IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
SHARITY MINISTRIES, INC.,[1]	Case No. 21-11001 (JTD)
	Re: D.I. 225, 223
	Hearing Date: October 13, 2021 at 1:00 p.m. (ET)
Debtor.	**Objection Deadline: October 12, 2021 at 12:00 p.m. (ET)**

UNITED STATES TRUSTEE'S OBJECTION TO MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER (I) APPROVING THE DISCLOSURE STATEMENT ON AN INTERIM BASIS; (II) SCHEDULING A COMBINED HEARING ON FINAL APPROVAL OF THE DISCLOSURE STATEMENT AND PLAN CONFIRMATION AND DEADLINES RELATED THERETO; (III) APPROVING THE SOLICITATION, NOTICE AND TABULATION PROCEDURES AND THE FORMS RELATED THERETO; AND (IV) GRANTING RELATED RELIEF

Andrew R. Vara, the United States Trustee for Region 3 (the "U.S. Trustee"), through his undersigned counsel, filed this Objection ("Objection") to the *Motion Of The Debtor For Entry Of An Order (I) Approving The Disclosure Statement On An Interim Basis; (II) Scheduling A Combined Hearing On Final Approval Of The Disclosure Statement And Plan Confirmation And Deadlines Related Thereto; (III) Approving The Solicitation, Notice And Tabulation Procedures And The Forms Related Thereto; And (IV) Granting Related Relief* ("Interim Approval and Procedures Motion") at D.I. 225, 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.

PRELIMINARY STATEMENT

1. The U.S. Trustee objects[2] to the Interim Approval and Procedures Motion because:

- the proposed Voting Procedures as applied to Members force them to vote their claims at $1.00 per Member per vote when their claims against the Debtor appear to be liquidated, in circumvention of the requirements of section 1126(c) of the Code;

- the Debtor has not provided the amounts of administrative claims due and payable, and there is insufficient disclosure about the projected amounts of claims in the proposed classes;

- the proposed Interim Approval and Procedures Order should describe in greater detail the manner of service the Debtor will use for transmitting the Solicitation Package and related notices; and

- the Solicitation Package[3] and Confirmation Hearing Notice contain overly broad and impermissible exculpation and injunction provisions.

2. Unless and until these issues are satisfactorily addressed, this Court should not authorize the Debtor to solicit the Plan.

[2] To be clear, the U.S. Trustee has raised in writing several other issues in connection with the Plan and Interim Approval and Procedures Motion with the Debtor. The U.S. Trustee is hopeful that his issues with the Interim Approval and Procedures will be consensually resolved in advance of the Hearing Date. Concerning the issues raised herein, the Debtor, the Committee, the U.S. Trustee, and several other parties in interest, are in active negotiations to resolve these issues. The U.S. Trustee intends to work to address these issues consensually in advance of the hearing. As to all other Plan issues, to the extent not resolved before the Confirmation Objection Deadline, the U.S. Trustee reserves the right to raise those issues at the confirmation stage.

[3] Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the Interim Approval and Procedures Motion.

JURISDICTION

3. Under (i) 28 U.S.C. § 1334, (ii) applicable order(s) of the United States District Court for the District of Delaware issued pursuant to 28 U.S.C. § 157(a), and (iii) 28 U.S.C. § 157(b)(2), this Court has jurisdiction to hear and determine the Motion.

4. The U.S. Trustee is charged with overseeing the administration of chapter 11 cases filed in this judicial district, pursuant to 28 U.S.C. § 586. This duty is part of the U.S. Trustee's overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts to guard against abuse and over-reaching to assure fairness in the process and adherence to the provisions of the Bankruptcy Code. *See In re United Artists Theatre Co*., 315 F.3d 217, 225 (3d Cir. 2003) ("U.S. Trustees are officers of the Department of Justice who protect the public interest by aiding bankruptcy judges in monitoring certain aspects of bankruptcy proceedings."); *United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 298 (3d Cir. 1994) ("It is precisely because the statute gives the U.S. Trustee duties to protect the public interest . . . that the Trustee has standing to attempt to prevent circumvention of that responsibility."); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 499 (6th Cir. 1990) ("As Congress has stated, the U.S. trustees are responsible for protecting the public interest and ensuring that the bankruptcy cases are conducted according to [the] law").

5. Under § 307 of title 11 of the United States Code (the "Bankruptcy Code" or "Code"), the U.S. Trustee has standing to be heard on the issues raised in this Objection.

6. Pursuant to 28 U.S.C. § 586(a)(3)(B), the U.S. Trustee has the duty to monitor plans and disclosure statements filed in Chapter 11 cases and to comment on such plans and disclosure statements.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

I. Procedural History

7. On July 8, 2021 (the "Petition Date"), Sharity Ministries, Inc. ("Sharity," or "Debtor") filed a voluntary chapter 11 petition in this Court. D.I. 1.

8. On the petition, Sharity elected to proceed under Subchapter V of chapter 11. *Id*.

9. On July 22, the U.S. Trustee filed the *United States Trustee's 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* at D.I. 68 ("U.S. Trustee's Motion"). Thereafter, several other parties joined the U.S. Trustee's Motion. *See* D.I. 85, 89, and 93.

10. After an evidentiary hearing on the U.S. Trustee's Motion, this Court entered its order granting the U.S. Trustee's Motion, in part, and directing the appointment of a committee at D.I. 144 ("Order"). Pursuant to this Order, the U.S. Trustee appointed a committee under section 1102 of the Code comprised of five Members ("Member Committee"). *See* D.I. 163, 173.

11. The Member Committee proposes to retain the following firms to represent it in this case: (i) Sirianni Youtz Spoonemore Hamburger PLLC; (ii) Mehri and Skalet PLLC; and (iii) Stevens & Lee, P.C. (together, "Proposed Committee Counsel"). *See* D.I. 212, 213. Proposed Committee Counsel concurrently represent the AlieraCare Plaintiffs[4] in non-bankruptcy litigation related to the Debtor.

[4] As defined in the Proposed Committee Counsel retention papers, the AlieraCare Plaintiffs are Gerald Jackson, Roslyn Jackson, Dean Mellom, Jon Perrin, Julie Perrin, Corlyn Duncan, Bruce Duncan, George T Kelly, III, Thomas Boogher, Rebecca Smith, Ellen Larson, Justine Lund, Jaime Beard, Jared Beard, Hanna Albina, and Austin Willard, in both their individual capacities and their capacities as class representatives in the following civil actions:

12. By a consensual resolution with various interested parties, the Debtor voluntarily withdrew its Subchapter V election, and this Court approved that resolution at D.I. 229. Accordingly, as of October 4, 2021, this case is proceeding as a standard chapter 11 case.

II. The Interim Approval and Procedures Motion

13. On October 1, 2021, the Debtor filed the Interim Approval and Procedures Motion, seeking, among other things, interim approval of the disclosures contained in the *Combined Disclosure Statement And Chapter 11 Plan Of Liquidation Of Sharity Ministries Inc.* (the "Plan") filed at D.I. 223 and approval of the solicitation materials and other notices to be sent to parties in interest in connection with solicitation of the Plan.

A. The Voting Procedures

14. Concerning voting on the Plan, the Interim Approval and Procedures Motion proposes the following

> All of the Debtor's current and former Members shall be accorded one (1) vote valued at $1.00 in each class in which they are a holder for voting purposes only with respect to the Plan, and not for purposes of allowance or distribution. For the avoidance of doubt, any current or former Member that is the holder of a Member Claim for Post-July 8, 2021 Monthly Payments, an Unpaid Medical Claim, or that has filed an Other Member Claim shall similarly be accorded one vote valued at $1.00 in each class in which they are a holder for voting purposes only, regardless of how many Claims or types of Claims such Member holds.

See Interim Approval and Procedures Motion at ¶ 26(ii); *see also* Plan at Art. VII (providing that all holders of Class 3 and Class 4 Claims "shall have a claim temporarily allowed for voting purposes only at $1").

(a) Jackson v. The Aliera Companies, Inc., Civil Action No. 2:19-cv-01281-BJR (W.D. Wash.); (b) Duncan v. The Aliera Companies, Inc., Civil Action No. 2:20-cv-00867-TLN-KJN (E.D. Cal.); (c) Kelly v. The Aliera Companies, Inc., Civil Action No. 3:20-cv-05038-MDH (W.D. Mo.); (d) Smith v. The Aliera Companies, Inc., Civil Action No. 1:20-cv-02130- RBJ (D. Colo); and (e) Albina v. The Aliera Companies, Inc., Civil Action No. 5:20-cv-00496-JMH (C.D.
Ky.).

15. The Debtor proposes to use this one dollar, one vote per Member feature because "[s]ubstantially all of the potential claims held by the approximately 90,000 Former Members are unliquidated [and] [i]t is not possible to estimate the value of claims held by the approximately 90,000 past and current Members for purposes of voting." *See* Interim Approval and Procedures Motion at ¶ 27.

16. At the same time, however, the Plan provides that "Members will be automatically treated as having submitted a claim for the greater of (i) their previously submitted requests to the Debtor for payment of medical expenses that have not yet been satisfied, and (ii) all monthly payments made under the Debtor's programs. Members need not take any action to have a claim for the greater of these two amounts. These amounts will be calculated based on the Debtor's records and there is no guarantee that such records are accurate. The ballot provided to each Member contain instructions on how to view the amounts the Debtor believes are owed. **If a Member disagrees with the amount or wishes to file a claim for any other amounts, the Member should file a proof of claim before the General Bar Date of January 4, 2022.**" *See* Plan at Art. I (emphasis in original).

B. Disclosure-Related Deficits

17. As stated above, the Debtor requests interim approval of the disclosures contained within the Plan, but there are several key pieces of information missing from the Plan. To begin, although the Plan proposes to pay all Administrative Claimants in full as it must in order for the Plan to be confirmed under 1129(a)(9), the Plan does not disclose the total estimated amounts of administrative claims, including attorneys' fees. Relatedly, claimants in Class 3 (Member Claims for Post-July 8 Monthly Payments) are purportedly receiving a full refund of their payments, but that class is classified as impaired without explanation. *See* Plan Art. 1 at Question 10.

18. Additionally, except for Classes 1, 2, and 3, the Plan does not contain any estimate of the amounts of claims in other Classes. This lack of information is particularly concerning as it relates to Class 4 (Member Claims and General Unsecured Claims) because the Debtor has already indicated on the record at the 341 meetings and at the evidentiary hearing on the U.S. Trustee's Motion that it believes there are approximately $52 million in claims outstanding in Class 4.

C. Uncertainties Concerning Compliance with Rule 3017(d) and information on Ballots

19. The Interim Approval and Procedures Motion appears to propose a combination of mailing and emailing of Solicitation Packages. But, it is unclear to whom the Debtor will send paper notices, and also unclear when and under what circumstances the Debtor will use email to transmit these important notices.

20. Additionally, the Plan indicates that the "ballot provide[d] to each Member contains instructions on how to view the amounts the Debtor believes are owed." A review of the proposed Ballot reveals that those instructions are not very clear. *See e.g.,* Interim Approval and Procedures Motion at Ex. C (appearing to provide a space for inclusion of estimated amount owed by Debtor but no instructions on how to view this information).

D. The Injunction and Exculpation Provisions

21. The Confirmation Hearing Notice, which forms part of the Solicitation Package creditors will receive, and the Plan each contain provisions concerning exculpation and injunctions preventing the prosecution and enforcement of claims.

22. The exculpation provision reads as follows:

> For the avoidance of doubt and notwithstanding any other provision of the Plan or Plan Supplement, the Plan does not contain any releases of any party or of any Causes of Action, and except for the following paragraph, the Plan does not contain any exculpation provisions.

Except for liability of an Exculpated Party that arises primarily and directly from any act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct, the Exculpated Parties shall neither have nor incur any liability to any Entity for any and all claims, causes of action, and any other debts, obligations, rights, suits, damages, actions, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing during the Exculpation Timeframe arising, in law, at equity, whether for tort, contract, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances taking place or arising during the Exculpation Timeframe and related in any way to the Debtor.

This exculpation provision includes those claims and causes of action that the Debtor would have been legally entitled to assert against the Exculpated Parties or that any Holder of a Claim or other Entity would have been legally entitled to assert against the Exculpated Parties for or on behalf of the Debtor or the bankruptcy estate and further including those claims and causes of action that are related to the Chapter 11 Case, Liquidating Trust Agreement, or this Plan, including any act taken or omitted to be taken in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming, or consummating the Plan, the Liquidating Trust Agreement, or any other contract, instrument, release or other agreement or document created or entered into in connection with this Plan or any other post-petition act taken or omitted to be taken in connection with the Debtor, but only during the Exculpation Timeframe.

See Plan at Art. XIV; *see also* Interim Approval and Procedures Motion at Ex. 1.

23. The Plan defines Exculpated Parties as

"Exculpated Parties" means, collectively, (i) the Subchapter V Trustee and any professionals retained by the Subchapter V Trustee, (ii) the Member Committee in their official capacity and any professionals retained by the Member Committee, (iii) the professionals retained by the Debtor under sections 327, 328, 363 or 1103 of the Bankruptcy Code that were approved by the Bankruptcy Court as follows: (a) Baker & Hostetler LLP as its legal counsel [D.I. 138]; (b) Landis Rath & Cobb LLP as co-counsel [D.I. 135]; (c) SOLIC Capital Advisors, LLC to provide services and the following interim officers: Neil Luria as Chief Restructuring Officer, Raoul Nowitz as Assistant Chief Restructuring Officer, and Kevin Tavakoli as Director of Finance [D.I. 140]; and (d) BMC Group, Inc. as its claims and noticing agent and administrative advisor [D.I. 40, 136], and (e) the three independent directors of the Debtor specifically, 1. Mr. Chris Sizemore, 2. Mr. Joe Handy, and 3. Mr. Stephen Vault.

See Plan at Art. II, § 39.[5]

24. In turn, the Plan defines the Exculpation Timeframe as "the time period from the Petition Date through and including the Effective Date." *See id*. at Art. II, § 40.

25. As written, the exculpation provision proposes to exculpate the "Exculpated Parties" from any liability arising during the Exculpation Timeframe that is "**related in any way to the Debtor**." *See* Plan at Art. XIV (emphasis added). The Exculpated Parties include Baker Hostetler, SOLIC Capital, and Proposed Committee Counsel (excluding Stevens & Lee), all of which have had dealings related to the Debtor—whether as professionals to the Debtor, in litigation in defense of or against the Debtor—during the Exculpation Timeframe but unrelated to this chapter 11 case.

26. Although the Plan is a liquidation plan, and although it purports not to contain any releases other than the exculpation provision discussed above, the Plan contains the following injunction provision

> **From and after the Effective Date, all Persons are permanently enjoined from commencing or continuing in any manner against the Debtor, the Member Committee or its members, the Liquidating Trust or the Liquidating Trustee, or their respective predecessors, successors, and assigns, current and former shareholders, affiliates, subsidiaries, principals, employees, agents, officers, directors, managers, consultants, limited partners, trustees, partners, members, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants, in each case in their capacity as such, and their assets and properties, as the case may be, any suit, action or other proceeding, on account of or respecting any claim, demand, liability, obligation, debt, right, action, interest or remedy treated pursuant to the Plan or the Confirmation Order.**
>
> **Except as otherwise expressly provided for in this Combined Plan and Disclosure Statement or in obligations issued pursuant to this Combined Plan and Disclosure Statement, from and after the Effective Date, all Persons shall be precluded from asserting against the Estate, or its representatives, the Liquidating Trust, the Liquidating Trustee, or their respective successors and**

[5] This definition is not provided in the Confirmation Hearing Notice.

assigns, and their assets and properties, any other claims or equity interests based upon any documents, instruments, or any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date.

Except as otherwise specifically provided in the Combined Plan and Disclosure Statement, all Persons who have held, hold, or may hold Claims against or Interests in the Debtor and any successors, assigns or representatives of such Person shall be precluded and permanently enjoined on and after the Effective Date from (a) commencing or continuing in any manner any Claim, action or other proceeding of any kind against any of the assets to be distributed under the Plan, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree, or order with respect to any of the assets to be distributed under the Plan, and (c) creating, perfecting or enforcing any encumbrance of any kind with respect to any of the assets to be distributed under the Plan. Except as otherwise expressly provided for in this Combined Plan and Disclosure Statement or with respect to obligations issued pursuant to this Combined Plan and Disclosure Statement, all Persons are permanently enjoined, on and after the Effective Date, on account of any Claim or Interest satisfied and released hereby, from: commencing or continuing in any manner any action or other proceeding of any kind against any Debtor, the Liquidating Trust or the Liquidating Trustee, or their successors and assigns, and their assets and properties; enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against any Debtor, the Liquidating Trust or the Liquidating Trustee, their successors and assigns, and their assets and properties; creating, perfecting, or enforcing any encumbrance of any kind against any Debtor, the Liquidating Trust or the Liquidating Trustee or the property or estate of any Debtor or the Liquidating Trust; asserting any right of subrogation against any Debtor, the Liquidating Trust or the Liquidating Trustee or against the property or Estate of any of the Debtor or the Liquidating Trust, except to the extent that a permissible right of subrogation is asserted with respect to a timely filed proof of claim; or commencing or continuing in any manner any action or other proceeding of any kind in respect of any claim or equity interest or cause of action released or settled hereunder.

Notwithstanding any provision in this Combined Plan and Disclosure Statement or the Plan Confirmation Order to the contrary, nothing contained in this Combined Plan and Disclosure Statement or the Confirmation Order shall (i) extinguish, impact, or release any right of setoff, recoupment, or subrogation of any kind (a) held by any creditor or vendor which is asserted in a timely filed proof of claim or objection to this Combined Plan and Disclosure Statement, or pursuant to section 503(b)(1)(d) of the Bankruptcy Code or (b) that is or may be asserted as an affirmative defense or other

> **defense to a cause of action or claim asserted by a Debtor or the Liquidating Trust against such creditor or vendor; or (ii) affect the applicability of 26 U.S.C. § 7421(a).**
>
> **Notwithstanding anything contained in the section, the injunction referenced herein shall not apply to the Aliera Companies or their predecessors, successors, and assigns, current and former shareholders, affiliates, subsidiaries, principals, employees, agents, officers, directors, managers, consultants, limited partners, trustees, partners, members, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants, in each case in their capacity as such, and their assets and properties, as the case may be.**

See Plan at Art. XIV; *see also* Interim Approval and Procedures Motion at Ex. 1.

27. As written the injunction provision would enjoin claims of any entity against the Debtor, various third parties, the Liquidating Trust, Liquidating Trustee, and the Member Committee "on account of or respecting any claim, demand, liability, obligation, debt, right, action, interest or remedy treated pursuant to the Plan or the Confirmation Order." *See id*.

ARGUMENT

I. The Voting Procedures Circumvent the Requirements of Section 1126(c) of the Code.

28. Valuing all the Member Claims at $1.00 per Member per vote effectively nullifies the requirements of section 1126(c) of the Bankruptcy Code, where the Debtor otherwise has liquidated amounts at which it can value these claims for voting purposes.

29. Section 1126(c) of the Bankruptcy Code provides that "[a] class of claims has accepted the plan if such plan has been accepted by creditors, . . . , that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by the creditors . . . that have accepted or rejected such plan." *See* 11 U.S.C. § 1126(c).

30. Here, pursuant to the Plan's own terms, Member claims will be automatically allowed in the higher of either (i) the total of unpaid medical claims for the particular Member or

(ii) the aggregate amount of monthly premiums paid by a particular Member without the Member having to file a proof of claim. Accordingly, these are the "allowed" claims of such class that should be used to determine whether a class has accepted or rejected the Plan. Although the Debtor's books and records might not be entirely accurate, this estimation of a Member's claim is more likely to approximate the true value of a Member's claim than $1.00. It is of no consequence that this procedure is being imposed for "voting purposes only" and not for distribution purposes because the procedure's effect is to give too much weight to low value claims and too little weight to high value claims.

31. The Interim Approval and Procedures Motion cites at paragraph 27 purported authority for the use of this procedure. However, as the same Motion indicates, the cited cases concern mass torts situations where the claims valued at $1.00 for voting purposes were unliquidated. By the Debtor's own admission, the Members' claims are liquidated, not unliquidated. Indeed, the ballots will contain information quantifying each Member's claim. It may indeed confuse creditors if the ballot contains a value for their claim but they are prohibited from voting their claims in that amount.

32. Therefore, this Court should not approve the Voting Procedures.

II. The Combined Plan and Disclosure Statement does not Contain Adequate Information as Required by Section 1125 of the Bankruptcy Code.

33. Section 1125 of the Bankruptcy Code provides that a disclosure statement must contain "adequate information" describing a confirmable plan. 11 U.S.C. § 1125; *see also In re Quigley Co.,* 377 B.R. 110, 115 (Bankr. S.D.N.Y. 2007). The Bankruptcy Code defines "adequate information" as:

> 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, including a discussion of the potential material Federal tax

> consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, **that would enable such a hypothetical reasonable investor of the relevant class to make an informed judgment about the plan** . . . .

11 U.S.C. § 1125(a)(1) (emphasis added); *see also Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994); *Kunica v. St. Jean Fin., Inc.*, 233 B.R. 46, 54 (S.D.N.Y. 1999).

34. The disclosure statement requirement of section 1125 of the Bankruptcy Code is "crucial to the effective functioning of the federal bankruptcy system[;] . . . the importance of full and honest disclosure cannot be overstated." *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996) (citing *Oneida Motor Freight, Inc. v. United Jersey Bank (In re Oneida Motor Freight, Inc.)*, 848 F.2d 414 (3d Cir. 1988)).

35. The "adequate information" requirement is designed to help creditors in their negotiations with Debtors over the plan. *See Century Glove, Inc. v. First Am. Bank*, 860 F.2d 94 (3d Cir. 1988). Section 1129(a)(2) conditions confirmation upon compliance with applicable Code provisions. The disclosure requirement of section 1125 is one of those provisions. *See* 11 U.S.C. 1129(a)(2); *In re PWS Holding Corp.*, 228 F.3d 224, 248 (3d Cir. 2000).

36. Section 1125 of the Bankruptcy Code is geared towards more disclosure rather than less. *See In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990). The "adequate information" requirement establishes a floor, not a ceiling, for disclosure to voting creditors. *In re Adelphia Commc'ns Corp.*, 352 B.R. 592, 596 (Bankr. S.D.N.Y. 2006) (citing *Century Glove, Inc. v. First Am. Bank of New York*, 860 F.2d 94, at 100 (3d Cir. 1988).

37. A disclosure statement must inform the average creditor what it is going to get and when, and what contingencies there are that might intervene. *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991). Although the adequacy of the disclosure is determined on a case-by-case basis, the

disclosure must "contain simple and clear language delineating the consequences of the proposed plan on [creditors'] claims and the possible [Bankruptcy Code] alternatives . . . ." *In re Copy Crafters Quickprint, Inc*., 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1988).

38. Here, although the Plan proposes to pay all Administrative Claimants in full—a confirmation requirement under 1129(a)(9)—the Plan does not disclose the estimated amounts of administrative claims, including attorneys' fees. Relatedly, Class 3 (Member Claims for Post-July 8 Monthly Payments) is purportedly receiving a full refund of their payments (as they should because these claims appear to be administrative in nature), but that class is classified as impaired without explanation. *See* Plan Art. 1 at Question 10.

39. Additionally, except for Classes 1, 2, and 3, the Plan does not contain any estimate of the amounts of claims in other Classes. This lack of information is particularly concerning as it relates to Class 4 (Member Claims and General Unsecured Claims) because the Debtor has already indicated on the record at the 341 meetings and at the evidentiary hearing on the U.S. Trustee's Motion that it believes there are approximately $52 million in claims outstanding in Class 4.

40. Therefore, the Plan is missing key information that would enable a creditor to make an informed vote on the Plan, and the Debtor should not solicit the Plan until it remedies these deficits.

III. The Debtor's Proposed Solicitation Procedures Require Further Clarification and Precision.

41. The Interim Approval and Procedures Motion and the proposed order thereto contain imprecise and unclear information as to the means the Debtor will employ to send the Solicitation Package, the Confirmation Hearing Notice, and attendant notices and the information that will be included in the ballots. *See* Interim Approval and Procedures Motion at para. 43, 44; *accord* Ex. 1 at ¶ 8.

42. Federal Rule of Bankruptcy Procedure 3017(d) governs here, and states "[u]pon approval of a disclosure statement,-except to the extent the court orders otherwise with respect to one or more unimpaired classes of creditors or equity holders-the debtor in possession . . . shall mail to all creditors and equity holders . . . (1) the plan or court approved summary of the plan; (2) the disclosure statement approved by the court; (3) notices of time within which acceptances and rejections of the plan may be filed; and (4) any other information as the court may direct, including any court opinion approving the disclosure statement or court-approved summary of the opinion." Fed. R. Bankr. Proc. 3017(d).

43. Rule 3017(d) also provides "[i]n addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security in accordance with Rule 2002(b), and form of ballot . . . shall be mailed to creditors and equity security holders entitled to vote on the plan." *See id*.

44. Here, the Debtor appears to propose sending relevant notices and packages both electronically and in traditional paper format. But the Debtor does not definitively explain which method it will use for what packages and to whom the Debtor will send them. Although this Court's order at D.I. 160 authorized email service in certain instances, the Debtor must specify the manner of sending required notices under Federal Rule of Bankruptcy Procedure 3017(d), so that it is clear what will be emailed or mailed and to whom. Additionally, the Plan indicates that the "ballot provided to each Member contain instructions on how to view the amounts the Debtor believes are owed." A review of the proposed Ballot reveals that those instructions are confusing. *See e.g.,* Interim Approval and Procedures Motion at Ex. C (appearing to provide a space for inclusion of estimated amount owed by Debtor but no instructions on how to view this information).

45. Therefore, the U.S. Trustee requests that the Debtor clarify the issues identified above before the solicitation process begins.

IV. The Exculpation and Injunction Provisions are Overly Broad and Improper.

A. Exculpation.

46. The Debtor's proposed exculpation provisions are too broad, because they include any liability "***related in any way to the Debtor***," and are not limited to liability for actions by the Exculpated Parties taken in connection with the chapter 11 case.

47. The Court in *In re Washington Mutual, Inc*., 442 B.R. 314, 350-51 (Bankr. D. Del. 2011) held that exculpation is limited to actions taken during a bankruptcy case:

> [T]he Third Circuit has held that a creditors' committee, its members, and estate professionals may be exculpated under a plan *for their actions in the bankruptcy case* except for willful misconduct or gross negligence. *PWS, 228 F.3d at 246*. The Third Circuit reasoned that such a provision merely stated the standard to which such estate fiduciaries *were held in a chapter 11 case*. *Id*. . . .
> The exculpation clause must be limited to the fiduciaries *who have served during the chapter 11 proceeding*: . . .

442 B.R. at 350-51 (emphasis added).

48. Here, although the Exculpation Timeframe is limited to the Petition Date through the Effective Date, the qualifier "related in any way to the Debtor" still exculpates more actions than just those taken during and in connection with the bankruptcy case. This is because many of the Exculpated Parties are professionals that were employed by the Debtor and/or the AlieraCare Plaintiffs in matters unrelated to the bankruptcy case but nonetheless related to the Debtor during the Exculpation Timeframe. Exculpation is not intended to shield professionals from any liability they may have with respect to a debtor, whether or not related to the bankruptcy case. Rather, a plan exculpation provision should limit protection both in terms of time and in terms of relationship to the bankruptcy case.

49. Therefore, the Debtor should revise and limit the scope of the exculpation provision before it solicits the Plan.

B. Injunction

50. The Plan contains an improper injunction provision that amounts to a discharge of a liquidating Debtor and is contrary to section 1141(d)(3) of the Bankruptcy Code.

51. Section 1141(d)(3) of the Bankruptcy Code provides:

> The confirmation of a plan does not discharge a debtor if—
>
> (A) the plan provides for the liquidation of all or substantially all of the property of the estate;
>
> (B) the debtor does not engage in business after consummation of the plan; and
>
> (C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

11 U.S.C. § 1141(d)(3).

52. The elements of section 1141(d)(3) are present here. First, the Plan is a liquidating plan that proposes to dispose of the Debtor's remaining assets. Second, the Plan provides that the Debtor intends to dissolve as soon as it can after the Effective Date and not engage in any further business. Third, the Debtor, as a corporate entity, would not be eligible for a discharge if it was a chapter 7 debtor pursuant to Section 727(a)(1), which provides that the Court shall grant a debtor a discharge unless the debtor is not an individual. *See, e.g., In re Flintkote Co*., 486 B.R. 99, 129 n.80 (Bankr. D. Del. 2012)("Section 1141(d)(3)(C) is always satisfied for corporate debtors, as they cannot receive discharges in chapter 7.") Therefore, the Debtor is not entitled to a discharge.

53. Because the Debtor is not entitled to a discharge, a discharge injunction is not appropriate. A discharge injunction partially effectuates a discharge. Section 524(a) provides that a discharge operates as an injunction against the commencement or continuation of an act to

collect, recover or offset a debt discharged under section 1141 as a personal liability of the debtor, except to the extent needed to protect estate property being distributed through a plan. However, the injunction provision of the Plan quoted above accomplishes a discharge of the Debtor and provides protections beyond the exculpation provided to some non-debtors. *See* Plan at Art. XIV; *see also* Interim Approval and Procedures Motion at Ex. 1. This injunction provision enjoins a broader set of claims than those specifically exculpated in the Plan.

54. Therefore, this Court should not approve solicitation of the Plan with this injunction provision as written.

RESERVATION OF RIGHTS

55. The U.S. Trustee leaves the Debtor to its burden of proof and reserves any and all rights, remedies and obligations to, among other things, complement, supplement, augment, alter or modify this limited objection and reservation of rights, assert any objection, file an appropriate motion, or conduct any and all discovery as may be deemed necessary or as may be required and to assert such other grounds as may become apparent upon further factual discovery. The U.S. Trustee also reserves all rights with respect to plan confirmation issues until the objection deadline for the same.

Dated: October 7, 2021.
Wilmington, Delaware

Respectfully submitted,
ANDREW R. VARA
UNITED STATES TRUSTEE, REGIONS 3 AND 9

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 October 7, 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 at **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 15TH 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 INSURNCE & 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. 10TH AVE., 2ND 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 7TH 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

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

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