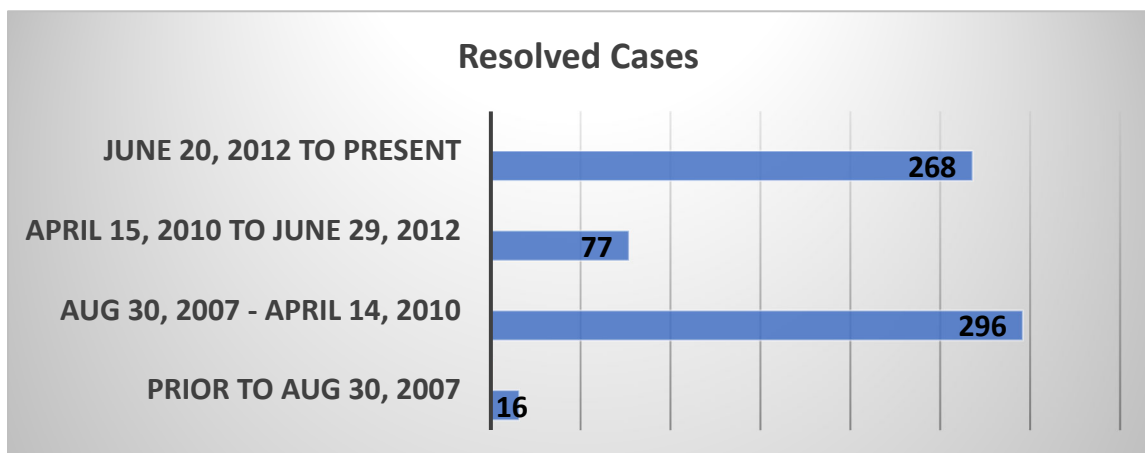
54. From 2017 through 2020, SVCMC and the MedMal Trust Monitor worked to resolve an additional seventy-six (76) MedMal Claims. *Id.* at ¶ 35. Of these claims: (i) thirty-four (34) were settled, (ii) one was a defense verdict case in favor of SVCMC, (iii) thirty-seven (37) were dismissed or discontinued, and (iv) four (4) stipulated to commercial coverage. *Id.*

55. As illustrated in the chart below, after the SV2 Cases, an additional 268 of the 697 MedMal Claims were resolved, and 40 MedMal Claims remained pending:



V. Current Status of the MedMal Claims and the MedMal Trusts

56. The MedMal Claims. Of the holders of the 697 MedMal Claims that were permitted to pursue litigation to liquidate their claims under the terms of the SV1 Plan, the SV2 Plan, and the Trust Agreements, 657 of the claims are fully resolved. A chart reviewing the resolved MedMal Claims by year is attached hereto as Exhibit 2, and a summary bar graph is below for illustrative purposes:



57. Holders of forty (40) of the MedMal Claims have failed to liquidate their claims to become “Allowed Claims,” as defined in the SV1 Plan (collectively, the “Unliquidated MedMal Claims”). Taub Declaration, at ¶ 37. For each of the Unliquidated MedMal Claims, either (i) no suit has been filed, (ii) there is no record of the litigation, or (iii) the statute of limitations has expired for the MedMal Claim holder to act. *Id.* The Unliquidated MedMal Claims are also the subject of this Motion. A chart detailing each of the Unliquidated MedMal Claims is attached hereto as **Exhibit 3**.

58. The MedMal Trusts. As of the date of this Motion, the MedMal Trusts have dissolved pursuant to the terms of the MedMal Trust Agreements, but distributions must be made in accordance with such terms. *See supra* ¶ 47. As of November 30, 2021, the amounts remaining in the MedMal Trusts are as follows (the “Residual MedMal Trust Amounts”):

<u>Trust</u>	<u>Amount</u>
MedMal-MW Trust	\$1,019,488.04
MedMal-BQ Trust	\$22,821,575.29
MedMal-SI Trust	\$439,171.08
Total	\$24,280,234.41

59. To illustrate how the funds in the MedMal Trusts have been historically utilized, the MedMal Trust Monitor prepared the below summary detailing the historical cash flow from August 2009 to November 2021 for each of the MedMal Trusts. These cash flow summaries are illustrative only.

MedMal-SI Trust

<u>Bank Balance - April 1, 2010</u>	<u>\$ 4,907,934.00</u>
<u>Cash Inflow</u>	
Deposits from SVCMC directly	\$ -
Deposits from Liquidating Trustee of SVCMC (Eugene Davis)	\$ -
Deposits from Litigation Trustee	\$ -

Inter-trust Transfers	\$ -
Investment Income	\$ 381,484.82
Third Party Contributions (insurance, indemnity, etc.)	\$ -
Other (stop payment, canceled checks, reimbursements, misc.)	\$ 358,053.67
Market Adjustments	\$ 31,695.30
Total Inflows to Trust	\$ 771,233.79
Cash Expenditures	
Settlement Payments to Tort Claimants	\$ (4,870,154.46)
Payments of Professional Fees: MedMal Trust Monitor & Trustee	\$ -
Payments to SVC MC	\$ (20,000.00)
Outflows from Trust to MedMal Trust Monitor	\$ -
Outflows from Trust to MedMal Trustee (Christiana Bank)	\$ (117,031.89)
Bank fees, expenses, taxes or other	\$ (89,419.33)
Market Adjustments	\$ (143,391.03)
Total Outflows from Trust	\$ (5,239,996.71)
Bank Balance - November 30, 2021	\$ 439,171.08

MedMal-MW Trust

Bank Balance - April 1, 2010	\$ 7,594,871.00
Cash Inflow	
Deposits from SVC MC directly	\$ 19,586.37
Deposits from Liquidating Trustee of SVC MC (Eugene Davis)	\$ 1,214,922.95
Deposits from Litigation Trustee	\$ -
Inter-trust Transfers	\$ 1,429,481.32
Investment Income	\$ 636,517.43
Third Party Contributions (insurance, indemnity, etc.)	\$ 5,816,641.52
Other (stop payment, canceled checks, reimbursements, misc.)	\$ 417,530.57
Market Adjustments/Capital Gains	\$ 28,084.03
Total Inflows to Trust	\$ 9,562,764.19
Cash Expenditures	
Settlement Payments to Tort Claimants	\$ (14,756,138.22)
Payments of Professional Fees: MedMal Trust Monitor & Trustee	\$ (604,003.52)
Payments to SVC MC	\$ (26,000.00)
Outflows from Trust to MedMal Trust Monitor	\$ -
Outflows from Trust to MedMal Trustee	\$ (150,139.29)
Bank fees, expenses, taxes or other	\$ (235,466.45)
Insurance Renewal Fee	\$ (115,035.67)
Inter-trust Transfer	\$ (103,911.31)
Mediator Fees	\$ (497.39)

Market Adjustments	\$ (146,955.30)
Total Outflows from Trust	\$ (16,138,147.15)
<u>Bank Balance - November 30, 2021</u>	<u>\$ 1,019,488.04</u>

MedMal-BQ Trust

<u>Bank Balance - April 1, 2010</u>	<u>\$ 698,394.00</u>
<u>Cash Inflow</u>	
Deposits from SVC MC directly	\$ -
Deposits from Liquidating Trustee of SVC MC (Eugene Davis)	\$ 32,765,035.02
Deposits from Litigation Trustee	\$ 789,285.54
Inter-trust Transfers	\$ 10,982,188.89
Investment Income	\$ 2,707,336.44
Third Party Contributions (insurance, indemnity, etc.)	\$ -
Other (stop payment, canceled checks, reimbursements, misc.)	\$ 214,756.45
Market Adjustments/Capital Gains	\$ 709,615.96
Total Inflows to Trust	\$ 48,168,218.30
<u>Cash Expenditures</u>	
Settlement Payments to Tort Claimants	\$ (15,883,793.83)
Payments of Professional Fees: MedMal Trust Monitor & Trustee	\$ (7,073,607.13)
Payments to SVC MC	\$ (264,000.00)
Outflows from Trust to MedMal Trust Monitor	\$ -
Outflows from Trust to MedMal Trustee	\$ (475,850.21)
Bank fees, expenses, taxes or other	\$ (136,021.83)
Insurance Renewal Fee	\$ (480,491.39)
Inter-trust Transfer	\$ (1,020,398.75)
Market Adjustments	\$ (710,873.87)
Total Outflows from Trust	\$ (26,045,037.01)
<u>Bank Balance - November 30, 2021</u>	<u>\$ 22,821,575.29</u>

RELIEF REQUESTED

60. Pursuant to this Motion, the MedMal Trust Monitor seeks entry of an order, substantially in the form attached hereto (the “Proposed Order”), (i) authorizing the MedMal Trust Monitor to discontinue reserving the MedMal Trusts for the Unliquidated MedMal Claims after expiration of the Notice Period (as defined below) and expunging the Unliquidated MedMal Claims; (ii) authorizing the MedMal Trust Monitor to direct the MedMal Trustee to (a) transfer

the Wind Down Reserve Amount to SVCMC; and (b) release the excess of the Residual MedMal Trust Amounts less the Wind Down Reserve Amount (the “Net MedMal Trust Amounts”) to the Liquidating Trustee for payment to the SV2 General Unsecured Creditors; (iii) dissolving and terminating the MedMal Trusts, as applicable, (iv) extending the SV2 Plan exculpation to the MedMal Trust Monitor, the MedMal Trustee, and the Liquidating Trustee and their professionals and advisors’ and (v) authorizing the MedMal Trust Monitor to take any all necessary or advisable ancillary and related actions, without further notice or order of this Court, that are required after the MedMal Trusts are dissolved, as determined by the MedMal Trust Monitor in consultation with SVCMC. Based on discussions with SVCMC, entry of the Proposed Order will ultimately aid in the wind down of the SV1 Cases and allow these cases—which have been pending for over fifteen (15) years—to finally close.

61. To implement the foregoing, contemporaneously with the filing of this Motion, the MedMal Trust Monitor will notify the holders of the Unliquidated MedMal Claims by publication notice and by mail notice (to the last known addresses of the holder of the Unliquidated MedMal Claim) of the relief requested in this Motion and how their claims will be affected. Forms of the publication notice (the “Publication Notice”) and mail notice (the “Mail Notice”) are attached hereto as **Exhibit 4** (collectively, the “Notice”). The Publication Notice will be published in the following newspapers: (i) the Staten Island Advance; (ii) the New York Times; (iii) the New York Law Journal; (iv) the New York Post; and (v) USA Today. Moreover, the deadline to object to this Motion is set 30 days from the date hereof, which provides ample time to holders of the Unliquidated MedMal Claims to prosecute a claim, if any, pursuant to the Objection Procedures¹³

¹³ Objection Procedures has the meaning given to such term as set forth in the cover notice filed contemporaneously with this Motion.

(the “Notice Period”). Moreover, the SV1 and SV2 Debtors’ claims agent will publish this Motion and the Notice on the SV1 and SV2 case websites. If the holders of the Unliquidated MedMal Claims fail to take any action to assert their claims during the Notice Period and pursuant to the Notice Objection Procedures, then the MedMal Trust Monitor respectfully requests that such claims are expunged to allow for dissolution of the MedMal Trusts and the wind down of the SV1 and SV2 Cases.

62. If the relief requested in this Motion is granted and a distribution of the balance of the MedMal Trusts (less the Wind Down Reserve Amount) is disbursed to the SV2 General Unsecured Creditors, the MedMal Trust Monitor projects an additional recovery to the SV2 General Unsecured Creditors of approximately five percent (5%), and that the recovery as of such distribution will be approximately eighteen percent (18%) of their claims to date. A chart reviewing the recovery is as follows:¹⁴

Unsecured Creditors Pool Analysis	
Total Current Allowed Unsecured Claims Pool	\$ 583,520,274.74
Withdrawal of MedMal Trust Unsecured Claim	\$(113,080,000.00)
Total Adjusted Allowed Unsecured Claims Pool	\$ 470,440,274.74
Residual MedMal Trust Amounts	\$ 24,280,234.41
Estimated Wind Down Reserve	\$ (500,000.00)
Turnover of Trust Assets to Unsecured Creditors	\$ 23,780,234.41
Recovery for Allowed Unsecured Creditors	5%
Distribution of Trust Assets to Unsecured Creditors	5%
Previous Distribution & Creditor Recovery	13%
Total Current Recovery (after Distribution of Trust Assets)	18%

¹⁴ The Total Allowed Unsecured Claims Pool excludes subordinated claims of \$55.5 million for 1199 SEIU and \$3.6 million for Local 803.

BASIS FOR RELIEF REQUESTED

I. The Residual MedMal Trust Amounts Should Not be Reserved for the Unliquidated MedMal Claims and the Unliquidated MedMal Claims Should be Disallowed and Expunged

A. After the Expiration of the Notice Period, the Residual MedMal Trust Amounts Should Not be Reserved for the Unliquidated MedMal Claims Because the Holders Failed to Liquidate Their Claims Within Five Years of Confirmation of the SV2 Plan

63. Section 1143 of the Bankruptcy Code provides:

If a plan requires presentment or surrender of a security or *the performance of any other act* as a condition to participation in distribution under the plan, such action shall be taken not later than five years after the date of the entry of the order of confirmation. An entity that has not within such time presented or surrendered such entity's security or taken any such other action that the plan requires may not participate in distribution under the Plan.

11 U.S.C. § 1143 (emphasis added). A claimant failing to take required actions under a plan within five years from the confirmation of the plan is no longer entitled to distributions and may not remedy its failure after the five-year mark. *See In re IBIS Corp.*, 272 B.R. 883, 887 (Bankr. E.D. Va. 2001) (“Section 1143 acts as a bar date to take certain actions,” and “[i]f the action is not taken within the five-year period, the creditor . . . is barred from participating in the distribution under the plan.”); *In re Payroll Express Corp.*, No. 92-42150, 2008 WL 5396609, at *3 (Bankr. S.D.N.Y. Nov. 24, 2008) (“If the plan requires the creditor to . . . render some performance as a condition to participating in a distribution, it must do so within five years of the confirmation order or forego its right to participate in any distribution under the plan.”); *In re TLI, Inc.*, 213 B.R. 946, 950 (N.D. Tex. 1997), *aff’d*, 159 F.3d 1355 (5th Cir. 1998) (per curiam) (“Sections 347(b) and 1143 together establish an outer limit of five years from entry of a plan confirmation order within which a creditor required to perform an act as a condition of participating in a plan distribution must accomplish the act or relinquish its right to participate.”).

64. Section 1143 of the Bankruptcy Code promotes ““finality, judicial economy and the avoidance of disruptive, wasteful litigation over funds which remain unclaimed five years after confirmation.”” *In re TLI, Inc.*, 213 B.R. at 950 (quoting *In re Goldblatt Bros., Inc.*, 132 B.R. 736, 738 (Bankr. N.D. Ill. 1991)). Applying section 1143 of the Bankruptcy Code here will permit the winddown of two bankruptcy cases that have been pending for over 15 years.¹⁵

65. The MedMal Trust Monitor recognizes that section 1143 of the Bankruptcy Code typically applies to preconditions to receive distributions under a plan such as surrendering a security, releasing a lien, or cancelling a class of securities. *See e.g.*, 8 Collier on Bankruptcy ¶ 1143.03 (16th ed. 2021). In connection with section 105 of the Bankruptcy Code, however, the Court has authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code. Thus, using the principals of section 1143 of the Bankruptcy Code that promote finality and judicial economy when a creditor is required to take action to receive a distribution and the Court’s authority under section 105 of the Bankruptcy Code to issue orders to carry out the Bankruptcy Code, this Court should find that the Residual MedMal Trust Amounts should not be reserved for the Unliquidated MedMal Claims.

66. Under the SV1 Plan and the SV2 Plan, holders of MedMal Claims are only entitled to distributions from the MedMal Trusts if they have an Allowed Claim. *See* SV1 Plan §§ 4.8(b),

¹⁵ Bankruptcy Code section 1143 is typically read in conjunction with Bankruptcy Code section 347(b). Bankruptcy Code section 347(b) provides:

Any security, money, or other property remaining unclaimed at the expiration of the time allowed in a case under chapter 9, 11, or 12 of this title for the presentation of a security or the performance of any other act as condition to participation in the distribution under any plan confirmed under section 943(b), 1129, 1173, or 1225 of this title . . . becomes property of the debtor or of the entity acquiring the assets of the debtor under the plan, as the case may be.

Here, however, certain of the holders of the MedMal Claims have failed to reduce their claim to Final Order or otherwise settle, and as such, those claims are not Allowed Claims (as defined in the SV1 Plan). If the MedMal Claims are not Allowed Claims, they are not entitled to a distribution from the MedMal Trusts under the SV2 Plan.

4.9(b), and 4.10(b); *see also* SV2 Plan § 8.6 (stating that the MedMal Trust Monitor could reconcile MedMal Claims under the terms of the SV1 Plan). Under the SV1 Plan, a MedMal Claim is Allowed if it has been reduced to a Final Order or is otherwise settled. *See* SV1 Plan, § 1.10. Thus, to receive a distribution from the MedMal Trusts, holders of the Unliquidated MedMal Claims are required to prosecute their claims to a Final Order or enter into a settlement. *Compare In re IBIS Corp.*, 272 B.R. at 889 (finding that resolving claims was not an act subject to section 1143 of the Bankruptcy Code when the plan did not include an express requirement to resolve claims prior to distribution).

67. Unlike the creditors in *IBIS*, the resolution of the MedMal Claims are within the control of the holders of the MedMal Claims because the SV1 Plan specifically required them to reduce their claims to a Final Order or otherwise settle before receiving a disbursement from the MedMal Trusts. Moreover, the time limit the MedMal Trust Monitor seeks to impose on such holders is not arbitrary, as the court suggested in *IBIS* when there were claims outside of the control of the creditors to satisfy. Here, the holders of the Unliquidated MedMal Claims have had over ten years to reduce their claims to Final Order or settle. The holders of the Unliquidated MedMal Claims have failed to do either. *See* Taub Declaration ¶ 37. Moreover, the overwhelming majority of holders of MedMal Claims have utilized the requirements of the SV1 Plan to receive a distribution and liquidated their claims.

68. Many of the outstanding Unliquidated MedMal Claims have passed the applicable statute of limitations and cannot be prosecuted. *Id.* at ¶ 37, 41. Moreover, none of these claims have any supporting documentation. Upon information and belief, certain of the holders of the Unliquidated MedMal Claims have otherwise chosen not to prosecute or settle their claims. Further, as described above the MedMal Trust Monitor has attempted to locate these holders but

has been unable to do so, and therefore this Motion is being served on the holders of the Unliquidated MedMal Claims at their last known addresses. The MedMal Trust Monitor is also providing the Notice by publication to the holders of the Unliquidated MedMal Claims and through the claims' agent websites for the SV1 and SV2 Debtors notifying them of the final opportunity to liquidate their claims.

69. Despite the efforts of the MedMal Trust Monitor and SVCMC, as of the date of this Motion, holders of the Unliquidated MedMal Claims have failed to prosecute or settle their claims. Under sections 1143 and 105 of the Bankruptcy Code and the terms of the SV1 Plan and the SV2 Plan, these holders are no longer entitled to their distributions under the SV1 Plan or the SV2 Plan. *See In re IBIS Corp.*, 272 B.R. at 887; *In re Payroll Express Corp.*, No. 92-42150, 2008 WL 5396609, at *3; *In re TLI, Inc.*, 213 B.R. at 950. Nonetheless, the MedMal Trust Monitor is providing the holders of Unliquidated MedMal Claims with an additional opportunity to come forward and assert their claims. Accordingly, after expiration of the Notice Period, the MedMal Trust Monitor should not be required to reserve any portion of the MedMal Trusts for holders of the Unliquidated MedMal Claims. If the Court does not grant this relief requested, the SV1 Debtors run the risk that their "bankruptcy cases could potentially continue in perpetuity," which is directly contradictory to the policy behind section 1143 of the Bankruptcy Code. *In re TLI, Inc.*, 213 B.R. at 955.

B. The Unliquidated MedMal Claims Should be Disallowed and Expunged

70. The MedMal Trust Monitor has satisfied the constitutional requirements to provide the holders of Unliquidated MedMal Claims with notice of their entitlement to a recovery from the MedMal Trusts. Moreover, the MedMal Trust Monitor is providing the holders with the additional Notice Period to assert such claims. If the claimants fail to do so, the MedMal Trust

Monitor respectfully requests that the Court disallow and expunge the remaining Unliquidated MedMal Claims for all purposes, including receiving distributions from the Debtors' bankruptcy estates or from the MedMal Trusts.

71. Constitutionally sufficient notice is satisfied when notice is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their [claims].” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also Jones v. Flowers*, 547 U.S. 220, 227 (2006); *SLW Capital, LLC v. MansarayRuffin (In re Mansaray-Ruffin)*, 530 F.3d 230, 239 (3d Cir. 2008) (“The level of process due to a party prior to the deprivation of [an interest] . . . is highly dependent on the context.”). As described above, the holders of the Unliquidated MedMal Claims have been provided with various forms of notice of the requirements to liquidate their claims before receiving a distribution from the MedMal Trusts, including publication notice and mail notice. Moreover, the MedMal Trust Monitor will also supply the Unliquidated MedMal Claim holders with the Mailing Notice and Publication Notice attached hereto. Under the circumstances of these cases, constitutionally sufficient notice has been satisfied.

72. In a traditional objection to a proof of claim, the objecting party must only provide evidence sufficient to negate the *prima facie* validity of the claim. *See In re Waterman Steamship Corp.*, 200 B.R. 770, 774–75 (Bankr. S.D.N.Y. 1996). Upon objection, the burden shifts to the claimant to demonstrate the validity of the claim. *See In re Oneida, Ltd.*, 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009), *aff'd*, No. 09 Civ. 2229 (DC), 2010 WL 234827, at *5 (S.D.N.Y. Jan. 22, 2010); *In re Adelphia Commc'ns Corp.*, No. 02-41729, 2007 Bankr. LEXIS 660, at *15 (Bankr. S.D.N.Y. Feb. 20, 2007). While this Motion is not necessarily an objection to proofs of claim, these general standards to satisfy validity of a claim for allowance purposes apply.

73. For the MedMal Claims to be treated by the SV1 Plan as “Allowed Claims,” holders of MedMal Claims are required to prosecute their claims to Final Order of a court of competent jurisdiction or by settlement. SV1 Plan, § 1.10. If a claimant fails to prosecute or settle their MedMal Claims, under the SV1 Plan (as implemented through the SV2 Plan), such claims are disallowed.

74. The MedMal Trust Monitor has reviewed the Unliquidated MedMal Claims and has determined that for each of the Unliquidated MedMal Claims either: (i) no suit has been filed, (ii) there is no record of the litigation, or (iii) the statute of limitations has expired for the MedMal Claim holder to act. As such, the Unliquidated MedMal Claims are not “Allowed Claims” as defined in the SV1 Plan. The passage of time alone justifies the relief requested.

75. Moreover, the MedMal Trust Monitor is providing holders of Unliquidated MedMal Claims with a final opportunity to present their claims for treatment prior to the hearing on this Motion. Upon expiration of the Notice Period, for any remaining Unliquidated MedMal Claims, the holders of such claims should not be entitled to treatment under the SV2 Plan and should be disallowed and expunged in accordance with the terms of the SV1 and SV2 Plans.

II. The MedMal Trust Monitor Should be Authorized to Direct the MedMal Trustee to Release the Net MedMal Trust Amounts to the Liquidating Trustee and Dissolve and Wind Up the MedMal Trusts

A. The Court has Authority to Enter an Order to Enforce the SV2 Confirmation Order and Carry Out the Provisions of the SV2 Plan

76. Section 1142(a) of the Bankruptcy Code states that “any entity organized or to be organized for the purposes of carrying out [a] plan shall carry out the plan and shall comply with any orders of the court.” Section 1142(b) of the Bankruptcy Code, in turn, grants the Court the expansive power “to direct the debtor and any other necessary party to execute or deliver

instrument . . . and to perform any other act . . . that is necessary for the consummation of the Plan.”

77. The “clear intent of Section 1142 of the Bankruptcy Code is to assure that the terms and provisions of a confirmed chapter 11 plan are carried out until the plan is completed.” *Chateaugay Corp. v. LTV Corp. (In re Chateaugay Corp.)*, 201 B.R. 48, 66 (Bankr. S.D.N.Y. 1996), *aff’d* 213 B.R. 633 (S.D.N.Y. 1997); *see also U.S. Brass Corp. v. Travelers Ins. Grp., Inc. (In re U.S. Brass Corp.)*, 301 F.3d 296, 306 (5th Cir. 2002) (“[Section 1142 of the Bankruptcy Court] empowers the bankruptcy court to enforce the unperformed terms of a confirmed plan.”); *Gordon Sel-Way, Inc. v. United States (In re Gordon Sel-Way, Inc.)*, 270 F.3d 280, 289 (6th Cir. 2001) (“11 U.S.C. § 1142 provides bankruptcy courts with broad power to enforce the terms of a confirmed plan.”).

78. Moreover, section 1142 of the Bankruptcy Code may be used to compel distributions on claims as required by a plan. *In re WorldCom, Inc.*, No. 02-13533, 2009 Bankr. LEXIS 1136, at *23–24 (Bankr. S.D.N.Y. May 19, 2009) (directing debtors to pay administrative expense claims in accordance with plan); 8 Collier on Bankruptcy ¶ 1142.03 (16th ed. 2021). Rule 3020(d) also expressly gives the bankruptcy court authority to “issue any other orders necessary to administer the estate,” and the Advisory Committee Note to the same specifies resolution of claims as an example of a post-confirmation matter to be considered by the bankruptcy court. *See also Schwinn Cycling & Fitness, Inc. v. Benonis (In re Schwinn Bicycle Co.)*, 210 B.R. 747, 762 (Bankr. N.D. Ill. 1997) (“[R]ule 3020(d) can also be read in conjunction with 11 U.S.C. § 105(a), and the foregoing discussion of authority thereunder to protect the bankruptcy estate, to include authority to protect execution of the Plan or distribution of the estate.”).

79. Additionally, as stated above, section 105(a) of the Bankruptcy Code permits courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code. “[S]ection 105(a) plainly may be used to enforce and implement earlier orders.” *In re River Ctr. Holdings, LLC*, 394 B.R. 704, 711 (Bankr. S.D.N.Y. 2008) (citing *NWL Holdings, Inc. v. Eden Ctr., Inc. (In re Ames Dep’t Stores, Inc.)*, 317 B.R. 260, 273–74 (Bankr. S.D.N.Y. 2004) (“[I]t is manifestly proper, in this Court’s view, to invoke section 105(a) to enforce or implement the Court’s earlier orders”)); *Luan Inv. S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 230 (2d Cir. 2002) (“A bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders, particularly when disputes arise over a bankruptcy plan of reorganization.”).

80. Moreover, courts use section 105(a) of the Bankruptcy Code, with section 1142 of the Bankruptcy Code, to issue orders enforcing the terms of a confirmation order or plan. *See e.g., Bennett & Fairshter, LLP v. Stinky Love, Inc. (In re Lacy)*, 335 B.R. 729, 738 (B.A.P. 10th Cir. 2006) (“Under § 1142(a), ‘the debtor . . . shall carry out the plan and shall comply with any orders of the court, including a chapter 11 confirmation order. The bankruptcy court can enforce this duty under §§ 105(a) and 1142, which allow it to take ‘any action or mak[e] any determination necessary or appropriate to enforce or implement’ a court order, such as its confirmation order, ‘to prevent an abuse of process,’ or to ‘direct the debtor and any other necessary party . . . to perform any . . . act . . . that is necessary for the consummation of the plan.’”); *H&L Developers, Inc. v. Arvida/JMB Partners (In re H&L Developers, Inc.)*, 178 B.R. 71, 76 (Bankr. E.D. Penn. 1994) (“[§ 1142] along with § 105 have been the basis of orders construing and enforcing terms of a confirmed plan.”) (collecting cases).

B. Carrying Out the SV2 Plan Requires Distribution of the Net MedMal Trust Amounts to the SV2 General Unsecured Creditors and the Winddown of the MedMal Trusts

81. It is appropriate for the Court to use the authority granted in sections 1142 and 105 of the Bankruptcy Code to authorize the MedMal Trust Monitor to direct the MedMal Trustee to release the Net MedMal Trust Amounts to the Liquidating Trustee for distribution to the SV2 General Unsecured Creditors and winddown the MedMal Trusts. Doing so fulfills the intent of the SV1 Plan, the SV2 Plan, the SV2 Confirmation Order, and the Trust Agreements. Moreover, if permitted to release the Net MedMal Trust Amounts, general unsecured creditors may see as much as an eighteen percent (18%) recovery of their claims. If the relief is denied, over \$24 million will continue to sit in the MedMal Trusts for an unknown time, and the MedMal Trusts will continue to accrue administrative costs.

82. The SV2 Plan and the Trust Agreements provide the MedMal Trust Monitor with express authority to distribute any funds in excess of the Allowed MedMal Trust Claims and certain taxes, expenses, fees, and costs to the Liquidating Trustee for distribution to the SV2 General Unsecured Creditors. The MedMal Trust Monitor agreed to take action to resolve the MedMal Claims upon entry into the Trust Modifications, which were implemented through the SV2 Plan Supplement. Pursuant to the Trust Modifications, any residual funds in the MedMal Trusts are to be remitted to the Liquidating Trustee. *See* SV2 Plan Supplement, pp. 48, 65, 82. It is the duty of the Liquidating Trustee to make distributions under the SV2 Plan and administer the Unsecured Claims Fund to pay the SV2 General Unsecured Creditors. The Net MedMal Trust Amounts would be included in the Unsecured Claims Fund to pay such creditors. Once all Residual MedMal Trust Amounts have been distributed, the MedMal Trust Monitor should

thereafter be permitted to winddown the MedMal Trusts and take any and all necessary or advisable ancillary and related actions that are required after the MedMal Trusts are dissolved.

83. The MedMal Trust Monitor seeks entry of the Proposed Order to allow distributions to the holders of General Unsecured Claims, as permitted under the SV2 Plan, and to liquidate and wind up, and ultimately dissolve and terminate, the MedMal Trusts. This relief is similar to requests under section 1142 of the Bankruptcy Code to compel distributions under a plan and is consistent with the goals of section 1142 of the Bankruptcy Code to resolve claims. *See e.g., In re WorldCom, Inc.*, 2009 Bankr. LEXIS 1136, at *23–24; *In re Schwinn Bicycle Co.*, 210 B.R. at 762. Accordingly, such relief is appropriate here.

84. As explained above, prior to the date of filing this Motion, the MedMal Trust Monitor, with the assistance of SVC MC with respect to filed lawsuits, undertook substantial efforts to locate and resolve all of the MedMal Trust Claims. *See generally* Taub Declaration. The MedMal Trust Monitor will also publish the Publication Notice and mail the Mail Notice to allow holders of the Unliquidated MedMal Claims one final opportunity to assert their rights under the SV2 Plan. Moreover, upon the release of the Net MedMal Trust Amounts to the Liquidating Trustee, the MedMal POCs shall be deemed satisfied and expunged from the SV2 claims register thereby reducing the SV2 general unsecured claims pool. With these conditions, the release of the Net MedMal Trust Amounts will not prejudice or harm any party—rather, the release will greatly benefit the SV2 General Unsecured Creditors and is in the interests of judicial economy to close these long-pending cases. There is no valid reason to wait because the relief sought herein will be necessary at some point.

85. In sum, the MedMal Trust Monitor respectfully requests that the Court enter the Proposed Order: (i) enforcing the terms of the SV2 Plan and Confirmation Order and (ii)

authorizing the MedMal Trust Monitor (x) to direct the MedMal Trustee to release the Net MedMal Trust Amounts to the Liquidating Trustee for distribution to the SV2 General Unsecured Creditors and (y) thereafter, to winddown the MedMal Trusts and take any and all necessary or advisable ancillary and related actions that are required after the MedMal Trusts are dissolved. Such relief is necessary for the MedMal Trust Monitor to carry out his duties under the SV1 and SV2 Plan and for the estates to be finally administered.

C. A Portion of the Residual MedMal Trust Amount Should be Reserved for the Med Mal Trust Monitor, the MedMal Trustee, and other Related Costs and Expenses

86. Under the SV1 Plan (as incorporated through the SV2 Plan, § 8.6), SVCMC is required to “pay the reasonable fees and expenses of the MedMal Trust Monitor (including the fees and expenses of its legal counsel) up to \$75,000 per year until the dissolution of all MedMal Trusts.” SV1 Plan, § 6.6(g)(iii). Moreover, under the terms of the Trust Agreements, the MedMal Trustee is permitted to “incur reasonable and necessary expenses in administering” the MedMal Trusts and such expenses are to be paid out of the MedMal Trust assets. *See* Trust Agreements, § 6.3. Thus, under the terms of the SV1 and SV2 Plans and the Trust Agreements, the MedMal Trust Monitor and the MedMal Trustee are entitled to recover any reasonable costs necessary to finally administering the MedMal Trusts. The MedMal Trust Monitor estimates that these costs will be approximately \$500,000.00, for which the MedMal Trust Monitor will provide invoices to SVCMC in connection with the administration.

87. Moreover, the MedMal Trust Monitor is a current member of the SV2 Post-Effective Date Committee. Under the terms of SV2 Plan, the MedMal Trust Monitor is also entitled to reimbursement for any reasonable fees and expenses of sitting on the SV2 Post-Effective Date Committee. *See* SV2 Plan, § 5.8(f). Accordingly, notwithstanding section 5.5(b) of the Trust Agreement, the MedMal Trust Monitor also respectfully requests a reservation for

these amounts from the Residual MedMal Trust Amounts, which is included in the \$500,000.00 set forth above.

88. Pursuant to the terms of the SV1 and SV2 Plans, and the Court's authority under section 105 of the Bankruptcy Code, the MedMal Trust Monitor respectfully requests that the Court authorize a portion of the Residual MedMal Trust Amounts in the amount of \$500,000.00 to be set aside to pay the fees and expenses of the MedMal Trust Monitor and his advisors and the MedMal Trustee and its advisors associated with winding up the cases, and any other reasonable costs related thereto. Specifically, the MedMal Trust Monitor seeks authority to direct the MedMal Trustee to transfer the Wind Down Reserve Amount from the MedMal-BQ Trust to SVCMC notwithstanding the Trust Agreement. SVCMC, in turn, will hold the Wind Down Reserve Amount for disbursement of the costs described herein, and all of the amounts in the MedMal Trusts shall have been transferred. If any portion of the Wind Down Reserve Amount remains after payment of the forgoing costs, the MedMal Trust Monitor will direct SVCMC to transfer the remaining balance to the Liquidating Trustee as contemplated by the Trust Agreement.¹⁶

III. The Exculpations in the SV2 Plan Should be Restated and/or Extended to the MedMal Trust Monitor and Others for the Actions Described in this Motion

89. The SV2 Confirmation Order approved the exculpations in the SV2 Plan. *See* SV2 Confirmation Order, ¶¶ 4, 13(c), 13(o). The SV2 Plan set forth the following exculpation (the "SV2 Exculpation"):

To the maximum extent permitted by applicable law, the Releasees shall not have or incur any liability for any act or omission in connection with, related to, or arising out of the Chapter 11 Cases (including, without limitation, the filing of the Chapter 11 Cases), the Plan and any related documents (including, without limitation, the negotiation and consummation of the Plan, the pursuit of the Effective Date, the administration of the Plan, the administration of the Plan or the property to be

¹⁶ The interim transfer of the Wind Down Reserve Amount to SVCMC is not contemplated by the Trust Agreement, however, the purpose and intent of the Trust Agreement would still be fulfilled by SVCMC's return of the remaining balance after payment of the costs provided for in the Trust Agreement.

distributed under the Plan), and/or the closure of any of the Debtors' healthcare and related services (including without limitation the events and decisions leading up to the closure of the Manhattan Hospital), except with respect to the actions found by Final Order to constitute willful misconduct, gross negligence, fraud, or criminal conduct, and, in all respects, the Releasees shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Without limitation of the foregoing, each such Releasee shall be released and exculpated from any and all Causes of Action that any Person is entitled to assert in its own right or on behalf of any other Person, based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence in any way relating to the subject matter of this section.

SV2 Plan, § 11.7. The SV2 Plan defines "Releasees" to include:

the Estates, the Debtors, the SVCMC Group, the Responsible Officer, the **Liquidating Trustee**, the Liquidating Trust, the Post-Effective Date SVCMC, the DIP Lenders, the DIP Agent, GECC as the prepetition revolving and term loan agent and lender of the Debtors, TD Bank, N.A. as the prepetition revolving and term loan lender of the Debtors, **the MedMal Trusts Monitor, the MedMal Trustees**, the Committee, the Post-Effective Date Committee, the Ombudsmen, the Creditor Settlement Parties, all of the assets and property of each of the foregoing, and each current and/or former member, officer, director, employee, counsel, advisor, professional, or agents of each of the foregoing who were employed or otherwise serving in such capacity on or after the SV1 Effective Date.

Id. at § 1.127 (emphasis added).

90. In summary, the SV2 Plan provided exculpations to SVCMC, the Liquidating Trustee, the MedMal Trust Monitor, and the MedMal Trustee, with respect to each of the MedMal Trusts, for any act in connection with or related to the SV2 Cases, including "administration of the [SV2] Plan."

91. The actions that the MedMal Trust Monitor has described in this Motion, such as distributing the Net MedMal Trust Amounts to the Liquidating Trustee, winding down the MedMal Trusts, and the like, are to administer the SV2 Plan. Although these acts are to administer the SV2 Plan and are technically already included in the SV2 Exculpation, for the avoidance of doubt, the MedMal Trust Monitor seeks entry of the Proposed Order restating and/or extending the SV2 Exculpation to parties necessary to implement the Proposed Order. Additionally, the

MedMal Trust Monitor seeks clarification that the MedMal Trusts, the MedMal Trustee, and the MedMal Trust Monitor are released from claims or causes of action, if any, from the Liquidating Trust and the Liquidating Trustee once all funds held by the MedMal Trusts have been distributed to the Liquidating Trustee and to SVCMC for the Wind Down Reserve Amount.

92. As previously stated, the Court has the authority to enforce its own orders under section 105 of the Bankruptcy Code. *In re River Ctr. Holdings, LLC*, 394 B.R. at 711. Under the terms of the SV2 Plan, the Court retained jurisdiction over all matters relating to the Chapter 11 Cases, including jurisdiction to “take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate this Plan. . . .” SV2 Plan, § 12.1. The Court therefore has authority to restate and/or extend the exculpations in furtherance of the SV2 Plan.

93. Moreover, to the extent this request is to extend the exculpations, exculpations that are limited to protect certain parties for their efforts during the bankruptcy cases or in furtherance of the plan are generally found to be acceptable in the Second Circuit when necessary to effectuate the plan. *In re Enron*, 326 B.R. 497, 503 (S.D.N.Y. 2005) (approving an exculpation provision when it was necessary to effectuate the plan and excluded gross negligence and willful misconduct and noting that excising similar exculpation provisions “would thus tend to unravel the entire fabric of the [p]lan, and would be inequitable to all those who participated in good faith to bring it into fruition”); *In re WorldCom*, 2003 WL 23861928, at *28 (approving an exculpation provision when it “was an essential element of the Plan formulation process and negotiations”). Here, the above-stated parties require the reassurance of the SV2 Exculpation to perform their tasks under the SV2 Plan and the Proposed Order, particularly considering that it has been eight (8) years since the SV2 Effective Date and over fifteen (15) years since the SV1 Petition Date. And, importantly,

the tasks to be performed will aid in the administration of the SV2 Plan by providing a distribution to the SV2 General Unsecured Creditors and winding up the SV1 and SV2 Cases. The parties would not perform these tasks without the essential element of the SV2 Exculpation.

94. Accordingly, under the terms of the SV2 Plan, the SV2 Confirmation Order, and section 105 of the Bankruptcy Code, the MedMal Trust Monitor respectfully requests that the Court enter the Proposed Order, which includes a restatement and/or extension of the SV2 Exculpation to the Releasees for the actions described in this Motion.

RESERVATION OF RIGHTS

95. Nothing contained herein is intended to or should be construed as a limitation on, or waiver of, the MedMal Trust Monitor's right to take any action authorized by the SV1 Plan, the SV2 Plan, the Trust Agreements, any other applicable orders of this Court, or the Bankruptcy Code.

NOTICE

96. The MedMal Trust Monitor will provide the Mail Notice and Publication Notice to the holders of the Unliquidated MedMal Claims, as described herein. The MedMal Trust Monitor has also served notice of this Motion upon (i) the above-captioned SV1 and SV2 Debtors and their counsel; (ii) the Liquidating Trustee, Eugene I. Davis, and his counsel; (iii) the MedMal Trustee, Wilmington Savings Fund Society, FSB, successor to Christiana Bank & Trust Company and its counsel; (iv) counsel to the SV2 Post-Effective Date Committee; (v) the Office of the United States Trustee; and (vi) any other party that has submitted a request for electronic notice in the SV1 or SV2 Cases. Moreover, a copy of this Motion will be made available on the SV1 and SV2 Debtors' claims agent websites at <https://dm.epiq11.com/case/svc/dockets> and <https://dm.epiq11.com/case/svcmc2010/dockets>.

NO PRIOR REQUEST

97. No prior request for the relief requested herein has been made to this or any other court.

CONCLUSION

WHEREFORE, the MedMal Trust Monitor respectfully request that the Court enter the Proposed Order granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: February 4, 2022
New York, New York

HAYNES AND BOONE, LLP

By: /s/ Richard S. Kanowitz
Richard S. Kanowitz

Counsel for the MedMal Trust Monitor

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re:

SAINT VINCENT’S CATHOLIC MEDICAL
CENTERS OF NEW YORK, *et al.*¹,

Debtors.

Chapter 11

Case No. 05-14945 (CGM)
Jointly Administered

-----X
In re:

SAINT VINCENT’S CATHOLIC MEDICAL
CENTERS OF NEW YORK, *et al.*²,

Debtors.

Chapter 11

Case No. 10-11963 (CGM)
Jointly Administered

-----X
**ORDER: (I) ENFORCING THE SV2 CONFIRMATION ORDER, (II) RELEASING THE
MEDMAL TRUST FUNDS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)³ of Michael E. Katzenstein (the “MedMal Trust Monitor”), in his capacity as the MedMal Trust Monitor of the MedMal-MW Trust, the MedMal-SI Trust, and the MedMal-BQ Trust, seeking entry of an order: (i) finding that the Residual MedMal Trust Amounts should not be reserved for holders of the Unliquidated MedMal Claims for failure to prosecute or settle their claims under the SV2 Plan; (ii) disallowing and expunging the Unliquidated MedMal Claims, which shall resolve all of such Unliquidated MedMal Claims

¹ The debtors in these chapter 11 cases (the “SV1 Cases”) include Saint Vincent’s Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers (“SVCMC”), Medical Service of St. Vincent’s Hospital and Medical Center, P.C., Surgical Service of St. Vincent’s, P.C., CMC Cardiology Services P.C., CMC Physician Services P.C., and CMC Radiological Services P.C. (collectively, the “SV1 Debtors”).

² In addition to SVCMC, the debtors in these chapter 11 cases (the “SV2 Cases”) include 555 6th Avenue Apartment Operating Corporation, Bishop Francis J. Mugavero Center for Geriatric Care, Inc., Chait Housing Development Corporation, Fort Place Housing Corporation, Pax Christi Hospice, Inc., Sisters of Charity Health Care System Nursing Home, Inc. d/b/a St. Elizabeth Ann’s Health Care & Rehabilitation Center, St. Jerome’s Health Services Corporation d/b/a Holy Family Home, and SVCMC Professional Registry, Inc. (collectively, the “SV2 Debtors”).

³ Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

for purposes of the Trust Agreements; (iii) releasing the Net MedMal Trust Amounts to the Liquidating Trustee and authorizing the dissolution, winding up, and termination of the MedMal Trusts and the discharge of the MedMal Trustee from its responsibilities with respect to each of the MedMal Trusts; (iv) reserving a portion of the Residual MedMal Trust Amounts as the Wind Down Reserve Amount for fees and expenses of the MedMal Trust Monitor and others in connection with the relief described in the Motion; and (v) restating and/or extending the SV2 Exculpation to the MedMal Trust Monitor, the Liquidating Trustee, and the MedMal Trustee, in respect of each of the MedMal-MW Trust, the MedMal-SI Trust, and the MedMal-BQ Trust, for their post-SV2 Effective Date work to administer the SV2 Plan; this Court finding that (a) it has jurisdiction over this matter pursuant to 11 U.S.C. § 1334, paragraph 15 the SV2 Confirmation Order, and section 12 of the SV2 Plan; (b) this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) notice of the Motion being sufficient under the circumstances in full compliance with the requirements of the Bankruptcy Code and the Bankruptcy Rules; and (d) notice of the procedures and final opportunity to liquidate the Unliquidated MedMal Claims to the holders of the Unliquidated MedMal Claims having satisfied the constitutional notice requirements; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED in its entirety.
2. Notwithstanding section 5.5(b) of the Trust Agreement, the MedMal Trustee shall reserve the Residual Trust Amounts to be used for the purposes set forth in the Motion and the Residual Trust Amounts in the MedMal Trusts shall not be reserved for the holders of Unliquidated MedMal Claims; *provided that* if any holder of an Unliquidated MedMal Claim has taken action

to prosecute their claim by the expiration of the Notice Period pursuant to the Objection Procedures (an “Objection”), the MedMal Trust Monitor will direct the MedMal Trustee to reserve a reasonable amount in the applicable MedMal Trust for such claim, plus any reasonable expenses to be incurred in connection therewith (as such amounts are determined in the MedMal Trust Monitor’s and SVCMC’s discretion) until such claim is resolved, whereupon the applicable MedMal Trust shall be dissolved, wound up, an terminated; *provided further that*, for the avoidance of doubt, the MedMal Trust Monitor’s right to contest an Objection are fully preserved and nothing in this Order should be construed to limit the MedMal Trust Monitor’s, the Liquidating Trustee’s, or SVCMC’s rights to contest an Objection in any way.

3. The Unliquidated MedMal Claims in the SV1 Cases and as set forth in Exhibit 3 attached to the Motion shall be disallowed and expunged for all purposes.

4. The MedMal Trust Monitor is authorized to direct the MedMal Trustee to release the Net MedMal Trust Amounts to the Liquidating Trustee.

5. Notwithstanding any provision in the Trust Agreement to the contrary, the MedMal Trust Monitor is authorized to direct the MedMal Trustee to transfer \$500,000.00 of the Residual MedMal Trust Amounts to SVCMC for the Wind Down Reserve Amount. As more fully described in the Motion, the Wind Down Reserve Amount shall be reserved for (i) the reasonable fees and expenses of the MedMal Trust Monitor and his counsel to serve on the SV2 Post-Effective Date Committee, to wind down the SV2 Cases, and to take any and all ancillary actions that are required after the dissolution of the MedMal Trusts; (ii) the reasonable fees and expenses of the MedMal Trustee to wind up and liquidate the MedMal Trusts, including the MedMal Trustee’s reasonable professional fees; and (iii) any amounts related to the winding up of the SV1 Cases. After payment of the foregoing, if any Wind Down Reserve Amount remains, the MedMal Trust

Monitor shall direct SVCMC to transfer the remaining Wind Down Reserve Amount to the Liquidating Trustee.

6. Upon release of the Net MedMal Trust Amounts to the Liquidating Trustee and the Wind Down Reserve Amount to SVCMC, the MedMal POCs shall be deemed satisfied and expunged from the SV2 claims register.

7. Once all funds held by the MedMal Trusts have been distributed to the Liquidating Trustee and to SVCMC for the Wind Down Reserve Amount, the MedMal Trust Monitor is authorized to: (i) dissolve and terminate the MedMal Trusts, to the extent applicable; (ii) discharge the MedMal Trustee from its responsibilities, and (iii) take all action necessary or reasonable in connection with the foregoing.

8. The MedMal Trust Monitor is authorized to take any and all necessary or advisable ancillary and related actions, without further notice or order of this Court, that are required after the MedMal Trusts are dissolved, as determined by the MedMal Trust Monitor in consultation with SVCMC including, without limitation, to direct the destruction of documents on the date that is one year after the day this Order is entered, *provided however*, that the MedMal Trust Monitor shall first permit the MedMal Trustee the opportunity to retake possession of any records for compliance with Wilmington Savings Fund Society, FSB's internal record retention policies.

9. Notwithstanding the dissolution of the MedMal Trusts, the SV2 Exculpation in the SV2 Plan is restated to apply to the Releasees (as defined in the SV2 Plan) for their post-SV2 Effective Date work to administer, dissolve, liquidate, and wind up the MedMal Trusts, to distribute the Residual Trust Amounts to the Liquidating Trustee, to wind down the SV1 Cases, for the MedMal Trust Monitor's service on the SV2 Post-Effective Date Committee, and for any

related actions that are required after the dissolution of the MedMal Trusts, as further described in the Motion and as authorized by this Order.

10. Once all funds held by the MedMal Trusts have been distributed to the Liquidating Trustee and to SVCMC for the Wind Down Reserve Amount in accordance with this Order, the MedMal Trusts, the MedMal Trustee, and the MedMal Trust Monitor shall not have or incur any liability and shall be released and exculpated from any and all claims or causes of action, if any, that the Liquidating Trust and/or the Liquidating Trustee has or may have based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence in any way relating to the MedMal Trusts to the fullest extent permitted by law.

11. The MedMal Trust Monitor, the MedMal Trustee, SVCMC, and the Liquidating Trustee are authorized to take all necessary steps to effect the terms of this Order.

12. The Court shall retain jurisdiction over any and all issues arising from or related to this Order.

Exhibit 1

Taub Declaration

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re:

SAINT VINCENT’S CATHOLIC MEDICAL
CENTERS OF NEW YORK, *et al.*,¹

Debtors.

Chapter 11

Case No. 05-14945 (CGM)
Jointly Administered

-----X
In re:

SAINT VINCENT’S CATHOLIC MEDICAL
CENTERS OF NEW YORK, *et al.*,²

Debtors.

Chapter 11

Case No. 10-11963 (CGM)
Jointly Administered
-----X

**DECLARATION OF BARRY TAUB, SVCMC MALPRACTICE COUNSEL, IN
SUPPORT OF THE MEDMAL TRUST MONITOR’S MOTION FOR ENTRY OF AN
ORDER: (I) ENFORCING THE SV2 CONFIRMATION ORDER, (II) RELEASING THE
MEDMAL TRUST FUNDS, AND (III) GRANTING RELATED RELIEF**

I, Barry Taub, declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am the Malpractice Counsel for Saint Vincent’s Catholic Medical Centers of New York (“SVCMC”). I was admitted to practice law in the Courts of the State of New York in 1974. I have more than 46 years of experience in the defense of medical malpractice cases. In my current capacity as the Malpractice Counsel for SVCMC, I am familiar with the MedMal Claims, the SV1 Plan, the SV2 Plan, the Trust Agreements, and the resolution of the MedMal Claims.

¹ The debtors in these chapter 11 cases (the “SV1 Cases”) include Saint Vincent’s Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers (“SVCMC”), Medical Service of St. Vincent’s Hospital and Medical Center, P.C., Surgical Service of St. Vincent’s, P.C., CMC Cardiology Services P.C., CMC Physician Services P.C., and CMC Radiological Services P.C. (collectively, the “SV1 Debtors”).

² In addition to SVCMC, the debtors in these chapter 11 cases (the “SV2 Case”) include 555 6th Avenue Apartment Operating Corporation, Bishop Francis J. Mugavero Center for Geriatric Care, Inc., Chait Housing Development Corporation, Fort Place Housing Corporation, Pax Christi Hospice, Inc., Sisters of Charity Health Care System Nursing Home, Inc. d/b/a St. Elizabeth Ann’s Health Care & Rehabilitation Center, St. Jerome’s Health Services Corporation d/b/a Holy Family Home, and SVCMC Professional Registry, Inc. (collectively, the “SV2 Debtors”).

2. I submit this declaration (the “Declaration”) in support of the *Motion for Entry of an Order: (I) Enforcing the SV2 Confirmation Order, (II) Releasing the MedMal Trust Funds, and (III) Granting Related Relief* (the “Motion”), filed contemporaneously herewith. Capitalized terms used in this Declaration but not otherwise defined have the meanings given to them in the Motion.

3. Except as otherwise indicated, all facts set forth in this Declaration are based on: (a) my personal knowledge or my discussions with other professional advisors or representatives of the MedMal Trust Monitor; (b) my review of relevant documents and (c) my experience with and knowledge of the Debtors’ business and the MedMal Claims resolution process. If I were called upon to testify, I could, and would, testify competently to the facts set forth herein.

A. Work History

4. From 1981 to 2005, I worked as the founding partner and managing attorney for Kanterman & Taub, P.C., a 30-attorney, medical malpractice/general liability defense firm. During that time, I defended thousands of medical malpractice cases from pleadings through jury verdicts and appeals. The types of cases varied, and included obstetrical and gynecological, neurological and neurosurgical, psychiatric, surgical (vascular, thoracic, orthopedic, etc.), anesthesia, internal medicine, emergency medicine, cardiology, oncology, podiatric and dental issues.

5. During my employment at Kanterman & Taub, P.C., I lectured on medical malpractice issues to physicians at Columbia Presbyterian Medical Center, Doctor’s Hospital, Hospital Underwriters Mutual Insurance Company, North General Hospital, and SVCMMC. From 1998 to 2005, I also worked as an Adjunct Professor at the New York College of Podiatric Medicine, teaching issues related to medical malpractice litigation.

6. In August of 2005, I departed Kanterman & Taub, P.C. and began work as Malpractice Counsel for North General Hospital. In this capacity, I defended all professional and general liability cases as the Attorney-of-Record until February 2008.

7. From March 2008 to the present, I have worked as Malpractice Counsel for SVCMC. From March 1, 2008 through December 31, 2018, I held the title of Senior Malpractice Attorney. From January 1, 2019 through the present, I have served as a Consultant. In my capacity as Malpractice Counsel for SVCMC, I have been responsible for managing approximately 900 professional liability lawsuits for the seven (7) former SVCMC hospitals, as well as its other health care businesses, including nursing homes. Additionally, I managed SVCMC's captive insurance program, Queensbrook (QIL); interacted daily with the commercial primary and excess insurance carriers; frequently appeared in court on all high exposure trials and cases; provided daily direction to outside defense counsel regarding coverage, strategy, and early resolution; directed bimonthly claims committee conferences on all cases; and provided daily advice on risk management, quality assurance and other health issues.

B. SVCMC Case Background Relevant to the Motion

8. On July 5, 2005, SVCMC and certain of its affiliates commenced the SV1 Cases. On July 27, 2007, the SV1 Cases were confirmed. On August 30, 2007, SVCMC emerged from the SV1 Cases and the automatic stay was lifted in the SV1 Cases, thus permitting resolution, settlements, and/or closures of the MedMal Claims.

9. On April 14, 2010, SVCMC and certain of its affiliates commenced the SV2 Cases. Accordingly, the automatic stay was reinstated, and all settlement conferences, trials, depositions, and other discovery matters were stayed. During this time, I evaluated and resolved, settled, and/or closed many of the MedMal Claims filed in the SV1 Cases.

10. During the SV2 Cases, although the stay was in place, settlements continued to be negotiated and finalized. In addition, the Court entered agreed orders lifting the automatic stay when plaintiffs stipulated to accept and pursue third-party insurance coverage. *See infra*, ¶ 14. Each of these claims had coverage through MLMIC Insurance Company (“MLMIC”), which covered the Manhattan and Staten Island MedMal Claims. The primary policy was \$1,000,000 for each claim.

C. Collaboration with the MedMal Trust Monitor and the MedMal Trustee

11. Resolving the MedMal Claims required a coordinated effort between SVCMC, the MedMal Trust Monitor, and the MedMal Trustee. The MedMal Trust Monitor was responsible for all decisions and duties with respect to the various MedMal Trusts. In turn, SVCMC assisted the MedMal Trust Monitor in settlement efforts, by supplying books, records and various related information. The SVCMC team involved in resolving the MedMal Claims initially included the Chief Risk Officer, another Malpractice Attorney, and myself. By June of 2016, only I remained to resolve the outstanding MedMal Claims.

12. The MedMal Trust Monitor, with the assistance of counsel, collaborated with SVCMC and the MedMal Trustee in the closure of 657 MedMal Claims. The MedMal Trust Monitor’s involvement varied from case to case, depending upon the method of case closure and the amount of the settlement. A detailed description of the MedMal Trust Monitor’s involvement for each category of cases follows:

13. Dismissed or Discontinued Cases: Approximately 277 of the MedMal Claims involved cases that were either dismissed or discontinued. For these cases, the MedMal Trust Monitor was advised of the closures and was sent copies of the applicable court orders and stipulations of discontinuance for review, prior to filing.

14. Stipulated to Commercial Coverage Cases: Approximately thirty (30) of the MedMal Claims involved claimants that stipulated to accept commercial insurance coverage. Each of these claims had coverage through MLMIC, which covered the Manhattan and Staten Island MedMal Claims. The primary policy was \$1,000,000 for each claim. For these claims, SVCMC sent the MedMal Trust Monitor the stipulations for review, approval and execution. *See e.g.*, SV2 Cases, Doc. Nos. 3731, 4090, and 4113.

15. Cases with Defense Jury Verdicts: Approximately thirty-one (31) of the MedMal Claims involved cases that went to trial and resulted in defense jury verdicts in favor of SVCMC. The MedMal Trust Monitor approved the decision to go to trial. SVCMC provided the MedMal Trust Monitor with daily trial updates.

16. Settled Cases: Approximately 319 of the MedMal Claims involved cases that were settled and paid. Many of these settlements were the result of the MedMal Trust Monitor's letter campaign. Approximately twice a year, the MedMal Trust Monitor, through counsel, sent demand letters to the holders of the MedMal Claims or counsel for holders of MedMal Claims inviting them to make a formal settlement demand. Every demand letter received went to SVCMC for evaluation and negotiation purposes.

17. Once a tentative settlement was reached, SVCMC sent a report to the MedMal Trust Monitor summarizing the allegations, parties, liability, and damages to support approval of the settlement. In preparing these reports, SVCMC reviewed relevant correspondence, legal and medical files to evaluate the liability and damages. Damage assessments required a review of the claimant's alleged monetary claims for past and future medical expenses, physician expenses, hospital expenses, lost wages, and permanent disabilities. In some instances, SVCMC retained

outside experts and/or would consult with SVCMC's Chief Medical Officer, Dr. Anthony Gagliardi, to provide opinions on liability and disability.

18. The MedMal Trust Monitor reviewed the report and determined whether to approve SVCMC's settlement proposal. Once a settlement was approved, SVCMC prepared a direction letter, subject to review by the MedMal Trust Monitor, to send to the MedMal Trustee. The direction letter included various closing documents, such as a General Release, Hold Harmless Agreement, Court Order, and Stipulation of Discontinuance. Upon receipt of the direction letter, the MedMal Trustee would send the settlement payment from the applicable MedMal Trust to the holder of the MedMal Claim. The MedMal Trustee then sent a copy of the settlement payment record to SVCMC and the MedMal Trust Monitor. The MedMal Trustee also sent monthly bank statements for each of the MedMal Trusts to the MedMal Trust Monitor and SVCMC.

19. Large Exposure Cases: Certain of the MedMal Claims involved large exposures, which generally included MedMal Claims that asserted damages exceeding \$1,000,000. For these cases, the MedMal Trust Monitor would consult with SVCMC to reach a proposed settlement amount. Once determined, the MedMal Trust Monitor granted SVCMC authority to go to court and negotiate the settlement. In some instances, the MedMal Trust Monitor would attend these settlement conferences and negotiate directly with the claimant's counsel.

D. The MedMal Claims Resolution Process

20. Resolution of the MedMal Claims occurred in three (3) phases. First, certain of the MedMal Claims were resolved during the SV1 Cases and after the SV1 Effective Date, from August 2007 through April 2010. Second, certain of the MedMal Claims were resolved during the pendency of the SV2 Cases, from April 2010 to June 2012. Finally, the remaining MedMal

Claims were resolved after the SV2 Effective Date, from June 2012 to the present. Each phase, in turn, is detailed below.

21. As stated in the Motion, and for context of this portion of the Declaration, the SV1 Plan permitted the MedMal Trust Monitor and the MedMal Trustee to make distributions from the MedMal Trusts to “holders of Allowed MedMal Claims in accordance with Sections 4.8, 4.9, and 4.10 of the [SV1] Plan.” SV1 Plan, § 6.6(t)(i). This procedure was incorporated into the SV2 Plan. SV2 Plan, § 8.6. Accordingly, if a MedMal Claim is not an Allowed Claim, i.e., has not been reduced to Final Order or settlement (*see* SV1 Plan § 1.10), the MedMal Trust Monitor is not permitted to authorize the MedMal Trustee to make a distribution to such holders of MedMal Claims.

i. MedMal Claims Resolved During the SV1 Cases and After the SV1 Effective Date (August 2007 – April 2010)

22. On March 1, 2008, after the stay was lifted in the SV1 Cases, I began working to resolve the MedMal Claims asserted in the SV1 Cases. Daily, I was actively engaged and attended multiple court hearings, trials, and other discovery matters across the five counties in New York City. I attended and actively participated in court-approved settlement conferences and trials at least three days a week.

23. From March 2008 to April 2010, I spent my entire day working to resolve the MedMal Claims. During this time, the focus was on resolving the MedMal Claims for which claimants had responded to the MedMal Trust Monitor’s above-described letter campaign. Receipt of a demand letter triggered the above-described settlement negotiations and ultimate resolution of the applicable claim.

24. During the SV1 Cases and up to the SV1 Effective Date, through the efforts of the MedMal Trust Monitor, his counsel, and SVCMC, approximately sixteen (16) of the MedMal

Claims were resolved, settled, and/or closed, leaving 681 claims to be resolved post-emergence from the SV1 Cases.

25. After the SV1 Effective Date and prior to the SV2 Petition Date (or August 30, 2007 through April 14, 2010), through the efforts of the MedMal Trust Monitor, his counsel, and SVCMC, an additional approximately 296 of the MedMal Claims were resolved, settled and/or closed. By 2010, prior to the commencement of the SV2 Cases, approximately \$98.4 million was distributed in association with these resolved cases.

ii. MedMal Claims Resolved During the SV2 Cases (April 2010 – June 2012)

26. During the pendency of the SV2 Cases, we continued to work to resolve the MedMal Claims, as contemplated in the SV2 Plan. Consistent with the settlement attempts after the SV1 Cases, the MedMal Trust Monitor continued the letter campaign to obtain settlement demands from holders of MedMal Claims. The responses to the letters had decreased, compared to the earlier years. Accordingly, SVCMC and the MedMal Trust Monitor began renewed targeted efforts to contact holders of the largest purported MedMal Claims in order to execute on an organized strategy to settle or liquidate MedMal Claims.

27. This renewed effort included shifting focus to resolve the MedMal Claims that had the largest indemnity reserves. For each active case, SVCMC assigned the underlying MedMal Claim an indemnity reserve amount. The indemnity reserve is an estimated maximum settlement amount taking into account the medical and legal review by a team of physicians and lawyers. As such, SVCMC would set aside the funds to pay that claim through the indemnity reserve. The amount of the indemnity reserve would fluctuate during the life of a case and would be adjusted by SVCMC after depositions, expert reviews, physical examinations, and the like. We initially focused on settling cases with reserves of \$1,000,000 or more. Then, we worked to resolve cases

in the next lowest layer of reserves, \$750,000 or more. We then worked to settle cases in lower reserve layers of \$500,000 or more, \$250,000 or more, \$100,000 or more and then cases with reserves of less than \$100,000.

28. On or around June 2011, SVCMC became aware that some of the letters from the letter campaign were not reaching holders of MedMal Claims or the attorneys for the holders of the MedMal Claims. In some cases, the holders of MedMal Claims or their counsel had relocated, so the letters were returned. The MedMal Trust Monitor coordinated with SVCMC to locate new addresses for the individual claimants and/or their counsel. The MedMal Trust Monitor and SVCMC searched for claimants through the Social Security Administration, publications, and social media to determine whether they were still living. When family members of deceased claimants were located, the MedMal Trust Monitor and/or SVCMC would negotiate with the administrator or executor of the claimant's estate.

29. From around 2010 to 2012, the MedMal Trust Monitor, his counsel and SVCMC resolved approximately seventy-seven (77) additional MedMal Claims, some of which were settled within insurance policy limits without payment from the MedMal Trusts and others with direct cash recoveries from the MedMal Trusts. By 2012, an additional approximately \$23 million was distributed to holders of resolved MedMal Claims.

iii. Claims Resolved After the SV2 Effective Date (June 2012 to the Present)

30. After the SV2 Effective Date, pursuant to the SV2 Plan, all of the MedMal Claims remained stayed. Accordingly, the MedMal Trust Monitor could only close cases within the confines of the SV2 Plan, which required a settlement payment from the MedMal Trusts or a stipulation to recover from insurance only.

31. The MedMal Trust Monitor continued efforts to settle the MedMal Claims through the letter campaign and also targeted the largest reserved claims. The MedMal Trust Monitor and

SVCMC resolved some of the claims via stipulations to lift the stay to allow recovery against insurance proceeds. Thirty (30) MedMal Claims were closed between 2012 and 2018 by obtaining stipulations limiting recovery to commercial insurance.

32. Around 2013, the MedMal Trust Monitor discontinued the letter campaign, but continued its effort on the claims with the larger SVCMC indemnity reserves. By 2019, all MedMal Claims, with indemnity reserves, were resolved or were in the process of being closed and paid.

33. As the number of outstanding MedMal Claims was reduced, it became more difficult to resolve these remaining claims due to an inability to locate the remaining claimants or their counsel. In some instances, the MedMal Trust Monitor and SVCMC hired private investigators to assist in locating claimants. Many of the claimants located this way were *pro se*, and the MedMal Trust Monitor and SVCMC negotiated directly with these claimants. From the SV2 Confirmation Date in June 2012 to 2016, the MedMal Trust Monitor resolved an additional 192 claims.

34. Around 2016, the MedMal Trust Monitor began to focus on resolving the cases in which neither the claimant nor their counsel could be located. For pending cases in this category, SVCMC worked with the MedMal Trust Monitor to close these pending cases by filing motions to dismiss for failure to prosecute in the applicable state courts. Approximately, ten (10) MedMal Claims were dismissed based upon state court orders.

35. From 2017 through 2020, I worked with the MedMal Trust Monitor to resolve an additional seventy-six (76) MedMal Claims. Of these claims: (i) thirty-four (34) were settled, (ii) one (1) was a defense verdict case in favor of SVCMC, (iii) thirty-seven (37) were dismissed or discontinued, and (iv) four (4) stipulated to commercial coverage. These cases were the most

difficult and time-consuming to close. The holders of these MedMal Claims had continually refused settlement offers, abandoned their cases, lacked counsel, or had expired. For claimants that had died, I had to work to identify the next of kin and/or administrators of their estates to settle these claims. Either I, or SVCMC staff or outside counsel, worked closely with the applicable state courts to close these claims.

E. Status of the MedMal Claims

36. Of the 697 holders of MedMal Claims that were allowed to liquidate their claims under the terms of the SV1 Plan, the SV2 Plan, and the Trust Agreements, 657 of the claims are fully closed, settled, and or otherwise resolved. A chart reviewing the resolved MedMal Claims by year is attached to the Motion as **Exhibit 2**.

37. The holders of forty (40) MedMal Claims have failed to liquidate their claims to become “Allowed Claims,” as defined in the SV1 Plan and as incorporated into the SV2 Plan (collectively, the “Unliquidated MedMal Claims”). A list of the Unliquidated MedMal Claims is attached to the Motion as **Exhibit 3**. For each of the Unliquidated MedMal Claims: either (i) no suit has been filed, (ii) there is no record of the litigation, and (iii) the statute of limitations has expired for the MedMal Claim holder to act. The Unliquidated MedMal Claims are the subject of the Motion.

38. SVCMC undertook due diligence to ensure that no litigation was pending for any of these Unliquidated MedMal Claims. SVCMC cross checked each of the Unliquidated MedMal Claims against the hard-copy and electronic legal files maintained by SVCMC. Additionally, during the summer of 2016, a paralegal went to each of the New York Supreme Courts in the counties of Kings, Queens, Richmond, Bronx, and New York to search for lawsuits filed on behalf of the Unliquidated MedMal Claims. No such lawsuits were found.

39. SVCMC last attempted to identify lawsuits in connection with the Unliquidated MedMal Claims in August 2020. At that time, an SVCMC employee researched each potential case on the electronic court docket and reviewed corresponding Workers' Compensation and General Liability case notes. SVCMC was unable to locate lawsuits for any of the Unliquidated MedMal Claims.

40. Other than the claims filed in the SV1 or SV2 Cases, SVCMC has no detail or records on the Unliquidated MedMal Claims. Moreover, none of the Unliquidated MedMal Claims had indemnity reserves, as there was no data or records to evaluate these cases and set a reserve.

F. Conclusion

41. SVCMC, the MedMal Trust Monitor, and the MedMal Trustee have resolved 657 of the 697 MedMal Claims asserted against SVCMC in their bankruptcy case. Approximately \$157,861,637.05 has been distributed in association with these MedMal Claims.³ Forty (40) MedMal Claims remain outstanding, for which applicable statutes of limitations have expired and for which there are no records supporting the claims.

42. I believe that the relief requested by the MedMal Trust Monitor in the Motion is necessary and reasonable in these circumstances. Holders of MedMal Claims have had ample time and opportunities to liquidate their claims to Final Order or otherwise settle in compliance with the SV1 and SV2 Plan. SVCMC and the MedMal Trust Monitor have undertaken considerable effort to provide such holders with that opportunity. Accordingly, I respectfully request that the Court grant the relief requested in the Motion.

³ This total includes the full payment amounts made to the Holders of MedMal Claims. As such, this amount may include payments to Holders of MedMal Claims outside of the MedMal Trusts, including recoveries from commercial insurance, third parties, the Debtors, and others.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
is true and correct to the best of my information, knowledge and belief.

Dated: November 4, 2021

SAINT VINCENTS CATHOLIC MEDICAL
CENTERS OF NEW YORK

A handwritten signature in black ink, appearing to be 'BT', written over a horizontal line.

Barry Taub
Malpractice Counsel

Exhibit 2

Schedule of Resolved cases by Year and Resolution Type

Resolution Type	Prior*	2007	2008	2009	2010 - pre	2010	2011	2012	2012 - post	2013	2014	2015	2016	2017	2018	2019	2020	Total
Settlement	8	34	43	46	11	14	22	9	11	18	20	25	24	8	13	10	3	319
Defense Verdict	1	2	16	7	1	0	0	0	0	3	0	0	0	0	1	0	0	31
Dismissed/Continued	7	31	43	45	17	15	10	7	2	15	8	29	11	22	13	1	1	277
Stipulated to Commercial Coverage	0	0	0	0	0	0	0	0	1	1	0	2	22	3	1	0	0	30
Total Cases Resolved per Year	16	67	102	98	29	29	32	16	14	37	28	56	57	33	28	11	4	657
<i>% of Trust</i>	<i>2.30%</i>	<i>9.61%</i>	<i>14.63%</i>	<i>14.06%</i>	<i>4.16%</i>	<i>4.16%</i>	<i>4.59%</i>	<i>2.30%</i>	<i>2.01%</i>	<i>5.31%</i>	<i>4.02%</i>	<i>8.03%</i>	<i>8.18%</i>	<i>4.73%</i>	<i>4.02%</i>	<i>1.58%</i>	<i>0.57%</i>	

** Indicates cases that were already resolved prior to formation of the MedMal Trusts.*

Exhibit 3

Summary Chart of the Unliquidated MedMal Claims

In re Saint Vincents Catholic Medical Centers of New York et al. (Case No. 10-11963)
Schedule of [Unliquidated] MedMal Claims
Exhibit 3

Expunged Claim Amount								
CLAIM NO	CLAIMANT	DEBTOR	CLAIM DATE	ADMIN CLAIM AMOUNT	PRIORITY CLAIM AMOUNT	SECURED CLAIM AMOUNT	UNSECURED CLAIM AMOUNT	CLAIM TOTAL
184	PORRAS, SARAH JOLI (INFANT) BY MOTHER TABITHA ESPINOZA & TABITHA ESPINOZA IND. C/O BRAVERMAN LAW OFFICE PC 50 CHARLES LINDBERG BLVD, STE 400 UNIONDALE NY 11553	SVCMC	10/12/2005	\$ -	\$ -	\$ -	\$ -	\$ -
773	DOCKERY, JANNIE 140-16 LINDEN BLVD JAMAICA NY 11436	SVCMC	2/23/2006	\$ -	\$ -	\$ -	\$ 2,000,000.00	\$ 2,000,000.00
1035	HAYNES, FRED VS. SVCMCSI 289 WESTWOD AVE APT 4-B STATEN ISLAND NY 10314	SVCMC	2/28/2006	\$ -	\$ -	\$ -	\$ -	\$ -
1162	VANDERHOST, KIESNA 40 MADISON AVE #15F NEW YORK NY 10038	SVCMC	3/2/2006	\$ -	\$ -	\$ -	\$ -	\$ -
1675	FISHER, AMANDA C/O LINDENBAUM & SILBER, PLLC 419 PARK AVE S 2ND FL NEW YORK NY 10016	SVCMC	3/14/2006	\$ -	\$ -	\$ -	\$ -	\$ -
1755	GODFREY, MAUREEN & DAVID C/O PEGALUS & ERICKSON, LLC ONE HOLLOW LANE, SUITE 107 NEW HYDE PARK NY 11042	SVCMC	3/16/2006	\$ -	\$ -	\$ -	\$ 5,000,000.00	\$ 5,000,000.00
1839	PIERRE, RACHELLE C/O SHANDELL, BLITZ, BLITZ & BOOKSON 150 BROADWAY NEW YORK NY 10038	SVCMC	3/20/2006	\$ -	\$ -	\$ -	\$ 5,000,000.00	\$ 5,000,000.00
1875	MURRAY-BUSBY, SHARON ATTN: MICHAEL L. BERGMAN BERGMAN BERGMAN GOLDBERG & LAMONSOFF 108-18 QUEENS BLVD., SUITE 903 FOREST HILLS NY 11375	SVCMC	3/20/2006	\$ -	\$ -	\$ -	\$ 2,000,000.00	\$ 2,000,000.00
1917	BENDER, HEIDI V SVCMCN 1755 YORK AVENUE APT 25-F BROOKLYN NY 10128	SVCMC	3/20/2006	\$ -	\$ -	\$ -	\$ 200,000.00	\$ 200,000.00
2188	KOCH, ELIZABETH & NICHOLAS 220 W 24TH ST, 3M NEW YORK NY 10011	SVCMC	3/24/2006	\$ -	\$ -	\$ -	\$ 10,000,000.00	\$ 10,000,000.00
2242	BERNARD, DEANNA 3311 SHORE PKWY. #1E BROOKLYN NY 11235	SVCMC	3/27/2006	\$ -	\$ -	\$ -	\$ -	\$ -
2278	SEERY, JEANINE AND THOMAS 968 PATTERSON AVENUE STATEN ISLAND, NY 10306	SVCMC	3/27/2006	\$ -	\$ -	\$ -	\$ 2,000,000.00	\$ 2,000,000.00
2285	AMBRUSTER, MOONIN AS ADMINISTRATRIX OF ESTATE OF CARL AMBRUSTER THE JACOB D. FUCHSBERG LAW FIRM 500 FIFTH AVE., 45TH FLOOR NEW YORK NY 10110	SVCMC	3/27/2006	\$ -	\$ -	\$ -	\$ 5,000,000.00	\$ 5,000,000.00
2317	ORTIZ, BARBARA 163-47 130TH AVENUE APT #2B JAMAICA NY 11434	SVCMC	3/27/2006	\$ -	\$ -	\$ -	\$ 500,000.00	\$ 500,000.00
2351	CRUZ, ALEXANDER, INF. FITZGERALD & FITZGERALD, P.C 538 RIVERDALE AVENUE YONKERS NY 10705	SVCMC	3/28/2006	\$ -	\$ -	\$ -	\$ -	\$ -
2352	[SANTANA, MARTHA] ARANGO, ELIANA, INF. FITZGERALD & FITZGERALD, P.C. 538 RIVERDALE AVENUE YONKERS NY 10705	SVCMC	3/28/2006	\$ -	\$ -	\$ -	\$ -	\$ -
2430	ACOCCELLA, KIM (EXECUTRIX OF THE ESTATE OF CHARLES H ACOCCELLA, JR DECEASED & INDIV. AS SURVIVING SPOUSE) AS EXEC. 15 PHILIP DRIVE FAIRFIELD NJ 07004	SVCMC	3/28/2006	\$ -	\$ -	\$ -	\$ 1,000,000.00	\$ 1,000,000.00
2491	ZEAS, LUZ 20 FATHER CAPODANNO BOULEVARD APT 6G STATEN ISLAND, NY 10305	SVCMC	3/28/2006	\$ -	\$ -	\$ -	\$ -	\$ -
2506	COOPER, NEISHA J., AS ADMINISTRATRIX OF THE ESTATE OF CLAUDIA J. COOPER C/O COFFINAS & COFFINAS, LLP 275 MADISON AVENUE, SUITE 1000 NEW YORK NY 10016	SVCMC	3/28/2006	\$ -	\$ -	\$ -	\$ -	\$ -
2538	CABALLERO, JOSHUA, INF. FITZGERALD & FITZGERALD, P.C. 538 RIVERDALE AVENUE YONKERS NY 10705	SVCMC	3/29/2006	\$ -	\$ -	\$ -	\$ -	\$ -

In re Saint Vincents Catholic Medical Centers of New York et al. (Case No. 10-11963)
Schedule of [Unliquidated] MedMal Claims
Exhibit 3

Expunged Claim Amount								
CLAIM NO	CLAIMANT	DEBTOR	CLAIM DATE	ADMIN CLAIM AMOUNT	PRIORITY CLAIM AMOUNT	SECURED CLAIM AMOUNT	UNSECURED CLAIM AMOUNT	CLAIM TOTAL
2573	PENINSULA HOSPITAL CENTER, STANLEY SPRECHER M.D. & RICHARD STEINBERG MD RE: PHYLLIS DAVIS BREA & YANKOWITZ, 35 N TYSON AVE. FLORAL PARK NY 11001	SVCMC	3/29/2006	\$ -	\$ -	\$ -	\$ -	\$ -
2599	NYS NURSES ASSOC C/O THE LAW OFFICES AVRUM J. ROSEN 38 NEW STREET HUNTINGTON NY 11743	SVCMC	3/29/2006	\$ -	\$ -	\$ -	\$ -	\$ -
2642	MONTAN, FRANCISCA C/O RAYMOND J AAB, ESQ 61 BROADWAY 25TH FL NEW YORK NY 10006	SVCMC	3/29/2006	\$ -	\$ -	\$ -	\$ -	\$ -
2667	DAVIS, PHYLLIS C/O WOLF & FUHRMAN, P.C. 306 HEMPSTEAD AVENUE MALVERNE NY 11565	SVCMC	3/30/2006	\$ -	\$ -	\$ -	\$ 1,500,000.00	\$ 1,500,000.00
2682	GILL, INGRID C/O RAPPAPORT, GLASS, G'WNT & LEVINE 500 FIFTH AVE. - SUITE 1150 NEW YORK NY 10110	SVCMC	3/30/2006	\$ -	\$ -	\$ -	\$ 1,000,000.00	\$ 1,000,000.00
2784	ESMOND, BRIAN 141-18 79TH AVENUE, APT. 1E FLUSHING NY 11366	SVCMC	3/30/2006	\$ -	\$ -	\$ -	\$ 10,000,000.00	\$ 10,000,000.00
2858	SILVERSTEIN, ILLENE KIERAN J. CONLON, ESQ. RYAN & CONLON, LLP 5 HANOVER SQUARE, STE. 1605 NEW YORK NY 10004	SVCMC	3/30/2006	\$ -	\$ -	\$ -	\$ 1,000,000.00	\$ 1,000,000.00
2886	LYONS, AUDREY C. P.O. BOX 8164 F.D.R. STATION NEW YORK NY 10022	SVCMC	3/30/2006	\$ -	\$ -	\$ -	\$ 50,000,000.00	\$ 50,000,000.00
2920	FOLTZ, LORRAINE 42 W MARKET STREET BREEZY POINT NY 11697	SVCMC	3/30/2006	\$ -	\$ -	\$ -	\$ 100,000.00	\$ 100,000.00
3104	ECCLESMTSE, HARRY C/O ASHER & ASSOCS, PC 111 JOHN ST STE 1200 NEW YORK NY 10038	SVCMC	3/30/2006	\$ -	\$ -	\$ -	\$ -	\$ -
3110	PEREZ, JONATHAN, AN INFANT BY HIS M/N/G, ROSA PELAEZ 73 IRVINE AVE BROOKLYN NY 11273	SVCMC	3/30/2006	\$ -	\$ -	\$ -	\$ 10,000,000.00	\$ 10,000,000.00
3141	ARCE, EDWIN SANUCKI, NEWMAN & TURRET, LLP 225 BROADWAY 8TH FL NEW YORK NY 10007	SVCMC	3/28/2006	\$ -	\$ -	\$ -	\$ -	\$ -
3149	TRINIDAD, CARMEN C/O SULLIVAN PAPAIN BLOCK, ET AL. 120 BROADWAY 18TH FL NEW YORK NY 10271	SVCMC	3/30/2006	\$ -	\$ -	\$ -	\$ 5,000,000.00	\$ 5,000,000.00
3151	O'KEEFE, LINDA, ESTATE OF C/O SULLIVAN PAPAIN BLOCK ET AL 120 BROADWAY NEW YORK NY 10271	SVCMC	5/2/2006	\$ 5,000,000.00	\$ -	\$ -		\$ 5,000,000.00
3184	ACOCCELLA, KIM (EXECUTRIX OF THE ESTATE OF CHARLES H ACOCELLA, JR DECEASED & INDIV. AS SURVIVING SPOUSE) AS EXEC. 15 PHILIP DRIVE FAIRFIELD NJ 07004	SVCMC	3/28/2006	\$ -	\$ -	\$ -	\$ 1,000,000.00	\$ 1,000,000.00
3224	RIVERA, JOEVITA MINCHEW, SANTNER & BRENNER, LLP 1741 VICTORY BLVD STATEN ISLAND, NY 10314	SVCMC	10/12/2006	\$ -	\$ -	\$ -	\$ 5,000,000.00	\$ 5,000,000.00
3235	[ROBINETT, YASMIRA] TAYLOR-BROWN, TABITHA BY HER M/N/G, YASMIRA ROBINETT & YASMIRA ROBINETT IND. SIMONSON HESS & LEIBOWITZ PC ESQS 15 MAIDEN LANE NEW YORK, NY 10038	SVCMC	3/30/2006	\$ -	\$ -	\$ -	\$ -	\$ -
3243	CARDUCCI, MICHELE C/O SULLIVAN PAPAIN BLOCK MCGRATH & CANNAVO P.C 120 BROADWAY 18TH FL NEW YORK, NY 10271	SVCMC	12/22/2006	\$ 5,000,000.00	\$ -	\$ -	\$ -	\$ 5,000,000.00

In re Saint Vincents Catholic Medical Centers of New York et al. (Case No. 10-11963)
Schedule of [Unliquidated] MedMal Claims
Exhibit 3

Expunged Claim Amount								
CLAIM NO	CLAIMANT	DEBTOR	CLAIM DATE	ADMIN CLAIM AMOUNT	PRIORITY CLAIM AMOUNT	SECURED CLAIM AMOUNT	UNSECURED CLAIM AMOUNT	CLAIM TOTAL
Docket 2426	PALAEZ, ROSA AS MOTHER AND NATURAL GUARDIAN OF J.P. C/O MICHAEL M BAST SILVERSTEIN & BAST 217 BROADWAY, SUTIE 715 NEW YORK, NY 10007	SVCMC	11/17/2006	\$ -	\$ -	\$ -	\$ -	\$ -
Docket 3864	ANDERSON, MATTIE (AS ADMINISTRATRIX OF ESTATE OF MOSES ANDERSON AND INDIVIDUALLY) C/O PAUL NADLER SILBERSTEIN AWAD & MIKLOS, PC 600 OLD COUNTRY RD GARDEN CITY, NY 11530	SVCMC	11/7/2007	\$ -	\$ -	\$ -	\$ -	\$ -

Exhibit 4

Form of Publication Notice for the Unliquidated MedMal Claims

**UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

*In re Saint Vincent's Catholic Medical Centers of New York
d/b/a Saint Vincent Catholic Medical Centers, et. al
Case Nos. 05-14945 (CGM) & 10-11963 (CGM)*

PLEASE TAKE NOTICE THAT, the MedMal Trust Monitor of those certain trusts (the "MedMal Trusts") created as part of the confirmed plan of reorganization of Saint Vincent's Catholic Medical Centers of New York ("SVCMC") in SVCMC's first bankruptcy and amended in SVCMC's second bankruptcy for the benefit of holders of claims against SVCMC based on medical malpractice (the "MedMal Claims"), filed a motion (the "Motion") seeking court authority to, among others things: (i) expunge the forty (40) MedMal Claims that have not been liquidated as required by SVCMC's first bankruptcy plan (the "Unliquidated MedMal Claims"); (ii) release the residual funds; and (iii) dissolve the MedMal Trusts.

The Motion is scheduled for a hearing before the Court on March 17, 2022 at 10:00 a.m. (prevailing Eastern Time) before the Honorable Cecelia G. Morris, Chief United States Bankruptcy Court for the Southern District of New York, 355 Main Street, Poughkeepsie, NY 12601 (the "Hearing").

Holders of Unliquidated MedMal Claims that do not want their MedMal Claims expunged and be forever barred from recovery should contact the counsel for the MedMal Trust Monitor before the Hearing and file a response or objection to the Motion by March 7, 2022 at 5:00 p.m. (ET) in accordance with the Objection Procedures described therein. The MedMal Trust Monitor's counsel can be contacted at:

HAYNES AND BOONE, LLP

Richard Kanowitz

30 Rockefeller Plaza, 26th Fl.

New York, NY 10112

Telephone: 212-659-7300

Facsimile: 212-918-8989

Email: richard.kanowitz@haynesboone.com

**UPON ENTRY OF AN ORDER APPROVING THE
MOTION, HOLDERS OF UNLIQUIDATED MEDMAL
CLAIMS WILL BE FOREVER BARRED FROM
RECOVERING FROM THE MEDMAL TRUSTS.**

A copy of the Motion and other documents filed in both of the SVC MC bankruptcy cases may be obtained through the applicable claims agent website free of charge: (i) for the SV1 Debtors: <https://dm.epiq11.com/case/svc/dockets>; and (ii) for the SV2 Debtors: <https://dm.epiq11.com/case/svcmc2010/info>.

Notice for Electronic Service

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

SAINT VINCENT'S CATHOLIC MEDICAL
CENTERS OF NEW YORK, *et al.*¹,

Debtors.

Chapter 11

Case No. 05-14945 (CGM)
Jointly Administered

-----X
In re:

SAINT VINCENT'S CATHOLIC MEDICAL
CENTERS OF NEW YORK, *et al.*²,

Debtors.

Chapter 11

Case No. 10-11963 (CGM)
Jointly Administered
-----X

**NOTICE OF INTENT TO EXPUNGE UNLIQUIDATED CLAIMS AND
RELEASE REMAINING TRUST FUNDS FOR PAYMENT OF MEDICAL
MALPRACTICE CLAIMS AS PART OF THE PLANS OF REORGANIZATION
OF SAINT VINCENT'S CATHOLIC MEDICAL CENTERS OF NEW YORK**

PLEASE TAKE NOTICE THAT:

On July 5, 2005, Saint Vincent's Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers ("SVCMC"), and certain of its above-captioned affiliates (collectively, the "SV1 Debtors"), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Court") initiating their bankruptcy cases (the "SV1 Cases").

¹ The debtors in these chapter 11 cases (the "SV1 Cases") include Saint Vincent's Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers ("SVCMC"), Medical Service of St. Vincent's Hospital and Medical Center, P.C., Surgical Service of St. Vincent's, P.C., CMC Cardiology Services P.C., CMC Physician Services P.C., and CMC Radiological Services P.C. (collectively, the "SV1 Debtors").

² In addition to SVCMC, the debtors in these chapter 11 cases (the "SV2 Cases") include 555 6th Avenue Apartment Operating Corporation, Bishop Francis J. Mugavero Center for Geriatric Care, Inc., Chait Housing Development Corporation, Fort Place Housing Corporation, Pax Christi Hospice, Inc., Sisters of Charity Health Care System Nursing Home, Inc. d/b/a St. Elizabeth Ann's Health Care & Rehabilitation Center, St. Jerome's Health Services Corporation d/b/a Holy Family Home, and SVCMC Professional Registry, Inc. (collectively, the "SV2 Debtors").

On July 27, 2007, the Court entered the *Order Confirming Debtors' First Amended Chapter 11 Plans of Reorganization and Liquidation, Dated June 5, 2007* approving the SV1 Debtors' plan of reorganization (the "SV1 Plan").

The SV1 Plan contemplated the payment in full of all timely filed "Allowed" proofs of claim asserting medical malpractice liability for which SVCMC was liable either directly or vicariously based on medical malpractice committed by its employees or other healthcare professionals (the "MedMal Claims"), when the particular MedMal Claim became "Allowed." Under the SV1 Plan, a MedMal Claim becomes an "Allowed Claim" only "after the MedMal Claim has been determined by Final Order of a court of competent jurisdiction or by settlement."

Pursuant to the SV1 Plan, SVCMC created and maintained three separate trusts (the "MedMal Trusts") to satisfy its liability for the MedMal Claims *provided that* a holder of a timely filed MedMal Claim liquidated their claim under terms of the SV1 Plan and could not recover from insurance. After consultation with SVCMC, the Tort Claimants' Committee³ in the SV1 Cases appointed Michael E. Katzenstein as monitor pursuant to each of the MedMal Trusts (the "MedMal Trust Monitor").

On August 30, 2007, the SV1 Plan went effective by its terms.

PLEASE TAKE FURTHER NOTICE THAT:

On April 14, 2010, SVCMC and certain of its above-captioned affiliates (collectively, the "SV2 Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Court initiating their bankruptcy cases (the "SV2 Cases").

On June 29, 2012, the Court entered the *Order Confirming Debtors' Second Amended Joint Chapter 11 Plan* approving the SV2 Debtors' plan of reorganization (the "SV2 Plan").

Pursuant to the SV2 Plan and its supplement, the Trust Agreements were amended to provide for any residual funds in the MedMal Trusts to revert to SVCMC and be made available to general unsecured creditors of the SV2 Debtors' estate after the resolution of the remaining MedMal Claims. The SV2 Plan provided the MedMal Trust Monitor with the specific "sole and exclusive authority to reconcile and resolve the SV1 MedMal Claims in accordance with the SV1 Plan, the Amended MedMal Trust Agreements, and the MedMal Trusts Settlement Agreement."

On June 29, 2012 (the "SV2 Effective Date"), the SV2 Plan was substantially consummated and the effective date occurred by its terms. Upon the SV2 Effective Date, Eugene I. Davis was appointed as the Liquidating Trustee. The Liquidating Trustee is responsible for, among other things, "administering the Liquidating Trust, maintaining the Liquidating Trust Reserves, liquidating the Liquidating Trust Assets and making distributions under the Plan." SV2 Plan, § 5.7(b).

³ Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Motion (as defined below).

PLEASE TAKE FURTHER NOTICE THAT:

The MedMal Trust Monitor has worked diligently to fulfill his duties relative to the MedMal Trusts including, among other things, settling, closing, or otherwise resolving the MedMal Claims and coordinating with the MedMal Trustee for disbursements from the MedMal Trusts for the benefit of holders of MedMal Claims. Notwithstanding the MedMal Trust Monitor's extensive good faith efforts, holders of forty (40) of the MedMal Claims have failed to liquidate their claims to become "Allowed Claims," as defined in the SV1 Plan and as required to receive a distribution from the MedMal Trusts (collectively, the "Unliquidated MedMal Claims").

PLEASE TAKE FURTHER NOTICE THAT:

On February 4, 2022, the MedMal Trust Monitor filed its *Motion for Entry of an Order: (I) Enforcing the SV2 Confirmation Order, (II) Releasing the MedMal Trust Funds, and (III) Granting Related Relief* (the "Motion") with the Court in both the SV1 Cases and the SV2 Cases. A copy of the Motion and other documents filed in both the SV1 Cases and the SV2 Cases may be obtained through the applicable claims agent website free of charge: (i) for the SV1 Debtors: <https://dm.epiq11.com/case/svc/dockets>; and (ii) for the SV2 Debtors: <https://dm.epiq11.com/case/svc/mc2010/info>.

Through the Motion, the MedMal Trust Monitor requests the Court enter an order: (i) authorizing the MedMal Trust Monitor to discontinue reserving the remaining funds in the MedMal Trusts for the Unliquidated MedMal Claims; (ii) expunging the Unliquidated MedMal Claims; (iii) authorizing the MedMal Trust Monitor to direct the MedMal Trustee to release the residual funds in the MedMal Trusts to the Liquidating Trustee for payment to the SV2 General Unsecured Creditors, but reserving certain amounts as described in the Motion; (iv) dissolving the MedMal Trusts and discharging the MedMal Trustee from its responsibilities with respect to the MedMal Trusts, and (v) extending the SV2 Plan exculpation to the MedMal Trust Monitor, the MedMal Trustee, and the Liquidating Trustee.

The Motion is scheduled for a hearing before the Court on March 17, 2022, at 10:00 a.m. (prevailing Eastern Time) before the Honorable Cecelia G. Morris, Chief United States Bankruptcy Court for the Southern District of New York, 355 Main Street, Poughkeepsie, NY 12601 (the "Hearing").

PLEASE TAKE FURTHER NOTICE THAT:

Any holders of Unliquidated MedMal Claims that do not want their MedMal Claims expunged or to be forever barred from recovery should consider responding or objecting to the Motion, which shall (i) be in writing; (ii) conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York; (iii) be filed with the Court (a) by registered users of the Bankruptcy Court's case filing system, electronically in accordance with General Order M-399 (which can be found at <http://www.nysb.uscourts.gov>) and (b) by all other parties in interest, on a CD-ROM, in text searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Court and General Order M-399, to the extent applicable, and (iv) served upon the following

parties: (a) the above-captioned Debtors and their counsel; (b) the Liquidating Trustee, Eugene I. Davis, and his counsel; (c) the MedMal Trustee, Wilmington Savings Fund Society, FSB, successor to Christiana Bank & Trust Company, and its counsel; (d) the MedMal Trust Monitor and his counsel; (e) counsel to the SV2 Post-Effective Date Committee; (f) the Office of the United States Trustee; and (g) any other party that has submitted a request for electronic notice. Objections must be actually received on or before March 7, 2022 at 5:00 p.m. (prevailing Eastern Time) (collectively, the “Objection Procedures”).

UPON ENTRY OF AN ORDER APPROVING THE MOTION, HOLDERS OF UNLIQUIDATED MEDMAL CLAIMS WILL BE FOREVER BARRED FROM RECOVERING FROM THE MEDMAL TRUSTS. ANY HOLDERS OF UNLIQUIDATED MEDMAL CLAIMS SHOULD CONSULT AN ATTORNEY REGARDING MATTERS IN CONNECTION WITH THIS NOTICE.

PLEASE TAKE FURTHER NOTICE THAT: Notwithstanding anything in this notice, the MedMal Trust Monitor reserves all of his rights and does not waive any rights.

HAYNES AND BOONE, LLP

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Attorney for the MedMal Trust Monitor