

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

SHARITY MINISTRIES, INC.,¹

Debtor.

Chapter 11 (Subchapter V)

Case No. 21-11001 (JTD)

Re: D.I. 68, 84, 85, 89, 93

Hearing Date: August 5, 2021 at 1:00 p.m. (ET)

**UNITED STATES TRUSTEE’S REPLY IN SUPPORT OF MOTION TO REMOVE THE
DEBTOR IN POSSESSION PURSUANT TO 11 U.S.C. § 1185, OR ALTERNATIVELY,
MOTION TO AUTHORIZE THE SUBCHAPTER V TRUSTEE TO INVESTIGATE THE
DEBTOR’S FINANCIAL AFFAIRS PURSUANT TO 11 U.S.C. § 1183**

Andrew R. Vara, the United States Trustee for Region 3 (the “U.S. Trustee”), through his undersigned counsel, respectfully files this reply (“Reply”) in support of his Motion for an order removing the debtor in possession pursuant to 11 U.S.C. § 1185(a), or alternatively, authorizing the Subchapter V Trustee to investigate the Debtor’s financial affairs pursuant to 11 U.S.C. § 1183(b)(2) filed at D.I. 68, and states as follows:

¹ The last four digits of the Debtor’s federal tax identification number is 0344. The Debtor’s mailing address is 821 Atlanta Street, Suite 124, Roswell, GA 30075.

REPLY

I. Cause Exists to Remove the Debtor as Debtor in Possession, and The Debtor Oversimplifies the Questions Concerning its Eligibility to Proceed in Subchapter V.

1. To be clear, the standard for removal of a debtor as debtor in possession is cause, which includes *but is not limited to* “fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the date of commencement of the case[.]” 11 U.S.C. § 1185(a). Cause “may emerge from a variety of factual scenarios.” *In re W.R. Grace & Co.*, 285 B.R. 148, 158 (Bankr. D. Del. 2002) (citing *In re Intercat, Inc.*, 247 B.R. 911, 920–22 (Bankr.S.D.Ga.2000)).

2. Although there might be a presumption that current management is best suited to act as debtor in possession, section 1104(a) of the Code, “represents a potentially important protection that courts should not lightly disregard or encumber with overly protective attitudes towards debtors-in-possession.” *In re Peak Serum, Inc.*, 623 B.R. 609, 621 (Bankr. D. Colo. 2020). The reasoning underlying the presumption is that ““current management is generally best suited to orchestrate the process for rehabilitation for the benefit of creditors and other interests of the estate.”” *In re Marvel Entm't Group, Inc.*, 140 F.3d 463, 471 (3d Cir. 1998) (quoting *In re V. Savino Oil & Heating Co.*, 99 B.R. 518, 524 (Bankr. E.D.N.Y. 1989)). In *Marvel*, however, the Third Circuit did not “invoke” the presumption where the debtor’s current management took control over the business six months after the filing of the chapter 11 case because the Court was not confronted with a debtor with extensive familiarity with the company’s operations. 140 F.3d. at 471.²

² See also *In re G-I Holdings, Inc.*, 385 F.3d 313, 320 (3d Cir. 2004) (clarifying portion of *Marvel* opinion regarding not invoking presumption to mean that facts satisfied the clear and convincing burden).

3. Here, the U.S. Trustee submits that the presumption normally applied to a debtor management team that actually controls and runs its operation is not warranted. The Debtor admits that its business model is one whereby other parties and vendors administered and controlled almost all aspects of its operation. *See* Debtor's Response D.I. 84 at ¶ 15. The Debtor also admits that it only operates with a few employees to focus on the day-to-day aspects of its operation, *id.* at ¶ 13, but it does not state what those day-to-day operations are. Indeed, for almost a year of its three-year history, the Debtor only had one employee, Mr. Thead. *See* Form 990 at D.I.1. In any case, the Debtor has now pivoted and re-focused on a liquidation and wind down, not a rehabilitation, and has provided no justification for continuing to incur the costs of a CRO and other professionals for a process that does not even contemplate a marketing of assets or anything of that nature.

4. The U.S. Trustee does not dispute that Mr. Luria and his team are experienced, but in the context of an organization that previously operated as a health-insurance-like enterprise where the main goal of the case should be the Members, analyzing information concerning their pending and unpaid claims, transitioning Members to other health claim coverage options, and ascertaining what assets are available (including causes of action against current and former management and Alera) to pay those claims, there is no knowledge that his team possesses that a Chapter 11 trustee would not also have. The Debtor is not rehabilitating and there is no sale contemplated.

5. The U.S. Trustee also notes that the contracts with the new third party vendors that were poised to handle the operations of the Debtor were only signed, at most, two months before the filing of the bankruptcy case. *See* Schedule G at D.I. 2 (referencing contract dates for contracts with Centivo, Enrollment123, and MedWatch). These vendors are likewise new to the Debtor and

do not have historical and institutional knowledge about the Debtor sufficient to warrant a presumption that the Debtor is best suited to manage its affairs.

6. The Debtor misstates the U.S. Trustee's reasons for arguing that there is cause under section 1185(a) of the Code. *See* Debtor's Response at ¶ 35.

7. The U.S. Trustee cited some examples of state court actions and litigation to develop the record on the issue of the significant prepetition regulatory litigation that has circled this Debtor almost from its inception. There are several reasons why this litigation is evidence of cause to remove the Debtor. First, the fact that approximately eleven states³ have all instituted regulatory actions against the Debtor (which has only been in operation for about three years), supports a finding of cause to remove the Debtor as debtor in possession. This high-volume regulatory activity indicates something is dangerously wrong with the Debtor's business.

8. Second, many of these regulatory actions do not entail mere allegations; in Colorado, Connecticut, Iowa, New Hampshire, New Mexico, Oregon, and Washington the allegations have either led to the Debtor consenting not to operate in those states or findings of fact and conclusions of law by insurance divisions or a court. More importantly, several states and the AlierCare class action plaintiffs have spoken for themselves, and they agree with the U.S. Trustee that an independent trustee should take control of the Debtor and determine its best course for liquidation. *See* D.I. 85, 89, 83. The U.S. Trustee intends to submit these regulatory action orders in evidence.

9. Third, many of the Debtor's current board members like Mr. Guarino and Mr. Sizemore were also members of the board at the time of these state regulatory proceedings. *See* Form 990 at D.I.1.

³ Those states are California, Colorado, Connecticut, Iowa, New York, New Hampshire, New Jersey, New Mexico, Oregon, Texas, and Washington.

10. The Debtor also seems to suggest that the U.S. Trustee should list what actions it believes the Debtor should be taking in order to obtain its own business records. The U.S. Trustee submits that if the Debtor had been trying in earnest to separate itself from Alieria for a year before the filing of this bankruptcy case, there should have been a more robust calculation of how it would obtain its books and records, especially if the lack of access to those records would only act to hurt its Members. Moreover, the U.S. Trustee accepts that the Debtor has chosen to liquidate; the decision, however, is concerning when a few days before the Debtor stated that its intention was to reorganize; it suggests the Debtor's own lack of understanding of how a bankruptcy filing would impact its Members. Since that decision was announced the U.S. Trustee has received numerous calls from Members confused about what to do next and who have tried to call the Debtor to no avail.

11. Concerning the lack of care, attention, and obligation to Members, the Debtor's decision not to treat the Members as creditors raises a lot of issues that the Debtor simply cannot answer because it does not have its books and records. Are there potential claims on account of Share Request that were denied but then were appealed, approved, and never paid? If so, what is the amount? Are there potential claims on account of Share Requests that were approved and never paid as of the Petition Date? If so, what is the amount? To the extent these claims exist, it is of no consequence that the claimants can file proofs of claim if the Debtor will dispute them because the Debtor thinks it is not legally obligated to pay them. These questions also bear directly on the issue of whether this Debtor is eligible to proceed under Subchapter V which is an issue that the Debtor has relegated to a footnote in its response but bears directly on the proper framework on which this case should proceed as ordained by the Bankruptcy Code. *In re Parking Management, Inc.*, 620 B.R. 544, 551 (Bankr. D. Md. 2020) (noting that when Congress expanded the reach of Subchapter

V to debtors who have up to \$7.5 million in debts, it made the subchapter available to entities having complex creditor relationships; “[t]he court need not find a lack of good faith or candor to conclude it should review the claims in this case.”).

12. The U.S. Trustee submits the arguments above equally apply to its request for an expansion of the Subchapter V Trustees duties.

CONCLUSION

13. The Court should remove the Debtor as debtor in possession and direct the appointment of a trustee to oversee and take control of this case. Alternatively, if this Court does not order the removal of the Debtor as debtor in possession, then this Court should expand the duties of the Subchapter V Trustee to include investigatory duties under section 1106 of the Code. As argued above, there is cause to justify either request.

Dated: August 2, 2021.
Wilmington, Delaware

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE

By: /s/ Rosa Sierra

Rosa Sierra

Trial Attorney

United States Department of Justice

Office of the United States Trustee

J. Caleb Boggs Federal Building

844 King Street, Suite 2207, Lockbox35

Wilmington, Delaware 19801

Phone: (302) 573-6492

Fax: (302) 573-6497

Email: rosa.sierra@usdoj.gov

CERTIFICATE OF SERVICE

I, Rosa Sierra, hereby attest that on August 2, 2021, I caused to be served a copy of this Motion by electronic service on the registered parties via the Court's CM/ECF system and upon the following parties by electronic mail:

Proposed Debtor's Counsel: LANDIS RATH & COBB LLP Adam G. Landis Matthew B. McGuire Nicolas E. Jenner landis@lrclaw.com mcguire@lrclaw.com jenner@lrclaw.com BAKER & HOSTETLER LLP Jorian L. Rose Jason I. Blanchard Elyssa S. Kates jrose@bakerlaw.com jblanchard@bakerlaw.com ekates@bakerlaw.com Andrew V. Layden alayden@bakerlaw.com	Subchapter V Trustee GELLERT SCALI BUSENKELL & BROWN,LLC (RE: SUBCHAPTER V TRUSTEE) HOLLY SMITH MILLER, ESQ. EML:HSMILLER@GSBBLAW.COM
ALABAMA DEPARTMENT OF INSURANCE P O BOX 303351 MONTGOMERY, AL 36130-3351 PH : FAX: EML:INSDEPT@INSURANCE.ALABAMA.GOV	ARIZONA DEPARTMENT OF INSURANCE WENDY GREENWOOD 100 NORTH 15 TH AVE, SUITE 102 PHOENIX, AZ 85007-2624 PH : FAX: EML:WGREENWOOD@AZINSURANCE.GOV
DAVID C. WEISS C/O ELLEN SLIGHTS, ESQUIRE US ATTORNEY'S OFFICE DISTRICT OF DE 1007 N. ORANGE STREET, SUITE 700 WILMINGTON, DE 19801 PH : FAX: EML:ELLEN.SLIGHTS@USDOJ.GOV	DELAWARE SECRETARY OF STATE CORPORATIONS FRANCHISE TAX PO BOX 898 DOVER, DE 19903 PH : FAX: EML:DOSDOC_FTAX@STATE.DE.US
DELAWARE ATTORNEY GENERAL DELAWARE DEPARTMENT OF JUSTICE CARVEL STATE BUILDING 820 N. FRENCH ST. WILMINGTON, DE 19801 PH : FAX: EML:ATTORNEY.GENERAL@STATE.DE.US	DIVISION OF MARKET REGULATION & MAIL CHA, INSURANCE EXAMINER ENFORCEMENT PO BOX 7873 MADISON, WI 53707-7873 PH : FAX: EML:MAI.CHA@WISCONSIN.GOV
GEORGIA OFFICE OF INSURANCE & SAFETY FIRE COMMISSIONER 2 MLK JR. DR, W TOWER, STE 702 ATLANTA, GA 30334-0000 PH ☎(404) 656-2070	ILLINOIS DEPARTMENT OF INSURANCE 320 W. WASHINGTON STREET SPRINGFIELD, IL 62767-0000 PH :217-782-4515 FAX: EML:DOI.INFODESK@ILLINOIS.GOV

FAX: EML:ADMINPROC@OCI.GA.GOV	
KANSAS INSURANCE DEPARTMENT 1300 SW ARROWHEAD RD. TOPEKA, KS 66604-0000 PH : FAX: EML:KID.COMMISSIONER@KS.GOV	KANSAS OFFICE OF THE ATTY GENERAL LYNETTE GOOD 120 W. 10 TH AVE., 2 ND FL TOPEKA, KS 66612-1597 PH : FAX: EML:LYNETTE.GOOD@AG.KS.GOV
KENTUCKY DEPARTMENT OF INSURANCE 500 MERO STREET 2 SE 11 FRANKFORT, KY 40601-0000 PH :502-564-3630 FAX:502-564-1650 EML:DOI.ISHELPDESK@KY.GOV	LIFE & HEALTH MARKET REGULATION JAMES KOCHA, SR. MANAGEMENT ANALYST FL OFFICE OF INSURANCE REGULATION 200 E. GAINES STREET TALLAHASSE, FL 32399 PH : FAX: EML:JAMES.KOCHA@FLOIR.COM
MICHIGAN DEPT OF INSURANCE AND FINANCIAL SERVICES PO BOX 30220 LANSING, MI 48909-7720 PH : FAX: EML:DIFSINFO@MICHIGAN.GOV	MINNESOTA DEPARTMENT OF COMMERCE 85 7 TH PLACE EAST SUITE 280 SAINT PAUL, MN 55101-0000 PH :651-539-1600 FAX: EML:CONSUMER.PROTECTION@STATE.MN.US
MISSOURI DEPARTMENT OF INSURANCE, ROBERT TILLMAN FIN. INSTITUTIONS & PROF. REGST. PO BOX 690 JEFFERSON CITY, MO 65102-0690 PH : FAX: EML:ROB.TILLMAN@INSURANCE.MO.GOV	NEBRASKA DEPARTMENT OF INSURANCE PO BOX 82089 LINCOLN, NE 68501-2089 PH :402-471-2201 FAX: EML:DOI.WEBMASTER@NEBRASKA.GOV
NEVADA DIVISION OF INSURANCE 1818 E. COLLEGE PKWY SUITE 103 CARSON CITY, NV 89706-0000 PH ☎775) 687-0700 FAX:702-486-4007 EML:CSCC@DOI.NV.GOV	OFFICE OF LICENSING AND MARKET REG. DUSTIN SIMON, INSURANCE INVSTGTR MI DEPT OF INSURANCE & FIN. SERVS PO BOX 30220 LANSING, MI 48909-7720 PH : FAX: EML:SIMOND8@MICHIGAN.GOV
RHODE ISLAND DEPT OF BUSINESS REGULATION, INSURANCE DIVISION 1511 PONTIAC AVENUE CRANSTON, RI 02920-0000 PH : FAX: EML:DBR.INSURANCE@DBR.RI.GOV	SOLIC CAPITAL ADVISORS, LLC N. LURIA, R. NOWITZ, K. TAVAKOLI 425 W. NEW ENGLAND AVENUE SUITE 300 WINTER PARK, FL 32789 PH :847.583.1618 FAX: EML:NLURIA@SOLICCAPITAL.COM
SOLIC CAPITAL ADVISORS, LLC N. LURIA, R. NOWITZ, K. TAVAKOLI 425 W. NEW ENGLAND AVENUE SUITE 300 WINTER PARK, FL 32789 PH :847.583.1618	SOLIC CAPITAL ADVISORS, LLC N. LURIA, R. NOWITZ, K. TAVAKOLI 425 W. NEW ENGLAND AVENUE SUITE 300 WINTER PARK, FL 32789 PH :847.583.1618

<p>FAX: EML:RNOWITZ@SOLICCAPITAL.COM</p>	<p>FAX: EML:KTAVAKOLI@SOLICCAPITAL.COM</p>
<p>SOUTH CAROLINA DEPT OF INSURANCE 1201 MAIN STREET SUITE 1000 COLUMBIA, SC 29201-0000</p> <p>PH : FAX: EML:INFO@DOI.SC.GOV</p>	<p>SR. DEPUTY COMMISSIONER KATHY SHORTT NORTH CAROLINA DEPT OF INSURANCE 1201 MAIL SERVICE CENTER RALEIGH, NC 27699-1201</p> <p>PH : FAX: EML:KATHY.SHORTT@NCDOI.GOV</p>
<p>STATE OF UTAH INSURANCE DEPT CARRIE BACKUS,MRKT CONDUCT EXAMINER STATE OFFICE BUILDING, SUITE 3110 SALT LAKE CITY, UT 84114-6901</p> <p>PH : FAX: EML:CBACKUS@UTAH.GOV</p>	<p>TENNESSEE DEPARTMENT OF COMMERCE & INSURANCE 500 JAMES ROBERTSON PKWY NASHVILLE, TN 37243-0565</p> <p>PH : FAX: EML:ASK.TDCI@TN.GOV</p>
<p>U.S. ATTORNEY'S OFFICE DAVID C. WEISS HERCULES BUILDING 1313 N MARKET STREET WILMINGTON, DE 19801</p> <p>PH : FAX: EML:DAVID.WEISS@USDOJ.GOV</p>	<p>WEST VIRGINIA OFFICES OF THE INS COMMISSIONER PO BOX 50540 CHARLESTON, WV 25305-0540</p> <p>PH : FAX: EML:OICLEGAL@WV.GOV</p>
<p>WISCONSIN OFFICE OF THE COMM'R OF INSURANCE PO BOX 7873 MADISON, WI 53707-7873</p> <p>PH : FAX: EML:OCICOMPLAINTS@WISCONSIN.GOV</p>	<p>BURR & FORMAN LLP (RE: COUNSEL TO ALIERA COMPANIES) J. CORY FALGOWSKI, ESQUIRE 1201 N. MARKET STREET SUITE 1407 WILMINGTON, DE 19801</p> <p>PH :302-830-2312 FAX: EML:JFALGOWSKI@BURR.COM</p>
<p>BURR & FORMAN LLP (RE: COUNSEL TO ALIERA COMPANIES) MARC P. SOLOMON, ESQUIRE 420 NORTH 20TH STREET SUITE 3400 BIRMINGHAM, AL 35203</p> <p>PH : FAX: EML:MSOLOMON@BURR.COM</p>	<p>OFFICE OF THE ATTY GENERAL OF TEXAS (RE: ATTORNEYS FOR THE STATE OF TEXAS) JASON B. BINFORD & ABIGAIL R. RYAN BANKRUPTCY & COLLECTIONS DIVISION P. O. BOX 12548 MC008 AUSTIN, TX 78711-2548</p> <p>PH ☎(512) 463-2173 FAX ☎(512) 936-1409 EML:JASON.BINFORD@OAG.TEXAS.GOV</p>
<p>OFFICE OF THE ATTY GENERAL OF TEXAS (RE: ATTORNEYS FOR THE STATE OF TEXAS) JASON B. BINFORD & ABIGAIL R. RYAN BANKRUPTCY & COLLECTIONS DIVISION P. O. BOX 12548 MC008 AUSTIN, TX 78711-2548</p> <p>PH ☎(512) 463-2173 FAX ☎(512) 936-1409 EML:ABIGAIL.RYAN@OAG.TEXAS.GOV</p>	<p>ADVEVO, LLC 990 HAMMOND DRIVE SUITE 700 ATLANTA, GA 30328-0000</p> <p>PH : FAX: EML:MARTHA.PARKER@ALIERACOMPANIES.COM</p>

<p>ENSURIAN AGENCY, LLC 990 HAMMOND DRIVE SUITE 700 ATLANTA, GA 30328-0000</p> <p>PH : FAX: EML:MARTHA.PARKER@ALIERACOMPANIES.COM</p>	<p>GIBBONS, P.C. ONE GATEWAY CENTER NEWARK, NJ 07102-5310</p> <p>PH :215-446-6308 FAX: EML:JMARTIN@GIBBONSLAW.COM</p>
<p>RON HINKLE LEGISLATIVE CONSULTANT PO BOX 11664 AUSTIN, TX 78711</p> <p>PH : FAX: EML:RON@RHINKLE.COM</p>	<p>TACTIC EDGE SOLUTIONS, LLC 990 HAMMOND DRIVE SUITE 700 ATLANTA, GA 30328-0000</p> <p>PH : FAX: EML:MARTHA.PARKER@ALIERACOMPANIES.COM</p>
<p>USA BENEFITS & ADMINISTRATORS, LLC 990 HAMMOND DRIVE SUITE 700 ATLANTA, GA 30328-0000</p> <p>PH : FAX: EML:MARTHA.PARKER@ALIERACOMPANIES.COM</p>	<p>Karen Cordry, Bankruptcy Counsel National Association of Attorneys General kcordry@naag.org</p>

/s/Rosa Sierra, Esq.