IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MARTIN J. WALSH, Secretary of Labor, U.S. DEPARTMENT OF LABOR,	)	
Plaintiff,	)	**CIVIL ACTION**
v.	)	**Case No. 2:20-cv-02624-TC-ADM**
DANIEL L. WHITNEY; *et al.*	)	
Defendants.	)	

INDEPENDENT FIDUCIARY'S PLAN OF LIQUIDATION

Pursuant to the Consent Order entered in this case on March 18, 2021 (Dkt. 32), Receivership Management Inc. was appointed as the interim Independent Fiduciary of "all the employee welfare benefit plans, as defined in section (3)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (the "Plans") for which Defendant Medova [Healthcare Financial Group, LLC] serves as the claims administrator." (Dkt. 32, pp. 1-2). The Consent Order further provides that "[t]he Independent Fiduciary shall have the authority, with at least ten (10) business days' notice to the Defendants, to terminate one or more of the Plans and liquidate the Plans' assets." (Dkt. 32, ¶ 2). Such notice was provided on August 25, 2021. (Dkt. 84, p. 11). This document is the Independent Fiduciary's Plan of Liquidation for all Plans that self-terminate or that the Independent Fiduciary, in its sole discretion, deems it necessary to involuntarily terminate. Nothing herein is intended to be inconsistent with the Court's All Writs Act Order of June 3, 2021 (Dkt. 58), and unless and until otherwise ordered by the Court that Order remains in full force and effect.

I. Procedures to Notify Delinquent Plans and Provide Opportunity to Cure

1. Relying on reports to be furnished by the third-party administrator ("TPA"), the

Independent Fiduciary will determine which Plans are in arrears on required monthly contribution payments ("Delinquent Plans"). If the employer-sponsor of a Delinquent Plan has expressed its intent to terminate the Delinquent Plan, including by notification to the Independent Fiduciary or the TPA, then the provisions of Section II below will apply. If the employer-sponsor of a Delinquent Plan has not expressed its intent to terminate the Delinquent Plan, then the provisions of this Section I will apply.

2. For each Delinquent Plan, the Independent Fiduciary, through the TPA, will issue a "Delinquency Notice" to the employer-sponsor by United States First-Class Mail, notifying the employer-sponsor that it has 21 days from the date of the Delinquency Notice to cure the monthly contribution arrearage. The Delinquency Notice will also notify the employer-sponsor that its Plan will be terminated if the arrearage is not cured within the 21 days. The Delinquency Notice will further notify the employer-sponsor that termination of its Plan may result in loss of any available stop loss benefits to the employer-sponsor to satisfy covered Plan aggregate and specific losses, and that pursuant to the Plan Document the employer-sponsor is liable for full payment of all expenses, medical claims and other financial obligations of the Plan to the extent there are insufficient Plan assets to pay all such obligations. The form of Delinquency Notice is attached as Exhibit 1 hereto.

3. If an employer-sponsor cures the arrearage within the 21-day period and remains current thereafter, the Plan will remain in effect until the end of the Plan year.

4. If an employer-sponsor fails to cure the arrearage within the 21-day period, then the Independent Fiduciary will proceed to terminate the Delinquent Plan in accordance with the procedures in Section II below.

II. Procedures for Termination of Plans

5. For each Plan being terminated for any reason, including (a) Delinquent Plans that do not cure their arrearages as provided in Section I above, (b) Plans whose Plan sponsors notify the Independent Fiduciary or the TPA of their express intent to voluntarily terminate a Plan, and (c) any other Plans the Independent Fiduciary determines, in its sole discretion, should be terminated for any other reason, the Independent Fiduciary, through the TPA, will mail a "Notice of Termination" to the following persons to the extent known: the employer-sponsor, the relevant broker of record if it has a Broker of Record form on file with the Independent Fiduciary, all medical service providers, all current and former Plan participants, and Medova with respect to any Plans to be terminated under category (c), advising them of the termination of such Plan. The Notice of Termination will be sent by United States First-Class Mail, and will state as follows:

a. If a Plan sponsor provides the Independent Fiduciary or the TPA notice of its express intent to voluntarily terminate a Plan, then the Notice of Termination shall indicate the termination is or will be as of the date indicated on the Plan Sponsor's notice to the Independent Fiduciary or TPA. For all other Plans, the Notice of Termination shall indicate the Plan will be terminated 21 days after the date of the Notice of Termination. Each of the above-referenced dates is referred to herein as the "Effective Date."

b. All terminated Plans will be liquidated under this Plan of Liquidation (a copy of which will be provided) as approved by the United States District Court for the District of Kansas.

c. Benefits under the Plan will cease as of the Effective Date for all covered employees and their dependents.

d. The Independent Fiduciary will cease paying premiums for any stop loss coverage as of the Effective Date. Stop Loss coverage will likely be affected by ceasing stop loss premium payments.

e. Pursuant to the Plan Document, the employer-sponsor is liable for full payment of all expenses, medical claims and other financial obligations of the Plan to the extent there are insufficient Plan assets to satisfy such obligations, and the Independent Fiduciary will seek to recover from the employer-sponsor any Plan asset deficiency.

f. The recipient should refer to this Plan of Liquidation for the procedures applicable to liquidation of the Plan, including adjudicating outstanding medical claims as set forth in subsection B below.

The form of the Notice of Termination for Plans being terminated by the Independent Fiduciary is attached as Exhibit 2 hereto.

A. Priority of Claims

6. Upon termination of any Plan, fees and expenses of the Independent Fiduciary not paid in accordance with the Consent Order appointing the Independent Fiduciary shall have first priority, followed by fees and expenses of the TPA, other administrative claims and claims for Plan expenses excluding broker commissions, claims of pharmacy benefit managers, claims of other medical providers, claims for broker commissions, claims of general creditors, and claims of employer-sponsors, in that order and priority.

B. Medical Provider Invoice Claims and Related Deadlines

7. The following procedures shall apply to the submission and adjudication of medical provider claims for all Plans for which a Notice of Termination has been issued. Only

claims with dates of service on or prior to the Effective Date shall be considered. To the extent any of the following procedures are inconsistent with the Plan Document, the Plan Document is amended in accordance with ¶ 12 of the Consent Order (Dkt. 32) to incorporate these procedures:

a. The deadline for all providers to submit medical invoices not already submitted to the TPA for any terminated Plan shall be 45 days from the Effective Date.

b. The TPA will have 45 days from the deadline for submission of such provider claims to review and adjudicate them. The review and adjudication by the TPA will otherwise be pursuant to the applicable Plan Document and will take into account all participant responsibility (copayments, deductibles, coinsurance, etc.) under the Plan Document.

c. Within 14 days of the completion of the medical claims adjudication by the TPA as provided in subparagraph b, the TPA will issue to the Independent Fiduciary an adjudicated unpaid provider medical claims run ("Claims Run"). To the extent the Plan has sufficient assets to pay all claims set forth in the Claims Run and higher priority claims, the TPA, with approval of the Independent Fiduciary, shall pay such claims. If the Plan has insufficient assets to pay all claims set forth in the Claims Run and higher priority claims, the Independent Fiduciary, through the TPA, shall transmit the Claims Run and an itemization of unpaid higher priority claims to the employer-sponsor of the Plan along with a demand that such employer-sponsor pay the amount of the claims in the Claims Run and higher priority claims for which there are insufficient Plan assets to pay ("Employer Responsibility").

d. Each employer-sponsor referred to in subparagraph c above will have 30 days

following receipt of the Claims Run to discuss and resolve questions regarding the Employer Responsibility amounts with the TPA and/or Independent Fiduciary. By no later than 60 days after an employer-sponsor's receipt of the Claims Run, the employer-sponsor must report to the Independent Fiduciary or the TPA the status of its funding, through the TPA, of the Employer Responsibility amounts, the efforts taken to do so including any efforts taken to negotiate with the provider(s) to accept a reduced amount, and the amount of time needed, if any, to fund the Employer Responsibility amounts.

e. Failure of an employer-sponsor to report to the Independent Fiduciary by 60 days after receipt of the Claims Run will be construed by the Independent Fiduciary as a failure or refusal by the employer-sponsor to fund the Employer Responsibility amounts.

f. Failure or refusal by the employer-sponsor to fund the Employer Responsibility amounts for any reason may result in the Independent Fiduciary seeking relief from the Court to enforce the Plan of Liquidation or instituting a legal action on behalf of the Plan against the employer-sponsor. If an employer-sponsor fails or refuses to pay the Employer Responsibility amounts, then the Independent Fiduciary, through the TPA, shall pay the medical claims in the Claims Run and higher priority claims in order of priority and *pro rata* to the extent necessary from the Plan's available assets. If through enforcement of this Plan of Liquidation, legal action against the employer-sponsor, or otherwise, additional Plan assets are recovered, they shall be applied to the medical claims in the

Claims Run and higher priority claims in order of priority and *pro rata* to the extent necessary.

g. As a condition of accepting any distribution of assets from any terminated Plan, the Independent Fiduciary may require agreement by the medical provider to look solely to the estate of the terminated Plan for any Plan Responsibility amounts of the provider's medical claims in accordance with this Plan of Liquidation, and not to initiate or continue any suit, action, complaint, or any other form of administrative, legal or arbitral proceeding, or to engage in or threaten any type of collection activity, directly against the Plan, any Participant of the Plan, or the Independent Fiduciary for such Plan Responsibility amounts.

h. The Independent Fiduciary, in its sole discretion, may extend or shorten any of the above deadlines, but the deadlines in subparagraph d above shall not be extended beyond 90 days from the date an employer-sponsor receives the Claims Run absent exceptional circumstances. The Independent Fiduciary, in considering whether to extend such deadlines, will take into considerations the number of unpaid claims and the amount of Employer Responsibility, and the efforts demonstrated by the employer-sponsor to address the unpaid claims and related matters.

i. In the case of any negotiated reduction agreed upon between the employer-sponsor and any provider, the employer-sponsor shall obtain a release from the provider in favor of the employer-sponsor, the participant (except as to any participant responsibility amount), the Plan and its assets, Medova and any other

defendants, and the Independent Fiduciary. The required form of release is attached as Exhibit 3 hereto.

j. Upon issuance of payment by the Plan and/or employer-sponsor of the medical claims set forth in the Claims Run, the TPA will issue Explanations of Benefits ("EOBs") to the relevant Plan participants and medical providers. A participant may appeal any such determination in accordance with the Plan Document, ERISA, and the Affordable Care Act.

k. To the extent any aspect of the appeal process referred to above results in a determination that there is additional Plan responsibility for any medical expenses not previously adjudicated to be Plan responsibility ("Amended Claims"), then the TPA shall issue to the employer-sponsor an amended Claims Run setting forth the Amended Claims as determined by the appeal process, and the procedures and timelines set forth above shall apply and be repeated with regard to the payment and resolution of any Amended Claims.

C. <u>Further Investigation/Potential Asset Recovery.</u>

8. Following completion of the procedures set forth in subsection B above, the Independent Fiduciary shall address the payment of any remaining administrative expense and Plan expense claims and any other claims outstanding against any terminated Plan ("Remaining Claims"). If there are sufficient Plan assets to pay all Remaining Claims, they shall be paid in full by the Independent Fiduciary through the TPA. After payment of all Remaining Claims, any excess funds in the plan that were contributed by the employer-sponsor shall be returned to the employer-sponsor. If there are insufficient assets to pay Remaining Claims in full, the Independent Fiduciary shall pay the Remaining Claims in order of priority and *pro rata* to the

extent necessary using any available Plan assets, and the Independent Fiduciary shall send by United States First Class Mail a written demand upon the employer-sponsor to pay any unpaid Remaining Claims within 21 days . If the employer-sponsor fails to pay the unpaid Remaining Claims within 21 days of the date of written demand, the Independent Fiduciary may seek to enforce this Plan of Liquidation before the Court or avail itself of other legal remedies on behalf of the Plans to address unpaid Remaining Claims.

9. During the course of any Plan liquidation, the Independent Fiduciary, with the assistance of counsel, may review records, transactions, claims data, and other information, and may investigate material claims or causes of action that may benefit the Plans receiving a Notice of Termination. The Independent Fiduciary, in its sole discretion, will determine what causes of action, if any, to pursue in an effort to recover assets or reduce liabilities for the Plans, including the recovery of unpaid medical claims or reimbursement of Employer Responsibility amounts from third parties who may be at fault.

Respectfully submitted,

RECEIVERSHIP MANAGEMENT, INC., IN ITS CAPACITY AS INDEPENDENT FIDUCIARY

By: /s/ Gaye Tibbets

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acurley@robinsoncurley.com

EXHIBIT 1

NOTICE OF DELINQUENCY

DATE OF NOTICE: [INSERT DATE]

Re: **[PLAN NAME]** ("The Plan")

AMOUNT OF DELINQUENCY: **[INSERT AMOUNT]**

Dear Employer Sponsor ("You") of The Plan:

On March 18, 2021, pursuant to a Consent Order in the case captioned *Walsh, U.S. Secretary of Labor, v. Whitney, et. al.*, 2:20-cv-02624-TC-ADM, the United States District Court for the District of Kansas ("the Court") appointed Receivership Management, Inc. as the interim Independent Fiduciary ("IF") of all ERISA employee welfare benefit plans ("ERISA Plans") then being administered by Medova Healthcare Financial Services, LLC. The Plan is one of the ERISA Plans now under the IF's authority.

On _____, 2021, the Court approved the IF's Plan of Liquidation for delinquent ERISA Plans. You are hereby notified pursuant to the Plan of Liquidation that The Plan is delinquent due to failure to pay required monthly premium contributions.

THEREFORE, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

You have 21 days from the date of this Notice of Delinquency to cure the monthly contribution arrearage set out above. In order to cure the arrearage, the full amount of the arrearage must be remitted to: Hawaii Mainland Administrators, LLC, P.O. Box 644010, Dallas, TX 75264-4010, by no later than 21 days from the date of this Notice of Delinquency.

If the arrearage is not cured within 21 days, The Plan will be terminated in accordance with the Plan of Liquidation.

Termination of The Plan will result in the immediate cessation of benefits for all participants of The Plan, and may result in The Plan's loss of any available stop loss coverage for aggregate and specific losses. Pursuant to The Plan documents, You remain liable for full payment of all expenses, medical claims and other financial obligations of The Plan to the extent there are insufficient assets in The Plan to pay all such obligations.

IF YOU HAVE QUESTIONS REGARDING THIS NOTICE, YOU MAY CALL 615-370-0051 or you may email your questions to: rmoore@receivermgmt.com. Please reference the word "Medova" in the subject line of your email.

ROBERT E. MOORE, JR., President
RECEIVERSHIP MANAGEMENT INC.
510 Hospital Drive, Ste. 490
Madison, TN 37115

EXHIBIT 2

NOTICE OF TERMINATION

DATE OF NOTICE: [INSERT DATE]

Re: [**NAME OF PLAN]** ("The Plan")

To: EMPLOYER SPONSORS, BROKERS OF RECORD, EMPLOYEE PARTICIPANTS, THEIR SPOUSES AND DEPENDENTS ("Participants"), AND HEALTH CARE PROVIDERS WHO HAVE PROVIDED OR ARE PROVIDING MEDICAL SERVICES TO PARTICIPANTS OF THE PLAN

On March 18, 2021, pursuant to a Consent Order in the case captioned *Walsh, U.S. Secretary of Labor, v. Whitney, et. al.*, 2:20-cv-02624-TC-ADM ("Walsh Case"), the United States District Court for the District of Kansas ("the Court") appointed Receivership Management, Inc. as the interim Independent Fiduciary ("IF") of all ERISA employee welfare benefit plans ("ERISA Plans") then being administered by Medova Healthcare Financial Services, LLC. The Plan is one of the ERISA Plans now under the IF's authority.

On _____, 2021, the Court approved the IF's Plan of Liquidation for ERISA Plans that the IF has determined must be terminated. A copy of the Plan of Liquidation is enclosed with this Notice.

You are hereby being notified pursuant to the Plan of Liquidation that The Plan will be terminated 21 days after the date of this NOTICE OF TERMINATION.

THEREFORE, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

The Plan will be terminated 21 days after the date of this Notice of Termination and it will be liquidated under the Plan of Liquidation.

Benefits for Participants under The Plan will cease 21 days after the date of this Notice of Termination.

The IF will cease paying for any stop loss coverage 21 days after the date of this Notice of Termination. Stop loss coverage will likely be affected by ceasing stop-loss premium payments.

Pursuant to the documents governing The Plan, the Employer Sponsor is liable for full payment of all expenses, medical claims and other financial obligations of The Plan to the extent there are insufficient assets to satisfy such obligations, and the IF may seek to recover from the Employer Sponsor any asset deficiency.

All recipients of this Notice, including Employer Sponsors, should refer to the Plan of Liquidation for the procedures applicable to liquidation, including adjudicating outstanding medical claims.

EXHIBIT 2

PLAN PARTICIPANTS SHOULD BEGIN SEEKING HEALTH INSURANCE COVERAGE FROM ANOTHER SOURCE IMMEDIATELY!

Plan Participants: Under the Health Insurance Portability and Accountability Act, as amended by the Affordable Care Act, ERISA Plans are required to provide you a Certificate of Insurance. As soon as all information is verified, a Certificate of Insurance will be issued to you for your use in securing other health insurance coverage.

IF YOU HAVE NOT RECEIVED A CERTIFICATE OF INSURANCE BY 30 DAYS FROM THE DATE OF THIS NOTICE, PLEASE CONTACT RECEIVERSHIP MANAGEMENT, INC. AT 615-370-0051.

IF YOU HAVE QUESTIONS REGARDING THIS NOTICE, YOU MAY CALL 615-370-0051 or you may email your questions to: rmoore@receivermgmt.com. Please reference the word "Medova" in the subject line of your email.

ROBERT E. MOORE, JR., President
RECEIVERSHIP MANAGEMENT INC.
510 Hospital Drive, Ste. 490
Madison, TN 37115

EXHIBIT 3

TERMS OF PAYMENT & RELEASE

[DATE]

[Provider Name] Via Fax or email: _____
[Address]
[Address]
[Attn:]

RE: **[PLAN NAME]** ("The Plan")

This Agreement and Release ("Agreement") is entered into by and between _____, as the Employer Sponsor of The Plan ("Employer Sponsor") on one hand, and on the other _____, a provider of medical services ("Provider") which were rendered to one or more participants of The Plan and for which the Provider has not been paid in full, as reflected on the attached adjudicated unpaid provider medical claims run ("Claims Run").

In order to resolve and pay or compromise any amounts owed to the Provider reflected as "Plan Responsibility" on the Claims Run, the Employer Sponsor agrees to pay, either directly or through The Plan's third-party claims administrator, and the Provider agrees to accept, the amount shown below in full and final satisfaction of any Plan Responsibility amounts owed to the Provider by The Plan:

Total Plan Responsibility Amount: $_____
Agreed Payment Amount: $_____

The Provider agrees to accept the Agreed Payment Amount shown as payment in full for the Total Plan Responsibility Amount shown above and on the Claims Run, and further agrees that in exchange for the payment of the Agreed Payment Amount, the Provider does hereby forever release the Employer Sponsor, The Plan and its assets, the participant(s) for whom the medical services were rendered, the Court-appointed interim Independent Fiduciary in the action *Walsh, U.S. Secretary of Labor, v. Whitney, et. al.*, 2:20-cv-02624-TC-ADM (D. Kansas), Medova Healthcare Financial Group or any other defendants in the *Whitney* action, and any other person or entity who is in any way financially responsible to the Provider for payment of the Total Plan Responsibility Amount, of and from any and all claims, amounts, demands, causes, rights, or remedies at law or in equity, relating to or arising out of the Total Plan Responsibility Amount shown above and reflected on the Claims Run.

This Agreement effects a full and final accord and satisfaction as to the full amount of the Total Plan Responsibility Amount shown above and reflected on the Claims Run, but expressly does not include any "Patient Responsibility" amounts reflected on the Claims Run such as co-pays, co-insurance, and deductible amounts owed by the participant or person for whose benefit the medical services were rendered by the Provider.

The Provider expressly acknowledges it cannot further pursue any person or any entity for any amounts that are contained in the Total Plan Responsibility Amount set forth above and on the Claims Run, including the difference between the Total Plan Responsibility Amount and Agreed

EXHIBIT 3

TERMS OF PAYMENT & RELEASE

Payment Amount set forth above.

The Provider represents and warrants that it has the full and complete authority to enter into this Agreement and has not transferred, assigned or otherwise encumbered, in whole or in part, the charges reflected on the attached Claims Run, or the demands, causes or rights herein released, and that this Agreement binds its parent and subsidiary entities, owners, officers, directors, employees, agents, successors-in-interest, assigns, partners, members, divisions, and affiliates.

By signing this Agreement, the undersigned agree to the terms of this Agreement and attest to being the authorized to execute it on behalf of the party shown:

_____ Date: _____

Provider or Authorized Agent Signature

Print _____ Title _____

_____ Date: _____

Employer Sponsor or Authorized Agent Signature

Print _____ Title _____

Please return signed copy via fax to_____or email to_____