



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

In re:

COHERA MEDICAL, INC.,  
a Delaware corporation,

Assignor,

To:

DSI ASSIGNMENTS, LLC,  
A Delaware Limited Liability Company,

Assignee.

C.A. No. 2018-0718-MTZ

**ASSIGNEE'S MOTION FOR ORDER  
(I) DISCHARGING ASSIGNEE, (II) RELEASING THE BOND,  
AND (III) CLOSING THE CASE**

DSI Assignments, LLC ("Assignee"), solely in its capacity as the Assignee for the Benefit of Creditors of Cohera Medical, Inc. ("Cohera" or "Assignor") pursuant to the general assignment for the benefit of Assignor's creditors ("Assignment") hereby moves (this "Motion") for entry of an order (i) discharging Assignee from any further obligations and duties, while reserving the Assignee's ability to file final federal, state and city tax returns, related to the Assignment (as defined below), (ii) granting Assignee permission to release the Bond (as defined below), and (iii) closing the above-captioned case. In support of this Motion, the Assignee respectfully states as follows:

## **JURISDICTION**

1. This Court has jurisdiction to consider this Motion pursuant to 10 Del. C. §§ 7381-7387.

## **BACKGROUND**

2. Assignor is a Delaware corporation. On October 2, 2018 (the “Assignment Date”) Assignor assigned all of its right, title, and interest in all remaining assets to Assignee for the benefit of Assignor’s creditors. On October 4, 2018, Assignee filed a Verified Petition for Assignment for the Benefit of Creditors with the Court (the “Petition”).

3. Assignor’s assets are encumbered by a senior secured first lien asserted by with KKR Chrome Investors L.P. (the “Lender”), pursuant to a Senior Secured Promissory Note (the “Note”), Security Agreement (the “Security Agreement”) and Intellectual Property Security Agreement (the “IP Security Agreement”, together with the Note and Security Agreement, the “Existing Financing Agreements”) each executed August 4, 2017. The approximate amount of the first lien debt outstanding under the Existing Financing Agreements is \$7.5 million.

4. On October 10, 2018, Assignee distributed a notice of commencement of the assignment for the benefit of creditors to creditors and investors (the

“Notice”). The Notice was also posted on Assignee’s website. Over one-hundred 100) parties received the Notice. A claims bar date was set for January 4, 2019.

5. On November 2, 2018, Assignee filed its Affidavit of Inventory pursuant to 10 *Del. C.* § 7381 (the “Inventory Affidavit”). As described in the Inventory Affidavit, the assets which comprise the Assignment estate are primarily the Assignor’s intellectual property, consisting of patents, trademarks and other such property, such as its URL, domain name and social media sites. Assignee believes the book value of the inventory exceeds the orderly liquidation value of the same.

6. On November 21, 2018, Assignee filed a Motion for an Order (I) Waiving Appraisal and Bond Requirements and (II) Appointing a Disinterested Third Party Auctioneer (the “Appraisal and Bond Motion”). On January 10, 2019, the Court entered an order that permitted the Assignee to appoint a disinterested third party auctioneer, but required the Assignee to post a bond and obtain an appraisal (the “Appraisal and Bond Order”). The Appraisal and Bond Order allowed the Assignee to employ Ocean Tomo Transactions (“OTT” or the “Auctioneer”) as the agent to conduct the IP Sale.

7. The IP Assets were the subject of an auction sale conducted by the Auctioneer separate from the auction of Cohera’s equipment. Following entry of the Appraisal and Bond Order, Assignee worked with the Auctioneer to determine

the estimated value of the IP Assets and such value was estimated at \$100,000. The IP Assets were sold at auction on March 4, 2019 for \$500,000 plus a ten percent (10%) buyer's premium (the "Purchase Price"). The buyer's premium is an amount paid to OTT, it is separate from and does not affect the proceeds of the sale due to the estate.

8. On February 13, 2019, Assignee filed a notice of bond (the "Notice of Bond") which informed the Court and parties in interest that Assignee obtained a bond in the amount of \$2 million, per the Court's Order Approving Bond Nunc Pro Tunc to February 13, 2019 entered on February 25, 2019. Because the estimated value of the FF&E was approximately \$100,000.00, the Bond allocated \$100,000 to the FF&E and the balance of \$1.9 million was allocated to the IP Assets.

9. On March 6, 2019, Assignee filed a motion for an order approving a reduction in bond (the "Bond Reduction Motion") and on March 11, 2019, the Court entered an order (the "Bond Reduction Order") that granted the Bond Reduction Motion.

10. The Assignee has prepared and will be filing all final tax returns. The only remaining item for the completion of this case is the final accounting as required by 10 Del. C. § 7385. A copy of the final accounting is attached hereto as **Exhibit A**. As a result, Assignee has completed the full and final administration of

the assignment estates. Assignee therefore files this Motion in connection with the completion of this case.

11. Filing the final federal, state and city tax returns constitutes the only outstanding task. In support of the relief requested herein, the Assignee submits the Affidavit of Geoffrey L. Berman of DSI Assignments, LLC in Support of Assignee's Motion for Order (I) Discharging Assignee, (II) Releasing the Bond, and (III) Closing the Case, which is attached hereto as **Exhibit B**.

### **RELIEF REQUESTED**

12. By this Motion, the Assignee seeks entry of an order (i) discharging Assignee from any further obligations and duties related to the Assignment, but reserving the Assignee's ability to file final federal, state and city tax returns, (ii) granting Assignee permission to release the Bond, and (iii) closing the above-captioned case.

### **BASIS FOR RELIEF REQUESTED**

13. All outstanding matters concerning the assignment estate has been resolved with the exception of filing final federal, state and city tax returns. The Assignee has liquidated all remaining assets and investigated any possible causes of action that may serve as a source of recovery. Assignee has no further duties or obligations and is in position to bring this case to a conclusion, if authorized to retain the ability to file the final federal, state and city tax returns.

## **DISCHARGE OF ASSIGNEE**

14. As described above and in previous filings with the Court, Assignee has faithfully carried out its duties by doing, among other things, the following:

a. Filing the Affidavit of Inventory setting forth the assets assigned to Assignee through to the Trust Agreement pursuant to 10 Del. C. § 7381;

b. Seeking the appointment of two disinterested and competent persons to appraise the estates pursuant to 10 Del. C. § 7382;

c. Posting and amending the Bond as required by 10 Del. C. § 7383;

d. Effecting an orderly liquidation of the property and assets of the Assignors to maximize recovery for the benefit of the Assignors' creditors;

e. Filing final tax returns, other than the federal, state and city tax returns; and

f. Filing a Final Accounting as required by 10 Del. C. § 7385.

15. The Final Accounting has been rendered and any remaining assets have no value or will be disposed, assigned or abandoned. The Lender, KKR Chrome Investors L.P., as the senior secured lender will not have its senior secured indebtedness satisfied as there are insufficient funds to make a complete distribution to the Lender. Moreover, there remain unpaid administrative expenses,

including, but not limited to, professional fees, for the assignment estates. Accordingly, there are no funds available to satisfy the priority and general unsecured creditor claims that fall behind the Lender's senior secured lien and the administrative expenses. Thus, it is necessary to bring this case to a conclusion.

16. In light of the good faith completion of administration of this assignment estate, Assignee therefore respectfully submits that it should be discharged from all future obligations or duties relating to the Assignment, but authorized to file final federal, state and city taxes.

#### **RELEASE OF BOND**

17. 10 Del. C. § 7383 requires Assignee to give a bond when the inventory and appraisal required by 10 Del. C. § 7382 have been filed. As noted above, the Assignee filed the Bond Motion and obtained entry of the Bond Order and Amended Bond Order.

18. Assignee hereby seeks authority to release the Bond as all assets have been distributed and the assignment estates have been fully administered. Assignee has "faithfully execut[ed] the trust" in accordance with the intent underlying the requirement of posting the bond under 10 Del. C. § 7383. As such, Assignee respectfully submits that it is appropriate for the Bond to be released in its entirety.

## **CLOSING OF CASE**

19. As discussed above, Assignee has faithfully carried out its duties in that Assignee has provided the Court with the Final Accounting that summarizes the funds recovered by the Assignee from the sale of IP, inventory, and equipment. Such Final Accounting evidences that there are insufficient funds to satisfy the senior secured liens of the Lender and in turn, the claims of Cohera's priority and unsecured creditors. Consequently, Assignee has fully administered this assignment estate and there are no further tasks, other than filing the final federal, state and city taxes, to be performed in connection with the Assignment. Accordingly, Assignee hereby requests that the above-captioned case be closed.

20. The assignment estate has prepaid for the storage of documents and records through September 11, 2025 (the "Records Storage Period") after which such documents and records will be destroyed. The retention of documents and records through the Records Storage Period and destruction after the expiration of such period will preserve the confidentiality and privacy of the assignment estates' business and other records by preventing the dissemination of any potentially confidential or private information contained therein. The storage and eventual destruction of the documents and records is in the best interests of the assignment estate and the Assignee should be authorized to retain and store the documents and



records through the Records Storage Period after which time the documents and records may be destroyed.

21. The assignment estate will have insufficient funds to maintain or store any remaining assets. Any such remaining assets will have little to no value and should be abandoned or assigned to KKR in accordance with its lien rights. The Assignee submits that the proposed destruction, abandonment, or other disposition of the remaining assets is a good faith exercise of its sound business judgment in light of these facts and circumstances and is also in the best interest of the assignment estates. Accordingly, the Assignee should be authorized to destroy, abandon, or otherwise dispose of the remaining assets.

### **NOTICE**

22. Assignee will serve a copy of Notice of this Motion via first class mail, postage prepaid on creditors who filed claims. If no objections are received within fourteen (14) days of the service of this Motion, Assignee will request that the Court enter the proposed form of order filed contemporaneously herewith. If any responses are received, Assignee will either submit a new proposed form of order addressing any objections or inform the Court of any unresolved disputes.

WHEREFORE, DSI Assignments, LLC, solely in its capacity as the Assignee for the benefit of the creditors of the Assignor, respectfully requests the entry of an order, substantially in the form filed herewith (i) discharging Assignee

from any further obligations and duties related to the Assignment, while reserving the Assignee's ability to file final federal state and city tax returns, (ii) granting Assignee permission to release the Bond, and (iii) closing the above-captioned case.

Dated: February 14, 2020

Respectfully Submitted,

/s/ Brenna A. Dolphin

**POLSINELLI PC**

Christopher A. Ward (Bar No. 3877)

Brenna A. Dolphin (Bar No. 5604)

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*Attorneys for DSI Assignments, LLC,  
Solely in its Capacity as the Assignee  
for the Benefit of Creditors of Cohera  
Medical, Inc.*

Word Count: 1,966



**EXHIBIT A**

| <b>ASSIGNMENT FOR THE BENEFIT OF CREDITORS Cohera Medical, Inc.</b> |  |                     |
|---|--|---------------------|
| <b>Final Accounting of Receipts and Disbursements 2/5/2020</b>      |  |                     |
|   | <b>Receipts:</b>   |                     |
|   | Advances from Secured Lender/collateral  | \$452,011.43        |
|   | Collection of Accounts Receivable  | \$826.90            |
|   | Interest Income  | \$759.79            |
|   | Miscellaneous Refunds  | \$15,549.85         |
|   | Sale of Equipment  | \$41,460.72         |
|   | Sale of Intellectual Property  | 401,351.95          |
|   | <b>Total Receipts into Receivership</b>  | <b>911,960.64</b>   |
|   |  |                     |
|   | <b>Disbursements:</b>  |                     |
| Notes<br>1  | Proceeds to Secured Lender Intellectual Property   | \$400,000.00        |
|   | Ocean Tomo - Investment Banker for IP  |                     |
|   | Taxes  | \$10,806.76         |
|   | Bond   | \$9,100.00          |
|   | Storage  | \$7,615.27          |
|   | Computer Hosting   | \$38.97             |
|   | Independent Contractors  | \$45,267.54         |
|   | Assignee   | \$90,000.00         |
|   | Assignee Expenses  | \$3,411.64          |
|   | Legal Expense  |                     |
|   | Polsinelli PC- Assignee Counsel  | \$216,873.72        |
|   | Pepper Hamilton LLP- Assignor Counsel  | \$25,000.00         |
|   | Chipman Brown Cicero & Cole - Conflict Counsel   | \$12,077.19         |
|   | Fish & Richardson, PC - IP Counsel   | \$40,035.32         |
|   | Accounting Fees - Cohen & Company  | \$35,945.00         |
|   | Bank Service Charges   | \$448.80            |
|   | Miscellaneous  | \$12,838.74         |
|   | <b>Total Expenses</b>  | <b>\$909,458.95</b> |
|   |  |                     |
|   | <b>Fees available for outstanding Expenses</b>   | <b>\$2,501.69</b>   |
| Notes   | Intellectual Property was sold by Ocean Tomo, as investment banker. Gross purchase prices was \$500,000, Ocean Tomo Commission was \$100,000, net to estate for payment to secured lender is \$400,000 |                     |



**EXHIBIT B**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

In re:

COHERA MEDICAL, INC.,  
a Delaware corporation,

Assignor,

To:

DSI ASSIGNMENTS, LLC,  
A Delaware Limited Liability Company,

Assignee.

C.A. No. 2018-0718-MTZ

**AFFIDAVIT OF GEOFFREY L. BERMAN OF DSI ASSIGNMENTS, LLC  
IN SUPPORT OF ASSIGNEE’S MOTION FOR ORDER (I)  
DISCHARGING ASSIGNEE, (II) RELEASING THE BOND,  
AND (III) CLOSING THE CASE**

I, Geoffrey L. Berman, being duly sworn, depose and say:

1. I am a Senior Managing Director employed by Development Specialists, Inc., the sole and Managing Member of DSI Assignments, LLC (“DSI” or the “Assignee”), solely in its capacity as the Assignee of Cohera Medical, Inc. (“Cohera” or “Assignor”).

2. I have read the attached Motion for Order (I) Discharging Assignee, (II) Releasing the Bond, and (III) Closing the Case (the “Motion”), and the facts set forth therein are true and correct to the best of my knowledge, information and belief.

3. I certify that I will cause a Notice of the Assignee's Motion for Order (I) Discharging Assignee, (II) Releasing the Bond, and (III) Closing the Case to be served on those creditors who filed claims.

Dated: February 14, 2020

/s/ Geoffrey L. Berman  
Geoffrey L. Berman  
Senior Managing Director  
DSI Assignments, LLC



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

In re:

COHERA MEDICAL, INC.,  
a Delaware corporation,

Assignor,

To:

DSI ASSIGNMENTS, LLC,  
A Delaware Limited Liability  
Company,

Assignee.

C.A. No. 2018-0718-MTZ

**ORDER (I) DISCHARGING ASSIGNEE, (II) RELEASING THE BOND,  
AND (III) CLOSING THE CASE**

Upon consideration of the motion (the “Motion”) of DSI Assignments, LLC (“Assignee”), solely in its capacity as the Assignee of Cohera Medical, Inc. (“Cohera” or “Assignor”) under the general assignment for the benefit of Assignor’s creditors (the “Assignment”), for an order (i) discharging Assignee, but reserving the Assignee’s ability to file final federal, state and city tax returns, (ii) releasing the bond, and (iii) closing the case; and good and sufficient cause appearing therefor, it is hereby ORDERED THAT:

1. The Motion is GRANTED as set forth herein.



2. Assignee is hereby discharged from any further obligations and duties relating to the Assignment with the exception of filing final federal, state and city tax returns.

3. Assignee is authorized to release the Bond.

4. That, the Assignee is and shall be authorized, subject to applicable law and the procedures of this Court, to terminate the Assignment and take any and all actions necessary to close these cases, including, but not limited to, the filing of state and city payroll taxes, the payment of outstanding administrative expenses of these cases from available funds, if any, and the retention, storage, assignment, abandonment, destruction and disposition of any and all remaining assets, if any, documents and records.

5. That a copy of this Order shall be served on all creditors of the assignment estates.

6. The Court shall retain exclusive jurisdiction to hear any matters or disputes arising from or relating to this Order.

7. The above-captioned case is hereby closed.

DATED: \_\_\_\_\_, 2020

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Vice Chancellor Morgan T. Zurn



**CERTIFICATE OF SERVICE**

I, Brenna A. Dolphin, do hereby certify I am not less than 18 years of age and that on the 14th day of February 2020, I caused to be served by File & ServXpress a copy of the foregoing *Assignee's Motion for Order (I) Discharging Assignee, (II) Releasing the Bond, and (III) Closing Case* on the following counsel of record:

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Mark D. Olivere  
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Wilmington, DE 19801  
(302) 295-0191

Dated: February 14, 2020

/s/ Brenna A. Dolphin  
Brenna A. Dolphin (Bar No. 5604)