Hearing Date: September 25, 2024 at 12:00 p.m. (Eastern Time)
Objection Deadline: August 5, 2024 at 11:30 a.m. (Eastern Time)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re: ORION HEALTHCORP, INC.,[1] Debtor.	Chapter 11 Case No. 18-71748 (AST)
HOWARD M. EHRENBERG IN HIS CAPACITY AS LIQUIDATING TRUSTEE OF ORION HEALTHCORP, INC., et al., Plaintiff, - against - ELIZABETH KELLY, Defendant.	Adversary Proc. No. 20-08048 (AST)

MOTION OF THE LIQUIDATING TRUSTEE OF ORION HEALTHCORP, INC., PURSUANT TO FED. R. BANK. P. 9019, FOR ENTRY OF AN ORDER APPROVING SETTLEMENT

The Liquidating Trustee of Orion HealthCorp., Inc. ("Trustee") hereby moves this Court (the "Motion") for entry of an order approving the compromise and settlement of the adversary action initiated against Defendant Elizabeth Kelly (the "Defendant"), pursuant to Rule 9019 of the Federal Rule of Bankruptcy Procedure (the "Bankruptcy Rules"). A true and correct

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Orion Healthcorp, Inc. (7246); Constellation Healthcare Technologies, Inc. (0135); NEMS Acquisition, LLC (7378); Northeast Medical Solutions, LLC (2703); NEMS West Virginia, LLC (unknown); Physicians Practice Plus Holdings, LLC (6100); Physicians Practice Plus, LLC (4122); Medical Billing Services, Inc. (2971); Rand Medical Billing, Inc. (7887); RMI Physician Services Corporation (7239); Western Skies Practice Management, Inc. (1904); Integrated Physician Solutions, Inc. (0543); NYNM Acquisition, LLC (unknown) Northstar FHA, LLC (unknown); Northstar First Health, LLC (unknown); Vachette Business Services, Ltd. (4672); Phoenix Health, LLC (0856); MDRX Medical Billing, LLC (5410); VEGA Medical Professionals, LLC (1055); Allegiance Consulting Associates, LLC (7291); Allegiance Billing & Consulting, LLC (7141); New York Network Management, LLC (7168). The corporate headquarters and the mailing address for the Debtors listed above is 1715 Route 35 North, Suite 303, Middletown, NJ 07748.

copy of the settlement agreement (the "Agreement") is attached hereto as Exhibit A and incorporated herein by reference for all purposes. In support of the Motion, the Trustee respectfully states as follows:

JURISDICTION

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and rule predicates for the relief sought in this Motion are sections 105(a) and 363 of chapter 11 of Title 11, United States Code (the "Bankruptcy Code") and Rule 9019 of the Bankruptcy Rules.

BACKGROUND

3. On March 16, 2018 (the "Petition Date"), the Debtor commenced the above-captioned chapter 11 case (the "Bankruptcy Case") by filing a voluntary petition with this Court under chapter 11 of the Bankruptcy Code.

4. Prior to the Petition Date, the Debtors were a consolidated enterprise of several companies aggregated through a series of acquisitions, which operate the following businesses: (a) outsourced revenue cycle management for physician practices, (b) physician practice management, (c) group purchasing services for physician practices, and (d) an independent practice association business, which is organized and directed by physicians in private practice to negotiate contracts with insurance companies on their behalf while such physicians remain independent and which also provides other services to such physician practices.

5. On February 26, 2019, the Honorable Alan S. Trust, United States Bankruptcy Judge for the Eastern District of New York, entered an order (the "Confirmation

Order") [Docket No. 701] confirming the Debtors' Third Amended Joint Plan Of Liquidation (the "Plan").

6. On February 26, 2019, pursuant to the *Findings of Fact, Conclusions of Law, and Order Confirming Third Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 701] (the "Confirmation Order"), the Plan (as defined in the Confirmation Order) was confirmed, a Liquidating Trust Agreement was entered, and the Trustee was appointed to implement and oversee the Creditor Trust and the terms of the Creditor Trust Agreement, the Plan and Confirmation Order. Howard Ehrenberg was appointed as the Trustee. The Trustee engaged Pachulski Stang Ziehl & Jones LLP and Reed Smith, LLP as its counsel in the underlying adversary proceeding.

7. The Plan provides, among other things, for the formation of the Liquidating Trust and the appointment of the Liquidating Trustee on the Effective Date (as that term is defined in the Plan) to oversee distributions to holders of Allowed Claims and Allowed Interests and to pursue retained Causes of Action of the Debtors' Estates. The Effective Date occurred on March 1, 2019.

8. The Plan provides that the Trustee shall have the authority and responsibility to, among other things, receive, manage, invest, supervise, and protect the Liquidating Trust Assets, including causes of action.

9. On or about March 13, 2020, the Trustee filed his *Complaint For Avoidance And Recovery Of: (1) Fraudulent Transfers; (2) Preferential Transfers; (3) Recovery Of Avoided Transfers; (4) Turnover Of Property Of The Estate; (5) For Recovery Of Property (6) Objection To Claim No. 10044; (7) Subordination Of Claim; (8) Declaratory Relief Pursuant To 11 U.S.C. §§ 502, 542, 544, 547 548 And 550; And (9) Breach Of Fiduciary Duty* (the "Complaint") against

the Defendant with the Bankruptcy Court, designated as Adversary Proceeding No. 8-20-08048-ast (the "Adversary Proceeding"). The Complaint sought to recover alleged preferential and fraudulent transfers under applicable provisions of the Bankruptcy Code in the amount of $5,890,000.00 (the "Transfers"), breach of fiduciary duty, as well as the objection and subordination of the proof of claim, Claim No. 10044 filed in the amount of $49,659,100 (the "Filed Claim").

10. The Complaint stems from the Debtors acquisition of NYNM, Inc. The Defendant, as the founder and majority owner of NYNM, Inc., a medical billing company, sold her company to the Debtor in the Spring of 2017 for approximately $22M, with approximately $6M placed into an escrow account and with the right to two years of earn-outs based on the performance of NYNM, working capital adjustments and the collection of receivables. A second purchase agreement, identical to the first in most respects, except as styled with a $30M acquisition price, was also located and which was submitted to the banks for the acquisition. Defendant remained and functioned as Chief Executive Officer of NYNM during 2017 interacting with the Parmar executive team. In the Summer of 2017, Parmar and his executive team were terminated following the discovery of various bad acts. The Trustee asserts that the alleged escrow was a commingled slush fund Parmar utilized at Robinson Brog to forward his misdeeds. The Trustee asserts such funds can be clawed back. The Trustee further alleged that Kelly, as the CEO of NYNM, participated in or was aware of various conduct leading to the devaluation of NYNM. Defendant Kelly denies the allegations and asserts she was a victim of Parmar and his executive team as much as any other creditor in the Bankruptcy Case and her company was destroyed along with the value of her earn-out.

11. In or about June 2020, the Defendant filed a Motion to Dismiss the Complaint and the Adversary Proceeding. Thereafter, the Parties engaged informally in the exchange of documents and legal positions regarding the Adversary Proceeding as well as negotiations of various issues in the Bankruptcy Case. On or about November 2021, the Parties resolved other matters outside the direct purview of the Adversary Proceeding which settlement was approved by the Court. The Parties reported back to the Court as to the remainder of the matters pending in the Adversary Proceeding on or about May 2022.

12. In or about October 2022, the Trustee filed his Opposition to the Motion to Dismiss. The Parties entered into discovery thereafter.

13. On or about October 31, 2013, the Parties were ordered to attend mediation. The Motion to Dismiss was denied and the Defendant filed her Answer to the Complaint on February 27, 2024, generally and specifically denying the assertions within the Complaint.

14. The Parties, including the insurance carrier, attended two days of mediation before the Honorable Gerald Rosen, Ret. in 2023 and 2024. Ultimately, the Parties were unsuccessful in resolving the Adversary Proceeding in mediation. Nonetheless, as the Parties conducted the remaining discovery, they continued to discuss the issues raised in the Adversary Proceeding in good faith and ultimately reached a consensus on settlement terms which settlement the Parties bring before the Court for approval.

SETTLEMENT DETAILS

15. The Complaint includes numerous causes of action stemming from the Debtor's acquisition of NYNM, Inc. The proposed settlement is a global resolution of all claims between the Parties, including the insurance carrier. In essence the Parties will compromise the dispute, liquidate and expunge the Filed Claim and dismiss the Adversary Proceeding as

memorialized in the Agreement, the terms of which are summarized as follows:[2] (1) $2.5M to be paid to Ms. Kelly by the Trust following entry of an order approving the 9019 motion, (2) $1.3 MM paid to the Trustee by Ironshore/Kelly following entry of an order approving the 9019 motion, and (3) release of all claims in the bankruptcy case between Defendant, Kelly and the Bankruptcy estate. The Kelly release includes a general release of all claims including the right to future recoveries in the bankruptcy case and the Parties will execute a dismissal with prejudice of the Adversary Proceeding with each side to bear its own fees and costs.

RELIEF REQUESTED

16. By this Motion, the Trustee seeks approval of the Agreement.

BASIS FOR RELIEF

17. Federal Rule of Bankruptcy Procedure 9019(a) sets forth that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." In approving a settlement, a court must "review the reasonableness of the proposed settlement [and] . . . make an informed judgment as to whether the settlement is fair and equitable and in the best interests of the estate." *In re Worldcom, Inc*., 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006); see also A*ir Line Pilots Ass'n, Int'l v. Am. Nat'l Bank & Trust Co. (In re Ionosphere Clubs, Inc.)*, 156 B.R. 414, 426 (S.D.N.Y. 1993). The Court, however, need not "conduct a 'mini trial' on the issue. The Court need only 'canvass the issues' to determine if the 'settlement falls below the lowest point in the range of reasonableness.'" *Worldcom*, 347 B.R. at 137 (quoting *In re Teltronics*. *Serv., Inc*., 762 F.2d 185, 189 (2d Cir. 1985)).

[2] The terms of the Agreement summarized in this Motion in no way alter, change, or amend the actual terms set forth in the Agreement. In the event that there are any inconsistencies between this summary and the actual terms of the Agreement, the language set forth in the Agreement shall control.

18. The factors to consider in approving a settlement include: (1) the balance between the litigation's possibility of success and the settlement's future benefits; (2) the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment; (3) the paramount interests of the creditors, including each affected class's relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement; (4) whether other parties in interest support the settlement; (5) the competency and experience of counsel supporting the settlement; (6) the nature and breadth of releases to be obtained by officers and directors; and (7) the extent to which the settlement is the product of arm's length bargaining. *Fjord v. AMR Corp. (In re AMR Corp.)*, 502 B.R. 23, 43 (Bankr. S.D.N.Y. 2013) (citing *In re Iridium Operating LLC*, 478 F.3d 452, 462 (2d Cir. 2007)).

19. Moreover, settlements should be approved if they fall above the lowest point of reasonableness. "[The] responsibility of the bankruptcy judge . . . is not to decide the numerous questions of law and fact raised by the appellants, but rather, to canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness." *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *In re Planned Protective Servs., Inc.,* 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991). It is not necessary to conduct a "mini-trial" of the facts or the merits of the underlying dispute. *In re Adelphia Communs. Corp.*, 368 B.R. 140, 226 (Bankr. S.D.N.Y. 2007). "Rather, the court only need be apprised of those facts that are necessary to enable it to evaluate the settlement and to make a considered and independent judgment about the settlement. In doing so, the court is permitted to rely upon opinions of the trustee, the parties, and their attorneys". *Id*. at 226. Thus, the question is not whether a better settlement might have been achieved or a better result reached if litigation pursued. Instead, the court should approve

settlements that meet a minimal threshold of reasonableness. *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994); *In re Tech. for Energy Corp.*, 56 B.R. 307, 311-312 (Bankr. E.D. Tenn. 1985); *In re Mobile Air Drilling Co., Inc.*, 53 B.R. 605, 608 (Bankr. N.D. Ohio 1985).

20. Settlements or compromises are favored and encouraged in bankruptcy "[I]n administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims as to which there are substantial and reasonable doubts." *In re Adelphia Communs. Corp*., 368 B.R. at 226 (quoting *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424, 88 S. Ct. 1157, 20 L. Ed. 2d 1 (1968)). "The decision whether to accept or reject a compromise lies within the sound discretion of the court." *Adelphia,* 368 B.R. at 226.

(1) The balance between the litigations possibility of success and the settlement's future benefits.

21. The Adversary Proceeding involves complex factual narratives including the sale of NYNM, Inc. to the Debtor in March 2017, Defendant's role as an executive at NYNM post-sale, the schemes of Paul Parmar and his executive team , Defendant's interaction with them, and the financial condition of NYNM, Inc., Orion and CHT both before, during and after the acquisition. As the Court noted at the pleading stage, the Complaint was filed with over 100 pages of exhibits, the Motion to Dismiss attacking the Complaint was over 300 pages with exhibits, and the Response over 400 pages with attachments not including the request for judicial notices of a further 150 pages. [Dkt No. 53] During the course of discovery, the Parties produced in excess of 10,000 documents which memorialized dealings across a two year time frame. Like other adversaries, this Adversary Proceeding involved multiple versions of purchase agreements, diversion of funds utilizing the Robinson Brog account, and suspect conduct from various Debtor

executives who made every attempt to conceal their dealings. The Trustee has confronted conduct of this nature in the Bankruptcy Case and with respect to many of these same players. However, the Adversary Proceeding raises its own unique factual issues, including the Defendant who asserts she was the victim, a $49M Filed Claim involving an earn-out provision with a contractual right to damages, and the operations of NYNM both before and after restructuring officials stepped in to operate the Debtors. The Adversary Proceeding also involves a breach of fiduciary duty claim, one year of D & O insurance coverage, and potential insurance coverage issues relating to the defense and indemnification obligations, most of which are fact dependent. Lastly, the Filed Claim raises issues of subordination, breach of contract claims, potential fraud, and modeling of damages. In sum, whichever narrative is adopted by the trier of fact could lead to disparate outcomes at trial. For example, if the trier of fact believes the monies were deposited into a true-escrow, the funds are not subject to avoidance as property of the estate. Similarly, if the trier of fact believes conveyances were fraudulent, or that certain damages were caused by intentional conduct, these factual findings may raise new insurance coverage disputes, and necessitate further litigation costs to be incurred before they are resolved. The settlement seeks to compromise these various risks based on the discovery and the benefits in achieving a known outcome.

(2) the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment

22. As the founder and majority owner of NYNM, Inc., Defendant has taken the Adversary Proceeding quite personally as well as the allegation of malfeasance with Parmar and other executives. Similarly, the Trustee has gone to great lengths to expose the bad acts perpetrated against creditors. Defendant continues to dispute that she is a perpetrator of such acts. Both sides have every incentive to pursue the case to trial and potentially appeal an unfavorable outcome given the complexities of the case. The Trustee has the added risk that if he is successful,

he will need to collect against an individual. Both parties would incur significant expert fees in areas of insolvency, standard of care, corporate governance, healthcare and damages. Trial costs would also be far from insignificant since numerous percipient witnesses would be involved, expert's paid for trial testimony, reporter's fees and attorney's fees. These fees could set-off either sides recovery or success in the litigation.

> (3) the paramount interests of the creditors, including each affected class's relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement; (4) whether other parties in interest support the settlement;

23. The Trustee consulted and obtained the approval of the Oversight Committee on the terms of the proposed settlement. With respect to general creditors of the estate, Plaintiff submits that the proposed settlement resolves complex litigation and pushes the bankruptcy case closer to the finish line. The settlement allows for funds held in reserve net of settlement and costs to be made available for distribution to creditors, a factor which favors the granting of the Motion. While the Trustee might do better in litigation of the claims, he could also do worse. The proposed settlement and global release of all claims would allow the Trustee to release the net reserve rather than keep those funds tied up for years, be subject to additional litigation and costs, or be lost all together with an adverse verdict.

> (5) the competency and experience of counsel supporting the settlement; (7) the extent to which the settlement is the product of arm's length bargaining.

24. The Trustee is represented by two firms; PSZ&J and Reed Smith. Both firms have experienced counsel, each with in excess of 20 years of civil litigation experience, who have handled the litigation from the initiation of the Adversary Proceeding to today. Both firms have prosecuted in the Bankruptcy Case similar causes of actions and theories of recovery as filed in the Adversary Proceeding which have been affirmed on appeal. Defendant has also retained

multiple counsel with the lead counsel taken by Anthony Acampora of Rimôn PC., who has in excess of forty years of litigation experience and has represented Ms. Kelly from the inception of the adversary proceeding to today. Both sets of lawyers have litigated tort and bankruptcy matters in the Bankruptcy Courts in the Eastern and Southern Districts of New York. The insurance carrier in the Adversary Proceeding, Ironshore, was also represented by experienced coverage counsel, Charles Jones. Each set of lawyers participated in the proposed settlement which started with the assistance of Gerald Rosen, Ret. in two separate all day mediation sessions. The proposed settlement was achieved as a result of mediation, extensive negotiations, and protracted litigation.

(6) the nature and breadth of releases to be obtained by officers and directors

25. The proposed settlement is a mutual general release and complete walk-away of the claims raised in the Adversary Proceeding and in the Bankruptcy case. The various settlement payments will be exchanged and the Filed Claim will be liquidated and withdrawn. Following exchange of payments of the settlement amounts, Defendant is waiving any further claims against the bankruptcy estate. However, litigation between Kelly and Arvind Walia pending in New York state court, and between the Trustee and Arvind Walia pending in United States Bankruptcy Court in New York, is expressly excluded from any release or waiver.

26. Prior to the bankruptcy, Kelly caused New York Network Management LLC, to bring an action against Kevin Kelly and Auciello Law Group, PC, in the Supreme Court of New York, Kings County, index number 522203/2016. Kevin Kelly brought an action (index number 522255/2016) in the same court, naming Elizabeth Kelly and New York Network Management LLC as defendants. Elizabeth Kelly and New York Network Management LLC thereafter counterclaimed against Kevin Kelly in that second action. Thereafter, Elizabeth Kelly and New York Network Management LLC filed appeals challenging an order of the Supreme

Court requiring that a percentage of the proceeds paid to Elizabeth Kelly from the sale of NYNM be held in escrow. Those appeals are pending in the Appellate Division of the New York State Supreme Court, Second Department, and bearing index numbers 2017-13018 and 2018-07583. To the extent Kelly intends to go forward with the appeal, the Trustee does not oppose relief from the automatic stay given his understanding the appeals does not include actions prosecuted by or against NYNM.

NOTICE

27. Notice of this Motion has been given to: (a) the Office of the United States Trustee; (b) all parties that have previously requested notice in this case pursuant to Bankruptcy Rule 2002; (c) the Debtor; and (d) the Defendant.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that this Court enter the order granting the Motion approving the Agreement, to and grant such other and further relief as the Court deems just and equitable.

Dated: New York, New York
July 19, 2024

PACHULSKI STANG ZIEHL & JONES LLP

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EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement ("**Agreement**") is made and entered into between Howard M. Ehrenberg ("**Trustee**"), in his sole and exclusive capacity as liquidating trustee of the jointly administered bankruptcy estates of Orion HealthCorp, Inc. ("**Orion**") and Constellation Healthcare Technologies, Inc., et al., ("**CHT**") (collectively, "**Debtors**"), and Elizabeth Kelly ("**Kelly**") and Ironshore Specialty Insurance Company ("**Ironshore**") (each individually is defined to be a "**Party**" and collectively defined as the "**Parties**"), and is based upon the following:

RECITALS

WHEREAS:

A. **Ironshore** issued Managed Care Organizations Directors and Officers Liability Policy no. 000572708 to **New York Management, LLC ("NYNM")** for the July 14, 2017 to July 14, 2018 policy period (the "**Policy**"). Subject to its terms and conditions, the **Policy** provides coverage to those serving as directors and officers of **NYNM** for Claims first made during the policy period or any applicable Extended Reporting Period for certain Wrongful Acts subject to an aggregate limit of liability of Five Million Dollars ($5,000,000).

B. On or about March 10, 2017, the **Debtors** acquired **NYNM** from selling members owning **NYNM**, which included **Kelly** ("**NYNM Acquisition**"). Following the **NYNM Acquisition, Kelly** held the position of Chief Executive Officer (CEO) of **NYNM** until in or around June 2018.

C. On March 16, 2018, **Debtors** filed a voluntary petition with the United States Bankruptcy Court for the Eastern District of New York (the "**Bankruptcy Court**") under chapter 11 of the Bankruptcy Code. **NYNM** commenced its voluntary petition on July 5, 2018.

D. On or about July 2, 2018, Kelly filed a claim in the amount $49,659,099.00, which the claims agent appointed by the **Bankruptcy Court** designated as claim no. 10044 (the "**Filed Claim**").

E. On or about March 13, 2020, the **Trustee** commenced an Adversary Proceeding (Adv. Pro. No. 20- 08048; Main Case No. 18-71748) in the **Bankruptcy Court** asserting causes of action to avoid and recover fraudulent and preferential transfers, to subordinate and/or object to the **Filed Claim**, and for breach of fiduciary duty and declaratory relief ("**Adversary Proceeding**").

F. **Kelly** tendered the **Adversary Proceeding** to **Ironshore** for coverage under the **Policy** and **Ironshore** agreed to participate in **Kelly's** defense subject to a reservation of rights. **Kelly** has contested **Ironshore's** coverage position.

G. **Kelly** raised certain defenses and disputes the allegations made in the **Adversary Proceeding**. **Kelly** denies and continues to deny all of the claims and material allegations (including any allegations of wrongdoing) asserted by the **Trustee** against her in the **Adversary Proceeding**.

H. **Kelly**, the **Trustee**, and **Ironshore** have made separate and independent evaluations of the claims and defenses in the **Adversary Proceeding**, as well as coverage under the **Policy**, and wish to avoid the cost, expense and risk of further proceedings (including any trial) in this matter, and further to resolve their differences by way of this **Agreement**.

I. This **Agreement** is the result of arms-length settlement negotiations between and among **Kelly**, the **Trustee**, and **Ironshore**, all of whom have thoroughly considered the factual allegations underlying the proceedings discussed in these recitals, any applicable defenses and counterclaims thereto, their likelihood of success, the risk of liability, the amount of claimed damages, the evidence in the case, the costs, expenses, and time of litigation, the potential reasonable range of amounts of a verdict against **Kelly**, the public interest, and similarly related factors.

NOW, THEREFORE, subject to and in consideration of the mutual covenants, agreements and conditions set forth herein, and upon acknowledgement of each of the **Parties** of the receipt of valuable consideration, the **Parties** agree as follows:

1. Conditions Precedent. The obligations of and releases by the **Parties** as set forth in any other provision in this **Agreement**, are subject to and made expressly contingent upon the **Bankruptcy Court's** approval of this **Agreement** pursuant to a final non-appealable order.

2. Settlement Amount regarding the **Adversary Proceeding**.

i. On or before ten (10) business days after the order approving this **Agreement** becomes a final order, **Kelly** and **Ironshore** jointly and severally will deposit One Million Three Hundred Thousand Dollars ($1,300,000.00) ("**Settlement Payment**") within the RIMON, PC. Interest on Lawyers Trust Account ("IOLTA" Account) and give written notice to the Trustee's counsel immediately thereafter.

ii. On or before fifteen (15) business days after the order approving this **Agreement** becomes a final order, the **Debtors'** estate shall pay to **Kelly** counsel's IOLA Account to be held in trust pending the settlement exchange the total amount of Two Million Five Hundred Thousand Dollars ($2,500,000.00) (**"Claim Payment"**) by wire transfer to:

Wire Instructions

Bank name: [redacted]
Account name: Rimon, P.C.
Account address: 1655 W Fairview Ave, Ste 102, Boise, ID 83702
[redacted]

iii. On or before twenty (20) business days after the order approving this **Agreement** becomes a final order, the IOLTA Account will release and make the **Settlement Payment** to the **Trustee** by wire transfer to:

Wire Instructions

Account Name: The Orion Liquidating Trust
Reference: Howard M. Ehrenberg, Liquidating Trustee
Bank Name: [redacted]
ABA Number: [redacted]
Bank Acct Num. [redacted]

iv. On or before twenty (30) business days after the order approving this **Agreement** becomes a final order, the IOLTA Account will release and make the **Claim Payment** to **Kelly**.

3. Proofs of Claim. **Kelly** agrees that within (10) days of execution of this **Agreement, Kelly** will execute and deliver to the Trustee, or in a form acceptable to the Trustee, a Notice of Withdrawal or Expungement of the **Filed Claim** which the Trustee will not file unless and until the Bankruptcy Court approves the Agreement, the Order becomes final and the payments made in Paragraph 2(i) and (ii).

4. Dismissals and Releases.

i. Dismissal of the **Adversary Proceeding**. **Trustee** agrees to dismiss all claims asserted against **Kelly** in the **Adversary Proceeding** with prejudice

within fifteen (15) business days of the **Settlement Payment** to the **Trustee** under the terms set forth in Section 2 of this **Agreement**.

ii. **Trustee's** Release of Claims against **Kelly**. **Trustee** agrees to fully release and forever discharge **Kelly** from any and all obligations, duties, responsibilities, claims, liabilities, and damages, of any nature or kind whatsoever based upon, relating to, arising from, and/or in connection with the **Adversary Proceeding,**. This release by the **Trustee** is effective following the **Settlement Payment** by **Ironshore** and/or **Kelly** to the **Trustee** under the terms set forth in Section 2 of this **Agreement**. Notwithstanding the foregoing and for the avoidance of doubt, the Trustee does not release in any way pending litigation and claims against Arvind Walia, et al., in adversary case no. 20-08049, or as against John Petrozza, et al., in adversary case no. 20-08052.

iii. **Trustee's** Release of Claims against **Ironshore**. **Trustee** agrees to fully release and forever discharge **Ironshore** and its respective affiliates, directors, officers, employees, agents, attorneys, predecessors, successors, partners, heirs, executors, administrators, and assigns from any and all obligations, duties, responsibilities, claims, liabilities, and damages, of any nature or kind whatsoever based upon, relating to, arising from, and/or in connection with the **Adversary Proceeding** and **Kelly's** claim for coverage for the **Adversary Proceeding** under the **Policy**, including but not limited to, any and all claims for breach of contract and/or breach of the covenant of good faith and fair dealing, following the **Settlement Payment** by **Ironshore** and/or **Kelly** to the **Trustee** under the terms set forth in Section 2 of this **Agreement**.

iv. **Kelly's** Release of Claims against **Ironshore**. **Kelly** agrees to fully release and forever discharge **Ironshore** and its respective affiliates, directors, officers, employees, agents, attorneys, predecessors, successors, partners, heirs, executors, administrators, and assigns from any and all obligations, duties, responsibilities, claims, liabilities, and damages, of any nature or kind whatsoever based upon, relating to, arising from, and/or in connection with the **Adversary Proceeding** and **Kelly's** claim for coverage for the **Adversary Proceeding** under the **Policy**, including but not limited to, any and all claims for breach of contract and/or breach of the covenant of good faith and fair dealing, following the **Settlement Payment** by **Ironshore** and/or **Kelly** to the **Trustee** under the terms set forth in Section 2 of this **Agreement**. This release shall not release **Ironshore** of any of its

obligations for the payment of invoices for attorneys' fees and costs timely submitted by **Kelly** and incurred by her in the **Adversary Proceeding** as per the prior agreement between **Kelly** and **Ironshore** under which the parties reserved their rights.

v. **Kelly's** Release of Claims against **Debtors'** Estate. **Kelly** agrees to fully release and forever discharge the **Trustee** and **Debtors** and their respective subsidiaries, affiliates, directors, officers, employees, agents counselors, attorneys, predecessors, successors, partners, joint ventures, heirs, executors, administrators, and assigns from any and all obligations, duties, responsibilities, claims, liabilities, and damages, of any nature or kind whatsoever based upon, relating to, arising from, and/or in connection with the **Debtors**, **NYNM**, the **Adversary Proceeding,** and the **Filed Claim**, following the **Claim Payment** by the **Debtors'** estate to **Kelly** under the terms set forth in Section 2 of this **Agreement**. Notwithstanding, the foregoing and for the avoidance of doubt, Kelly does not release in any way pending litigation and claims against Arvind Walia in the Supreme Court of the State of New York.

vi. The **Trustee**, **Kelly**, and **Ironshore**, by releasing unknown claims, expressly waive any and all provisions, rights, and benefits conferred by any law of the United States, any state or territory of the United States, or any non-United States jurisdiction, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5. Incorporation of Recitals. The Recitals are specifically incorporated herein as representations and warranties that the **Parties** have relied upon and are intended to be part of this **Agreement**. This **Agreement** constitutes a fully executed settlement agreement by **Trustee**, **Kelly**, and **Ironshore**, as defined herein, with respect to the **Adversary Proceeding** and the **Filed Claim**.

6. Representations and Warranties.

i. Each **Party** to this **Agreement** represents and warrants to, and agrees with, the other settling **Party** hereto, as follows:

(a) Except as provided in this **Agreement**, no **Party** (nor any agent, representative, or attorney of or for any **Party**) has made any statement or representation to any other **Party** regarding any fact relied upon in entering into this **Agreement**, and each **Party** does not rely upon any statement, representation or promise of any other **Party** (or of any agent, representative, or attorney for any other **Party**) in executing this **Agreement**, or in making the settlement provided for herein, except as expressly stated in this **Agreement**.

(b) Each **Party** has made such investigation of the facts pertaining to the settlement provided for herein and this **Agreement**, and of all the matters pertaining thereto, as each settling **Party** deems necessary.

(c) Each **Party** has read this **Agreement**, is represented by counsel and has had the opportunity to consult with counsel regarding any and all provisions of this **Agreement** and their effects and understands the contents hereof.

(d) Each **Party** represents, warrants, and agrees that this **Agreement** was freely negotiated between the **Parties** at arm's length, and is not the result of collusion, extortion, or duress.

(e) Each **Party** agrees to take such steps and to execute such documents as may be reasonably necessary or proper to effectuate the purpose and intent of this **Agreement** and to preserve its validity and enforceability, including in connection with any motion to approve this **Agreement** by the **Bankruptcy Court**. In the event that any proceeding of any type whatsoever is commenced or prosecuted by any person not a **Party** hereto to invalidate, interpret, or prevent the validation, enforcement or carrying out of all or any of the provisions of this **Agreement**, the **Parties** will cooperate fully in opposing such proceeding.

(f) Each **Party** has received independent legal advice from his, her or their respective attorneys with respect to the advisability of making

the settlement provided for herein, and with respect to the advisability of executing this **Agreement**.

ii. Each term of this **Agreement** is contractual and not merely a recital.

7. Additional Covenant. Kelly contends that the automatic stay does not impact any issues in the bankruptcy including Kelly's continued prosecution and defense of the litigation currently pending in the Supreme Court of the State of New York, titled Kevin Kelly et al. v. Elizabeth Kelly et al, Index No. 522255/2016, as consolidated with Index No. 522203/2016 (the "**State Court Action**"), and/or any related appeals (including but not limited to docket numbers 2017-13018 and 2018-07583 pending in the Appellate Division, Second Department). The Trustee is not a party to or aware of any issues raised in the State Court Action. Kelly will move for relief from stay in the Bankruptcy Case to permit the continuation of the State Court Action.

8. Adequate Consideration. Each Party acknowledges that he, she or it has received adequate and sufficient consideration to support his, her or its obligations hereunder and the releases provided herein.

9. No Admission as to Disputed Claims. This **Agreement** is made and entered into for the purpose of settling and compromising any disputes between the **Parties**. This **Agreement** is not, and shall not be construed as, an admission of any sort, including as to liability, by any of the **Parties**.

10. Fees and Costs. As between each other, and except as provided or assigned elsewhere in this **Agreement**, the **Parties** are solely and exclusively liable and responsible for any and all attorneys' fees, witness fees, consultant fees, costs, expenses and any other amounts that they have incurred in connection with the **Adversary Proceeding**, the **Filed Claim**, and this **Agreement**. The prevailing Party in any litigation arising from a dispute under or relating to this **Agreement** shall be entitled to recover his, her, or its reasonable attorneys' fees and expenses.

11. Non-Waiver. The failure of any of the **Parties** to insist upon strict adherence to any term or obligation of this **Agreement** shall not be considered a waiver or deprive any **Party** of the right thereafter to insist upon strict adherence to that term or obligation, or any other term or obligation, of this **Agreement**.

12. Construction. Each **Party** cooperated in drafting and preparing this **Agreement**, which shall not be construed for or against any **Party** on that basis.

13. Survival of Terms. If one or more of the provisions contained in this **Agreement** shall for any reason be invalid or unenforceable, such provision or provisions may be modified by an arbitrator or appropriate judicial body so that it or they are valid and/or enforceable. If any

provision is stricken, the remaining provisions of this **Agreement** shall remain valid and enforceable.

14. Integrated Agreement. This **Agreement** contains the entire agreement and understanding between the **Parties** and supersedes and replaces all prior negotiations and proposed agreements, written or oral, among and between the **Parties** with respect to the **Adversary Proceeding**, with the specific exception of the prior agreement between **Kelly** and **Ironshore** with respect to payment of attorneys' fees in connection with the **Adversary Proceeding**. . No amendments, modifications or supplements to this **Agreement** may be made other than by a writing signed by the **Parties**.

15. No Third-Party Beneficiary(ies). No provision of this **Agreement** is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any person other than the Parties hereto and their respective successors.

16. Binding Nature of Agreement. This **Agreement** shall bind and benefit the **Parties** and their respective successors, assigns and heirs and as otherwise stated herein.

17. Power & Authority. The **Parties** represent and warrant that they have full power and actual authority to enter into this **Agreement**, to grant the benefits granted herein, to incur the obligations set forth herein, and to carry out all actions required of them herein. All persons executing this **Agreement** in representative capacities represent and warrant that they have full power and authority to bind their respective corporate entities.

18. Counterparts. This **Agreement** may be executed in counterparts, and when each **Party** has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one agreement, which shall be binding upon and effective to all **Parties**. Facsimile or scanned signatures shall be deemed original signatures.

19. Consent to Jurisdiction. All of the **Parties** hereto consent and submit to the continuing jurisdiction of the **Bankruptcy Court** with respect to any disputes arising under, and to enforce the terms of, this **Agreement**.

Dated: July 18, 2024

By: _____
Howard M. Ehrenberg, in his sole and exclusive capacity as liquidating trustee of the jointly administered bankruptcy estates of Orion HealthCorp, Inc. and Constellation Healthcare Technologies, Inc., et al.

Dated: 33
By: _____
Elizabeth Kelly UD 7/15/24

Dated:
By: _____
Ironshore Specialty Insurance Company

Dated:
By: _____
Elizabeth Kelly

Dated: July 17, 2024
By: _____
Ironshore Specialty Insurance Company