

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re:)	Chapter 11			
)				
VALERITAS HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 20-10290 (LSS)			
)				
Debtors.)	Jointly Administered			
)				
)	Re Dkt. No.: 25, 127			

LIMITED OBJECTION OF EXPRESS SCRIPTS SENIOR CARE HOLDINGS, INC. TO DEBTORS’ NOTICE OF PROPOSED ASSUMPTION OR ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS

Express Scripts Senior Care Holdings, Inc., (“SCH”), by and through counsel, hereby files this Limited Objection (the “Objection”) to Debtor’s *Notice of Proposed Assumption or Assumption and Assignment of Certain Executory Contracts* [Docket No. 127] (the “Cure Notice”)², and respectfully represents as follows:

1. On February 9, 2020 (the “Petition Date”), the Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).
2. Upon information and belief, Debtor is operating and managing its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.
3. SCH and Debtor entered in that *Medicare Part D Rebate Program Agreement* finally dated July 26, 2012 and the *Medicare Part D Inflation Agreement* finally dated March 3, 2016 (collectively, the “Agreement”). Under the Agreement, Debtor was to pay to SCH certain

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

² Terms not otherwise defined here shall have the meanings ascribed to them in the Cure Notice and accompanying documents.



rebates and fees associate therewith related to the sale of certain products.

4. The Agreement has not been rejected or assumed by Debtor as of the date of this objection.

5. On March 6, 2020, the Debtors filed the Cure Notice [Docket No. 407].

CURE CLAIM OBJECTION

6. Section 365(b) provides in pertinent part as follows:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default...;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

7. As of the date of this Objection, SCH objects to the cure amounts proposed for the Agreement included in Debtors' Cure Notice (the "Proposed Cure Amount(s)"). SCH herein reserves the right to file supplementary cure objections.

8. The Proposed Cure Amount is understated, as of the date of this Objection as indicated in the below table:

[Remainder of Page Left Intentionally Blank]

TABLE 1:

Debtor's Contract Description	Debtor Proposed Cure Amounts	SCH "<u>Cure Amounts</u>"³
<i>Medicate Part D Rebate Program</i>	\$0.00	\$244,983.95

9. SCH further objects to the assumption of the Agreement absent payment of all Cure Amounts owed thereunder from the date of this Objection through the effective date of assumption, including any amounts that will become due or be invoiced on or after March 10, 2020, (including, but not limited to, additional amounts, not yet known, that accrued following the date of this Objection).

JOINDER

10. In addition to the foregoing, SCH further joins in the objections filed by the Debtors' other creditors to the extent that such objections are not inconsistent with the relief requested in this Objection.

RESERVATION OF RIGHTS

11. SCH hereby reserves its rights to make such other and further objections as may be appropriate to the Agreement, including, but not limited to, objections regarding adequate assurance of future performance under Section 365.

CONCLUSION

12. For the reasons set forth above, SCH respectfully requests that this Court (i) sustain this Objection; (ii) require that any order authorizing the assumption of the Agreement

³ The Cure Amounts specified in this chart do not reflect any amounts that will become due or be invoiced on or after March 10, 2020, and SCH reserves all of its rights with respect thereto.

affirmatively requires the Debtors to pay all amounts accrued but not yet billed following March 10, 2020; and (iii) grant SCH such further relief as it deems proper.

Date: March 18, 2020

Wilmington, DE

HOGAN♦McDANIEL

/s/Garvan F. McDaniel

Garvan F. McDaniel (DE Bar No. 4167)

1311 Delaware Avenue

Wilmington, Delaware 19806

Telephone: 302.656.7540

Facsimile: 302.656.7599

Email: gfmcdaniel@dkhogan.com

*ATTORNEYS FOR EXPRESS SCRIPTS,
INC.*

CERTIFICATE OF SERVICE

Garvan F. McDaniel hereby certifies that on this the __18__ day of March, 2020, a true a correct copy of the *Limited Objection of Express Scripts, Inc. Notice of Proposed Assumption or Assumption and Assignment of Certain Executory Contracts* was served upon all parties registered to receive electronic service via CM/ECF.

/s/ Garvan F. McDaniel
Garvan F. McDaniel