

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, July 2, 2020

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#1.00 HearingRE: [4881] Motion for approval of chapter 11 disclosure statement (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures For Confirmation of Amended Joint Plan;(IV) Setting Administrative Claims Bar Date; and (V) Granting Related Relief; Memorandum of Points and Authorities In Support Thereof

Docket 4881

Matter Notes:

7/2/2020

The tentative ruling will be the order.
Party to lodge order: As set forth in the Tentative Ruling

POST PDF OF TENTATIVE OR AMENDED TENTATIVE RULING TO CIAO

Tentative Ruling:

7/1/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing. The cost for persons representing themselves has been waived.

For the reasons set forth below, the Court approves the Amended Disclosure Statement as containing adequate information, and approves the voting and solicitation procedures proposed by the Debtors.

Pleadings Filed and Reviewed:

- 1) Motion to Approve Disclosure Statement:
 - a) Disclosure Statement Describing Amended Joint Chapter 11 Plan of Liquidation (Dated June 16, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee [Doc. No. 4880] (the "Disclosure Statement")



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- b) Notice of Hearing and Joint Motion for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Amended Joint Plan; (IV) Setting Administrative Claims Bar Date; and (V) Granting Related Relief [Doc. No. 4881] (the "Motion")
 - i) Application for Order Setting Hearing on Shortened Notice [Doc. No. 4885]
 - ii) Order Granting Application and Setting Hearing on Shortened Notice [Doc. No. 4889]
 - iii) Notice of Hearing on Joint Motion for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Amended Joint Plan; (IV) Setting Administrative Claims Bar Date; and (V) Granting Related Relief [Doc. No. 4893]
 - iv) Declaration of Service by Kurtzman Carson Consultants, LLC [Doc. No. 4962]
- c) Amended Joint Chapter 11 Plan of Liquidation (Dated June 16, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee [Doc. No. 4879] (the "Plan")
- 2) Opposition Papers:
 - a) Objection of Cigna Entities to Disclosure Statement [Doc. No. 4927]
 - b) Creditor California Department of Health Care Services's Objections to Debtors' Proposed Disclosure Statement and Amended Joint Chapter 11 Plan of Liquidation [Doc. No. 4928]
 - c) Objection of the United States, on Behalf of the U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services to Disclosure Statement [Doc. No. 4934]
 - d) Strategic Global Management, Inc.'s Reservation of Rights Regarding Disclosure Statement [Doc. No. 4937]
 - e) Objection to Approval of Disclosure Statement [filed by the Medical Staff of Seton Medical Center] [Doc. No. 4939]
 - i) Withdrawal of Objection to Approval of Disclosure Statement [Doc. No. 4979]
- 3) Stipulations Resolving Issues:
 - a) Stipulation with the California Attorney General Approving Certain Language to be Included in Any Order Approving the Disclosure Statement Describing

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- Amended Joint Plan of Liquidation (Dated June 16, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee [Doc. No. 4951]
- b) Order Approving Stipulation with the California Attorney General Approving Certain Language to be Included in Any Order Approving the Disclosure Statement Describing Amended Joint Plan of Liquidation (Dated June 16, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee [Doc. No. 4952]
- 4) Omnibus Reply in Support of Joint Motion for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Amended Joint Plan; (IV) Setting Administrative Claims Bar Date; and (V) Granting Related Relief [Doc. No. 4976] (the "Reply")

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California, Inc. ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors' cases are being jointly administered.

On June 16, 2020, the Debtors, the Official Committee of Unsecured Creditors (the "Committee"), and the Prepetition Secured Creditors [**Note 1**] (collectively, the "Plan Proponents") filed the *Amended Joint Chapter 11 Plan of Liquidation (Dated June 16, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Doc. No. 4879] (the "Plan") and an accompanying disclosure statement [Doc. No. 4880] (the "Disclosure Statement").

The Disclosure Statement provides the following general overview of the Plan [**Note 2**]:

The Plan essentially implements a comprehensive settlement and compromise between the holders of the Secured 2005 Revenue Bond Claims, the Debtors and the Committee, which enables the Plan to become effective in these Chapter 11 Cases immediately after the sale of the Debtors' remaining Hospital assets, ends the incurrence and expenditure of continuing administrative expenses of the Debtors, permits cash payments to be made to certain creditors on or about the Effective Date of the Plan and thereafter, and resolves the remaining litigation pending against the Prepetition Secured Creditors in these proceedings. Specifically, the comprehensive settlement

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provides for the following cash payments to be made on or about the Effective Date of the Plan: (i) full payment of the claims of the Prepetition Secured Creditors other than the holders of Secured 2005 Revenue Bond Claims; (ii) partial payment of the Secured 2005 Revenue Bond Claims in an amount not less than \$124.2 million; (iii) full payment of all Allowed Mechanics Lien Claims; and (iv) full payment of all Allowed Administrative Claims. In return for the agreement by the Holders of the Secured 2005 Revenue Bond Claims to accept a partial payment of their claims on the Effective Date and to allow full payment of the Allowed Administrative Claims and Mechanics Lien Claims on or about the Effective Date, the Debtors shall: (i) dismiss with prejudice certain litigation commenced by the Committee for the benefit of the Debtors against the Prepetition Secured Creditors, and waive preserved claims against Verity MOB Financing LLC and Verity MOB Financing II LLC; and (ii) create a Liquidating Trust to collect, liquidate and realize upon the Debtors' remaining assets, which Liquidating Trust shall issue (x) First Priority Trust Beneficial Interests to the 2005 Revenue Bonds Trustee in the amount of the unpaid deficiency of the Secured 2005 Revenue Bond Claims which remains outstanding after the initial payment on the Effective Date with respect to the 2005 Revenue Bond Claims, and (y) Second Priority Trust Beneficial Interests for the benefit all holders of Allowed General Unsecured Claims. As the Debtors' remaining assets are collected, the Liquidating Trust shall make payments to the 2005 Revenue Bonds Trustee, as holder of the First Priority Trust Beneficial Interests for the benefit of the holders of the Secured 2005 Revenue Bond Claims, until such Interests are paid in full, with interest; thereafter, the Liquidating Trust shall make payments to holders of Second Priority Trust Beneficial Interests until the holders thereof are paid in full.

Disclosure Statement at 15–16. [Note 3]

Plan Proponents move for an order finding that the Disclosure Statement contains "adequate information" within the meaning of § 1125. *See* Doc. No. 4881 (the "Motion"). As discussed in Section II below, all objections to the Motion have either been withdrawn or have been resolved and are now moot.

II. Findings and Conclusions

A. Issues That Have Been Resolved

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In response to objections asserted by various parties, the Plan Proponents have agreed to modify the Disclosure Statement. As more fully described below, the Court finds that proposed modifications resolve the objections. Accordingly, the objections are overruled as moot.

1. Objection of the California Department of Health Care Services ("DHCS")

DHCS objected to the Disclosure Statement's failure to include information regarding the status of the resolution of DHCS' claims against Seton and St. Francis arising from the transfer of each hospital's Medi-Cal Provider Agreement. DHCS asserted that such information was material since the closing of the sale of each hospital is conditioned upon resolution of DHCS' claims.

DHCS has reached agreements with Seton and St. Francis fixing the amount of DHCS' claims against each hospital in connection with the transfer of each hospital's Medi-Cal Provider Agreement. *See* Doc. No. 4977. Disputes between DHCS and the Debtors regarding this issue have been resolved and no longer impose an impediment to the closing of the sale. It is not necessary for the Disclosure Statement to contain information regarding this issue.

DHCS also objected to the Disclosure Statement's description of the dismissal of a prior appeal. DHCS noted that a footnote in the Disclosure Statement indicated that the appeal was dismissed as moot, when in fact the appeal was dismissed after the Debtors and DHCS reached a settlement that, among other things, provided for the withdrawal of the decision being appealed. The Plan Proponents have agreed to revise the footnote at issue to address DHCS' concerns.

2. Objection of the U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services ("HHS")

HHS asserted that the Disclosure Statement did not provide adequate information concerning HHS' potential objections concerning the transfer of Medicare Provider Agreements in connection with the St. Francis Sale and Seton Sale. To resolve the objection, HHS and the Plan Proponents have agreed to include the following language in the Amended Disclosure Statement:

The transfer of the Debtors' two Medicare Provider Agreements pursuant to:
(a) the Seton Asset Purchase Agreement, dated March 30, 2020 [Docket No. 4360], entered into by and between AHMC, as buyer, and Seton and certain other Debtors, as sellers; and (b) the SFMC Asset Purchase Agreement, dated

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April 3, 2020 [Docket No. 4471], entered into by and between Prime, as buyer, and SFMC and certain other Debtors, as sellers, is the subject of ongoing settlement discussions and negotiations between HHS and the Debtors. The parties have entered into various stipulations and orders extending the time to file supplemental briefing and continuing the hearing date on the Medicare Provider Agreement transfer issue. Currently, pursuant to an order approving the parties' further stipulation entered on June 18, 2020 [Docket No. 4902], the hearing date on the Medicare Provider Agreements transfer issue is July 15, 2020 at 10:00 a.m. Thus, further governmental approval is necessary before the Medicare Provider Agreements may be transferred consensually to AHMC or Prime. HHS reserves the right to assert that its proofs of claim constitute secured claims as of the Petition Date to the extent of its setoff rights, pursuant to § 506(a). The Debtors and HHS are currently engaged in settlement discussions concerning a mutually agreeable resolution to the Medicare Provider Agreements transfer issue.

The Court finds the stipulated language to be appropriate.

3. Objection of the Cigna Entities

Cigna Healthcare of California, Inc., Cigna Health and Life Insurance Company, Life Insurance Company of North America, Cigna Dental Health of California, Inc., Cigna Dental Health Plan of Arizona, Inc., and Cigna Dental Health of Texas, Inc. (collectively, the "Cigna Entities") asserted that the Disclosure Statement did not contain adequate information because it failed to specify whether certain Cigna contracts will be assumed or rejected.

The Plan Proponents have agreed to include in the Amended Disclosure Statement and Amended Plan the following provision requested by the Cigna Entities:

The Debtors shall, no later than five (5) business days prior to the hearing on confirmation of the Plan, provide Cigna with written notice of its irrevocable decision as to whether or not the Debtors propose to assume or reject each of the Cigna Contracts as part of the Plan.

The Cigna Entities also objected to the Disclosure Statement and Plan's provisions regarding the timing of payment of administrative expense claims. The Cigna Entities noted that under the Plan, Priority Tax Claims and Priority Non-Tax

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Claims (which are held by the Cigna Entities) would be paid within fourteen days after such claims became allowed "or as soon as reasonably practicable thereafter." The Cigna Entities asserted that as a result of the qualifying language "as soon as reasonable practicable thereafter," it was possible that the Priority Tax Claims could be paid before Cigna's Priority Non-Tax Claims, in contravention of the Bankruptcy Code's priority scheme.

To resolve the Cigna Entities' objection, the Plan Proponents have agreed to modify the provision pertaining to the treatment of Priority Non-Tax Claims as follows (modifications in **bold**):

Treatment. Except to the extent that a Holder of a Priority Non-Tax Claim agrees to a less favorable treatment of such Claim, each such Holder shall receive payment in Cash in an amount equal to the amount of such Allowed Claim, payable on the later of the Effective Date and the date that is fourteen (14) Days after the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, in each case, or as soon as reasonably practicable thereafter **in accordance with the priority scheme set forth in the Bankruptcy Code.**

The Court finds that the proposed modifications with respect to the assumption of agreements and the treatment of Priority Non-Tax Claims are appropriate and resolve the Cigna Entities' objections.

4. Objection of the Medical Staff of Seton Medical Center (the "Seton Medical Staff")

The Seton Medical Staff asserted that the Disclosure Statement's description of the Plan's provisions pertaining to deemed substantive consolidation was inadequate. The Seton Medical Staff subsequently withdrew its objection.

5. Reservation of Rights of Strategic Global Management, Inc. ("SGM")

The Plan provides that the deposit made by SGM in connection with the failed SGM Sale, in the amount of \$30.5 million (the "Deposit"), will be distributed to creditors. SGM filed a Reservation of Rights, stating that that the Debtors' and SGM's rights in the Deposit will be determined by the District Court, which is presiding over litigation in which the Debtors assert an entitlement to the Deposit.

In response to SGM's informal request, [**Note 4**] the Plan Proponents have agreed to include the following language in the Amended Disclosure Statement:

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The Plan Proponents acknowledge that SGM disputes the Debtors' claim to the Deposit, and SGM contends that the Deposit must be returned to SGM. The Debtors and the Plan Proponents dispute the contentions and claims of SGM to the Deposit, and contend that the Deposit is an asset of the Debtors' estates, free and clear of any rights or claims of SGM, and should be distributed in accordance with the Plan. As provided in the Plan, on the Effective Date, all rights of the Debtors against SGM, including, without limitation, all rights to recover the Deposit, are being transferred to the Liquidating Trust. The Plan shall be amended to provide, and the Confirmation Order shall state, that the Liquidating Trust shall not distribute the Deposit to creditors in accordance with the Plan or take any other action which would reduce or dissipate the Deposit, unless permitted by a judgment or an order entered by the District Court having jurisdiction over the Adversary Proceeding, and such judgment or order has not been stayed. In the event an appeal is taken from any such judgment or order, the party taking the appeal shall have the right to seek a stay pursuant to the applicable Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure. Nothing contained in the Plan or the Disclosure Statement shall modify, alter or change the rights of the Debtors and the Liquidating Trust, on the one hand, and SGM, on the other hand, to any claim or rights to the Deposit. All such claims and rights are expressly reserved and preserved.

The Court finds that the proposed language provides adequate information to creditors with respect to the Plan's treatment of the Deposit.

6. Stipulation Between the Plan Proponents and the California Attorney General

The Court has approved a stipulation between the Plan Proponents and the Attorney General providing that the following language will be included in the Amended Disclosure Statement and in any order approving the Amended Disclosure Statement:

Nothing in this Order or the Disclosure Statement shall modify or amend paragraph 38 of the SFMC Sale Order or paragraph 35 of the Seton Sale Order, each of which shall remain in full force and effect.

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B. The Amended Disclosure Statement Contains Adequate Information

Section 1125 provides that a disclosure statement must contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, ... that would enable ... a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." §1125.

Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). As explained by one court:

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984).
However, "[d]isclosure of all factors is not necessary in every case." *Id.*

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The Court finds that the Amended Disclosure Statement contains information adequate to enable creditors to make an informed decision on the Plan. Among other things, the Amended Disclosure Statement contains detailed information regarding the following:

- 1) Events leading to the commencement of these Chapter 11 cases, including the Debtors' prepetition business operations, capital structure, and retirement benefit plans.
- 2) Significant events that occurred during the Chapter 11 cases, including information regarding resolved and ongoing adversary proceedings.
- 3) A broad general overview of the Plan, as well as a detailed description of the Plan's classification structure.
- 4) A liquidation analysis under Chapter 7 of the Bankruptcy Code.
- 5) A description of the tax consequences of the Plan.
- 6) A discussion of risk factors with respect to the Plan and the Debtors.
- 7) A discussion of the requirements for Plan confirmation.
- 8) A description of the releases and injunctions provided for in the Plan.

C. The Proposed Voting and Solicitation Procedures Are Approved

The Court approves the voting and solicitation procedures proposed by the Debtors. The Court adopts the Debtors' proposed timeline regarding the confirmation hearing, as follows [**Note 5**]:

- 1) Voting Record Date—July 2, 2020
- 2) Entry of Disclosure Statement Order—July 2, 2020
- 3) Solicitation Commencement Deadline—July 9, 2020
- 4) Deadline to Object or File a Motion to Estimate Claims for Voting Purposes—July 23, 2020
- 5) Voting Objection Deadline—July 23, 2020
- 6) Administrative Claims Bar Date—July 29, 2020
- 7) Voting Deadline—July 30, 2020, at 4:00 p.m. (prevailing local time)
- 8) Confirmation Objection Deadline—July 30, 2020
- 9) Debtors' Deadline to File Ballot Tabulation Report, Memorandum of Law in Support of Confirmation, Proposed Confirmation Order, and Response to Objections to Plan Confirmation—August 5, 2020
- 10) Confirmation Hearing—August 12, 2020, at 10:00 a.m. (prevailing local

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As a result of the COVID-19 pandemic, the Confirmation Hearing will take place by telephone, and the courtroom will be unavailable for in-court appearances. The Court has reviewed and approves the proposed *Form of Confirmation Hearing Notice*, *Form of Notice of Non-Voting Accepting Status and Confirmation Hearing*, and *Form of Notice of Non-Voting Rejecting Status and Confirmation Hearing*, except that ¶ 25 of each respective Notice shall include the following additional language (additional language is in **bold**):

On August 12, 2020, at 10:00 a.m. (Prevailing Pacific Time), or as soon thereafter as counsel may be heard, a hearing (the "Confirmation Hearing") will be held before the Honorable Ernest M. Robles, United States Bankruptcy Judge, at the Bankruptcy Court, 255 E. Temple Street, Courtroom 1568, Los Angeles, California 90012 to consider (i) confirmation of the Plan, as the same may be amended or modified; and (ii) such other and further relief as may be just and appropriate. **As a result of the COVID-19 pandemic, the courtroom will be unavailable for in-court appearances. All parties shall appear at the Confirmation Hearing by telephone via CourtCall. To make a telephonic appearance, contact CourtCall at 888-882-6878, ext. 188 no later than 3 p.m. on the day prior to the hearing. The cost for persons representing themselves has been waived.**

III. Conclusion

Based upon the foregoing, the Amended Disclosure Statement and the proposed voting and solicitation procedures are approved. By no later than **July 2, 2020**, the Debtors shall submit an order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Note 1

The Prepetition Secured Creditors are UMB Bank, N.A., as Master Trustee, Wells Fargo Bank, National Association, as 2005 Revenue Bonds Trustee, U.S. Bank, National Association as 2015 Notes Trustee and 2017 Notes Trustee, Verity MOB Financing LLC and Verity MOB Financing II, LLC.

Note 2

Capitalized terms not defined in the excerpt quoted below have the meaning set forth in the Plan.

Note 3

Page citations are to the ECF pagination, which is automatically affixed to the top of each page of every document filed with the Court, rather than to the document's internal pagination.

Note 4

In its Reservation of Rights, SGM did not assert that the Disclosure Statement failed to include adequate information with respect to the Plan's treatment of the Deposit.

Note 5

Capitalized terms have the meaning set forth in the Motion.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

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Verity Health System of California, Inc.

Kerry L Duffy

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