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Fred Stevens  
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**Hearing Date: May 9, 2017  
Hearing Time: 3:00 p.m. (EST)**

**Deadline to File an Objection to Make  
a Higher or Better Offer:  
May 2, 2017 @ 4:00 p.m. (EST)**

*Counsel to the Debtors and Debtors in Possession*

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

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In re	:	
	:	Chapter 11
HOSPITAL AUDIENCES, INC.	:	
d/b/a Healing Arts Initiative, <u>et al.</u> ,	:	Case No. 16-42119 (CEC)
	:	
Debtors.	:	(Jointly administered)
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**NOTICE OF HEARING ON DEBTORS’ MOTION PURSUANT TO  
11 U.S.C. §§ 105(a) AND 363 OF THE BANKRUPTCY CODE AND FED. R.  
BANKR. P. 2002 AND 6004 FOR AN ORDER APPROVING SALE AGREEMENT  
AND AUTHORIZING SALE OF PROPERTY FREE AND CLEAR OF ALL LIENS,  
CLAIMS AND ENCUMBRANCES**

TO THE UNITED STATES TRUSTEE FOR THE EASTERN DISTRICT OF NEW YORK,  
COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND ALL  
PARTIES ENTITLED TO NOTICE PURSUANT TO FED. R. BANKR. P. 2002:

**PLEASE TAKE NOTICE**, that Hospital Audiences, Inc., d/b/a Healing Arts Initiative (“HAI”) and HAI Ventures, LLC (“HAI Ventures”) and, together with HAI, the “Debtors”) will present their Motion (the “Motion”) pursuant to 11 U.S.C. §§ 105(a) and 363, and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”) for an order (the “Sale Order”) approving the Sale Agreement between HAI and Young Adult Institute, Inc., a New York not-for-profit corporation (the “Buyer”), substantially in the form attached to the Motion as Exhibit B (the “Sale Agreement”), subject to higher and better offers as may be timely and properly received by the Objection Deadline (as defined below), and authorizing the sale of certain property of HAI defined in the Sale Agreement as the Acquired Assets (collectively, the “Property”) free and clear of all liens, claims and encumbrances, as more fully detailed in the Motion, on **May 9, 2017 at 3:00 p.m. (Prevailing Eastern Time)** (the “Hearing”), before the Honorable Carla E. Craig, Chief United States Bankruptcy Judge, United States Bankruptcy Court, Eastern District of New York, Conrad B. Duberstein U.S. Courthouse,

271-C Cadman Plaza East, Courtroom 3529, Brooklyn, New York 11201-1800 (the “Bankruptcy Court”).

**PLEASE TAKE FURTHER NOTICE**, that the Motion and all exhibits thereto have been filed electronically with the Clerk of the United States Bankruptcy Court for the Eastern District of New York, and may be reviewed by all registered users of the Court’s website at <http://www.nyeb.uscourts.gov>. Copies of the Motion and exhibits thereto may be obtained by telephonic or e- mail request to the undersigned counsel for the Debtors, Attn: Kristen Garofalo, Paralegal (kgarofalo@klestadt.com).

**PLEASE TAKE FURTHER NOTICE**, that the Debtors will consider any offers for the purchase of the Property if set forth in the form of an objection and filed and served in accordance with the below objection procedures so as to be received by the Debtors by the Objection Deadline (defined below). If any such offer is timely and properly received and determined by the Debtors, in their good faith business judgment, to be better than the offer of the Buyer as set forth in the Sale Agreement (a “Competing Bid”) and the Buyer does not make a subsequent offer that the Debtors determine to be better than the Competing Bid, such Competing Bid will be considered at the Hearing on the Motion. If no timely and proper Competing Bid is received and accepted by the Debtors, subject to the approval of the Court, the Debtors will consummate the sale of the Property to the Buyer pursuant to the Sale Agreement, subject to approval of the Bankruptcy Court. If any party desires any additional information regarding the Property or is interested in submitting a Competing Bid, they may contact the undersigned counsel for the Debtors, Attn: Fred Stevens.

**PLEASE TAKE FURTHER NOTICE**, that any Competing Bid and any other objection to the relief sought in the Motion shall be made in writing, filed with the Court electronically by registered users of the Court’s electronic case filing system and, by all other parties in interest, e-mailed, preferably in Portable Document Format (PDF), Microsoft Word or any other Windows-based word processing format, or mailed to the Clerk of the United States Bankruptcy Court, Eastern District of New York, Conrad B. Duberstein U.S. Courthouse, 271-C Cadman Plaza East, Suite 1595, Brooklyn, New York 11201-1800, with a hard copy delivered directly to the Chambers of the Honorable Carla E. Craig, Chief United States Bankruptcy Judge, United States Bankruptcy Court, Eastern District of New York, Conrad B. Duberstein U.S. Courthouse, 271-C Cadman Plaza East, Courtroom 3529, Brooklyn, New York 11201-1800, and served upon (i) the undersigned counsel to the Debtors, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036, Attn: Fred Stevens, Email: [fstevens@klestadt.com](mailto:fstevens@klestadt.com); (ii) counsel to the Buyer, Epstein Becker Green, 250 Park Avenue, New York, New York 10177, Attn: Wendy Marcari, Email: [wmarcari@ebglaw.com](mailto:wmarcari@ebglaw.com); (iii) counsel to the Official Committee of Unsecured Creditors, SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753; and (iv) the Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, New York 10014, Attn: Rachel B. Weinberger, Trial Attorney, Email: [rachel.weinberger@usdoj.gov](mailto:rachel.weinberger@usdoj.gov), so as to be actually received **no later than May 2, 2017 at 4:00 p.m. (Prevailing Eastern Time) (the “Objection Deadline”)**.

Dated: New York, New York  
April 14, 2017

**KLESTADT WINTERS JURELLER  
SOUTHARD & STEVENS, LLP**

By: /s/ Fred Stevens

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

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In re	:	
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HOSPITAL AUDIENCES, INC.	:	
d/b/a Healing Arts Initiative, <u>et al.</u> ,	:	Case No. 16-42119 (CEC)
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Debtors.	:	(Jointly administered)
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**DEBTORS’ MOTION PURSUANT TO 11 U.S.C. §§ 105(a) AND 363 OF THE  
BANKRUPTCY CODE AND FED. R. BANKR. P. 2002 AND 6004 FOR AN ORDER  
APPROVING SALE AGREEMENT AND AUTHORIZING SALE OF PROPERTY FREE  
AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES**

**TO THE HONORABLE CARLA E. CRAIG,  
CHIEF UNITED STATES BANKRUPTCY JUDGE:**

Hospital Audiences, Inc., d/b/a Healing Arts Initiative (“HAI”) and HAI Ventures, LLC (“HAI Ventures” and, together with HAI, the “Debtors”) submit this motion (this “Motion”) pursuant to Sections 105(a) and 363 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”) for an order (the “Sale Order”), substantially in the form annexed hereto as Exhibit A, approving the Sale Agreement between HAI and Young Adult Institute, Inc., a New York not-for-profit corporation (the “Buyer” or “YAI”), substantially in the form attached hereto as Exhibit B (the “Sale Agreement”), and authorizing the sale of certain property of HAI defined

in the Sale Agreement as the Acquired Assets (collectively, the “Property”) to the Buyer, free and clear of all liens, claims and encumbrances, subject to any higher or better offers for the purchase of the Property as may be timely and properly received by the Debtors on or before May 2, 2017 at 4:00 p.m. (Prevailing Eastern Time), and respectfully set forth as follows:

### **JURISDICTION**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Administrative Order No. 264 titled “In the Matter of The Referral of Matters to the Bankruptcy Judges” of the United States District Court for the Eastern District of New York (Weinstein, C.J.), dated August 28, 1986, and Administrative Order No. 601 of the United States District Court for the Eastern District of New York (Amon, C.J.), dated December 5, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. The statutory bases for the relief sought herein are sections 105(a) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004.

### **FACTUAL BACKGROUND**

#### **I. The Chapter 11 Cases**

3. On May 16, 2016 and May 24, 2016 (as applicable, the “Petition Date”), HAI and HAI Ventures, respectively, filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York (the “Court”).

4. The Debtors continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On May 20, 2016, the then Executive Committee of the Board of Directors of HAI elected to employ John Keefe as the Interim Executive Director of the Debtors (the “Interim Executive Director”).

6. On May 25, 2016, the United States Trustee appointed an official committee of unsecured creditors in HAI's case (the "Committee").

7. On July 22, 2016, Alan Gettner, Richard Gomes, Greg Libertiny, Jonathan Pearlroth, Laura Anne Walker and D. Leslie Winter resigned from HAI's Board of Directors (the "Board") and Jennifer Geiling, Jenny A. Hourihan, John MacIntosh and Gregory Pressman were simultaneously elected to the Board.

8. No trustee or examiner has been appointed in these chapter 11 cases.

## **II. The Proposed Sale**<sup>1</sup>

9. HAI is a New York not-for-profit corporation that has provided an array of arts, education and wellness programs to culturally underserved populations throughout New York City for over 45 years. HAI has provided access to Broadway shows, the Metropolitan Opera, world class museums and other cultural experiences to audience members in hospitals, shelters, nursing homes, New York City public schools, social services agencies and other public forums.

10. Over the last eleven months during which these chapter 11 cases have been pending, the Debtors, through their counsel and their Interim Executive Director, have sought to obtain the contributions and/or financing needed to continue HAI's charitable operations or a purchaser of HAI's assets for the benefit of its employees and creditors and the communities that it serves. Unfortunately, the Debtors have been unable to secure the funds necessary to continue operating; on or about May 13, 2016, the Debtors ceased day-to-day operations and terminated their remaining employees other than their acting interim executive director, whose role was assumed by the existing Interim Executive Director. The Buyer represents the only party to date

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<sup>1</sup> In the event of any discrepancy between the provisions of this Motion and the provisions of the Sale Agreement, the provisions of the Sale Agreement shall control.

who has responded with interest in acquiring HAI's assets and continuing its charitable programs.

11. YAI, the proposed Buyer, is itself a New York not-for-profit organization. YAI works with individuals, families, governments, corporate partners, donors and foundations to ensure that people with disabilities are recognized for their abilities, achieve the goals that are important to them and are integrated into their communities. Through its staff of more than 4,500 people, YAI creates new opportunities for individuals of all ages with intellectual and developmental disabilities to live, love, work, learn and otherwise achieve the fullest life possible.

12. Pursuant to the Sale Agreement, YAI will purchase certain of HAI's assets, as further detailed and defined in the Sale Agreement as the Acquired Assets, including, but not limited to, HAI's right, title and interest in and to its corporate legal names, trademarks, copyrights, trade secrets and other intellectual property, domain name registrations, e-mail addresses, internet websites and social media sites and accounts, work-product, marketing records, vendor lists, employee records, originals or copies of expired contracts, permits, if any, and goodwill.

13. Certain of HAI's assets are excluded from the sale, including, but not limited to, all of HAI's right, title and interest in and to its cash, accounts receivable, bank accounts, owned or leased real property, owned or leased computer software and hardware, tax benefits or claims (except to the extent attributable to the Property), unacquired books and records, unexpired contracts, policies and procedures, telephone and facsimile numbers, amounts or claims payable under any insurance policy of HAI's business, including, without limitation, any directors and officers liability insurance, arising prior to the closing, all artwork owned by HAI or related to its

business, litigation claims against any third parties arising prior to the closing and not specifically related to the Property (including any claims under Chapter 5 of the Bankruptcy Code) and HAI's 34-passenger bus.

14. In exchange for the Property, YAI will deliver to HAI at closing a purchase price of \$25,000 (the "Purchase Price"). As a condition to closing and YAI's payment of the Purchase Price, a grant of funds in the amount of \$100,000 to be made by SeaChange Capital Partners to YAI in furtherance of YAI's charitable mission will be deposited with a third party escrow agent and subject to release immediately following the closing. The Debtors will utilize the Purchase Price to pay outstanding fees to the United States Trustee, pay back amounts due the Interim Executive Director and pay outstanding storage fees incurred in connection with storing certain artwork and records. The Debtors anticipate that the Purchase Price will be insufficient, after payment of the transaction expenses, to fund any distributions to creditors of the Debtors' estate.

15. Debtors and their Interim Executive Director believe that the sale to YAI is in the best interests of the Debtors and their estate, as well as the communities served by HAI and YAI. The proposed sale represents the only offer the Debtors have received to date for the purchase of their assets and therefore the best opportunity for the Debtors to maximize the value of the Property. The proposed sale will allow the Property to be utilized in the spirit of HAI's charitable mission and in furtherance of YAI's charitable work, without any appreciable cost to the estate.

16. In order to ensure that that the sale is the estate's best opportunity to maximum value for the benefit of the Debtors' creditors, the Debtors will consider any higher or better offer than the offer of the Buyer set forth in the Sale Agreement (any such offer, a "Competing Bid") if such Competing Bid is timely and properly received by the Debtors on or before May 2,



2017 (the “Objection Deadline”) and served in accordance with the procedures set forth in the Notice of Motion filed concurrently with this Motion.

**III. Extraordinary Provisions**

17. In accordance with Administrative Order 557, In re: Adoption of Sale Guidelines, dated March 29, 2010, the Debtors disclose the following Extraordinary Provisions provided for in the Sale Agreement:

(i) Requested Findings as to Successor Liability. Pursuant to the Sale Agreement, the Buyer shall not assume or be obligated to pay or assume any claims, interests, encumbrances or other liabilities of HAI currently existing or hereafter arising, or otherwise, whether or not disclosed to the Buyer, and HAI shall retain and remain exclusively liable for such excluded liabilities. The intent and objective of HAI and the Buyer is that the Buyer shall not assume, and no transferee liability will attach to the Buyer pertaining to, any such excluded liabilities. The Sale Order shall provide that the sale is to the Buyer with no successor liability.

(ii) Access to Records. The Buyer is acquiring employee records, contract records, marketing records, vendor list records and employee records, provided that HAI is entitled, at its sole cost and expense, upon reasonable notice, during regular business hours and at mutually agreeable times, to receive copies of such acquired records for a period of two (2) years after closing. HAI is maintaining all other original books and records, including HAI’s corporate, financial and tax books and records and any other books and records HAI is required by law to maintain, provided that Buyer shall be entitled, at its sole cost and expense, to receive copies of such excluded records.

(iii) Relief from Bankruptcy Rule 6004(h). A material inducement to the Buyer’s willingness to enter into the Sale Agreement is the condition that Bankruptcy Rule

6004(h) is waived and there will be no stay of execution of the Sale Order under Bankruptcy Rule 7062.

### **SUMMARY OF THE RELIEF REQUESTED**

18. By this Motion and the Sale Agreement, the Debtors are seeking entry of the attached Sale Order, *inter alia*, approving the Sale Agreement, authorizing the sale of the Property to the Buyer free and clear of all liens, claims and encumbrances under Section 363(f) of the Bankruptcy Code, finding that the Buyer is a good faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code, and confirming the Buyer is acquiring the Property free and clear of excluded assets and liabilities and releasing Buyer with respect thereto.

### **LEGAL AUTHORITY**

#### **I. The Sale is Supported by Legitimate Business Justifications**

19. Section 363(b)(1) of the Bankruptcy Code provides that the “[t]he Debtor, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The decision to use, sell or lease property of the estate is subject to the exercise of the Debtors’ business judgment. *See Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). Further, to obtain court approval to sell property under section 363(b) of the Bankruptcy Code, a debtor need only show a legitimate business justification for the proposed action. *See id.* at 1070 (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”); *Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

20. The Debtors believe that the sale of the Property as outlined herein, together with the opportunity for the Debtors to receive any Competing Bids on or before the Objection Deadline, represents the estate's best opportunity to achieve the highest and best offer and to recover the maximum value from the Property for the benefit of the estate and its creditors.

## **II. Sale Free and Clear of All Liens**

21. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell property free and clear of any interest in such property of an entity other than the estate only if:

- (i) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (ii) such entity consents;
- (iii) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (iv) such interest is in bone fide dispute; or
- (v) such entity should be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

22. Section 363(f) is drafted in the disjunctive, and satisfaction of any one of its five requirements will suffice to permit the Sale "free and clear." *See Michigan Employment Sec. Comm'n v. Wolverine Radio Co., Inc. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991).

23. Several courts have held that, notwithstanding the use of the term "interest" in the statutory language of section 363(f), such section grants bankruptcy courts the power to convey assets free and clear of claims. *See, e.g., In re Trans World Airlines, Inc.*, 322 F.3d 283, 290 (3rd Cir. 2003); *In re Medical Software Solutions*, 286 B.R. 431, 446 (Bankr. D. Utah 2002); *In re Trans World Airlines, Inc.*, Case No. 01-0056, 2001 WL 1820325 at \*5 (Bankr. D. Del. Mar. 27, 2001) ("Authorizing the sale [of debtor's assets] free and clear of . . . successor liability claims achieves the purpose of section 363 [of the Bankruptcy Code] intended by Congress."). Section

105(a) of the Bankruptcy Code provides additional support for a court's authority to convey assets free and clear of claims. *See Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (stating that the absence of specific authority to sell assets free and clear of claims poses no impediment to such sale, as such authority is implicit in the court's equitable powers when necessary to carry out the provisions of Title 11); *see also Equity Broadcasting Corp. v. Winstar New Media Co., Inc. (In re Winstar Communications, Inc.)*, 284 B.R. 40, 48 (Bankr. D. Del 2002) (approving a sale order transferring the debtor's securities free and clear of all encumbrances pursuant to sections 105(a) and 363(f) of the Bankruptcy Code).

24. The Debtors are not aware of any objection of any party to the sale of the Property free and clear of claims and liens. In fact, all liens of the Debtors' secured creditors were necessarily released upon the Debtors' payment in full of such secured creditors' claims. The Buyer would not have entered into the Sale Agreement if the Property were not to be sold free and clear of all liens, claims and encumbrances or if the Buyer would, or in the future could, be liable for any such liens, claims and encumbrances. The Debtors submit that the sale of the Property should be permitted free and clear of all liens, claims and encumbrances, with any such liens, claims and encumbrances, to the extent there are any, to attach to the sale proceeds in the order of their priority.

### **III. Purchaser is a Good Faith Purchaser Pursuant to Bankruptcy Code Section 363(m)**

25. The Debtors also request that this Court enter an order finding that the Buyer is a good faith purchaser of the Property pursuant to Section 363(m) of the Bankruptcy Code such that the reversal or modification on any appeal of the sale of the Property to the Buyer will not affect the validity of the sale to the Buyer, whether or not the Buyer knew of the pendency of the

appeal. *See* 11 U.S.C. § 363(m); *see also In re Motors Liquidation Co.*, 430 B.R. 65, 78 (S.D.N.Y. 2010) (“Section 363(m) limits the appealability of a Section 363 sale order that has been consummated to the issue of the purchaser’s good faith”).

26. Although the Bankruptcy Code does not define “good faith,” the Second Circuit has held that:

The “good faith” component of the test under § 363(m) speaks to the equity of [the buyer’s] conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

*In re Colony Hill Assocs.*, 111 F.3d 269 (2d Cir. 1997)111 F.3d at 276 (internal citations omitted); *In re GSC, Inc.*, 453 B.R. at 180 (citing *Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380 (2d Cir. 1997)) (“Good faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings . . . and the relevant inquiry [remains] whether that conduct was intended to control the sale price or take unfair advantage of prospective bidders.”).

27. The Buyer is undertaking the Sale Agreement and the proposed transaction with the Debtors at arm’s-length, for value and in good faith in accordance with Section 363(m) of the Bankruptcy Code. Neither party has engaged in any conduct or collusion that would cause or permit the sale Agreement to be avoided under Section 363(n) of the Bankruptcy Code. Relief under Section 363(m) of the Bankruptcy Code will ensure the finality of the sale and garner the highest value for the Property and is a material term required by the Buyer in the Sale Agreement.

**NOTICE**

28. Contemporaneously with the filing of the Motion, the Debtors filed with the Court and served by first class mail a notice of the relief requested in this Motion upon: (i) the Office of the United States Trustee; (ii) counsel to the Buyer; (iii) counsel to the Committee, (iv) all persons who made their interest in the Property known to the Debtors and/or their counsel or asserted any liens against or any interest in the Property; (v) all known creditors and all known parties in interest in these chapter 11 cases, and (vi) all entities having filed a notice of appearance or otherwise entitled to notice pursuant to Bankruptcy Rule 2002.

29. The Debtors respectfully submit that notice of this Motion is compliant with Bankruptcy Rules 2002 and 6004 and is otherwise reasonable and appropriate, and that no other or further notice of the relief requested herein is warranted or required.

**NO PRIOR RELIEF**

30. No prior motion for the relief sought herein has been made to this or any other court.

*[remainder of the page intentionally left blank]*

**WHEREFORE**, the Debtors respectfully request that the Motion be granted and the Sale Order, substantially in the form annexed hereto as Exhibit A, be entered, and the Debtors be granted such other and further relief as is just and proper.

Dated: New York, New York  
April 14, 2017

**KLESTADT WINTERS JURELLER  
SOUTHARD & STEVENS, LLP**

By: /s/ Fred Stevens

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