

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____))
In re) Chapter 11, No. 14-
))
HAMPDEN COUNTY PHYSICIAN)
ASSOCIATES, LLC)
))
Debtor)
_____)

MOTION FOR ADMINISTRATIVE FEE ORDER PURSUANT TO 11 U.S.C. § 331
ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF PROFESSIONALS

To the HONORABLE HENRY J. BOROFF, Bankruptcy Judge:

Now comes HAMPDEN COUNTY PHYSICIAN ASSOCIATES, LLC ("Debtor"), the Debtor in the above-captioned matter, and it does hereby move this Court, pursuant to 11 U.S.C. § 331, and Rule 9009-2 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Massachusetts ("MLBR"), for entry of an Order establishing procedures for interim compensation and reimbursement of expenses of professionals employed in this case. In support of this Motion, the Debtor represents as follows:

JURISDICTION

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

BACKGROUND

2. On October 2, 2014 the Debtor filed a Voluntary Petition under the provisions of Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code") with the United States Bankruptcy Court for the District of Massachusetts ("Bankruptcy Court").

3. Pursuant to the provisions of §§ 1107 and 1108 of the Bankruptcy Code, the Debtor has continued to operate its business and manage its business affairs as a Debtor-in-Possession. No Trustee or Examiner has been requested or appointed.

4. The Debtor is a multi-specialist physician group engaged in the practice of medicine in Western Massachusetts. Its approximately sixty-eight (68) healthcare providers serve about 55,000 patients. The business enterprise employs a total of approximately 300 individuals and operates fourteen (14) offices primarily located throughout Hampden County, Massachusetts. In addition, the Debtor and its staff serve patients at local hospitals, skilled-nursing facilities, and long-term care facilities. The Debtor operates its own laboratory, sleep disorder center, and urgent care center.

5. The filing of the Debtor's bankruptcy case was precipitated by a series of events that resulted in a decrease in revenue and increase in certain expenses. Over the course of approximately the last two years, several healthcare providers have retired or departed from the Debtor for a variety of reasons. During this same period of time, the Debtor attempted to expand its practice by leasing new office space, purchasing new equipment, and attempting to recruit new healthcare

providers.

RETENTION OF PROFESSIONALS

6. The Debtor intends to seek authority to employ several professionals in the case including: (i) Hendel & Collins, P.C. as counsel to the Debtor; (ii) Meyers Brothers Kalicka, P.C. as accountant to the Debtor; and (iii) Morrison Mahoney LLP, as special counsel for corporate and litigation matters.

RELIEF REQUESTED

7. The Debtor requests the entry of an Administrative Fee Order, as defined in MBLR Appendix 6, to establish procedures for the allowance and payment of compensation and reimbursement of expenses of professionals, whose services have been authorized by the Bankruptcy Court, pursuant to §§ 327 and 1103 of the Code ("Professional"). Specifically, the Debtor proposes that the following procedures, which are substantially similar to those proposed in MBLR Appendix 6,¹ be established for interim compensation of each Professional:

(a) Submission and Monthly Statements. On or before the twenty-fifth (25th) day of each month following the month for which compensation is sought, each Professional seeking compensation pursuant to the Administrative Fee Order shall serve a monthly fee and expense statement ("Monthly Fee Statement") upon the following persons ("Notice Parties"):

- (i) HAMPDEN COUNTY PHYSICIAN ASSOCIATES, LLC
Attn: Ms. Lisa A. Patenaude
354 Birnie Avenue
Springfield, Massachusetts 01103;

¹ Significant differences are noted in **bold**.

- (ii) HENDEL & COLLINS, P.C.
Attn: Andrea M. O'Connor, Esq.
101 State Street
Springfield, Massachusetts, 01103;
- (iii) OFFICE OF THE UNITED STATES TRUSTEE
Attn: Richard T. King, Esq.
446 Main Street, 14th Floor
Worcester, Massachusetts 01608;
- (iv) SISTERS OF PROVIDENCE HEALTH SYSTEM, INC.
c/o Foley & Larder, LLP
Attn: Edward J. Green, Esq.
99 High Street, 20th Floor
Boston, MA 02110
- (v) T.D. BANK, N.A.
c/o Cooley Shrair, P.C.
Attn: Peter Shrair, Esq.
1380 Main Street, Suite 500
Springfield, Massachusetts 01103; and
- (vi) In the event that an official committee or trustee is appointed, counsel to such official committee and/or trustee.

(b) Content of Monthly Fee Statement. Each Monthly Fee Statement shall contain an itemization of time spent and the applicable hourly rate. All timekeepers must maintain contemporaneous time entries in increments of one-tenth (1/10th) of an hour.

(c) Review Period. Each person receiving a Monthly Fee Statement shall have twenty-one (21) days after service of the Monthly Fee Statement to review it and serve an objection ("Objection Period").

(d) Payment. In the absence of a timely served Objection, the estate representative will promptly pay each professional an

amount ("Interim Payment") equal to the lesser of (i) ninety (90%) percent of the fees and one hundred (100%) percent of the expenses requested in the Monthly Fee Statement, or (ii) ninety (90%) percent of the fees and one hundred (100%) percent of the expenses not subject to any partial objection.

(e) Objections.

(i) If any party objects to a Monthly Fee Statement, it must serve a written Objection ("Notice of Objection to Monthly Fee Statement") and serve it upon the professional and each of the parties served with the Monthly Fee Statement as set forth above, so that the Notice of Objection to Monthly Fee Statement is received on or before the last day of the Objection Period.

(ii) The Notice of Objection to Monthly Fee Statement must set forth the nature of the objection and the amount of fees and/or expenses at issue.

(iii) If an estate representative receives an Objection to a particular Monthly Fee Statement, the estate representative shall withhold payment of that portion of the Monthly Fee Statement to which the Objection is directed, and shall promptly pay the remainder of the fees and disbursements in the percentages set forth above.

(iv) If the parties to an Objection are able to resolve their respective dispute(s) following the service of a Notice of Objection to Monthly Fee Statement, and the Professional and the objecting party serve upon each of the parties served with the Monthly Fee Statement as set forth above a statement indicating that the Objection is

withdrawn, in whole or in part, and describing in detail the terms of the resolution, then the estate representative shall promptly pay in accordance with the percentages listed above that portion of the Monthly Fee Statement which is no longer subject to an Objection.

(v) If the parties are unable to reach a resolution to the Objection within twenty-one (21) days after service of the Objection, the affected Professional may either (a) move to compel the payment with the Bankruptcy Court, together with a request for payment of the difference, if any, between the total amount of the Interim Payment sought and the portion of the Interim Payment as to which there is an Objection ("Incremental Amount"); or (b) forgo payment of the Incremental Amount until the next interim or final fee application, or any other date and time so directed by the Bankruptcy Court, at which time it will consider and dispose of the Objection, if so requested.

(vi) Neither an Objection to a Monthly Fee Statement nor the failure to object thereto shall prejudice a party's right to object to any fee application on any ground.

(vii) Failure of a Professional to timely serve a Monthly Fee Statement shall not prejudice such Professional in seeking interim or final allowance of fees or expenses. Further, any Monthly Fee Statement served after the deadline for such Monthly Fee Statement shall be deemed served at the time that such Professional serves a Monthly Fee Statement for the next subsequent period and shall be subject to the Objection Deadline for the Monthly Fee Statement for such subsequent period.

(f) Fee Applications.

(i) Parties seeking compensation pursuant to an Administrative Fee Order shall file at four (4) month intervals or such other intervals directed by the Bankruptcy Court ("Interim Period") an interim fee application. Each Professional seeking approval of its interim fee application shall file with the Bankruptcy Court an interim application for allowance of compensation and reimbursement of expenses, pursuant to 11 U.S.C. § 331, of the amounts sought in the Monthly Fee Statements issued during such period (the "Interim Fee Application").

(ii) The Interim Fee Application shall comply with the mandates of the Bankruptcy Code, Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure and the MLBR.

(iii) The Interim Fee Application must be filed within forty-five (45) days after the conclusion of the Interim Period.

(iv) In the event any Professional fails to file an Interim Fee Application when due, such Professional will be ineligible to receive further interim payments or fees or expenses under the Administrative Fee Order until such time as the Interim Fee Application is submitted.

(v) The pendency of a fee application, or a Bankruptcy Court Order that payment of compensation or reimbursement of expenses was improper as to a particular Monthly Fee Statement, shall not disqualify a Professional from the further payment of compensation or reimbursement

of expenses as set forth above, unless otherwise ordered by the Bankruptcy Court. Additionally, the pendency of an Objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from future payment of compensation or reimbursement of expenses, unless the Bankruptcy Court orders otherwise.

(vi) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on the Bankruptcy Court's interim or final allowance of compensation and reimbursement of expenses of any Professionals. All compensation is subject to final approval by the Bankruptcy Court.

(vii) Counsel for any official committee may, in accordance with the foregoing procedure for monthly compensation and reimbursement to Professionals, collect and submit statements of actual expenses incurred, with supporting vouchers, from members of the committee such counsel represents, provided, however, that such committee counsel ensures that these reimbursement requests comply with the applicable Rules and those guidelines.

(g) Miscellaneous.

(i) Any party may object to requests for payments made pursuant to the Administrative Fee Order for good cause, including, without limitation, that the estate representative has not timely filed monthly operating reports or remained current with its administrative expenses and 28 U.S.C. § 1930 fees.

(ii) The estate representative shall include all payments to Professionals on its monthly operating reports, including details of the amount paid to each Professional.

(iii) All fees and expenses paid to Professionals are subject to disgorgement until final allowance by the Bankruptcy Court.

10. The Debtor proposes that, except as otherwise ordered by this Bankruptcy Court, service of the actual interim and final fee applications ("Applications") shall be limited to the Notice Parties only. The Debtor also requests that all other parties who have filed a Notice of Appearance with the Court in these Chapter 11 proceedings shall be entitled to receive notice of any hearings on the Applications.

11. The Debtor further proposes that professionals holding pre-petition retainers are authorized to continue to hold such retainers and are not required to apply the retainer to Interim Fee Applications.

APPLICABLE AUTHORITY

12. Section 331 of the Bankruptcy Code provides in relevant part:

A trustee, an examiner, a Debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the Court not more than once every 120 days after an Order for relief in a case under this title, or more often if the Court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date

as is provided under section 330 of this title.

13. Further, Rule 9009-2 of the MLBR authorizes the Bankruptcy Court to establish certain case management procedures including procedures for interim compensation.

14. The Debtor says that the proposed compensation procedures are in the best interest of the Bankruptcy Estate and its creditors in that it will:

- a) Assist the parties-in-interest to more effectively monitor the cost of administration of this Chapter 11 bankruptcy case;
- b) Establish an efficient cash management procedure;
- c) Permit efficient review of professional fees and expenses; and
- d) Minimize duplication and mailing expense.

15. All payments to Professionals in accord with the proposed compensation procedure will be included in the Debtor's monthly operating reports.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order, in substantially the form filed herewith, establishing procedures for interim compensation and reimbursement of expenses of Professionals and providing all such other relief as may be deemed just and proper.

HAMPDEN COUNTY PHYSICIAN
ASSOCIATES, LLC

Dated: October 2, 2014

By: /s/ Henry E. Geberth, Jr.
JOSEPH B. COLLINS, ESQ.
(BBO No. 092660)

HENRY E. GEBERTH, JR., ESQ.
(BBO No. 187940)
ANDREA M. O'CONNOR, ESQ.
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aoconnor@hendelcollins.com

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

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In re) Chapter 11, No. 14-
))
HAMPDEN COUNTY PHYSICIAN)
ASSOCIATES, LLC)
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Debtor)
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ORDER ON MOTION FOR ADMINISTRATIVE ORDER UNDER 11 U.S.C. § 331
ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF PROFESSIONALS

Upon the Motion of HAMPDEN COUNTY PHYSICIAN ASSOCIATES, LLC, the Debtor in the above-captioned matter, seeking the entry of an Order, pursuant to 11 U.S.C. § 331, establishing procedures for interim compensation and reimbursement of expenses of professionals employed in said case, after notice and hearing, for good cause shown, it is hereby

ORDERED that the Motion is GRANTED; and it is further

ORDERED that, except as may be otherwise provided in Orders of this Court authorizing the employment of professionals, all professionals employed in this case may seek interim compensation in accordance with the following procedure:

(a) Submission and Monthly Statements. On or before the twenty-fifth (25th) day of each month following the month for which compensation is sought, each Professional seeking compensation pursuant to the Administrative Fee Order shall serve a monthly fee and expense statement ("Monthly Fee Statement") upon the following persons ("Notice Parties"):

- (i) HAMPDEN COUNTY PHYSICIAN ASSOCIATES, LLC
Attn: Ms. Lisa A. Patenaude
354 Birnie Avenue
Springfield, Massachusetts 01103;
- (ii) HENDEL & COLLINS, P.C.
Attn: Andrea M. O'Connor, Esq.
101 State Street
Springfield, Massachusetts, 01103;
- (iii) OFFICE OF THE UNITED STATES TRUSTEE
Attn: Richard T. King, Esq.
446 Main Street, 14th Floor
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- (iv) SISTERS OF PROVIDENCE HEALTH SYSTEM, INC.
c/o Foley & Larder, LLP
Attn: Edward J. Green, Esq.
99 High Street, 20th Floor
Boston, MA 02110
- (v) T.D. BANK, N.A.
c/o Cooley Shrair, P.C.
Attn: Peter Shrair, Esq.
1380 Main Street, Suite 500
Springfield, Massachusetts 01103; and
- (vi) In the event that an official committee or trustee is appointed, counsel to such official committee and/or trustee.

(b) Content of Monthly Fee Statement. Each Monthly Fee Statement shall contain an itemization of time spent and the applicable hourly rate. All timekeepers must maintain contemporaneous time entries in increments of one-tenth (1/10th) of an hour.

(c) Review Period. Each person receiving a Monthly Fee Statement shall have twenty-one (21) days after service of the Monthly Fee Statement to review it and serve an objection

("Objection Period").

(d) Payment. In the absence of a timely served Objection, the estate representative will promptly pay each professional an amount ("Interim Payment") equal to the lesser of (i) ninety (90%) percent of the fees and one hundred (100%) percent of the expenses requested in the Monthly Fee Statement, or (ii) ninety (90%) percent of the fees and one hundred (100%) percent of the expenses not subject to any partial objection.

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(i) If any party objects to a Monthly Fee Statement, it must serve a written Objection ("Notice of Objection to Monthly Fee Statement") and serve it upon the professional and each of the parties served with the Monthly Fee Statement as set forth above, so that the Notice of Objection to Monthly Fee Statement is received on or before the last day of the Objection Period.

(ii) The Notice of Objection to Monthly Fee Statement must set forth the nature of the objection and the amount of fees and/or expenses at issue.

(iii) If an estate representative receives an Objection to a particular Monthly Fee Statement, the estate representative shall withhold payment of that portion of the Monthly Fee Statement to which the Objection is directed, and shall promptly pay the remainder of the fees and disbursements in the percentages set forth above.

(iv) If the parties to an Objection are able to resolve their respective dispute(s) following the service

of a Notice of Objection to Monthly Fee Statement, and the Professional and the objecting party serve upon each of the parties served with the Monthly Fee Statement as set forth above a statement indicating that the Objection is withdrawn, in whole or in part, and describing in detail the terms of the resolution, then the estate representative shall promptly pay in accordance with the percentages listed above that portion of the Monthly Fee Statement which is no longer subject to an Objection.

(v) If the parties are unable to reach a resolution to the Objection within twenty-one (21) days after service of the Objection, the affected Professional may either (a) move to compel the payment with the Bankruptcy Court, together with a request for payment of the difference, if any, between the total amount of the Interim Payment sought and the portion of the Interim Payment as to which there is an Objection ("Incremental Amount"); or (b) forgo payment of the Incremental Amount until the next interim or final fee application, or any other date and time so directed by the Bankruptcy Court, at which time it will consider and dispose of the Objection, if so requested.

(vi) Neither an Objection to a Monthly Fee Statement nor the failure to object thereto shall prejudice a party's right to object to any fee application on any ground.

(vii) Failure of a Professional to timely serve a Monthly Fee Statement shall not prejudice such Professional in seeking interim or final allowance of fees or expenses. Further, any Monthly Fee Statement served after the deadline for such Monthly Fee Statement shall be deemed

served at the time that such Professional serves a Monthly Fee Statement for the next subsequent period and shall be subject to the Objection Deadline for the Monthly Fee Statement for such subsequent period.

(f) Fee Applications.

(i) Parties seeking compensation pursuant to an Administrative Fee Order shall file at four (4) month intervals or such other intervals directed by the Bankruptcy Court ("Interim Period") an interim fee application. Each Professional seeking approval of its interim fee application shall file with the Bankruptcy Court an interim application for allowance of compensation and reimbursement of expenses, pursuant to 11 U.S.C. § 331, of the amounts sought in the Monthly Fee Statements issued during such period (the "Interim Fee Application").

(ii) The Interim Fee Application shall comply with the mandates of the Bankruptcy Code, Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure and the MLBR.

(iii) The Interim Fee Application must be filed within forty-five (45) days after the conclusion of the Interim Period.

(iv) In the event any Professional fails to file an Interim Fee Application when due, such Professional will be ineligible to receive further interim payments or fees or expenses under the Administrative Fee Order until such time as the Interim Fee Application is submitted.

(v) The pendency of a fee application, or a Bankruptcy Court Order that payment of compensation or

reimbursement of expenses was improper as to a particular Monthly Fee Statement, shall not disqualify a Professional from the further payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Bankruptcy Court. Additionally, the pendency of an Objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from future payment of compensation or reimbursement of expenses, unless the Bankruptcy Court orders otherwise.

(vi) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on the Bankruptcy Court's interim or final allowance of compensation and reimbursement of expenses of any Professionals. All compensation is subject to final approval by the Bankruptcy Court.

(vii) Counsel for any official committee may, in accordance with the foregoing procedure for monthly compensation and reimbursement to Professionals, collect and submit statements of actual expenses incurred, with supporting vouchers, from members of the committee such counsel represents, provided, however, that such committee counsel ensures that these reimbursement requests comply with the applicable Rules and those guidelines.

(g) Miscellaneous.

(i) Any party may object to requests for payments made pursuant to the Administrative Fee Order for good cause, including, without limitation, that the estate representative has not timely filed monthly operating

reports or remained current with its administrative expenses and 28 U.S.C. § 1930 fees.

(ii) The estate representative shall include all payments to Professionals on its monthly operating reports, including details of the amount paid to each Professional.

(iii) All fees and expenses paid to Professionals are subject to disgorgement until final allowance by the Bankruptcy Court;

and it is further

ORDERED that parties filing Interim or Final Fee Applications for allowance of compensation and reimbursement of expenses, pursuant to 11 U.S.C. §§ 330 and 331, shall serve full copies of such Application on the Notice Parties and shall serve notices of hearings regarding such Applications on all Notice Parties and all parties that have filed a Notice of Appearance in this bankruptcy case. Notice given in accordance with this paragraph shall be deemed sufficient, adequate, and in full compliance with the applicable provisions of the Bankruptcy Code and the Federal and Local Bankruptcy Rules and any further requirements of Rule 6004(a) shall be waived; and it is further

ORDERED that the Debtor shall include all payments to Professionals in its monthly operating reports, detailed so as to state the amount paid to each Professional; and it is further

ORDERED that Professionals who received and hold pre-petition retainers are authorized to continue to hold such retainers as security and are not required to apply such

retainer payments to Interim Fee Applications; and it is further

ORDERED that all time periods referred by this Order be calculated in accordance with Rule 9006(a); and it is further

ORDERED that this Court retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated:

HONORABLE HENRY J. BOROFF
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____))
In re) Chapter 11, No. 14-
))
HAMPDEN COUNTY PHYSICIAN)
ASSOCIATES, LLC)
))
Debtor)
_____)

CERTIFICATE OF SERVICE

I, HENRY E. GEBERTH, JR., of the law firm of HENDEL & COLLINS, P.C., 101 State Street, Springfield, Massachusetts do hereby certify that I caused a copy of the attached Motion to be served by first class mail, postage prepaid, to any of the parties listed on the attached Exhibit "A" not noted as having received service through the Court's CM/ECF system on the 2nd day of October, 2014.

Dated: October 2, 2014

/s/ Henry E. Geberth, Jr.
HENRY E. GEBERTH, JR., ESQ.
(BBO No. 187940)
For HENDEL & COLLINS, P.C.
101 State Street
Springfield, MA 01103
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Exhibit "A"

Lisa A. Patenaude, CPA
HAMPDEN COUNTY PHYSICIAN ASSOCIATES, LLC
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INTERNAL REVENUE SERVICE
Attn: Bankruptcy Unit
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MASSACHUSETTS DEPARTMENT OF REVENUE
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Mr. Daniel P. Moen
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Exhibit "A"

Mr. Thomas Robert
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271 Carew Street
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Exhibit "A"

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c/o Colebrook Management
1441 Main Street
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SYSTEM COORDINATED SERVICES, INC.
c/o Sisters of Providence
1233 Main Street
Holyoke, MA 01040

LYON OFFICES, LLC
P.O. Box 180
West Springfield, MA 01090

PRIORITY HEALTHCARE DISTRIBUTION, INC.
d/b/a CuraScript Specialty
P.O. Box 533307
Charlotte, NC 28290-3307

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267 Hillside Road
Southwick, MA 01077-9685

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P.O. Box 2342
South Burlington, VT 05407

VERIZON BUSINESS
P.O. Box 660794
Dallas, TX 75266-0794

BECKMAN COULTER, INC.
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Palatine, IL 60055-0164

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MICHAEL B. GUARCO, SR.
7 Bayberry Drive
East Granby, CT 06026

Exhibit "A"

WB MASON
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Boston, MA 02298-1101