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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS

IN RE:	§	**CASE NO. 22-30659(MVL)**
	§	
NORTHWEST SENIOR HOUSING CORPORATION, et.al.	§	**Chapter 11**
	§	
	§	**(Jointly Administered)**
DEBTORS[1]		

OJBECTION TO FIRST AMENDED DISCLOSURE STATEMENT FOR THE PLAN OF REORGANIZATION OF THE PLAN SPONSORS DATED DECEMBER 6, 2022.

TO THE HONORABLE MICHELLE V. LARSON:

Joel E. Brickell, Executor for the Estates of Theodore Carl Gilles and wife, Bonnie Gilles, ("Brickell") files this Objection to First Amended Disclosure Statement for the Plan of Reorganization of the Plan Sponsors Dated December 6, 2022 ("Objection to Disclosure Statement") and in support would show the following:

I.
Jurisdiction

1. This Court has jurisdiction over this Objection and the Debtor's Disclosure Statement to which it relates pursuant to 28 U.S.C. §§157(b)(2)(A) and (O).

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.

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II.
Procedural History

2. The Debtors filed for Chapter 11 bankruptcy relief on April 14, 2022.

3. On December 6, 2022, Debtors filed their First Amended Disclosure Statement for the Plan of Reorganization of the Plan Sponsors Dated December 6, 2022 [Dkt 870] ("Amended Disclosure Statement.

4. Contemporaneously with the filing of the First Amended Plan of Reorganization the Plan Sponsors Dated December 6, 2022 (the "Amended Plan") [Dkt. 869].

III.
Background Facts

5. Brickel is the executor of the estates of Theodore Carl Gilles and wife Bonnie Gilles, Former Residents of Unit No. 8108 located at 8523 Thackery Street, Dallas, Texas 75225. This particular has been vacant and has not yet been sold.

6. Brickel filed a proof of claim in the amount of $301,410.00.

7. For these reasons, Brickel is a creditor of the Debtor.

IV.
Requirements of a Disclosure Statement

8. As set forth in Section 1125 of the Bankruptcy Code, the term "adequate information" means information of a kind and in sufficient detail that would enable a hypothetical investor, typical of holders of claims or interests of the relevant class, to make an informed judgment about the Plan. Specifically, that section states, in relevant part:

> An acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information.

11 U.S.C. § 1125(b). The Debtor's Disclosure Statement, in many instances, provides no information, while other times, the information the Debtor deign to provide is misleading and incomplete.

9. Section 1125 was designed to "discourage the undesirable practice of soliciting acceptance or rejection at a time when creditors and stockholders were too ill-informed to act capably in their own interests." *In re Heritage Organization, LLC*, 376 B.R. 783, 794 (Bankr. N.D. Tex. 2007). Indeed, courts consistently have recognized that the purpose of Section 1125's disclosure statement requirement is to ensure that interested parties have sufficient information so they may be fully informed when deciding whether to accept or reject a proposed plan. *See In re U. S. Brass Corp.*, 194 B.R. 420, 423 (Bankr. E.D. Tex. 1996); *see also Duff v. United States Trustee (In re California Fidelity, Inc.)*, 198 B.R. 567 (9th Cir. B.A.P. 1996) ("The purpose of a disclosure statement is to give all creditors a source of information which allows them to make an informed choice regarding the approval or rejection of a plan.") (citation omitted).

10. The concept of adequate information is to be evaluated by the Court on a case-by-case basis. A list of factors used by courts as a guide in evaluating the sufficiency of the information contained in a Disclosure Statement can be found in *In re Metrocraft Publishing Servs., Inc.*, 39 B.R. 567 (Bankr. N.D. Ga. 1984). There, the court provided a checklist of the information which is typically addressed in a disclosure statement:

(a) the events which lead to the filing of the bankruptcy petition;
(b) a description of the available assets and their values;
(c) the anticipated future of the debtor;
(d) the source of information stated in the Disclosure Statement;
(e) a disclaimer;
(f) the present condition of the debtor while in Chapter 11;
(g) the scheduled claims;
(h) the estimated return to creditors under a Chapter 7 liquidation;
(i) the accounting method utilized to produce financial information and the name of accountants responsible for such information;
(j) the future management of the debtor;
(k) a Chapter 11 plan or summary thereof;

(l) the estimated administrative expenses, including attorneys' fees and accountants' fees;
(m) the collectability of accounts receivable;
(n) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan;
(o) information relevant to the risks and contingencies posed to creditors under the plan;
(p) the actual or projected realizable value from recovery of preferential or otherwise avoidable transfers;
(q) litigation likely to arise in a non-bankruptcy context;
(r) the tax attributes of the debtor; and
(s) the relationship of the debtor with affiliates.

Id. at 39 B.R. at 568. See also, *United States Brass Corporation*, 194 B.R. at 427, and *Westland Oil Development Corp. v. MCorp Management Solutions, Inc.*, 157 B.R. 100, 102 (S.D. Tex. 1993) (both citing *Metrocraft* factors).

11. These *Metrocraft* factors are neither exhaustive nor exclusive.

V.
Objections to the Sufficiency of the Disclosure Statement

A. The Treatment of Class 5 Claimants – Former Residents Claims is Deceiving.

12. Using the *Metrocraft* factors as a foundation, the Trustees' proposed Disclosure Statement lacks fundamentally adequate information as it relates to a number of issues. As a result, the Disclosure Statement does not comply with the provisions of § 1125(a). Based on information and belief, the reference to the treatment of Former Residents in Section 3.25 of the Disclosure Statement may be unclear and misleading; therefore, it does not provide adequate information of who in fact is a Former Resident.

13. Based on information and belief, Class 5 may not cover Former Residents whose units have not been sold are being treated differently under Class 5 than those Former Residents whose units have been sold/leased. All former Residents should be treated the same.

14. Class 5 reads as follows:

> 3.2.5 Class 5 —Class 5 — Former Resident Claims. Class 5 is Impaired and entitled to vote on this Plan. This Class consists of the Claims of Former Residents, who, for the avoidance of doubt, **no longer reside at Edgemere as of the Voting Record**

> **Date**. The Residency Agreements of Former Residents shall be rejected, and the holders of Allowed Class 5 Claims who OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan shall receive a Class 4 General Unsecured Claim. Former Residents who do not OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan (i.e. Participating Former Residents) shall receive Cash from the Residents Trust within sixty (60) days of the Effective Date, **or as soon as practicable thereafter**, in an amount equal to their Refund Claim. (emphasis added)

15. If the Plan Participants truly intend to treat Former Residents differently, i.e., those whose units have not been sold from Class 5 treatment versus those whose units have been sold,, then it appears that the Disclosure Statement and Plan are misleading. A reading of the plain language of Class 5 Treatment would seem to show that there is no such distinction between a Former Resident whose Unit has been sold and a Former Resident whose unit has not been sold.

16. So, if the Plan Sponsors intend to treat Former Residents whose units have not been sold differently than those whose units were sold, then the Disclosure Statement needs to be amended to state such distinction. Otherwise, a Former Resident whose units has not been sold may be led to believe not to OPT Out of the Lifespace Settlement when perhaps such resident would be inclined to do so if he or she had known there was such a distinction.

17. If this Court finds that such is the case, the Amended Disclosure Statement and the Solicitation Letter should clearly state in bold letters that those Former Residents whose units have not been leased/sold are being treated differently than those Former Residents whose units have been leased/sold.

B. Payment of the Class 5 Claim is Nebulous.

18. Class 5 treatment provides for Class 5 claimants to be paid "… within sixty (60) days of the Effective Date, **or as soon as practicable thereafter**, in an amount equal to their Refund Claim."

19. The term "as soon as practicable is nebulous and totally discretionary on the part of the Plan Proponents.

20. Further, the release which Class 5 claimants are giving per the Lifespace Settlement and Contribution Agreement is illusory if the payments are never made or stretched out an unreasonable amount of time.

21. Plan Proponents should therefore be required to state a date certain when Class 5 claimants receive their "Refund Claim."

22. Further Lifespace should be required to provide detailed financial statements as exhibits so that Former and Current Residents can make an informed decision on not only whether to accept the plan but also whether to OPT OUT.

C. It is Unclear if the Release Under Section 8.6 Applies Whether or Not a Creditor Opts Out.

23. A portion of Section 8.6 of the Plan states:

> **ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE DEBTORS' ESTATES, THE LITIGATION TRUST, ALL OTHER RELEASED PARTIES AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, INVESTMENT BANKERS, FINANCIAL ADVISORS, AND OTHER PROFESSIONAL ADVISORS, AGENTS AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS, OR ANY ACT OR OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE**

24. Those creditors opting out should not be bound by this provision if funds are never paid.. In this regard, the Disclosure Statement should be amended to state such.

VI.
Objections to the Plan

25. The Amended is not confirmable under Sections 1122 and 1123(a)(4) of the Bankruptcy Code if Former Residents are being treated differently.

26. Section 1122(a) states:

> **(a)** Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

11 U.S.C. §1122.

27. Section 1122 of the Bankruptcy Code expressly mandates that all claims or interests in a class be "substantially similar" to all other claims or interests in the class. It further prohibits separate classification when the separate classification is motivated by the need to gerrymander a consenting class of impaired claims to satisfy section 1129(a)(9). *Phoenix Mutual Life Ins. Co. v. Greystone III Joint Venture (In re Greystone III Joint Venture)*, 995 F.2d 1274, 1279 (5th Cir. 1991).

28. Section 1123(a)(4) provides:

> **(a)**Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—
>
> ***
>
> **(4)** provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest;

11 U.S.C. §1123.

29. There simply is no valid distinction to be made between Former Residents whose units have been re-leased and those who have not. They should be treated the same.

30. For these reasons, Former Residents should be treated the same and accorded the same treatment. There should be no distinction as to when their units have not been sold/leased. Otherwise, the plan violates Section 1123(a)(4) of the Bankruptcy Code.

VI.
Conclusion

31. The requested additional disclosures will provide sufficient information to Former Residents to determine how their claim will be treated, the distributions they may receive and just as importantly whether to OPT OUT as there is a strong chance they will and should OPT out.

32. Further, though this Court may defer in the classification issue, the Amended Plan is not conformable.

33. For the reasons enumerated above, the Disclosure Statement does not fully comply with the requirements of Section 1125 of the Bankruptcy Code.

WHEREFORE, PREMISES CONSIDERED, Joel Edward Brickell respectfully prays that this Court deny the sufficiency of the Disclosure Statement as it does not contain adequate information as required by Section 1125(a) of the Code; or require Debtor to provide the information set forth above; and that the Court grant Joel Edward Brickell such other and further relief both at law and in equity to which she may be justly entitled.

Respectfully submitted,

By: */s/ William L. Siege*
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document was served via ECF on counsel for the Debtor and all parties who have requested notice on the 12th day of December 2022.

/s/ William L. Siegel
WILLIAM L. SIEGEL