

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

<p>IN RE</p> <p>ABC DENTISTRY, P.A., et al.¹</p> <p style="text-align: center;">DEBTORS.</p>	§ § § § § § § §	<p>Chapter 11</p> <p>Case No. 16-34221</p> <p>Jointly Administered</p>
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**DECLARATION OF IRAJ S. JABBARY IN SUPPORT OF CONFIRMATION OF THE
SECOND AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ABC
DENTISTRY, P.A., AND ITS DEBTOR AFFILIATES**

1. My name is Iraj S. Jabbary, D.D.S., and I am the Director of ABC Dentistry, P.A. (“ABC”); the Sole Member of ABC Dentistry West Orem, P.L.L.C. (“ABC West Orem”); and the Sole Member of ABC Dentistry Old Spanish Trail, P.L.L.C. (“ABC OST,” together with ABC and ABC West Orem, the “Debtors”). I own and operate the Debtors and am familiar with their day-to-day operations, business, and financial affairs.

2. I submit this proffer in support of the *Second Amended Joint Chapter 11 Plan of Reorganization of ABC Dentistry, P.A., ABC Dentistry West Orem, P.L.L.C., ABC Dentistry Old Spanish Trail, P.L.L.C., ABC Dentistry Hillcroft, P.L.L.C., ABC Dentistry Pasadena, P.A., and Iraj S. Jabbary, DDS, as Modified on December 11, 2017* [Dkt No. 349] (as amended, modified, or supplemented, the “Plan”),² which was filed on December 11, 2017.

3. I earned a Doctorate of Dental Surgery in 1995 from the University of Texas Dental School in Houston, Texas.

¹ The Debtors in these chapter 11 cases are: ABC Dentistry, P.A.; ABC Dentistry West Orem, P.L.L.C.; and ABC Dentistry Old Spanish Trail, P.L.L.C.
² Capitalized terms used but not defined herein have the meaning given to them in the Plan.

4. I have been a dentist for approximately 20 years. I began my career as a dentist at South Texas Dentists, where I worked from 1997-1999. In January of 1999, I purchased a 50% ownership interest in the first of the ABC Dentistry clinics. I subsequently opened each of the ABC Dentistry Clinics. Since 1999, I have owned and operated dental clinics in the greater Houston area.

Background

5. As I discussed in my *Declaration in Support of First Day Motions* [Docket No. 14], prior to filing for bankruptcy, the Debtors faced the threat of a \$24 million judgment being issued against them by a State trial court (the "Rohi Litigation"). Given the looming threat of this judgement, the Debtors sought bankruptcy protection with the honest belief that reorganization in chapter 11, and the accompanying automatic stay, provided the best means to preserve the going concern value of the Debtors' business for the benefit of all stakeholders. The breathing room afforded by the bankruptcy process has allowed the Debtors time to negotiate with the plaintiffs in the Rohi Litigation and reach a settlement agreeable to all parties. As a result, the Debtors' business will survive, continuing to service its debt obligations, perform under its contracts, and employ approximately 40 individuals.

6. Given (i) the consensual resolution of the Rohi Litigation, (ii) the unimparment or consensual restructuring of priority Creditors' debt, and (iii) the repayment in full of General Unsecured claims, the Debtors believe that the Plan represents a favorable outcome for all Creditors.

7. As a result of negotiations made possible through the Debtors' bankruptcy, the plaintiffs in the Rohi Litigation have agreed to accept an amount that is a fraction of the amounts originally asserted in the Rohi Litigation, to be repaid over a five-year term. The terms of this

settlement will allow the Debtors to continue to operate, avoiding an otherwise dire threat of closure. Because the Plan is necessary to consummate the transactions contemplated by the Rohi Settlement and State Release Agreement, and based on the support for the Plan by Rohi and the State, I believe that the Plan is in the best interests of the Debtors, their Estates, and their Creditors.

The Plan Satisfies Each Requirement for Confirmation

A. The Plan Complies with the Applicable Provisions of the Bankruptcy Code as Required by Section 1129(a)(1) of the Bankruptcy Code

8. I believe, based on knowledge and advice, that the Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1122 and 1123(a)(1) of the Bankruptcy Code.

i. The Plan Properly Classifies Claims and Interests as Required by Sections 1122 and 1123(a)(1) of the Bankruptcy Code

9. Article III of the Plan provides for the separate classification of Claims and Interests as follows:

Class(es)	Claims and Interests	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Deemed to Accept
2	Secured Tax Claims	Unimpaired	Deemed to Accept
3	First Bank Secured Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Convenience Class	Unimpaired	Deemed to Accept
6	Rohi Personal Claims	Impaired	Entitled to Vote
7	Rohi Qui Tam Claims	Impaired	Entitled to Vote
8	State of Texas OIG Claims	Unimpaired	Deemed to Accept
9	Interests	Unimpaired	Deemed to Accept

10. I believe that each Class of Claims or Interests, and each instance of separate classifications of separate Claims or Interests, was based on valid business, factual, and legal reasons. Dissimilar Claims and Interests are not classified together under the Plan. No classification has been made for the purpose of gerrymandering votes. Based on the advice and

guidance provided to me by the Debtors' advisors, I believe that this classification scheme satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

11. The Plan separately classifies Claims (rights to payment) from Interests (representing ownership in the business). Secured Claims are classified separately from unsecured Claims because the Debtors' obligations with respect to the former are secured by collateral. Unsecured Claims are grouped according to the nature of the Claimants' relationships with the Debtors. Classes 4 and 5 include claims held by the Creditors to whom the Debtors had obligations which arose in the Ordinary course of the Debtors' business. The Plan segregates these claims from Class 6, 7 and 8 claims, three separate Classes of Claims related directly or indirectly to the Rohi Litigation and whose treatment was a direct result of the Rohi Settlement. Creditors holding claims in Classes 6 and 7 are deemed to have voted to accept the Plan upon the Court's entry of the Rohi Settlement. Creditors holding claims in Class 8 are unimpaired and deemed to accept the Plan.

ii. The Plan Specifies Unimpaired and Impaired Classes and Provides the Same Treatment to Each Holder in a Particular Class as Required by Sections 1123(a)(2)–(4) of the Bankruptcy Code

12. Article III and various other provisions of the Plan provide for, among other things, the following: (a) designated Classes of Claims and Interests; (b) specified Classes of Unimpaired Claims and Interests, including Classes 1, 2, 5, 8 and 9; (c) specified treatment of Classes of Impaired Claims, including with respect to Classes 3, 4, 6, and 7; and (d) the same treatment for each Allowed Claim or Interest of a particular Class.

iii. The Plan Provides for Adequate Means of Implementation as Required by Section 1123(a)(5) of the Bankruptcy Code

13. I believe that Article V of the Plan and various other provisions of the Plan provide adequate means for the Plan's implementation by, among other things, providing for the

following: (a) the execution and delivery of appropriate agreements or other documents of continuation or reorganization containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (b) the vesting of assets in the Reorganized Debtors, free and clear of Liens, Claims, and encumbrances; and (c) the dissolution of ABC Dentistry, P.A.

iv. The Plan Prohibits the Issuance of Non-Voting Securities in Reorganized ABC as Required by Section 1123(a)(6) of the Bankruptcy Code

14. I am aware that the Debtors' charters allow for only one class of equity security, and that class of equity security has voting privileges. I am also aware that the Plan does not amend the Debtors' charter to permit the issuance of non-voting equity securities, and therefore complies with the Section 1123(a)(6) of the Bankruptcy Code.

v. The Plan Provides for the Selection of Directors and Officers as Required by Sections 1123(a)(7) and 1129(a)(5) of the Bankruptcy Code

15. I believe that the manner of selecting the officers and directors of the Reorganized Debtors under the Plan is entirely consistent with Texas law, the Bankruptcy Code, the interests of Creditors and equity security holders, and public policy. I, as President, Chief Executive Officer, and Sole Member of each of the Debtors am authorized and will continue as President, Chief Executive Officer, and Sole Member of each Reorganized Debtor from and after the Effective Date of the Plan, as set forth in Article 5.6 of the Plan.

16. As disclosed in Article 7.V of the Disclosure Statement, as of the effective date, I will continue to receive a \$50,000 per month salary from West Orem and a \$20,000 per month salary from OST. Such salaries shall be paid in two installments, once on the 15th of the month and second at the end of the month. Notably, at times during these chapter 11 proceedings I have drawn less than these amounts, when necessary. I may, on occasion, continue to draw less than my full monthly salary, as circumstances and the well-being of the Reorganized Debtors require.

Nevertheless, the Plan provides that I may draw the full salaries described above. Further, the Reorganized Debtors have reserved the right to increase these salaries in accordance with their usual and customary practices.

vi. The Plan Complies with the Discretionary Provisions of Section 1123(b) of the Bankruptcy Code

17. It is my understanding that the Plan employs various provisions in accordance with the discretionary authority of section 1123(b) of the Bankruptcy Code. For example, Article 3 of the Plan leaves certain Classes of Claims and Interests Unimpaired, while others are Impaired. Specifically, Classes 1, 2, 5, 8, and 9 are Unimpaired because the Plan will not alter the legal, equitable, and contractual rights of the holders of Claims and Interests in those Classes. On the other hand, Classes 3, 4, 6, and 7 are Impaired because the Plan modifies the rights of the holders of Claims and Interests within such Classes. The Plan also proposes appropriate treatment for contracts and leases and provides a structure for Claim allowance and disallowance. Further, the Plan seeks to implement release, exculpation, and injunction provisions. I believe that these provisions are appropriate because they are integral to the success of the Plan and the transactions contemplated by the Rohi Settlement and State Release Agreement underlying the Plan, as evidenced by the facts and circumstances of these chapter 11 cases, and are the product of extensive good-faith, arms' length negotiations among the Debtors and their key constituents, are given for valuable consideration, are fair and equitable and in the best interests of the Debtors' estates. Additionally, the Plan, including the release, exculpation, and injunction provisions, has been overwhelmingly accepted by all Classes entitled to vote.

18. The parties being released by the Debtors include: (a) Persons (as defined in section 101(a)(41) of the Bankruptcy Code) and Entities subject to Avoidance Actions (except

those related to the claim objection process), (b) the Debtors' Professionals, and (c) Persons and Entities receiving releases under the State Release Agreement.

19. I believe the Debtor Release in sections 12.8 and 12.9 of the Plan are essential to the Debtors' reorganization. The Release was the subject of negotiations with Rohi and the State of Texas and thus is in exchange for significant value contributed by such parties in furtherance of the global compromise embodied in, and the transactions contemplated under the Rohi Settlement and the State Release Agreement. Additionally, as previously stated, all Classes entitled to vote on the Plan overwhelmingly voted to accept the Plan, including the release provisions.

20. Section 12.5 of the Plan includes an exculpation provision (the "Exculpation"), which was included in prior versions of the Plan that was the product of extensive negotiations with Rohi and the State, each of whom played a critical role in formulating the Rohi Settlement, the State Release Agreement, and the Plan, and related documents in furtherance of the restructuring transactions. I believe that the Exculpation is necessary and appropriate to protect parties who made substantial contributions to the Debtors' reorganization from future collateral attacks related to actions taken in good faith in connection with the Debtors' restructuring in reliance upon such protections. Accordingly, I believe the protections afforded by the Exculpation are reasonable and appropriate.

21. The injunction provision set forth in section 12.6 of the Plan (the "Injunction") implements the Releases and the Exculpation by permanently enjoining all entities from commencing or maintaining an action against the Debtors, the Reorganized Debtors, the released parties, the Exculpated Parties, or the Solicitation Parties on account of any Claims or Interests that are released, discharged, or subject to exculpation pursuant to the Plan and Confirmation

Order. As such, I believe that the Injunction is a key provision of the Plan because it enforces the Debtor Release, the releases contained in Article 12.8 and 12.9 of the Plan, and the Exculpation, which are centrally important to the Plan and the global settlement embodied therein. To the extent that the Court finds that the foregoing releases and the Exculpation appropriate, I believe that the Injunction must also be appropriate.

B. The Debtors Have Proposed the Plan in Good Faith

22. I believe that the Plan was proposed in good faith, with the legitimate and honest purposes of reorganizing the Debtors' ongoing business and maximizing the value of each of the Debtors and the recovery to Creditors and other stakeholders. In particular, it is my belief that the Plan satisfies the purposes of the Bankruptcy Code. The Plan is the product of over a year of arms' length negotiations among the Debtors, the State, Rohi, and other interested parties. It is my opinion that the Plan has been proposed in good faith and will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.

C. The Plan Provides that the Debtors' Payment of Professional Fees and Expenses are Subject to Court Approval

23. It is my understanding that Professional Claims are subject to Court approval and the reasonableness requirements under sections 328 and/or 330 of the Bankruptcy Code, as applicable.

D. The Plan Does Not Require Governmental Regulatory Approval Required by Section 1129

24. I do not believe that any governmental regulatory approval of the Plan with respect to any rate changes is applicable, and is therefore not required, including under section 1129(a)(6) of the Bankruptcy Code.

E. The Plan is Feasible

25. I understand that John Baumgartner of Stout Risius Ross, LLC will address the Plan's feasibility in his declaration, so I will not repeat that testimony here. However, I understand that the Debtors will have the necessary liquidity to make payments as required on and shortly after the Effective Date. The chapter 11 reorganization process has allowed the Debtors to reduce their debt service obligations and obtain additional liquidity. As the Baumgartner Declaration describes in further detail, I also believe that the Debtors meet the financial feasibility requirements of the Bankruptcy Code.

F. The Plan is Fair and Equitable and Does Not Unfairly Discriminate with Respect to the Deemed Rejecting Classes

26. I understand that the Plan must not discriminate unfairly and is "fair and equitable" with respect to all Classes. I believe the Plan satisfies the absolute priority rule with respect to all Classes of Claims and Interests. It is my understanding and that there are no junior Classes of Claims or Interests receiving more favorable treatment than an objecting senior Class of Claims or Interests, as there are no such objecting Classes. All creditors are being paid in full under the plan other than Dr. Rohi, who accepted the plan, and the State of Texas who did not vote, but, as I understand, supports confirmation of the Plan. In addition, no creditor under the Plan is getting paid more than in full. Thus, I believe the Plan is fair and equitable and does not discriminate unfairly with respect to any Class.

The Deemed Substantive Consolidation is Appropriate Under the Circumstances

27. The deemed substantive consolidation of the Debtors benefits Creditors by avoiding increased costs and expenses of that would otherwise result. Such deemed substantive consolidation will result in the Debtors' Estates as being treated as a single Estate for certain limited purposes related to the Plan, including voting, confirmation, and Distribution. As all

creditors will be paid in full, the deemed substantive consolidation will allow the debtors to consummate their Plan more effectively and efficiently. As the Debtors do not propose to merge any of the Debtors as a result of the substantive consolidation, the costs of not approving the Debtors' deemed substantive consolidation would far outweigh any benefit that could be achieved by such an exercise. Liens against specific assets of the Debtors' estates will have the same validity, enforceability, and priority as they did prior to substantive consolidation. Lack of fairness to Creditors is not prevalent in the Cases. It is doubtful that Creditors had any expectation that one entity's debts would only be satisfied from its sole property. In sum, I believe that substantive consolidation represents a significant benefit to the estates with little cost.

The Plan Satisfies Section 1123(d) of the Bankruptcy Code

28. The Plan appropriately provides for the assumption and rejection of executory contracts. I believe that the determinations as to which contracts to assume and which to reject are in the best interests of the Debtors and their Estates. As a general matter, the Debtors chose to assume contracts that will continue to be profitable post-Effective Date and that provided for delivery of goods or services that could not be easily replaced. Similarly, the Debtors chose to reject a contract that is no longer profitable or that provides for services that could be replaced on better terms.

29. For assumed contracts, this includes in some cases the renegotiation of terms. Pursuant to the Plan, the Debtors are assuming all executory contracts not expressly listed in Exhibit 4 to the Plan Supplement as amended, modified, or supplemented, or rejected pursuant to an order of the Bankruptcy Court. I understand that there have been no defaults under any assumed contracts, or that any existing defaults have otherwise been cured.

30. No objections were filed in opposition to the Plan. The Debtors resolved any and all informal objections in good faith after extensive arms-length negotiations with Rohi and the State. All of the compromises, which are memorialized in the proposed confirmation order, are fair and reasonable.

Good Causes Exists to Waive the Stay of the Confirmation Order

31. I understand that certain Bankruptcy Rules provide for the stay of an order confirming a plan of reorganization, but that such stay may be waived upon court order after a showing of good cause.

32. I believe that good cause exists for waiving and eliminating any stay of the entry of the Proposed Confirmation Order so that the Proposed Confirmation Order will be effective immediately upon its entry. As noted above, these chapter 11 cases and the related transactions have been negotiated and implemented in good faith. Additionally, each day the Debtors remain in chapter 11 they incur significant administrative and professional costs. For these reasons, the Debtors, their advisors, and other key constituents are working to expedite the Debtors' entry into and consummation of all documents and transactions related to the Rohi Settlement, the State Release Agreement, and the Plan so that the Effective Date of the Plan may occur as soon as possible after the Confirmation Date. Based on the foregoing, I believe that good cause exists to waive any stay imposed by the Bankruptcy Rules so that the Proposed Confirmation Order may be effective immediately upon its entry, and our Creditors have not objected to the allowance of confirmation of the Plan prior to the expiration of any stay period.

Pursuant to 28 U.S.C. § 1746, the undersigned makes the forgoing proffer as of the date of its filing under penalty of perjury.

[Signature Page Follows]



Dr. Iraj S. Jabbar, DDS
President, CEO, and Sole Member,
ABC Dentistry Old Spanish Trail, P.L.L.C.,
ABC Dentistry West Orem, P.L.L.C.