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Hearing Date: September 13, 2013 at 10:00 a.m.
Objection Deadline: September 6, 2013 at 10:00 a.m.

*Counsel for Debtors
And Debtors in Possession*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11 Case

SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.,

Case No. 13- 22840 (RDD)

Debtors.

(Jointly Administered)
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**DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTION 365 OF
THE BANKRUPTCY CODE AUTHORIZING DEBTORS TO REJECT
CERTAIN EXECUTORY CONTRACTS, *NUNC PRO TUNC*, TO THE
DATE OF TERMINATION OR THE FILING DATE OF THIS
MOTION, WHICHEVER IS EARLIER**

Sound Shore Medical Center of Westchester ("SSMC"), and its debtor affiliates (each a "Debtor" and together, the "Debtors") in the above chapter 11 cases (the "Chapter 11 Cases"), hereby file this Motion (the "Motion") for the entry of an Order pursuant to Section 365 of Bankruptcy Code, rejecting the executory contracts (the "Executory Contracts") set forth on Exhibit A hereto. In support of the Motion, the Debtors respectfully represent as follows:

SUMMARY OF RELIEF REQUESTED

1. As set forth in more detail below, the Debtors have determined that the Debtors' executory contracts (the "Executory Contracts") with Convergent Revenue Cycle Management ("Convergent") and Med-Metrix, LLC ("Med-Metrix") are no longer necessary for the Debtors continued operations and do not provide any meaningful value or benefit to the Debtors and their

estates. Details pertaining to the Executory Contracts sought to be rejected are identified and described on Exhibit A hereto. Accordingly, to avoid the accrual of any unnecessary administrative expenses under the Executory Contracts, by this Motion, the Debtors seek entry of an order, substantially in the form annexed hereto as Exhibit B (the “**Proposed Order**”), pursuant to Section 365(a) of Title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), authorizing the Debtors to reject the Executory Contracts, *nunc pro tunc*, as of the earlier of (i) the date on which the respective agreement was terminated, or (ii) the filing of this Motion.

JURISDICTION

2. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicate for the relief requested herein is Section 365(a) of the Bankruptcy Code.

BACKGROUND

4. A significant portion of the Debtors’ core business is focused around Sound Shore Medical Center of Westchester (“**SSMC**”). SSMC is a not-for-profit 242-bed, community-based teaching hospital offering primary, acute, emergency and long-term health care to the working class residents of southern Westchester. SSMC’s affiliate, Mount Vernon Hospital (“**MVH**”), is a voluntary, not-for-profit, 176-bed hospital located in Mount Vernon, New York. MVH also operates the Dorothea Hopfer School of Nursing, chartered by New York State since 1901. Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center (“**SECC**”), the third operating Debtor, is a 150-bed, comprehensive facility offering short-term rehabilitation/sub-acute care, as well as skilled long-term care. (SSMC, MVH and SECC are sometimes collectively referred to as the “**Medical Centers**”)

5. SSMC, MVH and SECC (with their affiliated Debtors) together comprise the Sound Shore Health System, Inc. (“SSHS” or the “System”) which was formed in 1997 when the three affiliated healthcare institutions joined together to create one of the largest regional healthcare systems between New York City and Albany. Today, the System provides a range of specialized services, including orthopedic surgery, behavioral health, pediatrics, OB/GYN, continuing care facilities, a nursing home and community care clinics providing primary care services for the indigent and uninsured. Their affiliation with the New York College of Medicine also enables the Debtors to provide a teaching environment in multiple disciplines to their community and patients.

6. As the largest “safety net” providers for southern Westchester County, the Medical Centers serve a disproportionate share of patients in the Medicaid and uninsured populations. Annually, they are responsible for approximately 13,000 acute discharges, 55,000 emergency department visits and 60,000 indigent care clinic visits.

7. Given the historical deterioration of the Debtors’ financial condition and the pressing need to find a strategic partner, which has been recounted in detail to the Court, the Debtors entered into an asset purchase agreement with Montefiore Medical Center (“MMC”) (the “Purchase Agreement”) providing for the sale of all of their Owned Real Property, Furniture, Fixtures, Inventory, Assigned Contracts and related operating assets, which collectively comprise the Acquired Assets (all as therein defined). MMC which will thereafter continue operations at the Debtors’ former facilities under their own auspices.

EXECUTORY CONTRACTS

8. The Debtors are currently undergoing a comprehensive review of their executory contracts to determine which contracts will be assumed and/or rejected. Given the Debtors' intent to sell their assets to MMC, many of the Debtors' existing agreements and contracts will no longer be necessary to their continued operations pending such sale. The Debtors will thus seek to reject those contracts that provide no meaningful value or benefit to the Debtors' estates. As part of their ongoing review of the executory contracts, the Debtors have reviewed the Executory Contracts which are the subject of this Motion, and have determined, in the exercise of their sound business judgment, that continuing the Executory Contracts with Convergent and Med-Metrix would be burdensome and would provide no corresponding benefit or utility to the Debtors' estates.

9. The Debtors' agreement with Convergent, covers collection services relating to third party accounts and their agreement with Med-Metrix is for software services. The services covered by the Executory Contracts are no longer necessary for the Debtors' ongoing operations or the administration of the Debtors' estates. Thus, maintaining the Executory Contracts would impose unnecessary costs and burdens upon the estates. Indeed the services covered by the Executory Contracts have been largely included as part of other existing arrangements which have been routinely implemented by the Debtors. The Debtors do not believe the Executory Contracts provide any meaningful benefit or value to the Debtors' estates. Accordingly, the Debtors are seeking to reject the Executory Contracts.

RELIEF REQUESTED

10. As set forth above, by this Motion, the Debtors seek authorization to reject the Executory Contracts as of the earlier of (i) the date on which the respective agreement was terminated, or (ii) the filing of this Motion. A schedule detailing the Executory Contracts which are sought to be rejected and the proposed effective dates of rejection of each Executory Contract is attached hereto as Exhibit A.

BASIS FOR RELIEF REQUESTED

11. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). See, NLRB v. Bildisco & Bildisco, 465 U.S. 513, 521 (1984); see also, In re Lavigne, 114 F.3d 379, 386 (2d Cir. 1997). The United States Court of Appeals for the Second Circuit has stated that “[t]he purpose behind allowing the assumption or rejection of executory contracts is to permit the debtor or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome property.’” Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2nd Cir. 1993) (quoting 2 Collier on Bankruptcy 365.01[1] (15th ed. 1993)).

12. In considering a motion to assume or reject a contract or lease, the court should “... plac[e] itself in the position of the debtor or debtor-in-possession and determine[e] whether assuming [or rejecting] the contract would be a good business decision or a bad one.” Id. at 1099. “More exacting scrutiny would slow the administration of the debtor’s estate and increase its cost, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially.” Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1985).

13. Courts defer to a debtor's business judgment in rejecting an executory contract or unexpired lease, and upon finding that a debtor has exercised its sound business judgment, approve such rejection under section 365(a) of the Bankruptcy Code. See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (recognizing the "business judgment" standard used to authorize rejection of executory contracts); Nostas Assocs v. Costich (In re Klein Sleep Products, Inc.), 78 F.3d 18, 25 (2nd Cir. 1996) (recognizing the "business judgment" standard used to authorize rejection of executory contracts); In re Minges, 602 F.2d 38, 42-43 (2nd Cir. 1979) (holding that the "business judgment" test is appropriate for determining when an executory contract can be rejected); In re Kong, 162 B.R. 86, 94-95 (Bankr. EDNY 1993) (explaining that the business judgment standard requires only a demonstration that rejection will benefit the estate); In re Child World, Inc., 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992).

14. The "business judgment" standard is not a strict standard; it requires only a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor's estate. See In re Helm, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 1996) ("To meet the business judgment test, the debtor in possession must 'establish that rejection will benefit the estate'" (citation omitted); In re Balco Equities, Inc., 323 B.R. 85, 99 (Bankr. S.D.N.Y. 2005) ("In determining whether the debtor has employed reasonable business discretion, the court for the most part must only determine that the rejection will likely benefit the estate.") (quoting G Survivor, 171 B.R. at 757)). Further, under the business judgment standard, "[a] debtor's decision to reject an executory contract must be summarily affirmed unless it is the product of 'bad faith, or whim or caprice'" In re TransWorld Airlines, Inc., 261 B.R. 103, 121 (Bankr. D. Del. 2001).

15. As noted above, the Debtors have reviewed the Executory Contracts and have determined that they are no longer necessary or beneficial to the Debtors' ongoing business, and create unnecessary and burdensome expenses for the Debtors' estates. In addition, the Debtors have determined that no meaningful value would be realized by the Debtors if the Executory Contracts were assumed and assigned to third parties. Accordingly, it is in the best interests of the Debtors' estates to reject the Executory Contracts and avoid incurring additional unsecured or potential administrative claims relating to the Executory Contracts. Rejection of the Executory Contracts and the attendant reduction in the estates' administrative costs thus reflects the Debtors' exercise of sound business judgment.

NUNC PRO TUNC REJECTION

16. It is well-established that a bankruptcy court has the authority to deem the rejection of an unexpired lease or executory contract retroactive to a date prior to the date of entry of an order approving the rejection. See In re At Home Corp., 392 F.3d 1064, 1070 (9th Cir. 2004); Thinking Machines Corp. v. Mellon Financial Servs. Corp. (In re Thinking Machines Corp.), 67 F.3d 1021, 1028 (1st Cir. 1995); In re Stonebridge Technologies, Inc., 430 F.3d 260, 273 (5th Cir. 2005); In re Jamesway Corp., 179 B.R. 33, 37-38 (Bankr. S.D.N.Y. 1995). Courts have authorized rejections of executory contracts and unexpired leases, including retroactive rejections, based on the equities of the circumstances. See Thinking Machines, 67 F.3d 1021 at 1028 (finding that, "[i]n the section 365 context, this means that bankruptcy courts may enter retroactive orders of approval, and should do so when the balance of the equities preponderates in favor of such remediation"). Courts have permitted retroactive rejection in other cases in this Circuit and elsewhere. See e.g., Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC, Adv. Pro. No. 08-01789 (BRL) (Bankr. S.D.N.Y. February 4, 2009).

17. The Debtors believe that expedited rejection of the Executory Contracts is necessary due to the dire financial condition of the Debtors and the need to reduce unnecessary administrative claims against their estates. Expedited relief is appropriate under the circumstances herein since the Executory Contracts are no longer necessary for the Debtors' continued operations and any delays in rejection may lead to unnecessary costs and expenses for the Debtors' estates.

NOTICE

18. Notice of this Motion has been provided to all parties in interests in accordance with the Administrative Order Establishing Case Management and Scheduling Procedures (the "**Case Management Order**"), entered on June 4, 2013, notice of this Motion has been given to the parties identified on the General Service List and the Master Service List (as such terms are identified in the Case Management Order). The Debtors submit that no other or further notice need be provided.

NO PREVIOUS REQUEST

19. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE the Debtors respectfully request the entry of an order, substantially in the form annexed hereto as Exhibit B, authorizing the Debtors to reject the Executory Contracts

and granting such other and further relief as the Court may deem just and proper.

Dated: July 30, 2013
Great Neck, New York

GARFUNKEL WILD, P.C.
Proposed Counsel for Debtors and Debtors in Possession

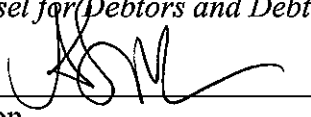
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EXHIBIT A
REJECTED CONTRACTS

<u>Contract Type</u>	<u>Date of Contract</u>	<u>Counterparty</u>	<u>Effective Date of Rejection</u>
Collection Agreement	August 13, 2012	Convergent Revenue Cycle Management	July 22, 2013 (date of termination)
Software Services	August 1, 2012	Med Metrix LLC	July 22, 2013 (date of termination)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:
SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.,

Chapter 11 Case
Case No. 13- 22840 (RDD)

Debtors.

(Jointly Administered)

-----X
**ORDER PURSUANT TO 11 USC § 365 APPROVING
REJECTION OF EXECUTORY CONTRACTS**

Upon the motion dated July 30, 2013 (the "Motion")¹ of Sound Shore Medical Center of Westchester ("SSMC") and its affiliated debtors, as debtors in possession in the above captioned chapter 11 cases (collectively, the "Debtors"), for entry of an order pursuant to section 365(a) of title 11, United States Code (the "Bankruptcy Code") and Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure, authorizing the Debtors to reject certain executory contracts, all as more fully described in the Motion; and it appearing that the Court has jurisdiction to consider this matter, and it further appearing that due and proper notice of the Motion has been given and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is necessary and is in the best interest of the Debtors, the Debtors' estates and their creditors, and all parties in interest; and after due deliberation and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

2. Pursuant to section 365(a) of the Bankruptcy Code, rejection of each of the Executory Contracts, as set forth herein (1) constitutes an exercise of sound business judgment by the Debtors, made in good faith and for valid business reasons, (2) is appropriate and necessary under the circumstances described in the Motion, and (3) is warranted and permissible under sections 105 and 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

3. Pursuant to section 365 of the Bankruptcy Code and Bankruptcy Rules 6006 and 9014, the rejection of the Executory Contracts listed on Exhibit A to the Motion and any related amendments and supplements thereto, is hereby authorized and approved, *nunc pro tunc*, effective upon the earlier of (i) the date on which the respective agreement was terminated or (ii) the filing of this Motion.

4. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: September __, 2013
White Plains, New York

HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY COURT JUDGE