

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA
FAMILY DIVISION**

NANCY JENNINGS,)	
)	
Petitioner,)	Civil Action No.
vs.)	2020CV337822
)	
JEFFREY GALLUPS,)	
)	
Respondent.)	

RECEIVER’S PETITION FOR CONFIRMATION OF SALE

S. Gregory Hays, solely in his capacity as Receiver herein (“**Receiver**”), appointed pursuant to the Court’s *Order Compelling Compliance, Appointing Receiver, and Granting Injunctive Relief* entered in this civil action August 16, 2023 (the “**Receivership Order**”),¹ files this *Petition for Confirmation of Sale* (the “**Petition**”).²

On March 14, 2024, the Court entered its *Order Granting Receiver’s Emergency Motion for Approval and Authorization of (1) Sale of Assets of the Receivership Estate and (2) Bridge Loan Financing* approving the Receiver’s sale of certain assets of the Affiliated Entities (the “**Business Asset Sale**”). By this Petition the Receiver requests that the Court confirm the Business Asset Sale pursuant to O.C.G.A. § 23-4-35 as further discussed below.

¹ Unless otherwise indicated, capitalized terms in this Motion will have the meanings attributed them in the Receivership Order.

² In support of this Petition the Receiver submits the *Affidavit of S. Gregory Hays* (the “**Hays Aff.**”) and the *Affidavit of C. Scott Wilkins* (the “**Wilkins Aff.**”), copies of which are attached to this Petition as Exhibits “A” and “B.” Mr. Wilkins is presently travelling outside the country and does not have access to a notary public. His notarized affidavit will be filed as a supplement to this Petition prior to hearing.

Since his appointment on August 16, 2023, the Receiver and his team have successfully operated the business of the Affiliated Entities (the “**Business**”) in the face of multiple extraordinary challenges, at the same time marketing the Business for sale. The Business Asset Sale is the result of these efforts. If confirmed, the sale will enable the Receiver to pay the majority of the Business’s creditor claims. On the other hand, if confirmation of the Business Asset Sale is denied, the Receiver will be unable to pay the ongoing costs of operating the Business, the Business’s landlords will proceed quickly to eviction, the Business will shut down and its 80 to 100 employees will lose their jobs. In that event, it is unlikely that creditors would receive any meaningful payment and may receive no payment whatsoever.

For the reasons discussed further in this Petition, the Receiver requests that the Court confirm the Business Asset Sale.

I. VENUE AND JURISDICTION

1. Venue respecting this Petition is proper in this Court. This Petition seeks confirmation of the Receiver’s sale of assets of the Affiliated Entities that are the subject of the Receivership Order previously entered by this Court in this case. All or most of the Affiliated Entities have their principal place of business in Fulton County, Georgia.

II. BACKGROUND

A. Receiver’s Appointment and Responsibilities

2. By the Receivership Order, the Court granted the Receiver the power and duty to operate, market, and sell the Business and/or the assets of the Affiliated Entities. *See* Receivership Order, p. 22, ¶ 15., xx; p. 31, ¶¶ 42, 43.

3. The Business and the Receiver's work are more thoroughly discussed in the November 1, 2023, *Receiver's First Interim Report* and the March 20, 2024, *Receiver's Second Interim Report*, both of which are incorporated in this Petition. (Hays Aff., ¶ 3).

B. Receiver's Operation of the Business

4. The Receiver retained Scott Wilkins as COO of the Affiliated Entities. Mr. Wilkins had been hired by MHSA as CFO two (2) weeks prior to the Appointment Date and charged with raising capital and marketing the Business. Mr. Wilkins became the COO on September 1, 2023, and together with the Receiver is an integral part of the management team. (Hays Aff., ¶ 4; Wilkins Aff., ¶ 13).

5. Shortly after Mr. Wilkins began working for the Business he was informed that the Finance Department was in disarray because Adam Holzhauer, the Vice President of Finance, had recently submitted his resignation. Furthermore, Peter Oh, the Senior Accountant, and Stephanie Allen, Head Administrator, were also in the process of resigning. Thus, in sum, the three primary contacts for the Finance Department were leaving the Business as of early August 2023. (Wilkins Aff., ¶ 9).

6. Mr. Wilkins discovered further disorganization and chaos within the Business. Crucially, there were no audited financial statements historically; considering this was purportedly a \$30,000,000-revenue company that was to be marketed for sale or recapitalized, the absence of audited statements was extremely problematic. Mr. Wilkins learned that the Business was marketed for sale approximately two years previously by an investment bank. In that process, again, there were no audited financial statements. (Wilkins Aff., ¶ 9).

7. Mr. Wilkins discovered also that the Business had incurred significant legal expenses, investment banking fees and quality of earnings review fees amongst other costs during

prior management's attempt to sell the Business in and around 2022. (Wilkins Aff., ¶ 10).

8. No sale was consummated by the investment bank in charge of the sale which, to Mr. Wilkins's knowledge, was due to the potential buyers' hesitations and concerns regarding the CEO, Respondent Jeffrey Gallups's ("**Respondent**") then-second wife, Melissa Moritz ("**Ms. Moritz**"), and the negative news released regarding Respondent's legal problems. (Wilkins Aff., ¶ 11).

9. Further, it appeared that potential buyers were concerned that the indicated valuations for the Business, ranging from \$30,000,000 to \$70,000,000, were premised on various and hypothetical cash flow scenarios rather than asset valuations. Some of the cash flow scenarios could be characterized as aggressive or unlikely. (Wilkins Aff., ¶ 12).

10. Following the Receiver's appointment, the Receiver asked Mr. Wilkins to manage the Business while continuing to prepare it for sale and Mr. Wilkins agreed to do so. (Wilkins Aff., ¶ 13).

11. Mr. Wilkins discovered immediately that the Business had neglected paying the majority of trade vendors and landlords. Accounts payable were mounting while cash flow was diminishing. (Wilkins Aff., ¶ 14).

12. During mid- and late-2023, Blue Cross Blue Shield (BCBS) Anthem, the largest insurance carrier for the Business, and Medicare had curtailed services with the Business due to Respondent's felony healthcare fraud conviction. (Wilkins Aff., ¶ 15).

13. By the end of August 2023, it was clear to the Receiver and Mr. Wilkins that the financial state of the Business was grave and not just precarious. (Wilkins Aff., ¶ 16).

14. There was an acute need for additional funding as early as August if the Business were to survive through the closing of a sale; this needed funding is termed "interim" or "bridge"

financing. Additionally, there was no telling how long it would take to find a qualified buyer or investor for the Business. (Wilkins Aff., ¶ 17).

15. To prepare the Business for a successful sale, there was a lot of work to do around transparency, organization of operational and financial information, compliance, management—in short, virtually every aspect of the Business was impaired and/or in question. There was nothing solid and nothing certain. The Receiver and Mr. Wilkins determined that if the Business were not repaired quickly, any sale price would be dismally low. (Wilkins Aff., ¶ 18).

16. The Business in late August/early September 2023 faced many operational challenges that are discussed in detail in the Receiver’s First and Second Interim Reports. Following are a few of the primary challenges:

- a. Georgia Banking Company (“**GBC**”), the Business’s senior secured lender, could have called its loan at any time. The Receiver and Mr. Wilkins immediately initiated close weekly contact with GBC, which contact continues with the same frequency currently;
- b. Accounts payable were increasing as there was insufficient cash to pay vendors and landlords;
- c. Cash collections were barely sufficient to cover payroll and the occasional partial payment to landlords or vendors;
- d. Cash had been diverted from the Business for non-operational purposes that included making payments to Respondent’s first ex-wife, payments to the Department of Justice, and personal, non-business expenses for Respondent and Ms. Moritz;
- e. Actual cash collections were declining because Medicare and BCBS Anthem had ceased working with the Business due to Respondent’s legal problems;
- f. Demands from the Department of Justice to pay \$596,566 by September 5, 2023, or face an increase of a judgement and a recorded \$5,300,000 judgment that would have devastated the Business and negatively impacted the bridge loan and sale prospects;
- g. Landlords had not been paid and the Business was receiving eviction notices. Issues regarding the landlords are discussed in the Receiver’s First and Second Interim Reports;

- h. Critical vendors had not been paid and threatened discontinuing key services;
- i. Internal turmoil within the Business caused by Ms. Moritz led to key staff departures and general instability. The net result of this was a decline in the organic growth of the Business;
- j. Given the lack of funds in the Business, the Receiver did not hire any C-Suite management but did employ an hourly controller-level employee from Aprio, a national accounting firm. This person proved to be more of a liability than an asset, perhaps too challenged by the chaos and the disorganized Finance Department. The Business did not renew her hourly contract after the 90-day initial period;
- k. The aforementioned facts are all reflected in the deteriorating financials commencing in July 2023 and continuing to the present date;
- l. The negative news flow regarding Respondent's criminal conviction was powerful and increasingly impacting the brand of the Business and, more importantly, weighed on the morale of the staff; and
- m. Securing bridge or interim funding was challenging given all the bad press about the Business and its founder as well as the lack of organized information and financials. In addition, the business was in a court-ordered receivership and lenders were skeptical of loaning money to a receiver when their standard loan documents indicated appointment of a receiver was an Event of Default.

(Wilkins Aff., ¶ 19).

17. The Receiver and Mr. Wilkins worked with the best of the senior staff and maintained very close contact with all the providers, especially the physicians, during the entire period. It took several months to win the trust of these key staff; however, once attained, these relationships were critical to achieving the Receiver's goals regarding organization, compliance, communication, marketing, accountability, and SOPs (Standard Operating Procedures). (Wilkins Aff., ¶ 20).

18. In addition to the many and substantial business operation challenges, the Receiver's time and resources were further taxed by legal distractions, including Respondent's multiple incidences of contempt and government actions to enforce Respondent's payment obligations resulting from Respondent's felony healthcare fraud. (Hays Aff., ¶ 9).

C. Receiver's Marketing of the Business

19. In this setting, the Receiver was tasked with stabilizing and then selling the Business. (Hays Aff., ¶ 10).

20. To market the Business for sale the Receiver employed a multi-pronged approach, contacting no fewer than fifteen family offices and high net worth individuals, multiple hospital groups including Piedmont Hospital and Northside Hospital, and no fewer than seven private equity groups. (Wilkins Aff., ¶¶ 21-23).

21. These various groups and individuals were located both in Georgia and outside of the state. (Wilkins Aff., ¶ 23).

22. The Receiver communicated also with the Business's prior investment banker and entities with whom prior management had negotiated during the marketing in 2022. (Wilkins Aff., ¶ 23).

23. The marketing started at various dates depending upon the group or individual. However, virtually all the targeted groups were contacted by the Fourth Quarter of 2023. (Wilkins Aff., ¶ 24).

24. Additionally, given the importance of the interim or bridge funding, the Receiver had discussions with all prospective investors about obtaining both interim and permanent funding from them. (Wilkins Aff., ¶ 24).

25. The first formal purchase offer was submitted December 8, 2023, by a major player in the ENT industry, funded by a private equity group and very active in the Southern United States (the "**First Suitor**"). The proposed \$8,000,000 asset purchase agreement excluded accounts receivable. The First Suitor's planned due diligence was extensive, projected to take six to nine months. (Wilkins Aff., ¶ 25).

26. The First Suitor expended significant resources in its due diligence, which only ended when the higher offer emerged from Northside Hospital in early 2024. (Wilkins Aff., ¶ 26).

27. The Receiver's team established and maintained discussions and negotiations with another five groups in various stages of advanced due diligence while the First Suitor and Northside Hospital were negotiating their letters of intent. (Wilkins Aff., ¶ 27).

D. Northside Hospital APA

28. In early January 2024, Northside Hospital responded to Mr. Wilkins to advance its interest in a possible acquisition of the Business. (Hays Aff., ¶ 14).

29. Northside Hospital and the Receiver, along with their counsel and business teams, continued negotiations and cooperation to facilitate Northside Hospital's due diligence and further inquiry for the next two months. (Hays Aff., ¶ 15).

30. These efforts successfully resulted in Northside Hospital and the Receiver's entering into an *Asset Purchase Agreement* (the "APA") for the sale of substantial assets of the Business. (Hays Aff., ¶ 16).³ The APA is further discussed in the March 14, 2024, *Receiver's Emergency Motion for Approval and Authorization of (1) Sale of Assets of the Receivership Estate and (2) Bridge Loan Financing*.

31. The proceeds from the sale under the APA will be used, to the extent of available funds, at or about the time of closing to satisfy costs of sale; professional and attorneys' fees and expenses of the Receiver, the Special Master, and Petitioner Nancy Jennings's ("**Petitioner**")

³ A copy of the APA is being filed under seal. A copy of the APA has already been provided to counsel for Petitioner, counsel for Respondent, and counsel for numerous landlords and other creditors on condition of non-disclosure.

attorneys; remaining obligations to the Government,⁴ the SBA, and Georgia Banking Company; and landlord arrearages. (Hays Aff., ¶ 17).

32. To the extent there are any proceeds from the sale under the APA remaining after the payment of the items discussed in the immediately preceding paragraph, and subject to further order of this Court, those remaining proceeds will be used to pay accrued and unpaid alimony owed by Respondent to Petitioner; trade creditor claims accruing through the closing date, lease termination damages, and Respondent's additional payment obligations to Petitioner. (Hays Aff., ¶ 18).

33. By future motion, the Receiver will seek Court approval of procedures and deadlines for filing, determining, and paying claims apart from those claims paid at closing. (Hays Aff., ¶ 19).

34. Additionally, the Northside Hospital APA includes bridge financing which has enabled the Receiver to pay necessary payroll expenses, partial good-faith payments to landlords and other operating costs. The Receiver's ability to do this-made possible only by the bridge financing-has enabled the Receiver to continue operating the Business and avoid the necessity of closing the Business and dismissing all employees. (Hays Aff., ¶ 20).

35. The \$10.0 million offer from Northside Hospital is an asset purchase and, unlike the offer from the First Suitor, includes the estimated \$2,000,000 in recoverable accounts receivable. (Wilkins Aff., ¶ 30).

⁴ As the Receiver has previously advised the Court, if the Receiver can pay the Government the reduced settlement amount presently of approximately \$350,000 on or before June 1, 2024, such payment will satisfy Respondent's civil liability to the Government. If the approximately \$350,000 is not paid on or before June 1, 2024, that obligation increases by well over \$2,000,000.

36. Furthermore, the Northside Hospital offer excludes the three clinics and surgery center in the southern section of Atlanta. The estimated value of the southern operation is \$1,000,000 to \$2,000,000 assuming the inclusion of a primary physician. (Wilkins Aff., ¶ 30). As Northside Hospital completes its due diligence, it may identify other assets it wishes to exclude from the APA.

37. The two formal purchase offers—the First Suitor’s offer and the Northside Hospital offer—were received in a relatively short period of time and under very difficult circumstances. Both offers were similar in value (\$10,000,000) when adjusted for the inclusion/exclusion of accounts receivable. The other indicated valuations from other interested suitors were in the \$5,000,000-\$7,000,000 range. Virtually all the parties agreed that the known risks were numerous and serious, and the unknown risks were perhaps more daunting—hence, the lower valuation range expressed by the other potential suitors. (Wilkins Aff., ¶ 31).

38. There has been no higher purchase price offered by any prospective buyer. (Hays Aff., ¶ 21).

39. There has been considerable uncertainty and disagreement surrounding the valuation of the surgery center located in Alpharetta, Georgia. The Receiver has found no concrete evidence of a firm value. The First Suitor valued it, together with the surgery center in the south located in Newnan, Georgia, at \$2,000,000. Other informal conversations with industry participants validate the low single-digit valuation. Further, a key issue for the sale and transfer of the Surgery Center involved required renovations which would be extensive. (Hays Aff., ¶ 22).

40. Accordingly, on March 14, 2024, the Receiver asked the Court to approve the sale of assets to Northside Hospital. It was crucial to the survival of the Business that such approval be given on an emergency basis because the Business’s cash flow problems had become critical

and the Government's approximate \$350,000 claim will increase by over \$2,000,000 if the \$350,000 remaining settlement amount is not paid by June 1, 2024. Without the bridge loan financing included in the Northside Hospital offer, the Business would not have been able to make payroll the following day, Friday, March 15, 2024. If that had happened it is extremely likely that most or all of the staff would have departed, and the Business could not have continued operating. (Hays Aff., ¶ 23).

41. The Receiver and his team took all reasonable steps to market the Business when no funds were available to engage additional experts or appraisers. (Hays Aff., ¶ 24).

E. Necessity of Confirmation

42. Denial of confirmation of the Northside Hospital sale would be disastrous. (Hays Aff., ¶ 25).

43. If the Northside Hospital sale is not confirmed, the Business will promptly cease operating and the 80 to 100 employees will lose their jobs. Landlords will immediately evict the Business from all locations. The remaining assets of the Business will sell, if at all, for a fraction of the Northside Hospital price and the sale proceeds are unlikely to pay claims other than a portion of administrative claims. (Hays Aff., ¶¶ 26, 35-36).

44. The Receiver will be forced to sell the individual assets at fire-sale prices and the sale proceeds will pay but a portion of administrative claims. Under this scenario, it is unlikely that the Government will be paid, and less likely that it will be paid in full and the \$350,000 owed will increase to a claim of over \$2,000,000 against the Respondent and the Business. The rent arrearages carried by the Business's landlords for the past eight months likely will not be paid. Landlords with lease termination claims will not receive any distribution. Petitioner will not receive any distribution. (Hays Aff., ¶ 36).

45. The Receiver, in his business judgment, has determined that the sale to Northside Hospital under the APA is the highest and best offer for the assets that will be sold. (Hays Aff., ¶ 27).

46. The Receiver, in his business judgment, has determined that the APA and the transaction thereunder are in the best interests of the Receivership Estate. (Hays Aff., ¶ 28).

III. ARGUMENT

A. Confirmation of Business Asset Sale

47. A sale under an equitable order, such as the proposed sale to Northside Hospital under the Court’s Receivership Order, is subject to confirmation by the Court. O.C.G.A. § 23-4-35.

48. In that capacity, the Court “has a large discretion vested in [it] in reference thereto.” *Id.*; *Leggett v. Ogden*, 248 Ga. 403, 406 n.2 (1981) (quoting *Pledger v. Bank of Lyerly*, 157 Ga. 229 (1923)). The receiver’s “duty is to administer the assets in such manner as to receive their highest value for the benefit of the estate and creditors,” and “[i]t is *presumed that both the receiver and the judge of the court, in the making and confirmation of the sale, have faithfully discharged their duty.*” *Northeast Factor & Disc. Co. v. Mortg. Invest., Inc. of Ga.*, 107 Ga. App. 705, 710 (1963) (emphasis added). “Like the judge, the receiver is an officer of the court.” *Id.*

49. The Receiver may seek confirmation of the Business Asset Sale prior to consummation of the sale. *See CML-GA Smyrna, LLC v. Atlanta Real Estate Invs., LLC*, 294 Ga. 787, 790 (2014) (“Confirmation of a proposed receiver’s sale can, and sometimes must, occur before the sale is executed....Indeed, such a sale cannot be deemed to be consummated until confirmed. *See* O.C.G.A. § 23-4-35. The court did not abuse its discretion in confirming the sale before the contract for sale was executed”).

50. A person's mere dissatisfaction with a sale is not grounds to challenge or overturn it. Rather, confirmation of a sale may be set aside *only* when a party points to concrete "facts showing fraud, deception, or excusable mistake." *Pledger v. Bank of Lyerly*, 157 Ga. 229, 229 (1924); see *Palmour v. Roper*, 119 Ga. 10 (1903) (even "inadequacy of price, though gross, is not sufficient to set aside a sale, unless coupled with circumstances giving rise to a presumption of fraud"). No such facts exist or could even be genuinely alleged to exist in this case.

51. The Business Asset Sale is for the highest price offered since the Receiver's appointment over eight months ago.

52. The purchase offer from Northside Hospital is the only offer that included bridge loan financing.

53. Northside Hospital will be able to close on the Business Asset Sale much more quickly and efficiently than any other potential purchaser.

54. Northside Hospital's reputation, particularly in the State of Georgia and more particularly in metropolitan Atlanta, is stellar, and its ability to close the Business Asset Sale is beyond question.

55. Further, Northside Hospital is one of the largest employers, if not *the* largest employer, in Fulton County, Georgia, and will provide an excellent working opportunity for those employees of the Business who remain with the practice post-sale.

56. If the Business Asset Sale is confirmed, the Receivership Estate will receive proceeds sufficient to pay most, if not all, of the Business's creditors.

57. On the contrary, if the Business Asset Sale is not confirmed, there are no other sale opportunities for the Business.

58. If confirmation is denied, the Business will not be able to continue to operate and will be shut down immediately. The Business's employees will lose their jobs. At best, the Receiver will sell the individual assets at fire-sale prices and the sale proceeds will pay a portion of administrative claims. Under this scenario, it is unlikely that the Government will be paid, and less likely that it will be paid in full. The rent arrearages carried by the Business's landlords for the past eight months likely will not be paid. Landlords with lease termination claims will not receive any distribution. Petitioner will not receive any distribution.

59. There is overwhelming cause for the Court, in its discretion, to confirm the Business Asset Sale.

60. The Receiver requests that the order granting the Petition expressly state that, pursuant to O.C.G.A. § 9-11-62, such order shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.

61. The Receiver requests that the Court afford this Petition expedited treatment under Uniform Superior Court Rule 6.7 due to the Business's precarious condition and the dire need for a timely closing.

62. This Petition is being served upon Petitioner, Respondent, and all known parties in interest in this case.

B. Business Asset Sale not Stayed by Automatic Stay in Bankruptcy

63. On March 21, 2024, Respondent filed a Voluntary Petition under Chapter 13 of the Bankruptcy Code, Case No. 24-12653-SMG, in the United States Bankruptcy Court for the Southern District of Florida.

64. The Receiver filed a motion in that bankruptcy case, in part seeking an order confirming that the automatic stay under Section 362 of the Bankruptcy Code does not stay or

interfere with the Business Asset Sale or the Receiver's sale of any Affiliated Entities' assets. The Bankruptcy Court entered an order granting that relief on April 16, 2024, and the Receiver filed a copy of the Bankruptcy Court's order with this Court that day.

65. The Business Asset Sale is not stayed by the automatic stay under Section 362 of the Bankruptcy Code in Respondent's bankruptcy case.

66. On April 10, 2024, Respondent converted his bankruptcy case from Chapter 13 to Chapter 7.

67. Sonya Salkin Slott (the "**Trustee**") has been appointed Interim Chapter 7 Trustee.

68. Upon the conversion of Respondent's bankruptcy case to a case under Chapter 7, all of Respondent's legal and equitable interests, including any interest respecting the outcome of this Receivership, became property of the bankruptcy estate under the exclusive control of the Trustee. *See* 11 U.S.C. § 541; *Parker v. Wendy's Int'l, Inc.*, 365 F.3d 1268, 1272 (11th Cir. 2004).⁵

69. Accordingly, the Receiver requests that the Trustee be permitted to attend virtually the Court's hearing on this Petition and other hearings in this case.

WHEREFORE, the Receiver respectfully requests that this Court:

⁵ "Generally speaking, a pre-petition cause of action is the property of the Chapter 7 bankruptcy estate, and only the trustee in bankruptcy has standing to pursue it. *Barger v. City of Cartersville*, 348 F.3d 1289, 1292 (11th Cir. 2003). Section 541 of the Bankruptcy Code provides that virtually all of a debtor's assets, both tangible and intangible, vest in the bankruptcy estate upon the filing of a bankruptcy petition. 11 U.S.C. § 541(a)(1) (providing that the bankruptcy estate includes 'all legal or equitable interest of the debtor in property as of the commencement of the case'). Such property includes causes of action belonging to the debtor at the commencement of the bankruptcy case. *Barger*, 348 F.3d at 1292. Thus, a trustee, as the representative of the bankruptcy estate, is the proper party in interest, ***and is the only party with standing to prosecute causes of action belonging to the estate.*** 11 U.S.C. § 323; *Barger*, 348 F.3d at 1292." *Id.* (emphasis added).

Exhibit “A”

AFFIDAVIT OF S. GREGORY HAYS

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA
FAMILY DIVISION

NANCY JENNINGS,)	
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Petitioner,)	Civil Action No.
vs.)	2020CV337822
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JEFFREY GALLUPS,)	
)	
Respondent.)	

AFFIDAVIT OF S. GREGORY HAYS

BEFORE the undersigned officer, duly authorized to administer oaths, personally appeared S. Gregory Hays who, after being duly sworn, deposes and says:

1. My name is S. Gregory Hays, and this Affidavit is made on the basis of my personal knowledge. I am over 18 years of age and I am otherwise competent to give this Affidavit.
2. On August 16, 2023, I was appointed as Receiver pursuant to the *Court's Order Compelling Compliance, Appointing Receiver, and Granting Injunctive Relief* entered in this civil action August 16, 2023 (the "**Receivership Order**").¹
3. The Business and my work as Receiver are more thoroughly discussed in my November 1, 2023, *Receiver's First Interim Report* and my March 20, 2024, *Receiver's Second Interim Report*, both of which are incorporated in my Receiver's *Petition for Confirmation of Sale Petition* (the "**Petition**").

¹ Unless otherwise indicated, capitalized terms in this Motion will have the meanings attributed them in the Receivership Order.

4. Following my appointment, after I dismissed Melissa Moritz as CEO, the Respondent's second ex-wife, I retained Scott Wilkins as COO of the Affiliated Entities. Mr. Wilkins had been hired by MHSA as CFO two (2) weeks prior to the Appointment Date and charged with raising capital and marketing the Business. Mr. Wilkins became the COO on September 1, 2023, and is an integral part of the management team.

5. Mr. Wilkins and I have been operating and marketing the Business of the Affiliated Entities (the "**Business**") since my appointment.

6. We discovered very early that the Business was not paying the majority of its creditors, accounts payable were growing, and cash flow was deteriorating.

7. Blue Cross Blue Shield (BCBS) Anthem, the largest insurance carrier for the Business, and Medicare had both curtailed services with the Business due to Respondent Jeffrey Gallups's ("**Respondent**") felony healthcare fraud conviction.

8. I determined very early on that a quick sale of the Business was necessary to maximize recovery for the Receivership Estate because the Business did not have funds to operate, pay the Government's claims, and pay doctors' deferred compensation.

9. In addition to the many and substantial business operation challenges, my time and resources were further taxed by legal distractions, including Respondent's multiple incidences of contempt and government actions to enforce Respondent's payment obligations resulting from Respondent's felony healthcare fraud.

10. In this setting, I was tasked with stabilizing and then selling the Business.

11. Mr. Wilkinson and I worked together to market the Business and obtain bridge loan financing.

12. Obtaining a bridge loan to continue operations was difficult given the receivership

and pending \$5.3 million judgment from the Government. After speaking with many potential lenders, purchasers and investors, we received two (2) purchase offers.

13. The first formal purchase offer was submitted December 8, 2023, by a major player in the ENT industry, funded by a private equity group and very active in the Southern United States (the “**First Suitor**”) for a maximum purchase price of \$8,000,000.

14. In early January 2024, Northside Hospital responded to Mr. Wilkins to advance its interest in a possible acquisition of the Business.

15. Northside Hospital and I, along with our respective counsel and business teams, continued negotiations and cooperation to facilitate Northside Hospital’s due diligence and further inquiry for the next two months.

16. These efforts successfully resulted in Northside Hospital and the Receiver’s entering into an Asset Purchase Agreement (the “**APA**”) for the sale of substantial assets of the Business.

17. The proceeds from the sale under the APA will be used, to the extent of available funds, at or about the time of closing to satisfy costs of sale; professional and attorneys’ fees and expenses of the Receiver, the Special Master, and Petitioner Nancy Jennings’s (“**Petitioner**”) attorneys; remaining obligations to the Government, the SBA, and Georgia Banking Company; and landlord arrearages.

18. To the extent there are any proceeds from the sale under the APA remaining after the payment of the items discussed in the immediately preceding paragraph, and subject to further order of this Court, those remaining proceeds will be used to pay accrued and unpaid alimony owed by Respondent to Petitioner; remaining trade creditor claims , lease termination damages, and Respondent’s additional payment obligations to Petitioner.

19. By future motion, we will seek Court approval of procedures and deadlines for filing, determining, and paying claims apart from those claims paid at closing.

20. Additionally, the Northside Hospital APA includes bridge financing which has enabled us to pay necessary payroll expenses, partial good-faith payments to landlords and other operating costs. Our ability to do this-made possible only by the bridge financing-has enabled us to continue operating the Business and avoid the necessity of closing the Business and dismissing all employees.

21. There has been no higher purchase price offered by any prospective buyer.

22. There has been considerable uncertainty and disagreement surrounding the valuation of the surgery center located in Alpharetta, Georgia. I have not found any concrete evidence of a firm value. The First Suitor valued it, together with the surgery center in the south located in Newnan, Georgia, at \$2,000,000. Other informal conversations with industry participants validate the low single-digit valuation. Further, a key issue for the sale and transfer of the Surgery Center involved required renovations which would be extensive.

23. Accordingly, on March 14, 2024, I asked the Court to approve the sale of assets to Northside Hospital. It was crucial to the survival of the Business that such approval be given on an emergency basis because the Business's cash flow problems had become critical, and the Government's approximate \$350,000 claim will increase by over \$2,000,000 if the \$350,000 remaining settlement amount is not paid by June 1, 2024. Without the bridge loan financing included in the Northside Hospital offer, the Business would not have been able to make payroll the following day, Friday, March 15, 2024. If that had happened it is extremely likely that most or all of the staff would have departed, and the Business could not have continued operating.

24. Along with my team I took all reasonable steps to market the Business when no

funds were available to engage additional experts or appraisers.

25. Denial of confirmation of the Northside Hospital sale would be disastrous.

26. If the Northside Hospital sale is not confirmed, the Business will promptly cease operating and the 80 to 100 employees will lose their jobs. Landlords will immediately evict the Business from all locations. The remaining assets of the Business will sell, if at all, for a fraction of the Northside Hospital price and the sale proceeds are unlikely to pay claims other than a portion of administrative claims.

27. In my business judgment, I have determined that the sale to Northside Hospital under the APA is the highest and best offer for the assets that will be sold.

28. In my business judgment, I have determined that the APA and the transaction thereunder are in the best interests of the Receivership Estate.

29. The Business Asset Sale is for the highest price offered since my appointment over eight months ago.

30. The purchase offer from Northside Hospital is the only offer we received that included bridge loan financing.

31. In determining that the Northside Hospital offer was the best for the Receivership Estate, I considered Northside Hospital's ability and stated willingness and intention to close on the Business Asset Sale much more quickly and efficiently than any other potential purchaser.

32. I considered also that Northside Hospital's reputation, particularly in the State of Georgia and more particularly in metropolitan Atlanta, is stellar, and its ability to close the Business Asset Sale is beyond question.

33. I considered also Northside Hospital's status as one of the largest employers, if not *the* largest employer, in Fulton County, Georgia, and its ability to provide an excellent working opportunity for those employees of the Business who remain with the practice post-sale.

34. If the Business Asset Sale is confirmed, the Receivership Estate will receive proceeds sufficient to pay most, if not all, of the Business's creditors.

35. On the contrary, if the Business Asset Sale is not confirmed, there are no other sale opportunities for the Business as any transaction must happen quickly as there are no funds to continue operating the Business.

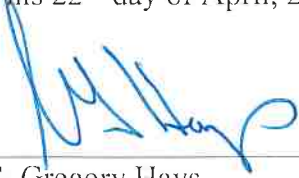
36. If confirmation is denied, the Business will not be able to continue to operate and will be shut down immediately. The Business's employees will lose their jobs. At best, I will sell the individual assets at fire-sale prices and the sale proceeds will pay a portion of administrative claims. Under this scenario, it is unlikely that the Government will be paid, and less likely that it will be paid in full. The Government's \$350,000 claim against Respondent and the Business will increase by over \$2,000,000. The rent arrearages carried by the Business's landlords for the past eight months likely will not be paid. Landlords with lease termination claims will not receive any distribution. Petitioner will not receive any distribution.

37. The Receivership Estate requires the protection of O.C.G.A. § 9-11-62, such that the order confirming the sale shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.

38. Due to the Business's precarious condition and the dire need for a timely closing, an expedited hearing is crucial.

I hereby declare that the information provided above is true and correct under penalty of perjury.

This 22nd day of April, 2024.



S. Gregory Hays
As and only as Receiver

Subscribed and sworn to before me
this 22nd day of April, 2024.

Notary Public
My commission expires: 3/14/2026



Exhibit “B”

Affidavit of C. Scott Wilkins

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA
FAMILY DIVISION**

NANCY JENNINGS,)	
)	
Petitioner,)	Civil Action No.
vs.)	2020CV337822
)	
JEFFREY GALLUPS,)	
)	
Respondent.)	
_____)	

AFFIDAVIT OF C. SCOTT WILKINS

BEFORE the undersigned officer, duly authorized to administer oaths, personally appeared C. Scott Wilkins who, after being duly sworn, deposes and says:

1. My name is C. Scott Wilkins, and this Affidavit is made on the basis of my personal knowledge. I am over 18 years of age and I am otherwise competent to give this Affidavit.

2. I am the owner and managing partner of The Cielo Group, a merchant bank founded in 2007. The Cielo Group focuses on M&A transactions, business turnaround transactions, recapitalizations and similar business situations.

3. Prior to creating this company, I was an investment banker for 14 years working in the United States, Europe and Latin America.

4. I was referred to Dr. Jeff Gallups in July of 2023. The referral stemmed from The Cielo Group’s mandate to raise \$15,000,000 for a New York City-based ENT (Ear, Nose and Throat) medical device company called ValENT Medical. The purpose of the meeting with Dr. Gallups was to discuss the use of the FDA-approved medical device in the ENT Institute of Atlanta’s clinics marketed by ValENT.

5. Early in the discussions, the focus turned to hiring The Cielo Group to sell Dr.

Gallups' business—a medical practice with approximately 150 employees at its peak, 14 locations and approximately \$30,000,000 in sales revenue (the “Business”).

6. My second meeting with Dr. Gallups included also Melissa Moritz, the then CEO of The ENT Institute of Atlanta. Ms. Moritz was also the second wife of Dr. Gallups.

7. Ms. Mortiz and Dr. Gallups requested the services of The Cielo Group and it was agreed that I would come in as a temporary Finance Director/CFO and organize the business for a sale/partial sale and/or recapitalization.

8. I was informed that the Finance Department was in disarray because Adam Holzhauser, the Finance Director, had recently submitted his resignation. Furthermore, Peter Oh, the Senior Accountant, and Stephanie Allen, Head Administrator, were also in the process of resigning. Thus, in sum, the three primary contacts for the Finance Department were leaving the Business as I was starting my mandate on August 2, 2023.

9. Upon starting my mandate, I quickly discovered the disorganization and chaos within the Business. Crucially, there were no audited financial statements historically; considering this was a \$30,000,000 revenue company that was to be marketed to sell or to recapitalize, audited statements would contribute significantly towards facilitating said objectives. It was also soon discovered that the Business was marketed for sale approximately two years previously by an investment bank. In that process, again, there were no audited financial statements.

10. I discovered also that the Business had incurred significant legal expenses, investment banking fees and quality of earnings review fees amongst other costs in its attempt to sell the business in and around 2022. These substantial fees have been detailed in other public documents pertaining to this case.

11. No sale was consummated by the investment bank in charge of the sale which, to

my understanding, was due to the potential buyers' hesitations and concerns regarding the CEO, Ms. Moritz, and the negative news released regarding Dr. Gallups' legal problems.

12. Further, it appeared that potential buyers were concerned that the indicated valuations for the Business, ranging from \$30,000,000 to \$70,000,000, were premised on various and hypothetical cash flow scenarios rather than asset valuations. Some of the cash flow scenarios could be characterized as aggressive or unlikely.

13. Soon after my arrival in early August, the Business was put into receivership. Approximately one week after the commencement of the receivership, the CEO, Ms. Moritz, was dismissed by the Receiver. At that point, the Receiver asked me to manage the Business while continuing to prepare it for sale and I agreed to do so. Thus, in the second half of August 2023, I began reporting to the Receiver while managing the Business and preparing it for sale/recapitalization.

14. I discovered immediately that the Business had neglected paying the majority of trade vendors and landlords. Accounts payable were mounting while cash flow was diminishing.

15. In July 2023 Blue Cross Blue Shield (BCBS) Anthem, the largest insurance carrier for the Business, had curtailed services with the Business due to Dr. Gallups' felony conviction.

16. By the end of August 2023, it was clear to me, and to the Receiver to whom I report, that the financial state of the Business was grave and not just precarious.

17. There was an acute need for additional funding as early as August if the Business were to survive through the closing of a sale; this needed funding is termed "interim" or "bridge" financing. Additionally, we had no idea how long it would take to find a qualified buyer or investor for the business.

18. To prepare the Business for a successful sale, there was a lot of work to do around

transparency, organization of operational and financial information, compliance, management— in short, virtually every aspect of the Business was impaired and/or in question. There was nothing solid and nothing certain. I determined that if the Business were not repaired, any sale price would be dismally low. Furthermore, there was another problem: time.

19. The Business in late August/early September 2023 faced many challenges that are discussed in detail in the Receiver’s First and Second Interim Reports. Following are a few of the primary challenges:

- Georgia Banking Company (GBC), the Business’s senior secured lender, could call its loan at any time as they had been unaware of the acute financial issues. I immediately initiated close weekly contact with GBC, which contact continues with the same frequency currently.
- Accounts payable were increasing as there was insufficient cash to pay vendors and landlords.
- Cash collections were barely sufficient to cover payroll and the odd payment to landlords or vendors.
- Cash had been diverted from the Business for non-operational purposes that included making payments to Dr. Gallups’ first ex-wife, payments to the Department of Justice, and personal, non-business expenses for Dr. Gallups and Ms. Moritz.
- Actual cash collections were declining because Medicare and BCBS Anthem had ceased working with the Business due to Dr. Gallups’ legal problems.
- Demands from the Department of Justice to pay \$596,566 by September 5, 2023, or face an increase of a judgement and a recorded \$5,300,000 judgment that would have devastated the Business and negatively impacted the bridge loan and sale prospects.
- Landlords had not been paid and the Business was receiving eviction notices. Issues regarding the landlords are discussed in the Receiver’s Second Interim Report.
- Critical vendors had not been paid and threatened discontinuing key services.
- Internal turmoil within the Business caused by Ms. Moritz led to key staff departures and general instability. The net result of this was a decline in the organic growth of the Business.
- Given the lack of funds in the Business, the Receiver and I did not hire any C-Suite management, but did employ an hourly controller-level employee from Aprio, a national accounting firm. This person proved to be more of a liability than an asset, perhaps too challenged by the chaos and the disorganized Finance Department. The Business did not renew her hourly

contract after the 90-day initial period.

- The aforementioned facts are all reflected in the deteriorating financials commencing in July 2023 and continuing to the present date.

- The negative news flow regarding Dr. Gallups' criminal conviction was powerful and increasingly impacting the brand of the Business and, more importantly, weighed on the morale of the staff.

- Securing bridge or interim funding was challenging given all the bad press about the Business and its founder as well as the lack of organized information and financials. In addition, the business was in a court-ordered receivership and lenders were skeptical of loaning money to a receiver when their standard loan documents indicated appointment of a receiver was an Event of Default.

20. The Receiver and I worked with the best of the senior staff and maintained very close contact with all the providers, especially the physicians during the entire period. It took several months to win the trust of these key staff; however, once attained, these relationships were critical to achieving our goals regarding organization, compliance, communication, marketing, accountability, and SOPs (Standard Operating Procedures).

21. To market the Business for sale I employed a multi-prong approach, always with the coordination and knowledge of the Receiver.

22. I contacted the following investor bases:

- Family Offices;
- High Net Worth Individuals;
- Hospital Groups; and
- Private Equity Groups.

23. Regarding the large hospital groups, I spoke to Piedmont Hospital and Northside Hospital. In terms of family offices and high net worth individuals, I spoke to more than 15 individuals or groups. I spoke with no fewer than seven private equity groups. These various groups and individuals were in Georgia as well as outside of the state. I also spoke to the Business'

prior investment banker and entities they had negotiated with during the marketing in 2022.

24. The marketing started at various dates depending upon the group or individual. However, virtually all the targeted groups were contacted by the Fourth Quarter of 2023. Additionally, given the importance of the interim or bridge funding, we had discussions with all prospective investors about the need for said interim funding in the hope of obtaining both interim and permanent funding from them.

25. The first formal offer came in from a major player in the ENT industry, funded by a private equity group and very active in the Southern United States (“First Suitor”), creating momentum in the process. The \$8,000,000 asset purchase agreement excluded accounts receivable. The First Suitor’s planned due diligence was extensive, projected to take six to nine months.

26. The First Suitor expended significant resources in its due diligence, which only ended when the higher offer emerged from Northside Hospital in early 2024.

27. The Receiver and I established and maintained discussions and negotiations with another five groups in various stages of advanced due diligence while the First Suitor and Northside Hospital were negotiating their letters of intent.

28. It is worth reinforcing the challenge of managing the Business while maintaining the marketing process with a very small senior staff, unreliable financials and a general employee base with one foot out the door. This was and remains the harsh reality of the Business. The prospective buyers and investors knew exactly the gravity of the financial and operational position of the Business.

29. Thus, it was good fortune to receive the offer from Northside Hospital slightly superior in value terms to that of the First Suitor and targeting a shorter timeframe to close.

Additionally, and crucially, Northside Hospital was amenable to interim financing of \$1,000,000.

30. The \$10.0 million offer from Northside Hospital is an asset purchase and, unlike the offer from the First Suitor, includes the estimated \$2,000,000 in recoverable accounts receivable. Furthermore, the Northside Hospital offer excludes the three clinics and surgery center in the southern section of Atlanta. The reason for this exclusion apparently stems from the locations' lack of infrastructure and lack of focus in that part of Georgia. The estimated value of the southern operation is \$1,000,000 to \$2,000,000 assuming the inclusion of a primary physician.

31. These two formal offers were received in a relatively short period of time and under very difficult circumstances. Both offers were similar in value (\$10,000,000) when adjusted for the inclusion/exclusion of accounts receivable. The other indicated valuations from other interested suitors were in the \$5,000,000-\$7,000,000 range. Virtually all the parties agreed that the known risks were numerous and serious and the unknown risks were perhaps more daunting—hence the lower valuation range expressed by the other potential suitors.

32. There has been considerable uncertainty and disagreement surrounding the valuation of the surgery center located in Alpharetta, Georgia. The Receiver and I and other parties found no concrete evidence of a firm value. The First Suitor valued it, together with the surgery center in the south located in Newnan, Georgia, at \$2,000,000. Other informal conversations with industry participants validated the low single digit valuation. A key issue for the sale and transfer of the Surgery Center involved the required renovation which would be extensive. I spoke with the First Suitor's contractor that evaluated the costs to bring the surgery center up to code.

33. On March 14, 2024, the Receiver asked the Superior Court to approve the sale of assets to Northside Hospital. It was crucial to the survival of the business that such approval be given on an emergency basis because the Business's cash flow problems had become critical.


Without the bridge loan financing included in the Northside Hospital offer, the Business would not have been able to make payroll the following day, Friday, March 15, 2024. If that had happened it is extremely likely that most or all of the staff would have departed and the Business could not have continued operating.

34. The Receiver and I took all reasonable steps to market the Business when no funds were available to engage additional experts or appraisers. Importantly, while Jeffrey Gallups had the luxury of time and money during 2022 and 2023 to market the Business, he did not pay the certain experts he employed including CFGI who prepared a Qualify of Earnings Study and is owed over \$137,500. In addition, other legal professionals and accountants were not paid.

35. If the Northside Hospital sale is not confirmed, the Business will promptly cease operating, employees will lose their jobs, landlords will move forward with eviction actions, and the remaining assets of the Business will sell for a fraction of the Northside Hospital price.

I hereby declare that the information provided above is true and correct under penalty of perjury.

This 22nd day of April, 2024.


C. Scott Wilkins

Subscribed and sworn to before me
this _____ day of _____, 2024.

Notary Public
My commission expires:

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA
FAMILY DIVISION**

NANCY JENNINGS,)	
)	
Petitioner,)	Civil Action No.
vs.)	2020CV337822
)	
JEFFREY GALLUPS,)	
)	
Respondent.)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the ***RECEIVER'S PETITION FOR CONFIRMATION OF SALE*** upon the following persons by e-mail, as follows:

- C. Knox Withers <Knox.Withers@agg.com>
- Elizabeth Green Lindsey, Esq. <elindsey@harrisonllp.com>
- Frank B. Strickland, Esq. <fstrickland@taylorenghish.com>
- Gregory M. Taube <gmt@nmrs.com>
- Jack Cartwright Esq. <cartwright@khlawfirm.com>
- Jessica G. Cino Esq. <cino@khlawfirm.com>
- Jordan B Forman <jforman@foxrothschild.com>
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April 23, 2024.

By: /s/ John K. Rezac
JOHN K. REZAC