

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)	
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, 129, 205

**OBJECTION OF ASCENT HEALTH SERVICES, LLC TO
DEBTORS’ SUPPLEMENTAL NOTICE OF PROPOSED ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS**

Ascent Health Services, LLC, (“Ascent”), by and through counsel, hereby files this Limited Objection (the “Objection”) to Debtor’s *Supplemental Notice of Proposed Assumption and Assignment of Certain Executory Contracts* [Docket No. 205] (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. Ascent and Debtor entered in that *Rebate Program Agreement and Inflation Agreement* (collectively, the “Agreement”). Under the Agreement, Debtor was to pay to Ascent certain rebates and fees associate therewith related to the sale of certain products.

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.



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 *Notice of Proposed Assumption or Assumption and Assignment of Certain Executory Contracts* [Docket No. 127].

6. On March 17, 2020, the Debtors filed the Cure Notice [Docket No. 205].

CURE CLAIM OBJECTION

7. 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).

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

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

TABLE 1:

Debtor's Contract Description	Debtor Proposed Cure Amounts	Ascent "<u>Cure Amounts</u>"³
<i>Rebate Program Agreement</i>	\$0.00	\$258,569.08

10. Ascent 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).

CURE AND ADEQUATE ASSURANCE OBJECTION

11. Pursuant to the *Asset Purchase Agreement* [Docket No. 67] (the "APA"):

At Closing, (x) [Debtors] shall, pursuant to the Sale Order and the Assumption and Assignment Agreement or the Assumption and Assignment of Leases, as applicable, assume and assign to Purchaser (the consideration for which is included in the Purchase Price) each of the Assigned Contracts that is capable of being assumed and assigned and pay all unpaid Cure Costs (if any) in excess of the Cure Cap in connection with such assumption and assignment, and (y) Purchaser shall pay promptly all Cure Costs (up to the Cure Cap), and shall assume, perform, and discharge the Assumed Liabilities (if any) under the Assigned Contracts, pursuant to the Assumption and Assignment Agreement or the Assumption and Assignment of Leases, as applicable.

12. Pursuant, to the language of the proposed *Revised Proposed Sale Order* [Docket No. 203], as of the closing of the sale, the Purchaser shall "cure or provide adequate assurance of cure"

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.

up to the Cure Cap, and the “Debtors [are] responsible for any Cure Amounts in excess of the Cure Cap.”⁴

13. Despite these clear statements to creditors and this Court in the APA and Proposed Sale Order, upon information and belief, Debtors do not intend to pay the cure of contracts that are assumed and assigned on or before closing of the sale.

14. In fact, upon information and belief, Debtor’s intent is to leave the cure costs above the Cure Cap unpaid until the confirmation of a Chapter 11 Plan (not yet on file) – and to use funds for cure payment set aside by the CRG Settlement (not yet approved by this Court) comingled with the estates administrative claims.

15. Even if Debtor did reveal this intent in its filings, such contingent payments and unclear timing fall far short of the cure and adequate assurance requirements of Section 365(b). Further, assumed contract parties should not be forced to take on the burden of the estate’s solvency to ensure payment of cure amounts.

16. In the Sale Order, this Court should affirmatively require Debtors to pay cure costs above the Cure Cap on or before sale as indicated by Debtors in the APA and intimated in the proposed Sale Order.

JOINDER

17. In addition to the foregoing, Ascent 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.

⁴ See *Revised Proposed Sale Order* [Docket No. 203], pg. 8.

RESERVATION OF RIGHTS

18. Ascent hereby reserves its rights to make such other and further objections as may be appropriate to the Cure Notice and or proposed sale.

CONCLUSION

19. For the reasons set forth above, Ascent respectfully requests that this Court (i) sustain this Objection; (ii) require that any order authorizing the assumption of the Agreement affirmatively requires the Debtors to pay all amounts accrued but not yet billed following March 10, 2020; and (iii) grant Ascent such further relief as it deems proper.

Date: March 19, 2020

Wilmington, DE

HOGAN♦McDANIEL

/s/Garvan F. McDaniel

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*ATTORNEYS FOR EXPRESS SCRIPTS,
INC.*

CERTIFICATE OF SERVICE

Garvan F. McDaniel hereby certifies that on this the 19th day of March, 2020, a true a correct copy of the *Objection of Ascent Health Services, LLC to Debtors' Supplemental Notice of Proposed 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