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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re

BEVERLY COMMUNITY HOSPITAL
ASSOCIATION, dba BEVERLY
HOSPITAL, a nonprofit public benefit
corporation,¹

Debtor.

Case No. 2:23-bk-12359-SK

Chapter 11

Jointly administered with:

Case No. 2:23-bk-12360-SK

Case No. 2:23-bk-12361-SK

**CHAPTER 11 TRUSTEE'S STATUS
REPORT**

DATE: October 18, 2023

TIME: 9:00 a.m.

PLACE: Courtroom "1575"

- ☒ Affects all Debtors
- ☐ Affects Beverly Community Hospital
Association
- ☐ Affects Montebello Community Health
Services, Inc.
- ☐ Affects Beverly Hospital Foundation

¹ The debtors in these chapter 11 cases (collectively, the "Cases"), along with the last four digits of each debtor's federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Boulevard, Montebello, California 90640.



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1 **TO THE HONORABLE SANDRA KLEIN, UNITED STATES BANKRUPTCY JUDGE,**
2 **THE OFFICE OF THE UNITED STATES TRUSTEE, AND INTERESTED PARTIES:**

3 I, Howard M. Ehrenberg (the “Trustee”), the duly appointed, qualified, and
4 acting chapter 11 trustee for the estates of the jointly administered debtors Beverly
5 Community Hospital Association, dba Beverly Hospital, a nonprofit public benefit
6 corporation (“Beverly Community”), Montebello Community Health Services, Inc.
7 (“Montebello Health”), and Beverly Hospital Foundation (“Beverly Foundation”)
8 (collectively and interchangeably, the “Debtor” or “Debtors”), hereby submit my “Chapter
9 11 Trustee’s Status Report”, and represent as follows:

10 **I.**

11 **TIMELINE OF EVENTS**

12 **A. Filing of Chapter 11 Case and Appointment of Chapter 11 Trustee**

13 On April 19, 2023 (the “Petition Date”), the Debtors each filed a voluntary
14 petition for relief under chapter 11 of title 11 of the United States Code. On May 10,
15 2023, the Office of the United States Trustee (the “OUST”) appointed an official
16 committee of unsecured creditors.

17 On August 7, 2023, the Debtors caused to be filed their “Notice of Motion
18 and Motion for Entry of An Order (I) Authorizing the Sale of Substantially all of the
19 Debtors’ Assets Free and Clear of All Liens, Claims, and Encumbrances; to White
20 Memorial Medical Center d/b/a Adventist Health White Memorial Free and Clear; (II)
21 Authorizing the Assumption and Assignment of Certain Executory Contracts and
22 Unexpired Leases, and (III) Granting Related Relief” (the “Sale Motion”) [Docket No.
23 638]. The Sale Motion sought, among other things, approval of that certain “Asset
24 Purchase Agreement” (the “APA”), dated as of August 7, 2023, by and between Beverly
25 Community and Montebello Health, as sellers, and White Memorial Medical Center d/b/a
26 Adventist Health White Memorial (“AHWM”), as buyer.

27 On August 18, 2023, the Court entered its “Order (A) Authorizing the Sale
28 of Debtors’ Assets to Purchaser Free and Clear of Liens, Claims, Interests, and Other

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1 Interests; (B) Approving the Assumption and Assignment of Executory Contracts and
2 Unexpired Leases Related Thereto; and (C) Granting Related Relief” (the “Sale Order”)
3 [Docket No. 718] granting the Sale Motion, approving the APA, and authorizing the
4 Debtors’ proposed sale to AHWM pursuant to 11 U.S.C. §§ 105(a), 363, and 365, Rules
5 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure, and
6 Rules 6004-1 and 9013-1 of the Local Bankruptcy Rules for the Central District of
7 California.

8 On September 7, 2023, the Debtors caused to be filed their “Notice of
9 Closing of Sale to White Memorial Medical Center d/b/a Adventist Health White
10 Memorial” [Docket No. 789] pursuant to which, among other things, the Debtors reported
11 that, pursuant to Section 1.3 of the APA, the Closing (as defined in the APA) of the sale
12 to AHWM occurred on September 6, 2023 (the “Closing Date”), with an Effective Time
13 (as defined in the APA) of 12:01 a.m. (Pacific Time) on September 7, 2023.

14 On September 11, 2023, U.S. Bank Trust Company, National Association,
15 as Master Trustee (“U.S. Bank”) caused to be filed “U.S. Bank Trust Company, National
16 Association, As Master Trustee’s Emergency Request for Status Conference and Order
17 to Show Cause Why A Chapter 11 Trustee Should Not Be Appointed” (the “OSC”)
18 [Docket No. 791]. The OSC was granted by the Court pursuant to its “Order Directing the
19 Appointment of A Chapter 11 Trustee and Setting Hearing and Briefing Schedule on Fee
20 Applications” entered on September 13, 2013 [Docket No. 803]. On September 15,
21 2023, the OUST filed its “Notice of Appointment of Chapter 11 Trustee” [Docket No. 811]
22 pursuant to which I was appointed chapter 11 trustee for the Debtors’ jointly administered
23 estates. On September 15, 2023, the OUST filed its “Application for Order Approving
24 Appointment of Trustee and Fixing Bond” [Docket No. 813]. On September 15, 2023, the
25 Court entered its “Order Approving the Appointment of A Chapter 11 Trustee” [Docket
26 No. 815].
27
28

As a result of the foregoing, I became the duly appointed, qualified, and acting chapter 11 trustee for the Debtors' jointly administered estates, and I continue to act in this capacity.

B. Meetings With Constituents

Since my appointment, I have met, either in person, by video conference, or by telephone, with numerous constituents in these jointly administered cases. The substance of those meetings, generally stated, are described below:

i. Debtors' Counsel

My counsel and I have had several meetings with counsel for the Debtors, Sheppard, Mullin, Richter & Hampton LLP. The purpose of these meetings was to discuss the history of the cases, the open issues regarding the administration of the cases, and the recently consummated sale of the hospital to AHWM. I also have met with the estate's ordinary course professionals to determine the other pending matters requiring my attention.

ii. U.S. Bank Trust Company, National Association, as Master Trustee

My counsel and I have had several meetings with counsel for U.S. Bank, the primary secured lender in these cases. Like the meetings with counsel for the Debtors, the purpose of these meetings was to discuss the history of the cases, the open issues regarding the administration of the cases, and the sale of the hospital to AHWM. In addition, as discussed below, I have been in negotiations with U.S. Bank regarding the use of its purported cash collateral to fund the administration of these cases, the retention of professionals, and the pathways towards a potential resolution of certain of the outstanding issues between the parties.

iii. Official Committee of Unsecured Creditors

My counsel and I have had several meetings with Dentons USA and Silis Cummis & Gross, LLP, co-counsel for the Official Committee of Unsecured Creditors (the "Committee") and Province LLC, the Committee's financial advisors. The purpose of

1 these meetings was to gain an understanding of the Committee's position on the
2 outstanding issues in these cases, and to discuss pathways towards a potential
3 resolution of certain of the outstanding issues between the parties.

4 **iv. Debtor's Financial Advisors**

5 My counsel and I have had several meetings with Triple P RTS, LLC
6 ("Portage"), the Debtor's financial advisors and proposed investment banker. Among
7 other things, Portage has a great deal of institutional knowledge regarding the Debtors'
8 business operations, expenses, budgets, assets, and liabilities. Prior to my appointment,
9 Portage had been working directly not only with the Debtors' counsel, but with the
10 remaining hospital staff, who still remain employees of the Beverly Hospital estate.
11 During the first weeks of my appointment, Portage was cooperative with me and my
12 professionals in responding to numerous requests for information and documents, often
13 times on a daily basis. Portage and its staff participated in multiple meetings, and
14 responding to daily requests for information. However, as addressed below, due to my
15 recent decision to retain a new financial advisor for the estates, Portage has advised me
16 that they can no longer provide assistance.

17 **v. AHWM**

18 My counsel and I have had several meetings with the officers and counsel
19 for AHWM, who acquired the hospital and ancillary assets from the Debtors. The
20 purpose of these meetings was to understand the allocation of employee expenses, the
21 assumption and assignment, or rejection, of certain additional executory contracts and
22 unexpired leases, and the return of leased equipment to vendors who leases were
23 previously rejected. Among other things, AHWM advised me that it is ahead of schedule
24 onboarding the Debtors' employees such that, in the near term, those employees will no
25 longer be employed and "leased" to AHWM.

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1 vi. **Department of Health Care Services and Centers for Medicare**
2 **and Medicaid Services**

3 My counsel and I have had several meetings with counsel for the
4 Department of Health Care Services (“DHCS”) and the Centers for Medicare and
5 Medicaid Services (“CMS”). The purpose of these meetings was to discuss a resolution
6 of the outstanding dispute regarding the payment of Quality Assurance Fees (“QAF”) due
7 to the estates and reaching an agreement regarding the method of payment of the QAF.
8 I also met with the United States Attorney who represents CMS to understand why CMS
9 has frozen the Debtors’ accounts and to determine the amount of debt and potential
10 offset.

11 vii. **United Nurses Associations of California/Union of Health Care**
12 **Professionals**

13 My counsel and I have had several meetings with counsel for the United
14 Nurses Associations of California/Union of Health Care Professionals (the “Union”) to
15 discuss any outstanding issues regarding the assumption and assignment of the Union’s
16 collective bargaining agreement with the Debtors to AHWM. These discussions remain
17 ongoing.

18 viii. **Beverly Hospital’s Former President and Chair of the Board**

19 My counsel and I have had several meetings with Beverly Hospital’s former
20 president, Alice Cheng, and the Chair of the Board, Lyla Eddington. The purpose of
21 these meetings was to discuss general facts regarding the history of these cases and
22 open issues affecting the administration of the estates, as well as to discuss the
23 depositions of Ms. Cheng and Ms. Eddington set by U.S. Bank relating to the Debtor’s
24 pending application to employ Portage as the estates’ investment banker. My
25 professionals and I also met with the counsel to the Board of Directors to discuss various
26 open issues in these cases.

ix. **Charitable Foundations**

My counsel and I have had several meetings with the Adventist Charitable Foundation, as well as representatives of the Beverly Foundation to discuss the best method of winding down the financial affairs and charitable mission of the Beverly Foundation.

x. **Hospital Staff**

I have met several times with the remaining members of the hospital staff to discuss current operational issues, expenses, and billing and collection issues, as well as any transitional issues relating to future employment by AHWB. The remaining staff are being moved pursuant to a lease approved prior to my appointment to the medical office building near the hospital.

C. **Retention of Professionals**

i. **General Bankruptcy Counsel**

On September 27, 2023, I caused to be filed my “Chapter 11 Trustee’s Application for Order Authorizing Employment of Greenspoon Marder LLP As General Bankruptcy Counsel; Declaration of Daniel A. Lev in Support Thereof” (the “Application”) [Docket No. 830], pursuant to which I seek an order of this Court authorizing the employment of Greenspoon Marder LLP, a firm in which I am a partner, to act as my general bankruptcy counsel, effective as of September 15, 2023, the date of my appointment as chapter 11 trustee.

ii. **Special Healthcare Counsel**

Due to my determination that the estates require the assistance of experienced healthcare counsel, I will be retaining Locke Lord, LLP (“Locke Lord”) as the estates’ special healthcare counsel. I anticipate that Locke Lord will advise me regarding regulatory issues as well as assisting me in my ongoing negotiations with CMS and DHCS. An application authorizing the employment of Locke Lord will be filed shortly.

1 payments. The notice was not detailed and did not provide a specific reason for the
2 freeze. Therefore, I have asked my proposed special healthcare counsel to assist with
3 addressing the freeze so that the flow of payments resumes.

4 **C. Insurance**

5 Many of the Debtors' insurance policies were set to expire at the end of
6 September, 2023. I have now had several calls with the Debtors' insurance brokers to
7 determine which policies were still required so I could bind those policies before their
8 expiration. With the assistance of Committee counsel, I also put the Debtors' directors
9 and officers' insurance carrier on notice of potential claims against the Debtors' former
10 officers and directors by sending a "notice of circumstances" to three of carriers, and am
11 investigating those claims.

12 **D. Cash Collateral/Wind-Down Budget**

13 While the authority to use U.S. Bank's cash collateral terminated upon my
14 appointment, U.S. Bank has advised me that they will agree to allow certain payments
15 necessary to the ongoing administration of the estates to be made out of its alleged cash
16 collateral, including, but not limited to (i) the payments primarily related to payroll and
17 benefits to the more than 600 employees who are still on the Debtors' payroll under the
18 Temporary Staffing Agreement, and (ii) payments that may need to be made to satisfy
19 items previously referred to as "Trailing Expenses".

20 The Trailing Expenses are essentially those post-petition, non-professional
21 vendors who were not paid, including utility companies who are also seeking payment
22 from an adequate assurance account established by the Debtors. I am working on an
23 initial 30-day budget and a longer wind-down budget to present to U.S. Bank for payment
24 of these wind-down administrative expenses. FTI and the hospital staff are assisting me
25 with the preparation of these budgets. I am also negotiating with U.S. Bank for an
26 arrangement for the payment of my fees and those of my professionals, which I have
27 proposed to be paid as an agreed surcharge of U.S. Bank's collateral. Once the budgets
28

1 and negotiations with U.S. Bank are complete, my professionals and I will negotiate and
2 file an appropriate stipulation and motion.

3 **E. Assumption and Assignment of Executory Contracts and Unexpired**
4 **Leases**

5 As part of my discussions with AHWM, certain additional executory
6 contracts and unexpired leases not previously assumed and assigned as part of the sale
7 have been identified by AHWM. As such, I will soon be filing a motion to assume and
8 assign these additional executory contracts and leases pursuant to the APA and Sale
9 Order. In this regard, I am working with AHWM to address the issue of the obligation to
10 pay cure payments and, in particular, those cure payments that were incurred post-
11 petition, but were not paid.

12 **F. Sale of Certain Assets Free and Clear of Liens**

13 Since my appointment, I have been contacted by at least one creditor that
14 has advised that it possessed a lien on equipment at the hospital. AHWM has taken the
15 position that this equipment was sold was included in the Purchased Assets as that term
16 was defined in the APA and Sale Order. The creditor in question did not oppose the Sale
17 Motion, but also disputes that it was served with notice of that motion. I believe that there
18 may be other similarly situated creditors who may have had their collateral sold free and
19 clear of their liens pursuant to the Sale Order. Under the Sale Order, such liens would
20 attach to the proceeds of the sale, but there was no mechanism to determine the relative
21 rights of those parties to the proceeds. There may also be an issue regarding the degree
22 of notice received by these creditors, and whether the Sale Order would, therefore, be
23 enforceable against such creditors. As a result, I believe it would be appropriate to
24 establish a protocol for addressing these issues, and am discussing this with U.S. Bank,
25 who claims a senior lien on all of the sale proceeds.

26 **G. Litigation**

27 Prior to my appointment, the Committee filed an action, since amended,
28 against U.S. Bank challenging the extent, validity, scope, and priority of U.S. Bank's liens

1 on certain assets of the estates and their proceeds (the "Committee Action"). In turn,
2 U.S. Bank field a Rule 12(b) motion to dismiss the amended complaint, but the motion
3 has yet to be scheduled for hearing. A status conference in the Committee Action is to
4 be conducted at the same time as the Chapter 11 Status Conference. Both sides have
5 expressed to me their firm belief in their positions. The resolution of the Committee
6 Action, either through a mediated settlement or through the conclusion of the litigation,
7 will have a significant impact on the outcome of these cases.

8 It appears that the constituents affected by this litigation have very
9 divergent views about the merits of their positions. I am hoping that my presence will
10 enable parties to engage in meaningful settlement discussions.

11 **H. Conversion**

12 I believe these jointly administered cases should remain in chapter 11 for
13 the time being, and, as a result, I do not intend to seek conversion to chapter 7 at this
14 time.

15 **III.**

16 **CONCLUSION**

17 As a result of the foregoing, I respectfully request that status conference be
18 continued for ninety days, and for such other and further relief as the Court deems
19 appropriate.

20 DATED: October 12, 2023

**HOWARD M. EHRENBURG
CHAPTER 11 TRUSTEE**

21
22
23 By: /s/ Howard M. Ehrenberg
24 Howard M. Ehrenberg
Chapter 11 Trustee
25
26
27
28

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 1875 Century Park East, Suite 1900, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled (*specify*): CHAPTER 11 TRUSTEE'S STATUS REPORT will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) October 12, 2023 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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☐ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (date) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 12, 2023

Denise Walker

/s/ Denise Walker

Date

Printed Name

Signature