IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA,
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

vs. Case No.: 14-001695-CI

TRI-MED CORPORATION,
TRI-MED ASSOCIATES INC.,
JEREMY ANDERSON,
ANTHONY N. NICHOLAS, III,
ERIC AGER, IRWIN AGER,
TERESA SIMMONS BORDINAT
a/k/a TERESA SIMMONS,
and ANTHONY N. NICHOLAS, JR.,

Defendants,

TMFL HOLDINGS, LLC,

Relief Defendant.
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DECLARATION OF BURTON W. WIAND, RECEIVER,
IN SUPPORT OF MOTION TO APPROVE SETTLEMENTS
WITH STEPHEN D. MARLOWE, BRIAN STAYTON,
AND THEIR LAW FIRMS AND FOR ENTRY OF BAR ORDERS

Burton W. Wiand declares as follows:

1. I am an attorney with Wiand Guerra King P.A. in Tampa, Florida, and serve as the Court-appointed Receiver for Tri-Med Corporation ("**Tri-Med**"), Tri-Med Associates Inc. ("**TMA**"), TMFL Holdings, LLC, Interventional Pain Center, PLLC, Rejuva Medical and Wellness Center, L.L.C., and Rejuva Medical Center, L.L.C. (collectively, the "**Receivership Entities**").

2. I make this declaration in support of my Motion To Approve Settlements With Stephen D. Marlowe, Brian Stayton, And Their Law Firms And For Entry Of Bar Orders (the

"**Motion**"), based on information personally known to me or investigated by others at my direction.

3. I and professionals acting at my direction investigated Tri-Med's operations and the Ponzi scheme underlying this case (the "**scheme**"), which ultimately revealed that Insiders[1] retained professionals like lawyers and accountants – including (1) Stephen D. Marlowe and Marlowe McNabb Machnik, P.A. (f/k/a Marlowe McNabb, P.A.) (collectively, "**Marlowe**"), and (2) Brian Stayton and Stayton Law Group, P.A. (collectively, "**Stayton**") – to give their scheme the appearance of legitimacy and make potential investors feel more comfortable. For example, investors were told that Marlowe was responsible for, among other things, holding all investors' money in trust pending its use to purchase letters of protection ("**LOPs**").

4. At the inception of the scheme, Marlowe wrote a letter to Tri-Med stating that "[a]ll funds received by or through Tri Med from investors will be deposited into a Marlowe McNabb Trust Account established for this purpose" and that Marlowe McNabb would "pay medical providers for the LOPs." Insiders provided that letter to investors, and investors relied on Marlowe's representations in making their investment decisions.

5. In similar letters, Insiders told investors that "your funds have been placed in an FDIC Insured Trust Account under the control and direction of one of Florida's most respected law firms, Marlowe McNabb P.A...." During the entirety of the scheme, however, only approximately $2.8 million of the more than $17.6 million raised from investors was deposited in trust with Marlowe. Insiders diverted the vast majority of the money invested in Tri-Med for their personal and others' benefit.

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[1] Defendants Jeremy Anderson; Anthony N. Nicholas, III; Eric Ager; Irwin Ager; Teresa Simmons Bordinat a/k/a Teresa Simmons; and Anthony N. Nicholas, Jr. are the primary "**Insiders**."

6. Similarly, Stayton was responsible, among other things, for executing the "Assignments of Interest" that Tri-Med provided to investors purportedly assigning them interests in LOPs allegedly purchased by Tri-Med. As Stayton explained in his April 30, 2012, engagement letter, "Tri-Med issues ... certificates to its investors when ... letters of protection are assigned," and "I sign each certificate." By signing each certificate, however, Stayton made numerous misrepresentations to investors. For example, those certificates stated that each letter of protection "**ACTS AS AN INDISPUTABLE LIEN UPON THE INDIVIDUAL CASE IT REPRESENTS**" (original emphasis). In addition, those certificates did not constitute valid assignments because, among other reasons, the investors never took ownership of the underlying LOP.

7. To underscore the purported safety of the securities issued through Tri-Med, the Assignments of Interest executed by Stayton also stated that the LOPs were "secured," "guaranteed," or "backed" by major insurance companies. In reality, the LOPs were not secured, guaranteed, or backed by anything. The LOPs were merely agreements between medical providers, patients, and their attorneys that gave the medical providers some right to receive payment for all or part of their services from any money patients might receive in connection with settlements or judgments.

8. In some cases, including with respect to members of the Investors Committee I have established, Stayton signed Assignments of Interest associated with LOPs that did not even exist. Insiders fabricated dozens of LOPs, and instead of purchasing medical receivables, they used investors' money to enrich themselves, purchase real estate, and fund unrelated business ventures. Even when Tri-Med actually purchased LOPs, many of them prohibited the relevant

medical provider from transferring or assigning them to Tri-Med or Tri-Med's investors. Investors were not informed of this fact.

9. In deciding to accept the Settlement Amounts[2] from Stayton and Marlowe in resolution of all claims against them, I (and the Investors Committee) considered a number of significant factors. First, I considered the risks associated with litigating the claims. Among those risks is the fact that, in addition to acting as attorneys, Marlowe and Stayton also served as escrow agents for Tri-Med. Because of the narrow roles escrow agents typically play in business transactions, they are often insulated from liability by both the terms of their escrow agreements and pertinent Florida law. Also among those risks, is that Stayton and Marlowe likely would mount vigorous defenses. Consequently, litigation would likely require expenditure of substantial Receivership resources and would not be without significant risks. If litigation is unsuccessful, defrauded investors would recover nothing instead of the $600,000 to be paid to the Receivership estate under the Settlement Agreements. These Settlement Amounts represent an equitable and good faith balance between the risks of litigation and the need to recover funds for the ultimate benefit of defrauded investors.

10. Second, the Settlement Amounts represent more than the maximum amounts presently available under Marlowe's and Stayton's respective professional liability policies. Marlowe's policy limit per claim is $500,000, but it is a "wasting policy" so the fees his insurance company has been paying his attorney have reduced the available coverage amount. As such, the $500,000 Settlement Amount exceeds the maximum currently available under Marlowe's insurance policy and includes a payment of personal funds.

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[2] Capitalized terms not defined herein have the meaning ascribed to them in the Motion.

11. Stayton's insurance policy is similar, but it only has a $100,000 limit per claim. Stayton's Settlement Amount exceeds the maximum currently available under his insurance policy and includes a payment of personal funds. Because the Settlement Amounts represent more than the maximum amounts currently available under Marlowe's and Stayton's respective professional liability policies, they are significant settlements. Indeed, because both have "wasting" policies, they add additional risk to litigating rather than settling at this time because the longer the case proceeds, the more their attorneys have to be paid, which in turn reduces the amount of insurance coverage available for any eventual settlement or judgment.

12. Third, Stayton provided a financial affidavit, which demonstrated that, aside from his professional liability insurance and the personal payment described above, he does not have significant assets against which a significant judgment could be enforced. Indeed, his law firm is small, as is Marlowe's, and in deciding to resolve these matters, I have taken my ability (or potential inability) to collect on any judgment into account.

13. In deciding to recommend the resolution reflected in the Settlement Agreements, I also found the following considerations significant:

> (a) based on the information I reviewed, these settlements constitute a recovery by the Receivership Entities of an amount well in excess of all fees received by Stayton and Marlowe, collectively, as a result of their dealings with Tri-Med; and
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> (b) litigation of claims against Stayton and Marlowe could easily cost in excess of the Settlement Amounts and would in no way guarantee the significant benefit to the Receivership estate that will occur as a result of the settlement reached with them.

14. As a result of Stayton's and Marlowe's cooperative and good-faith approach to resolving matters, Stayton, Marlowe, and I, with the consent of the Investors Committee, were able to reach agreements before the filing of any action. This provided a considerable cost savings to the Receivership.

15. As such, it is my opinion that granting the Motion and approving the settlements is in the best interests of the Receivership estate and its creditors, including defrauded investors.

Dated this 10th day of August, 2016.

BURTON W. WIAND, RECEIVER