

3/19/2021

Division of Corporations

H21000112442 3

Florida Department of State

ATTN: DIANE CUSHING

Division of Corporations

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**MERGER OR SHARE EXCHANGE  
DLFMH LLC**

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MAR 26 2021

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March 24, 2021

FLORIDA DEPARTMENT OF STATE  
Division of Corporations

DLFMH LLC  
6075 BATHEY LANE  
NAPLES, FL 34116

SUBJECT: DLFMH LLC  
REF: L21000116180

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

Non-profit entity cannot merge into a profit entity.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

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Lillie S Kervin  
Regulatory Specialist II

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Letter Number: 021A00005976

H21000112442 3  
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SECRETARY OF STATE  
TALLAHASSEE, FL

**ARTICLES OF MERGER  
OF  
THE DAVID LAWRENCE FOUNDATION FOR MENTAL HEALTH, INC. - 737816  
WITH AND INTO  
DLFMH LLC - 221000116190**

Pursuant to Title XXXVI, Chapter 605, Section 1025 of the Florida Revised Limited Liability Company Act (the "*Act*"), the undersigned entities, hereby certify and adopt the following Articles of Merger for the purpose of merging The David Lawrence Foundation for Mental Health, Inc., a Florida not-for-profit corporation, into DLFMH LLC, a Florida limited liability company.

**FIRST:** The name, jurisdiction of formation and type of entity for the non-surviving entity is: The David Lawrence Foundation for Mental Health, Inc., a Florida not-for-profit corporation (the "*Foundation*").

**SECOND:** The name, jurisdiction of formation and type of entity of the surviving company is: DLFMH LLC, a Florida limited liability company (the "*Company*") (sometimes hereinafter referred to as the "*Surviving Company*").

**THIRD:** Pursuant to the Agreement and Plan of Merger, the name of the Surviving Company is changed at the effective time of the merger to The David Lawrence Foundation for Mental Health LLC. The Foundation has consented to the Surviving Company's use of such name, which facilitates the implementation of transfers of property described in Section 605.1002(2) of the Act.

**FOURTH:** The Merger Agreement (the "*Plan of Merger*") attached as Exhibit A hereto was duly approved by the Foundation and the Company.

**FIFTH:** As to each of Foundation and the Company, the Plan of Merger was approved, adopted, certified, executed and acknowledged in the following manner:

**A. THE DAVID LAWRENCE FOUNDATION FOR MENTAL HEALTH, INC.:**

The Plan of Merger was approved, adopted, certified, executed and acknowledged by the Board of Trustees of the Foundation by at a duly called meeting on March 18, 2021.

The members of the Board of Trustees of the Foundation serve as the only members of the Foundation. At a duly called meeting on March 18, 2021, they also approved, adopted, certified, executed and acknowledged the Merger in their capacity as members of the Foundation.

**B. DLFMH LLC:**

The Plan of Merger was approved, adopted, certified, executed and acknowledged by the Board of Directors of the David Lawrence Mental Health Center, Inc., the sole member of

the Company, pursuant to its authority as the sole member of the Company. The approval was obtained at a duly called meeting on March 19, 2021.

**SEVENTH:** The merger and name change of the Surviving Company are to become effective upon the filing of these Articles of Merger.

**IN WITNESS WHEREOF**, the undersigned have caused these Articles of Merger to be duly executed by an authorized officer on the 19 day of March, 2021.

THE DAVID LAWRENCE FOUNDATION FOR  
MENTAL HEALTH, INC.

By: [Signature]

Name: William R. O'Neill

Title: Chairman

DLFMH LLC

By: DAVID LAWRENCE MENTAL HEALTH  
CENTER, INC., its sole member

By: [Signature]

Name: Scott Burgess

Title: Authorized Representative

State of: FLORIDA  
County of: COLLIER  
The forgoing instrument was acknowledged  
before me 19 day of MARCH, 2021  
[Signature]  
Notary Public  
My Commission Expires: 4/12/24

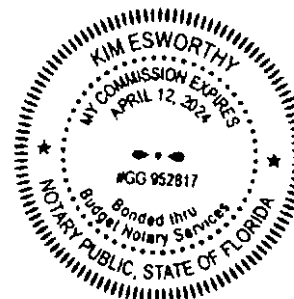


EXHIBIT A

Agreement and Plan of Merger

(See attached.)

## **AGREEMENT AND PLAN OF MERGER**

THIS MERGER AGREEMENT (the "***Agreement***") is made as of the 19th day of March, 2021 between The David Lawrence Foundation for Mental Health, Inc., a Florida not-for-profit corporation (the "***Foundation***"), and the DLFMH LLC, a Florida limited liability company (the "***Company***"). The Foundation and the Company are collectively referred to as the "parties", and each individually is referred to as a "party".

### WITNESSETH:

WHEREAS, the Foundation is a not-for-profit corporation organized under the laws of the Florida that is dedicated to scientific, charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "***Code***") for the purpose of promoting and supporting the activities of the David Lawrence Mental Health Center, Inc. (the "***Center***"). The Foundation is recognized by the Internal Revenue Service as an organization exempt from tax under Section 501(c)(3) of the Code.

WHEREAS, the Foundation and the Center recently were involved in litigation which established that the assets of the Foundation were held in constructive trust for the Center, in accordance with the Foundation's organizational documents; and the Center and Foundation desire to clarify their relationship.

WHEREAS, the Company is a limited liability company organized under the laws of the Florida that is dedicated to scientific, charitable and educational purposes within the meaning of Section 501(c)(3) of the Code for the purpose of promoting and supporting the activities of the Center. The Company is classified as an entity disregarded as separate from the Center for U.S. federal income tax purposes. The Center, which is the sole member of the Company, is recognized as an organization exempt from tax under Section 501(c)(3) of the Code.

WHEREAS, upon the terms and conditions set forth herein, the Foundation and the Company desire to merge the Foundation with and into the Company (the "***Merger***") for the purpose of continuing the respective missions and projects of the Foundation and of the Company, with the Company as the surviving entity of the Merger (sometimes hereinafter referred to as the "***Surviving Company***"); and

WHEREAS, the parties hereto have approved the Merger.

NOW, THEREFORE, the parties to this Agreement, in consideration of the premises and the representations, covenants, agreements and provisions set forth herein, hereby agree as follows:

Section 1. **Merger.** At the Effective Time (as defined below), and subject to and in accordance with the terms of this Agreement and with the Florida Revised Limited Liability Company Act (the "***Act***"), the Foundation shall be merged with and into the Company. The separate corporate existence of the Foundation shall cease, and the Company shall be and continue in existence as the Surviving Entity.

Section 2. Closing and Effective Time. Upon the terms and subject to the conditions of this Agreement, the closing of the transactions contemplated hereby (the "**Closing**") shall take place at the offices of the Center, located at 6075 Bathey Lane, Naples, FL 34116, on the first business day following the satisfaction or waiver of the conditions set forth in Section 8 (other than those conditions that by their terms cannot be satisfied until the Closing, but subject to the fulfillment or waiver of such conditions at the Closing). The time and date of the Closing is herein called the "**Closing Date**". The Closing shall be held by the exchange of documents (in person or electronically), unless another method or place is agreed to in writing by the Foundation and the Company. The Merger shall become effective upon the filing of the Articles of Merger, attached hereto as Exhibit A, with the Florida Secretary of State, Division of Corporations (the "**Effective Time**").

Section 3. Effect of Merger. As of the Effective Time, subject to and in accordance with all applicable provisions of the Act, all assets, rights, powers, privileges and franchises of the Foundation, including any funds treated as bequests, devises, gifts, grants or promises to the Foundation, shall vest in the Surviving Company, and the Surviving Company shall be responsible for all debts, liabilities, duties and obligations of the Foundation.

Section 3.1 Pursuant to this Agreement, the name of the Surviving Company is changed as of the Effective Time to "The David Lawrence Foundation for Mental Health LLC". The Foundation has consented to the Surviving Company's use of the Foundation's name, which facilitates the implementation of transfers of property described in Section 605.1002(2) of the Act.

Section 3.2 Pursuant to Section 605.1002(2) of the Act, any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to the Foundation and that takes effect or remains payable after the Merger shall inure to the Surviving Company. A trust obligation that would govern property if transferred to the Foundation applies to property that is transferred to the surviving entity under this Section 3.2.

Section 3.3 Pursuant to Section 605.1002(1) of the Act, any property held for a charitable purpose under Florida law by the Foundation immediately before the Merger becomes effective may not, as a result of the Merger, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required under or pursuant to Florida law concerning cy pres or other law dealing with nondiversion of charitable assets, the Surviving Company obtains an appropriate order of the appropriate court specifying the disposition of the property. By way of illustration, any donations to the Foundation held in a restricted fund shall continue to be held in a restricted fund at the Surviving Company to be used for the same purposes, absent a court order approving it be used for other purposes as described in this Section 3.3.

Section 4. The Surviving Company.

Section 4.1 Articles of Organization. The Articles of Organization of the Company, as amended and restated pursuant to the Articles of Merger to reflect the name change (and as further amended, restated, modified and supplemented from time to time, the "**Articles of Organization**"), shall be the Articles of Organization of the Surviving Company, until thereafter amended as provided by law and such Articles of Organization.

Section 4.2 Limited Liability Company Agreement. The Limited Liability Company Agreement of the Company shall continue as the Limited Liability Company Agreement of the Surviving Company, and shall be amended and restated to reflect the new name of the Surviving Company, as set forth in Section 3.1. The Foundation has reviewed such Limited Liability Company Agreement.

Section 4.3 Furtherance of the Mission of the Foundation. The Surviving Company shall use best efforts to continue and enhance the performance of the mission of the Foundation to promote and support the Center by providing resources and financial support necessary to promote such mission.

## Section 5. Representations and Warranties.

Section 5.1 Representations and Warranties of the Company. In order to induce the Foundation to enter into this Agreement and to consummate the transactions contemplated hereby, the Company represents and warrants to the Foundation, as of the date hereof and as of the Closing Date (unless otherwise explicitly provided herein), as follows:

(a) Organization and Power of the Company. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the Florida and has all requisite power and authority to own, lease and operate its assets and to carry on the activities which are currently conducted by it. True, correct and complete copies of the Articles of Organization of the Company have been made available to the Foundation by the Company.

(b) Authorization of the Company. The Company has all requisite power to enter into this Agreement and any other agreements and instruments required to be entered into by it hereby, to take and perform all procedures and acts required by it to consummate the transactions contemplated by this Agreement in accordance with the terms hereof, and otherwise to fulfill its obligations under this Agreement and any other agreements contemplated hereby. The execution and delivery by the Company of this Agreement and any other agreements, documents and instruments to be executed and delivered by the Company pursuant hereto, and the consummation by the Company of the transactions contemplated hereby and thereby and performance of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary actions of the Company, and no other proceeding on the part of the Company is necessary under any provision of law to authorize the execution and delivery by the Company of this Agreement and any other agreements, documents and instruments to be executed and delivered by the Company pursuant hereto or to consummate the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by the Company.

(c) Enforceability. This Agreement and the agreements, documents and instruments to be executed and delivered by the Company pursuant to this Agreement constitute or, when executed and delivered pursuant hereto, will constitute (assuming the due authorization, execution and delivery by the other parties hereto and thereto, as applicable) valid and binding agreements of the Company, enforceable against the



Company in accordance with their respective terms, except to the extent that (i) such enforcement may be subject to any bankruptcy, insolvency, reorganization, liquidation, fraudulent transfer, moratorium or other laws, now or hereafter in effect, relating to or limiting creditors' rights and remedies generally or (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses or to the discretion of the court before which any proceeding therefor may be brought.

(d) Consents and Approvals; No Violations. The execution and delivery by the Company of this Agreement, and the agreements, documents and instruments to be executed and delivered by the Company pursuant hereto, and the consummation by the Company of the transactions contemplated hereby, will not (i) violate or conflict with or result in any breach of any provision of the Articles of Organization of the Company; (ii) violate or conflict with, or require any filing or consent pursuant to, any statute, rule, ordinance or regulation applicable to the Company or its assets or properties; (iii) constitute, or with giving of notice or lapse of time or both constitute, a default (or give rise to any right of termination, cancellation or acceleration) under or breach of any of the terms, conditions or provisions of any contract, agreement, or other instrument to which is a party or by which it or any of its properties or assets may be bound, excluding any violation, conflict, failure to receive consent or approval, default or breach which could not reasonably be expected to have a material adverse effect on the business, operations, affairs, conditions, properties and assets, taken as a whole (a "**Material Adverse Effect**") on the Company or a Material Adverse Effect upon the Company's ability to consummate the Merger in accordance with the terms of this Agreement.

(e) Tax-Exempt Status. The Company is treated as an entity disregarded as separate from the Center. The Center has received a determination letter from the Internal Revenue Service ("**IRS**") that it is exempt from U.S. federal income taxation under Section 501(c)(3) of the Code, which determination letter is in full force and effect. The Company does not intend to separately apply for an IRS determination letter regarding its tax-exempt status. The Company acknowledges that the Merger, and the transfer of the Foundation's assets to the Company in connection therewith, is intended to support and contribute to the accomplishment of the Center's exempt purpose.

Section 5.2 Representations and Warranties of the Foundation. In order to induce the Company to enter into this Agreement and to consummate the transactions contemplated hereby, the Foundation represents and warrants to the Company, as of the date hereof and as of the Closing Date, as follows:

(a) Organization and Corporate Power of the Foundation. The Foundation is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the Florida and has all requisite corporate power and authority to own, lease and operate its assets and to carry on the activities which are currently conducted by it. True, correct and complete copies of the Articles of Incorporation and Bylaws of the Foundation have been made available to the Company by the Foundation.

(b) Authorization of the Foundation. The Foundation has all requisite corporate power to enter into this Agreement and any other agreements and instruments required to

be entered into by it hereby, to take and perform all procedures and acts required by it to consummate the transactions contemplated by this Agreement in accordance with the terms hereof, and otherwise to fulfill its obligations under this Agreement and any other agreements contemplated hereby. The execution and delivery by the Foundation of this Agreement and any other agreements, documents and instruments to be executed and delivered by the Foundation pursuant hereto, and the consummation by the Foundation of the transactions contemplated hereby and thereby and performance of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary corporate actions of the Foundation, and no other corporate proceeding on the part of the Foundation or its members is necessary under any provision of law to authorize the execution and delivery by the Foundation of this Agreement and any other agreements, documents and instruments to be executed and delivered by the Foundation pursuant hereto or to consummate the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by the Foundation.

(c) Enforceability. This Agreement and the agreements, documents and instruments to be executed and delivered by the Foundation pursuant to this Agreement constitute or, when executed and delivered pursuant hereto, will constitute (assuming the due authorization, execution and delivery by the other parties hereto and thereto, as applicable) valid and binding agreements of the Foundation, enforceable against the Foundation in accordance with their respective terms, except to the extent that (i) such enforcement may be subject to any bankruptcy, insolvency, reorganization, liquidation, fraudulent transfer, moratorium or other laws, now or hereafter in effect, relating to or limiting creditors' rights and remedies generally or (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses or to the discretion of the court before which any proceeding therefor may be brought.

(d) Consents and Approvals; No Violations. The execution and delivery by the Foundation of this Agreement, and the agreements, documents and instruments to be executed and delivered by the Foundation pursuant hereto, and the consummation by the Foundation of the transactions contemplated hereby, will not (i) violate or conflict with or result in any breach of any provision of the Articles of Incorporation or Bylaws; (ii) violate or conflict with any order, injunction or decree applicable to the Foundation or any of its assets; (iii) violate or conflict with, or require any filing or consent pursuant to, any statute, rule, ordinance or regulation applicable to the Foundation or its assets or properties; (iv) except as set forth on Schedule 5.2(d), require any filing by the Foundation with, or require the Foundation to obtain any permit, consent or approval of, any other party to any license, franchise, lease, contract, or agreement to which the Foundation is a party (other than any such consent or approval that has been obtained); (v) constitute, or with giving of notice or lapse of time or both constitute, a default (or give rise to any right of termination, cancellation or acceleration) under or breach of any of the terms, conditions or provisions of any note, bond, mortgage, license, lease, contract, agreement, or other instrument to which is a party or by which it or any of its properties or assets may be bound, excluding any violation, conflict, failure to receive consent or approval, default or breach which could not reasonably be expected to have a Material Adverse Effect on the Foundation or a Material Adverse Effect upon the Foundation's ability to consummate the Merger in accordance with the terms of this Agreement.

(c) Tax-Exempt Status. The Foundation is exempt from U.S. federal income taxation under Section 501(c)(3) of the Code. The Foundation has received a determination letter from the IRS that it is exempt from U.S. federal income taxation under Section 501(c)(3) of the Code, which determination letter is in full force and effect. No part of the net earnings of the Foundation has inured to the benefit of any individual within the meaning of Section 501(c)(3) of the Code and/or the Treasury Regulations thereunder. The Foundation has conducted its activities so as to continue to be eligible for tax-exempt status under Section 501(c)(3) of the Code. The Foundation has filed all material information or tax returns required to be filed by it, and all such tax returns are complete and correct in all material respects. There is no pending, or, to the best knowledge of the Foundation, threatened challenge to the tax-exempt status of the Foundation. The Foundation acknowledges that the Merger, and the acquisition by the Company of its assets in connection therewith, will support the accomplishment of the Foundation's exempt purpose.

Section 6. Representations and Warranties of the Center. The Center is exempt from U.S. federal income taxation under Section 501(c)(3) of the Code. The Center has received a determination letter from the IRS that it is exempt from U.S. federal income taxation under Section 501(c)(3) of the Code, which determination letter is in full force and effect. No part of the net earnings of the Center has inured to the benefit of any individual within the meaning of Section 501(c)(3) of the Code and/or the Treasury Regulations thereunder. The Center has conducted its activities so as to continue to be eligible for tax-exempt status under Section 501(c)(3) of the Code. The Center has filed all material information or tax returns required to be filed by it, and all such tax returns are complete and correct in all material respects. There is no pending, or, to the best knowledge of the Center, threatened challenge to the tax-exempt status of the Center. The Center acknowledges that the Merger, and the acquisition by the Company of the Foundation's assets in connection therewith, will support and contribute to the accomplishment of the Center's exempt purpose.

#### Section 7. Covenants.

Section 7.1 Reasonable Best Efforts to Complete Merger. Each party shall use its reasonable best efforts to satisfy the other party's conditions to Closing and to effectuate the transactions contemplated hereby. The Company and the Foundation shall cooperate with one another to plan for an orderly integration of their activities and operations on and after the Effective Time.

#### Section 8. Conditions to Closing.

Section 8.1 Conditions to Obligations of the Foundation. The obligation of the Foundation to enter into the transactions contemplated at Closing are subject to the following conditions:

(a) The representations and warranties of the Company are true and correct in all material respects (except for any representation or warranty qualified by "materiality" or "Material Adverse Effect" which must be true and correct) as of the date of this Agreement and as of the Effective Time.

(b) The Company shall have performed in all material respects all obligations required to be performed by it under the terms of this Agreement.

(c) There shall not be in force any governmental order or law, statute, rule or regulation enjoining or prohibiting the consummation of the Merger.

Section 8.2 Conditions to Obligations of the Company. The obligation of the Company to enter into the transactions contemplated at Closing are subject to the following conditions:

(a) The representations and warranties of the Foundation are true and correct in all material respects (except for any representation or warranty qualified by "materiality" or "Material Adverse Effect", which must be true and correct) as of the date of this Agreement and again at and as of the Effective Time.

(b) The Foundation shall have performed in all material respects all obligations required to be performed by it under the terms of this Agreement.

(c) There shall not be in force any governmental order or law, statute, rule or regulation enjoining or prohibiting the consummation of the Merger.

Section 9. Termination or Amendment. This Agreement may be terminated or, subject to the limitations contained in the Florida Revised Limited Liability Company Act, amended only in writing by action of the Company or the Foundation, at any time prior to the filing of the Articles of Merger with the Florida Secretary of State, Division of Corporations.

Section 10. Further Acts. The Company and the Foundation shall take all actions as may be necessary or appropriate to give effect to, and carry out the purposes of, the Merger. After the Effective Time, to the extent required by and in accordance with Applicable Law, the Surviving Company will (a) coordinate with the Center to report the Merger on the Center's IRS Form 990 and applicable state and local tax filings, if any, and (b) cause to be filed, on behalf of the Foundation, a final IRS Form 990 and applicable state and local tax filings, if any, for the short fiscal year ending with the Merger and, to the extent required, any such returns or reports not yet filed for the taxable year 2020, report the Merger thereon.

Section 11. Governing Law & Jurisdiction.

(a) This Agreement shall be governed by and construed in accordance with the laws of the Florida, without giving effect to principles of conflicts of laws. Each of the Company and the Foundation irrevocably submits to the jurisdiction of (i) the Twentieth Judicial Circuit Court in Florida and (ii) the United States District Court for the Middle District of Florida for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby.

(b) Each of the Company and the Foundation irrevocably and unconditionally waives trial by jury and irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in (i) the Twentieth Judicial Circuit Court in Florida and (ii) the United States District Court for the Middle District of Florida, and hereby further

irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. No party may assign its rights or obligations hereunder to any other person without the prior written consent of the other party.

Section 13. Survival. The representations and warranties set forth in this Agreement shall terminate upon the completion of the Closing.

Section 14. Entire Agreement. This Agreement constitutes the entire agreement of the parties as to its subject matter and supersedes all prior agreements or understandings, written or oral.

Section 15. Counterparts. This Agreement may be executed in one or more counterparts and each counterpart shall be deemed to be an original. All such counterparts, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf by their respective, authorized officers as of the date first above written.

**THE DAVID LAWRENCE FOUNDATION  
FOR MENTAL HEALTH, INC.**

By: [Signature]  
Name: William R. O'Neill  
Title: Chairman

State of: FLORIDA  
County of: COLLIER  
The forgoing instrument was acknowledged  
before me 19 day of MARCH 2021  
[Signature]  
Notary Public  
My Commission Expires: 4/12/24



*(Signature Page to Agreement and Plan of Merger)*

**DLFMH LLC**

By: DAVID LAWRENCE MENTAL HEALTH  
CENTER, INC.

By: [Signature]  
Name: Scott Burgess  
Title: Authorized Representative

**DAVID LAWRENCE MENTAL HEALTH  
CENTER, INC.**

By: [Signature]  
Name: Scott Burgess  
Title: Chief Executive Officer

State of: FLORIDA  
County of: COLLIER  
The forgoing instrument was acknowledged  
before me 19 day of MARCH, 2021  
[Signature]  
Notary Public  
My Commission Expires: 4/12/2024



(Signature Page to Agreement and Plan of Merger)