

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
)
Cano Health, Inc., *et al.*,¹) Case No. 24-10164 (KBO)
)
Reorganized Debtors.) (Jointly Administered)
)
) **Related Docket No.: 1183**

**MEDCLOUD’S RESPONSE TO REORGANIZED DEBTORS’ MOTION
TO QUASH MEDCLOUD DEPOT LLC’S DEPOSITION NOTICES**

Creditor, MedCloud Depot, LLC (“MedCloud”), by and through undersigned counsel, hereby files its Response to *Reorganized Debtors’ Motion to Quash Medcloud Depot LLC’s Deposition Notices*, (D.I. 1183) (“Motion to Quash”), and in support thereof respectfully states the following:

1. On or about February 4, 2024, Cano Health, Inc. (“Cano Health”), along with approximately 48 related and affiliated entities, filed for relief before this Court under Chapter 11 of Title 11 of the United States Code, (the “Bankruptcy Code”).

2. On or about February 5, 2024, the Court entered an *Order Pursuant to Fed. R. Bankr. P. 1015(b) for Entry of Order Directing Joint Administration of Related Chapter 11 Cases* (D.I. 34) with Cano Health as the lead case.

3. On June 28, 2024, the Court entered an Order (D.I. 1148) Confirming the Debtors’ *Fourth Amended Joint Chapter 11 Plan of Reorganization* (D.I. 864).

4. On August 13, 2024, the Court entered an *Order Pursuant to 11 U.S.C. § 350(a) (I) Closing Certain Cases and (II) Granting Related Relief* (D.I. 1328).

¹ The last four digits of Cano Health, Inc.’s tax identification number are 4224. A complete list of the Debtors in the chapter 11 cases may be obtained on the website of the Reorganized Debtors’ claims and noticing agent at <https://www.kccllc.net/CanoHealth>. The Reorganized Debtors’ mailing address is 9725 NW 117th Avenue, Miami, Florida 33178.



I. BACKGROUND

5. Since February 2018, MedCloud has licensed software to Cano Health and certain of its affiliates. More specifically, it has licensed the Syncrasy software operating system to Cano Health and certain affiliates by way of a Syncrasy Software License Agreement (the “License Agreement”). The Syncrasy software operating system (the “Syncrasy Software System”), was described in detail in MedCloud’s *Request for Payment of Administrative Expense; in the Alternative, Motion for Relief from Stay; and Motion to Compel Assumption or Rejection of Syncrasy Software License Agreement; and Notice of Debtors’ Breach of Syncrasy Software License Agreement* (D.I. 481) (the “Initial Administrative Expense Motion”),² which was filed with the Court on March 19, 2024.

6. The contractual relationship between MedCloud and Cano Health was ongoing when the Debtors filed their Chapter 11 petitions on February 4, 2024. Between February 2018 and October 2022, the License Agreement³ was amended nine times through various Addendums, which were attached to the Original Motion as Composite Exhibit “B.” The Ninth Addendum added Debtor Physician Partners Group of Puerto Rico, LLC (“PPGPR”) and Healthy Partners Inc. (“Healthy Partners”) with Cano Health as “Clients” under the License Agreement (PPGPR, Healthy Partners and Cano Health hereafter collectively the “Client”). PPGPR is a joint Debtor with Cano Health before this Court. According to the first day Declaration of Cano Health’s CEO (D.I. 14), Cano Health “acquired” Healthy Partners pre-petition.

² Although the pre-petition and post-petition history between MedCloud and the Debtors is relevant to the instant Motion, a lengthy recitation of that history was set forth previously in the Initial Administrative Expense Motion, which is incorporated herein by reference, and will not be restated in full here.

³ The License Agreement was attached to MedCloud’s Original Motion as Exhibit “A.”

7. MedCloud's Initial Administrative Expense Motion contained a detailed description of its Syncrasy Software System, which is a comprehensive proprietary cloud-based financial and clinical business software for physician practice organizations that provides users with relevant data to provide efficient value-based medical care and enable appropriate care and spending. The Syncrasy Software System facilitates medical practice management, patient care management, pharmacy management, provides relevant health cloud data, hospital admission alerts, healthcare availability, strategic services, and permits remote device access to important financial and clinical information. The Syncrasy Software System, or a system with similar capabilities, is essential to the Debtors' financial and medical service operations.

8. The Syncrasy Software System, *inter alia*, is also an essential tool to seamlessly integrate with over 75 insurance companies, each with their own different and separate coding systems, for reimbursement of medical and pharmaceutical expenses. The channeling of this capability into one system required many years of effort by MedCloud approximately 20 of its employees.

9. As of the filing of these cases on February 4, 2024, Cano Health had accrued certain charges to MedCloud.⁴

10. The Debtors continued to use the Syncrasy Software System post-petition, which facilitated the ability of Cano Health and its affiliates to continue operations even though MedCloud was not identified as one of the Debtors' "critical vendors." The Debtors continued the daily use the Syncrasy Software System post-petition without paying MedCloud the contracted monthly fees (or, for that matter, any fees) for the use of the system. However, without offering

⁴ The MedCloud pre-petition claim (exclusive of its rejection damages claim) against Cano Health and Healthy Partners is for \$877,221.47. The MedCloud pre-petition claim against PPGPR is an additional \$36,198.74.

any payment to MedCloud as an administrative expense, MedCloud did receive a letter from Debtors' counsel advising of the applicability of the automatic stay and that any effort to terminate the contract would be considered a willful violation of the stay. Thereafter, MedCloud filed the Initial Administrative Expense Motion.

11. In its Initial Administrative Expense Motion, MedCloud described the Debtors' pre-petition efforts to reverse engineer its Syncrasy Software System in violation of the License Agreement, and how these issues were resolved between MedCloud and the Client without litigation with the execution of Addendum 9 to the License Agreement.

12. In the Initial Administrative Expense Motion, MedCloud also described what appeared to be Cano Health's recidivist post-petition efforts to reverse engineer the proprietary Syncrasy Software System during these Chapter 11 proceedings. Information regarding these post-petition efforts by Cano Health to reverse engineer the proprietary Syncrasy Software System was based on reliable information obtained by Angel Sanabria, the Chief Executive Officer of MedCloud (the "CEO") and was described in the Declaration of the CEO that was filed in support of the Initial Administrative Expense Motion (D.I. 482).

13. In conjunction with the Initial Administrative Expense Motion and to discover further information regarding the Debtors' apparent post-petition reverse engineering efforts, MedCloud served the Debtors at that time, *inter alia*, with a deposition notice pursuant to Federal Rule of Civil Procedure 30(b)(6) (D.I. 493) (the "Rule 30(b)(6) Notice"). Upon Debtors' counsel's informal objection to the Rule 30(b) Notice as being too broad, although undersigned counsel deemed it unnecessary, in order to resolve the issue and avoid unnecessary motion practice before this Court, MedCloud also filed a motion for a Rule 2004 examination pursuant to Federal Rule of Bankruptcy Procedure 2004 (D.I. 506) (the "Rule 2004 Motion").

14. In response to the MedCloud's Rule 30(b)(6) Notice and the request for Rule 2004 examination, the Debtors filed a combined opposition to the Rule 2004 Motion and Motion to Quash the Rule 30(b)(6) Notice (D.I. 531) (the "Original Motion to Quash"). The Debtors also filed a motion to expedite a hearing on the Motion to Quash, which was agreed to by MedCloud, (D.I. 532) (the "Motion to Expedite"), and the Motion to Expedite was granted by the Court on April 1, 2024 (D.I. 536), setting the Motion to Quash for hearing on April 2, 2024 (the same date as the scheduled hearing on MedCloud's Initial Administrative Expense Motion).

II. THE SETTLEMENT

15. Prior to the scheduled hearing, the Debtors reached out to undersigned counsel and sought an agreement to resolve the pending disputes. All pending matters were settled in principle, and the hearing was adjourned pending documentation of the settlement. On April 11, 2024, the Debtors and MedCloud entered into a *Stipulation Resolving MedCloud Depot LLC's [Initial] Administrative Expense Motion and Related Discovery Disputes* (the "Settlement Stipulation"), which was approved by the Court on April 12, 2024 (D.I. 641).

16. A copy of the Settlement Stipulation (D.I. 641-1) is attached hereto as Exhibit "A." The Settlement Stipulation, *inter alia*, provided for payment by the Debtors to MedCloud for the continued use of the Syncrasy Software System, ***and that the Debtors would not, post-petition, seek to reverse engineer the Syncrasy Software System.*** It provided that Cano Health and Healthy Partners would collectively pay MedCloud, as a post-petition administrative expense, an aggregate fee of \$175,000.00 per month on an agreed timetable for each of March, April and May 2024, for the use of the Syncrasy Software System.⁵ As well, the Debtors also agreed to file a motion for authority to assume or reject the License Agreement with MedCloud by May 15, 2024, and unless

⁵ The fees to MedCloud for March, April and May 2024 were paid as agreed.

otherwise agreed by the parties in connection with the Debtors' assumption or rejection of the License Agreement, payments for the continued use of the Syncrasy Software System by Cano Health and Healthy Partners on or after June 1, 2024 would be calculated under the terms of the License Agreement and not at the agreed rate of \$175,000.00 per month.

17. Most critically, for the purposes of this Response to Debtors' Motion to Quash, the post-petition Settlement Stipulation that was approved by this Court (D.I. 641) specifically ***prohibits Cano Health, Healthy Partners, and all of their subsidiaries and affiliates, from taking any actions to reverse engineer the Syncrasy Software System, either with or without the assistance of a third party.*** Such actions were prohibited by the License Agreement but were *set forth again as a separate item* in the Settlement Stipulation. Specifically, the Settlement Stipulation states, at paragraph 9, that:

The Licensees as well as all subsidiaries and affiliates under the control directly, or indirectly of the Licensees, whether in Chapter 11 or not in Chapter 11, shall not take any actions, including but not limited to the use of, or assistance of, or in conjunction with, DataLink LLC, or any other company or entity, designed and/or intended to facilitate infringement of MedCloud's intellectual property rights in connection with the Syncrasy Software System, in order to duplicate or recreate a similar system. No DataLink LLC personnel or employee, or personnel or employee of any other company or entity, shall be permitted access to the Syncrasy Software System, nor shall any DataLink LLC personnel or personnel or employee of any other company or entity be granted credentials to access the Syncrasy Software System as a Debtor employee or as an employee of any Debtor related entity. *For the avoidance of doubt*, nothing herein shall limit or otherwise affect in any way the restrictions set for in paragraph 1 and all subparts thereof, of the Syncrasy Software License Agreement.

Settlement Stipulation, Exhibit A, ¶ 9 (emphasis original).

18. On May 14, 2024, the Debtors filed a motion seeking authority to reject the Syncrasy Software License Agreement with MedCloud (D.I. 816), to which MedCloud filed a limited objection on May 28, 2024 (D.I. 884). In communications between counsel for the Debtors

and MedCloud to resolve MedCloud's limited objection, Debtors advised MedCloud that they are now employing DataLink LLC (hereafter "DataLink") to provide similar services. Debtors' motion to reject thereafter was granted on June 4, 2024 (D.I. 969).

III. MEDCLOUD'S VERIFIED RENEWED MOTION FOR PAYMENT OF ADMINISTRATIVE EXPENSE AND NOTICE OF DEBTORS' BREACH OF SETTLEMENT STIPULATION

19. Based upon MedCloud's CEO's good faith belief that Cano Health was administratively violating the Court-approved *post-petition* settlement agreement by attempting to duplicate or reverse engineer the Syncrasy Software System (possibly with the assistance of third party DataLink), on June 20, 2024, MedCloud filed a "Verified Renewed Motion for Payment of Administrative Expense and Notice of Debtors' Breach of Settlement Stipulation" (D.I. 1062) (the "Renewed Administrative Expense Motion"). The CEO had a good faith belief, based on information obtained from reliable sources, that Cano Health was violating its post-petition Court-approved Settlement Stipulation by engaging *administratively* in efforts to reverse engineer the proprietary Syncrasy Software System. If true, these efforts would constitute a clear and brazen *post-petition* violation of the Court-approved Settlement Stipulation. Also, if true, as a post-petition breach of the Settlement Agreement, the Debtors and Reorganized Debtors would be fully liable for the contractually dictated damages, as their conduct would ***not*** be considered a pre-petition breach (discussed hereafter).

IV. DEPOSITION DISCOVERY

20. On June 21, 2024, in connection with MedCloud's Renewed Administrative Expense Motion, MedCloud noticed and subpoenaed the depositions of five Debtor employees, whose testimony may be relevant to the continued, post-petition reverse engineering issue. All five

employees are located in Miami, Florida. They were noticed for depositions for 1½ hours each at undersigned lead counsel's office in Miami, Florida on July 12, 2024:

Deponent	Time
Javier Machin	9:30 AM
Abraham Quintero	11:00 AM
Brian Leon	1:00 AM
Elizabeth Riego	2:30 PM
Suny Lopez	4:00 PM

These are relatively straightforward depositions limited to the issue of Debtors' post-petition administrative reverse engineering. The depositions would have been expeditiously concluded over a month ago but for the Debtors having filed their Motion to Quash, which has generated significant fees, not to mention the unnecessary use of the Court's resources associated with their present Motion.

V. CONTESTED MATTER

21. MedCloud's Renewed Administrative Expense Motion, the Debtors' objection thereto, the Rule 30(b)(6) Deposition Notices, and the Debtors' Motion to Quash, are contested matters under Fed. R. Bank. P. 9014. A contested matter is not defined in the Bankruptcy Code or in the Federal Rules of Bankruptcy Procedure but is any dispute between two or more parties that is not an adversary proceeding (Fed. R. Bankr. P. 7001). Contested matters are governed by Bankruptcy Rule 9014:

(a) Motion. In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court directs otherwise.

Fed. R. Bankr. P. 9014. Adversary proceedings and contested matters both permit discovery, allow testimony from witnesses of factual disputes, and require findings of fact and conclusions of law

by the court. (Fed. R. Bankr. P. 9014(c) and (d).) However, unlike an adversary proceeding, a contested matter does not require a summons and complaint, permit counterclaims and third-party practice, or involve lengthy pretrial procedure. (Commencing a Contested Matter in Bankruptcy, West Practical Law Practice Note w-015-8841).

22. A motion for payment of administrative expense can become a contested matter. *See, In re DLS Industries, Inc.*, 71 B.R. 679 (Bankr. D. Minn. 1987) (appropriate to treat application for payment of administrative expense as a contested matter and not as an adversary matter); *In re Energy Conversion Devices, Inc.*, 486 B.R. 872 (Bankr. E.D. Mich. 2013) (Section 503 administrative expense claims treated as a contested matter and not an adversary matter).

23. The Bankruptcy Code and the Federal Rules of Bankruptcy Procedure provide that a request for payment of an administrative expense must be allowed after notice and a hearing, suggesting that such requests can be contested and require a formal hearing process. *See, In re Taco Bueno Restaurants, Inc.*, 606 B.R. 289 (Bankr. N.D. Tex. 2019); *In re Atcall, Inc.*, 284 B.R. 791 (Bankr. E.D. Va. 2002). If an objection is raised regarding the request for payment, it necessitates a hearing during which the claimant must prove the validity of their claim. Moreover, specific case law directly addresses this issue, providing that a debtor's objection to a creditor's administrative expense claim gives rise to a contested matter governed by Bankruptcy Rule 9014. *See, Matter of TransAmerican Natural Gas Corp.*, 978 F.2d 1409 (5th Cir. 1992); *In re Rancher's Legacy Meat Co.*, 630 B.R. 308 (Bankr. D. Minn. 2021); *In re Chester Cnty. Plastics, Inc.*, 174 B.R. 41 (Bankr. E.D. Pa. 1994); *In re AMR Corp.*, 2013 WL 1155434, at *1 (S.D.N.Y. Mar. 21, 2013); *In re Vanguard Nat. Res., LLC*, 2017 WL 5573967, at *1 (Bankr. S.D. Tex. Nov. 20, 2017); *In re DLS Industries, Inc.*, 71 B.R. 679 (Bankr. W.D. Mich. 1987), (*In re Laughlin*, 210 B.R. 659 (1st Cir. 1997); *Matter of Bay Broadcasting, Inc.*, 182 B.R. 369 (D.C. Puerto Rico, 1995).

VI. RIGHT TO DISCOVERY IN CONTESTED MATTERS

24. Fed. R. Bankr. P. 9014 addresses this issue directly:

(c) Application of Part VII rules. Except as otherwise provided in this rule, and unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7064, 7069, and 7071. The following subdivisions of Fed. R. Civ. P. 26, as incorporated by Rule 7026, shall not apply in a contested matter unless the court directs otherwise: 26(a)(1) (mandatory disclosure), 26(a)(2) (disclosures regarding expert testimony) and 26(a)(3) (additional pre-trial disclosure), and 26(f) (mandatory meeting before scheduling conference/discovery plan). An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. The court shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order.

(d) Testimony of witnesses. Testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding.

Fed. R. Bankr. P. 9014.

25. Fed. R. Bankr. P. 9014 specifically incorporates Fed. R. Civ. P. 7030, which permits depositions. *See, In re Ascentra Holdings, Inc.*, 657 B.R. 339 (Bankr. S.D.N.Y. 2023) (right to deposition discovery in Chapter 15 contested matter); *In re Analytical Systems, Inc.*, 71 B.R. 408, 412 (Bankr. N.D. Ga. 1987) (“The underlying purpose of incorporating Federal Rules of Civil Procedure into contested matters [pursuant to Bankruptcy Rule 9014] is to provide due process protections to all parties of a dispute even though it does not rise to the status of a formal adversary proceeding.”); *Matter of Sutera*, 141 B.R. 539 (Bankr. D. Conn. 1992); *In re Camferdam*, 597 B.R. 170, 173–74 (Bankr. N.D. Fla. 2018) (“The ‘pending proceeding’ rule states ‘that once an adversary proceeding or contested matter has been commenced, discovery is made pursuant to Federal Rules of Bankruptcy Procedure 7026, et seq.’”)

VII. POST-PETITION BREACH IS AN ADMINISTRATIVE DEBT

26. In conjunction with its Renewed Administrative Expense Motion, MedCloud renewed its efforts to take discovery pertaining to the Debtors' potential post-petition violation of the Court-approved Settlement Stipulation by engaging in post-settlement efforts to reverse engineer the Syncrasy Software System. If such wrongful conduct is confirmed, the Debtors' violation of the Settlement Stipulation is actionable before this Court as an administrative expense and would justify an administrative claim by MedCloud for damages resulting from the Debtors' wrongful post-petition conduct while operating as debtors in possession.

27. As an apparent defense to MedCloud's Renewed Administrative Expense Motion, Debtors argue in their Motion to Quash that their breach of the post-petition Settlement Stipulation does not give rise to an administrative claim because there was no "benefit to the estate." This argument has already been addressed in the Renewed Administrative Expense Motion, at page 7, paragraph 18, which is incorporated herein by reference. In any event, this argument is misplaced in connection with Debtors' Motion to Quash. Debtors are arguing against the Renewed Administrative Expense Motion as a basis for quashing discovery, which is putting the proverbial cart before the horse and is not a basis to quash discovery. Clearly a debtor's or Trustee's post-petition negligence, post-petition torts, post-petition business decisions, post-petition bad faith litigation, and post-petition patent infringement give rise to administrative claims.

28. Finally, Debtors argue in their Motion to Quash that the parties' Settlement Stipulation, and this Court's approval thereof, should be disregarded and that the breach of the post-petition agreement ought to result in a pre-petition claim. They argue that because the alleged breaches would have violated the Debtors' pre-petition agreement, the post-petition administrative claims for Debtors' post-petition breaches should be deemed a pre-petition default. The Debtors

are wrong. The post-petition breach of the pre-petition License Agreement was *settled* in the Settlement Stipulation. The Renewed Administrative Expense Motion is not based upon a pre-petition breach or a breach of a pre-petition agreement. The Renewed Administrative Expense Motion is based entirely on Debtors' apparent breach of the post-petition agreement as embodied in the Settlement Stipulation, - *a post-petition agreement and a corresponding post-petition obligation that was approved by this Court.*

29. The cases cited by Debtors in the Motion to Quash are wholly inapposite. The *In re Bradlees Stores, Inc.*, 2003 WL 76990, at *3 (S.D.N.Y. Jan. 9, 2003), *aff'd*, 78 F. App'x 166 (2d Cir. (2003) case concerns the debtor's cancellation of a pre-petition contract for undelivered goods. It does not concern post-petition software infringement or other misconduct, nor does it concern a post-petition Court-approved stipulation prohibiting certain conduct by the debtor. It involved the cancellation and breach of a pre-petition contract, which clearly would be a pre-petition claim.

30. The *In re Trans World Airlines, Inc.*, 275 B.R. 712, 723 (Bankr. D. Del. 2002) case cited by Debtors supports MedCloud's position on this issue:

Further, the Debtor asserts that simply because a claim arises post-petition does not give it administrative status. Rather, *to be accorded administrative status a claimant must establish that the claim arises from a post-petition contract or transaction with the debtor ...*

We agree with the Debtor. There was no post-petition transaction or relationship between the Debtor and MBNA which would elevate MBNA's claims from mere breaches of a pre-petition contract to breaches of a post-petition contract entitled to administrative status.

In re Trans World Airlines, Inc., 275 B.R. 712, 724 (Bankr. D. Del. 2002) (emphasis added). Thus, *Trans World Airlines* is easily distinguishable because that court found there was "no post-petition transaction or relationship between the Debtor and [the claimant]" that would elevate the claims

to “breaches of a post-petition contract entitled to administrative status.” Conversely, MedCloud and the Debtors *did* enter into a post-petition contract in this case - a post-petition Settlement Stipulation with specific provisions regarding the Debtors’ post-petition conduct. And unlike the situation in *Tran World*, this Court specifically approved that post-petition contract.

31. *In re Italian Oven*, 209 B.R. 355, 361-62 (Bankr. W.D. Pa. 1997), also cited by Debtors, also fails to provide support for Debtors’ position. There, an unsecured creditor asserted an administrative claim for proceeds of a post-petition sale of its unperfected alleged collateral. The *Italian Oven* court declined to elevate an unsecured unperfected creditor to secured status with an administrative claim based upon the creditor’s unperfected pre-petition agreement purportedly entitling it to sale proceeds. *Italian Oven* is not remotely applicable to a post-petition, Court-approved agreement prohibiting certain post-petition behavior by the Debtors.

32. The Debtors’ final citation, *In re Lason, Inc.*, 309 B.R. 441, 444 (D. Del. 2004), concerned, in relevant part, an employment matter where the court found that there was a right to an employee’s administrative claim for the portion of a pre-petition retention bonus that was earned by the employee post-petition. Clearly, this case concerned an employment contract and is easily distinguishable factually from the instant case, but nothing in its holding is inconsistent with MedCloud having a claim against the Debtors for their potential post-petition breach of a post-petition Court-approved contract.

33. It is beyond peradventure that a court may enforce settlement agreements approved by that court. Here, the Settlement Stipulation included a specific provision prohibiting the Debtors from “[taking] any actions, including but not limited to the use of, or assistance of, or in conjunction with, DataLink, or any other company or entity, designed and/or intended to facilitate infringement of MedCloud’s intellectual property rights in connection with the Syncrasy Software

System, in order to duplicate or re-create a similar system.” It also included a specific provision prohibiting the Debtors from granting DataLink access to the Syncrasy Software System *during this case*.

34. This Court’s *Order Approving Stipulation Resolving MedCloud Depot LLC’s [Initial] Administrative Expense Motion and Related Discovery Disputes* (D.I. 641) provided the following:

IT IS HEREBY ORDERED THAT:

1. The Stipulation, a copy of which is attached hereto as **Exhibit A**, is approved in its entirety.
2. This Order shall be effective and enforceable immediately upon its entry.
3. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

(D.I. 641).

35. The Settlement Stipulation is clear and the Order approving, implementing, interpreting and enforcing the Settlement Stipulation is clear as well.

CONCLUSION

WHEREFORE, the Debtors’ Motion to Quash should be denied and MedCloud should be permitted to take the depositions of the five identified employees in Debtors’ IT Department in order to determine the Debtors’ compliance, or failure to comply, with the Settlement Stipulation as approved by the Court, and MedCloud should be granted any other and further relief appropriate herein.

Date: August 21, 2024
Wilmington, Delaware

SULLIVAN · HAZELTINE · ALLINSON LLC

/s/ E.E. Allinson III

Elihu E. Allinson, III (No. 3476)
919 North Market Street, Suite 420
Wilmington, DE 19801
Tel: (302) 428-8191
Fax: (302) 428-8195
Email: zallinson@sha-llc.com

and

Aaronson Schantz Beiley P.A

s/ Geoffrey S. Aaronson

Geoffrey S. Aaronson, Esq.
Fla. Bar No. 349623
One Biscayne Tower, Suite 3450
2 S. Biscayne Boulevard
Miami, Florida 33131
Phone: (786) 594-3000
Fax: (305) 424-9336
Email: gaaronson@aspalaw.com

Attorney for MedCloud Depot, LLC

EXHIBIT “A”

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----	X	
	:	
In re	:	Chapter 11
	:	
CANO HEALTH, INC., et al.,	:	Case No. 24-10164 (KBO)
	:	
Debtors.¹	:	(Jointly Administered)
	:	
-----	X	

**STIPULATION RESOLVING MEDCLOUD DEPOT LLC’S ADMINISTRATIVE
EXPENSE MOTION AND RELATED DISCOVERY DISPUTES**

This stipulation and agreement (the “**Stipulation**”) is entered into by and among Cano Health, LLC (“**Cano Health**”), Physicians Partners Group of Puerto Rico, LLC (“**PPGPR**”), and Healthy Partners, Inc. (“**Healthy Partners**”) (collectively, the “**Licensees**”) and MedCloud Depot LLC (“**MedCloud**”). The Licensees and MedCloud are referred to collectively in this Stipulation as the “**Parties**,” and, each, as a “**Party**.” The Parties hereby stipulate and agree as follows:

RECITALS

A. WHEREAS, beginning on February 4, 2024 (the “**Petition Date**”), Cano Health and certain of its subsidiaries, as debtors and debtors in possession, in the above-captioned chapter 11 cases (collectively the “**Debtors**”), each commenced with the United States Bankruptcy Court for the District of Delaware (the “**Court**”) a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a)

¹ The last four digits of Cano Health, Inc.’s tax identification number are 4224. A complete list of the Debtors in the chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.kccllc.net/CanoHealth>. The Debtors’ mailing address is 9725 NW 117th Avenue, Miami, Florida 33178.

and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the chapter 11 cases. The Debtors' chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedures (the "**Bankruptcy Rules**") and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

B. WHEREAS, prior to the Petition Date, MedCloud entered into a licensing agreement (as amended, the "**Syncrasy Software License Agreement**") with the Licensees for the use of MedCloud's Syncrasy software operating system (the "**Syncrasy Software System**").

C. WHEREAS, on March 19, 2024, MedCloud filed its *(I) Request for Payment of Administrative Expense, in the Alternative, (II) Motion for Relief from Stay, and (III) Motion to Compel Assumption or Rejection of Syncrasy Software License Agreement, and (IV) Notice of Debtors' Breach of Syncrasy Software License Agreement* [Docket No. 481] (the "**Administrative Expense Motion**").

D. WHEREAS, on March 21, 2024, MedCloud served on the Debtors a notice, pursuant to Federal Rule of Civil Procedure 30(b)(6), to designate one or more representatives to appear at a deposition in connection with the Administrative Expense Motion [Docket No. 493] (the "**Rule 30(b)(6) Notice**").

E. WHEREAS, on March 22, 2024, MedCloud also filed a motion for 2004 Examination from the Debtors pursuant to Bankruptcy Rule 2004 [Docket No. 506] (the "**Rule 2004 Motion**"), as well as a Motion to Shorten Notice with respect to the Rule 2004 Motion [Docket No. 507] (the "**MedCloud Motion to Shorten**").

F. WHEREAS, on March 28, 2024, the Debtors filed a combined opposition to the Rule 2004 Motion and motion to quash the Rule 30(b)(6) Notice [Docket No. 531] (the "**Motion**

to Quash”), as well a Motion to Expedite the Motion to Quash [Docket No. 532] (the “**Debtors’ Motion to Expedite**”).

G. WHEREAS, on April 1, 2024, the Court entered an order granting the Debtors’ Motion to Expedite [Docket No. 536].

H. WHEREAS, the Parties have consensually resolved the Administrative Expense Motion and the other discovery-related motions on the terms and conditions set forth herein.

NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT HEREBY IS STIPULATED AND AGREED, BY AND AMONG THE PARTIES THAT:

1. This Stipulation shall have no force or effect unless and until the date on which it is approved by an order of the Court (the “**Stipulation Effective Date**”).

2. Upon approval of this Stipulation by the Court, and without the need for any further action, the Administrative Expense Motion, the Rule 30(b)(6) Notice, the Rule 2004 Motion and the Motion to Quash shall each be considered withdrawn.

3. Cano Health (through the Canopanorama.com website) and Healthy Partners (through the healthypartnersanalytics.com website) may continue to use the Syncrasy Software System for themselves, as set forth in the Syncrasy Software License Agreement. Cano Health and Healthy Partners will collectively pay MedCloud, as a post-petition administrative expense, an aggregate fee of one-hundred seventy-five thousand dollars (\$175,000) per month for each of March, April and May 2024 for use of the Syncrasy Software System (each a “**Post-Petition Payment**,” and collectively the “**Post-Petition Payments**”).

4. The Parties agree the prior payment of one-hundred twenty-thousand dollars (\$120,000) made by Debtors to MedCloud for the Licensees’ use of the Syncrasy Software System for the period of February 4, 2024 through and including February 29, 2024 shall be considered satisfactory, with no further amounts due and owing to MedCloud for such period.

5. MedCloud will disable both sites for PPGPR, with no further amounts from Debtors due and owing to MedCloud for PPGPR.

6. The Debtors shall file a motion seeking authority to assume or reject the Syncrasy Software License Agreement by May 15, 2024. MedCloud will consider the election to assume or reject the Syncrasy Software License Agreement as to Cano Health and Healthy Partners notwithstanding the termination of the Syncrasy Software License Agreement as it pertains to PPGPR, as agreed herein and as set forth above in Paragraph 5.

7. The Post-Petition Payments from the Debtors to MedCloud shall be due and made as follows:

- a. The March 2024 Post-Petition Payment shall be due within three (3) business days of the Stipulation Effective Date.
- b. The April 2024 Post-Petition Payment shall be due on April 15, 2024, or within three (3) business days of the Stipulation Effective Date, whichever comes later.
- c. The May 2024 Post-Petition Payment shall be due on May 3, 2024.
- d. For each of the Post-Petition Payments described in this Paragraph 7, the Debtors shall have a one (1) business day grace period to make the Post-Petition Payment.
- e. All Post-Petition Payments will be made by the Debtors by wire to a MedCloud account, with all relevant wiring information designated in writing by MedCloud to David.armstrong@canohealth.com and Eladio.Gil@canohealth.com no later than two (2) business days after the Stipulation Effective Date. *For the avoidance of doubt*, no payments shall be due by the Debtors prior to MedCloud providing relevant wiring information at least one (1) business day prior to any such payment. Any change in wiring information shall be provided to the same email designees at least three (3) business days in advance of such payment date.
- f. If a payment is not timely made, MedCloud will promptly email the Debtors at David.armstrong@canohealth.com and Eladio.Gil@canohealth.com, and the Debtors' counsel at matthew.goren@weil.com and jared.friedmann@weil.com, with a notice of payment default. If the Debtors fail to remit payment within one (1) business day of receipt of such notice, MedCloud shall be entitled to relief from the automatic stay solely to the extent necessary to permit MedCloud to turn off the Syncrasy Software System without further order of the Court.

8. As of the Stipulation Effective Date, MedCloud waives all alleged post-petition payment deficiencies through May 31, 2024 only. Unless otherwise agreed in connection with the Debtors' assumption or rejection of the Syncrasy Software License Agreement, payments for the Licensees' use of the Syncrasy Software System on or after June 1, 2024 shall be calculated under the terms of the Syncrasy Software License Agreement (less any payments due in connection with PPGPR).

9. The Licensees as well as all subsidiaries and affiliates under the control directly, or indirectly of the Licensees, whether in Chapter 11 or not in Chapter 11, shall not take any actions, including but not limited to the use of, or assistance of, or in conjunction with, DataLink LLC, or any other company or entity, designed and/or intended to facilitate infringement of MedCloud's intellectual property rights in connection with the Syncrasy Software System, in order to duplicate or re-create a similar system. No DataLink LLC personnel or employee, or personnel or employee of any other company or entity, shall be permitted access to the Syncrasy Software System, nor shall any DataLink LLC personnel or personnel or employee of any other company or entity be granted credentials to access the Syncrasy Software System as a Debtor employee or as an employee of any Debtor related entity. *For the avoidance of doubt*, nothing herein shall limit or otherwise affect in any way the restrictions set for in paragraph 1 and all subparts thereof, of the Syncrasy Software License Agreement.

10. Except as expressly set forth herein, this Stipulation does not modify or affect MedCloud's rights with respect to any pre-petition claims, nor does it modify or affect the Debtors' rights with respect to any objections or defenses to same or any other rights or claims the Debtors may have against MedCloud.

11. The Parties, by and through their undersigned counsel, each represent and warrant that the undersigned is fully authorized and empowered to execute and deliver this Stipulation on behalf of, and to bind, each Party, as applicable, to the terms and conditions of this Stipulation.

12. This Stipulation may be executed in any number of counterparts, and each such counterpart is to be deemed an original for all purposes, but all counterparts shall collectively constitute one agreement. Further, electronic signatures or transmissions of any originally signed document by facsimile or electronic mail shall be as fully binding on the Parties as an original document.

[Remainder of page intentionally left blank.]

Dated: April 11, 2024
Wilmington, Delaware



/s/ Michael J. Merchant

SULLIVAN · HAZELTINE · ALLINSON LLC
Elihu E. Allinson, III (No. 3476)
919 North Market Street, Suite 420
Wilmington, DE 19801
Tel: (302) 428-8191
Fax: (302) 428-8195
Email: zallinson@sha-llc.com

RICHARDS, LAYTON & FINGER, P.A.
Mark D. Collins (No. 2981)
Michael J. Merchant (No. 3854)
Amanda R. Steele (No. 5530)
920 North King Street
Wilmington, Delaware 19801
Telephone: 302-651-7700
Email: collins@rlf.com
merchant@rlf.com
steele@rlf.com

-and-

-and-

Aaronson Schantz Beiley P.A.
Geoffrey S. Aaronson, Esq.
One Biscayne Tower, Suite 3450
2 S. Biscayne Boulevard
Miami, Florida 33131
Email: gaaronson@aspalaw.com
Phone: (786) 594-3000
Fax: (305) 424-9336

WEIL, GOTSHAL & MANGES LLP
Gary T. Holtzer (admitted *pro hac vice*)
Jared R. Friedmann (admitted *pro hac vice*)
Jessica Liou (admitted *pro hac vice*)
Matthew P. Goren (admitted *pro hac vice*)
Kevin Bostel (admitted *pro hac vice*)
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Emails: gary.holtzer@weil.com
jared.friedmann@weil.com
jessica.liou@weil.com
matthew.goren@weil.com
kevin.bostel@weil.com

Attorneys for MedCloud Depot, LLC

*Attorneys for the Debtors
and the Debtors in Possession*

CERTIFICATE OF SERVICE

I, Elihu E. Allinson, III, hereby certify that on August 21, 2024, a copy of the foregoing *MedCloud's Response to the Reorganized Debtors' Motion to Quash MedCloud Depot LLC's Deposition Notices* was electronically filed and served via CM/ECF on all parties requesting electronic notification in this case in accordance with Del. Bankr. L.R. 9036-1(b) and on the following parties via Electronic Mail.

Counsel to the Debtors:

RICHARDS, LAYTON & FINGER, P.A.

Mark D. Collins, Esq.
Michael J. Merchant, Esq.
Amanda R. Steele, Esq.
James F. McCauley, Esq.
One Rodney Square
920 North King Street
Wilmington, DE 19801
collins@rlf.com
merchant@rlf.com
steele@rlf.com
mccauley@rlf.com

WEIL, GOTSHAL & MANGES LLP

Gary T. Holtzer, Esq.
Jessica Liou, Esq.
Matthew P. Goren, Esq.
767 Fifth Avenue
New York, NY 10153
gary.holtzer@weil.com
jessica.liou@weil.com
matthew.goren@weil.com

U.S. Trustee:

Benjamin A. Hackman
Office of the United States Trustee
844 King Street
Suite 2207
Wilmington, DE 19801
benjamin.a.hackman@usdoj.gov

Jonathan Lipshie
U.S. Trustee Office
844 N. King Street
P.O. Box 3700
Wilmington, DE 19801
jon.lipshie@usdoj.gov

August 21, 2024
Date

/s/ E.E. Allinson III
Elihu E. Allinson, III