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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:
SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.,

Chapter 11 Case
Case No. 13- 22840 (RDD)

Debtors.

(Jointly Administered)

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**DEBTORS' REPLY TO LIMITED OBJECTION BY BECKMAN ,
COULTER INC. TO DEBTORS' MOTION FOR ORDER (A)
APPROVING BIDDING PROCEDURES FOR THE SALE OF THE
DEBTORS' REAL ESTATE AND DESIGNATED PERSONAL PROPERTY
ASSETS, (B) SCHEDULING AN AUCTION AND A SALE HEARING
RELATED THERETO, (C) APPROVING THE FORM OF NOTICE OF THE
AUCTION AND SALE HEARING, AND (D) APPROVING A BREAK UP FEE**

Sound Shore Medical Center of Westchester ("SSMC") and certain of its debtor affiliates, as debtors and debtors-in-possession (each a "Debtor" and collectively the "Debtors") in the above captioned chapter 11 cases (the "Chapter 11 Cases"), in response to the Limited Objection of Beckman Coulter, Inc., respectfully represents as follows:

PRELIMINARY STATEMENT

1. As detailed in the Bidding Procedures Motion, the Debtors' dire financial circumstances necessitated the negotiation of the proposed purchase agreement (the "Purchase Agreement") for the sale of the Debtors' assets to Montefiore SS Operations, Inc., Montefiore MV Operations, Inc., Montefiore HA Operations, Inc, and Montefiore SS Holdings, LLC,

Montefiore MV Holdings, LLC, and Montefiore HA Holdings, LLC (collectively referred to herein as “**MMC**”) and the preparation of a bankruptcy filing in an extremely compressed time frame. While substantial information has been provided to MMC regarding the Debtors’ operations and agreements, given the expedited nature of the negotiations, the full extent of the required due diligence could not be completed prior to the Petition Date and is still ongoing. The Debtors are parties to over 600 executory contracts which must be carefully reviewed and evaluated by MMC. Tremendous manpower has already been expended to date in compiling and providing diligence materials and financial information to MMC, while simultaneously negotiating a \$33 Million DIP financing facility, and preparing for the Chapter 11 filing itself. Significant focus and time was also expended in the simultaneous preparation and filing of the sale motion for these Chapter 11 Cases and negotiating the Purchase Agreement. Indeed, the Purchase Agreement and the Debtors’ bankruptcy filings were finalized in a matter of weeks before the Petition Date.

2. Additionally, as indicated in the Debtors’ supplemental statement in support of the Sale Motion, it is already anticipated that a sale and closing will occur on an expedited basis and notice to counter-parties to the Assigned Contracts will also be provided under a more deliberate time frame. Under the revised procedures (the “**Revised Assumption Procedures**”) proposed by the Debtor, an Assumption Schedule will be filed within sixty (60) days prior to the Closing Date. Counter-parties to the Assigned Contracts will thus have adequate notice and thirty (30) days after such notice to object to any proposed assumption and assignment of their respective contract. As things stand, assumption of the Assigned Contracts will only be effective upon closing of the sale. Wholesale assumption prior to that could lead to unnecessary administrative claims against the estate if for some unanticipated reason the sale fails.

3. To the extent Beckman seeks an earlier determination on the assumption and assignment of its contract, the proper venue for such a determination is through the filing of a motion to compel assumption and/or rejection, and not the wholesale revision of the proposed Assumption Procedures (as hereinafter defined).

4. Accordingly, the relief requested by Beckman should be denied and the Revised Assumption Procedures should be implemented as contemplated under the Purchase Agreement and Bidding Procedures Motion.

BACKGROUND

5. On May 29, 2013 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors' cases are being jointly administered for procedural purposes only.

6. The Debtors are operating their business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

7. On June 10, 2013, the United States Trustee for the Southern District of New York (the "**U.S. Trustee**") appointed an official committee of unsecured creditors (the "**Committee**") pursuant to section 1102 of the Bankruptcy Code. The Committee has engaged Alston & Bird, LLP as its proposed counsel. No trustee or examiner has been appointed.

BIDDING PROCEDURES MOTION

8. On the Petition Date, as part of the Debtors' First Day Motions, the Debtors filed an Application for Entry of a Scheduling Order and Debtors' Motion for Entry of (I) an Order (A) Approving Bidding Procedures for the Sale of the Debtors' Real Estate and Designated

Personal Property Assets, (B) Scheduling an Auction and a Sale Hearing Related Thereto, (C) Approving the Form of Notice of the Auction and Sale Hearing, (D) Approving a Break-Up Fee and Expense Reimbursement; and (II) an Order (A) Approving such Sale of the Assets Free and Clear of Liens, Claims, Encumbrances and other Interests, (B) the Assumption and Assignment of certain Executory Contracts and Unexpired Leases in Connection with such Sale, (C) Allowing the Payment of Certain Valid Lien Claims and (D) Related Relief (the “**Procedures Motion**”)¹ [Dkt. No. 17].

9. The Procedures Motion provides, among other things, for procedures relating to the assumption and assignment of certain executory contracts (the “**Assigned Contracts**”) to MMC. The Procedures Motion provides that the Debtors shall file a schedule (the “**Assumption Schedule**”) identifying all such Assigned Contracts no later than 15 days prior to the deadline for parties to object to the proposed sale. However, as indicated herein, under the Revised Assumption Procedures, it is anticipated that an Assumption Schedule will be filed within sixty (60) days prior to the scheduled closing of the sale. Counter-parties to any Assigned Contracts will thus have substantial notice of any proposed assumption and assignment of their contract.

10. On May 31, 2013 [Dkt. No. 36], the Court entered an Order scheduling a hearing on the Procedures Motion.

11. On June 20, 2013, Beckman Coulter, Inc. (“**Beckman**”) filed a Limited Objection (the “**Objection**”) to the Bidding Procedures Motion, solely as it relates to the procedures regarding the assumption and assignment of the Debtors’ executory contracts (the “**Assumption Procedures**”).

¹ Capitalized terms, unless herein defined, shall have the meaning set forth in the Procedures Motion.

12. On June 21, 2013, the Debtors filed a Supplemental Statement in Support of the Procedures Motion ("the "Supplemental Statement") [Dkt. No. 103].

THE OBJECTION

13. Beckman objects to that portion of the Procedures Motion which governs the assumption and assignment of the Assigned Contracts. As detailed in the Procedures Motion, due to Debtors' difficult financial circumstances and dire cash position preceding the filing of these Chapter 11 Cases, the proposed Purchase Agreement and sale of the Debtors' assets to MMC were negotiated in a very compressed time frame. While substantial information and diligence materials had been provided to MMC regarding the Debtors' operations and agreements, given the expedited nature of the negotiations, the full extent of the required due diligence could not be completed prior to the Petition Date. The Debtors are parties to over 600 executory contracts which must be carefully reviewed and evaluated by MMC.

14. Since the Petition Date, MMC has continued conducting due diligence on all aspects of the Debtors' operations, including the Assigned Contracts. However, MMC has not completely decided on the programatics of the successor entity and while it will be operated as an acute care facility, the full extent of services is still an open question. Thus what leases and equipment will be necessary going forward are still being evaluated. While all parties are working diligently and collectively to review all relevant contracts and provide further clarity to the counter-parties regarding any proposed assumption and assignment, the process has yet to be finalized. In addition, accurate cure amounts must be finalized by the Debtors with respect to many of the Assigned Contracts.

15. The parties are making every effort to be as comprehensive as possible with regards to determining which contracts will be deemed Assigned Contracts. However, by its very nature, the process is a fluid one and necessitates a rolling deadline as contemplated by the original Assumption Procedures and, in part, by the Revised Assumption Procedures. Additionally, the concept of a rolling deadline and a preservation of rights on the part of a buyer to amend a proposed list of assigned contracts is standard and has been routinely granted in other similar chapter 11 cases. See, e.g., In re New York Westchester Square Medical Center, Case No. 06-13050 (Bankr. S.D.N.Y. Dec. 17, 2012); In re Peninsula Hospital Center, et al. Case No. 11-47056 (Bankr. E.D.N.Y. August 31, 2012); In re Cabrini Medical Center, et al., Case No. 09-14398 (Bankr. S.D.N.Y. Dec. 30, 2009). Requiring the Debtors and MMC to effectuate proposed amendments only upon the consent of the counter-parties is unwarranted and will result in an undue burden on the Debtors and MMC while unnecessarily complicating the sale process.

16. Moreover, there will be no resulting prejudice to creditors by the implementation of the Assumption Procedures. As detailed in the Assumption Procedures (and as also contemplated by the Revised Assumption Procedures), all counter-parties to the Assigned Contracts will be provided notice of any proposed assumption and assignment of their respective contract. An opportunity to object to any such assumption and assignment will also be afforded. In the event of any amendment to the Assumption Schedule, all parties affected by the amendment will also receive notice and be provided with a similar opportunity to object to the proposed treatment of their contract. With respect to any disputes regarding a proposed cure amount, a hearing will be held by the Court, if necessary, and an adequate amount (as determined by the Court) will be reserved for the payment of any cures pending resolution of the dispute.

17. It should be further noted that pending any assumption and assignment of the Assigned Contracts, the Debtors are continuing to make required post-petition payments to the counter-parties, consistent with their obligations under the Bankruptcy Code. Practically speaking, any actual assumption and assignment will not, in any event, be effective until the Closing Date as any prior assumption of the Assignment Contracts could lead to the unnecessary incurrence of administrative claims. Thus, until the closing is effectuated, certainty for the assumption and assignment of any particular contract cannot be guaranteed in any event.

CONCLUSION

18. The Assumption Procedures have been carefully crafted and are designed to protect rights of counter-parties to all Assigned Contracts by providing the counter-parties with ample notice of any proposed assignment, and an opportunity to object thereafter. Beckman's request is without basis and simply unwarranted under the circumstances of these cases. Additionally, as indicated above, to the extent Beckman seeks an expedited assumption of its agreement, the proper procedure for making such a request is the filing of a motion to compel assumption and/or rejection of the agreement, not seek a wholesale revision of the Assumption Procedures.

19. Thus, based on the foregoing, it is respectfully requested that Beckman's Limited Objection be overruled and the relief requested in the Procedures Motion with respect to the Assumption Procedures be granted.

NOTICE

20. Notice of this Reply has been provided in accordance with the Administrative Order Establishing Case Management and Scheduling Procedures (the "Case Management

Order”), entered on June 4, 2013, as to the parties identified on the General Service List and the Master Service List (as such terms are identified in the Case Management Order). The Debtors submit that no other or further notice need be provided.

Dated: June 21, 2013
Great Neck, New York

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By: 

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